by Mark A. Criss, Esquire

It wasn’t a made-for-TV trick. Her anguish was authentic – expressed in a wail. “I feel like I can never do anything right! I get blamed for everything! If (call him “Andy”) doesn’t want to talk to you, it’s my fault. If I buy his shin guards for soccer, you tell me I got the wrong ones!” Protesting.

His resentment was also authentic, nearly palpable – expressed with growing agitation. “That’s not what happened. I didn’t say you got the wrong shin guards; I said why can’t I be involved in making that choice? You take everything I say as this huge criticism.” Denying. Defending. Blaming.

“In the past, I always got their stuff for sports. I was just doing what I’ve always done.” Justifying.

“You’re cutting me out of something I want to be involved in.” Accusing.

“I just want to quit being blamed for every little decision.” Pleading.

“And I want to quit being attacked every time I ask a question. You’re such a negative person. This is why we’re getting a divorce.” Defending. Accusing. Escalating.

And so it went on for about five minutes.

What was the setting? A custody exchange? A counseling session? A conciliation? Mediation? A collaborative meeting? Andy’s birthday party? Full marks if you guessed the only one of these choices which seems wildly inappropriate on the surface. It happened in a collaborative meeting. Here is how it went down.

Husband (H), Wife (W), their respective counsel, (HC) and (WC), and the neutral divorce coach (N) were trying to reach a parenting plan for Andy. W had already made very significant movement toward a true shared custody arrangement which H insisted upon. Yet there seemed to be some non-specific but clearly emotion-laden factors on both sides preventing closure. The parties, and especially W, had expressed on several occasions her feeling that insufficient progress had been achieved through several meetings, for which she was tending to blame the collaborative process.

The Team could taste an agreement. It was right there in front of the parties. But every time an attorney or the neutral gently urged the next step, one of the parties derailed the discussion with some sniping comment. Both counsel and the neutral coach reminded the parties of the importance of remaining positive, using “I–statements,” their undertaking in the Participation Agreement to be respectful, and various other shibboleths of the Collaborative art. Nothing seemed to work, and the meeting was getting out of control. It looked like the work of several months was about to disappear down the drain.

In apparent desperation, WC spontaneously allowed herself an intuitive leap, plunging the case over Niagara Falls.

“I’m going to suggest something that the rest of the Team may yell at me for later. But I’m going to do it

(continued on page 21)
by David Miller, Esquire

My corner this time could be called “Curb Your Enthusiasm, the Bandwagon, and Do the Right Thing.” But, before getting to that, I want to thank everyone who attended the regional meetings. Tracy Timby and I talked about the work of the subcommittees and especially the intense drafting process for the “Pennsylvania Collaborative Law Act.” The members who attended also provided helpful ideas for pursuing the mission of our committee. The other recent topic is the IACP Forum in San Antonio. Others will likely write about their experience at the IACP Forum so I will only note here that there were 18 attendees from Pennsylvania and many from our committee. That is a very good showing when you consider there were 400 attendees from around the world. Now, let’s get back to my corner.

Two characteristics are found in many individuals who become involved with, and who stay involved with, collaborative practice: enthusiasm and patience. I recall my enthusiasm when I learned about collaborative practice in September 2006. However, when things became rough in one early case, I also recall the client saying: “Well, you were the one who seemed so enthusiastic about the process.” I learned quickly to curb my enthusiasm (a little) to avoid hearing that again.

I have also noticed that some collaborative practitioners, who start out enthusiastic, lose interest. I refer to it as falling off the “bandwagon,” which prompted me to look up the word “bandwagon.” According to Wikipedia, historically, “a bandwagon is a wagon which carries the band in a parade, circus or other entertainment. The phrase ‘jump on the bandwagon’ first appeared in American politics in 1848 when Dan Rice, a famous and popular circus clown of the time, used his bandwagon and its music to gain attention for his political campaign appearances. As his campaign became more successful, other politicians strove for a seat on the bandwagon, hoping to be associated with his success.” I jumped on the collaborative bandwagon in 2006 and I am still cruising along with no thought of leaving. So, what distinguishes those who fall off the bandwagon from those who stay on it? I believe one important difference between the two groups is that the ones who stay have more patience.

(continued on page 3)
I asked someone recently why they have not been trained in the collaborative process and their response was essentially - “why bother, I just go to court and ask a court for relief.” Without saying it, and reading between the lines, what I heard was that they had no patience left for dealing with opposing counsel - better to just put your argument in a motion or your evidence in a trial and let someone else decide. Maybe more than any other area of law, it takes a lot of patience to practice family law and to see things through until an agreement is signed. It is a characteristic one needs to stay on the collaborative bandwagon.

The other thing that keeps me on the bandwagon is that I am confident that the collaborative process is the right thing to do for most disputes in which the individuals involved wish or need to maintain a future relationship. That confidence comes from litigating family law cases for 20+ years and witnessing firsthand the damaging impact of litigation on families and the relatively less damaging and perhaps even healing that occurs in the collaborative process.

So, the bottom line is that if you have fallen off the bandwagon, or you are thinking about getting off, remember it is acceptable to curb your enthusiasm (a little) and, with a little patience, you will find you can stay on the bandwagon because, as most of us know, it is the right thing to do.

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**IACP Honors**

*By Jane Nickle, Assistant to the Editor*

The Trend congratulates Deborah Conflenti, Esq. and Melissa Sulkowski, Licensed Professional Counselor, on their acceptance to the inaugural Leadership Academy of the International Academy of Collaborative Professionals (IACP). Their selection confirms that Pennsylvania has become a leader in the Collaborative movement. Deborah and Melissa are among only 23 professionals, hailing from Australia, Canada and the United States, who will be participating. Pennsylvania professionals comprise more than 1/12th of the IACP’s world-wide leadership initiative!

The Leadership Academy is a year-long learning program which is designed to cultivate leadership through skill building, dialogue and mentoring. Candidates were chosen by the IACP following a rigorous screening process that included nomination by the candidates’ practice groups, completion of two essays and review of letters of recommendation. Successful applicants were determined to be goal-oriented, motivated, open to learning and dedicated to the collaborative movement.

We are excited for Melissa and Deborah, both of whom have articles in this edition, to share their new skills with their fellow Pennsylvania collaborative professionals, in the coming year and beyond.
The 2013 IACP Forum in San Antonio was my first Forum experience. I shared the honor with my friend and colleague, Melissa Sulkowski, of wearing a nametag labeled both “First Time Attendee” and “Faculty.” Melissa and I co-presented a Sunday morning seminar with another friend and colleague, Brad Enterline. I was approached frequently throughout the Forum by new friends asking, “First time attendee and faculty? How did you do that?” My answer was humble in part, “I wasn’t expecting that Faculty tag!” But quickly I could turn my response toward my thoughts on how truly fortunate I felt (and feel) to have two such amazing and committed professionals to work with in Brad and Melissa.

I believe the bond that developed between Melissa, Brad, and I will last us our careers in collaborative practice. We aren’t perfect, of course, but we are a wonderfully cohesive team that, like the red wine we enjoy sharing together, will only improve with our maturity in this practice niche. We co-presented “Fatal (Fiscal) Attraction: Spendthrifts and Tightwads” as a full professional team – Attorney, Financial Neutral, and Mental Health Professional. We spent months together researching our material, negotiating our roles in the presentation, and determining the degree of emphasis we would place on certain aspects of our topic. We submitted our proposal to the category “Practical Applications of Neuroscience,” but we struggled with whether our audience would truly be interested in the Neuroscientific research we had uncovered, or would it perhaps be too technical? Would we put them to sleep or drive them out of the room? Having never attended a Forum before, I know this was a tricky grey line for me to navigate. Overall, I believe we found the best balance that we could given the time constraints of our seminar. This was later affirmed when we were greeted with warm, positive verbal feedback after the presentation. We also received positive feedback overall in our formal evaluations. But there was that one zinger, “… did not really explore deeply…” It is difficult to tell in summary form exactly what this comment pertains to in regards to our presentation, but it was the green light that I was looking for – go deeper!

If I were going to attempt to describe the IACP Forum in one word, it would be “deep.” At the Forum, I met and interacted with the largest, like-minded community that I have ever interacted with at one time – all of us wanting to dig deep into both collaborative practice and into ourselves so that we could make our practice as strong, vibrant, and effective as we could. All of us were there wanting to learn how to make a difference in the lives of families experiencing one of the greatest and most difficult changes they may face in their lives - divorce. I truly felt the power of our collective wisdom deep inside me when we shared meals and meditative silences together.

While Brad, Melissa, and I were enjoying the Forum and the fruits of our months-long labors to prepare for the seminar, one of our collaborative cases was imploding. As of this writing, the future of that case remains unclear, but in the weeks following the Forum, this case would challenge our team, both professionally and personally. This divorcing pair may be among the toughest out there for collaborative practice, and as we have struggled through the road blocks we have encountered with this case, we have leaned on each other and trusted. We trusted that we could look each other in the eyes and share both our frustrations with the case and our confidence that we were among friends - our confidence that our team would transcend this difficult case intact and stronger for the experience.

I found myself sharing the basic details of the case with the many new friends I met at the Forum. I had the privilege of attending Rita Pollak’s and Catherine Heenan’s Pre-Forum Institute topic on facilitation training. Rita’s was a face I was familiar with from the many training videos our practice group has watched together in the last couple of years and it was very comforting for me to know that I could take my questions about this case to one of the leaders in our movement. I received some excellent, nonjudgmental advice from Rita which I took back to my team and we weighed these thoughts carefully as we worked through the best approach toward handling these two tough clients. We felt stronger in our decisions because of the wisdom we gathered from Rita and all of those we spoke with at the
Forum – all of the leaders that we met at the forefront of collaborative practice.

Peggy Fraychineaud Gross was another leader I turned to for advice on this case. My outreach led to a great and deep, deep conversation with Peggy and her colleague, Leslie Bottimore. We talked about my case, and then we talked about collaborative, and by the end of the two hour conversation – originally intended to take ten or fifteen minutes – we may have talked about everything. We could do this because of the spirit of camaraderie and friendship that the Forum supports. Leslie, Peggy, and I explored the personal impact that this difficult work we do can have on our personal well-being if we do not continuously attend to our own self-care. I came out of that conversation knowing that it was very important that I maintain a sense of personal balance as I serve these struggling families. For me, that is a continued focus on my meditative and yoga practice, as well as ample sleep and healthy eating. When I am caring for myself in these ways, I support myself in my endeavor to be the strongest professional that I can be – helping these families redesign their lives after divorce.

To Brad, Leslie, Melissa, Peggy, and Rita – I am deeply grateful for your contribution to my practice and my personal growth.

THE POWER OF NON-DEFENSIVE COMMUNICATION
By Tracy Timby, Esquire

Recently in San Antonio, a colleague and friend of mine suggested I attend the IACP Forum Workshop Powerful Non-Defensive Communication with Sharon Strand Ellison, MS. I instinctively replied in a witty, dry way, “what you think I’m defensive?” and off I went to secure my seat. The next hour and a half added a tool to my Collaborative toolbox that I desperately needed - asking questions from a place of pure curiosity, without assumption or judgment. Truly making an inquiry to which you do not know the answer. The theory is that most professionals (and people for that matter) communicate through a model rooted in defensiveness for self-protection. To be non-defensive is to be vulnerable and that is just not a good thing! Sharon’s materials offered examples of how defensiveness can be subtle such as insisting on sticking to an agenda or it can be a blatant effort to control or guide how others respond. These actions automatically stimulate a defensive response without the other person even having to think about it. It is a biological process that is set in motion when we feel threatened. It is fight or flight, skipping right over the problem solving area of the brain. The session was filled with real examples of how the idea of simply asking a question from a place of pure curiosity with a level tone of voice and neutral body language can change the game and allow people to drop their defenses. If we can regulate defensiveness, we can work from the place of problem solving. Sharon Strand Ellison has produced a CD and a book on the topic as well as offering trainings. If you have the opportunity or the ability to create the opportunity to train with her I highly recommend it. Here is her website, http://www.pndc.com/

USING AN INTEREST AGENDA TO DEVELOP SETTLEMENT OPTIONS
By Paula Hopkins, Esquire

Identifying goals and interests are an important part of the collaborative process. The challenge is to use those goals when it is time to generate options. In her IACP workshop, “Keeping Interests on the Table: Generating Solutions With a Focus On Interests,” Jacinta Gallant showed us how to use an “Interest Agenda” to bring the goals and interests back to the table when it is time to explore settlement options.

Jacinta differentiates between two kinds of goals: the broad, “world peace” goals that the clients generate at the first meeting and the more detailed, specific goals developed after information is gathered. The
Reflective on My First IACP Conference

By Joni Berner, Esquire

After practicing family law for 30+ years, I trained in collaborative practice (CP) three years ago, and ever since I characterize myself a “born again collaborative lawyer.” Indeed, at the start of this year, I stopped going to court. It feels exhilarating and, fortunately, I practice with five other experienced family law attorneys and three young lawyers in training who can handle the contested litigation I’ve now abandoned. Going to San Antonio last month for the 14th Annual Networking and Educational Forum of the International Academy of Collaborative Professionals was a no-brainer and the experience stood up to my high expectations. It was exhilarating to be with 400+ professionals who all seemed to be much more experienced in CP than I am. On the other hand, I could not help but feel disappointed and frustrated at the slow pace CP is rolling out in southeastern Pennsylvania. But out of frustration comes creativity and resolve to improve things. So now I’m a born-again collaborative lawyer recently resolved to work creatively with others to make CP an essential component of family dispute resolution.

Okay, stepping down from my soap box, here are some specific take-aways I brought from the four workshops I attended in Texas:

- In a workshop called "Building the Collaborative Practice – Passion Shows!" I learned from Seattle lawyer, Michael Francher, the importance of developing a core message to inform – but not “sell” - clients why CP is a better way than contentious litigation to resolve most matters. This should not be a wishy-washy message or a hollow slogan, but rather a description that reveals my sincere belief in the process. Although parties’ control of the outcome is key, Michael recommends that I be clear and decisive about the structure of CP. For example, I should not make the use of other collaborative professionals sound like a mere recommendation, but a requirement to be on the team whether...
used a little or a lot. Michael suggested several specific ways to make important points to clients, but favorite was this: “Client, what do you want to see happen in this divorce? Fighting with your spouse? Having the lawyers out there fighting? Or having everyone out there creating solutions?”

- Of particular interest to me was a workshop called “Access to Collaboration: Pro Bono and Low Cost Services” presented by the IACP Access to Collaboration Task Force. The pilot projects around the country the task force had identified (13 of them going into the workshop with a few more identified by the attendees) are described in detail on the IACP website. My interest in this topic is sparked, in part, by my general desire to destroy the myth that CP is cost-prohibitive because it uses “so many” professionals. My specific interest in the topic is prompted by an alarming situation in Philadelphia: there is now a full 12-month delay between filing a custody complaint or petition to modify and the first court listing. Need I say more?

- I returned to the topic of CP practice development in “Sharing the Wisdom – How to Use Modern Marketing Tools,” a workshop led by Dick Price, a Fort Worth, TX collaborative lawyer, and his marketing agent, Ann Thaxton. The thorough but succinct review of technological tips was excellent, if not unique to CP: using free online directories, smart use of key words and search engine optimization, blogging, having a presence on LinkedIn and Google+, and the like.

- CP is not just for resolving disputes following broken relationships. In “Getting Out in Front of Divorce: Collaborative Marriage Planning,” three members of a collaborative practice group in Syracuse, NY (lawyers Dennis Lerner and Galen Haab, and therapist, Ronald Heilmann) explained their evolving concept of “collaborative marriage planning” (CMP). I thought the workshop would be about using CP to negotiate prenuptial agreements, but I was wrong. Well, a prenup could be the result of CMP, but it would probably include provisions about mutual respect and adaptability not seen in traditional prenups. The core idea of CMP is allowing each party to keep his/her core identity as they develop a relationship which necessarily requires two individuals. “Great humility” is required of CPs in CMP, the presenters said, because we are so accustomed to resolving the breakup of a relationship and we “manipulate” clients to arrive at our concept of a fair resolution. In CMP, however, it isn’t clear where the parties will end up.

Other highlights of the conference for me included a showing of “Split” by its creator/director, Ellen Bruno from San Francisco. This 28-minute film features several children talking about their reactions to their parents’ divorces; the result is a powerful message about why CP is a better way. A more direct message was the center of a short film clip used by one of the key-note speakers, George Pór, in his lecture, “What if Conflict Were an Evolutionary Gift?” Check this out when you have about 14 minutes: http://www.qi-global.com/10tmm (or google “the children’s fire by tim macartney”). It’s another thing I learned in Texas that made me realize how much bigger CP can be.

