Collaborative practice tips

By Maribeth Blessing

I. The Initial Consultation

A. Education

Under the Professional Rules of Conduct, attorneys are bound to be competent in their area(s) of practice. In their representation of their clients, attorneys must always conduct themselves with due diligence and be vigilant as to what course of action is in the best interests of their clients and how any action may impact the client and their family. Attorneys are counselors at law who provide their clients with all of the information needed to make informed choices. Part of the ethical duty of any family law attorney in an initial consultation is to ensure the client is aware of ALL the options as to processes available to address and resolve the issues in dispute. Accordingly, a thorough discussion of the processes, along with the pros and cons of litigation, arbitration, cooperative family law, collaborative family law, attorney negotiation, mediation and independent party negotiation must be explored with the client. Such a detailed analysis is necessary before any assessment of the appropriate dispute resolution process or processes for the client is possible.

B. Assessment

Once the client has a general idea as to processes and procedures, the attorney is ready to help the client decide on the right “fit” for his/her needs. Gather basic information about the family and the family’s current living and financial arrangements. Screen for domestic violence issues, dependency issues, substance abuse issues, and assess the appropriateness of possible processes for this client, so that you may guide the client to focus on those processes that meet his/her needs. During the initial interview, allow the client to tell his story in the manner most comfortable to him, and listen, listen and listen so that you are able to help the client frame and prioritize his issues and concerns and set appropriate and realistic goals, both short-term and long term. Guide the client in reframing the issues with a movement toward interest-based, as opposed to positional-based, goal setting. Orient the client to brainstorming creative and solution-based goals with a look to the impact on the client, his/her spouse, and the family. Provide the client with the tools necessary to open dialogue with the spouse as to selection of process, and consider an invitation to process letter from the attorney to the spouse or spouse’s attorney, if appropriate. Walk away materials, such as brochures, website information for further self-education and process summaries are excellent tools to help clients assess the process appropriate for them, and/or their family, and to open discussions with their spouse in hopes of a mutual and informed choice of process.

C. Information Sharing

Once the client is oriented to

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Message from the ADR Committee chair

By Stephen G. Yusem

It is not easy to follow Sally Cimini, who did such a superb job of leading the PBA Alternative Dispute Resolution Committee forward during the past three years. She amply reflected three essential qualities of effective leadership: She organized, prioritized and optimized.

If you received my July 7 memorandum, you know that at this stage of the committee’s evolution, we are reorganizing. This is the new subcommittee lineup:

- Conflict Resolution Day
- Membership
- CLE
- Newsletter
- Information Technology
- Probate ADR
- Lawyer Dispute Resolution
- Public Relations
- Legislative
- RUAA Action
- Liaison
- Sir Francis Bacon Award

Some members were surprised to note the absence of a collaborative law subcommittee. There are two reasons for this change. First, while the ADR Committee gave birth to the former Collaborative Law Subcommittee, which has moved forward rapidly and effectively, the time is ripe for collaborative law practitioners to form their own PBA committee or section (some of which have fewer than 50 members). Second, collaborative law is not truly an ADR process because there are no neutrals. Counsel for the parties may collaborate, but they do so as advocates without the assistance of mediators or arbitrators, unless, of course, they happen to agree to use those processes just as any other civil disputants may do. (We do support collaborative law and commend to your attention Maribeth Blessing’s article on Page 1.)

The important matter of diversity is well addressed by the PBA Diversity Team, the PBA Diversity Task Force and the PBA Minority Bar Committee. Our new Liaison Subcommittee is tasked to establish and maintain connections with those bodies. The Liaison Subcommittee will likewise maintain connections with the PBA Ethics and Professional Responsibility Committee as well as other PBA committees and sections that relate to ADR. These include the Business Law and Civil Litigation Sections and the In-house Counsel, Insurance Staff Attorney, Government Lawyers and Legal Services to the Public Committees.

