



INTEGRATIVE
LAW INSTITUTE
AT COMMONWEAL

COMMUNICATING THE PASSION

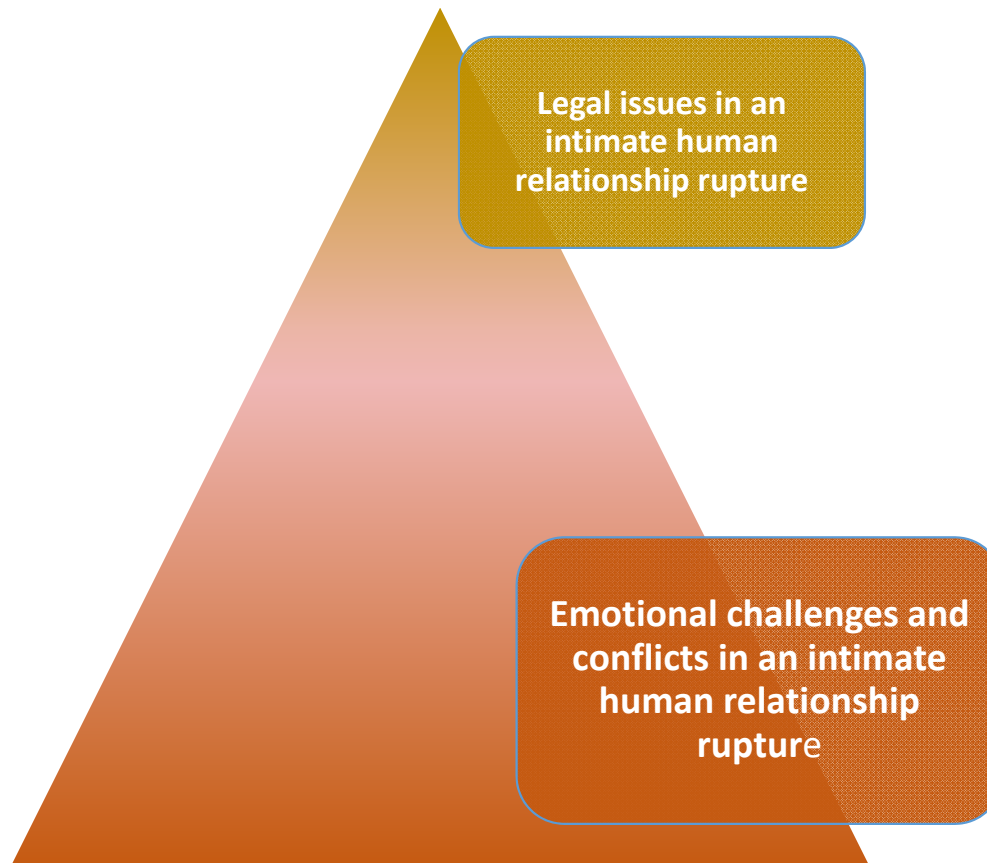
A workshop with
Pauline H. Tesler

IACP FORUM, SEATTLE WASHINGTON
October 25, 2018

