

MCFM
FAMILY MEDIATION QUARTERLY

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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

Summer is now a distant (though warm) memory, and fall is well under way. There are exciting things happening at MCFM.

With help from Lynda Robbins and Tracy Fischer, Laurie Israel has created our fabulous new website (adjustments are still being made, but check it out!).

Steve Nisenbaum and John Fiske are once again planning members' meetings that are so popular that we keep needing more space for them. Don't miss them!

Tracy Fischer has assumed leadership of the Certification Committee. We are still the only organization in Massachusetts to provide a peer-reviewed certification process for divorce mediators (though I hear that NE-ACR is currently exploring the issue). If you haven't already obtained your Certification status, there's no time like the present to start! Our committee will help you—you just have to ask.

Les Wallerstein continues to gather articles that both teach and entertain us in this publication, our highly regarded Family Mediation Quarterly.

Kathy Townsend has capably taken over management of our finances.

Laurie Udell is chairing our Fall Institute, to be held on November 19th. Don't miss it—or you'll be sorry!

Your Board has started a joint committee with the Massachusetts Collaborative Law Council to work on issues that will benefit both of our organizations. Stay tuned for news of a future joint Members' meeting.

Your Board is also discussing a “wish list”—what are our goals for MCFM? How can we harness our energies to achieve them? We want feedback from our members—what are your hopes for MCFM going forward?

As your new(ish) president, I am delighted with our current projects—and I also want to acknowledge how we got here. We stand on the shoulders of our past presidents, officers, Board members, and our full membership to be where we are today. So to all of our current and past leaders, thank you! I'm counting on all of you to continue your efforts and support on behalf of our wonderful organization!



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ANSIN V. CRAVEN-ANSIN: Good News About Marital Agreements & Practical Suggestions for Marital Mediation

By William M. Levine

What better way is there for a mediator to help a couple who really do not want to divorce than to create a process that can take the spectre of contested divorce proceedings out of play, and thus, out of the way of the spouses' efforts to stay together? The Massachusetts Supreme Judicial Court ("S.J.C.") has finally recognized that "marital agreements"ⁱ are not invalid *per se*; but rather, they are permissible, and fully enforceable if created in a way that they will survive "careful scrutiny", as prescribed by the Court.ⁱⁱ As always, though, opportunities come with challenges; and clients, lawyers and mediating professionals, all, need learn important lessons from *Ansin v. Craven-Ansin*.ⁱⁱⁱ

The mere existence of *Ansin* makes it clear that matrimonial agreements where the spouses wish to remain married no longer bear the stigma of potentially encouraging divorce, as the S.J.C. once considered possible with pre-marital agreements^{iv}; nor are they "necessarily coercive".^v To assure that a marital agreement is truly voluntary and knowing, however, the Court has provided clarifying standards, particularly focused on process and fairness.

First, the S.J.C. has clarified the "full and fair [financial] disclosure" that must precede the execution of every marital agreement, as compared with the less clear rules that apply in the pre-marital agreement context. Disclosure must be comprehensive, including all individual and jointly held assets, and all liabilities, current and reasonably anticipated income *and* reasonably anticipated changes there to.^{vi} The court emphasized the importance of effective disclosure in light of the obligation of "absolute fidelity" that spouses owe to each other when they intend to remain married.^{vii}

Further, the S.J.C. cautioned that the ultimate test of substantive "fairness and reasonableness" of a marital agreement's terms must exceed the relatively light pre-marital agreement standard of being "not unconscionable"^{viii} Instead, the Court followed the precedent of *Dominick v. Dominick*.^{ix}, which requires a careful review of the circumstances attending the creation of the marital agreement, and which may include a full consideration of the statutory factors of the Massachusetts property allocation and alimony scheme^x. The Court also shifted the historic burden regarding fraud to



the proponent of the marital agreement, who must now *disprove* an allegation that he or she committed fraud in inducing the other spouse consent to a marital agreement.

To implement the teachings of *Ansin*, in the marital mediation context, it seems clear that all participants should:

1) Encourage the use of independent, competent and experienced counsel for both spouses^{xi}, whether as part of mediation sessions themselves, or at least in an ongoing, active relationships during the mediation term;

2) Require the parties to make sworn and verifiable disclosure of assets, liabilities and income (together with reasonably anticipated changes) *before* negotiating substantive terms^{xii};

3) Consider both the spouses' current marital challenges, including financial issues that are a part of their family difficulties, *and* the legal parameters of property and spousal support matters in the divorce context; and,

4) Caution the spouses to be deliberate in their process, both to

reduce the likelihood of subsequent regrets and to enhance the likelihood that assent is provided knowingly and voluntarily, hence, minimizing the chance of litigation.

Ansin presents an opportunity for spouses and mediators to act responsibly and sensibly in the effort to save marriages, and otherwise to curb the ravages of divorce litigation. However, to do so without observing its cautionary aspects, and those of other cases, can disserve the public that is our market, and roil, rather than calm, the waters at the time of divorce if that event must come. A process that results in avoiding a contested divorce is no less good a professional service than a saved marriage, though clearly the less desired outcome. At the same time, a sloppy process that leads to a poorly conceived marital agreement invites a painful form of double jeopardy for divorcing spouses: a

Ansin presents an opportunity for spouses and mediators to act responsibly and sensibly in the effort to save marriages, and otherwise to curb the ravages of divorce litigation.

litigated challenge to the marital agreement *and* a statutory battle over finance, if the challenge succeeds. Every mediator, lawyer and client ought to read and re-read

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Ansin; then read it again. The four cautions above will help to crystallize how mediators may help, and *not* hurt, but there is no full substitute for the S.J.C.'s entire body of thinking on the subject.



William M. Levine is a partner in the Boston law firm of Lee & Levine LLP, where he practices exclusively in the mediation, negotiation and litigation of family law matters. He is a Fellow of the American Academy of Matrimonial Lawyers and has authored numerous articles on family law subjects. This article, in slightly different form, was previously published at www.maritalmediation.com.

Footnotes

ⁱ Previously known to lawyers and mediators as “postnuptial agreements”.

ⁱⁱ Litigation hurdles substantially higher than for pre-marital agreements (also re-named by the S.J.C., and formerly known as

“antenuptial” or “prenuptial” agreements).

ⁱⁱⁱ 457 Mass. 283 (2010)

^{iv} See, *Osborne v. Osborne*, 394 Mass. 591 (1981)

^v 457 Mass., at 289.

^{vi} Cases addressing prenuptial agreements do not specify the place of income in financial disclosure, though Supplemental Probate Court Rule 401 mandates it in the context of divorce agreements, known in Massachusetts practice as “separation” agreements. See, *Rosenberg v. Lipnick*, 377 Mass. 666 (1979); *Osborne v. Osborne*, *supra*; and *DeMatteo v. DeMatteo*, 436 Mass. 18 (2002)

^{vii} At the same time, the Court noted that “approximate” values of assets would suffice. 457 Mass. at 294.

^{viii} See, *DeMatteo*, *supra*.

^{ix} 18 Mass. App. Ct. 92 (1984).

^x G.L., Chapter 208, Section 34.

^{xi} Independent counsel is *not* a requirement for any of the various matrimonial agreements in Massachusetts, but the presence of same is emphasized repeatedly in cases as bearing on the level to which consent has been obtained freely and voluntarily from the party resisting enforcement at the divorce stage. *Ansin* amplifies this wisdom.

^{xii} The use of Rule 401 Financial Statements, at least their pertinent portions, is an excellent way to accomplish this in whole or in part.



“A marital agreement need not provide for an equal distribution of assets, as long as a judge has concluded that the agreement is fair and reasonable.”

Ansin v. Craven-Ansin
Margaret Marshall, CJ



THE TRUTH ABOUT CHILDREN AND DIVORCE

By Robert E. Emery

Emery's Divorce Mediation Study

The following is a summary of Dr. Emery's 12-year study on the effects of divorce mediation. This divorce mediation study is also available in Microsoft PowerPoint presentation format [here](#).

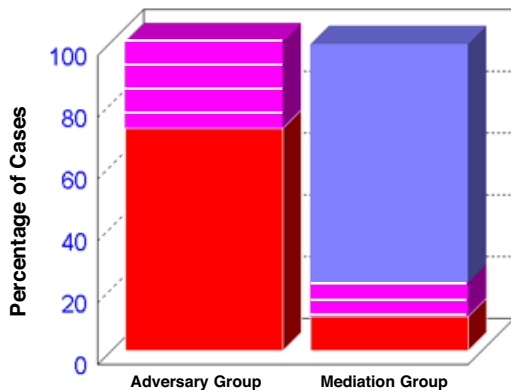
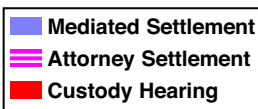
The Study

- Used a high conflict group - families who had filed for contested custody hearing.
- Used random assignment (the magic of science) — a flip of a coin determined whether families went to mediation or adversary settlement.
- Sample was young and low income.
- Mediation was short-term (5 hr average) and problem-focused but sensitive to emotions, especially grief.
- Was a longitudinal study — families were followed for 12 years.

Mediation Kept Most Families Out of Court

- If the coin came up tails and they stayed in the adversary system, 75% of families appeared before a judge.
- But if the coin came up heads, less than 20% appeared before a judge.
- Even when mediation failed, parents tended to settle out of court with the help of their lawyers.

Case Settlement Following Random Assignment



N = 36 for adversary group and N = 35 for mediation group

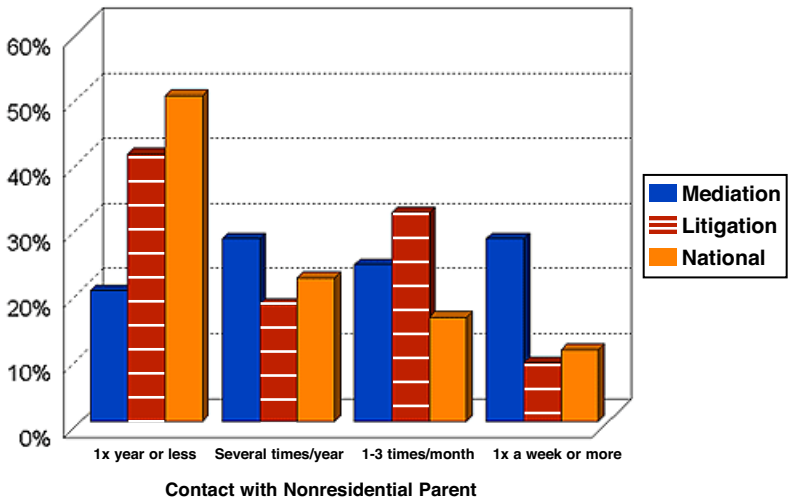
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What happens to angry families after they leave a mediator's office — and years later?

