MCFM

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

PRESIDENT'S PAGE

The leaves are falling and the summer is over, but I hear from some in the know that interest in entering our field is (like spring growth) increasing!

Part of our mission as an organization is to support the growth of our profession and our members—both new and seasoned (that sounded better than "old"). My message to our community this month is that MCFM is a precious resource for the development and maintenance of your mediation skills no matter what your level of experience and profession of origin.

Our dues are (comparatively) very low. We offer the option of joining our Referral list, which is a resource for both the public and professional community searching for family mediators. Go to (and use) our new website; MCFM.org!

We are the only organization in our state to offer a certification process, which is a way of providing public recognition and private education to our members whose experience and skills are endorsed by a committee of our most seasoned mediators (who are all certified themselves). Our website will give you all the information you need to apply, and our Certification committee will provide any support you let them know you need and answer any questions you have about the process.

Our quarterly Members' meetings are designed to further the skills of both new and seasoned mediators, of either the attorney or non-attorney persuasion. The feedback from attendees has been enthusiastically positive!

Our annual Institute (December 9, 2011 is coming up fast) is designed to educate, inspire, and bind our community together — and as part of that effort, we honor a mediator in our community who has made outstanding contributions to our field by bestowing the 7th annual John Fiske Award for excellence in mediation. The post-Institute evaluations of this day-long event have been overwhelmingly positive, and we expect that to continue.

MCFM peer groups are a wonderful source of information, peer support, professional development—and, once more, community building. Information about peer groups inviting new members can be found towards the back of this publication, and if there isn't one available in your area, don't be afraid to start (and we'll help you to publicize) one of your own!

And last (but definitely not least), after a year of MCFM membership, consider joining our Board of Directors. You'll be a part of a community within our community, working to promote our field with a bunch of like-minded folks who are also nice human beings.

Best wishes, and I'm looking forward to seeing all of you as much as possible this year.

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HONORING ONE OF OUR OWN

By Kathleen Townsend

Now Retired Judge Gail Perlman served on the board of MCFM for many years, including a term as President. She was recently honored at a portrait unveiling and reception at the Garden House in Look Park in Northampton. She had served as First Justice of the Hampshire Division of the Probate & Family Court since 1998 and stepped down when she reached the mandatory retirement age on May 26th.

Judge Perlman's dedication to improving access to justice and improving the court's delivery of service to families in distress brought many innovative programs to the court. During her watch, she was involved in the development of the first parent education program for divorcing parents and a more recent one for never married parents, conciliation and onsite mediation services for families at no cost to them, and a standing order that requires all cases involving children to be child-focused.

Those who know Judge Perlman also have had the pleasure of observing her whimsical and lighter side. She brought community art and artists into the courthouse, plants into the courtroom, and a constant supply of M&Ms to meetings. She deflects many of her well-deserved compliments to her court staff and co-workers. The team approach that she was able to establish in the Hampshire court created a satisfying workplace for staff, a refuge for many seeking justice, and a resource for those who were looking for some guidance and self-help.

As is tradition in many courts, the Hampshire Bar Association raised funds for Judge Perlman's portrait to be painted by a local artist. The artist Nancy Hill captured the serenity, wisdom, and sense of purpose that is Gail Perlman – wife, mother, grandmother, sister, judge, lawyer, social worker, mediator, and MCFM supporter. Undoubtedly, she will continue to enjoy her own family in her retirement as she continues to be involved in projects for all families.

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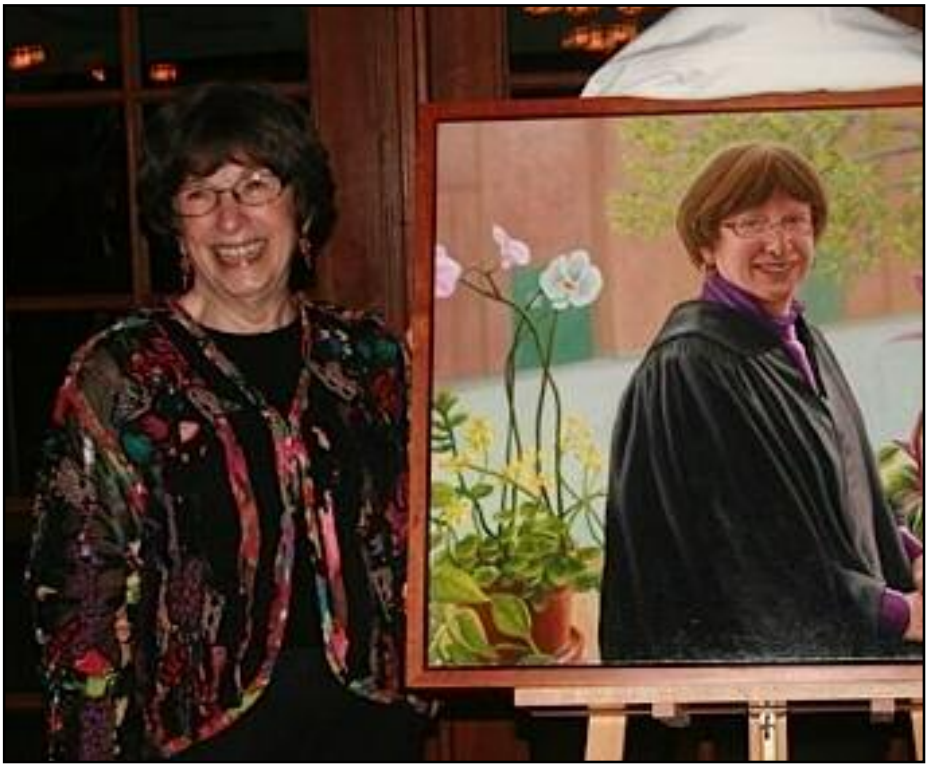
HON. GAIL. L. PERLMAN, (RET.)



Photographer: Hon Geoffrey A. Wilson **Artist: Nancy J. Hill**

Quotes from Gail's remarks at her retirement party on September 7, 2011

I no longer feel any pressure to show up at my funeral.

You know in judge school we're trained to hold our tongues. "Listen," they say, "Your job is to listen." And how hard is that? I mean, peel back the black bathrobe, and we're lawyers under there."

So, the bench, contrary to all the hype, is a kind of torture — slow, grinding torture — that leaves us with an urgent, pent up need to SPEAK. To tell all. And the retirement event is the last opportunity for revenge. I was born at 5:36 a.m....

No, seriously, this retirement thing — for those of my colleagues feeling envious — is very cool. You're gonna love having political opinions again. And you're REALLY gonna love the gifts. You can accept all of them. And they're all gonna be worth more than $50.00.

STOP SHOVELING SMOKE! GIVE USERS A CLASSIC DEFINITION OF MEDIATION

By Michael Leathes

The first woman to win the Pulitzer Prize for Literature was Edith Wharton in 1921, for her novel An Age of Innocence. Addressing what is, and is not, classic, Wharton wrote: *A classic is classic not because it conforms to certain structural rules, or fits certain definitions… It is classic because of a certain eternal and irrepressible freshness.*

Mediation needs a *classic definition* of itself. One does not exist. It also needs to be universal. In a field widely populated by lawyers, professionals who the great jurist Oliver Wendell Holmes Jr. noted *spend a great deal of time shoveling smoke*, we have literally hundreds of different published definitions of mediation. It's brain-curdling.

Edith Wharton's delicate yet powerful quality of *eternal and irrepressible freshness* is notably absent. No definition inspires those who know little or nothing about mediation. Most convey the sense that mediation is about dispute resolution. None is really short. A *classic* definition needs to be an assault of thought on the unthinking.

Does a classic definition matter? Yes! More than that, it is vital to the growth of the field and its positive perception by those that consume its services. Everyone knows what dentistry is, or architecture, accountancy, law and medicine. Popular familiarity renders these professions above the need of definition. Not so with mediation, at best an emerging (but not yet emerged) profession, one most people have yet to encounter.

Every mediation institution has its own definition. Most are 20 to 60 words strung in segmented, sometimes complex, sentences. Many — though not all — service providers tend to see the world more through their own private lenses than from the vantage point of their customers. They wind up describing what they do, rather than properly defining mediation itself. Consequently, they unwittingly limit what mediation is, or could be, by virtue of the narrow zone within which they operate.

For example, most definitions suggest mediation is a dispute resolution process, which implies that using a mediator to help negotiate, say, a pre-nuptial agreement or any other kind of contract, is somehow not "mediation". The word "trust" is notably absent — despite educators falling over backwards emphasizing its importance to mediation. There is no consistency. It all underscores the fragmentation of the mediation field that holds back its progression into an independent global profession.

As this balkanised field tiptoes toward a set of international professional norms, voluntary standards and a consistent code of ethics, surely mediation's leaders can

at least agree a *classic, universal definition of mediation*, for the benefit of the users out there. That straightforward task cannot elude the field's extraordinary talents. Can it?

Richard Buckminster Fuller is remembered for two things: patenting the geodesic dome, and his advice to the world at large — *Dare to be naïve*. Let's accept his challenge: to be naïve enough to offer a seven-word definition of mediation based on four key words — Consensus, Facilitation, Trust and Neutrality — aimed at achieving a classic definition of mediation that can work for everyone, everywhere — and especially for the demand side — the users, the parties and their advisers. If widely adopted, if everyone started using it, the world's leading dictionaries could be informed. If this happened, the impression created in the minds of potential users of mediation services would be electric. Here, for the first time, and not soon enough, would be something the entire mediation field could buy into, set aside market-driven one-upmanship and present a single professional identity to the world, something that can really inspire users. As Alexander Pope put it: *There is a certain majesty in simplicity which is far above the quaintness of wit.*

A possible *classic* definition is: **Consensus facilitated by a trusted neutral person.**

Consensus (Latin *sentio*: "feel") is achieved through a communication that survives the personalities, behavior, positions, assumptions, obfuscation, indecisions, tactics, half-truths, lies, misunderstandings, blame, history, exaggerations, counter-claims, threats, hidden agendas, confusion between wants and needs, distractions, cultural differences and other interferences that often characterize discussions, negotiations and dialog. The involvement of a suitable, competent neutral can help the parties "feel" their way through this quagmire to a higher quality consensus than is likely in a conventional negotiation, whether in a dispute context or not. The dynamic of a neutral presence can influence the communication in ways that transcend the capacity of the parties, individually or jointly, to achieve alone — namely, to render it more interest-based, focus on exploring options for mutual gain and enhance the parties' roles as consensus-seekers.

Facilitation (Latin *facilis*: "make easier") is the act of providing assistance to ease the parties' quest to achieve their goal. Facilitation can take passive and active forms, and can be facilitative, evaluative, transformative and normative. Evaluative mediators facilitate by expressing their own opinions, if that's what the parties want them to do. Mediation can be, but need not be, purely facilitative. The mediator's opinions can break deadlocks and ease the path forward. We should not trip over our own pre-dispositions, habits, cultures and philosophical approaches when defining mediation.

Trust (Old Norse *traustr*: "strong") requires acceptance by the parties that the

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neutral person has the competency to facilitate the discussion effectively, including skills to manage process, communicate, maintain confidentiality, question, build relationships, listen, analyze, identify issues and generate options for mutual gain. Trust also assumes that, during mediation, the neutral is felt by all parties to be the right person to facilitate the discussion in terms of competency, experience, expertise, standing and personality.

Neutrality (Latin *neuter*: "neither") involves those chosen to mediate being impartial and not having conflicts of interests that are not known to and accepted by the parties.

Both **Trust and Neutrality** involve respect, a heady mixture of how mediators are perceived, their standing, competency, knowledge, wisdom, history and many other subtle and often unexpressed characteristics. Mediators have to earn trust as the mediation progresses. Impartiality, and absence of conflicts of interests, are often claimed to be vital characteristics of a mediator, but I have seen occasions where parties used a mediator who was paid and even employed by one of them — with the full support, of course, of the other party. There are situations where using a theoretically partial mediator, one with an apparent conflict of interest, can be the golden key to a successful mediation, provided the mediator is trusted by everyone to act impartially. There are many cases in the political arena where this has occurred. The over-arching consideration is – can the mediator be trusted and respected all round, and act neutrally?

In his April 2009 thought provoker in Mediate.com, *The End of Mediation: An Unhurried Ramble On Why The Field Will Fail And Mediators Will Thrive Over The Next Two Decades!* Peter Adler helpfully described mediation as a meme. Interesting idea, and no doubt mediation is a meme, but that still does not say exactly what mediation is to the average user. All the more reason, in fact, for a short, classic, universal definition. Users really need this. If the service side keeps shoveling smoke around the issue, favouring one definition or another, mediation's agonizing lack of clear identity in the eyes of its customers will perpetuate. What a waste of opportunity that would be.

Someone has to be naïve enough; dare to put it forward and expect constructive comment from the world's mediation stakeholders. I humbly submit that a classic, universal definition is: **Consensus facilitated by a trusted neutral person**. Please don't stay silent — please take a moment to let me know how you feel about it, supportive or otherwise. I aim to publish a follow up consolidating the thoughts that are expressed.

And when we have arrived at a classic, universal definition of mediation, we need a collective noun for mediators. It's more than a bit of fun; it might also encourage less fragmentation and more cross-institutional gatherings of mediators to share experiences, and a

collegial drive for higher practice standards and more transparent professionalism. So, as a possible collective noun, how about a **branle** of mediators? True professionals are ambassadors for their calling. In French, un branle is a swing; se metre en branle is to swing forces into motion – as ambassadors should do. Edith Wharton lived in France, spoke fluent French, and her final resting place is the American Cemetery in Versailles. Were she alive today, might she rejoice in its **eternal and irrepressible freshness**?

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"Marriage is the triumph of imagination over intelligence. Second marriage is the triumph of hope over experience."

Oscar Wilde

PRENUPS – DON'T LAWYER UP, MEDIATE!

By Laurie Israel

Prenups aren't necessarily the best thing since sliced bread — they can pose many problems for the future spouses. On the other hand, there are circumstances where prenuptial agreements address bona fide issues that could derail a marriage. For instance, it may be a second marriage for one or both of the spouses, with children from a first marriage. In these cases, a carefully drafted prenuptial agreement can reduce financial tensions in the marriage and make the marriage better. Or, a family with money may insist that their child have a prenup. The future spouses may comply in order to create family peace.

But prenups can overdo it too. They often go far beyond what is necessary to accomplish narrow goals. And, because money and finances are one of the central aspects of marriage, overdrawn prenups can cripple a marriage before it even begins. The old saying "Money is love," has much truth to it. Although in our culture we marry for love, one of the expressions of love is providing financial security for the beloved. Therefore, prenups tend to signify a withdrawal of love right at the outset.

What happens when you "lawyer up" in a prenup? The other big problem of premarital agreements is the process in which it is usually done. At a very tender and loving time in their relationship, the parties "lawyer up." They are now transformed into adversaries.

Imagine this scenario — it happens all the time. The future spouses are in love. The wedding date has been set. Arrangements have been made, and the invitations may have been sent. The couple briefly discussed a prenup earlier but hadn't really talked about the terms.

Then one of the parties (generally the more-moneyed spouse) hires a lawyer. That lawyer draws up the first draft of the prenup. The initiating spouse may not have discussed the issues he wanted to address in the prenup and what terms he wanted with his own lawyer. He just asked for a "prenup" and got one.

Here comes the "scorched-earth" prenup. Generally the more-moneyed spouse's attorney sends a typical "off-the-shelf" prenup. It says that all money earned during the marriage is the husband's to control. All property accumulated before the marriage and proceeds and gains on it are also his to control. And the husband can decide whether or not to leave his new wife anything if he dies while the marriage is ongoing, even if they've been married 30 years. And she has no legal rights remaining to contest any of these terms.

And, by the way, the prenup says that there is no alimony, ever. Even if she leaves the job market and becomes a stay-at-home spouse with children and the marriage is very long, there is no alimony. I call this the "scorched-earth" version.

This becomes the first salvo in the prenup war.

The less-moneyed spouse is asked to get a lawyer, and her lawyer receives the draft. The lawyer then has to break the bad news to his client. She is devastated that her fiancé would be so mean. Their relationship may never heal from this initial blow.

I see this type of prenup very frequently when I am asked to review prenups on behalf of a client – even in the case of first marriages for both parties.

Hurt feelings. As soon as the less-moneyed spouse understands what's in the prenup, her feelings are understandably hurt. Very badly. She wonders who was behind this draft, her fiancé or her fiancé's attorney? Why would her future husband want to withhold property from her? Why should he control everything? Why can't they have a joint venture in at least part of their marriage? Why wouldn't he want to leave her his assets if he dies at a time the marriage is ongoing? Why not, indeed?

She wonders what happened to the love they had. She wonders why her fiancé wants to put her in a bad position. She wonders why would he want to be unfair to her.

The future husband feels like a cad. And yet, he trusts his lawyer. The lawyer might be his business lawyer and has always given him good advice. Changing the prenup becomes a difficult, uphill battle. His attorney resists change and says, "This is just a business deal," or "This will just go into a drawer and be pulled out if it's needed later," or "This is what a prenup is."

Negotiations. What proceeds is a series of fairly ugly negotiations through the two attorneys. The attorneys speak to each other and with their respective clients. The future spouses are very uncomfortable because they are now adversaries in a legal process. What started out as two people loving each other and wanting to marry has morphed into something else. The less-moneyed spouse feels she cannot share what is happening to her family, because their feelings towards her fiancé will change. She is dealing with it, and feels totally isolated. There are always tears shed.

Exhaustion sets in. The parties become exhausted with the struggle. They just want to get it over with. The wedding is approaching. They know the prenuptial agreement is flawed, but they sign it. It will be the economic guideline for their marriage.

However, the anger and hurt generated by this process will always be remembered, and can weaken the marriage at the outset, even if the prenup gradually changes and becomes more balanced and narrowly drawn. The prenup may even make divorce more likely. Perhaps much more likely depending on what the prenup says and how bad the process of negotiation was.

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A Better Alternative – The Mediated Prenup. A significant part of my practice has been as a mediator between two fiancés who wish to put a prenup into place for good reasons. My mediation clients have found the mediation process to be a much better way for them to come to terms when a prenup is needed.

In mediation, the couple formulates the terms of the prenup face-to-face, with the assistance of the mediator. Unlike "lawyering up," they are modeling communication, collaboration, and mutual understanding and respect in coming to the terms of the prenup. This action at the outset of their marriage is an achievement that reflects the connecting process of a good marriage.

Here are some of the steps of a mediated prenup:

"My mediation clients have found the mediation process to be a much better way for them to come to terms when a prenup is needed."

Choose a mediator. I think it's best to choose a divorce mediator to help a couple mediate a prenup. Another reason for choosing a divorce mediator is that they have great experience in seeing what makes marriage fail, and conversely, what makes them *not* fail. Since a good part of the prenup deals with what happens at a divorce, a divorce mediator is probably in the best position to help the couple imagine fair and workable provisions in case the marriage fails, especially if it fails far into the future.

And, because the result will be a complex legal agreement (generally drafted by the mediator), the mediator should be lawyer. Make sure the mediator/lawyer is experienced in drafting prenuptial agreements and in divorce law.

Discuss your concerns and interests in mediation sessions. The prenup mediator will guide your discussion. The mediator can help you envision what the prenup will say about what happens at death or divorce. The mediator will give you explicit information as to what the law in your jurisdiction provides in the case of divorce or death, so that you will know exactly how you would be changing that law in the prenup.

Usually an "off-the-shelf" prenup is like cutting butter with a meat-cleaver. Because the prenup mediator is experienced in drafting prenups, he or she can help by suggesting creative provisions that you may not even be aware of.

For instance, you can create an area of joint economic venture in the marriage. This domain can increase with the length of the marriage. Or there can be a gradual sharing of separate assets based on the length of the marriage. In short, the mediator can suggest the most efficient and humane way of achieving each of your mutual (and separate) goals in the most effective and narrow way possible, leaving your marriage intact.

Mediation levels the playing field. A mediator is a neutral party who works to hear each side and level the playing field. Each of the future spouses will be able to express his/her thoughts about what the prenup should do. A party can also, in the mediation session, express the opinion that no prenup is needed. The mediator can help the couple reconcile differences in a fair way that is satisfactory to each. Mediation does not feel like bullying. The parties are in control of the process.

In order for it not to hurt the marriage, a prenup must not be coercive. This is also a requirement for a prenup to be enforceable. Each party must freely and voluntarily agree to the terms. If the agreement is not coercive, the parties will likely stand behind it if there is an initiating event that causes it to come into play. There is no better way to come to a true meeting of the minds than to do it face-to-face in mediation sessions with an experienced prenup mediator.

Reviewing attorneys. In most cases, the mediation clients have reviewing attorneys look at the agreement. The parties' attorneys can provide input during the process and can be a helpful part of the mediation process. They can make good suggestions as to how to make the prenup better and more reflective of the future spouses' goals.

The mediator can refer the couple to "mediation friendly" reviewing attorneys. These attorneys are sensitive to the dangers of prenups, are their client's advocate, but also understand and support the terms their client may wish to make in the agreement. These attorneys will not substitute their own idea of "what a prenuptial agreement should be" and will respect their client's decisions. In this area, sometimes advocacy is not served by having a client get the "best financial deal possible," but by addressing and meeting real concerns and client goals as least restrictively as possible.

How it feels. My prenup mediation clients report that they are very happy with the mediation process. They still feel very good about each other as they embark on their wedding day, and support the terms of the prenup. This has the effect of making the prenup more enforceable if it ever needs to be put into effect.

The more moneyed spouse doesn't feel like a bully, because he wasn't one. The other spouse doesn't feel bullied. They both feel that the final agreement reflects both of their needs and interests.

They have performed the first difficult act of their marriage and have done it well. They can walk down the aisle with their heads held proudly. The mediated prenup has not hurt their chances of having a strong, lifetime marriage.

Laurie Israel is a divorce lawyer, mediator, and collaborative attorney in Brookline, Massachusetts. She is one of the leaders in the growing field of marital mediation. To read more of Laurie's articles, visit www.ivkdlaw.com and www.huffingtonpost.com/laurie-israel.

MEDIATION Q&A:
An Email Exchange on Mediator Impartiality

Editor's Note: *After receiving the questions below via email I replied. Afterwards I wondered what other mediators would say... so I emailed the questions first to present MCFM Directors, and then to past Directors. Below are their replies in the order in which they were received.*

QUESTIONS

My wife and I recently attended our first session. My question is should the mediator talk socially with either party during mediation? Statements such as "Where do I know you from?" "I really envy you for wanting to board horses, that's something I thought I might like to do." I'm questioning myself whether I feel the mediator is actually impartial.

ANSWERS

Les Wallerstein There seem to be three separate (albeit related) questions you're asking, and if you asked three mediators you'd likely get three different answers. These are mine.

1. "Should the mediator talk socially with either party during mediation?" Basically no. Mediation should be focused on the work at hand. However, if your "first session" were an initial consultation where you, your wife and the mediator were in the process of introducing yourselves, my basic "no" would allow for "small talk" exceptions.

2. "Where do I know you from?" is a valid question. If the mediator believes s/he has had a prior relationship with a prospective client it is necessary to explore that possibility… first to determine whether a prior relationship existed, and if so… to determine whether that relationship has bearing on a mediator's impartiality.

3. "I really envy you for wanting to board horses, that's something I thought I might like to do." I find it difficult to imagine a context in which this remark from a mediator falls within reasonable bounds… and without knowing more it seems inappropriate.

Rebecca Gagné My first thought is that the mediator appears to be aligning herself/himself with the wife. This kind of communication, especially, at the first session, would appear to be inappropriate. I believe it would be inappropriate at any session; but, the first session usually sets the tone. This mediator might find that he/she is losing business from this type of banter. Maybe we should have a training session sometimes that encompasses this type of issue, along with a other such type of faux pas.

Bill Leonard Is it "rappor" or "rapport" that one attempts to establish? Whichever, it seems that this mediator was trying to establish it, and that one party felt left out of that aspect of the process. I'd want to know more before I opined whether or not this report evidences any failure of impartiality.

Diane Spears The long answer to your question: My doctor always has a personal story to tell me: about her fall off a curb, problems with a teen-age daughter, an ailing father. I have had enough and am thinking of changing doctors. When I receive services from a professional all the talk should be about me - not the professional. Of course, there are times when the professional tells a personal story or makes a comment that is useful and/or that has a connection to my issue. These are fine. The mediator in Les' scenario obviously appeared biased to the husband and, therefore, the comments were inappropriate. I think this is a great topic for a program that would encompass other types of inappropriate comments/behavior by the mediator. We always, always, always have to be keenly aware of the appearance of impartiality. It is easy to cross the line.

Marion Wasserman Well put, Diane! Your answer covers all the bases.

John Fiske A program on mediator bias, both actual or perceived by the clients, is an excellent idea. Here the mediator did something which made a client uncomfortable. The fine line between social grace, trying to put clients at ease, etc and going too far from the appointed job at hand is worth exploring since the subject is so important. The message from the couple who spoke to 100 mediators at the last Gathering of Family Mediators stressed the need to remain impartial and to appear impartial at all times. Now, let's see, when do we have time for a program on mediator bias....

Kate Fanger I'm also highly in favor of doing a program on this topic, as it's a subject that comes up often in my professional conversations and I think is something all mediators need to be attentive to. I think the issue of impartiality is all about the clients' experience and perception, rather than the mediator's intention, and agree with others that one must be ever-vigilant about if when and how to introduce personal information or social conversation. I regularly do both in my mediations, but NEVER in the first session (beyond my own experience of the weather, if we're having notable weather), and also NEVER during a tense negotiation.

Kathleen Townsend My experience has taught me that sometimes clients are interested in me personally, but it seems to be more from either a polite inquiry or a need on their part to establish their individual connection with me and that's how he or she is trying to do it. I think managing that sort of interaction is less problematic than when you are tempted to offer comments on your own personal life preferences, etc. I have noticed in the past that when I did that, that folks got antsy, bored, squirm, listen politely but not really interested, and anxious to get back to them, even when it's short and sweet.

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However, if I offer the same vignette or info starting with "Well, here's what some folks do in that situation...." the response is much more attentive. I try to be there 100% for them, and they are so needy when they come through. My comments are more about helping them stay afloat than sharing my good fortune (or bad fortune) with them. They don't come in with much of a capacity to be concerned about other people's lives when their own are going down the toilet. In a legal practice, there is a lot of down time that you may have with clients - waiting for court, driving to depositions - and just plain old giving advice and counsel time to all aspects of the client's life. Giving examples from your own life, or talking one-on-one about things you're doing or have done, may have more of a place.

The mediation process is more akin to the therapeutic process where you are facilitating problem solving for this family, and in my opinion the mediator's personal life is extraneous to the process. Having said all that, it always goes back to the style that you personally develop and find to be effective for you and your clients. I could imagine a style that has something more personal in it. For me, I historically have not mixed my business and personal lives, even when I was an active practicing attorney.

Lynne Halem I do not think the interactions that you describe are appropriate.

Oran Kaufman I think it is a matter of personal preference and comfort level. There are occasions when I talk "socially" with my clients. I may tell them about my kids if they happen to have kids at the same school. We may have people we know in common. (I live in a pretty small town and that is not unusual.) I think one has to be careful and be very limited in how much of that you do but I think it is humanizing and often helps break the ice a bit to talk about things unrelated to divorce. Obviously you need to be discrete and careful to not say something that may be interpreted as aligning with one party. The statement below may ride the line but is not patently improper.

Mary Johnston Although it's quite tempting to talk "socially" with clients, I think it's important to keep an appropriate professional distance – especially when serving as a mediator. Making a "social" contact with one member of a couple can easily be interpreted by the other party as being non-neutral. As a mediator, one should be able to be considerate and welcoming to clients without being "social" or establishing a connection other than the appropriate mediator relationship. I think your question is an important reminder to us because it is tempting to slide into a social conversation, especially when one shares interests or other connections with a client.

Gail Perlman We can't tell from the comments whether or not the mediator's impartial – that is, whether or not she is so identified with the wife about the horses or in an actual conflict situation with the wife from a prior relationship – that she is unable to mediate even-handedly. But we DO know that she's already caused the husband to question his confidence in her.

This is the kind of careless comment that we don't get a lot of training on. Sometimes they pop out because the mediator is nervous. Sometimes it's a well-meaning effort to make a connection with a participant. But sometimes it's that the mediator is not sensitive enough to the idea that EVERY word and EVERY piece of body language is "read" by the participants and can affect the mediation. A mediator needs to have a little automatic censor in his/her head that stops the mouth from saying some of the things the mind is thinking.

This mediator could have said, when the parties entered the mediation room: "You know, you look really familiar. Have we met before?" And then she could have turned to the husband and explained that if she had already met the wife, they'd need to discuss the issue to be sure he was (or wasn't) comfortable going on with the mediation. Using the situation that way would increase, not decrease, the husband's confidence in the mediator and both participants' understanding of the process.

The horse comment is harder. I don't know a good way to make that one neutral. Especially if horses or a horse farm are going to be assets to be discussed in the divorce. Certainly the "envy" part should have been excluded. So should the part about the mediator's own future in the horse boarding business. The comment shouldn't have been made in the abstract without a parallel expression of interest in something the husband's talking about. And I question whether any such comment should have been made at all in the first session.

"Freedom is not worth having if it does not include the freedom to make mistakes."

Mahatma Gandhi

THREE IMPLICATIONS OF THE ALIMONY REFORM ACT OF 2011

By John A. Fiske

In the beginning there was no guidance. Then, inspired by Probate Judge Haskell Freedman, Judge Edward Ginsburg wrote an article in the Boston Bar Journal in October 1978 called "Predictability and Consistency in Alimony and Child Support Orders," suggesting simple formulas to define unallocated alimony and child support amounts.

Since there was usually not enough money to go around, he resolved the struggle between the irresistible force of the incentive of the breadwinner and the immovable object of the recipient's standard of living in favor of the breadwinner incentive, since there would be no money at all without that earning power.

He explained, "As a lawyer appearing in the Probate Court, I always thought how helpful it would be to have some guidelines or benchmarks which would apply in setting alimony and child support orders. One of the more difficult problems a lawyer faces is the lack of predictability in what a given judge will do on different days with similar circumstances."

As a divorce mediator starting in the fall of 1979, I was helped by that article to settle hundreds of cases. To quote one husband, "I'm perfectly willing to pay my wife 34% of my income as long as I know I'm not the only one in Middlesex County doing it."

We have come a long way since then, beginning with Child Support Guidelines that now predict almost instantly what a court will do based on five numbers: the incomes of the two parties, day care costs, health insurance costs and the number of children. We also know when child support typically ends. But alimony has remained mysterious, unpredictable and hotly contested, with wild stories about unending obligations after short marriages as if they were the norm and formulaic rules of thumb that some judges and lawyers follow, and some do not.

A seminal article in the Yale Law Journal in April 1979 addressed this dilemma of uncertainty and inconsistency. In "Bargaining in the Shadow of the Law: The Case of Divorce," Robert Mnookin and Lewis Kornhauser defined a different need for clarity in the law:

"We see the primary function of contemporary divorce law not as imposing order from above, but rather as providing a framework within which divorcing couples can themselves determine their post-dissolution rights and responsibilities."

They called it a form of "private ordering," a framework which shapes the entire mediation or negotiation process of a divorce. As court decisions become more predictable, settlements will thrive. One of the factors they define which influences this bargaining process is "the

degree of uncertainty concerning the legal outcome if the parties go to court." In other words, if we know what the judge is likely to do, there is no need to go to court to find out.

But what do we do if the sky is overcast, and the law casts no shadow to provide any degree of certainty? Here in Massachusetts, we had a lot of spouses dissatisfied by our alimony inconsistencies and a groundswell of support for change.

On Sept. 26, 2011, Gov. Deval L. Patrick signed into law the Alimony Reform Act of 2011; it had been unanimously passed this summer by the House and Senate. This broad compromise of many competing interests and factions followed what one participant called, "the most elegant legislative process I have ever seen." The law says alimony should be between 30% and 35% of the difference in the gross incomes of the parties, a simple formula which preserves the incentive of both parties to earn as much as they can. Most important, it includes term limits. These two frameworks offer many implications for lawyers, mediators, judges, probation officers and clients. Our lives are about to become a lot simpler and clearer. This article sees three major implications, and invites others:

Alimony Obligation Clear Parties no longer need to go to court to find out what the alimony obligation will be or how long it will last. They can readily follow the framework defined in the Alimony Reform Act to define their own amount and for how long. Lawyers need not mark up temporary alimony orders; they already know the answer. Mediation may become increasingly popular for clients who want their divorce to come in "under budget and ahead of schedule" because a major issue in their agreement has suddenly become more manageable.

Gross Income Key Issue Discovery of actual gross income, or attribution of income in some cases, may become the key alimony issue, much as it has for child support up to the first $250,000 of combined incomes.

Pro Se Cases Become Easier Pro se litigants may be able to figure out what their divorce will look like virtually on their own, with help from mediators and collaborative lawyers acting almost as consultants, or from beleaguered court clerks dealing with many couples who have never talked to a lawyer before going to court.

There will no doubt be other consequences and implications of this great improvement in Massachusetts divorce law. If you think of any now, or experience any as you go along, please write a letter or article for the FMQ to add to our cumulative understanding of the predictable and unpredictable ripples from the Alimony Reform Act of 2011.

John A. Fiske is a lawyer and mediator at Healy, Fiske, Richmond and Matthew, a Cambridge firm concentrating in family law and mediation. He is a founding member, past president and director emeritus of MCFM. John can be contacted at jadamsfiske@yahoo.com.

POTENTIAL TAX TRAPS: THE ALIMONY REFORM ACT OF 2011

James McCusker

Reading through the new Massachusetts "Alimony Reform" act, I came upon a few potential tax traps that you should be aware of when drafting your agreements under the new law. The issues reside on the short end of the term curve and come under the headings of, Rehabilitative, Reimbursement and Transitional Alimony. The crux of the issue revolves around the nature of the prescribed payments and whether they are in fact alimony or property settlements.

One of the requirements in order for a payment to qualify as alimony is that there be no liability on the part of the payor to continue payments after the death of the payee. If the agreement does call for payments to be made beyond the payee's death to either the payee's estate or an alternate payee, then the entire stream of payments will lose their status as alimony. This includes all the payments made prior to the payee's death, as well as, those made to any alternate payee. This creates a huge tax mess for the payor who would have to recapture all prior alimony payments as income. From the IRS' standpoint, because the payments extend beyond the payee's life they can no longer be considered support and instead take on the nature of an extended property settlement.

Under the new alimony act the sections that deal with Reimbursement Alimony and Transitional Alimony, both state that "…Alimony shall terminate upon the death of the recipient or a date certain." The Transitional Alimony section goes on to state that the "date certain" cannot be longer than 3 years from the date of the parties' divorce.

Although these clauses anticipate the death of the payee, by not stating that alimony must terminate on the earlier of these two events, the wording sets you up for a potential disqualification. So in a case where you had Transitional or Reimbursement Alimony, if in your agreement you had the language that alimony would terminate after a minimum amount had been paid or that payments would continue for a set period the payments would not qualify as alimony. Because the payee could predecease the payout the payments are considered property settlements. As a drafting matter the easy fix is to make sure that you always state that alimony will terminate at the earlier of the two events.

The crux of the issue revolves around the nature of the prescribed payments and whether they are in fact alimony or property settlements.

Perhaps a bigger problem with these shorter-term alimony payments is the potential you have with creating an "alimony recapture" situation. Alimony recapture as defined by the IRS exists when alimony payments in the first 3 years after divorce decline by more than a prescribed amount.

Without getting too deeply into the math, a problem arises if alimony payments drop by more than $15,000 from year 1 to year 2 (actually an average of year 2 adjusted and year 3) and from year 2 to year 3. Yearly payment reductions in excess of the $15,000 will be disqualified as alimony payments and reclassified as property settlements.

So let's assume a case of Rehabilitative Alimony where alimony payments were to last 2 years at $75,000 per year. The year 2 to year 3 excess is $60,000 ($75,000-$15,000 allowed reduction). The year 1 to year 2 excess is $52,500 ($75,000 – $22,500). The $22,500 is derived by taking an average of the year 2 allowed alimony ($15,000) and the year 3 alimony paid ($0) and adding that average ($7,500) to the allowed reduction of $15,000. That's a total alimony recapture of $112,500 – who wants to take that client call?

Because Rehabilitative, Reimbursement and Transitional Alimony are by definition short-term support, they look a lot like property settlements – at least to the skeptical eye that is the IRS. A little bit of planning in this area will go a long way to averting messy tax problems down the road.

James McCusker, CPA, is a certified financial planner. Jim invites your feedback and can be contacted at 978-256-1323, or by email at James@McCuskerAssociates.com, or visited online at www.McCuskerAssociates.com

"The income tax has made more liars out of the American people than golf has."

Will Rogers

MASSACHUSETTS FAMILY LAW
A Periodic Review

By Jonathan E. Fields

Alimony Bill Becomes Law Of course**,** the biggest news in the last quarter was the passage of the landmark alimony reform bill. I won't tackle it in this space but interested readers are directed to John A. Fiske's and James McCusker's articles in this FMQ for several in-depth views on the subject.

Judges Imputing Income Be Forewarned – There's a Recession Out There! In a divorce action, a Probate and Family Court found that a father in the real estate business was underemployed and imputed income to him for purposes of calculating child support. The Court averaged the father's income over the previous five years while acknowledging that it did not reflect his current actual income. The Appeals Court reversed because there was no finding that the father, who was working 60 hours per week, was earning less than he could through reasonable efforts.

Further, the Appeals Court went on, considering "the economic climate wherein the real estate industry was in steep decline, jobs were far from plentiful, and the husband was making reasonable efforts to earn at his full capacity, the judge ... was not permitted to factor in that the [father] was underemployed." *Sullivan v. Sullivan*, 79 Mass.App.Ct. 1131 (July 20, 2011) (Unpublished)

Lawyer-Mediator's Subsequent Representation of Party A Nebraska attorney served as a mediator for an unmarried couple in a child custody dispute; later, after the mediation had concluded, this same attorney represented the mother against the father in a suit involving the father's alleged wrongful theft of certain of the mother's property. The father sought to disqualify the attorney on the grounds of the prior mediation relationship. The Court, interpreting Nebraska law, *did not disqualify* the attorney. *Hossaini v. Vaelizadeh*, D. Neb. (August 4, 2011)

That's Nebraska. What does Massachusetts law say?

Here, Massachusetts Rules of Professional Conduct (MRCP) 1.12 prohibit a lawyer from representing a person "in connection with a matter in which the lawyer participated *personally and substantially"* as a mediator "unless all parties to the proceeding consent after consultation." The "personal and substantial" requirement is fact-specific and, in any event, it is unclear what it means.

Be thankful, then, for MCFM's Standards of Practice which are clear and unambiguous. Standard 6 (B)(2)(a) says that a mediator "shall never represent [a]

party to the mediation against any other party to the mediation in any matter whatsoever." Even with the consent of the parties, the mediator may only act for them as an "arbitrator or case evaluator." Note, too, that the Standard applies to "other individuals with whom the mediator is in business, such as other lawyers in a firm, or other mental health professionals in a group practice."

The Vineyard, Valuation, and Present Divisions After a trial, a Probate and Family Court entered a divorce judgment (1) valuing the husband's 25% interest in a Martha's Vineyard property at 25% of the market value of the property and (2) awarding a present interest in that property to the wife. The Appeals Court reversed.

On the issue of valuation, the appellate court noted that, while there was evidence of the market value of the *entire* Martha's Vineyard property, there was no evidence as to the husband's 25% interest – simply valuing it at 25% of market value was without basis.

Further, since the Court acknowledged that the husband's interest was unlikely to be sold and unlikely to generate income for him, ordering the husband to make a present payment to his wife for $360,000 is "plainly wrong and excessive." While the law strongly favors *present payments* to *"if, as, and when"* payments, the law also recognizes that where a present division would cause an undue hardship to a party, it is inappropriate. *Elliott v. Elliott*, 2011 Mass.App.Unpub. LEXIS 992 (September 6, 2011)

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"The important thing is not to stop questioning."

Albert Einstein

WHAT'S NEWS?
National & International Family News

Chronologically Compiled & Edited by Les Wallerstein

Chile's President Proposes Civil Unions, Including Gays Chile's conservative president proposed civil unions legislation that would give unmarried partners many of the rights now enjoyed only by married couples. If the bill is approved as written by both houses of congress, couples who sign "agreements to life as a couple" before a notary or at the civil registry would be able to resolve legal problems with inheritances, social welfare issues and health care benefits. Chile only legalized divorce in 2004, which is one reason why about 2 million people live together without legal recognition. (The Associated Press, New York Times, 8/9/2011)

China's New Wealth Spurs a Market for Mistresses As China has shed its chaste Communist mores for the wealth and indulgences of a market-oriented economy, the boom has bred a generation of nouveau-riche lotharios yearning to rival the sexual conquests of their imperial ancestors. Even the Chinese term for mistress — "ernai," or second wife — harks back to that polygamous tradition of yore. Faced with a spate of legal disputes between mistresses and their lovers over money and with growing public disgust that threatens to tarnish its authority, the Communist Party is trying to stanch the mistress tide through carrots and sticks aimed at women and men alike. The Supreme People's Court has considered a draft interpretation of the country's marriage law that would for the first time acknowledge mistresses, stating that they have no legal right to their patron's money, property or other expensive trinkets, legal experts said. Likewise, married men would not be able to use the courts to regain the cash and other niceties they had lavished on affairs gone bad. (Dan Levin, New York Times, 8/10/2011)

Romania: An Italian Divorce Destination of Choice Italy's notoriously complicated divorce laws and the ease and reciprocity of divorce elsewhere in Europe have created a niche industry. A growing number of Italians circumvent the lengthy and often costly Italian divorce process by taking advantage of European Union legislation that recognizes divorce granted in any member state. After obtaining foreign residency, they can in most cases file for divorce after six months, bypassing Italy's mandatory three-year legal separation. Romania, in particular, has become a destination of choice for divorce tourists, according to people who work in the business, who say it is quick, inexpensive and seemingly flexible about residency formalities. (Elisabetta Povoledo, New York Times, 8/15/2011)

More Unwed Parents in US Live Together The number of Americans who have children and live together without marrying has increased twelvefold since 1970. According to the National Survey of

Family Growth, part of the Centers for Disease Control, 42 percent of children have lived with cohabiting parents by age 12, far more than the 24 percent whose parents have divorced. (Sabrina Tavernise, New York Times, 8/17/2011)

Eighteen Month Minimum to Divorce in San Francisco For the romantically estranged residents of San Francisco, the wait for a divorce may soon drag on longer than the life span of most Hollywood marriages. Under a plan unveiled last month and due to take effect this fall, San Francisco will close 25 courtrooms, reduce clerks' hours and lay off more than 175 employees, effectively bringing much of the business of the court to a crawl. Katherine Feinstein, the presiding judge of San Francisco Superior Court, said the average time for a divorce would be at least 18 months. "The civil justice system in San Francisco is collapsing," Judge Feinstein said. (Jesse McKinley, New York Times, 8/24/2011)

Childbirth: Neonatal Deaths Slow, but U.S. Still Lags According to a new analysis, the United States now ranks 41st in the world in terms of neonatal mortality, the death rate of infants less than one month old. More than half of neonatal deaths in 2009 occurred in five countries that account for 44 percent of live births: India, Nigeria, Pakistan, China and Congo. The neonatal mortality rate is higher in the United States than in, among others, Cuba, Slovakia, Croatia and all of Western Europe and Scandinavia. (Nicholas Bakalar, New York Times, 9/6/2011)

Artificial Insemination Largely Unregulated As more women choose to have babies on their own, and the number of children born through artificial insemination increases, outsize groups of donor siblings are starting to appear. While one US sperm donor has been traced to 150 offspring, groups comprising 50 or more half siblings are cropping up on Web sites and in chat groups, where sperm donors are tagged with unique identifying numbers. There is growing concern among parents, donors and medical experts about potential negative consequences of having so many children fathered by the same donors, including the possibility that genes for rare diseases could be spread more widely through the population. Some experts are even calling attention to the increased odds of accidental incest between half sisters and half brothers who often live close to one another. "We have more rules that go into place when you buy a used car than when you buy sperm," said Debora L. Spar, president of Barnard College and author of "The Baby Business: How Money, Science and Politics Drive the Commerce of Conception." (Jacqueline Mroz, New York Times, 9/6/2011)

American Poverty Soars The Census Bureau reported that another 2.6 million people slipped into poverty in the United States in 2010, making the number of Americans living below the official poverty line (46.2 million people) the highest number in the 52 years the bureau has been publishing figures on it. The poverty line in 2010 for a family of four was $22,314. (Sabrina Tavernise, New York Times, 9/14/2011)

Continued on next page

The Respect for Marriage Act "RFMA" is a proposed bill in the United States Congress that would repeal the Defense of Marriage Act and allow the U.S. federal government to provide benefits to couples in a same-sex marriage, and would not compel individual states to recognize same-sex marriages. The 2009 bill was introduced on September 15, 2009, and garnered 120 cosponsors. It is supported by former U.S. Representative Bob Barr, original sponsor of the Defense of Marriage Act, and former President Bill Clinton, who signed the Defense of Marriage Act in 1996. The 2011 bill was introduced on March 16, 2011, and a U.S. Senate version was introduced on the same day. President Obama announced his support for the bill on July 19, 2011. In September 2011, Ileana Ros-Lehtinen of Florida became the 125th cosponsor of the bill in the U.S. House of Representatives and the first Republican member of the U.S. Congress to announce support for the bill. (Wikipedia, online, 9/23/2011)

Alimony Law Overhauled in Massachusetts A new law sharply curbs lifetime alimony payments in divorce cases and allows most of those paying alimony to stop once they retire. "It's a good bill that balanced the needs of the payees and those who are paying their spouses," said one supporter. "It strikes a balance between the two." An opponent said the new law could be unfair to women who leave the work force to raise their children. "It's arbitrary to have cutoff periods that effectively make it harder for that opportunity loss to be valued in the divorce... and might encourage women to stay in abusive marriages longer in order to qualify for more alimony." The new law had widespread support in the legislature. (Jess Bidgood, New York Times, 9/27/2011)

Proposed Change for Women to Ascend the English Throne Prime Minister David Cameron took the first formal step toward a constitutional change that would allow girls and women to ascend to the British throne before their younger brothers. The succession rules were set by the Act of Settlement, adopted in 1701, which stipulates that male children have precedence over their older sisters in succession to the throne. (John F. Burns, New York Times, 10/13/2011)

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

"Nature never deceives us; it is we who deceive ourselves."

Jean-Jacques Rousseau

MCFM MEMBER PROFILE: STEPHEN G. VIEGAS

***Address*:** 2 Haven Street, Suite 306, Reading, MA 01867
***Website/email*:** www.viegaslaw.com; stephen@viegaslaw.com

***Professional background & mediation history*:** Lawyer since 1973, Divorce mediator since 2005.

***Describe your mediation practice*:** I am primarily a divorce lawyer. At present I have a small divorce mediation practice but would like to transition to more mediation than advocacy.

***Describe your mediation workspace*:** My law office, which has a bright, airy and ample conference room.

What made you decide to be a mediator? I tried my last divorce trial in 1987. John Fiske suggested that because of my conciliation oriented approach I would be a good divorce mediator.

***Most memorable mediation moment*:** The email I received after a successful first meeting informing me that my clients decided to reconcile.

***Most helpful advice offered to you when starting to mediate*:** Listen, listen and then listen.

***Least helpful advice offered to you when starting to mediate*:** I trained with Divorce Mediation Training Associates. They specialize in good advice only.

***Any advice you can offer to new mediators*:** Spend vastly more time listening than talking.

***One thing about you that might surprise people*:** I am President of USA Track & Field New England which governs the sport of track and field in four of the New England States.

Continued on next page

If you could meet anyone, living or dead, who would it be and why? Benjamin Franklin, who was an incredible polymath. He was probably the most interesting of our very interesting founding fathers.

Hobbies & interests**:** Running and cycling, gardening, reading, following sports and active citizenship.

Favorite music, movie or sport**:** Music from the Great American Songbook and classical music.

Last book read**:** The Greater Journey, Americans in Paris by David McCullough.

Wise advice**:** Keep perspective. Mediation is about our clients – not us.

Philosophical outlook on life**:** Life is too short to waste it arguing or being upset and angry with others. The discipline of listening and reconciling differences may be difficult but it beats the alternative.

What would you want with you if marooned on an island? Susan Viegas, my spouse of 35 years.

“Enjoy when you can, and endure when you must.”

Johann Wolfgang von Goethe

MCFM NEWS

AN INVITATION FOR MCFM MEMBERS ONLY

All MCFM members are invited to fill out the Member Profile Questionnaire posted on the MEMBERS ONLY page of mcfm.org and submit it for publication in the FMQ. Please email your questionnaire with a personal photo (head shot) and an optional photo of your primary mediation space (or office) to wallerstein@socialaw.com. Since the questionnaire is intended to help others learn about you, feel free to customize it by omitting questions listed, or adding questions you prefer. Only questions answered will be published, and all submissions may be edited for clarity and length. **Please help us get to know you.**

CELEBRATE MCFM'S 30TH ANNIVERSARY!

Thursday, April 12, 2012 @ 7:00 PM
AT THE MUSEUM OF FINE ARTS

FREE FOR MCFM MEMBERS

As part of our celebration of MCFM's 30th anniversary, all MCFM members are invited to attend the opening night of the "Hollywood Scriptures" Film Series at the Museum of Fine Arts in Boston for a screening of "Family Matters" at no cost.

After the film there will be a discussion focused on cinema as a pathway to understanding human nature in the service of healthy choices; to minimize the destructive consequences of family conflict. Discussants will include expert mediators and judges.

Open to members of all other family professional organizations and the public, but all non-MCFM members will pay $11 per person to join the celebration. CE credits will be available to mental health professions.

PASS THE WORD & SAVE THE DATE

Continued on next page

MCFM
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FAMILY MEDIATION INSTITUTE

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The Good, The Bad & The Ugly

& FERN L. FROLIN, Esq.
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Including the Alimony Reform Act of 2011

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MCFM'S NEXT FREE PROFESSIONAL DEVELOPMENT WORKSHOP

November 9, 2011, from 2 to 4 pm
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WHAT MEDIATORS NEED TO KNOW ABOUT HOW LAWYERS VIEW MEDIATION

Robert W. Langlois, (formerly 1st Justice, Norfolk Probate & Family Court) and Boston attorneys Peter M. Barlow and Gene D. Dahmen will share their perspectives on the process of mediation, mediators and mediated agreements. Come join the conversation.

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MEDIATION PEER GROUP MEETINGS

Central Massachusetts Mediators Group: We serve mediators in Central Mass and towns along Rt. 2 West of Rt. 128. We meet to discuss topics and/or cases, sometimes with guest speakers, in the offices of Interpeople Inc. in Littleton. Interpeople is located about 1/2 a mile off Rt. 495, at Exit 31. Meetings begin at 8:30 AM on the last Thursday of every month, except December, July and August. If you are a family and divorce mediator — attorney or non-attorney — you are welcome to join us. New members are asked to please call ahead of time: 978-486-3338, or email Shuneet at drthomson@interpeople-inc.com.

North Suburban Mediators Group: Join fellow mediators meeting to learn and share and network. Meetings are held at 8:30 a.m. on the second Tuesday of the month from January to June and from September to November at the offices of Lynda Robbins and

Continued on next page

Susan DeMatteo, 34 Salem Street, Suite 202, Reading. Please call Lynda at 781-944-0156 for information and directions. All MCFM members are welcome.

Pioneer-Valley Mediators Group: This Western Mass group 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.***

OFFER MCFM BROCHURES IN YOUR WAITING ROOM

Copies of MCFM's brochure are available for members. Brochure costs are as follows: Two for $1; 25 for $10; 60 for 20; 100 for $30; and 150 for $40. **A blank area on the back is provided for members to personalize their brochures, or to address for mailing.**

TO OBTAIN COPIES MEMBERS MAY
call Ramona Goutiere: 781-449-4430
or email: masscouncil@mcfm.org

"Patience is bitter, but its fruit is sweet."

Aristotle

ANNOUNCEMENTS

* *

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

* *

7TH ANNUAL JOHN ADAMS FISKE AWARD NOMINATIONS NOW OPEN!

In 2005 the Massachusetts Council on Family Mediation established the John Fiske Award for Excellence in Mediation. The award will be presented at MCFM's 10th Annual Family Mediation Institute on December 9, 2011. Please tell us in 100 words or less why your nominee has demonstrated excellence in and/or contributed to family mediation in Massachusetts.

Submit your nomination by email to
lynn@lynnkcooper.com

NOMINATE YOUR CANDIDATE NOW!
Nominations close on October 30, 2011

FAMILY MEDIATION QUARTERLY ONLINE UPGRADE

The FMQ is now available online in a new, digital edition format that gives readers the 'look and feel' of holding the printed edition in their hands. In the new online format, both the left and right hand pages of the FMQ will simultaneously appear, and a mouse click will 'turn' the pages forward or back.

All past and future online, PDF editions of the FMQ will be formatted in this clickable, turn-the-page format. There will be no 'pop-up' ads, and the FMQ can still be fully downloaded, searched and emailed.

Special thanks to Tim Costikyan, MCFM's web guru, for making this possible!

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Legal Planning: Planning for Financial Management, Medicaid Eligibility, Medical Decision Making, Asset Protection and Guardianship.

Advanced Multi-Party Mediation Skills & Challenges Of Elder Mediation: Neutrality vs. Mediator Advocacy, Common Hurdles, New Strategies for Intake, Exploring the Hybrid Model of Elder Mediation, Working with Large, Dispersed Family Groups, