

MCFM

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The Massachusetts Council On Family Mediation is a nonprofit corporation established in 1982 by family mediators interested in sharing knowledge and setting guidelines for mediation. MCFM is the oldest professional organization in Massachusetts devoted exclusively to family mediation.



PRESIDENT'S PAGE

MEDIATORS MOVE THE WORLD

As your MCFM president for the last two years, I have looked forward to sharing my ideas with all of you on this open President's Page. This is my last entry as your president, and I have chosen to change my format to give credit and honor to two major mediator-championed initiatives that exemplify how Mediators Move the World right here in our backyard.

The first is our unique Professional Development series of offerings held five to six times per year – free for all MCFM members – with local to us, but actually nationally known, experts giving of their time and resources to our membership. All discussions are of a current and topical nature to our mediation practices and have everyone saying, “I had no idea...or I am so glad I learned about this...or what good ideas to take back to my practice.”

John Fiske and Steve Nisenbaum have been our inspirational leaders in this series and have no reservations about bringing in the best and brightest to share their ideas and have spirited discussions with us.

The second is a diverse group of mediators making a difference in the court system by challenging and changing the fundamental approach to all filed cases involving children in Hampshire. The Hampshire Probate & Family Court has a new Standing Order 1-10 effective May 1, 2010, written by mediator-trained judges, court staff, and attorney-mediators, vetted by members of the Hampshire bar, and approved and promulgated by Chief Justice Paula Carey.

The Hampshire Standing Order requires all attorneys and parents to address parenting issues together in person at the beginning of a case – no later than 45 days after the filing of an Answer and no fewer than two days before any motion session. There are remedies in the Order for noncompliance. See the full text of Standing Order 1-10 in the Probate & Family Court section of the Trial Court website to see what is not only possible, but what is really happening in one of our courts.

The inspiration and leadership for this effort has been by Judge Gail Perlman, a past MCFM president.

Your use of the professional development series or of the new Standing Order in Hampshire will enhance your skills and in turn will have positive effects on your clients and more importantly, perhaps, on their children. But don't stop there. Let these initiatives sparked by our friends and colleagues stir you to go the next step – whatever it may be – and serve as an inspiration to the rest of us. Mediators can and do move the world.



Kathleen A. Townsend

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NO FAULT OF THEIR OWN

By Ruth Bettelheim

As we have just passed the 40th anniversary of that much vilified institution, the no-fault divorce, it is an appropriate moment to re-evaluate how divorce affects families, and particularly children. The California law took effect on January 1, 1970, and was followed by a wave of marital separations that continues to this day — and also a wave of rhetoric condemning divorce for harming children and undermining the fabric of society.

As divorce is clearly here to stay, it may be more productive to instead ask how the process of dissolving a marriage might be changed to avoid, as much as possible, damaging children.

This challenge is not as great as widespread preconceptions would suggest. Studies conducted in the past 20 years have shown that on all

Researchers have found two explanations for this. Children who have to cope with their parents' separation and post-divorce lives often grow resilient, self-reliant, adaptable and independent. And children benefit from escaping the high-conflict environment of a rocky marriage. After their parents' separation, as conflicts fade, children recover.

Sustained family conflict can cause children to experience the kinds of problems that are usually attributed to divorce: low self-esteem, depression, high anxiety, difficulty forming relationships, delinquency and withdrawal from the world.

Given that reducing family conflict is good for children, the best way to protect them during divorce would be to minimize the acrimony of the proceedings. No-fault divorce, now practiced in every state except New York, has been one step toward this goal. But issues relating to children in divorce cases are still very often decided by long, heated contests between the parents. Custody

The best way to protect children during divorce would be to minimize the acrimony of the proceedings.

meaningful measures of success — social, economic, intellectual and psychological — most adult children from divorced families are no worse off than their peers whose parents remained married.

disagreements are settled by a judge's determination of what is in "the best interests of the child." In practical terms, this means that both parents do their utmost to demonstrate that they are the better parent — and that the



other one is worse, unfit or even abusive.

At stake are not only the participants' self-esteem and their relationships with their children but also their financial

security. As child support is often linked to the proportion of time the children spend with each parent, the

days and hours of their future lives become tools for one parent to extract payment from the other. This is a recipe for warfare, with the children's well-being both the disputed turf and the likely casualty.

What children need instead are no-fault custody proceedings — which could be accomplished with two changes to state family law. First, take the money out of the picture by establishing fixed formulas for child support that ensure the children are well taken care of in both homes, regardless of the number of days they spend in each. Second, defuse tension by requiring parents to enter mediation to find a custody solution that best meets the needs of all concerned.

Agreements reached through mediation would need to be binding (subject to the approval of a judge), so that they could not be discarded or contested later if new disagreements were to arise. Although some parents might worry

that this would diminish their opportunities for recourse, mediation would actually give them greater control over the outcome than a judge's unilateral verdict does.

Studies conducted in the past 20 years have shown that on all meaningful measures of success — most adult children from divorced families are no worse off than their peers whose parents remained married.

In an adversarial custody battle, no one wins, but children are the biggest losers of all. Intelligent legislation could promote the one thing that children of divorce need most: peace between their parents.



Ruth Bettelheim, Ph.D. has been a practicing psychotherapist, marriage and family counselor, and lecturer

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THE ORIGINS OF A CHILD FOCUSED FAMILY COURT MODEL

By Gail L. Perlman

It begins with a concept we all have heard: First, do no harm. The more I think about families in family courts, the more I think – if we’re honest with ourselves – in a family court system, if we do not think about the needs of families as different from the needs of other civil litigants, we do do harm. What family needs a “versus” between its two main adult members? Who wants to be called a “Plaintiff” or a “Defendant?” Who wants to solve family matters by filing a public “Complaint?” Who wants a relationship with children called “visitation?” Who believes that the real world decision-making function of parenting has the ownership overtones implied in the word “custody?”

And yet, from the word go in our family court, a family is thrown into an adversary posture. Families start off with a clear, articulated institutional expectation that they are official enemies. Official enemies many of whom once loved each other enough to produce a child. Official enemies doing battle over control of that child and over property and money.

Books upon articles upon books that all say the same thing: a child is hurt by uncontrolled parental conflict about the child. If we are honest with ourselves, we will acknowledge it: Right at the first, and as we proceed – despite our best intentions – we do do harm.

Let’s look at the numbers. In the United States, forty percent of children by the age of 15 have divorced parents. Of those divorced parents, one third have acrimonious divorces with ongoing conflict. In Massachusetts, that means that 203,082 children experience acrimonious divorce. Compare that with this figure: 152,082 – the entire population of the city of Springfield.

Joan Kelly, Ph.D., a well-known California researcher, says that “Unresolved, enduring parental conflict can violate children’s core developmental needs.”

Jennifer McIntosh, Ph.D., a researcher in Australia, says that children are hurt by their parents’ conflicts in two ways – as witnesses to it and as victims of the parents’ emotional withdrawal from them. She says, too, “Nothing grows well in toxic soil, and children are no different.” She recognizes that the way that lawyers assist parents in resolving disputes can have significant impact on the children’s well-being. She warns us that it is folly to rely on the old saw that children are “resilient.” While there is literature to support that

**Despite our best intentions
– we do do harm.**



view, she urges us to recognize that it is the job of family law professionals to “create resilient outcomes” by diminishing acrimony, managing disputes, building parental alliances, establishing child-centered parenting plans and tailoring those to the developmental needs of each child. She insists that “continuing to practice in ways that do not create a child focus can no longer be considered good practice...”

The American Law Institute, often cited by our Supreme Judicial Court as it entertains new subjects on the forefront of modern family law, supports Dr. McIntosh. The ALI encourages us to focus greater attention on planning for children’s needs, allocate responsibility first in parents and in the courts only as a last resort, and encourage parents to anticipate future problems and establish a way to resolve them.

We’re asking lawyers to do very new things: to pay special attention to kids’ needs even though kids are not their official clients.