- Mediator's hope we've planted a seed. Have we?
- Yes. If the coin came up heads, 5 hours of mediation caused nonresidential parents to see their children much more often 12 years later.
- Compare these rates to the dramatic drop off in contact after the typical divorce in America.
- For example, 28% of nonresident parents who mediated saw their children weekly 12 years later compared to 9% who litigated and 11% in the national averages.

12 Year Follow-Up: Outcomes of Mediation and Litigation

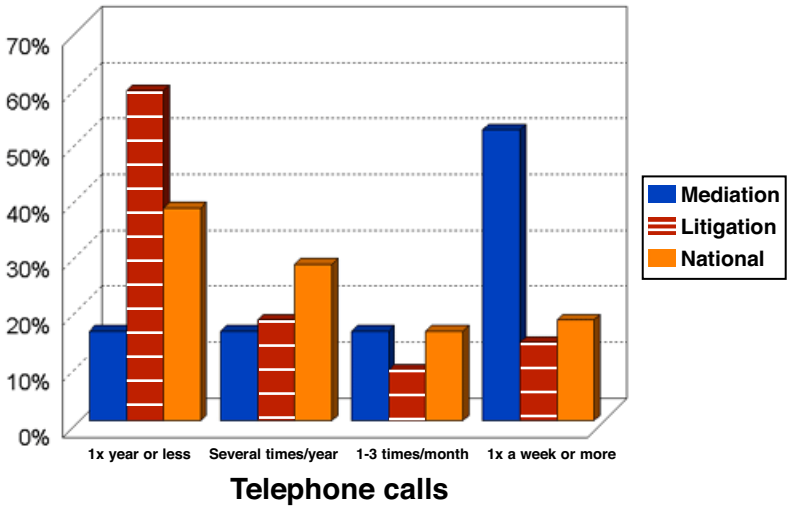


Changes in Telephone Contact Were Even More Dramatic

- 52% of nonresident parents who mediated talked with their children weekly 12 years later.
- This compares with 14% of nonresident parents who went to court and 18% in the national averages.
- Because of the random assignment, we know that 5 hours of mediation caused this difference.

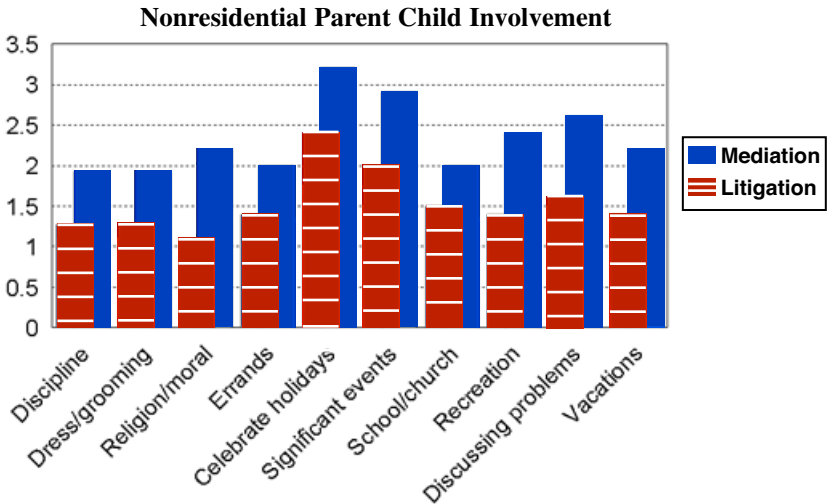


12 Year Follow-Up: Outcomes of Mediation and Litigation



Residential Parents Who Mediated Gave Nonresidential Parents Better “Grades” in Every Area of Parenting

- Including discipline, grooming, religious and moral training, running errands, celebrating holidays, taking part in significant events, school and church activities, recreation, vacations, and discussing problems with them.



Based on residential parent report

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Why Did So Little Mean So Much?

- Timing is everything. This is the time to do the right thing.
- The right path. Not so much that mediation is “good” as the alternative is...disruptive.
- Not the decisions reached (they were the same) but the process.
 - Having a voice
 - Taking the long view
 - Working together
 - Learning about children's needs and co-parenting
 - Recognizing your own grief and how it causes anger

Mediation: Do Something Different With Your Emotions

- The usual way to end a relationship is to say, “I never want to see you again!”
- Anger serves many functions following a loss including covering up hurt, grief, and pain.
- Mediation (and other forms of cooperative divorce) ask parents to do something different — for their kids sake.
- This can make breaking up emotionally harder for parents who may feel more ambivalence and acute pain.
- But working together for your children is the right thing and it does work!



Robert E. Emery, Ph.D., is a Professor of Psychology and Director of the Center for Children, Families, and the Law at the University of Virginia. His research focuses on family relationships and children’s mental health, and his book *The Truth About Children and Divorce* is available from Amazon.com. Readers are welcome to find more information online at <http://emeryondivorce.com/>

Primary Reference

Emery, R.E., Laumann-Billings, L., Waldron, M., Sbarra, D.A., and Dillon, P. (2001). Child custody mediation and litigation: Custody, contact, and co-parenting 12 years after initial dispute resolution. *Journal of Consulting and Clinical Psychology*, 69, 323-332.



WHEN APOLOGIES DON'T WORK IN DIVORCE MEDIATION

By Ronald Ramer

Introduction Apologies in divorce mediation of court-ordered, high-conflict custody and visitation issues do promote repair of relationships, as this author pointed out in his article, "An Apology at the Divorce Mediation Table," *Family Mediation Quarterly*, 9(1),1-6. When apologies are accepted, research has shown that three key elements have been verbally expressed by the offending party to the one offended.

The first element is the offender expresses recognition of ownership and accountability. He or she says, in effect, "It was my action and I am responsible for what I did."

The second element is the offender shows evidence of being personally and visibly affected by his or her action.

The third element is the apology is offered without defense which means the offender is not trying to get out of being blamed. No defense also leaves the offender vulnerable in that the offended party can choose whether to accept the apology or not. In making the decision whether to accept or not, the one offended is assessing whether the effort to repair the relationship is worth it and whether it would be too risky to accept the apology in light of being injured again.

In this article the author's goal is to

show that apologies do not always work, even though the elements seem to be present. Some reasons why they do not will be shown through an analysis of two case studies.

There is also a possibility that the parties may improve their communication without the formal language of apology being spoken, a kind of no-apology "apology." This situation will be discussed in the third case study.

It has been this author's experience that a primary reason apologies do not help the parties resolve is that the one who apologizes fails to convince the offended party that his/her behavior will not be repeated. Case studies will illustrate that the on-going assessment of the offender's future behavior is the core process in an apology.

Case Study # 1

Background Parents were ordered to resolve custody and visitation as the first part of their divorce process. During the mediation, Dad claimed that Mom violated an agreement when she unilaterally chose to take their children out of the country for two months, isolating them from him. Mom claimed that Dad was never interested in his children and that he was never around. She said, too, that he was unfaithful and fathered two children out of wedlock.

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Dad replied that Mom failed to pay the mortgage on their home, a failure which almost led to foreclosure. Dad staved it off at the last moment by his actions with the bank. Mom stated that she was there for Dad when he was in school full time and she kept the family going with her salary.

Mom: I admit I made mistakes.

Dad: They were not mistakes; she did it with intention. She knew what she was doing.

Mom: As a Christian woman, I tell you I am not lying. He is too proud to admit that he also made mistakes. And, he is not going to agree with me. He is only trying to win you over, as his friend, so the two of you will agree and be against me. That is how he operates. I know how he is.

Dad: She lies. This mediation is not going anywhere.

At this point, this author summarized the agreements they had reached. Mom would have the label of primary residential parent and that they were going to accept their temporary, court ordered visitation schedule.

Analysis of the case Even though Mom's admission acknowledged responsibility, one of the elements of an apology, Dad interrupted her with his statement that her actions to hurt were not mistakes but intentional on her part. Mom countered with a claim that Dad's pride would stop him from

negotiating in a fair way.

The parents remained deadlocked over the question of sole or joint legal custody. Apology failed to help them disengage from their confrontational positions. Dad would not change his position that Mom would change her behavior and be cooperative, or at least non-interfering. One and one half years after the mediation ended, the case is still being scheduled for trial.

Case Study #2

Background Mom and Dad have been divorced for three years. Their Parenting Agreement states they will raise the kids Catholic. Dad claims Mom doesn't take the kids to church every Sunday, and wants there to be a priority to get the kids to Mass every week. He offers that if she is not willing to do it, he will commit to pick them up and take them. Their issue is over Mom making a firm commitment to take the children, who will be in her possession, to the forthcoming Christmas Mass. Mom and Dad each present their positions.

Mom: Last year I took the kids to Mass Christmas Day morning and it was way too hectic to do presents and get to Mass in the morning. I will not be doing that again this year. We'll do Christmas Eve earlier than 4. So you may need to take them Christmas morning after 10. We may do that Christmas Eve, but I don't know the times yet.



Dad: You need to have them to me by 10 am on Christmas Day. Can you drop them at church 9:45 on Christmas Day? You can pick them up on Christmas Eve. They need to get to church.

Mom: Sorry, I tried to accommodate this, but I can't. We were going to go to Mass Christmas Eve at another church, but it's not convenient. Midnight Mass is too late for the kids. Christmas morning is way too hectic. If I had to get the kids to the church by 9:45 am, that requires they start getting ready at 9 am and that is the only time alone that we have and the only time on Christmas Day I have with them. I do believe they should go to Mass.

Dad: I'm not asking you to take them to Mass. I can take them.

Mom: I wish this were easier to figure out, but the issue is that is the only time I have with them on Christmas Day and that's the hardest day of the year for me to be without them. I hate that they have to leave. That time is so important to me, even though it may be just 45 minutes earlier, we have to rush.