Materials Packet

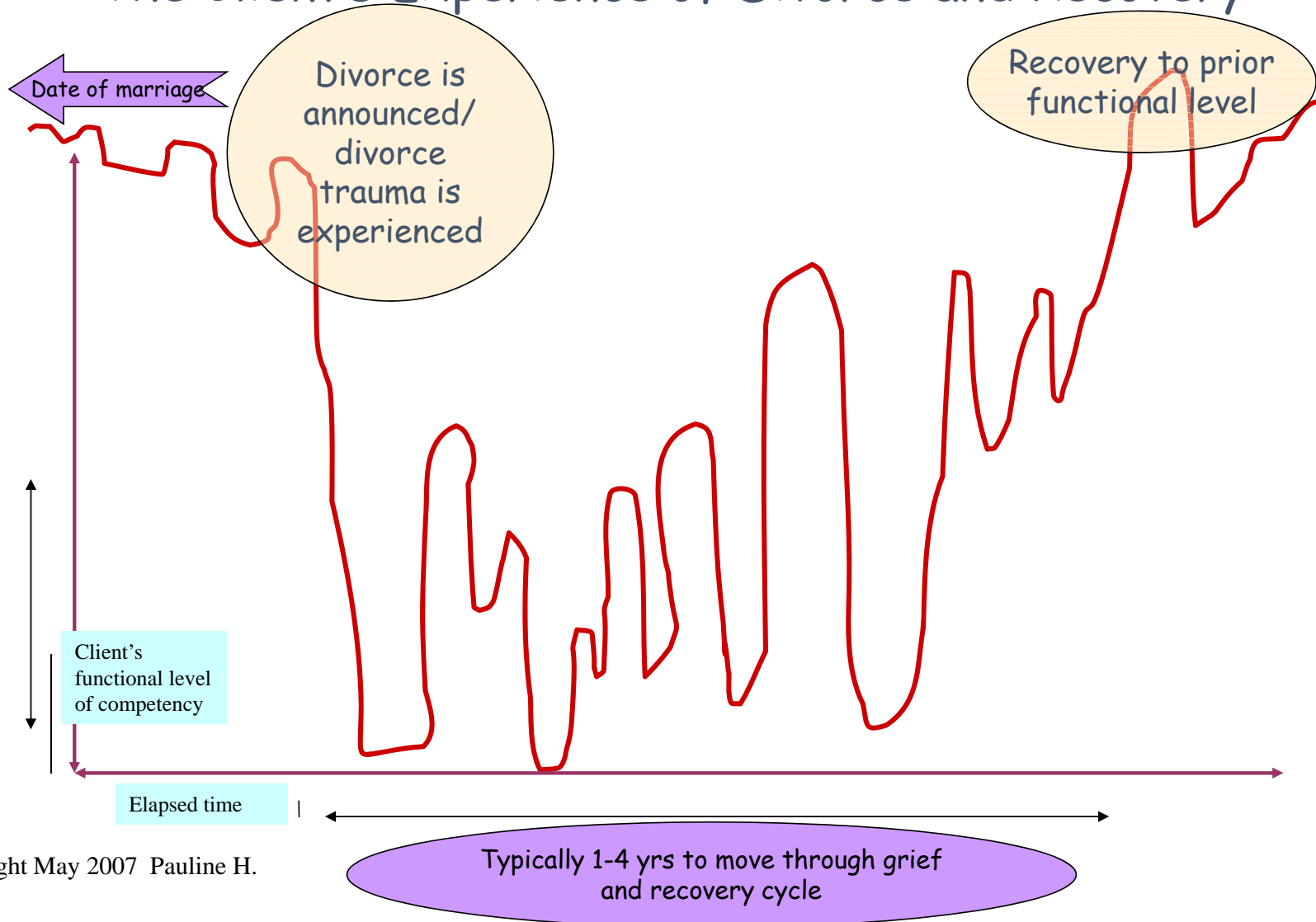
Note: Please review and get familiar with the “Henry and Ruth” case facts (pages 8-11) before the afternoon session of this workshop.