Janet Johnston, Ph.D., another prolific family researcher, urges us to plan a protective and nurturing environment for the child by understanding that the child is an individual separate from the parental conflict.

None of these directives from the experts is easy to achieve. All require a communal effort among us before we will master the skills hidden in the suggestions.

And, of course, despite all our efforts and our intentions, there will always be people in need of a decision by an outsider. Our law is set up to provide that outside decision, and because there will always be a need for it, our new approach to family conflict is not meant to toss out the traditional system. It’s meant to add a different approach to family conflict which we hope will be more productive for most families while maintaining the traditional trial, with its promises of due process, for those who are unable to reach a satisfactory conclusion without it.

We already know most families settle their cases before trial. The numbers differ from research project to research project, but in general, we know that fewer than ten percent of all divorce cases filed in family court finally go to trial. But many of those trial-bound families settle on the eve of trial or – how well we all know this – on the morning of trial.

Why? We weren’t sure why, but we did wonder whether, if the families had a different early experience in the divorce process, they’d be able to get in and out of the system faster and perhaps without allowing that long digging-in of heels and revved up experience as enemies to last as long as it does in the traditional system.

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The question is not new. Many have asked it. Some jurisdictions around the world have engaged in experimental systems to examine it. Australia has something called the “Less Adversarial Trial.” That model is buoyed by a team of highly sophisticated mental health professionals to help family members through their conflict. European countries have experimented with new models. Various provinces in Canada have, too. Numerous states in our country have designed creative solutions to the problem. So, in the Hampshire Division, we’re not taking credit for asking the questions. We follow on the heels of earlier pioneers. But here’s the back story to our particular questioning.

Four of us – Beth Crawford, the Assistant Judicial Case Manager in Hampshire, Judge Linda Fidnick, Kathleen Townsend, Esq. a lawyer, mediator and immediate past president of the Mass. Council on Family Mediation and I have been going for many years to the international conferences of a group called the AFCC (Association of Family and Conciliation Courts) where we hear people from the law, from the mental health professions and from court administration all over the world talk about many ideas on the forefront of the best thinking about families in trouble who are engaged with the legal system.

Every year we’re inspired. Every year we’ve thought about what we might do to bring some of those ideas home. We know we can’t change the “versus” on a county level or the language about plaintiff and defendant and complaint, about custody and visitation. We know we need to leave that part to forces state-wide. But the four of us thought about what we might be able to do here in our own local court – and we got a go-ahead from Chief Justice Carey to create new procedures in all cases in which there are children.

We vetted our initial ideas with a group of experienced family law attorneys. We owe enormous thanks to those participants, Oran Kaufman, Merry Nasser, David Sharpe, CT Wyner and Marianne Zurn. David Sullivan, the Register of the Hampshire Probate and Family Court and Pamela Eldridge, our Chief Probation Officer, were part of that group as well, and Judge Geoffrey Wilson, who is our

“Nothing grows well in toxic soil, and children are no different.” “regular visiting justice,” was in support of it from the beginning. The group was very excited about the ideas and helpful in re-structuring some of our early thoughts. We decided to structure our planned procedural changes in a Standing Order which can be fairly readily achieved with the support of the departmental Chief Justice and of the Chief Justice for Administration and Management.

And it can be tailored for an individual division. So, after the small group vetting,



we re-drafted the Standing Order and submitted it for comment by a large meeting of our Bench/Bar Committee. Again there was broad support for the ideas. Finally, at the request of Chief Justice Carey, we posted it on line for all members of the Hampshire County Bar Association to critique. And after obtaining their suggestions, we submitted it to Chief Justice Carey with revisions that reflected the comments of the bar. She signed the Standing Order and sent it on to the Chief Justice Mulligan who signed it within about 36 hours of receipt – with a start date of May 5, 2010. All of that speed was much to our surprise and delight –

And we're asking the Court to conduct itself in a new way by actively offering and sustaining resources to help attorneys and litigants carry out the new expectations effectively.

even though it means that our enthusiastic and unflappable staff once again (after the budget crisis, reduction in staff, MassCOURTS, the case management initiatives and the new procedures for motion sessions) had to gear up fast for some major new procedural changes.

In general, then, the new model is an effort – with the spotlight at all times on the kids– to accomplish two things:

- Early focused attention on the issues the family is facing and on each opportunity to explore settlement – that is, the new procedure does not leave until the pre-trial conference the intensive work that parents need to engage in to understand the nature of their issues and the resources they need in order to think clearly about them. There is a required early four-way meeting with a built-in agenda spelled out in the Standing Order. The meeting is about early knowledge-building, planning what information is needed for resolution and early attempts at consensus building; and
- Articulated acknowledgment of the attorney's role as more complex and demanding, sophisticated and nuanced than being a barracuda – that is, the modern family court and modern families in trouble need something different from attorneys from what we learned to be the pillars of good representation in other kinds of civil cases.

The new model, then, requires two new things:

It front loads the new process and the new expectations of conduct. And we establish those expectations, even allowing for the normal psychological period

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that many people need to come to terms with the newness of separation or divorce, even allowing for the anger that often accompanies break up, and even allowing for the chaos of those early days. We believe that people do not want to use that period of early confusion to become more and more hostile with each other, more and more alienated from their parenthood, more and more removed from the possibility of working together.

We're asking litigants to conduct themselves in new ways... even angry parents will be required to talk.

In addition, the new model establishes new expectations of litigants, lawyers and the Court. This is not a model that begins from the premise that one or more players in the family court drama is

a bad guy. It proceeds from an assumption that our questions and our delineated response are experimental. We expect that we will learn from each relevant population where we are going right and where we are going wrong. We want to be able to learn from our new experiences and help each other improve the skills each population needs in order to traverse the experience more productively.

We're asking lawyers to do very new things: to pay special attention to kids' needs even though kids are not their official clients. The legal ethics require that we always remember those actors in the story who are not represented, those small "clients" who usually have no voice of their own in the traditional procedures. We're asking lawyers to make changes in the way they conduct family litigation so that we, as an institution, will not be contributing to the psychological (and maybe even physical) problems that the kids face when their parents fight about them. We're asking lawyers to learn new ways to talk to clients, to the other lawyer, to the other litigant, and in the court.

We're asking litigants to conduct themselves in new ways. There will be a required face-to-face meeting early in the litigation and before every motion. With exceptions for families in which there are extant restraining orders, even angry parents will be required to talk.

And we're asking the Court to conduct itself in a new way by actively offering and sustaining resources to help attorneys and litigants carry out the new expectations effectively. The Court will administer the new procedures, will support on-site mediation and conciliation, will assist the parties in dispute intervention through the Probation Department at new times and with new agendas, will organize and present trainings to staff and to the bar to help everyone develop the new skills required by the Standing Order.



I've alluded briefly to some of the research about the effects of hostile divorce on children. There is also research that shows that legal professionals (judges and lawyers) can have a profound impact on the well-being of parents and children when they adopt new approaches to their professional conduct. The Standing Order is our chance to test the validity of that research.

Here are some of the specifics:

1. The three judges serving in the Hampshire Division have signed an Introductory Letter, the original of which will go to all parents at the outset of their litigation. The letter asks them to think about the litigation in new ways.
2. The Standing Order, applicable to all cases in the Hampshire Division involving children, requires a face-to-face meeting of the parents no later than 45 days after the filing of an Answer or other relevant responsive pleading in a case and no less than two days prior to each motion hearing. The meeting is designed to help parents identify the questions they have to resolve, determine whether they need any resources to assist them in resolving the open issues, plan the methods by which they will resolve each issue, including the designation of tasks that each parent and/or each attorney will undertake, confirm that they have completed or are signed up for the required parent education program, consider working on the web sites available to them for enhancing their parenting capabilities, and be prepared to report to the Court the progress they have made on these subjects.
3. The Standing Order encourages parents to utilize the services of our approved mediation programs, our approved conciliation program or our Probation Office to help them structure and conduct the Introductory Meeting.
4. The Standing Order directs parents to two web sites, carefully vetted by the Court, which are likely to be helpful to some, maybe many parents in thinking through their goals for parenting their children. The Standing Order allows the judges to require completion of the website exercises on a case by case basis. The web sites are UpToParents.org (for divorcing parents) and ProudtoParent.org (for never married parents). The web sites are intriguing in that they invite participants to enter their own child's name in the exercises – establishing a very personal connection to those exercises. While not every user is enthusiastic, many are. One significant breakthrough came for a family who used the web site after having filed 19 separate complaints against one another over seven years. For that family, the web site was the tool that enabled them to realize that their fighting was depriving their son of his childhood and that no issue between them was greater than their love for him. They were able to express those new insights in the courtroom.

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5. The Standing Order requires the Court, in collaboration with the Hampshire County Bar Association, to offer trainings to attorneys on such issues as representation of children and parents in the context of the Standing Order, ethical considerations in light of the Standing Order, and the like.

We will – first and last and as much as possible all the way through family litigation – strive mightily to do no harm.

The Standing Order, while designated as a pilot project in Hampshire, may not be a good fit for other divisions. But everyone

should feel free to pick and choose from the Order to see if any of the ideas seem promising for use elsewhere. The Hampshire Division will gladly share our experience, the forms we've developed, the research on which we've based our model – anything that will be useful to others considering family court change on a shoestring.

And that will be my last point: Many of the projects across the globe that have instituted extensive procedural revisions for families– in Canada, in Australia, in New Zealand, in California, in Connecticut and in many other places – have received major funding to carry out their goals. Some have legislative monies for hiring mental health professionals on site to conduct counseling for parents, for parents and kids, for kids alone. Many have legislative appropriations. Some have significant funds for research of the outcomes.

We have not one dime, not one penny for our program. Whatever we do under this Standing Order, we do with only our own will and our own energy to make change. We have only the power to look inside ourselves, reflect on the system that we have now and ask ourselves, each one of us: What are we doing that doesn't support the clear research about the harm to kids? How can we change? What do we need to learn? So that's how we've constructed the new model: it's all about us. It's all about a moment in time when we can examine our personal and professional goals and activities and can, if we choose, insist that we will – first and last and as much as possible all the way through family litigation – strive mightily to do no harm.



Gail L. Perlman is First Justice of the Hampshire Division of the Massachusetts Probate and Family Court, and a past president of the Massachusetts Council on Family Mediation. Judge Perlman can be contacted at 413-586-8500 or at gail.perlman@jud.state.ma.us



STANDING ORDER 1-10 SPECIAL PROCEDURES FOR CASES INVOLVING CHILDREN

Preamble

The Hampshire Division of the Probate and Family Court is committed to a child-focused procedural model for all cases involving children and has developed a pilot project for this purpose.

This Standing Order applies to all cases involving children filed in the Hampshire Division and will be liberally construed and applied to establish, ensure and support child-focused parenting and care giving, professional conduct and court procedures by and for families served by this Court.

The purposes of the child-focused model are as follows:

- to provide early opportunities for parents and care givers to learn the effects of hostile litigation on children;
- to provide early opportunities for non-adversarial planning of all unresolved issues;
- to establish a problem-solving environment in which each parent, care giver and attorney is expected to be a problem solver; and
- to establish an atmosphere in which parents and care givers are encouraged to experiment responsibly with multiple child care models as they observe children's adjustment to parenting in two households.

A. Application of the Rule

This Standing Order applies:

1. to all cases involving children filed in the Hampshire Division, including Divorce, Separate Support, Paternity, Support/Custody/Visitation, Modification, Contempt, Guardianship and Termination of Parental Rights; and
2. to all attorneys, parents and care givers involved in each such case. A "care giver" is a party to a case who is either a guardian, potential guardian, grandparent seeking visitation, de facto parent or person seeking de facto parent status.

B. Domestic Violence and Application of the Rule

Parents, care givers and attorneys will not be expected to adhere to the

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requirements of Paragraph E of this Standing Order if there is an abuse prevention order in effect.

C. Introductory Letter

1. After the commencement of an action, the Court will send an Introductory Letter to each parent, care giver or to the attorney representing each parent or care giver.
2. The attorney, upon receipt of the Introductory Letter, shall provide the original letter to his or her client.

D. Duties of Attorneys, Parents, Care Givers and the Court

1. Problem Solving

Attorneys, parents and care givers shall make all efforts to solve problems before seeking the decision making intervention of the Court and shall seek that intervention only as needed.

2. Conduct

Parents, care givers, attorneys and the Court shall consistently observe the following conduct:

- a. consistent, focused attention on each child's needs including maintaining an awareness that children suffer when their parents or care givers fight about them;
- b. consistent, focused attention on each parent or care givers needs, including maintaining an awareness
 - i. that children will be well served if each parent or care givers ability to provide safe, healthy and responsible parenting time with the children is supported by each parent or care giver;
 - ii. that children will be well served if there is reasonable financial security in each household; and
 - iii. that children will be well served if parents or care givers are able to resolve conflicts in a constructive manner.

3. Resources

- a. Attorneys shall inform their clients about resources available for counseling, mediation, conciliation or other assistance to help parents, care givers and children



improve their relationships and functioning, and to adjust to the realities of parenting or care giving in two households.

b. The Court shall maintain and make available to the public information about the following court-related resources, which parents are encouraged (and may be ordered) to use:

i. Parenting websites

- www.uptoparents.org
- www.proudtoparent.org

ii. Mediation/Conciliation

- Hampshire Introductory Mediation Program
- Hampshire Conciliation Program

iii. Referrals to bar association lawyer referral services and the Massachusetts Justice Project.

4. Planning

Parents, care givers, attorneys and the Court shall engage in consistent and, if necessary, repeated attempts to improve the circumstances of the children by cooperative planning on each relevant issue at each stage of the court process.

5. Administrative Efficiency

The Court shall establish an administrative process to accept full written agreements for temporary orders without the necessity of a hearing.

E. Introductory Meeting

1. General Requirement

All parties and attorneys shall schedule and participate in an Introductory Meeting at a time and place to be agreed upon by the attendees which shall take place as set forth below and, except in an emergency, no less than two days prior to a motion hearing.

The Introductory Meeting shall take place no later than forty-five days after the filing of an Answer or other relevant responsive pleading.

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2. Content and Process of the Introductory Meeting

Attendees at the Introductory Meeting shall:

- a. explore whether the parents or care givers need assistance gaining access to resources that could help them resolve the open issues or improve relevant relationships or functioning, and adjust to the realities of parenting or care giving in two households;
- b. confirm, if applicable, whether the parents or care givers have completed their website work, and if so, discuss the Agreed Commitments reached;
- c. work on a parenting or care giving plan;
- d. identify
 - i. issues that require immediate resolution;
 - ii. issues that require additional planning prior to resolution;
 - iii. tasks to be performed as to each issue;
 - iv. person(s) responsible for completing each task; and
 - v. the completion date for each task.
- e. attempt to resolve all issues that require resolution by the parties;
- f. confirm that each parent has complied with the parent education program required of them; and
- g. write, for presentation in court, any agreements or partial agreements achieved by the parties in the Introductory Meeting.

3. Facilitation Services

The family service resources of the Probation Department of the Court are available to assist in (a) facilitating the Introductory Meeting or any follow-up meeting, (b) suggesting resources available to the parents and care givers, and (c) writing any agreements or partial agreements reached in any meeting. In order to make use of these resources, the parents or care givers or counsel shall, in sufficient time to be in compliance with the scheduling requirements of this Standing Order, make an appointment with the Probation Department for assistance on a day before the date on which a motion or Case Management Conference is scheduled to be heard.



4. Non-Compliance

If parents or care givers and/or attorneys representing each parent or care giver fail to comply with the requirements of the Introductory Meeting, they shall be prepared to report to the Court the reasons therefor. In the event of an unexcused non-compliance, the Court has the discretion to refuse to hear the motion, alter the Case Management Order and issue sanctions, including but not limited to attorney's fees.

5. Follow Up Meetings

A follow-up meeting shall be held upon the request of any attorney or self-represented parent or care giver at any time, and at least two days prior to any hearing on each subsequently filed motion. Such a follow-up meeting may be held in person or by conference call, and shall, as applicable, address the same issues addressed in the Introductory Meeting.

6. Summary of Cooperative Efforts

Parents, care givers and attorneys, in compliance with the Pre-Trial Notice and Order, shall present at the Pre-Trial Conference a summary of the steps they have taken under this Standing Order toward the cooperative resolution of the unresolved issues.

F. Training

The Court, in collaboration with the Hampshire County Bar Association, shall offer training to attorneys on such topics as:

- representing children, parents and care givers in the context of this Standing Order;
- special skills needed to represent children, parents and care givers in the context of this Standing Order;
- processes developed in this Court and other Courts to carry out the purposes of the Standing Order; and
- ethical considerations in representing children, parents and care givers.

Date: 4/7/2010

Paula M. Carey, Chief Justice



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Greetings:

You are beginning the process of divorce in our Court. The process can be hard, but we want to give you some ideas for making this transition easier. Please save this letter and read it several times during the divorce process.

People going through divorce feel a range of emotions. You may be sad, angry, relieved, scared, or a mix of these. You may also be anxious about your future — afraid you could lose a lot — your money, your property, your children. Having strong feelings at this time is normal. But it's important to know that how you act on the feelings you have today can have a powerful effect on your future. Your actions can affect your long-term ability to work together with the other parent to make good decisions for your children as they grow. You have the power to help assure that the important events in your children's lives — those sporting events, that high school graduation — will be tension-free with two proud parents in attendance.

Children suffer when their parents fight about them. Research shows that the children who make the best adjustment to their parents' divorce are the children whose parents support a continuing close and loving relationship with both parents. While this won't be possible for all parents, if you can each make your best effort to achieve it, you can help your children adjust to the divorce.



We urge you to try to rise above your anger, sadness and fear during this hard process. We want you to consider as your goal in the divorce making sure that all members of your family — the children, yourself and your spouse — can live their lives after the divorce in the best emotional conditions that you can arrange and the best financial conditions that you can afford. We're not saying this is easy. It requires some very hard and persistent work to arrange a parenting plan that meets each child's needs and to divide your money and property in a way that meets each parent's needs.


But if you adopt this goal — instead of falling into the temptation of focusing just on your own needs, your own pain, your own win — you will give your children a great gift. You will be demonstrating for them a constructive model of adults dealing appropriately with a life crisis. Your children will learn from you that they, too, can build the skills they need to face crises in their own lives. If you adopt this goal and work hard to achieve it, all the members of your family can leave this Court with pride and confidence in the future.

The people who work in our Court — the Register of Probate and the Registry staff the Chief Probation Officer and the Probation staff — join us in expressing our commitment to serving you and your family.



Geoffrey A. Wilson

Sincerely,



Gail L. Perlman



Linda S. Fidnick



**“The wisest is the one
who can forgive.”**

Arabic Proverb



LEGAL LYRICS

By David Aptaker

***Editor's Note:** For those who've never had the pleasure, a high point at recent MCLE Family Law Conferences has been David Aptaker's recitation of some leading family law cases in rhyme, to the tune of popular songs. Here's a sampling from this year's conference.*

"TRADITION"

Mandel v. Mandel Divorcing parents agreed to each pay half of their daughters' college education expenses without further explanation regarding cost or choice of school.

Who had the right, to make the big decision
Choose the child's college, where she would attend
And who had the right, if he didn't like it
To refuse to pa-ay half the bill

The mama, the papa - Tuition
The problem, the problem - Tuition

Who said Casey could attend a private school
Not a State U or U Mass

And who participated in the final choice
Where daughter would matriculate.

The issue, the issue - Tuition
The cost of, the total - Tuition

The selection process should be interactive
Both parties should have input and participate
Agreements must be interpreted in accordance
With probable intention and common sense

The Outcome, the Outcome - Tuition
The Ruling, the Ruling - Tuition

Further findings were needed here
Equitable factors to be considered include
Financial resources, program offered at the school



The child's aptitude and benefits offered there
A remand, a remand - Tuition
A remand, to rule on - Tuition

“WHEN YOU'RE A JET”

R.D. v. A.H. In a custody dispute between a legal parent and a de facto parent, the de facto parent has to prove the legal parent legally unfit.

While you're still fit
They just can't take away
Your kid, even if
With someone else he did stay

When you're still fit
If the de facto parent takes the stand
With no mother around
You're the family man

The standard is here
For the Guardian to be appointed
Convincing and clear
If no unfitness is anointed
They're not disjointed

When you're not unfit
With a capital U
Best interests not it
For change of custody to ensue
When your still fit
You stay a DAD

“MODERN MAJOR GENERAL”

Doe v. NECC An action against a sperm bank and its director to compel them to disclose the name of a sperm donor.

There was an anonymous donor of male matter genetical
Who was sought out by a woman for child support and information medical

Inseminated in England, she was by facts historical
The sperm came from Massachusetts shipped from a local labratorical

I've presented cases here, poetical and lyrical

Continued on next page



Tried not to be heretical, perhaps a tad satirical
The law in family matters gets to topics esoterical
And sometimes we see Plaintiffs whose claims are borderline hysterical

The case raised several issues that proved a bit
problematical-oooooh problematical
Including allegations the twins had medical diagnoses
quite dramatical

Known as D 237, the donor's name, by contract, was not to be disclosed
Ordering him to pay child support was something the Defendant agency opposed

Plaintiff's misconceptions of some facts made her seem less than one immaculate
Twas not truth serum in the vial she got, just a squirt of male ejaculate
The mother's version of the case was something less than credible
Which led to an Interim opinion that the mom found quite regrettable

The Motion Judge wrote a well-crafted Order
which left plaintiff with empty pocketry
But it survived her attempt to obtain relief
by appeal interlocutory

It would dry up future supplies of semen which to public policy is antithetical
If child support orders were made against anonymous donors of male matter
genetical



David Aptaker previously worked as an attorney for the Massachusetts Department of Social Services, Massachusetts Office for Children and the Department of Mental Health. Since 1991 he has worked from his office in Somerville where he currently practices in the areas of mental health law, family law and probate law. David can be contacted at (617) 776-2211.



**“I am not young enough
to know everything.”**

Oscar Wilde



PROBATE AND FAMILY COURT ANNOUNCES AN ALTERNATIVE OPTION TO MEET THE PARENT EDUCATION REQUIREMENT IN LIMITED CIRCUMSTANCES

Press Release of April 10, 2010

The Probate and Family Court Administrative Office announces an alternative option to meet the Parent Education requirement where a waiver may otherwise be ordered by the Court. This option was initially approved by Chief Justice Paula M. Carey in June 2008 but notice was not widely disseminated. In an effort to further disseminate this information, this press release is issued.

Since 1994 Massachusetts has required mandatory parent education programs to help parents understand and handle the challenges of the disruption of the family unit with the breakup of a marriage, and to assist them in addressing and minimizing the stresses children may experience. Parties must register with an approved provider of one of these programs within sixty days of service of the original complaint.

Divorcing parents must attend a Parent Education program in person. Attendance at a Parent Education course is required of all parties to a divorce in which there are minor children or, as ordered by a judge, in other specific actions involving minor children, pursuant to Probate and Family Court Standing Order 4-08 entitled PARENT EDUCATION PROGRAM ATTENDANCE. The

Standing Order remains in full force and effect.

The court may waive the attendance requirement upon motion, with notice, for one or both parties. A Motion to Waive Attendance at a Parent Education Program must be presented by the party seeking the waiver. The reason the party is alleged to be unable to participate in a program in person must be included in the motion.

On a limited basis, use of a DVD program entitled *KidCare for Co-Parents: An Educational Program for Divorcing Families* is now available when a judge is considering a waiver.

KidCare for Co-Parents is a four and a half hour multimedia, interactive program which can be used with a DVD player on either a personal computer or a television screen. Completion of the interactive aspects of the DVD is required in order to obtain the Certificate of Attendance which must then be provided to the Court.

While this DVD is not the optimal means of satisfying the Parent Education Program Attendance requirement in most instances, it may be a reasonable alternative should a

Continued on next page



judge determine that a waiver of attendance is warranted. Utilization of this DVD may be ordered in lieu of a complete waiver of the requirement.

Examples where utilization of the DVD program may be ordered include unusual situations such as incarceration or extended hospitalization of, or residence outside of Massachusetts by, one of the parties.



**“When our relatives
are at home,
we have to think
of all their good points
or
it would be impossible
to endure them.”**

George Bernard Shaw



IS IT KOSHER FOR AN ATTORNEY/MEDIATOR TO DRAFT COURT PAPERWORK FOR CLIENTS?

From: Karen Lane <resipsa44@mac.com>
To: john fiske <jadamsfiske@yahoo.com>
Subject: Divorce Mediation - Is this Kosher?

John,

From my research, of various websites, of the services offered by family law attorneys/mediators in metrowest Boston area I have one question. Is it kosher for the attorney/mediator to draft the court paperwork/pleadings for the clients?

Karen L.

From: john fiske <jadamsfiske@yahoo.com>
To: Karen Lane <resipsa44@mac.com>
Cc: Les Wallerstein <wallerstein@sociallaw.com>,
oran kaufman <oran@orankaufman.com>

Dear Karen:

I've been asked many times if I draft pleadings for mediating clients, but I don't think anyone has ever used me to judge whether something is kosher. I'm taking the liberty of forwarding your question and my answer to Les Wallerstein, because he publishes the Mass Council Family Mediation Quarterly and often circulates such thoughtful questions to our members, and to Oran Kaufman because he would be another good person to answer both questions.

The ethical concern for the lawyer mediator is to avoid representing, i.e. acting as a lawyer for, either spouse. Hence no mediator goes to court with the couple at any point. Most mediators who are lawyers are willing to draft the Separation Agreement but nothing else: not the filing papers or financial statement or any real estate deed or any QDRO. There are others who are willing to do some of those. I am of the former school, though much to the consternation of my former partner and logical ethicist Phil Woodbury I have occasionally agreed to write a simple QDRO. I have never filled out a joint petition or affidavit or financial statement for a mediation client. I think most

Continued on next page



members of the Mass Council fall in that category. My best answer is that you make your own judgment and decide what you are comfortable doing. Now we'll see what Les says, and what he publishes if anything. I'm sure if you don't want your name published in connection with this good question, he will make the question anonymous.

Thanks for writing, John

From: Les Wallerstein

To: john fiske

Cc: Karen Lane; oran kaufman

Dear John, Karen & Oran:

On the subject of what's kosher for lawyer-mediators to draft in divorce mediation I agree with John... i.e., there are as many differing points of view among mediators as differences of opinions amongst rabbis... BUT I come at this from the opposite end of the spectrum.

Unlike John, I often draft all the court forms in addition to the Separation Agreement, including deeds and QDROs... all based on the information clients provide. I will also notarize financial statements for both parties. The paperwork is never signed by clients until they have reviewed it, or it has been reviewed by their counsel.

Since the Separation Agreement is a creature of statute (G.L. c. 208 § 1A), I've never understood the logic of a lawyer mediator's willingness to draft one legal document but not another, when both are relevant to the case. And while I never file the paperwork for the clients... I regularly draft a certified cover letter for the clients to sign and file pro se.

I have never appeared with my mediation clients in court but I would willingly do so at their request, as long as they understood that a judge may refuse to allow me to appear for both mediation clients... and with that caveat, so far none of my clients have been willing to be the Massachusetts test case. While I believe that in New York a lawyer/mediator may appear with her clients in court in an uncontested divorce, I also believe that NY is in the minority of jurisdictions that allow "dual representation."

Les



From: Oran Kaufman <oran@orankaufman.com>

To: Les Wallerstein <wallerstein@socialaw.com>;

john fiske <jadamsfiske@yahoo.com>

Cc: Karen Lane <resipsa44@mac.com>

Dear John, Karen and Les:

I'll weigh in and say that I am somewhere between John and Les (how convenient!). I draft agreements and I draft the court papers with a detailed set of instructions about what happens when parties go to court, what to expect, what they are likely to be asked, how to dress (in my experience, for some, dressing up means dressing up to go to the disco!). I do not draft financial statements although I help clients with them by going over them and commiserating about what awful forms they are. I have at times drafted QDROs but have decided to no longer draft those because I think they are fraught with potential problems down the road if there are problems with the QDRO. I draft deeds because I think those are pretty straightforward. I do not notarize my clients' signatures. I agree with Les that basically it seems silly that a lawyer mediator could draft an agreement, which is more substantive than any other document we might draft, but cannot draft documents which are essentially clerical (joint petition etc.) Finally, I started drafting court papers because my clients wanted me to and were continually asking me to. They were often stunned that the separation agreement was done and now they were on their own. I give them a choice about whether they would like me to draft court papers and 9 times out of 10, they are willing to pay for me to do that.

Oran Kaufman

From: john fiske <jadamsfiske@yahoo.com>

To: Oran Kaufman <oran@orankaufman.com>, Les Wallerstein <wallerstein@socialaw.com>

Cc: Karen Lane <resipsa44@mac.com>

Dear Les, cc Karen and Oran:

I hope this correspondence elevates to a Waldorf and makes it into the Quarterly, since the entire MCFM membership and Quarterly readership will be intrigued as spectators of the dilemma, and many of them will also be involved as participants in trying to decide their own answers. You'll get a lot more answers from those who read about it, I surmise. It's almost as if there are as many answers as there are mediators, I think.

Thanks, John

Continued on next page



From: Karen Lane <resipsa44@mac.com>

Date: January 29, 2010 10:15:42 AM EST

To: john fiske <jadamsfiske@yahoo.com>,
oran@orankaufman.com, wallerstein@sociallaw.com

Dear All,

This discussion and answers to my question reminds me of a group of Talmudic students and Rabbinic scholars parsing over the meaning of a passage in a scholarly text on Jewish law. As with all Talmudic discussions, there are always areas of agreement and disagreement but almost never ever a definitive answer to a question. Throughout the ages, students and scholars alike of "Jewish law" have almost always come away from their discussions with more questions than answers! That is why this particular discussion is so fascinating and oh so enjoyable. I am glad that my question sparked such interest and discussion.

Best Regards,
Karen Lane



THE FMQ WANTS YOU!



The Family Mediation Quarterly is always open to submissions, especially from new authors. Every mediator has stories to tell and skills to share.

To submit articles or discuss proposed articles
call Les Wallerstein (781) 862-1099
or email wallerstein@sociallaw.com

NOW'S THE TIME TO SHARE YOUR STORY!



MASSACHUSETTS FAMILY LAW

A Periodic Review

By Jonathan E. Fields

Limits of Attorney-Client Privilege

A recent Superior Court case held that a divorce lawyer who was sued for malpractice by a client could depose the successor counsel who represented that client in a modification action. That the client waives attorney-client privilege when malpractice is asserted is black-letter law. Here, the court extended that waiver to the *successor* counsel hired to fix the problems that the original lawyer had allegedly failed to address. The case should, at the very least, remind mediators that our confidentiality statute isn't bulletproof — in the event of a malpractice claim, the statute will not protect mediation communications from disclosure. See, e.g. *Bobick v. United States Fid. & Guar. Co.*, 439 Mass. 625, 658 n.11 (2003). *DiPietro v. Erickson*, 2010 WL 1178410 (Mass.Super.) (March 16, 2010).

Merger / Survival The basis of the malpractice claim in *DiPietro* is also instructive for mediators. The client alleged that the attorney negligently failed to advise him on the difference between “merger” and “survival” as they relate to the subsequent modification of the agreement. Note, too, the client's statements during the judge's colloquy that he understood the agreement and was satisfied with the advice of counsel do not preclude a malpractice action. If there's a lesson

in here — perhaps it is that mediators should ask clients to sign a document confirming their understanding of these terms. *DiPietro v. Erickson*, 2010 WL 1178410 (Mass.Super.) (March 16, 2010).

Automatic Restraining Order

During the pendency of a divorce action, the Barnstable Probate and Family Court found that the wife's restatement of her revocable living trust so as to no longer provide the husband with a life estate in the marital home was not a violation of the automatic restraining order, Rule 411. Central to the holding was that title to the home was not conveyed or transferred — and that the asset was not placed outside of the Court's reach for purposes of equitable distribution. The restatement only affected Husband's expectancy of a future interest which does not implicate Rule 411. To those who had wondered whether changing a will violated Rule 411, this case provides good ammunition that it does not. *Darden v. Darden* (Lawyers Weekly No. 15-001-09) (October 15, 2009) (published in Lawyers Weekly February 15, 2010).



Jonathan E. Fields, Esq. is a partner at Fields and Dennis, LLP in Wellesley. Jon can be contacted at 781-489-6776, or at jfields@fieldsdennis.com



WHAT'S NEWS?

National & International Family News

Chronologically Compiled & Edited by Les Wallerstein

A Snapshot of Working Families in Recession According to the US Census Bureau, the unemployment rate for couples with children under age 18 doubled from 2007 to 2009. The increase was higher for two-parent families than for single parents. In 2007 both parents worked in 67% of married-couple households. By 2009 the percentage had declined to 59%. The number of stay-at-home mothers was lower last year than it was in 2008, and for the first time the median age at which men marry passed twenty-eight: 28.1 for men and 25.9 for women. (Sam Roberts, New York Times, 1/17/2010)

Suburban Poverty in the US Rising A new study from the Brookings Institution tells us that the largest and fastest-growing population of poor people in the U.S. is in the suburbs. From 2000 to 2008, the number of poor people in the U.S. grew by 5.2 million, reaching nearly 40 million. That represented an increase of 15.4 percent in the poor population, which was more than twice the increase in the population as a whole during that period. "Suburbs gained more than 2.5 million poor individuals, accounting for almost half of the total increase in the nation's poor population since 2000." In 2008, a startling 91.6 million people — more than 30 percent of the entire U.S. population — fell below 200 percent of the federal poverty line, which is a meager \$21,834 for a family of four. (Bob Herbert, New York Times, 1/23/2010)

Women Now a Majority of American Workers For the first time in US history, women outnumber men on the nation's payrolls. This benchmark is bittersweet, as it comes largely at men's expense. Because men have been losing their jobs faster than women, the downturn has at times been referred to as a "man-cession." (Catherine Rampell, New York Times, 2/6/2010)

American Media Costs Rise According to the US Census Bureau, by 2004 the average American spent \$770.95 annually on services like cable TV, Internet connectivity and video games. By 2008 that number rose to \$903, outstripping inflation, and by the end of this year it is expected to have grown to \$997.07. Add another \$1,000 or more for cellphone service and the average family is spending as much on entertainment over devices as they are on dining out or buying gasoline. (Jenna Wortham, New York Times, 2/9/2010)



Top-Earning US Households Averaged \$345 Million in '07 According to the IRS, the 400 highest-earning households in the United States made nearly \$345 million in 2007, up 31% from 2006, and more than doubling since 2001 — when Congress adopted tax cuts proposed by President Bush. Each of the top 400 earning households in 2007 paid an average tax rate of 16.6%, the lowest since the IRS began tracking data in 1992. (By Bloomberg News, New York Times, 2/18/2010)

France Moves to Criminalize Psychological Violence France's National Assembly approved a bill to add "psychological violence" to a law intended to help victims of physical violence and abuse, despite doubts that the law is specific enough to have much impact. The proposed law says that to "act or repeatedly say things that could damage the victim's life conditions, affect his/her rights and his/her dignity or damage his/her physical or mental health" is punishable by a jail term of up to three years and a fine of up to 75,000 euros, or about \$103,000. Covering both genders, the law would apply to behavior toward a wife, husband, partner or concubine. Final passage is expected this summer. (Steven Erlanger, New York Times, 2/26/2010)

U.S. Births Rise in All Age Groups The journal Pediatrics has published its annual report on birth and pregnancy in the United States, and it found that the number of babies born in 2007 — 4,317,119 — was the highest ever recorded. The birthrate rose in all age groups, including teenagers, whose birthrate had been declining since 1996. Dr. Guyer, a professor of public health at Johns Hopkins University, bemoaned the lack of data more current than 2007. (Nicholas Bakalar, New York Times, 3/2/2010)

Study Finds Cohabiting Doesn't Make a Union Last Based on a study of men and women ages 15 to 44 by the National Center for Health Statistics (using data compiled in 2002), couples who live together before they get married are less likely to stay married, but their chances improve if they were already engaged when they began living together... and the likelihood that a marriage would last for a decade or more decreased by six percentage points if the couple had cohabited first. In general, the study found that one in five marriages will dissolve within five years, and one in three will last less than 10 years. The study defined cohabitation as people who live with a sexual partner of the opposite sex. (Sam Roberts, New York Times, 3/3/2010)

Gay Marriage is Legal in U.S. Capital Washington DC is now the sixth place in the nation where same-sex marriages can take place. Connecticut, Iowa, Massachusetts, New Hampshire and Vermont also issue marriage licenses to

Continued on next page



same-sex couples. The law survived Congressional attempts to block it, and Chief Justice John G. Roberts Jr. on Tuesday rejected a request from opponents of same-sex marriage to have the United States Supreme Court delay it. (Ian Urbina, New York Times, 3/4/2010)

Europe: Greater Parental Leave Proposed The European Union proposed to extend parental leave to four months from three for each parent. Union officials said the proposal would promote sex equality and encourage men to take an “equal share of family responsibilities.” It would also ensure financial and other benefits to employees on leave after the birth or adoption of a child. Parental leave, which is separate from maternity leave, can be taken anytime during a child’s first seven years. To become law, the proposal must be ratified within two years in each of the bloc’s 27 nations. (Associated Press, New York Times, 3/9/2010)

Sex Assault Reports Rise in Military The Department of Defense released an annual report on Tuesday showing an 11 percent increase in reports of sexual assault in the military over the past year, including a 16 percent increase in reported assaults occurring in combat areas, principally Iraq and Afghanistan. The report said there were 3,230 reports of sexual assault filed involving service members as either victims or assailants in the fiscal year that ended in September. The Pentagon attributed the rise largely to an upward trend in the reporting of incidents, and said the jump did “not necessarily” reflect an increase in the number of incidents. (Elisabeth Bumiller, New York Times, 3/17/2010)

I Need to Vent. Hello, Facebook Couples who once had to leave the house to fight in public take their arguments onto Facebook. Whether through nagging wall posts or antagonistic changes to their “relationship status,” the social networking site is proving to be as good for broadcasting marital discord as it is for sharing vacation photos. At 400 million members and growing, Facebook might just replace restaurants as the go-to place for couples to cause a scene. But some marriage experts say that taking your disagreements to Facebook, even jokingly, is nothing to LOL about. Instead, the urge to make private disagreements public represents a gradual but significant degradation of our regard for marriage. (Douglas Quenqua, New York Times, 3/18/ 2010)

Report Finds Shift Toward Extended Families The extended family is making something of a comeback, thanks to delayed marriage, immigration and recession-induced job losses and foreclosures that have forced people to double-up under one roof, an analysis of Census Bureau figures by the Pew



Research Center has found. Multigenerational families, which accounted for 25 percent of the population in 1940 but only 12 percent by 1980, inched up to 16 percent in 2008. The proportion of people 65 and older who live alone, which had been rising steeply for nearly a century — from 6 percent in 1900 to 29 percent in 1990 — declined slightly, to 27 percent. At the same time, the share of older people living in multigenerational families, which plummeted to 17 percent in 1980 from 57 percent in 1900, rose to 20 percent. Nearly half the 49 million Americans living in extended families are in households made up of two adult generations, with the youngest adult at least 25 years old. Almost as many live in households with three or more generations. (Sam Roberts, New York Times, 3/19/2010)

Caesarean Births Are at a High in U.S. The Caesarean section rate in the United States reached 32 percent in 2007, the country's highest rate ever. The rate has been climbing steadily since 1996, setting records year after year, and Caesarean section has become the most common operation in American hospitals. About 1.4 million Caesareans were performed in 2007, the latest year for which figures are available. The ideal rate is not known, but the World Health Organization and health agencies in the United States have suggested 15 percent. (Denise Grady, New York Times, 3/24/2010)

2008 Drop in Birth Rate May Be Tied to Recession American births fell in 2008, updated government figures confirm, probably because of the recession. The report on births was issued by the Centers for Disease Control and Prevention. It is based on a review of more than 99 percent of birth certificates for 2008 — the first full year of the recession. Over all, about 4.2 million children were born that year, a 2 percent drop from 2007. It is the first annual decline in births since the start of the decade. (New York Times, Associated Press, 4/7/2010)

Maternal Deaths Decline Sharply Across the Globe For the first time in decades, researchers are reporting a significant drop worldwide in the number of women dying each year from pregnancy and childbirth, to about 342,900 in 2008 from 526,300 in 1980. The findings, published in the medical journal *The Lancet*, challenge the prevailing view of maternal mortality as an intractable problem that has defied every effort to solve it. "The overall message, for the first time in a generation, is one of persistent and welcome progress," said the editor wrote. (Denise Grady, New York Times, 4/14/ 2010)



Les Wallerstein is a family mediator and collaborative lawyer in Lexington. He can be contacted at (781) 862-1099, or at wallerstein@socialaw.com



MCFM NEWS

MEDIATION PEER GROUP MEETINGS

Merrimack Valley Mediators Group: We are a group of family law mediators who have been meeting (almost) monthly since before the turn of the century! The criterion for membership is a desire to learn and share. Meetings are held at 8:15 AM on the last Tuesday of the month from January to June, and from September to November, at the office of Lynda Robbins, 11 Summer Street, Chelmsford. Please call Lynda at (978) 256-8178 or Karen Levitt at (978) 458-5550 for information and directions. All MCFM members are welcome.

Pioneer-Valley Mediators Group: This Western Mass group is newly organized and will be meeting monthly in December on the first Wednesday of every month at the end of the day, from 4 to 6 pm or 6 to 8 pm (depending on the interest) in Northampton at a location to be announced. Please email Kathy Townsend for further information at <Kathleen@divmedgroup.com>

Mediators in Search of a Group? As mediators we almost always work alone with our clients. Peer supervision offers mediators an opportunity to share their experiences of that process, and to learn from each other in a relaxed, safe setting. Most MCFM directors are members of peer supervision groups. All it takes to start a new group is the interest of a few, like-minded mediators and a willingness to get together on a semi-regular, informal basis. In the hope of promoting peer supervision groups a board member will volunteer to help facilitate your initial meetings. Please contact Kathy Townsend <Kathleen@divmedgroup.com> who will coordinate this outreach, and put mediators in touch with like-minded mediators.



HELP BUILD AN ARCHIVE!

In the spring of 2006, MCFM entered into an agreement with the Department of Dispute Resolution at the University of Massachusetts to create an archive of Massachusetts family-related mediation materials. The two key goals are to preserve our history and make it available for research purposes.

We're looking for anything and everything related to family mediation in Massachusetts — both originals and copies — including: meeting agendas and minutes, budgets, treasurer's reports, committee reports, correspondence, publications, fliers, posters, photographs, advertisements and announcements.

We need your help to maximize this opportunity to preserve the history of mediation in Massachusetts. **Please rummage through your office files, attics, basements and garages. If you discover materials that you are willing to donate please contact Les Wallerstein at wallerstein@socialaw.com.**



ANNOUNCEMENTS

All mediators and friends of mediation are invited to submit announcements of interest to the mediation community to wallerstein@socialaw.com, for free publication.

MCFM'S NEXT, FREE PROFESSIONAL DEVELOPMENT PROGRAM

“DIVORCE MEDIATION: TERMINABLE & INTERMINABLE”

Two judges will discuss the Court's views on divorce mediation and the Separation Agreements that result from mediated settlements.

Hon. Edward M. Ginsburg (Ret.) was a Probate and Family court judge for twenty-five years who founded Senior Partners For Justice in 2002.

Hon. Eileen M. Shaevel (Ret.) was a Probate and Family court judge for eleven years who established Dispute Resolution Alternatives in 2001.

Wednesday, June 9th @ 2:00 PM
Wellesley Public Library



34-Hour Divorce Mediation Training
April 29*, 30 and May 1, 14 & 15, 2010
In Holyoke, MA

Co-Sponsored by The Mediation & Training Collaborative
And HCC Kittredge Center for Business & Workforce Development
Prerequisite - 30 hours Basic Mediation Training

A 34-hour advanced mediation training for those interested in working with separating, divorcing or already-divorced couples. Topics include the emotional and legal aspects of divorce, parenting issues, division of assets and debts, spousal support, working with non-traditional couples, mediator ethics, dealing with high conflict, and more. Fee includes training manual, coached roleplays, parking and



refreshments. Social Work CEC's or attorney CLEs available upon request. Trainers are Betsy Williams, Cate Woolner, Larry Saunders, Stephanie Levin, Oran Kaufman and Court Dorsey. Fee is \$795. **For brochure or more information, mediation@communityaction.us or 413-475-1505**

*** The four-hour April 29 session will focus on Massachusetts family law for divorce mediators and is open to divorce mediators who want a review of this topic.** Fee for this session alone is \$80. Attorneys taking the full training who have extensive experience in family law may choose to omit the April 29 session. Call for more information on either of these options.



CONFLICTWORKS
in collaboration with
The Amherst Area Chamber of Commerce Presents

**THE JOY OF CONFLICT: TRANSFORMING
WORKPLACE CONFLICT INTO OPPORTUNITY**

The Goal: Whether you are an employee or manager at a large scale business or have a one-person business, conflict is a fact of life. Whether in the form of interpersonal conflicts with other employees, with vendors or customers, we all regularly have to face conflicts in the workplace. The goal of this training will be to provide an introduction to business professionals on how to manage conflict in the workplace and transform the potential negative affects of conflict into opportunity.

Who Will Benefit: All business professionals whether sole practitioners, employees at large businesses, managers, human resource managers and owners of business.

Why this training will be useful? Conflict in the workplace can have devastating effects on morale, productivity, efficiency and relationships. Effective management of conflict can not only prevent these negative effects but can lead to positive transformation and opportunity.

Date and Location: May 4, 2010 and May 11, 2010 from 8:30 AM until 12:30 PM at the Munson Library, South Amherst, MA.



Cost: Early registration - \$150 for Amherst Chamber members and \$175 for non-chamber members by April 15, 2010 **After April 15, 2010** - \$175 for Chamber members and \$200 for non-chamber members. **Registration includes materials & snacks.**

To register online, go to either:

www.amherstarea.com/events/index.cfm/fa/ShowEvent/EventID/9281.cfm **or**
www.orankaufman.com



COMMUNITY DISPUTE SETTLEMENT CENTER DIVORCE MEDIATION TRAINING

This 24-hour course is designed for mediators who are interested in the practice of divorce mediation. Topics will include an Overview of Divorce Mediation, Alimony, Health Insurance, Property, Financial Issues in Divorce and Reaching Closure. The training integrates substantive information with practice through interactive role play experiences. Cynthia Runge, CDSC's Coordinator of Court and Divorce Mediation Services, will facilitate each session. **Prerequisite: Basic mediation training.**

Friday, May 7, 9:30am – 5:00pm

Faculty: Gail Packer, Rita Pollak

Saturday, May 8, 9:30am – 5:00pm

Faculty: Michael Leshin, Joyce Kauffman

Tuesday, May 11, 4:30pm – 7:30pm

Faculty: David Hoffman

Saturday May 15, 9:30am – 5:00pm

**Faculty: Hon. Eileen M. Shaavel (ret.),
Hon. Maureen Monks, Brad and Jane Honoroff**



Where: CDSC's offices, 60 Gore Street, East Cambridge
(near Lechmere T, Galleria, courthouses)

Cost: \$695 (\$675 if registration received by April 1st)
\$595 for Volunteers with other Community Mediation Centers
\$400 for CDSC Volunteers

Enrollment: Limited to 24. Enroll early!

Registrants who cancel before April 10th will receive a full refund.
Later cancellations will be refunded only if space is filled.

For more information contact CDSC:

Tel. 617-876-5376

Fax: 617-876-6663

E-mail: cdscinfo@communitydispute.org
www.communitydispute.org



MEDIATION WORKS INC. OFFERS FOUR PROGRAMS & WORKSHOPS IN BOSTON

I

A NEGOTIATION SKILLS WORKSHOP

May 6 & 7, 2010

MWI's "Negotiation Skills Workshop" concentrates on the theory and practice of joint problem-solving and negotiation. Based on principles developed at the Harvard Negotiation Project and the bestseller "Getting To Yes", this two-day interactive workshop is designed to build your capacity to negotiate collaboratively, producing better outcomes for all parties while enhancing long-term working relationships.

II

EXECUTIVE MEDIATION TRAINING PROGRAM

May 10-14, 2010

MWI's "Executive Forty-Hour Mediation Training Program" is a five-day comprehensive "hands-on" skill building program designed for



professionals interested in becoming effective mediators. The program covers all aspects of the mediation process through lectures, demonstrations, interactive exercises, supervised role-plays and group discussions. MWI's Mediation Trainings meet the training requirement outlined in the Massachusetts Confidentiality Statute (MGL ch. 233 sec. 23C,) and CEUs are available for Licensed Social Workers (NASW for LICSWs), Mental Health Counselors (with MMCEP for LMHCs) and Human Resource Professionals (PHR, SPHR and GPHR recertification through the HR Certification Institute).

III DEALING WITH DIFFICULT NEGOTIATORS & TACTICS TRAINING PROGRAM

June 11, 2010

MWI's "Dealing with Difficult Negotiators & Tactics" builds on the foundational skills and frameworks introduced in MWI's Negotiation Skills Workshop as well as other programs. MWI's Dealing with Difficult Negotiators and Tactics course will offer helpful advice, tools and additional frameworks designed to address the most difficult negotiators, complex scenarios and challenging tactics.

IV TRAIN THE TRAINER INSTITUTE

June 24 - 25, 2010

MWI offers a two-day seminar designed to prepare experienced mediators to become effective mediation trainers and role-play coaches with an interest in developing their capacity to design and deliver effective mediation training programs. **Prerequisites:** Mediators must have completed 40-hours of formal mediation training (or meet their state's requirement), and Mediators must have experience with at least 10 cases in the past two years.

**For more information about any of MWI's programs & workshops please visit MWI's web site at www.mwi.org or contact MWI's Executive Director
Chuck Doran at 800-348-4888 x22
or cdoran@mwi.org**



HONORÉ DAUMIER (1808 – 1879)

October 11, 1847



Cher Robert & C^{ie} de la Cour 18

- Laissez dire un peu de mal de vous... laissez dire... tout à l'heure, moi, je vais injurier
toute la famille de votre adversaire !...

— Never mind... let him say a few unpleasant things about you... in a minute or two I am going to abuse his entire family!...

Honoré Daumier was a French political cartoonist who penned thousands of satirical drawings. Amongst his most famous lithographs were the *Lawyers and Justice* series, published in a Parisian newspaper, *Le Charivari*, per the sample above.



JOIN US

MEMBERSHIP: MCFM membership is open to all practitioners and friends of family mediation. MCFM invites guest speakers to present topics of interest at four, free, professional development meetings annually. These educational meetings often satisfy certification requirements. Members are encouraged to bring guests. MCFM members also receive the Family Mediation Quarterly and are welcome to serve on any MCFM Committee.

All members are listed online at MCFM's web site, and all listings are "linked" to a member's email. Annual membership dues are \$90, or \$50 for full-time students. Please direct all membership inquiries to **Ramona Goutiere** at <masscouncil@mcfm.org>.

REFERRAL DIRECTORY: Every MCFM member is eligible to be listed in MCFM's Referral Directory. Each listing in the Referral Directory allows a member to share detailed information explaining her/his mediation practice and philosophy with prospective clients. The Referral Directory is printed and mailed to all Massachusetts judges, and to each listed member. **The most current directory is always available online at www.mcfm.org.** The annual Referral Directory fee is \$60. Please direct all referral directory inquiries to **Jerry Weinstein** at <JWeinsteinDivorce@comcast.net>.

PRACTICE STANDARDS: MCFM was the first organization to issue Practice Standards for mediators in Massachusetts. To be listed in the MCFM Referral Directory each member must agree to uphold the MCFM Standards of Practice. **MCFM's Practice Standards are available online at www.mcfm.org.**

CERTIFICATION & RECERTIFICATION: MCFM was the first organization to certify family mediators in Massachusetts. Certification is reserved for mediators with significant mediation experience, advanced training and education. Extensive mediation experience may be substituted for an advanced academic degree. **MCFM's certification & recertification requirements are available online at www.mcfm.org.**

Every MCFM certified mediator is designated as such in both the online and the printed Referral Directory. Certified mediators must have malpractice insurance, and certification must be renewed every two years. Only certified mediators are eligible to receive referrals from the Massachusetts Probate & Family Court through MCFM.

Certification applications cost \$150 and re-certification applications cost \$50. For more information contact **Lynn Cooper** at <lynnkcooper@aol.com>. For certification or re-certification applications contact **Ramona Goutiere** at <masscouncil@mcfm.org>.



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EDITOR'S NOTICE

MCFM **Family Mediation Quarterly**

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The FMQ is dedicated to family mediators working with traditional and non-traditional families. All family mediators share common interests and concerns. The FMQ will provide a forum to explore that common ground.

The FMQ intends to be a journal of practical use to family mediators. As mediation is designed to resolve conflicts, the FMQ will not shy away from controversy. The FMQ welcomes the broadest spectrum of diverse opinions that affect the practice of family mediation.

The contents of the FMQ are published at the discretion of the editor, in consultation with the MCFM Board of Directors. The FMQ does not necessarily express the views of the MCFM unless specifically stated.

The FMQ is mailed and emailed to all MCFM members. The FMQ is mailed to all Probate & Family Court Judges, all local Dispute Resolution Coordinators, all Family Service Officers and all law school libraries in Massachusetts. An archive of all previous editions of the FMQ are available online in PDF at <www.mcfm.org>, accompanied by a cumulative index of articles to facilitate data retrieval.

MCFM members may submit notices of mediation-related events for free publication. Complimentary publication of notices from mediation-related organizations is available on a reciprocal basis. Commercial advertising is also available.

Please submit all contributions for the FMQ to the editor, either by email or computer disk. Submissions may be edited for clarity and length, and must scrupulously safeguard client confidentiality. The following deadlines for all submissions will be observed:

Summer: July 15th Fall: October 15th
Winter: January 15th Spring: April 15th

All MCFM members and friends of family mediation are encouraged to contribute to the FMQ. Every mediator has stories to tell and skills to teach. Please share yours.

MASSACHUSETTS COUNCIL ON FAMILY MEDIATION

www.mcfm.org



The Family Mediation Quarterly is printed on paper stock that is manufactured with non-polluting wind-generated energy, and 100% recycled (with 100% post consumer recycled fiber), processed chlorine free and FSC (Forest Stewardship Council) certified.