IACP CONFERENCE
PRE-FORUM INSTITUTE REPORT
By Mary K. McDonald, Esquire

No. 5: What Now? Guiding Clients to Their Agreement.
Presenter: J. Mark Weiss, JD
Seattle WA

The Pre-Forum Institutes are full day intensive programs. This one was chock full of interesting material – too much to condense into a short article. Mark addressed the power struggles that sometimes echo the dynamics of the marriage and how the professionals can both recognize them and move the clients beyond them. The client has a limited sense of possibilities but the following are valuable questions with which to guide them:

- Who they actually are today
- Who they want to be
- Who they can become during this process.

In order to come to a resolution both parties need to be able to understand the other’s interests rather
than stay entrenched in their own positions. Mark went through an interesting diagram explaining different conflict styles and the usefulness of each in particular situations. They included:

- Competing – useful for a routine decision; not useful if the other’s support is needed.
- Accommodating – useful when agreement makes sense; not useful when it leads to resentment or there is something that needs to be addressed which is thus swept under the rug;
- Avoiding – useful if there is not much time to talk and the decision can be delayed; not useful if a decision is necessary (but could be a self-protective device to avoid flooding)
- Collaborating – useful for the long term ability to work together; not useful if the issue is trivial and/or time, energy or money is in short supply;
- Compromising – useful to getting an agreement quickly and the issue is of moderate importance; not useful when an in depth analysis is needed or one cannot live with the consequences.

He noted that we often shift our style to match the conflict.

In what he called “The Drama Triangle” Mark pointed out that it is a human response to blame others in an anxiety provoking situation rather than looking at our own contributions. The clients often portray themselves as the victim, the other party as the persecutor and the attorney as the rescuer. That is precisely the roles that occur in conventional lawyering. However this does not advance the objective of reaching agreement. The focus must change to working on the problem and helping the clients with communication skills. Work with your client by

- Listening carefully and accessing their mindset, behavior and patterns;
- Not being pulled into their story
- Delay arriving at an answer
- Separate the past from the future.

The tools that Mark suggested were most important in guiding the clients to their agreement were:

- Foundational – clear intention and genuineness
- Joining – validation (their right to emotions – effective with an angry client), restating, reflecting;
- Understanding – curiosity, double-listening (listening for what is missing, unstated), summarizing (reinforce the progress)
- Shifting – reframing (shifting from position to interests, moving direction), redirecting (a deliberate major overt shift, a shift of energy)
- Containing – setting expectations (regarding the process), stopping/interrupting (to stop emotional outbursts – note men flood quicker than women – to stop take a 20 min. break, drink water, walk, put cold water on hands)
- Reinforcement – of the progress made, of the rules of conduct
- Anchoring and re-anchoring

He also pointed out that everyone has learning preferences:

- Active – trying things out OR Reflective – thinking and working alone;
- Visual – using pictures, charts to explain OR Verbal – using the written or spoken word;
- Sequential – linear steps, logical OR Global – the big picture, overview.

Finally, to get to a quality agreement it is necessary that the interests be quality also. One should work with the client so that the interests are topical, tangible, non-positional and complete. This requires preparation of the client before each meeting. Be clear with the client that all interests will not be met and so the client should prioritize the interest.

**FORUM WORKSHOP REPORT**

No. 5: Ethical Standards and the UCLA – How Should Differences and Inconsistencies be Resolved?
Panel of Linda Wray JD (Moderator), David Fink JD, Diane Diel JD, Harry L. Tindall JD & Maury White JD of the IACP-UCLA Standards Review task Force

The format of this workshop was highly interactive. Each of the panelists gave a short statement on the overriding question of the potential conflict/differences between the aspirations of the IACP Ethical Standards and those in the various forms of the UCLA as enacted. The history of the development of the IACP Ethical standards and the UCLA/R was touched upon. The question is whether or not to amend the IACP standards in light of the differences. Even within the IACP Standards, the ethical issues within each of the disciplines take precedence. Also, since the IACP is not a licens-
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(continued from page 10)

ing authority, it cannot “enforce” any standard relating to the practice of the particular profession.

The attendees broke into four groups each of which discussed one of the questions. Each group was facilitated by a panel member. The questions were:

1. Should the IACP Ethical Standards adopt the approach of the UCLA/R which is to require that “time-
   ly, full, candid and informal” disclosure be made upon request, or continue requiring voluntary disclosure of all material information?

2. Should the IACP Ethical Standards define the beginning and ending of a Collaborative case – as does the UCLA/R? The privilege created by the UCLA/R applies only during the Collaborative case.

3. Should the IACP Ethical Standards clearly preclude the use of arbitration during the Collaborative process as does the UCLA/R?

4. Should the IACP Ethical Standards permit Collaborative attorneys to represent a party in court for the purpose of seeking or defending an emergency order, as does the UCLA/R?

The approach was to look at the questions presented in the light of the following points:

• What purpose is the IACP Ethical Standards attempting to achieve in addressing the issue the way that it has?
• What purpose is the UCLR/A attempting to achieve in addressing the issue the way it has?
• Can the IACP Ethical Standards be amended without detracting from the identified purpose?
• What are the possible consequences of having the IACP Ethical Standards and the UCLR/A differ?

Question 1: UCLA/R seems to be a floor while the IACP holds to a higher standard. The analysis of the group was that the purpose of the IACP standard was to call to the highest part of each client in coming to a resolution. The UCLA/R stand would seem to lead to a need for quasi-discovery in each case.

Question 2: The pros and cons of closely defining when the Collaborative Process begins and therefore when the privilege regarding communications attaches were debated. It was pointed out that privilege is a statutory creation. There is no question that confidentiality is protected after the Participation Agreement (PA) is signed. Therefore, one can have the client sign a waiver prior to the signing of the PA addressing both confidentiality and privilege. There was no consensus about changing the IACP Ethical Standards to match the UCLA/R.

Question 3: Some thought that the IACP Ethical Standards should be amended to preclude arbitration. Others suggested that at an impasse letting the parties resolve an issue though the use of an arbitrator and then resuming the collaborative process should be permitted. If the parties voluntarily seek the assistance of an arbitrator it should not be considered a “contested court procedure”.

Question 4: The approach of the UCLA/R was addressing the domestic violence community concerns. This group concluded that there was no need to change the IACP Ethical Standards. In most cases the attorney can refer the matter to another attorney. In the instance where the legal community is so small that there is no one who can take on the representation immediately, the code of ethics of the particular profession trumps and the party is entitled to have the collaborative attorney continue. In that case the consensus was that the collaborative attorney should get off the case at the earliest possible moment.

An overriding question was how the IACP could possibly change the standards to match the UCLA/R when it is passed in different forms in the United States and the laws in other countries may also be different. This program went over the time allotted because of the discussions that the topic engendered. Interestingly, all of the participants were attorneys.

ADVANCED WORKSHOP REPORT
C – Collaborative Advocacy: It Starts From Hello!
Presented by Victoria Smith, C.Med. CFM (FMC) & Sherri Goren Slovin, JD

The advanced workshops were new this year. They required successful completion of at least 15 collaborative cases. This was an excellent presentation
Different Perspectives: The IACP Forum
(continued from page 11)

from two professionals in different professions. They actively involved the audience.

What does advocacy mean? It is educating the client, taking action to support the client’s interests and speaking for the Collaborative Process. This can be a challenge in the process of team building. Some points from this program that I felt were important are:

Attorney’s key roles:
• to give the client a voice, uncover and prioritize needs and help the client to be heard and to be understood;
• to help the client to act wisely, to understand the neuroscience of emotions, help the client to appreciate the other party, to ensure that the client is informed.
• to advance the client’s realistic goals, generate creative options, persuade and influence the client.

It is important to realize that the client’s needs are not static but may change over time and that there will be times that the client cannot make a decision because of their emotional state.

We can take some instruction from those in sales:
• Attunement and perspective taking – see the issue from the other’s point of view;
• Buoyancy – the capacity to manage negativity. i.e., stay positive; and
• Clarity – the ability to make clear a murky situation – problem finding, sorting information, asking questions

In the Collaborative Process, at its most basic, two people interact and try to get their interests met. So the biggest problem in failed cases is unmet expectations. Therefore we must manage our client’s expectations from the start by educating them that our role will not be the one that is typically shown by the media. Instead we focus on their goals and needs. We may be a Facilitative Advocate where the clients are able to speak for themselves and the lawyers facilitate and provide information in which the focus is more on interests rather than the law. On the other end of the spectrum, we may be a Partisan Advocate where the lawyer often speaks for the client and provides opinions, recommendation and advice. Here the negotiations may be more legally based.

There was an interesting discussion of the concept of fairness. They noted that we are all hotwired for it but may have different definitions. To some it may mean 50/50; to others that whoever works harder should be rewarded and to others that the one who needs more should receive more. Therefore it is helpful to tease out the meaning for the client at the beginning of the case. In discussing the law, it is helpful to point to it as a standard but only one option. Litigation is a dispute mechanism for those who cannot come to an agreement. That helps to demystify it.

The presenters went on to discuss other challenges in incorporating advocacy into the collaborative process. I would highly recommend signing up for this workshop if it is presented in the future.

THE INTEREST BASED TOOLBOX
By David Miller, Esquire

I attended several workshops at the IACP Forum in San Antonio. The one that I think lends itself to a newsletter and which was probably most helpful to practitioners was the seminar on the “Interest Based Toolbox.” The workshop was conducted by Brian Galbraith, LLB, Sue Cook, RSW, CCC, MEd, and Jackie Ramler, CFP, FMA, MBA, all from Barrie, Ontario, Canada. The toolbox contains 24 tools, all with a short name. Here they are with a short description of each: (1) Open ended questions – we all know what that is (what, where, when, why, how) but it is difficult to practice if you come from a litigation background (I was trained to avoid the words “why” and “how” like the plague!); (2) Probing – pick a word used by a speaker and ask about it with curiosity; (3) Acknowledging - using words, sounds or gestures that show you heard; (4) Body language – voice, tone, face, body position, hands, legs – watch it all; (5) Summarizing – pull together what has been agreed upon and where differences still exist; (6) Defusing – take the blame and redirect the conversation; (7) Silence – give time to regroup; (8) Goal setting – use common goals
to test settlement options; (9) Labeling emotions – put a label on emotions you observe; (10) Paraphrasing – summarize what you heard but using more positive words; (12) Echoing – repeat back exactly what you heard (i.e. reflecting); (13) Mirroring – ask parties to listen to each other and then summarize what the other said; (14) Humor – lighten the atmosphere (but be careful); (15) Parking – write down unresolved issues for later return; (16) Separate person from problem – shift from blame to problem solving; (17) Change it up – seating, food, water, different room etc.; (18) Stay in the fire – avoid distraction, stay focused, show empathy; (19) Reflect on process – ask how everyone feels the process is working; (20) Checking in – ask often – do I have it right? is there more?; (21) Reality testing – ask how it will work in real life; (22) Ask for compromise – find out what each can offer as a compromise; (23) BATNA – discuss the best alternative to a negotiated agreement; (24) Rewind – allow the conversation to start over. I have added some of my own comments and I know many of you already use many of these tools. Nevertheless, now you have a nice short label for each tool which can help when you have to quickly figure out how to get out of a jam during a collaborative team meeting. See you in Vancouver at next year’s forum!

**INSPIRATION FROM THE IACP LEADERSHIP CONFERENCE**

*By Melissa Sulkowski, MA*

The IACP annual conference provided me with an opportunity for self-reflection and left me feeling overwhelmingly grateful. I gained a whole new perspective on the word “global”. As one of the founding members of our local practice group and our president elect, to visually take in how large this movement is was an amazing experience. To see so many countries represented had an impact. I felt like a computer downloading information for 4 days straight and came out of it only eager for more.

In spending my first two days in the Leadership Academy, the energy in the room and the ability of others to be vulnerable was powerful. There is willingness within all of us to serve and by doing this with integrity and intention, the overall effect it greater. I am looking forward to the next year with the 22 other leaders who are part of it. It is truly a blessing to not only be a part of this group, but furthermore to lead the collaborative movement. I am hopeful that it will only be the beginning of many new opportunities around the world.

Additional experiences that remained with me from the conference were the "collective wisdom" and the "children's fire". Slowing down and connecting with strangers to gather collective wisdom under the direction of Alan Briskin was enlightening and moving. The opportunity to go to a place of calm with such a large group was powerful. The synergy, passion and commitment in the room to move families to a better place by resolving a dispute in a better way was beautiful.

George Por sharing the YouTube video by Mac on the “children's fire” was the foundation of the conference in my opinion. The video depicts Native American chiefs choosing, as an organizing principle of their culture, to give primacy to the human instinct to love our offspring. I intend to show the video to those within my holistic private practice as well as to my local collaborative practice group. I would recommend that anyone who works with families watch it. I often say to new clients "I do what I do for a living because I love children". While I care about parents and recognize their ability to define healthy family systems by what I term the "trickle down effect", I work with the parents as a coach for the ultimate benefit of the child. I could comfortably identify with the "children's fire" and that was a good feeling.

Melissa Sulkowski
THE CHALLENGES OF NEUTRALITY IN COLLABORATIVE PRACTICE FROM THE IACP FORUM

By Loretta (Lori) Gephart, M.A.

Since joining CLASP, one of my favorite fall activities has been to attend the IACP Forum each year. This year’s Forum in San Antonio again lived up to my expectations and proved to be well worth the effort, cost and time of attendance. A rewarding benefit of regular attendance at the Forum is the opportunity to meet collaborative professionals from around the world and to develop friendships that deepen each year as names are connected with faces and conversations extend beyond the few days of the Forum into the rest of the year. A highlight of this year was a lovely dinner on the River Walk, coordinated by Linda Solomon, with a group of about 15 fellow mental health professionals (MHPs) from around the world that offered us the opportunity to bond, laugh and learn from each other.

I have never before been part of an organization that had such a global and interdisciplinary perspective. Interacting with professionals from across the globe offers unique opportunities to expand horizons and grow on so many levels. I always find fresh ideas as well as validation of tried and true techniques at each workshop. I spent one of my pre-forum days this year in the workshop entitled “The Challenges of Neutrality in Collaborative Practice” presented by Linda Solomon, LPC and Barbara Kelly, Ph.D. This workshop which was attended by MHPs, financial professionals and attorneys offered a unique opportunity to engage in discussion about the challenges of neutrality from the different perspectives of each profession.

One of the questions I raised in discussion with my fellow attendees, including attorneys, was, “How do you address the concern that clients might have about the cost of a neutral coach?” The invariable answer from one and all was loud and clear, “How can they afford not to have a coach?” Time and time again I heard stories of the evolution of practice groups around the world which began as attorney only groups and then evolved, as the group matured, into interdisciplinary groups in which the norm is to have some version of the full team model composed of MHP (whether it is one neutral coach or two coaches), a child specialist, a financial neutral and two attorneys.

In this workshop the value of the one coach model was highlighted given the opportunity that it affords for the MHP to provide the neutrality that balances the advocacy of the attorneys. That neutrality has two primary challenges: the coach’s own neutrality and the perception of that neutrality. It is particularly important to avoid the perception that the coach is not neutral when there is a case where the coach needs to spend more time coaching one client than the other. In this scenario it is crucial to provide transparency to the full team, including both clients, that the coach is meeting with one client and is available to meet with the other as needed or wanted.

Every MHP who has worked in the neutral role for any length of time has heard the accusation from a client or their attorney that, “You’re not neutral.” Often the attorneys are the first to hear from the clients that the coach’s neutrality is in question. Sharing this information as soon as it is available can create the opportunity for personal and team growth by exploring neutrality on a deeper level, as the coach looks inward, asks for team feedback and discussion, asks for client feedback and discussion and considers the context of the statement. These statements by a client may mean, “I don’t like what you just said.” Or perhaps it is a reminder that the coach has just given an opinion. The coach may need to consider if it is ever appropriate to give an opinion. Or perhaps there is some countertransference occurring in which the client’s behavior has triggered something in the coach and “hooked” the coach emotionally. In any event, once the question of neutrality has been voiced and the coach has processed this internally and with the team the next step is to check with the clients and ask what the clients need to be able to continue in the process and are they comfortable going forward?

I am happy to bring back this information from San Antonio to share with my colleagues in Pittsburgh. My hope is that this is only the beginning of many more conversations about the nuances of balancing neutrality and advocacy. I encourage collaborative teams to include in their debriefs a discussion of the emotional
hooks that may be triggered in any of the team members during this challenging work. Such conversations are the meat of team debriefs which can take a team and/or team member(s) to new skill levels as collaborative professionals.

I hope to see many of you at the 2014 IACP Forum in Vancouver!

2013 IACP ANNUAL FORUM - MY IMPRESSIONS
By Brad Enterline, Esquire

This will have been my fifth IACP forum in as many years. Sometimes I think that there is no use attending another one, given all the hours of breakout sessions, conferences and additional advanced trainings which many of us attend. However, San Antonio was another excellent opportunity.

I attended the pre-conference forums on Thursday and Friday and both were very good. I attended Thursday’s session titled Collaborative Practice at its Best: How the Most Proficient Practitioners Manage the Most Difficult Cases. While I was reluctant to attend an all day session, it was very informative, with good interaction and a lot of good discussion on an actual case that the presenters were involved in. The presenters were made up of two lawyers as well as the divorce coach. They provided fact patterns and asked us how we would resolve the various issues encountered. They were then able to explain to us how they handled each issue at the time.

I also enjoyed the breakout session on Where did the Mediators Go? This was presented by Kevin Fuller of Dallas, Texas, who led a great interactive discussion. It was interesting to hear how different teams in Texas, Rochester, New York, Minnesota, Massachusetts, and England have handled the use of mediators in their collaborative cases. There were a ton of good ideas and different models discussed for the introduction and use of mediators in a collaborative case.

I also enjoyed the session on the Coach Matrix presented by Rene Haas and Ingeburg Sandig, both of the Netherlands. This was again an interactive session on a model used by the coaches to help a party identify and work through problems in a very specific and structured way.

These forums would be enjoyable enough for all the learning and new ideas which we come across, but of course that’s not all there is. My wife and I were able to enjoy San Antonio and experience the food, the culture, the architecture and the climate! All work and no play can make for a less enjoyable experience. Thankfully, the down time was a nice balance to the learning and camaraderie. Oh, and did I mention the food!

I am already looking forward to Vancouver in 2014.

USING THE COLLABORATIVE PROCESS FOR ESTATE AND TRUST DISPUTES - FROM THE 14TH IACP FORUM
By Lea E. Anderson, Esquire

The 14th annual IACP Forum was held in San Antonio from October 17 – 20, 2013 and was titled “The Power of our Collective Wisdom”. I attended two powerful pre-forum institutes, in addition to the Opening Plenary featuring Alan Briskin, the Stu Webb Lecture featuring George Por and several workshops. The programs, activities and entire conference were executed with the precision and seamless convenience we have come to expect from the IACP. The Saturday evening program involved travel 45 minutes out of San Antonio to a working ranch for a BBQ bash, complete with opportunity to line dance and sit astride a large long-horn Texas bull.

I want to take this opportunity to share my enthusiasm and excitement generated by a concentrated 3 hour workshop on using the collaborative process for Trusts and Estates.

While this program held great promise of help-
ing us all make the move from talking about to applying the collaborative process to the estate and trust areas, I approached it with some degree of skepticism. At past forums, I had attended presentations billed as, “How to apply the collaborative process to civil and business disputes” or “Using the collaborative process in civil disputes,” and had learned that very few of the presenters had actual experience. While they were informative and genuinely well intentioned, those presenters had primarily focused on theories and possibilities of how the collaborative process would work in these kinds of cases because they had yet to apply it in actual cases. Moreover, during those programs, estate planning and estate and trust disputes were always considered to be subsumed in the civil dispute analysis.

In this year’s program, estate and trust disputes finally achieved an identity and niche in the collaborative process case spectrum separate from other civil cases. Even more significantly, Presenters Nancy J. Ross, LCSW and Alan Nobler, JD have successfully applied the collaborative process to both pre-mortem estate planning and post-mortem estate disputes. Thus, their seminar on this area of collaborative practice was based on real world experience.

Their “soup to nuts” analysis came complete with marketing ideas, full trust and estate protocols and a two day training outline in the collaborative process for estate and trust application.

They also offered a list of typical questions posed by clients engaged in the estate planning process and provided answers both in the traditional litigation environment and using the collaborative model. Their comparison is reproduced below and illustrates how the collaborative process works in this practice area.

In the estate and trust arena, the interdisciplinary model is deeper and broader than in the domestic model and can include eldercare professionals, geriatric care managers, and family systems professionals, in addition to the mental health and financial professionals.

If you are interested in developing a collaborative estates and trust practice, Nancy and Alan suggest that you start by inviting your colleagues to join you for a discussion to “determine how we can all work together to create a Collaborative Practice model that will serve our clients and their families…” They suggest that you remind your colleagues that, when applied in the estate and trust context, the collaborative process can:

- Avoid unnecessary conflict and preserve family relationships though open, thoughtful communication during the challenging pre-and –post mortem periods
- Serve all our clients more effectively through Collaborative teamwork
- Bring a higher purpose to our work with our clients
- Create an effective professional network of Collaborative Trust and Estate professionals

At the gathering, itself, following an introduction of the individuals and the work each currently does, you would then describe your interest in Collaborative Trusts and Estates and how you think working in an interdisciplinary model will benefit everyone’s clients.

After developing interest in the collaborative process among your professional colleagues, Nancy and Alan stated that the next step is to provide public education to create awareness and a desire for working collaboratively. For success, they even included a “typical” flyer and agenda for such a public program.

In sum, one thing I learned at the IACP Forum was that Pennsylvania Collaborative practitioners interested in extending the use of the collaborative process into estates and trusts need not start from scratch. Instead, they can build on the wisdom and experience of Alan, Nancy and other collaborative professionals who have successfully applied the collaborative process to planning and administering estates and trusts and in resolving estate disputes and contested guardianships.
Collaborative Estates and Trusts  
Is it for me?

This list will help you decide if Collaborative Practice is the route for you to make these important decisions about your and your family’s future.

<table>
<thead>
<tr>
<th>Questions</th>
<th>Traditional Model</th>
<th>Collaborative Model</th>
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<tr>
<td>My family gets along well. Why would I be concerned about fighting amongst my heirs after I die?</td>
<td>The traditional estate planning model takes a very superficial accounting of family relationships. There are some standard considerations, such as a second marriage where the likelihood of a subsequent court battle increases dramatically. But otherwise, the traditional model does nothing to address underlying family dynamics that can lead to costly, stressful trust or probate battles in the future.</td>
<td>With the Collaborative model, all family members (where appropriate) are informed about the estate planning well ahead of time. They can then resolve any differences while you are living, rather than creating dissension after your passing. Not only does this reduce the likeliness of litigation but it also increases the quality of life for the family while you are living. Often probate and trust battles are fought over what mom or dad “really” intended. With several people having heard you directly state your intent, it will be very hard for a family member to claim you intended something else.</td>
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<tr>
<td>Who knows about the will or trust? Will my estate plan be private?</td>
<td>While you are living, your will and trust are private documents that nobody else knows about. At your death, your will must be lodged with a court where it is available to the general public. Your beneficiaries and heirs (heirs are what most people think of as “next of kin”) will get notice of your trust and will at the time of your death. They have the right to request copies of the trust.</td>
<td>All family members you invite into the process will participate in a discussion of your intentions. Conversations are kept confidential within the family and involved professionals. Confidences are not shared outside of the group unless everyone agrees.</td>
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<td>Questions</td>
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<td>Are there surprises when the</td>
<td>Possibly, because it is a private document.</td>
<td>There are no surprises if you have informed the key people ahead of time.</td>
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<td>details of the will or trust are</td>
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<td>disclosed?</td>
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<td>Who will decide how to divide</td>
<td>Probate and trust litigation is done without a jury. So a judge makes the ultimate</td>
<td>Family members, guided by your intentions. Professionals assist family members to communicate and have the pertinent information to make informed decisions. The family can be creative and explore unlimited options.</td>
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<td>my estate if there is a dispute?</td>
<td>decision in traditional litigation.</td>
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<td>How much delay will there be</td>
<td>Litigation usually takes more than a year from the first filing of a document to</td>
<td>This process is likely to take far less time than litigation. The Collaborative process lends itself to finding solutions rather than seeking a “one up” position. This provides a more efficient process where family meetings focus on understanding and collaborative agreements. There is no “jockeying” and strategizing that usually make litigation protracted and expensive. There is also a flexible meeting schedule (can meet on weekends, holidays, etc.). Professionals suggest, but the family decides, when to meet and how often</td>
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<td>if there’s a dispute about my</td>
<td>trial. Some cases stay in court for years pending appeals. Scheduling is first</td>
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<td>estate?</td>
<td>dependent on availability of court and attorneys then parties. Most of the time is</td>
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<td>spent waiting for one party to respond or the judge to decide on a small issue</td>
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<td>before the case can go forward. In an adversarial litigation process, the delay</td>
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<td>can be incredibly long because neither side has control over the actions of the</td>
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<td>other side and attorneys have to respond to everything the other attorney does or</td>
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<td>fails to do.</td>
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<td>Questions</td>
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<tr>
<td>How much would a dispute about my will or trust cost?</td>
<td>Litigation is very expensive, it can cost at least $60,000 per side from time of filing the first document with the court to trial. The usual cost is over $100,000 per side. Most costs are related to disagreements over sharing or hiding information and documents, as well as preparing for and attending trial. Energy and resources are focused on proving the other side is wrong. Expert witnesses are often involved, which adds a significant expense to the cost. Experts are hired to advocate a position and there is often a very costly “battle of the experts”.</td>
<td>Much less costly than trial. Information and documents are voluntarily shared with all family members and professionals. No one has to be wrong. Energy and resources are focused on finding solutions that would benefit all. The neutral experts here are hired to educate, create options, and find a solution rather than to battle with another expert.</td>
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<td>Will my family be able to still get along if there’s a dispute about my will or trust?</td>
<td>In litigation generally no one talks to each other during and after the court case. Parties talk through their attorneys and through legal documents filed with the court.</td>
<td>Family members talk directly to each other during the meetings. After the process, most family relationships transform from indifference or hostility to cordial or familial.</td>
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<td>How can I create an estate plan that will be fair to all my family members when I have a blended family, one of my children needs the money more than the others, or I want to reward one of my children for helping me out?</td>
<td>The traditional approach is to make an estate plan and hope everyone will understand.</td>
<td>The family talks about the plan beforehand with the help of the communication coach so there will be no hard feelings after the estate planner dies.</td>
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<td>Questions</td>
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<td>What if my spouse and I don’t agree on how to leave our property?</td>
<td>Each person makes their own plan; one spouse pressures the other; or they don’t make a plan at all.</td>
<td>The lawyer mediator, financial specialist or communication specialist helps the couple come to a mutually satisfactory plan.</td>
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<td>What if one of my children doesn’t manage money well and I’d like to leave someone else in charge but I don’t want there to be resentment?</td>
<td>The child that is passed over as trustee or executor, or who has someone else appointed to manage their money is likely to resent their siblings and/or the person writing the will or trust</td>
<td>The mediator financial specialist and coach help the parents find a way to talk to their children about it and come up with a protective but respectful arrangement. This could even provide an opportunity for a previously “irresponsible” child to learn how to manage money. Based on positive behavioral changes, you may decide to change your plans.</td>
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<td>What if one of my children can’t manage money at all and has special needs?</td>
<td>If a child or other beneficiary is receiving public benefits, their benefits can be protected by having a “Special Needs Trust” prepared. If this is not discussed with the beneficiary, they might not like the choice of who is put in charge of their money, and may not understand the reasons for it.</td>
<td>The mediator financial specialist and/or coach help the parents find a way to talk to their child about the Special Needs Trust. They can solicit the beneficiary’s opinions as to who they would like to be in charge of their money and other aspects of the arrangements, to the extent of their abilities to understand and communicate.</td>
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REFLECTIONS FROM IACP: “IT’S BELIEF THAT GETS US THERE.”
By Deborah Conflenti, Esquire

It may be a line from a movie, but it’s something that I try to remember on a daily basis, that is, that our beliefs are what drive us every day. As we move forward in our efforts to grow the collaborative process, I believe we need to ask ourselves a few questions. What is collaborative practice to each of us? Are we looking forward? Can we develop a profitable and satisfying collaborative practice without truly believing and committing to the process ourselves?

Following is my reflection on our “collective wisdom” (to quote IACP). I do not believe it is anything that we don’t know. I believe it is just something that we don’t take the time to consider on a daily basis.

If we feel truly passionate and inspired by the process, I believe that we can move it forward. However, if we, as collaborative professionals, do not “believe” that not only can the process work, but that it is a better option than litigation, how can we expect clients to?

Let’s face it, most clients are frightened beyond belief. It may be masked in anger, tears or laughter to name a few. What is the CP’s role? Are we able to present as a member of a group that is energetic, pure and authentic? If so, we can soften some of the fears our clients present with.

The great thing about the collaborative process is that it affords individuals the opportunity for discovery, growth and on-going improvement. It can be empowering and transformative, morphing caterpillars into butterflies and dispirited victims into enlightened champions—if we let it.

When we litigate, we fight zealously for our clients, but who among us has never asked ourselves simple, but vital questions like: Where does litigation leave the family at the end? What really happens to the children in a highly combative matter? What effect does that “great deal” we obtained in court have on the family and the children?

Conflict is inevitable. How conflict is handled changes lives. Change takes courage: courage to face reality; courage to stand for something; courage to take that “chance.”

On a daily basis we are deliberate and mindful in our actions and reactions. I would like for each of us to ask ourselves the following: Are we able to take that same deliberation and mindfulness and apply it to our “beliefs” about collaborative practice? Our option is to respond consciously with spirit and discernment rather than falling back to our automatic learned responses.

It doesn’t matter what provokes us or what “pushes our buttons,” we all own the choice card. The choice requires that we believe what we ask our clients to believe. This choice requires that we remain positive and believe that we can respond differently and make a difference. Problems inevitably come and go. It may be cliché, but truly, there is no problem without a solution. Our challenge is to remain passionate and always remember this powerful truth.

I believe we are all familiar with what Aristotle once said: “We are what we repeatedly do. Excellence, then, is not an act but a habit.” I would like to challenge all of us (especially myself) to take the time to change our “autopilot” from fight or flight to reasoned negotiated responses.

The challenge to our clients in choosing a different path will require a change in their lives, their beliefs, or their priorities. They will most likely see this as a risk; hence, asking clients to take more responsibility is dangerous for us. But if we can find a way to help them through this challenge, the end result can be something which puts an end to the “never ending battle,” and provides children with a model of a better way to do things; a model which shows that differences can be constructive when responses are deliberate.

We create the world we see. We all choose our own level of consciousness. The choice is ours. Maybe, just maybe, if we let go, we will find the moment which helps our clients to see that all is not lost, and that there does not have to be a “winner” and a “loser”.

We can only advance the Collaborative process through our own trust and “belief” in its excellence.
REPORT FROM CENTRAL PENNSYLVANIA

By Jim Demmel, Esquire

The Collaborative Professionals of Central Pennsylvania have been working to integrate the one-coach practice model into our practice group. This has included extensive discussion about the role of coaches in the collaborative process and development of accepted procedures. Our monthly membership meetings have focused on substantive education and discussion, with positive feedback from group members. We have begun testing the use of the collaborative roadmap, which was introduced to several group members at the Maryland Spring Forum. CPCP is also making an effort to focus on marketing for the group and how to make the most productive use of our recently redesigned website. We’ll hold elections for our executive committee in November and hopefully see some new faces with fresh ideas and enthusiasm in leadership roles. Our November membership meeting will also include a presentation and discussion of the workshops and material from the 2013 IACP Forum.

COLLABORATIVE PROFESSIONALS OF NORTHWEST PA

By Zanita A. Zacks-Gabriel, Esquire

Collaborative Professionals of Northwest PA (CPNWPA) is alive, well and thriving! We have redrafted our Mission Statement, and held a 2-day basic training and an advanced training that took place November 7-9, 2013. Sue Brusting came in from Rochester to do the basic training on November 7 and 8 and the advanced training on November 9. We had unprecedented numbers attend - from Buffalo, Pittsburgh and Mercer County. There were 19 attorneys, 16 mental health professionals and 4 financial professionals who attended. Excellent training with great social events afterwards!

We are delighted to report that Melissa Sulkowski has been selected for the IACP Leadership Academy. It is quite an honor and very exciting for all of us.

After working closely with the Bench, our Judges have approved the posting of Collaborative materials and a Collaborative/Mediation/Litigation chart our group prepared. These notices are now posted in the Custody Office, the Support Office, the Prothonotary’s Office, the DRS Payment Office, Court Administration and every bulletin board in the Erie County Court House. We are very excited.
anyway. You two are blaming the collaborative process for taking too long and not getting enough done. But it’s up to you. HC and I could reach an agreement on this in five minutes. But it’s your process. It seems like you have some things to say to one another. So I’m going to suggest that you two just go ahead and tear into one another for the next five minutes and get it out in the open. We’ll be quiet. Maybe, after that, we’ll be able to figure something out.”

HC and N looked at one another, stunned, but somehow powerless to voice an objection. So WC proceeded: “Who wants to go first?” No one spoke. Gesturing to W, WC said, “Why don’t you begin?” And so began the exchange quoted in the preamble.

The most vexing issue in the case – the parenting plan – settled about 20 minutes later. Fairly.

Before you start yelling at your computer screen, or scribbling an angry “Dear so-called Editor” letter, please note that I did not say, “As the result of this off-beat approach, the case settled.” But it did settle – and quickly – right after the Team breached all conventional collaborative dogma. At a minimum, and off the top of my head:

1) The maneuver encouraged negativity
2) One colleague went off on her own without prior consultation with the Team
3) The “safe container” was deliberately breached
4) Fight, flight or play-dead chemicals were deliberately released into the brain, such as would typically inhibit reasoned decision making
5) Feel free to add to this list of collaborative offenses.

So what happened? Did the rapid, fair settlement following this episode suggest an error in collaborative dogma, or at least introduce a new, acceptable technique to be used in appropriate (and probably limited) circumstances? Was the outcome fortuitous, achieved in spite of a deliberately courted and unnecessary risk; sort of like getting home safely, in spite of being so drunk you don’t remember how you got there?

WC’s thought was that something happened that could be analogized to catharsis. In her view, W and H got their negativity out of their systems, so they were free to advance to something positive. HC wondered if the situation could be compared to make-up sex, specifically in relation to chemical changes in the brain. He assumed an initial release of cortisol during the “mad” phase, but wondered what happens next that apparently causes us to fall back into one another’s arms – literally, in the case of make-up sex, or metaphorically, in the context of a collaborative process? N, a very experienced coach, was skeptical that this new alchemy would produce gold. A day after the meeting, she directed HC and WC to an article by Pauline Tessler, entitled What is Neuro-Literacy and Why Should You Care?, published in Family Lawyer Magazine.

With a certain inevitability, I felt an article for The Trend coming on. My truth-seeking interest was aroused, reached a plateau during the hardworking research phase, climaxed with the realization that there might be plausible science-based answers to the questions, and resolved through the process of writing about my investigative journey, as follows . . .

Understanding more about anger seemed like a good place to start. After all, we had explicitly endorsed the venting of anger in our collaborative session. What had we set in motion?

When we get angry, the heart rate, arterial tension and testosterone production increase, cortisol decreases, and the left hemisphere of the brain becomes more stimulated.1 Oops, there goes the assumption that cortisol would certainly be released during our venting episode. Cortisol is sometimes referred to as “the stress hormone.” It is released (along with adrenaline) by the adrenal glands in response to fear (not anger), as part of the fight, flight or freeze (play dead) reaction to threatening stimuli. Short term effects of massive cortisol are known to include increased heart rate and respiration, diversion of blood to large and smooth muscles, and impairment of working memory until balance (or homeostasis) is restored. The length of time involved in the dissipation of excess cortisol and adrenaline varies from individual to individual, but is generally believed to be at least 30 minutes.2

(continued on page 22)
If fear = cortisol = temporary inability to engage in higher level reasoning (as is commonly believed by collaborative practitioners), can we infer from the fact that H and W reasoned to a logical conclusion soon after filing one another that their predominant emotion during the exchange was (cortisol-decreasing) anger, rather than (cortisol-releasing) fear? Might this hypothesis support (or at least permit) the use of our catharsis tactic?

Put it this way: My review of the scientific, quasi-scientific and collaborative literature suggests caution. Make that extreme caution.

Consider these common goals of the expression of anger:
1) Correcting wrongdoing, or showing the wrongdoer that the behavior was inappropriate
2) Maintaining the relationship, or addressing the interpersonal problems that caused you to get angry.
3) Demonstrating power, which may be a way to ensure that this trigger doesn’t happen again.

Venting, as a technique for expressing anger, might arguably serve goals one and three. Those goals appear to be susceptible of such one-way communication. Goal two perhaps implies a more muted expression of anger, one which contains an invitation to discussion.

“In studies, respondents have identified talking things over with the offender as the most appropriate way to deal with anger. It’s not just venting or yelling at the person; it’s telling them why you’re angry in a way that moves toward a solution. This method of expression is why anger can sometimes be good for us. We’re moved to address a negative in our life and make it a positive.”

The first time I read that sentence I thought, “Aha, so much for catharsis!” Then I read it a few more times, and I thought, “Ah crap. This doesn’t prove anything.” I can accept that “talking things over . . . is the ‘most appropriate’ way to deal with anger.” But that’s not the same as saying it’s the only way. The next sentence is even more of a problem. It suggests that venting or yelling 1) cannot convey “why you are angry” or, at the very least, that venting cannot convey “why you are angry in a way that moves toward a solution.” Well, if finding a solution is predicated on “talking things over” and finding a different place to meet on some issue, can we not hypothesize that the act of venting, even if couched in terms unwelcome to the sensitive ears of the “ventee”, may have the salutary effect of removing an impediment from the venter’s ability to move toward a solution?

We need to know more about catharsis theory. I first heard the word catharsis in one of two places, 10th grade English in which we were handed twenty words a week to learn to define, spell and use in a coherent sentence, or else in my first drama class. The latter seems more likely.

Catharsis was advanced by Aristotle in his Poetics. Aristotle disagreed with Plato who felt that drama “unbalanced” the citizenry. Aristotle held, to the contrary, that the release of pent up “energy or fluids,” as occurred following the build-up of suspense in a play, restored balance to the human condition, and was healthy, vicarious and safe.

The same notion informed Aristotle’s concept of the humours. If you were too choleric, melancholy, phlegmatic or sanguine, the goal was to restore the balance, or golden mean, which the ancient Greeks so revered. Purging the bad or excess humour was good. Medically, this sometimes meant draining blood from someone perceived to be overly sanguine.

A version of catharsis theory became part of psychology through the work of Sigmund Freud. “He believed your psyche was poisoned by repressed fears and desires, unresolved arguments and unhealed wounds. The mind formed phobias and obsessions around these bits of mental detritus. You needed to rummage around in there, open up some windows and let some fresh air and sunlight in.”

By the 1990’s the idea of “letting off steam” to relieve anger was generally accepted. Hitting a punching bag or screaming into pillows were among the “safe” techniques used by psychologists. However, there were a number of psychologists who doubted whether venting anger was effective to release or reduce it. One of these, Professor Brad Bushman from Iowa State, devised a series of experiments.

As described by McRaney:
In one of Bushman’s studies he divided 180 students into three groups. One read a neutral article. One read an article about a fake study which said venting anger was effective. The third group read about a fake study which said venting was pointless.

He then had the students write essays for or against abortion, a subject for which they probably had strong feelings. He told them the essays would be graded by fellow students, but they weren’t.

When they got there (sic) essays back, half were told their essays were superb.

The other half had this scrawled across the paper: “This is one of the worst essays I have ever read!”

They then asked the subjects to pick an activity like play a game, watch some comedy, read a story, or punch a bag.

The results?
The people who read the article which said venting worked, and who later got angry, were far more likely to ask to punch the bag than those who got angry in the other groups. In all the groups, the people who got praised tended to pick non-aggressive activities.

...exposure to media messages in support of catharsis can affect subsequent behavioral choices. Angry people expressed the highest desire to hit a punching bag when they had been exposed to a (bogus) newspaper article claiming that a good, effective technique for handling anger was to vent it toward an inanimate object.

- Brad Bushman, Roy Baymeister and Angela Stack, from the study on catharsis

So far so good. Belief in catharsis makes you more likely to seek it out.

Now it gets really interesting. McRaney continues:

Bushman decided to take this a step further and let the angry people seek revenge. He wanted to see if engaging in cathartic behavior would extinguish the anger, if it would be emancipated from the mind.

The second study was basically the same, except this time when subjects got back their papers with “This is one of the worst essays I have ever read!” they were divided into two groups. The people in both groups were told they were going to have to compete against the person who graded their essay. One group first had to punch a bag, and the other group had to sit and wait for two minutes.

After the punching and waiting, the competition began.

The game was simple, press a button as fast as you can. If you lose, you get blasted with a horrible noise. When you win, blast your opponent. They could set the volume the other person had to endure, a setting between zero and 10 with 10 being 105 decibels.

Can you predict what they discovered?

On average, the punching bag group set the volume as high as 8.5. The timeout group set it to 2.47.

The people who got angry didn’t release their anger on the punching bag, it was sustained by it. The group which cooled off lost their desire for vengeance.

In subsequent studies where the subjects chose how much hot sauce the other person had to eat, the punching

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When the punching bag group later did word puzzles where they had to fill in the blanks to words like ch__e, they were more likely to pick choke instead of chase.

Bushman has been doing this research for a while, and it keeps turning up the same results.

If you think catharsis is good, you are more likely to seek it out when you get pissed. When you vent, you stay angry and are more likely to keep doing aggressive things so you can keep venting.

It’s drug-like, because there are brain chemicals and other behavioral reinforcements at work. If you get accustomed to blowing off steam, you become dependent on it.

The more effective approach is to just stop. Take your anger off of (sic) the stove. Let it go from a boil to a simmer to a lukewarm state where you no longer want to sink your teeth into the side of buffalo (sic).

Bushman’s work also debunks the idea of redirecting your anger into exercise or something similar. He says it will only maintain your state or increase your arousal level, and afterward you may be even more aggressive than if you had cooled off.

Still, cooling off is not the same thing as not dealing with your anger at all. Bushman suggests you delay your response, relax or distract yourself with an activity totally incompatible with aggression.

These results contradict any suggestion that hitting the punching bag would have beneficial effects because one might feel better after doing so (which is what advocates of catharsis often say). People did indeed enjoy hitting the punching bag, but this was related to more rather than less subsequent aggression toward a person...hitting a punching bag does not produce a cathartic effect: It increases rather than decreases subsequent aggression.

- Brad Bushman, Roy Baymeister and Angela Stack, from the study on catharsis

This research, which defines catharsis as some form of physical or psychological venting of aggression, clearly concludes (among many other important findings) that not even the “venter” benefits from the venting.7

So what happened with H and W, when they came to a rational agreement to share custody, minutes after taking each other to the woodshed?8 One idea is that they experienced something like make-up sex. What about that, huh? What does the literature say about that?

To clarify, the initial hypothesis was that something chemical happened in the brain during this argument/reconciliation process which would also occur in an argument/make-up sex scenario.

My research immediately encountered problems.9 First, there is no independent research which distinguishes the bodily changes that occur during sex, from those that occur during make-up sex. For that matter, make-up sex seems to be defined differently by its practitioners, with no consensus. Then there are reported differences between how men and women experience make-up sex, but then again there are similarities, too.

I decided to take a step backward and try and begin with what happens to the brain during sex. Turns out the literature seems hopelessly fixated on orgasms, which I suppose is logical, but nonetheless surprised me. In brief, nerves throughout the body transmit signals back to the brain along several neural routes. When the impulses reach the brain a lot happens.

Scientists in the Netherlands used PET scans to observe the brains of some gallant – and apparently uninhibited (or maybe well paid) – volunteers (1) while resting, (2) while being “sexually stimulated” and (3) while having an orgasm. They wanted to see whether the pleasure centers of the brain10, also termed the reward circuit, would “light up” during sexual activity,
Collaborative Make-up Sex (Continued from page 24)

and if other areas would “shut down.”

As synopsized by the article cited in the previous footnote:

Interestingly, they discovered that there aren’t too many differences between men’s and women’s brains when it comes to sex. In both, the brain region behind the left eye, called the lateral orbitofrontal cortex, shuts down during orgasm. Janniko R. Georgiadis, one of the researchers, said, “It’s the seat of reason and behavioral control. But when you have an orgasm, you lose control” [source: LA Times]. Dr. Gert Holstege stated that the brain during an orgasm looks much like the brain of a person taking heroin. He stated that “95 percent is the same” [source: Science News].

There are some differences, however. When a woman has sex, a part of the brain stem called the periaqueductal gray (PAG) is activated. The PAG controls the “flight or fight” response. Women’s brains also showed decreased activity in the amygdala and hippocampus, which deal with fear and anxiety. The team theorized that these differences existed because women have more of a need to feel safe and relaxed in order to enjoy sex. In addition, the area of the cortex associated with pain was activated in women, which shows that there is a distinct connection between pain and pleasure.

On the surface, these findings cast doubt on the theory that H and W, in coming together in a rational manner after reciprocal denunciations, experienced something akin to make-up sex, but that may be only because the research quoted emphasizes what happens during the orgasmic climax. And, in fairness, orgasm is implied when we think about make-up sex.

But, what if we contemplate some earlier stage of sexual activity, arousal for example: Could it be that all those pleasure centers of the brain were just glowing from a sort of abusive foreplay which, when they reached agreement, had not yet become incandescent to the point where reason was impossible? Of course, this line of thinking modifies the original hypothesis, but that’s OK, we’re seeking truth not vindication.

But we are not going to find any definitive truth today. The deadline for this piece is at hand, and there is no thread which my research suggests would be fruitful. In the end, there is only conjecture about why H and W reached agreement as they did, when they did. I am satisfied that catharsis was not responsible, but I do not know what was. It feels if WC putted a golf ball toward the windmill. The timing was just right. The ball escaped the scything blades and came through to safety on the other side. Hole in one! Perhaps I should study next the proper role of intuition in the collaborative process, if it has one.

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I think it best to leave the final word about allowing, not to mention introducing, emotional tempests in the collaborative meeting, to Pauline Tesler, who has the academic credentials to entitle her to an opinion.¹¹

It follows that every communication between and among the lawyers and the parties in a case necessarily carries a biologically wired emotional substratum. Lawyers unsophisticated in the workings of mirror neurons may make the well-intentioned error of allowing distressed clients to unload on one another at settlement meetings, believing there is something constructive in what they call “catharsis.” Not so, neuroscience tells us. Each client, and everyone else in the room, will simulate via their own mirror neurons the intense emotions being expressed, and will experience in their own bodies and brains the “fight or flight or play dead” evolutionary defense program that strong emotion triggers. The possibility of creative problem solving disappears, neurally speaking, for quite some time following such a “catharsis.” For clients, another round of the same old fight also reinforces the implicit memory attractor patterns that register every shred of evidence confirming the other’s unworthiness of trust and respect, while diminishing the brain’s ability to notice disconfirming evidence of good faith that does not match the increasingly charged negative pattern.

If catharsis is counterproductive, should we instead instruct clients to “suck it up,” or adopt that strategy ourselves when frustrated or angry at someone else in the negotiating room? It turns out that won’t work well, either. Our facial muscles, body language and the timbre of our voices speak louder than words, communicating our actual feelings and contaminating the environment at the table. If the feelings are there, they will be read by every brain in the room and can silently undermine trust and cooperation.

How might practical neuro-literacy help us address more effectively the eruption of negative emotion during case-related communications?

We can learn “self scanning,” a technique for becoming aware of how various emotions express themselves uniquely in our own bodies. This can become an early warning system, alerting us that we are becoming anxious or irritated before the emotion reaches a volume that shuts down higher level cognitive processes like planning, creative imagination, and cause-and-effect analysis.

With a more nuanced awareness of our emotions as they play through body and mind, we can invoke self-soothing techniques that operate at the neural level to abort emotional “hijacking” of higher brain functions. Functional brain imaging studies show that meditation and similar awareness practices can modulate the effects that otherwise accompany negative emotional states.

We can teach clients simple techniques to soothe and avert emotional meltdowns, many of them involving sensory inputs associated with implicit memory patterns of relaxation, trust, and other desired states. Some of those associations may be uniquely personal, such as listening to a particular piece of music or experiencing a scent associated with a particular positive memory or looking at a photograph of a beloved child, while others may be shared by most of us—the positive effects of deep breathing, soothing touch, or of endorphins generated by taking a break for a short brisk walk.

Collaborative lawyers have employed these and similar techniques for nearly two decades. Now, hard science confirms that far from being touchy-feely ideas, these techniques work because of how our brain works. Strong emotions should neither be allowed to contaminate the safe space of the negotiating room, nor be excluded from the negotiation process. Learning how to manage them constructively is part of becoming neuro-literate.¹²

(Endnotes)

1 What Happens When We Get Angry? sciencedaily.com, June 1, 2010.
4 Ibid.
5 I know I promised you make-up sex. Be patient. Enjoy the foreplay.
com (2010). Essentially, almost my entire review of the history of catharsis theory is a paraphrase of the cited article.

7 The author’s wife (and first reader of this article) points out that the Bushman, et al.’s research subjects were unrelated students, not intimates like marriage partners. Would the experiment hold up if the subjects were H and W? As yet, I have been unable to find any research on the exact point. But the fact that the question is raised signifies the barnacle-like hold that catharsis theory holds in the popular consciousness. People want to believe that venting works to improve a conflict situation.

8 I realize that the word “rational” describing the parties agreement, connotes a value judgment. Certainly, in this case, the entire collaborative team would agree with my assessment.

9 I refer to my academic research, not the fact that my wife refused make-up sex. I still love you, dear.

10 Generally consisting of the amygdala which regulates emotions, the nucleus accumbens which controls the release of dopamine, the ventral tegmental area (TVA) which actually releases the dopamine, the cerebellum which controls muscle function, and the pituitary gland which release beta-endorphins which decrease pain; oxytocin which increases feelings of trust; and vasopressin, which increases bonding. This description comes from What Happens During Orgasm?, science.howstuffworks.com, but for a more complete understanding of how these brain parts function in myriad ways outside the sexual context, I recommend reading the book How We Decide, by Jonah Lehrer, published by Houghton, Mifflin, Harcourt 2009.

11 Unlike me. Just because I stayed at a Holiday Inn Express last night, I may not actually have the ability or resources to survey the medical and psychological literature on these vast topics. But I enjoyed my chaotic research ride and learned a lot, in spite of my clumsy techniques which, according to my intimates, may have included some experimental venting.