The Tip of the Iceberg



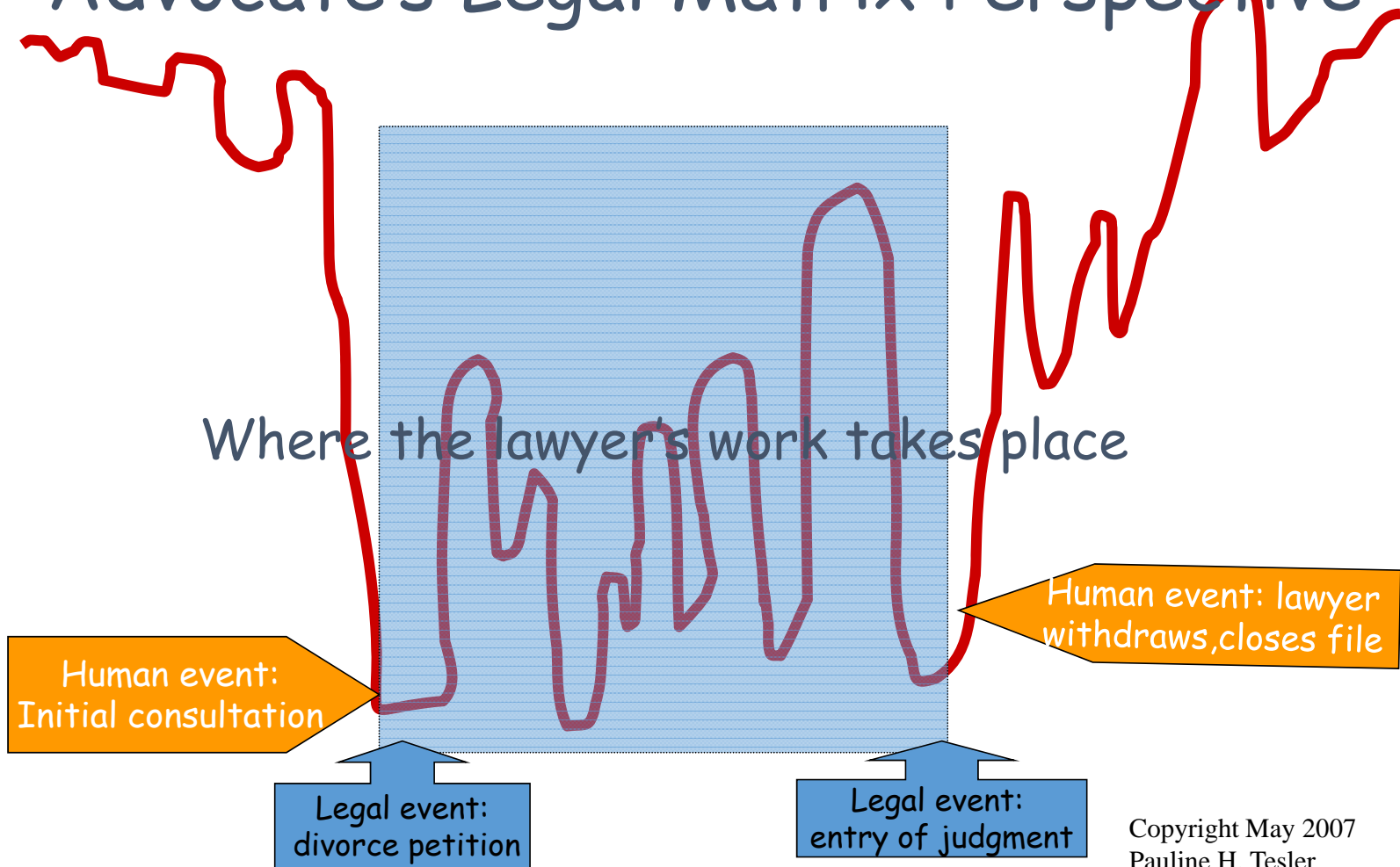
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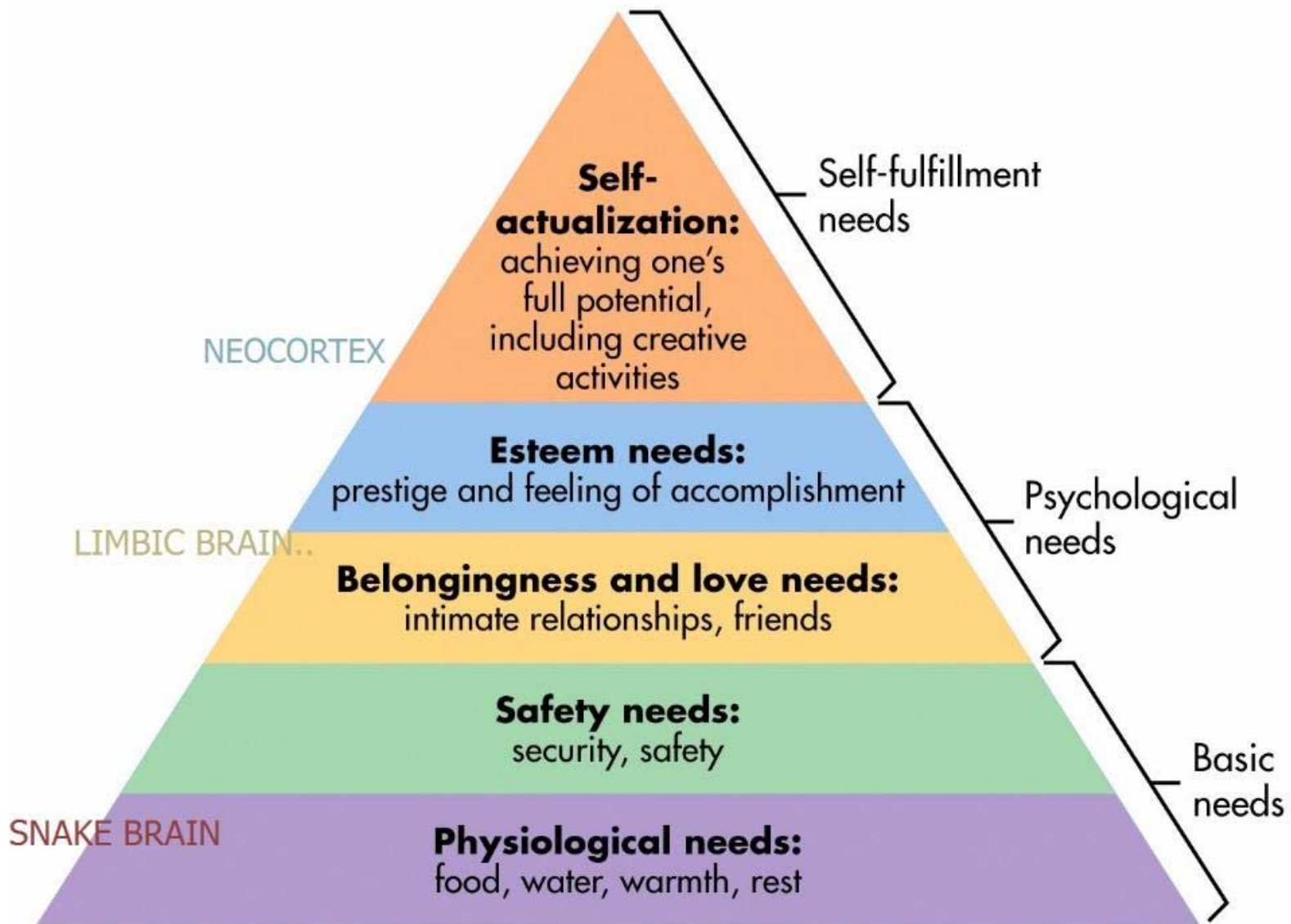
The Client's Experience of Divorce and Recovery



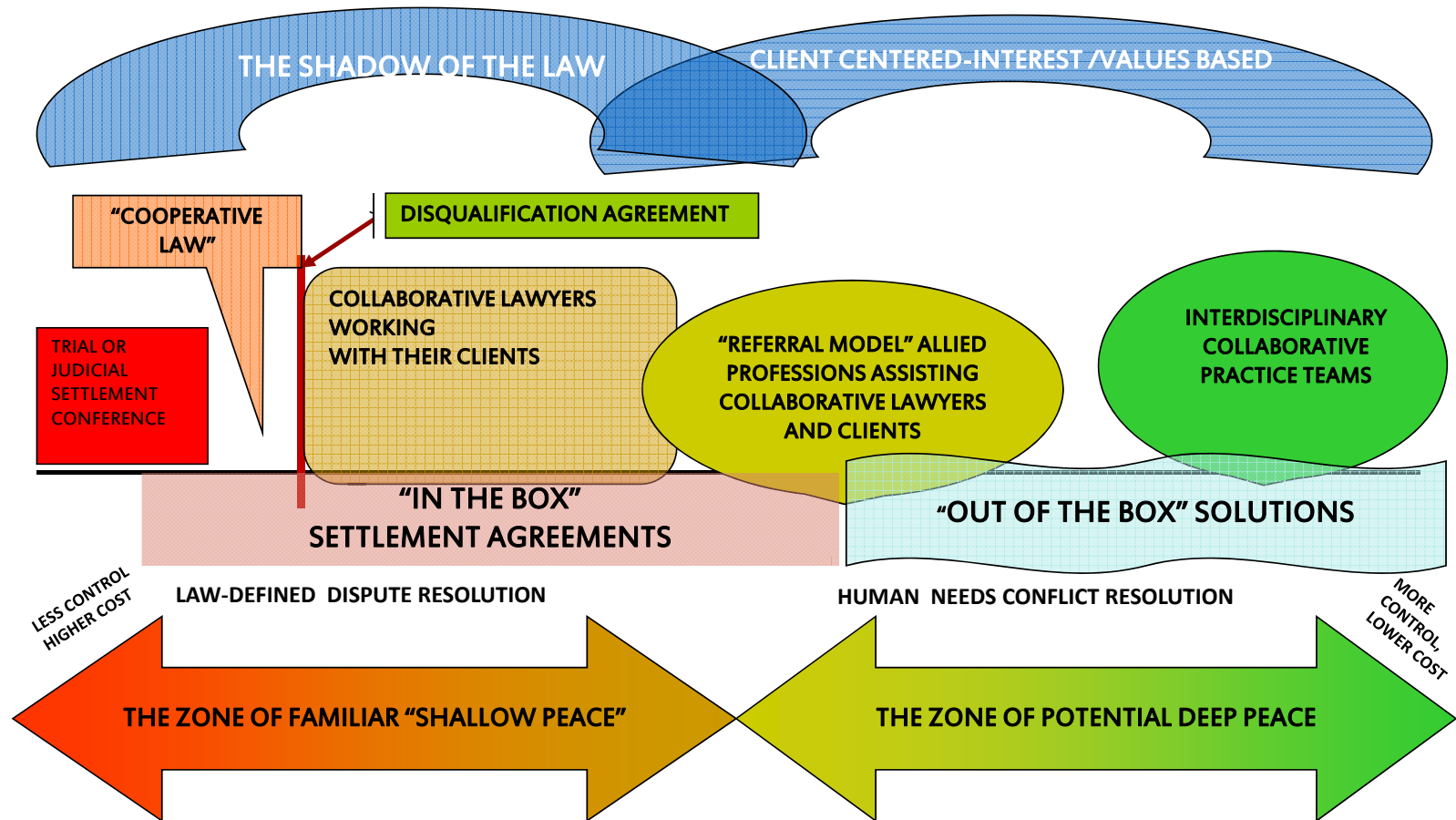
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The Legal Divorce/The Conventional Advocate's Legal Matrix Perspective