Our former Communications Subcommittee is the new Public Relations Subcommittee. The former Court-Annexed Mediation, Credentialing Certification and State Agency Subcommittees have essentially achieved their objectives and have therefore run their courses. Of course, our subcommittee structure is always up for discussion as we periodically meet and confer.

The chairs and vice chairs of our dozen subcommittees will constitute our newly created executive council, which will occasionally meet at PBA headquarters either in person or by conference call. Our first executive council meeting is tentatively scheduled for Sept. 9 for the purpose of discussing objectives and timeframes. Our first full committee meeting is scheduled for Nov. 17 in Harrisburg during PBA Committee/Section Day.

Committee Vice Chair Jim Rosenstein and I urge that all committee members sign up for one or more of our dozen subcommittees. We have no doubt that you will find subcommittee membership to be a dynamic and rewarding experience as it enhances your ADR practice and enlarges your ADR network. Together, let’s move Pennsylvania ADR onward and upward.

Stephen G. Yusem
Message from the editor

By Mary Kate Coleman
Arbitration & Mediation editor

I hope this message finds you well and enjoying a relaxing summer! We are pleased to issue our committee’s third newsletter of 2011 and trust that you will find it to be of interest. Many thanks to everyone who contributed items for the newsletter or otherwise assisted in its production.

As usual, we are soliciting items for our next newsletter. We would appreciate receiving articles, book reviews, case summaries, subcommittee reports, photos, notices of upcoming events, etc., that may be of interest to your fellow committee members. So as to be able to receive your news about Conflict Resolution Day activities throughout the state (please see article on Page 5 for more details), we are extending the deadline for items for the next edition of the newsletter. Please send any newsletter items to me at MKColeman@rhwrlaw.com by Nov. 1.

Mary Kate Coleman

Collaborative practice tips

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process and procedure and has begun to set realistic and solution-oriented goals, the attorney can move on to gathering and sharing information. In a preliminary basic manner, outline the marital assets and liabilities while assessing the level of knowledge your client has as to the family finances. Begin to frame discovery needs and help the client determine whether or not he/she is able to provide some of those needs. Ask the client to obtain his/her credit report. Do preliminary support calculations, and review family budgets to help focus the client on realistic expectations. Present and review the appropriate fee agreement with the client. If the collaborative process is chosen, present and explain the participation agreement and the necessary commitment to the collaborative process. Help the client understand his or her role, your role and the role of the experts.

II. The Collaborative Process

A. Preparing the Client for First and Subsequent Meetings

Review with the client the goals of facilitating constructive communication, full disclosure in all areas, exploring and maximizing creative options and outcomes, maintaining a safe and productive environment, and focusing on the best interests of the family and in particular, the children, if applicable. Review the collaborative participation agreement again. Discuss expectations and prepare the client as to how lawyers and/or the professionals involved may act and their respective roles in the process. Explore the need for financial planners or child specialists or possibly a coach for your client. Share the meeting agenda and focus the client on the items listed. Develop a priority list along with options to be discussed at the four-way meeting. In doing so, assist the client in identifying specific needs, goals, motivation, sources of satisfaction and interests as well as those of the spouse. Discourage positional bargaining and focus on interest-based bargaining. Estimate the likely key issues of the spouse (both substantive and procedural) and identify all of the facts that may be expected to help the parties communicate effectively and commence mutually collecting documentation for disclosure.

B. Preparing for the Meetings

Meetings typically take place about two to four weeks apart to enable the parties to complete their assigned tasks and/or for the parties to work with other team members as necessary. The meeting environment is essential to the success of the meeting. Choose a place with a safe, warm, friendly atmosphere as opposed to a “sterile” meeting place. Never meet at a courthouse. Always have refreshments, both snacks and beverages, available in the meeting room. Allow the parties to select their seats first, but if tempted to “steer” them, put the parties in the “power” chairs at the long ends of the table, not the attorneys, or better yet have no chairs at the long end of the table. A round table is preferred. If using a conference room table, arrange the chairs for maximum eye contact. Both attorneys should be ever aware of body language and intonation. This is the parties’ process, so the attorney role is one of support. The attorneys should never monopolize the conversation. Instead, the attorneys should prepare the parties prior to the conference as to how to manage their conversations. The tone should be one of cooperation and problem solving. The attorneys should ensure that both parties are respected and have the opportunity to speak and feel heard. Attorneys must be prepared to address the emotional, as well as the financial and substantive, needs of the parties.

To get started, set up a meeting or a conference call with your client’s spouse’s attorney. Share whatever factual or substantive documentation or information you have received from your respective clients. Explore the need for financial planners, child specialists or coaches and the family’s financial ability to support other experts. If engaging other experts, determine the specific roles of those experts for presentation to the parties at the first meeting. If other professionals
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are involved and sanctioned by the parties, a follow-up conference call or meeting with attorneys and the professional(s) should be established, and a neutral case manager should be selected among the professionals. The professional’s role in the process should be identified – i.e. information gathering only, meeting with parties and/or with full team and parties, long-range planning assessment, possible distribution input, financial assessment, cash flow analysis, input into custodial schedule development, interfacing with parents, children and family support services, etc.

Set the meeting agenda, and designate the meeting time and place. Assign one of you to be responsible for taking notes and preparing a detailed memorandum of the meeting and “To Do” list for both parties and counsel. This task should be alternated per meeting. The first meeting agenda should include the following: Introductions and housekeeping (i.e. ensuring the parties know where the restrooms are located, have the opportunity to request a break, have a room available where they can privately consult with their attorney, have access to refreshments); setting of tone for meeting; establishment of agreed ground rules for meetings; introduction and outline of the collaborative process; review and signing of participation agreements – both client and attorney; discussion of reasons for choosing collaborative process and expectations and goals; discussion as to involvement of other professionals – financial planners, appraisers, child specialist, etc.; confirmation of and/or redefining current living arrangements and interim financial support; identification of party priorities and/or pressing needs; fielding questions of either party; identification of goals and interests; compilation and sharing of information and documentation; identifying needs for further discovery of information and assignment of homework tasks; brainstorming and identifying options and alternatives; recordation of agreements reached; set next meeting agenda; and obtain client feedback as to this meeting.

Keep in mind that the conflict resolution process consists of identifying the issues, gathering the facts and documentation, developing options and negotiating solutions in an atmosphere of acceptance and respect. Ensure that you debrief your client after each meeting. Discuss his/her reaction to the meeting and any ongoing concerns and needs. Review assigned tasks with him/her. Answer any questions.

The number and timing of the four-way meetings is case specific. It is not unusual for there to be large gaps of time between meetings when one spouse is not in the same emotional place in accepting a divorce situation as the other spouse. Future four-way meetings beyond the first must be carefully planned as well. Determine who the players are and if experts are attending. Ensure there is a conference call for preparation and agenda setting prior to meeting with the parties. Identify the needs and interests that may be underlying issues for the parties, and ensure they are communicated and understood. Clarify needs, motivations and goals. Identify shared feelings and agreements, and generate a wide range of options for those that are not shared. Analyze data together with the parties, and ensure both clearly understand the impact of the data and the numbers. Take the time to put all of the information and options on the table before evaluating any of them. Review the law and determine the role it will play in your negotiations. Look at ranges of outcomes. Support the outcome that best meets the needs of both parties and is acceptable to each. Recap the accomplishments of the parties at the end of each meeting. Check in as to their comfort level and success meter. Leave time for questions and verify homework assignments for both the parties and counsel, who will be sharing in memoranda and document preparation. Use the memorandum of the last meeting to begin the conversation of the next. Start setting the agenda for the next meeting with the parties at the end of each meeting. Most important, keep the tone of the meetings cooperative, and build on the positive.

III. Conclusion

The collaborative process can be an extremely rewarding process for the parties, their families and the attorneys and involved experts as well, when it is well thought out and well implemented. The success of this process, as any process, depends on a careful choosing and matching of process selection to the needs, personalities and goals of the parties. It requires attorneys and experts at all times to keep those needs, personalities and goals a focal point in their planning and implementation of the process. The key is for all of the players to plan their work and work their plan. Like a fine-tuned orchestra, the conductor (the two attorneys) merely directs the orchestra (the parties and their chosen experts) to play beautiful music together, ever aware that each instrument brings to the mix, their own individual voice, each of which must be in harmony with one another in order to create the harmonious masterpiece.

Maribeth Blessing

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Conflict Resolution Day 2011

This year Conflict Resolution Day is Thursday, Oct. 20. Conflict Resolution Day was conceived in 2005 by the Association for Conflict Resolution to:

- Promote awareness of mediation, arbitration, conciliation and other creative, peaceful means of resolving conflict;
- Promote the use of conflict resolution in schools, families, businesses, communities, governments and the legal system;
- Recognize the significant contributions of (peaceful) conflict resolvers; and
- Obtain national synergy by having celebrations happen across the country and around the world on the same day.

See http://www.acrnet.org/crday/ for more information.

Last year, many ADR and conflict resolution groups across the state sponsored Conflict Resolution Day activities and events. The PBA ADR Committee would like to hear what you or your group did this year to commemorate Conflict Resolution Day. Please send a short article about how you celebrated Conflict Resolution Day to Mary Kate Coleman at mkcoleman@rhwrlaw.com by Nov. 1. Photos are welcome, too!

Successful CLE on Commercial Arbitration Reform

The dramatic success of arbitration in resolving commercial disputes over the past several decades has brought with it justified concerns that the process has increasingly mimicked litigation complete with extensive discovery, reflexive motion practice and contentious advocacy. The College of Commercial Arbitrators, a national nonprofit association consisting of experienced neutrals, has published an 87-page monograph titled “Protocols for Expeditious, Cost-effective Commercial Arbitration - Key Action Steps for Business Users, Counsel, Arbitrators & Arbitration Provider Institutions” proposing reforms to address these concerns.

The CCA monograph was featured at the committee’s June 7 CLE, which was presented in person in Philadelphia, by simulcast to 19 county bar associations and by webcast throughout the commonwealth. The protocols panel consisted of David H. Burt, corporate counsel, DuPont; Judy Meyer of J.P. Meyer Associates, Haverford; and Steve Yusem of Morris and Clemm, Plymouth Meeting. A second panel, consisting of Mike McDowell, Pittsburgh; David Fitzsimons of Martson Deardorff Williams Otto Gilroy & Faller, Carlisle; and Tom Wilkinson of Cozen and O’Connor, Philadelphia, discussed ethical implications of the reform process as well as recent developments in arbitration ethics.

It is important to note that the majority of the CLE attendees participated by webcast or simulcast, rather than attending in person. This reflects a trend. Many lawyers would rather access a CLE by simulcast at their own offices rather than fight traffic to a distant location, find a parking space and return during rush hour, or they may prefer to convene with their friends and colleagues by webcast at their local bar associations. Technology has reached a point where both the video and audio components of the webinar process are at high fidelity levels. Questions can easily be directed to the presenters by email, fax or telephone.

Our new Training Subcommittee will look into the possibility of providing four quarterly, one-hour webinars that would be available to all lawyers throughout the commonwealth, rather than producing a single location presentation that may be less convenient to prospective attendees. The Continuing Legal Education Board limits webinar attendance to four hours per year.

www.pabar.org
The phrase “conflict competence” may seem like an oxymoron, especially when used in reference to alternate dispute resolution.

At first glance, it could be misinterpreted to mean that someone is enhancing his or her ability to generate conflict.

However, nearly 50 people who attended the eighth annual Lawrence W. Kaplan Lecture in Conflict Resolution in May learned the true meaning of the phrase and how it can be applied to their work. Craig Runde, director of the Center for Conflict Dynamics at Eckerd College in St. Petersburg, Fla., was the featured speaker.

Runde oversees training and development on the Conflict Dynamics Profile (CDP), an assessment tool that helps individuals understand how they usually respond to conflict. He explained that conflict competence is the ability to use cognitive, emotional, behavioral and normative skills to more effectively manage conflict.

“The CDP actually benefits people long before litigation ever occurs. By learning how to better manage their responses to conflict, people are able to address differences at an early stage before things have escalated or positions have hardened,” said Runde. “Yet, it can also turn out to be an effective one for both clients and attorneys.

“In the case of the CDP, mediators will sometimes use it with clients to help them manage their ability to engage effectively in mediation sessions,” added Runde. “Just as often, the CDP is used with attorneys to help them improve their own capacity to manage conflicts with their colleagues and staff.”

Michael McDowell, a local arbitrator and mediator, said the lecture reinforced the concepts that Runde helped him recognize several years ago when he first heard him give a presentation in New York City.

“When people are able to manage these problems at the lowest possible level and at the earliest possible time, it helps to keep things from spiraling out of control. It is similar in that respect to alternate dispute resolution in that it seeks to address issues earlier.”

Runde said incorporating the CDP concept into the practice of law is analogous to integrating ADR into the profession.

“For a profession that has historically been framed in an adversarial context, it is often difficult to adopt a collaborative approach,” he said. “Yet, it can also turn out to be an effective one for both clients and attorneys.

“In the case of the CDP, mediators will sometimes use it with clients to help them manage their ability to engage effectively in mediation sessions,” added Runde. “Just as often, the CDP is used with attorneys to help them improve their own capacity to manage conflicts with their colleagues and staff.”

Mary Kate Coleman, who chairs the Allegheny County Bar Association ADR Committee, said Runde’s work helps identify an individual’s hot buttons or those types of people and situations that can create conflict.

“More importantly, he offers practical suggestions for how to deal with this situation when it occurs or the person who pushes your buttons,” said Coleman, a civil litigation attorney, mediator and arbitrator with Riley, Hewitt, Witte & Romano. “This information is important for ADR practitioners, such as mediators, to have because we often encounter things or people in mediations that make us angry or with which we disagree. It is important to be able to cope effectively with those situations when they occur. His suggestions also should be helpful to attorneys dealing with clients in conflict situations.”

The eighth annual Lawrence W. Kaplan Lecture in Conflict Resolution was held May 18 and featured Craig Runde, director of the Center for Conflict Dynamics at Eckerd College. From left: Rick Rogow, Allegheny County Bar Association ADR Committee Chair Mary Kate Coleman, Runde, retired Judge Lawrence W. Kaplan and Ann Begler.

Photo by Drew Hardman

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Kaplan Lecture

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Rick Rogow, a board member for the Mediation Council of Western Pennsylvania and principal of The Pittsburgh Mediation Group, witnessed Runde’s ability to address conflict when he took him on a tour of Pittsburgh. Spending time with Runde was interesting for Rogow, who is considered a pioneer in the field of mediation. “I saw what a keen observer Craig is and how easily he was able to provide responsive, creative feedback,” said Rogow, who was trained as a mediator in 1977 by the Federal Mediation and Conciliation Service. “In one particular instance, I saw how he managed a potential disagreement by using a sincere set of inquiries. It was a thing of beauty. There was some acknowledgment and reflection, and it happened almost as quickly as a very personal debate morphs into an argument. It was more than tact or good timing.”

Coleman said Runde attracted a new group of attendees who had never been to the lecture before. He was recommended as the keynote speaker by Ann Begler, who is a mediator, conflict resolution coach, organizational consultant and founder of the Begler Group.

Begler, who is certified to use the CDP assessment tool, said practitioners could learn valuable lessons by reading one of the books co-authored by Runde. The titles include Becoming a Conflict Competent Leader, Building Conflict Competent Teams and Developing Your Conflict Competence.