Dad: I understand and I am willing to give them to you earlier on Christmas Eve for any time you are losing. If you want, you could take them to the 9:45 am Mass and this would allow you to be with them until 11:00 on one of the most important days of the religious year. This would give you more time

with them. I am not able to take them to a later morning mass; later is not an option for me.

Mom then began to explain why she was reluctant to go to church and uncomfortable there. She stated it stemmed from her being told that as a divorced woman she cannot receive the sacraments. When she finished her explanation, Dad saw an opening for resolution. He said that what she was told had to be looked into and that he knows a priest whom they can consult. Mom refused Dad's offer to go with him to see the priest. Dad says he will go and report what the priest says.

Follow-up to the mediation Dad met with the priest and sent a written summary of his conversation to Mom and the mediator. Dad began by declaring it was good news. He reported the Pastor telling him there is no reason why Mom cannot come to church and receive the sacraments. She is completely welcome. He encourages her to give him a call and he can get her registered at the parish. He told Dad to say that whoever gave Mom the previous information was wrong because they were not married in the church. Dad added that this is great news for Mom and for the kids. This should help you feel more comfortable in the church and should remove the issue we have been having with getting the kids to church on a weekly basis. This should put the issue to rest.

Dad's next communication to the

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mediator and Mom was that Mom's church attendance with the kids was not consistent.

Analysis of the Christmas issue Dad's report of the priest's interest and desire to make things right did not express Mom's deeply felt injury. Dad did not express any empathy for Mom's feelings. He focused on how he solved Mom's problem by removing her reason for not getting kids to Church. A shift to cooperative communication might have occurred since Mom's felt injury was now apparent and could have been acknowledged. What stops this from working as an apology is that the one who is trying to make things right for Mom is someone, i.e. the

Credibility of a change in the other parent's behavior is at the crux of a decision whether an apology will be accepted or rejected.

priest; she refused to meet face to face. Dad never expanded on what Mom had gone through in being rejected by the church.

What has the author learned? While it sounded like there was going to be an apology that would repair Mom's status with the church, facilitated by Dad, resulting in cooperative communication, her refusal to meet with the priest should have signaled there was something else going on. The parents came to mediation because she rejected every problem solving option

that Dad could supply to trade time with her and take the kids to Church himself. She told Dad she could not handle separation from her children on this day. Hence, his insistence they must always go to Church came across as consistent with his past behavior of always making demands that suited him and did not factor in her perspective that partial time with the kids on an important holiday was not good.

The salient issue, seen in retrospect by the author, was his own decision, as well as Dad's behavior. The author's interest in affirming the role of the priest during the mediation meant he, like the Dad, became wedded to an apology as a path to resolution. Hence he did not bring forth Mom's voice to be sure her needs were factored in holiday scheduling decisions. She made it known that she had looked at all the options and could not accommodate Dad on this change in Holiday scheduling. Dad did not step back from his own demands and the author did not bring this to his attention.

Case Study #3

Background Post divorce custody and visitation issue, ordered by the court for the parents of a 17? year old son. There was an existing order of protection against Dad. Mom refused to be in Dad's presence at mediation. She said she would attend only if a sheriff was in



the mediation room. The author arranged for a conference room at the county courthouse, monitored by an outside camera aimed at the entrance to the room. Two sheriffs were 50 feet away at their station at the courthouse entrance. Mom positioned herself at the doorway of the room visible to the sheriffs monitoring the camera of that room and the surrounding hallway.

The author began the session with a question and asked the parents to take turns stating what each wanted.

Mediator: What do each of you want to get out of this mediation?

Mom: Peace.

Dad: Peace and communication.

Mom: Respectful and cordial information.

Dad: Respect.

Mom: Communication.

Dad: No names and calmness.

Mom: I had the restraining order to achieve space, calmness and control. I have peace and I want to continue it. I'm frustrated that money is being spent because this continues. Our son will be 18 in seven months. Dad has free access to his son at any time.

Dad: She undermined my relationship with my son and continues to do so. She took authority because I yelled at

her. I lost my job. If she wants to be at peace from this point on, okay.

Analysis of the case study There wasn't an apology where one could clearly point to the presence of the three elements of an offender acknowledging responsibility, being visibly troubled by the impact his/her act had on the other parent and being vulnerable in not offering an excuse. The parents focused on themselves. Each expressed how he/she was impacted by the conflict. Both are troubled by what they are each experiencing yet they did not show empathy. They only expressed their own vulnerability. They did not say that, "I am personally accountable for the injury I caused."

Yet when each parent affirmed the other parent's words of peace and respect, and Dad said, "If she wants to be at peace...okay," this author experienced their exchange as if it was an apology that was accepted. It was based on their acceptance of what each other wanted, namely a vision of how things could be better for each of them, with their separate needs. In the affirmation there was vulnerability in that they were moving from a defensive posture without knowing how the other parent would react. This joint affirmation of a vision of peace was fundamental to what each must have judged, namely that the other parent's declarations were credible. The assessment led them to agree to noninterference in each other's parenting role.



Conclusion The elements of an apology are subject to an assessment of credibility that parents conduct throughout mediation. They assess whether to believe that the other parent will change behavior and how much to invest in making their divorce or post divorce relationship work. Credibility of a change in the other parent's behavior is at the crux of a decision whether an apology will be accepted or rejected. Hence, apology cannot be manipulated by the presence of set words or phrases commonly spoken such as "I am sorry" or "I regret what happened." There is no set formula to be recited that will move another person to accept an apology. The work of apology is exploratory, in that parents and the mediator are looking for constructive openings. One of those unexpected openings, seen in case study #3 rested on the vulnerability element in an apology. They each

moved from demands and from accusations to a neutral zone. In this zone, they took a chance that that they would not be taken advantage of as being weak, and therefore attacked. When each affirmed a vision of peace, they were telling each other they were ready to do something different. Their behavior outcome was to get out of each other's way in order for each to fulfill his or her parental role.



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**“The bitterest tears
shed over graves are
for words left unsaid
and for deeds left undone.”**

Harriet Beecher Stowe



HARRY POTTER, MEDIATION AND US

By Gail L. Perlman

Editor's Note: This article was originally presented as the keynote address at MCFM's 'Gathering of Mediators in New England' in May 2000.)

I'm a Muggle. (If you're new to Harry Potter language, you might want to consult your Glossary right now). I'm a Muggle, all right. The only brooms I've ever owned remain quite unyieldingly rooted to the kitchen floor. Although I've always collected owls, none of the little clay and glass and pewter critters has ever carried a message for me. And, in a moment of weakness in New Orleans, I bought a wonderful black cloak with a red satin lining, but alas it has never made me invisible. Nope. I'm just a Muggle. A rather dim and unaccomplished muggle who hasn't ever been invited to matriculate at Hogwarts.

Are there any other Muggles in the room?

Are there any Hogwarts graduates among us? (Keep that Glossary handy).

Are there any for whom the words Muggle and Hogwarts are entirely Greek to you?

Well, luckily, there's room for all of us here—Muggles, wizards and those who have yet to determine their designation.

The glossary, of course, is intended to give this speech a certain intellectual glitter. Something better. A few months ago my brother, a little stunned by the title, asked me, "So what's your point -what connection are you going to make between Harry Potter and mediation?" "H-mmm," I replied, "That's a good idea." "What!," he said, "you chose a title without a clue about what you were going to say?"

Well, yeah, but the thing is that John called—it was way last year some time-and asked me to speak. Of course I said yes. Not only because it was John, and not only because John was asking me to come and spend time with all of you (both of which were seminal in the decision), but also because May seemed so safely harbored in the future that it wasn't worth worrying about.

About two days later, I had a message from Janet Wiseman asking me to submit "AS SOON AS POSSIBLE, MAYBE BY TONIGHT OR TOMORROW" the title of the talk so she could include it in the program which was going to press imminently. Well, of course, I followed her instruction. Not only because it was Janet and not only because I didn't want to be fired, (both of which were seminal in the decision), but also because at that very moment I was knee deep in Dumbledore and,



without any caution for my reputation, discussing Harry in all my adult conversations. So bewitched—if you will—was I with Volume I that it was all I could do to remind myself that the citizens who kept coming into the courtroom were there seeking only justice and not literary criticism or social commentary on a kids' book. Anyway, the reality was that Harry had become my reality in those months, and I believed then—and still believe today—that he connects to everything. Hence the title without text. And, as you'll see in a minute, it may be better that way, better if we all just experience Harry Potter and avoid the gloss. And yet, I owe you the gloss; it's just expected of keynoters. So here goes.

Bruno Bettelheim was a child psychiatrist in Chicago who led a complicated life. A survivor of the holocaust, he was during his career revered as a creative genius and in his later years denounced as an abuser of

“Fear of a name increases fear of the thing itself.”

the children he treated. It was a devastating end to what had been a stellar career. He died under that cloud of denunciation. In 1976 he wrote a book called *The Uses of Enchantment* which discussed the importance of fairy tales in children's psychological development. I was very intrigued by the book then (though it, too, was the subject of severe attacks on Bettelheim), and I

recalled it after I read Harry. Despite Dr. Bettelheim's apparently abysmal breaches of professional trust, I want to tell you a little about his ideas on fairy tales because they ring true to me.

Bettelheim believed that a child's task is to create a life in which his or her actions and beliefs have meaning. He believed that children find that meaning at least in part by having access to works of art, particularly profound literature and most particularly fairy tales. He theorized that each child chooses from among the multiple available layers of meaning in a fairy tale, chooses (sometimes consciously, usually unconsciously) those meanings appropriate to the child's developmental stage. In contradistinction to fairy tales, he felt the great bulk of children's literature, while it “attempts to entertain or inform”, is “so shallow in substance that little of significance can be gained from [it]” (p. 4).

Bettelheim does acknowledge that a story must entertain a child and arouse the child's curiosity in order to hold the child's attention, but he says that the story must also “... [give] full credence to the seriousness of the child's predicaments...” If it does, then the child's experience with the story promotes self-confidence and confidence in the future (p. 5).

Bettelheim recognizes that the fairy tales attract children partly because



kids are intrigued by evil. He encourages parents not to divert a child from life troubles, not to insist that the child be exposed only to the sunny side of things, not to pretend that the dark side of our nature does not exist, but rather to allow the child to learn that life is unavoidably a struggle in which “evil is sometimes in the ascendancy” (p. 9). The child in this way gains both meaning and skills and becomes able “steadfastly [to meet] unexpected and often unjust hardships... [and can master] all obstacles and at the end [emerge] victorious,” (p. 8).