THE COLLABORATIVE CONFLICT RESOLUTION SPECTRUM AND THE SHADOW OF THE LAW



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Hopes, fears, and golden apples

- Ask open-ended, curious questions to achieve the following goals
 - Meet ethical obligations re informed consent while expressing your own commitment to CP in values-based terms
 - Screen: is this a collaborative client? A collaborative case?
 - Always be answering the implicit question: What's in it for me?
 - Educate client in ways that normalize emotions and give permission to aspire high
 - Lay down process anchors, using the "hopes and fears" technique
- Listen to the answers
- Use the answers as your armature for education about collaborative practice, using the “what’s in it for me” technique

SOME CURIOUS QUESTIONS ABOUT HOPES AND FEARS

- When you fear the worst about this divorce, what specific things do you imagine?
- If you allowed yourself to hope for the very best divorce process, what would that look like for you? For your children? Your spouse?
- What do you think your spouse's main hopes and fears might be?
- What will the biggest challenge in this divorce be?
- How would your spouse answer that question?
- Have you told your children about the divorce? What did you tell them?
- What is the worst thing that your spouse will tell his/her lawyer about you? What's the best thing?
- When you fight, what do you fight about? How do you fight? How do you make up?
- Have any recent arguments or disagreements led to solutions?
- Why are you interested in collaborative practice?
- How important is it to you that your spouse do well in the divorce, provided you also do well?
- If your major goals and needs are met in a settlement, would it matter to you if your spouse did as well as or better than you? Why?
- If you and your spouse each met your most important goals in your divorce settlement, to what extent would it matter to you that you might have done better in court in a traditional representation?
- How would we know that we had met your highest expectations for a good process and outcome?

The Henry and Ruth Case

Husband: Henry, age 55

Wife: Ruth, age 50

Children: Joseph, age 17; Marie, age 20.

Basic Facts:

Henry and Ruth were married for twenty years at the time Ruth decided to separate for purposes of divorce, nearly two years ago. The family had lived for the last fifteen years of the marriage in a single-family home in a comfortable middle-class suburb of your city. Since separation, Henry has remained in the family residence; Ruth moved out.

Henry is a "type A," anxious, hard-driving middle-management executive for a large commercial real estate company. He is a fairly conventional person, unadventurous and accustomed to following well-trod paths in his personal and work life. He does not like to stand out as different from friends and colleagues. He is a quiet, very inward person but he ruminates and worries, and his anxieties often build up to a breaking point when family stresses are more than he can control. He is very concrete and rational, and does not easily express or even understand his own feelings. He has a controlling personality, and becomes particularly dominating when anxious.

Ruth now lives in a small apartment that she rented shortly after the separation. Ruth is intelligent and outgoing, sociable, warm, somewhat emotional in her manner, and assertive under pressure. She is more adventurous than Henry, but also has a conservative streak: she worries about what people might think about her, especially since she is the one who wants this divorce. It is important to her that the children come through this process as well as possible and that she and Henry conduct themselves in a civilized way as they divorce.

Ruth left the marriage as part of a process of self-discovery, in the course of recovering from long-term alcoholism. She has become very involved in alternative healthcare and spiritual practices, including meditation and yoga. Although she is not yet comfortable enough to "come out," Ruth has just begun a lesbian relationship with a woman she met in a yoga class. She fears Henry's reaction if and when he learns about this.

Henry abuses alcohol when stressed. He does not understand why Ruth left the marriage and believes she is destroying the family for no reason. He believes that Ruth would understand this and reconcile with him, if only she would listen. Ruth believes that she cannot stay sober or be true to herself if she remains married to Henry. She has no anger at Henry but she believes he is controlling and has little self-understanding.

The children:

At the time of separation, Joseph was in his second year of secondary school, and Marie was in her first year at university. Joseph should complete secondary school this year, and Marie has one more year before completing her degree at the university.

Joseph has always been a somewhat difficult child even when young, and as he became a teenager, he got involved with new friends who both parents believe are a bad influence. He has been abusing drugs and alcohol. He has been suspended from school more than once for being intoxicated. His school grades were average until recently, when he began failing several of his courses. Joseph most often lives with Ruth but sometimes goes to live with his father in the family residence when he refuses to abide by Ruth's house rules.

Neither parent understands why Joseph is such a challenging child and they have always had great difficulty reaching any agreements about how to parent him. Henry believes firmly that children should be obedient and follow the rules, and that in every situation there is a right choice and a wrong choice. He is a stern authoritarian parent. Joseph gets very upset when his father is angry about Joseph's behavior, and he turns to Ruth for sympathy. Ruth is warmer and a more permissive, nurturing parent who believes that Joseph's problems are caused mainly by Henry's harsh and unsympathetic parenting style and his lack of warmth or closeness with Joseph. But Ruth cannot tolerate alcohol or drug abuse in her home because of her own problems with alcoholism and that is the one rule that she will not allow Joseph to violate while he is living with her. Each parent sends Joseph to the other parent when they run out of ways to deal with him.

Marie is the "good child." She is an excellent student and always does as is expected of her. She has never been in any trouble. She has a wide circle of friends in both Rio and Sao Paolo, and is doing well at university. She is closer to Henry than to Ruth; Henry understands Marie and has always felt like a competent parent with her. He feels at ease parenting her, and he enjoys taking Marie on outings and providing treats and luxuries for her. She knows where she stands with Henry, and feels safe with his parenting style. Marie's temperament is not unlike Henry's. Marie is a bit scornful and unsympathetic about Ruth's alcoholism and disapproves of Ruth's desire to divorce; she worries about how Henry will adjust to this unwelcome change.

Basic financial facts:

Henry is a moderately high earner and prides himself on providing well for his family in ways that his own father could not. There has been enough money from his earnings to support a comfortable lifestyle, and for him to put aside some money for retirement. He worries a great deal about money and fears that a divorce will ruin him and destroy his ability to provide for his children. He has friends who went through very bad, angry, expensive divorces and he dreads that this could happen to him.

Ruth attended art school for two years before she met Henry, but left before completing a degree when they got married. During the marriage, she has primarily been a homemaker and parent, and also worked part time as a buyer in a retail women's clothing business owned by her family. That business has been losing money and is about to declare bankruptcy. She is not currently employed. She never earned much more than the minimum wage. Ruth liked working in her parents' store because it got her out of the house and in contact with active, fashionable people, but her income was not needed by the family and Henry would have been content if she had not worked outside the home.

Henry has paid voluntary support (child support for the children and separate maintenance or alimony for Ruth) since she moved out two years ago. The total amount is less than would probably be ordered by the local court, and soon Henry will have no legal duty to pay child support for Joseph to Ruth, once Joseph is an adult. Marie is now an adult and while he is not legally obliged to support her anymore, Henry voluntarily pays all of Marie's university living expenses, tuition, and fees, and provides her with a car and allowance.

Ruth so far has been content with the arrangement but she realizes it will not work for her as a permanent financial solution. She does not think she can find work that pays enough to support her at or near the marital standard of living. She thinks Henry should expect to support her more or less indefinitely. Henry would not agree if he knew this. He expects Ruth to go back to work, and to live on what she can earn after they are divorced. He and Ruth have not discussed any of this yet.

The present status of the case:

Ruth is the first to consult a lawyer. She is interested in collaborative divorce because of her spiritual beliefs, but she worries about whether Henry temperamentally can handle such an approach to dispute resolution. He contains himself and does not share what he is thinking or feeling, but his anger builds up and finally explodes. She isn't afraid to speak her mind to Henry but she wonders whether he has the patience or flexibility to engage fully in collaborative negotiations.

Ruth believes there are two factors that could make Henry choose a collaborative divorce process. First, Henry's worries and frustrations about Joseph might make him appreciate the coaching and child specialist resources of a collaborative team. Second, his fears about the cost of an adversarial divorce might motivate him to participate in a collaborative divorce. But at the same time she expects that Henry would worry about how much all this professional help is going to cost him.

Ruth is ready to follow the advice of a calm and optimistic professional advisor about what kind of divorce process to choose. She also would follow the advice of an aggressive, adversarial professional advisor. Ruth is uncertain and feels out of her depth about these important decisions. How she is advised is crucial to her decision making.

Henry reluctantly makes an appointment with a collaborative lawyer at Ruth's request. He doesn't want the divorce, and is quite worried about what it would cost to retain even a lawyer, much less a team. But he has genuine worries about Joseph, and at bottom he cares about Ruth's welfare, though that concern is buried pretty far below his current anxious thinking. Henry's potential lawyer will need to draw Henry out in order to have a "hopes and fears" and "what's in it for me" conversation with him.

Lawyers: Have a "hopes and fears and golden apples" conversation with either Ruth or Henry. See where it takes you. Your job is to provide information about CP in a way that answers the question, "what's in it for me?"

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