“Practically speaking, practitioners will have a more clear understanding of what hot buttons are and how they work,” said Begler. “Anyone who follows Runde’s work will deepen their understanding of both constructive and deconstructive approaches to conflict and those patterns will be helpful in understanding what happens for the practitioner when conflict becomes intense and how to structure processes for clients to be on a constructive path. This is what helps people get to resolutions.”

Begler noted that the CDP was not specifically designed to be used in cases. Rather, it was designed to help people better understand how to manage themselves when conflicts are present.

“I think this type of assessment is particularly useful in early intervention work, in mediations that are often done outside of the legal process and for conflicts within organizations and families,” said Begler. “Actually taking the CDP, getting a report and using the tool in that way will not often be a source of support in cases that are already in litigation and on a timetable or in processes where the attorneys are playing a critical role in negotiating.

“I do think there is a very credible way to use the CDP in divorce mediation, in the practice of collaborative law, for consultants like me who work with family (businesses) and closely held businesses and professional practices, as well as for work within organizations,” she added. “It’s not that the CDP wouldn’t be useful in all types of cases; it’s more that I don’t see professionals reaching out to use it in time-sensitive cases already highly immersed in the adversarial process.”

Begler said the CDP has helped her understand her own hot buttons, or those things that trigger a quick emotional response. She stressed the importance of being able to control these emotions, especially when working as a mediator, conflict coach or organizational consultant.

“If we as neutrals aren’t able to understand and manage our own responses to intense events, then how can we ever help our clients? I often use the fundamental principles of the CDP with clients I coach, with teams and with groups within organizations,” said Begler. “Merely teaching clients about the possibility of having a meaningful engagement during a conflict is helpful. I’ve also found the theoretical base of the CDP to be useful in various types of training I’ve offered in conflict management and in building conflict competency.”


Coleman said the individuals who attended the lecture were very receptive to the ideas presented by Runde. She believes the annual lecture has been a tremendous help in promoting ADR and ancillary concepts.

“The lecture has gone from something that was a new idea to becoming an event which has really taken root,” said Coleman. “For the past eight years, people have known that there is a lecture that focuses on ADR and that by coming to it, they will be exposed to nationally known ADR practitioners. Not only have we increased awareness of and knowledge of ADR in Pittsburgh, but by extension I believe we have also increased the use of ADR in Pittsburgh.”

Member Benefit: Education

Avoiding Legal Malpractice Seminars — Seminars on avoiding legal malpractice are held across the state to help members recognize and avoid malpractice situations. Qualified attendees can receive up to a 5 percent discount on their PBA-sponsored professional liability insurance, plus 1.5 hours of CLE ethics credit. Call 1-800-932-0311, Ext. 2218, for seminar information.

Continuing Legal Education — Through the PBA’s partnership with the Pennsylvania Bar Institute (PBI), CLE is offered to members at substantial savings. Courses are made available throughout the year at a variety of convenient locations and online. Members receive discount coupons to attend PBI CLE seminars.
Philadelphia lawyer honored by PBA ADR Committee

The Pennsylvania Bar Association Alternative Dispute Resolution Committee presented its Special Recognition Award to Philadelphia lawyer John N. Salla Jr. for his commitment to promoting the practice of alternative dispute resolution in Pennsylvania. The award was presented during the association’s annual meeting, May 4, in Philadelphia.

Salla is a member of the PBA Alternative Dispute Resolution Committee and served for six years as chair of the Sir Francis Bacon Award Subcommittee.

Salla holds his undergraduate degree from Villanova University and his juris doctor from Villanova University School of Law.

PBA ADR Committee Members in the News

Several members of the PBA ADR Committee were quoted recently in the Pittsburgh Business Times in an article about mediation and the debt crisis. To access the article, “Eight tips on how mediation could solve U.S. debt crisis,” written by Paul J. Gough and published on July 14, 2011, go to: http://www.bizjournals.com/pittsburgh/news/2011/07/14/mediators-point-how-to-solve-debt-crisis.html?ed=2011-07-14&s=article_du&ana=e_du_pub&page=

‘An Informal Evening with Doug Noll’

PBA Alternative Dispute Resolution Committee members were among those who attended “An Informal Evening with Doug Noll” on June 29 at the Begler Group office in Pittsburgh. Noll (center in photo) is a full-time mediator and the author of Elusive Peace, released in April. He attended Dartmouth College, received his law degree from University of the Pacific McGeorge School of Law and his master’s degree in peacemaking and conflict studies from Fresno Pacific University. He is an adjunct professor of law and chair of the board of trustees at San Joaquin College of Law. The event was sponsored by the Dialogue and Resolution Center of The Center for Victims of Violence and Crime, in collaboration with Mediation Council of Western Pennsylvania, the Allegheny County Bar Association Collaborative Law Committee and the Collaborative Law Association of Southwestern Pennsylvania.
Musings on Herb Nurick’s beginning days as a mediator

The Pennsylvania Bar Association Alternative Dispute Resolution Committee presented its Sir Francis Bacon Award to Harrisburg lawyer Nurick on May 4 during the association’s Annual Meeting in Philadelphia.

By Joe Skelly

My story begins on a cold, bleak Friday night in mid-December of 1996, late into the evening. While it has been some time ago, many of the events are still very clear in my mind. Other events are likely suppressed in the deep recessed crevices of my brain. There was a lot of craziness going on that night.

I was seated in the passenger seat of Herb Nurick’s Toyota, with him at the wheel, as we wove our way through Washington, D.C. We were looking for a hotel in Arlington, Va., that was close to the Key Bridge Therapy and Mediation Center where we were to begin our training in mediation skills the next morning.

By way of background, a few weeks earlier I had crossed paths with Nurick, an old friend since our early days as cub lawyers in Harrisburg. Since it had been some time since we had seen one another, we began playing “catch-up” as to what was going on in our lives, primarily work and family. During the course of our conversation he told me he was going to the Washington area for a two weekend mediation training. As coincidence would have it, I also was enrolled in the same course. It was one of those “OMG” moments. Nurick suggested we car pool for each weekend, which made sense. He would drive one weekend, and I the next.

While it did make sense, after we parted some reservations about the whole thing began to creep in. I remembered working with Nurick on two major endeavors. One was the very first Pennsylvania continuing legal education program under new rules requiring CLEs for all Pennsylvania lawyers. Nurick was in charge of the program and had asked me to make a presentation. The second was a two-year stint on the PBA Professionalism Committee of which he was chair, and I was his vice chair. Nurick was a bit of a tough task master in those days, approaching every task with his customary seriousness. He was a stickler for details. To me, on many occasions, he came across as what I would call in slang parlance, a “real tight ass.” The thought of spending two whole weekends with him was a bit daunting to say the least, but it was too late and too awkward to back out.

So at the appointed time, Nurick picked me up at the house, and we started out on our trek. Much to my delight and relief, he was relaxed and his sense of humor really blossomed. The drive to Arlington would be an easy one, U.S.15 to the beltway, to the George Washington Parkway, to the Arlington exit. The drive seemed to go quickly, and both of us talked incessantly and had a lot of laughs on the way. Nurick was a totally different guy from the one I had worked with before.

As we were heading down the GW Parkway, we began to look for signs to Arlington. For reasons I’m not sure why, we missed those signs and found ourselves on the Key Bridge, crossing the Potomac into D.C. I was fairly familiar with the area – so not to worry. We’d regain our bearings and find our way into Arlington. All we needed to do was to go back over the bridge.

And then the fun, with overlaying apprehension, began. Somehow we could not find our way back to the bridge and we started circling aimlessly around D.C. While at first it was nice to see the lights and hubbub of the city, that didn’t last long. We soon left the lights behind us and found ourselves in an empty deteriorating neighborhood, desolate with few people on the streets. We were hopelessly lost but, again, not to worry. Nurick said we’d simply ask the first person we saw how to get to Arlington and that would solve our problem.

We spotted that person instantly – a woman walking along the sidewalk all alone. Nurick abruptly swerved the car toward the curb, lowered my passenger side window, and started...
Musings on Herb Nurick’s beginning days as a mediator

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yelling to her as to how we could get to Arlington. She seemed not to understand but slowed down a bit, looking somewhat strangely at us but with a rather inviting look on her face. I said, “Herb, get the hell out of here. She might be a decoy, and we could get picked up as soliciting Johns!”

Frightened at the thought, Nurick quickly sped away. We next found ourselves in some God-forsaken place beside a loading platform of a trucking company. Surely, if we could get up on the platform, there would be someone on duty who could direct us. Moreover, by this time, a bathroom break was becoming a severe necessity for each of us, and we could ask to use the facilities inside. As could be expected late on a Friday night, however, no one was on duty. Given that not a soul was in sight, we each instantaneously knew we didn’t need indoor plumbing, and we proceeded to alleviate our discomfort. Nurick issued a command to run; we might get arrested for public indecency. We jumped in the car and took off, to where I don’t know. At that point we looked at one another and broke out in uncontrollable laughter.

The next two days were uneventful except for the great training course we were taking. However, another incident occurred that could have resulted in another possible arrest. On Sunday night at the conclusion of the first weekend, a young, wheelchair-bound woman who was in the course with us was about to make her way to the local train station to catch a train home. The streets were dark and empty, so Nurick and I offered to accompany her to make sure she would reach the station safely. We wheeled her into the station, she bought her ticket, and we then went through the departure turnstile to the gate where she would board the train. After she boarded, we went back to the turnstile to get to the main lobby to leave for the trek home.

Unfortunately, it hadn’t occurred to us that we were at the departure turnstile with no admission into the main lobby. (We had neglected to focus on prominently displayed “exit only” signs before we entered.) As we were trying to fiddle with the turnstile to see if we could open it, we were quickly approached by a security guard, not a very friendly man, and in a stern voice he demanded to know what we were doing. Without missing a beat, Nurick immediately started to explain about the woman in the wheelchair that we took to the boarding gate, obviously no longer visible. Jeez, I thought, were we going to be arrested on suspicion of being terrorists?

After more sweet talk by Nurick, the guard let us go with the very stern warning to never try anything like that again and to leave the station immediately. He followed us a few steps behind to make sure we went out to the street. Had today’s security precautions been in effect then, there is no doubt that we would have been whisked off to some undisclosed location for suspected terrorists and our names published on all the airlines lists as suspicious persons.

Another memorable antidote some years later arising out of Nurick’s twisted sense of humor was a time when he and I were riding up in a much crowded elevator in a major office building in Philadelphia. Nurick was crammed against the back wall of the elevator car, and a very large man stood in the front row of passengers, behind the doors. Nurick reached over the shoulders of the riders in front of him, tapped the man on the shoulder and asked him to please move as he was blocking Nurick’s view. To the amazement of everyone, the man squeezed into the jammed crowd to make the doors visible for Nurick.

So – I was privileged to be there for the beginning of Nurick’s journey into a career of mediation. From that cold, dark night of craziness in Washington, he has gone on to become one of Pennsylvania’s premier mediators.

Joe Skelly, a lawyer/mediator, is engaged in private practice at Skelly Dispute Resolution Center in Harrisburg and is an adjunct professor in ADR at Widener University School of Law, Harrisburg campus. (Website: www.skellydrc.com). He nominated Herb Nurick for the Sir Francis Bacon Award.
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Oct. 21-22
The Hotel Hershey, Hershey

**PBA Minority Bar Committee Diversity Summit**
Oct. 27
Hilton Harrisburg, Harrisburg

**PBA Committee/Section Day**
Nov. 17
Holiday Inn East, Harrisburg

**PBA House of Delegates Meeting**
Nov. 18
Sheraton Harrisburg Hershey Hotel, Harrisburg