But Bettelheim also knows that “[e]xplaining to a child why a fairy tale is so captivating... destroys... the story’s enchantment” (emphasis added), and the enchantment itself is what will help the child struggle on his or her own with the problem and master it alone. “Adult interpretations, as correct as they may be, rob the child of the opportunity to feel that [the child], [on his or her] own, through repeated hearing and ruminating about the story, has coped successfully with a difficult situation. We grow... by finding meaning in life, and security in ourselves by having understood and solved personal problems, not by having them explained to us” (p. 19).

Now, where do we go with this?

First, I want to expand Bettelheim a bit. The world of fairy tales didn’t end with the Brothers Grimm. Others of prodigious imagination have built on

the classic folklore and invented modern tales of meaning. J.K. Rowling is among them, artists who arise with the skills of the old masters to pave modern children’s paths toward self-understanding.

Second, I want to embellish Bettelheim a bit. I want to claim that grownups are just big kids, and that we need fairy tales and meaning and art and the opportunity to master our own problems just as much as kids do. In fact, the older I get, the more I find myself rejecting the bright line we draw between childhood and adulthood. For all the good it does us (and I won’t deny it creates a very useful dichotomy), it causes lots of trouble. It deprives us grown ups of much we still need even though we’re big.

Third, I want to underscore Bettelheim a bit. People don’t learn by others’ interpretations. Each person reads a fairy tale and gathers from it what he or she needs at his or her own stage of development. So, there’s no way I’m going to tell you what Harry Potter means or what his importance is. I can only speak for myself—at my own stage of development.

I let Harry into my life in manifold ways from different corners of my personal history:

I reacted to Harry as if I were a child: I loved the pure story and the adventure; I loved his ambivalence toward authority; I loved his

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devilishness and his willingness to fight.

I reacted to Harry as an English major: I loved Rowlings' word play and word invention. I loved Harry as the noble prince of a noble line, lost at first and embarked on a picaresque journey which we can merely trust will conclude with his finding his own destiny at the end of the promised 7th volume.

I reacted to Harry as a parent: I loved him for teaching children to love reading, teaching the kids of the TV age what it feels like not to want to put a book down. And, as a parent, I suffered with him as he slept in his cupboard and received old socks for birthday presents and was an outcast, blamed for trouble he didn't cause.

As a clinical social worker, I loved Rowlings' unerring instinct for the 9-12 year old's mind. Remember Nearly Headless Nick?

“Sir Nicholas de Mimsy-Porpington at your service. Resident ghost of Gryffindor Tower.” ‘I know who you are!’ said Ron suddenly. ‘My brothers told me about you—you’re Nearly Headless Nick!’ ‘I would prefer you to call me Sir Nicholas de Mimsy-’ the ghost began stiffly, but sandy-haired Seamus Finnigan interrupted.

‘Nearly Headless? How can you be nearly headless?’ Sir Nicholas looked extremely miffed, as if their little chat wasn't going at all the way he wanted.

‘Like this,’ he said irritably. He seized his left ear and pulled. His whole head swung off his neck and fell onto his shoulder as if it was on a hinge. Someone had obviously tried to behead him, but not done it properly. Looking pleased at the stunned looks on their faces, Nearly Headless Nick flipped his head back onto his neck, coughed, and said, ‘So—new Griffindors! I hope you’re going to help us win the house championship this year?...’”(p. 124).

Can you imagine a 9-12 year old who would not be deliciously grossed out by Nick?

As a lawyer, I loved Rowlings' playful examination of rules: the rules of the Muggle world, the rules of the magic world and Hogwarts, and mostly the rules of Quidditch. I mean, I deliberately never took a course in insurance in law school because I knew I'd hate reading the fine print written in legalese and hemmed in by all those clauses and sub-clauses. But Rowlings managed to write the rules of Quidditch with such artistry that I want to persuade her to run for the legislature.

And as a mediator: Ah, at last, as a Mediator. Modern mediators act in at least two related spheres. We operate at our round tables, and we act in the broader social world to bring ADR to the population and its institutions. How can Harry help us in these spheres?



At the table first: As mediators we now have before us a whole population who knows Harry Potter. Already we're meeting with parents who have read Harry to their children or—like me—read it for themselves. We will over the next two decades meet with then divorcing people who read Harry when they were children. And we now have 3 volumes of Harry and the 4th to hit the stands within weeks. A work of art which can provide meaning and metaphor for the struggles of our clients and their children.

I'm just going to give a couple of examples that I can imagine plucking back from memory to use in a mediation.

1. Check your Glossary on this one if you need to: The scene takes place when Harry is speaking to Dumbledore after barely surviving the encounter with You Know Who and Professor Quirrell in the struggle for the sorcerer's stone near the end of the first book.

“‘Sir?’ said Harry, ‘I’ve been thinking... Sir—even if the Stone’s gone, Vol—, I mean You Know Who—’ ‘Call him Voldemort, Harry,’ Dumbledore interrupts. ‘Always use the proper name for things. Fear of a name increases fear of the thing itself.’”

What a powerful idea for children to learn, I thought—and something that adults need

to remember from time to time as well. I imagine two divorcing parents frightened to death of the imminent task of talking to their young children about their decision to divorce. Their fear of the word is real and touching. They recognize that it will sound evil to the children, evil like Voldemort as the children face their task of making meaning of their imminent loss. I imagine Dumbledore helping the parents here to remember that naming a thing reduces the fear, putting words to the unspeakable, speaking the evil out loud is a first step toward forcing the fear to recede.

2. Or take Hagrid. I love Hagrid. I love him because he's so flawed. He gets kicked out of Hogwarts, but then Dumbledore allows him to return to the Hogwarts community as the gamekeeper. In addition to his original sin, from time to time, Hagrid has trouble keeping secrets. Remember that he reveals to Harry, Hermione and

When we commit ourselves to an alternative, several things happen: We experience within the new alternative community the exhilaration of the pioneer and the calm of knowing we've found a home. Within the larger society, we often experience the loneliness of the outcast, the rebel.

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Ron some information about Nicholas Flamel that he wasn't supposed to tell? He isn't a perfect wizard. Yet, it's Hagrid who's entrusted with freeing Harry from the Dursleys, with doing his first school shopping in Diagon Alley and with getting Harry on the train to Hogwarts.

Isn't Hagrid just like every one of us? Some wonderful lovable qualities, and a biography full of mistakes made past and present? Someone who has done a bad thing of pretty intense proportions and is still allowed to be part of and contribute to the community?

I thought about the phrase we often use with couples that they don't have to like each other much but that they need to create a "working" relationship for parenting after the divorce. Perhaps Hagrid can help them go even further. I imagined reminding parents of Hagrid because embedded

We'll stay useful to the world only as long as we make room for that magic in ourselves, only as long as we stay vulnerable to its enchantment, only as long as we maintain our connections to fairy tales, to the long unbroken quest for meaning that stretches from childhood to death.

in Hagrid are concepts of forgiveness, acceptance, recognition of the worthy and the imperfect in all of us. Embedded in Hagrid is the possibility that two very hurt and angry parents learning to make room for each other as Dumbledore made room for the erring Hagrid, two parents who can create a new working relationship AND new emotional growth for themselves post-divorce.

3. And in Harry himself, we have a fairy tale example of a child struggling—as a child of divorce might—with loss with all its yearning (remember when Harry looked in the Mirror of Erised (Desire spelled backwards) and saw all the generations of his own family as he wished he could recreate them); just as a child of divorce would look in the mirror and see his family in its original form. Here is Harry, a child with severe deprivations, going deep into the work of creating a meaningful life, a child who—after all is said and done—finds the magic inside himself. How does he do that? He doesn't do it alone, It might be helpful for us to help parents learn what are the supports Harry needed to do the hard work of growing up with significant adversity.

You know, I worked for a long time to figure out who I really identified with in the Harry stories. And who a mediator



might identify with. The exercise was fun, but in the end I found it not very useful—because it was too linear. It wasn't possible to pop Harry's world onto the mediator's world and make clear, allegorical parallels. I realized that I identified with nearly all the characters. Like the characters of Greek mythology (another work of art brimming with meaning), each Harry character resembles recognizable parts of the human personality. Don't you sometimes feel like arrogant Hermione, the workaholic? Don't you sometimes feel like Hagrid, fumbling awkwardly and making mistakes? Like Professor McGonnigal, the orderly disciplinarian, like Snape, ready to make the cutting, hurting remark? And don't you sometimes feel like the wise Dumbledore who showed Harry at the end of the Prisoner of Azkaban that he could hold his father, even in death, within his own being?

We talk about the magic of mediation. By that, we usually mean that someone around that table or maybe more than one participant reaches a moment of recognition and feels transformed. We know the mediator can enable those magic moments by our own choices of words and body language and silence. Harry is part of our toolbox now, useful for enabling magic moments, because he is a work of art harboring deep meanings and because we hold him in common with our clients and our clients' children.

It's not an easy time to believe in

magic. In the excessively confusing world we live in, there is a push toward science and technology, the rational, the observable. We are the heirs of the ideas of 18th century enlightenment which itself was heir to the ideas of ancient Greece—ideas which our modern society has embraced with fervor and commitment. They are engrained in all of us as fundamentally true and good.

And yet, we've come to see, in this as in all social orders, that the structurally significant ideas can become rigid over time and unable to serve some important human needs. We've established a health care system so bound to western scientific method that it's had trouble acknowledging other time-worn methods of healing. We've created a legal system which is endowed with revered qualities like due process and truth by adversarial argument, and until recently, we've tried to make that model fit all our human disputes.

The brave spirits who imagine a different reality in the face of strongly constructed social systems live often on the social periphery. It's interesting to me that even in our society which we hold out as diverse, that different reality is often seen as "alternative." Alternative Health Care. Alternative Lifestyle. Alternative Dispute Resolution. When we commit ourselves to an alternative, several things happen: We experience within the new alternative community the

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exhilaration of the pioneer and the calm of knowing we've found a home. Within the larger society, we often experience the loneliness of the outcast, the rebel.

In our embrace of mediation, we've stood on the shoulders of the original pioneers, and we've been pioneers ourselves, bringing the values of this method to more and more institutional venues in the society: the prisons, the neighborhoods, the schools, religious organizations, businesses large and small and the courts. It's an exhilarating time—sort of like sending a child off to school for the first time—as we watch the baby we've tended take steps toward independence and new sophistication. But it's a scary time, too (like sending Pinocchio off to school): at the same time that ADR can bring its promise to the broader

We talk about the magic of mediation. By that, we usually mean that someone around that table or maybe more than one participant reaches a moment of recognition and feels transformed. We know the mediator can enable those magic moments by our own choices of words and body language and silence.

community, the fledgling is prey to new influences, to misuse and misunderstanding, to charlatans and thieves.

We who feel like pioneers and the progeny of pioneers run the risk of becoming cynical as we watch the baby grow and change in ways we could not predict and may not always like. (I for one have a horror of ending up the old guy who says, "Why should I pay more taxes for school buses? When I was a boy, we walked five miles to school every day. If it was good enough for me, it's good enough for them.") Our job is to launch that baby knowing that it will become its own thing as an adult, that it won't end up just like us. Our job is to remind ourselves that human beings, if they hang around long enough—either by reading history or by accumulating the life experience of many years—live to see the times change; to see the alternative become the accepted, the accepted become the new norm, to see the new norm almost inevitably become reified in its turn, and to see new brave minds imagine yet another new alternative. We'll only be ready to stay in that predictable cycle, we'll only be prepared to contribute our experience and wisdom to the next bold social invention for human conflict if we hold

on for dear life to our Harry Potters.

As ADR becomes more and more part of the daily life of our culture, as our



golden snitch of mediation is challenged by new ideas, its flaws exposed, its successor imagined, our job is to stay open to the new magic which will be felt from these new ideas. Because the magic, after all, lies within or perhaps is the imagination. We'll stay useful to the world only as long as we make room for that magic in ourselves, only as long as we stay vulnerable to its enchantment, only as long as we maintain our connections to fairy tales, to the long unbroken quest for meaning that stretches from childhood to death.

Oh, no, I'm such a Muggle. Here I am pontificating on the condition of the universe and utterly ignoring what was right before my eyes: Dumbledore as the quintessential banquet speaker. Volume I, page 123. There's the model I should have followed if only I'd been educated at Hogwarts:

As the students assembled in the splendid banquet hall, Albus Dumbledore, welcomed them back to Hogwarts after their summer vacation. "He had gotten to his feet. He was beaming at the students, his arms opened wide, as if nothing could have pleased him more than to see them all there. 'Welcome,' he said, 'Welcome to a new year at Hogwarts! Before we begin our banquet, I would like to say a few words. And here they are: Nitwit. Blubber. Oddment. Tweak. Thank you.'"



Gail L. Perlman is First Justice of the Hampshire Probate and Family Court and a past president of MCFM. Gail can be contacted at gail.perlman@jud.state.ma.us.
by muggles and magicians

ABBREVIATED GLOSSARY

MUGGLES: Ordinary humans among whom there is a wide range of susceptibility to magic.

THE DURSLEYS: Harry's Aunt and Uncle and his Cousin, Dudley; Muggles who are terrified by magic and who should probably have been reported to DSS.

HOGWARTS: A school of witchcraft and wizardry in which a student must complete seven years of learning. Hogwarts has four residential houses:

GRIFFINDOR for the brave, daring and chivalrous;

HUFFLEPUFF for the just, loyal, patient and hard-working;

RAVENCLAW for the witty and ready of mind; and

SLYTHERIN for the cunning who will use any means to achieve an end.

ALBUS DUMBLEDORE: A wise if somewhat batty wizard; Headmaster of Hogwarts.

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HAGRID: A fumbling but well-meaning wizard on a motorcycle; expelled from Hogwarts in his third year but kept on by Dumbledore as Gamekeeper.

SNAPE: a Professor of Potions who knows a lot about the Dark Arts and who seems to have it in for Harry. But in the third book....

PLATFORM 9?: The track from which the train to Hogwarts leaves King's Cross Station. Inaccessible to Muggles who know nothing of magic.

DIAGON ALLEY: The London street where witches and sorcerers buy their wands from Dedalus Diggle, their owls at the Eeylops Owl Emporium, their school books from Flourish & Blotts and indulge in an occasional drink at the Leaky Cauldron.

GRINGOTTS: The bank where witches and sorcerers keep their money—17 silver sickles to the golden galleon and 29 bronze knuts to the sickle. "It's easy enough."

QUIDDITCH: A game played in the air on brooms with four balls and seven players on each side:

3 **CHASERS** who throw the **QUAFFLE** (a red ball about the size of a soccer ball) to each other and try to score goals of ten points each.

1 **KEEPER** who performs like a soccer goalie.

2 **BEATERS** who try to keep the two black **BLUDGER** balls from knocking players off their brooms.

1 **SEEKER** who tries to capture the **SNITCH**, a walnut-sized golden ball with tiny fluttering silver wings. The Snitch flies fast and is hard to see. Catching it is worth 150 points. The game ends when the Snitch is caught.

VOLDEMORT: A wizard who has gone over to the dark side and taken others with him; known throughout the wizard community as "You Know Who."



**“It is our choices
that show what we truly are,
far more than our abilities.”**

J.K. Rowling

Harry Potter and the Chamber of Secrets
spoken by Albus Dumbledore



HOW I FOUND DIVORCE MEDIATION & WHY I LOVE IT

By Marion Lee Wasserman

My request was unusual. As a summer clerk at a mid-sized law firm in Boston, I asked to work with the firm's only domestic relations lawyer. I was a second year student at Harvard Law School, and domestic relations was not supposed to be my first choice — or even my second or third choice, for that matter. But domestic relations interested me, and I thought I might have a career in it. So for me, it was a natural choice.

Unfortunately, the partner I was assigned to was old-fashioned in his level of formality and difficult to warm up to as a mentor. Calling him by his first name was out of the question. Still, he could teach me what I wanted to learn, or so I thought.

I remember going to my first-ever four-way meeting early that summer. I was excited about seeing how things actually worked in a divorce case. This was really it, I thought. But the meeting proved to be a shock and a thoroughly depressing experience. The two lawyers did almost all of the talking. Their clients barely said a word. I had no idea what the husband and the wife were thinking or what they wanted. The lawyers were aggressive and unpleasant towards each other, and so far as I could tell, nothing was accomplished. I concluded that family law was not at

all what I had expected, and I asked the law firm to shift me to a different area of law for the remainder of my clerkship, to which the firm readily agreed.

Many years later, while practicing law in the tech industry, I came across an article about John Fiske and divorce mediation. John's partners in his Cambridge law firm were, at that time, Regina Healy and Diane Lund, who had team-taught one of the best courses I had taken as a law student — a seminar-style course in family law. I was impressed by that. But what most impressed me when I read the article was that John had discovered a new and better way of helping divorcing couples. He had solved the problems I had seen first-hand as a summer clerk. Whereas I had walked away from the challenge, John had grappled with it, creatively and persistently. And he had blazed a trail for others to follow.

I screwed up my courage after reading that article, and I called John Fiske to find out how I could learn more about mediation and perhaps become a mediator. John did not know me at all, but he gave generously of his time over the phone, making suggestions that were instrumental in setting me on my way towards becoming a mediator.

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There is a common-sense simplicity to the idea of divorcing spouses sitting down together to discuss their settlement with the assistance of a trained, neutral third party.

Today, my practice is dedicated to family law. About half of my cases are mediation cases, while the other half are cases where I am legal counsel, helping clients reach a settlement and also reviewing mediated agreements. Fortunately, I do not have to choose between the two sides of my practice. My clients make that choice.

Not every client getting divorced chooses mediation, but for those who do, the choice is almost always a wise one. Here are four reasons why I love doing divorce mediation and why it works so well.

Simplicity There is a common-sense simplicity to the idea of divorcing spouses sitting down together to discuss their settlement with the assistance of a trained, neutral third party. This three-way model is the one I use. In my divorce mediation practice, the three-way meetings are the primary vehicle for achieving settlement. Because this model is so simple, it is easy to explain to potential clients; and couples usually do a good job of self-selecting — that is, recognizing whether or not this

process will be a good fit for them. Although the parties may have lawyers working with each of them in the background of the mediation process, the primary dialogue in the process is the couple's own dialogue, at three-way meetings and between meetings, if possible. The divorce is their divorce. The dialogue is their dialogue. The mediator's humble role — apart from educating the couple about the legal context of divorce — is to facilitate the negotiation, to give the couple an assist. Though the three-way model is a simple one, the mediator's role is endlessly interesting and challenging.

Flexibility The spareness of the three-way model makes it easy for the couple to decide, with the mediator's guidance, whether additional professional assistance is required. Professionals with special knowledge and skills — for example, financial planners, accountants or child development specialists — can be brought into the process on an as-needed basis. By agreement, the couple can decide whether to work with an outside expert individually or as a couple; and the expert can provide reports and spreadsheets shedding light on complex financial issues. The expert can attend one or more mediation sessions if this will be helpful and cost-effective. Decisions about the use of experts grow dynamically out of discussions at the three-way meetings. The divorce mediation process is never “one size



fits all” but is instead an inherently adaptive and flexible process.

Cost-Effectiveness The three-way model makes for a highly cost-effective process. This is an unquestionable upside for the divorcing couple and their children.

In the Middle The first few times I entered a room as a mediator for a divorcing couple, I had to screw up my courage. Sitting down at a table with two people going through wrenching, life-changing conflict was scary. Often, the spouses were angry and hurt and could barely abide being in a room together. But in a surprisingly short period of time, my trepidation at being in the middle disappeared completely — a tribute to the transformative power of the mediation process, not only for clients but also for mediators themselves. I began meeting each new

couple eagerly, with confidence in the mediation process. Whatever the couple’s emotional dynamic, I welcomed the opportunity and the privilege of creating a safe space they could enter, where they could work through conflict and get divorced in a cooperative, mindful way. Now I thoroughly enjoy the special challenges of being in the neutral middle.



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**“Simplicity
is the ultimate
sophistication.”**

Leonardo da Vinci



WHY I MEDIATE DIVORCES & THE HARD LE\$\$ON

By John A. Fiske

I Do it For Love The sometimes grumpy commuter rail conductor asked me one morning, “When are you retiring?” My answer was easy: “Why should I retire? I love my work.” He snorted in disbelief. “Well I don’t like mine, and I’m retiring in two months,” and he went off to punch tickets and that was that. I mediate divorces for love: love of clients, love of my well being, and for “the perfect love of the work,” to quote Lord Jim.

Love of Clients Not many lawyers these days have grateful clients. Clients in divorce mediation are refreshingly grateful: grateful for the chance to avoid lawyers (“with all due respect to your profession, etcetc”), to save face, hassle, money and time, to control one’s own life, and to do something positive together. “It sounds funny to say this,” said an engineer after their third meeting, “but I’m looking forward to coming back.”

So I love my clients because they are appreciative, and for other qualities. (1) They are brave. I cannot imagine the courage it takes to call a complete stranger and say, “I want you to help my spouse and me get divorced.” One woman told me she was reading her diary between meetings and discovered she wrote seven years earlier that she wanted to get a divorce, and it had taken her that long to take action. (2)

They are considerate. A father whose wife had an affair and now wants a divorce from him still offers to pay her more than the amount required by the Child Support Guidelines because he wants to be sure she and his children are okay. A wife says she is willing for her husband to take a teaching position at a significant reduction in salary because he has always wanted to teach, even if his reduction means she will receive less alimony as a result. (3) They are ingenious. The husband asks his wife why it is taking so long for her to decide what she wants and she says, “I have to consult with my committee.” “Who’s your committee?” he asks, quite puzzled. She puts her fingertips on her tummy and says, “I have all these voices.” Another wife takes forever to do a simple budget, and after months pass she calls me and says she is ready to meet. When she produces a thorough budget for her monthly expenses the husband asks her in admiring disbelief, “How did you do that?” She explains she invited three friends over for Sunday lunch and they spread all her bills out on the living room floor and spent the afternoon making her budget. (4) They are nice people. Even if they do not always bring out the best in their behavior, mediating clients come voluntarily to the process because their self-image is that they are both reasonable people able, in a pinch, to agree on what needs



to be done. For the most part, they focus on the future and minimize arguments over past irrelevant hurts.

Love of My Well Being In early days of divorce mediation I discovered Janet Miller Wiseman at a meeting in Jerry Weinstein's living room of people with various professional backgrounds gathered to talk about our favorite subject. She was a therapist and I a lawyer — each willing to teach the other and each eager to learn from the other how to blend these two worlds. In writing a joint article about the efficacy of divorce mediation for Social Work Magazine in 1980 we developed a formula for how people should negotiate the terms of their divorce and called it "A Marital Negotiation Process." It begins with asking, "What do I want?" (see www.mediate.com/fiske link to Useful Documents for the rest) So for years I having been helping each spouse ask herself or himself, "What do I want?" and encouraging each of them to make sure (s)he is as happy and healthy as possible. "If I am not for myself, who is for me, and Being for myself alone, what am I?" quotes Gary Friedman in the beginning of his well-titled book, *A Guide to Divorce Mediation*. The message, that it is not just acceptable but also healthy to listen to your self, tend to your self and respect your self, tends to sink in after a while even if difficult to follow. What is most important to me?

We're on the planet in help others, and to be as healthy and happy in the

process as possible. So mediating divorces helps me tend to my self, more so than in some other lawyer roles I have held. Advocacy may appeal to my competitive elements when I win, but usually results in disappointment with my performance or the result and in frustration with the

"We are outsiders in these people's lives."

court experience. I spent 1974 to June 1978 trying to help the courts run in a more businesslike and efficient manner, and came to the conclusion after four years that we have a lousy system with a lot of good judges and court staff as our judicial branch of Massachusetts government. The job was not an expression of love of self: there was little result to show for lots of effort. By contrast, divorce mediation offers monumental results with work that sometimes seems effortless, though other times Herculean. The mediation process itself may create a sense of well being for clients and mediator alike.

The Perfect Love of The Work The ideal divorce involves Bill and Sally at the kitchen table working it out in a mutually fair and respectful way. Most of the time, however, they need professional help. Mediation offers them the most functional model: one additional person, impartial and knowledgeable, to provide a range of services in a confidential setting including and not limited to the various mediator roles we offer: buddy, conflict

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resolver, diplomat, educator, friend, guide, host, listener, moderator, scrivener and witness.

A wife called me up after her divorce and said, "I've figured out why you are so important. You are a witness." For her, knowing that someone had observed what she was experiencing had enormous value. In one of my more colorful mediation outbursts, in the middle of a five way meeting Bill snarled at Sally, "Stop complaining about not having enough money. Why don't you just sell your mother's jewels?" She jumped up, threw her cup of tea at him and then climbed over my 54" diameter round table and started pounding him while her lawyer tried to pull her off. Bill fell off his chair, got up and looked at everyone in the room: Sally, her lawyer, his lawyer and me, all transfixed. He said, "Do you see?" He wanted a witness, and he got several. Five minutes later Bill and Sally were chatting alone in my office while their lawyers and I talked in the waiting room. They worked everything out in about ten minutes. "We are outsiders in these people's lives," Patrick Phear used to say in early Mass. Council meetings.

My perfect love of the work comes from the elegance of the mediation process, perfectly designed to allow and encourage couples to reach for their better angels and help each other get through this, this dreadful period

of marital separation, "the erosion of love and the persistence of attachment," as Robert Weiss wrote in *Marital Separation*. The work offers rewards to all participants, and especially to the grateful mediator who will continue the work until he no longer loves it and retires. What will he ever do for an encore?

THE HARD LESSON I thought this email from a mediation client is worthy of the Quarterly and wide readership. The client is a well-established business lawyer who is getting divorced and has also hired an advisory attorney. I edited it slightly to eliminate any hint of personal reference.

The mathematics of our practice are indeed startling. I don't think it's an exaggeration to say that lawyers charge about 10 times what mediators do, and the clients usually split the mediator's fee in some way. For example, \$40,000 apiece for the two lawyers versus \$4,000 for the mediator divided 50-50. Of course some couples need lawyers, but for the clients who could mediate, and follow the path suggested by Rule 5 when the lawyer mentions ADR in that first meeting, they need to be educated about what is at stake for their pocketbook. Alas, Christ has to be crucified every generation, and some clients have to learn the hard le\$\$on the hard way, no matter what they are warned in advance.



“John,

After my limited experience with the divorce bar, I absolutely LOVE to receive your invoices. You have a pretty detailed idea of how much of my money went to (major divorce law firm representing one of my children). My meeting with my own divorce lawyer, plus a modest email exchange after the meeting, cost me \$1,390 and the invoice indicated that \$540 of time was not billed (I don't think it was because I'm so good looking). I must say I fail to understand why

anyone in a marital problem position would do anything other than hire ... a mediator, for all of the reasons, financial and other, which your web site so succinctly explains.”



John A. Fiske is an award-winning family mediator and mediation trainer. He co-founded and has served as MCFM's President, and continues to serve as a Director Emeritus. John has mediated more than 2,000 divorces, separations, and post-marital contracts to help couples stay married, and he can be contacted at 617-354-7133 or [jadamsfiske@yahoo.com](mailto:jadamfiske@yahoo.com)



**“It is in the shelter
of each other that
the people live”**

Irish Proverb



MASSACHUSETTS FAMILY LAW A Periodic Review

By Jonathan E. Fields

Postnups OK'd in Massachusetts (or "the Fogg has Lifted") Nearly 20 years ago, in the *Fogg* case, the SJC "left to another day" the question of whether postnuptial agreements were valid in Massachusetts. Well, that day has come. The SJC has finally resolved the long-deferred question by approving such agreements so long as certain requirements are met. Among such requirements, according to the SJC, the court must find that the agreement was fair and reasonable at the time of signing *as well as* at the time of enforcement. In permitting such agreements, Massachusetts appears to be in line with the majority of states. Readers interested in an in-depth treatment of the new case are directed to Bill Levine's terrific article at the beginning of this issue. *Ansin v. Craven-Ansin*, 457 Mass. 283 (July 16, 2010)

Counting Parenting Time (Even When the Kids are Sleeping) In trying to equalize a parenting schedule, do you count "sleep time" and "school time" or only "awake time"? In a modification action, a Probate and Family Court judge changed the parenting schedule without finding a change in circumstances on the theory that the percentage of "awake time" (time that the "children were not at school, camp, or awake") spent with each parent was roughly equivalent to the previous schedule. The Appeals

Court reversed, noting that the law has not "neatly divided custodial parenthood into waking, sleeping, and schooling categories. Nor should it. Disregarding sleep or school time ignores that children get sick, have nightmares, and otherwise require their parent's assistance at unexpected times." Parents are always "on call," the Appeals Court continued: "[t]he responsibilities of a parent do not end when a child is asleep, at school or day care, or otherwise outside of the parent's presence." *Katzman v. Healy*, 77 Mass.App.Ct. 589 (September 7, 2010).

Imputing Income and Divorce Planning. The Appeals Court affirmed a judgment in which the trial court refused to impute income to a wife who was working an 80% schedule at the time of trial and who was earning an annual salary of over \$500,000. The Appeals Court was impressed that throughout the marriage, she had often reverted from full-time to reduced-time and that the current schedule was not the result of "divorce planning." *Lanes v. Jagolta*, 2010 Mass.App.Unpub. LEXIS 1069 (September 24, 2010) (Unpublished)



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WHAT'S NEWS?

National & International Family News

Chronologically Compiled & Edited by Les Wallerstein

Argentina Legalizes Same-Sex Marriage

Argentina is the first country in Latin America to allow gay couples to wed. Three other countries in the region — Uruguay, Colombia and Ecuador — have recognized civil unions for same-sex couples in recent years, as have various cities and states. Argentina's new law will give gay people the same marital rights as heterosexuals, including adoption and inheritance rights, and reflects the broadening legal recognition of same-sex relationships across Latin America. (Alexei Barrionuevo, *New York Times*, 7/16/2010)

women, a federal judge in San Francisco struck down California's voter-approved ban on same-sex marriage on Wednesday, handing supporters of such unions at least a temporary victory in a legal battle that seems all but certain to be settled by the Supreme Court. "Proposition 8 cannot withstand any level of scrutiny under the Equal Protection Clause," wrote Judge Walker. "Excluding same-sex couples from marriage is simply not rationally related to a legitimate state interest." (Jesse McKinley and John Schwartz, *New York Times*, 8/5/2010)

The Un-Divorced For some couples, a long separation is financially prudent and easier emotionally. In certain cases, the world assumes a couple is divorced and never learns otherwise until an obituary puts the record straight. Warren Buffett, the wealthy chairman of Berkshire Hathaway, separated from his wife, Susan, in 1977 but remained married to her until her death in 2004. Also in the ranks of the un-divorced is the artist Willem de Kooning, who had been separated from his wife for 34 years when she died in 1989. (Pamela Paul, *New York Times*, 8/1/2010)

Mexico Honors Same-Sex Marriage

The Mexican Supreme Court has ruled that each of the country's 31 states must recognize same-sex marriages registered in Mexico City, potentially giving gay and lesbian couples full matrimonial rights nationwide. The court also made clear that state governments were not obligated to enact same-sex marriage laws of their own, and leaves uncertainty about which marital rights must be recognized by state governments. (David Agren, *New York Times*, 8/11/2010)

California's Ban on Same-Sex Marriage is Struck Down

Saying that it discriminates against gay men and

US Allows Asylum for Domestic Abuse Victim

Based on a favorable recommendation from the Department of Homeland Security, an immigration

Continued on next page



judge granted asylum to a Mexican woman who was sexually abused and severely battered by her common-law husband. In a novel argument the woman's lawyer asserted that she could not find safety by moving to any new location in Mexico because her common-law husband could easily track her down using the Internet, since she was a school teacher who would have to post her current address in a public registry to work. (Julia Preston, *New York Times*, 8/14/2010)

US Birthrate is Lowest in a Century

For the second consecutive year since the recession began in 2007, the birthrate has fallen to its lowest level in at least a century. According to the National Center for Health Statistics there were 4,136,000 births in 2009, down from 4,247,000 in 2008, as compared with 4,300,000 in 2007, when more babies were born in the US than in any other year in the nation's history. (*New York Times*, Associated Press, 8/28/2010)

US Divorce Rate Plummets The divorce rate in America is at a 30-year low. The Centers for Disease Control and Prevention puts the current divorce rate at 3.5 per 1,000, down 8 percent in the last five years, 16 percent since 2000, and a staggering 34 percent since its peak in 1979. Roughly 20,000 fewer Americans couples are divorcing every year as compared with a decade ago. The declines have been so steady over the last generation that widespread reports attributing recent drop-offs to the

recession are misleading. (Bruce Feiler, *New York Times*, 8/29/2010)

Rise in Out-Of-Wedlock Births

The European Union says the number of children born out of wedlock in the 27-nation bloc has doubled over the past two decades and now accounts for over one-third of the region's births. Eurostat, the E.U.'s statistical agency, said Thursday that 35.1 percent of births in 2008 occurred outside of marriage, up from 17.4 percent in 1990 and 25.1 percent in 1998. Estonia holds the highest out-of-wedlock birthrate at 59 percent, and every E.U. nation except Denmark has experienced an increase. Eurostat also said marriage rates had decreased to 4.9 per 1,000 people in 2008, from 6.3 marriages per 1,000 in 1990. (*New York Times*, Associated Press, 9/10/2010)

Study Finds Wider View of 'Family'

A majority of Americans now say their definition of family includes same-sex couples with children, as well as married gay and lesbian couples. At the same time, most Americans do not consider unmarried cohabiting couples, either heterosexual or same-sex, to be a family — unless they have children. The findings are culled from surveys conducted in 2010, 2006 and 2003 by Brian Powell, a sociology professor at Indiana University, Bloomington. (Sam Roberts, *New York Times*, 9/15/2010)

Mortgage Mediation Nevada is now reporting some of the nation's highest



foreclosure figures... 4.5 times the national average. To mitigate this continuing disaster, the Nevada Assembly created a foreclosure mediation program that began on July 1, 2009. During its first year, 2,590 cases — more than 60 percent of completed mediations — resulted in agreements between borrower and lender. But some mediators who have participated in the Nevada program and some lawyers who represent borrowers in it say it has flaws that may give the banks an advantage over borrowers. (Gretchen Morgenson, *New York Times*, 9/19/2010)

Florida Court Strikes Down a Ban on Gay Adoptions A state appeals court has ruled that a 30-year-old Florida law prohibiting adoption by gay men and lesbians is unconstitutional. The state's governor said the law would not be enforced pending a decision by Florida's Department of Children and Families on whether to appeal. (John Schwartz, *New York Times*, 9/23/2010)

Saying No to 'I Do,' With the Economy in Mind The United States crossed an important marital threshold

in 2009, with the number of young adults who have never married surpassing, for the first time in more than a century, the number who were married. A long-term decline in marriage accelerated during the severe recession, according to new data from the Census Bureau, with more couples postponing marriage and often choosing to cohabit without tying the knot. Among the total population 18 and older, the share of men and women who were married fell from 57 percent in 2000 to 52 percent in 2009 — again, the lowest percentage since the government began collecting data more than 100 years ago. The share of adult women who were married fell below half, to 49.9 percent. (Erik Eckholm, *New York Times*, 9/29/2010)



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



**“No matter how cynical you become,
it’s never enough to keep up.”**

Lily Tomlin



PERRY V. SCHWARZENEGGER

Editor's Note: Below are excerpts from the decision by Federal District Court Judge Vaughn R. Walker that struck down California's Proposition 8, the voter-approved ban on same-sex marriage.

"Marriage in the United States has always been a civil matter. Civil authorities may permit religious leaders to solemnize marriages but not to determine who may enter or leave a civil marriage. Religious leaders may determine independently whether to recognize a civil marriage or divorce, but that recognition or lack thereof has no effect on the relationship under state law...

"The parties do not dispute that the right to marry is fundamental. The question presented here is whether plaintiffs seek to exercise the fundamental right to marry; or, because they are couples of the same sex, whether they seek recognition of a new right.

"Proposition 8 was premised on the belief that same-sex couples simply are not as good as opposite-sex couples. Whether that belief is based on moral disapproval of homosexuality, animus toward gays and lesbians or simply a belief that a relationship between a man and woman is inherently better than a relationship between two men or two women, this belief is not a proper basis on which to legislate. The Constitution cannot control private

biases, but neither can it tolerate them....

"California's obligation is to treat its citizens equally, not to 'mandate [its] own moral code. Moral disapproval, without any other asserted state interest,' has never been a rational basis for legislation....

"The evidence at trial regarding the campaign to pass Proposition 8 uncloaks the most likely explanation for its passage: a desire to advance the belief that opposite-sex couples are morally superior to same-sex couples....

"Moral disapproval alone is an improper basis on which to deny rights to gay men and lesbians....

"Proposition 8 fails to advance any rational basis in singling out gay men and lesbians for denial of a marriage license. Indeed, the evidence shows Proposition 8 does nothing more than enshrine in the California Constitution the notion that opposite-sex couples are superior to same-sex couples....

"Because California has no interest in discriminating against gay men and lesbians, and because Proposition 8 prevents California from fulfilling its constitutional obligation to provide marriages on an equal basis, the court concludes that Proposition 8 is unconstitutional....



MCFM NEWS

**THE MASSACHUSETTS COUNCIL ON FAMILY MEDIATION, INC.
PRESENTS ITS 9th ANNUAL
FAMILY MEDIATION INSTITUTE**

NOVEMBER 19, 2010
8:30 - 5:00 PM
Wellesley Community Center

Observe & Participate in role-plays with John A. Fiske & Diane Neumann

**MEET MARSHA KLINE PRUETT
AT HER KEYNOTE PRESENTATION**

Partnership Parenting: How Fathers and Mothers Parent
Differently & Making The Most of it For Your Children

ENJOY A SUMPTUOUS LUNCH
Featuring MCFM's 6th Annual Presentation of the
John A. Fiske Award for Excellence in Mediation to
JUDGE GAIL L. PERLMAN

Choose two of the following five afternoon workshops:

**SEPARATION OR DIVORCE
CAN HELP PAY FOR COLLEGE**

By Larry Dannenberg

THE CONSCIOUS DRAFTER

By Marion Lee Wasserman

**RECENT DEVELOPMENTS &
HOT TOPICS IN FAMILY LAW**

By Fern L. Frolin

**TAX RETURNS & PAY STUBS 101
(OR HOW I LEARNED TO LOVE THE IRS)**

By Susan Miller

Continued on next page



**DIVORCE MEDIATION & THE AFFAIR:
DEALING WITH THE UNHAPPY
ELEPHANT IN THE ROOM**

By Lynn K. Cooper & Kate Fanger

LAST YEAR SOLD OUT

REGISTER NOW!



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 Robbins 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.



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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.**



Honoré Daumier (1808 – 1879)

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

No. 7 April 24, 1845



— 1845, lith. par G. F. de la Haye et C.

— Alors deux chers confrères... vous avez tort de vous disputer hors de l'audience... les débats doivent être la **salle des pas perdus** pour les plaideurs... mais jamais en un cabinet de conseil... comme des parties.

Come, come, my dear colleagues... no, disputations out of court...this waiting-room is where clients waste their time... not where lawyers waste their breath...



ANNOUNCEMENTS

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

MCFM'S NEXT FREE PROFESSIONAL DEVELOPMENT PROGRAM

ATTACHMENT AND PARENTING PLANS: HOW DID WE GET TO WHERE WE ARE TODAY?

Presented by Robert Zibbell, Ph.D.

December 8, 2010
Weston Public Library
2-4 PM

Bob Zibbell is a licensed psychologist in Framingham, who has been doing GAL work since 1980 and parenting coordination work since 1995. He participated in the writing of the original parenting plan guidelines in 1991 and again in the AFCC 2004 revision, and was one of the mental health professionals who served as members of the committee of the Probate and Family Court that addressed parenting plan issues from 2008-10. He was directly involved in the creation of standards for Category F and indirectly for Category E GALs. He has presented in local and national (AFCC) conferences on child and family forensic issues in various venues to family law attorneys, mental health professionals (GALs), the judiciary, and family service officers. He is the author of several articles in peer-reviewed journals and of *Critical Cases in Massachusetts Family Law for E&F Guardians ad Litem: A mental health professional's perspective on how appellate law informs GAL investigations and evaluations* (2006-08) (jointly sponsored by MAGAL, Inc. and Massachusetts AFCC) and the co-author with Geri Fuhrmann, Psy.D. of an upcoming book, *Evaluations for Child Custody*, part of an Oxford University Press series on forensic psychology. He is one of the four founders of the Massachusetts Association of Guardians ad Litem, Inc.

SAVE THE DATES FOR MCFM'S NEXT TWO FREE PROFESSIONAL DEVELOPMENT PROGRAMS

February 9, 2011—Weston Public Library
April 13, 2011—Wellesley Free Library

2:00 - 4:00 PM

TOPICS & SPEAKERS ARE WORKS IN PROCESS

CHECK WWW.MCFM.ORG FOR UPDATES



THE MEDIATION AND TRAINING COLLABORATIVE ANNOUNCE

MEDIATION TRAINING HOLYOKE, MASSACHUSETTS

Oct 23, Oct 29, Nov 5 & Nov 13, 2010
9 a.m.– 5:30 p.m.

The Mediation & Training Collaborative (TMTc), in collaboration with the Holyoke Community College Kittredge Center for Business and Workforce Development, is offering its 30-hour, four-session intensive Mediation Training in Holyoke.

This interactive practice-based training is open to anyone wishing to increase ability to work with individuals in conflict, whether through formal mediation or in other professional settings. Individual attention and coached practice sessions provide opportunity for participants to integrate skills learned. Seventy-four page manual, refreshments, Social Work CECs, attorney CAFL CLEs and parking are included in the \$575 fee.

**For more information or brochure:
413-475-1505 or mediation@communityaction.us
or see www.mediationandtraining.org.**



DIVORCE MEDIATION TRAINING ASSOCIATES (DMTA) OFFERS A COMPREHENSIVE COURSE IN MEDIATION OCTOBER 27, 28, 29 AND NOVEMBER 5, 6, 2010 Wellesley College Club, Wellesley, MA

Divorce Mediation Training is an intensive, 5-day training program that equips you with the skills of a divorce mediator. We have been teaching mediation since 1988 and are proud that several Massachusetts Probate Court judges have completed our training program. With over 30 years of divorce mediation experience, we are the leaders in mediation training in the country. The course is approved by the National Association of Conflict Resolution (ACR) and offers 40 hours of training (exceeding the Massachusetts Mediator Confidentiality Statute. Course materials include a DMTA training video, resource materials and Certificate of Completion.

Class size is limited

For more information contact either:

John Fiske: 617-354-7133

Diane Neumann: 617-926-9100

Or visit our website: www.dmtatraining.com



**PARENTING SOLUTIONS PRESENTS ...
FALL AND WINTER, 2010 - 2011 PROGRAMS
FOR PARENTS**

DISCIPLINE THAT WORKS

with Sylvia Sirignano, Ph.D.

Wednesday Evenings 7:30 -9 pm

Fee: \$30 per session / \$50 for any 2 sessions /
\$90 for 4 sessions (2nd parent half price)

Oct 27 Knowing When and How To Say "NO!"
Nov 10 Who's In Control?

PARENTING YOUR CHALLENGING CHILD

with Sylvia Sirignano, Ph.D.

Wednesday Evenings 7:30 -9 pm

Fee: \$40 per session / \$120 for all 4 sessions; 2nd parent is free
December 8 | January 26 | March 23

A special series of programs for parents of those hard-to-raise children. Strategies and tips will be discussed, as well as specific issues and concerns. Come to one, or come to all four.

PARENTING TOGETHER

with Sylvia Sirignano, Ph.D. and Glenn Smith, LICSW

Wednesday evenings 7:30 - 9 pm

Fee: \$30 per person; \$45 per couple

Jan 12/ Parenting As A Team
Feb 9 / After Divorce: When Co-Parenting Seems Impossible
Mar 30 / Is It Worth Trying to Save This Marriage?
What's Best for the Kids?

FOR PARENTS OF TEENS

with Glenn Smith, LICSW

Wednesday Evenings 7:30 - 9 pm

Fee: \$30 per session (2nd parent half price)

Dec 1/ Parenting Teens: Is It Them or Just Me?

PARENTING IN STEPFAMILIES

with Glenn Smith, LICSW

Wednesday Evenings 7:30 - 9 pm

Fee: \$30 per session (\$45 for parenting couples)

Nov 3 Step-Parenting: The Good, the Bad & the Ugly
Dec 29 Avoiding the Trouble Spots: Essential Tips
For Couples Parenting in Stepfamilies



DIVORCE THAT WORKS FOR CHILDREN
 Co-led by **Sylvia Sirignano, Ph.D. and Glenn Smith, LICSW**
 Thursday and Friday Mornings 9 -11:30 am
 Fee: \$80

December 16 & 17 / October 21 & 22 / November 18 & 19
 January 20 & 21 / February 17 & 18

This is a two-part five hour court-approved parent education program required for divorcing parents, but all parents just beginning to think about divorce, or already divorced are also welcome. The workshop gives information about the effects of divorce on children and teaches strategies to help children deal successfully with divorce. Its small group, informal format allows the instructors to tailor the program to the interests of the participants.

DIVORCE THAT WORKS FOR CHILDREN PLUS!

Tuesday Evenings 7 -9 pm

Fee: \$50 per session | \$100 for 3 sessions

Oct 26 / Nov 23 / Dec 21 / Jan 25 / Feb 22 / Mar 22

For parents who have already taken the court-mandated divorcing parent education course, this monthly program gives divorcing parents an opportunity to address issues of specific concern.

Parenting Solutions also offers divorce mediation for parents, individual parent consultations, community presentations and groups for new parents, parents of young children, and parents of teens. Our presentations provide practical parenting strategies informed by the latest research.

For further information, or to register for a workshop, or to schedule an appointment, call 508-366-7557 OR visit us online at www.parentingsolutionsprograms.com

Join our email list to receive future flyers, parenting tips, and more!



**HOW TO USE MEDIATION TO
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A two-day marital mediation training

Presented by John A. Fiske, Esq. & Laurie Israel, Esq.

Wellesley College Club

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ANNOUNCES

MEDIATION TRAINING

When:

Friday, November 12, 9:30 a.m.–5 p.m.
Saturday, November 13, 9:30 a.m.–5 p.m.
Monday, November 15, 4:30 p.m.–7:30 p.m.
Thursday, November 18, 9:30 a.m.–5 p.m.
Friday, November 19, 9:30 a.m.–5 p.m.

Where:

CDSC, 60 Gore Street, East Cambridge, Massachusetts
(near Lechmere T, Galleria, courthouses).

Cost:

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60 Gore Street
Cambridge, MA 02141

Established in 1979, the CDSC is a private, not-for-profit mediation service dedicated to providing an alternative and affordable forum for resolving conflict. CDSC also provides training programs in mediation and conflict management to individuals and organizations. For more information please contact us at (617) 876-5376, or by email: cdscinfo@communitydispute.org, or at our web site: www.communitydispute.org.



FRAMINGHAM COURT MEDIATION SERVICES ANNOUNCES

2011 TRAINING FOR VOLUNTEER MEDIATORS

Framingham Court Mediation Services is offering a 36-hour basic mediation course for people interested in becoming volunteer mediators in the District Courts of Framingham, Natick, Concord and Marlborough.

To be eligible for this training, volunteers need to commit to serving in court during the day several hours a month for at least one year. An interview and references are required. Course fee is \$100 to cover the cost of materials. Successful completion of the course is a prerequisite to assignment in court.

January 2011 Training Dates for the Volunteer Mediator Program:

Monday	1/10	8:30-4:30
Wednesday	1/12	8:30-12:30
Friday	1/14	1-5
Wednesday	1/19	8:30-12:30
Friday	1/21	1-5
Monday	1/24	8:30-4:30
Wednesday	1/26	8:30-12:30

(Snow Dates: Monday, 1/31 and Wed, Feb 2, 2011)

**If interested, call Jan at 508-872-9495 or
email info@framinghammediation.org.**



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@socialaw.com

NOW'S THE TIME TO SHARE YOUR STORY!



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 **Rebecca J. Gagné at rebecca@gagneatlaw.com**

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

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 **S. Tracy Fischer at tracy@tracyfischermediation.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.

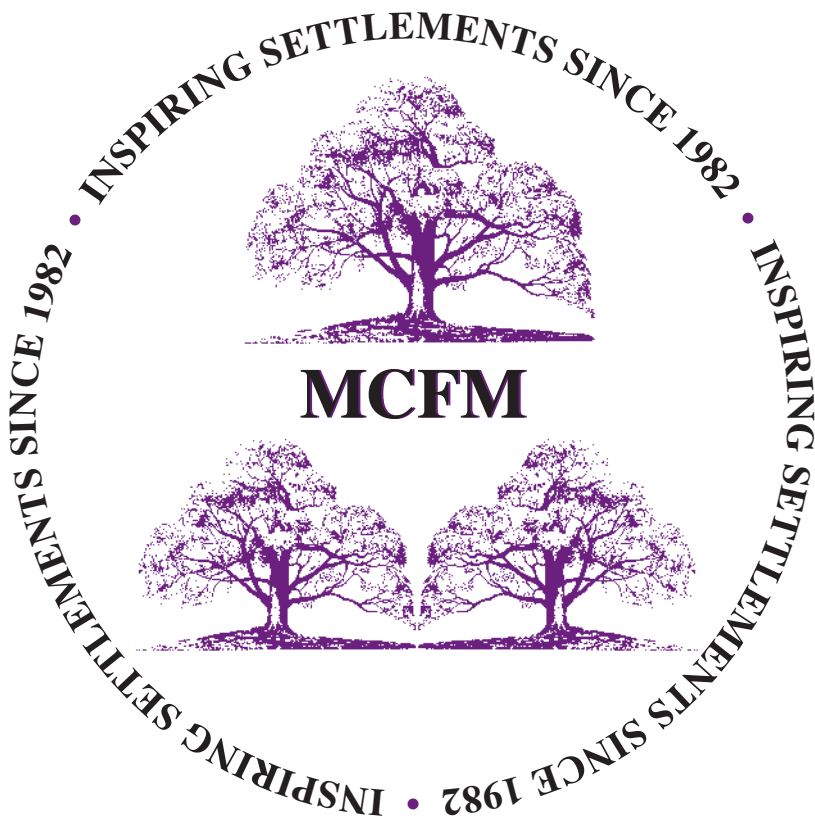
Please submit all contributions for the FMQ to the editor, either by email or computer disk. Submissions may be edited for clarity and length, and must scrupulously safeguard client confidentiality. The following deadlines for all submissions will be observed:

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.

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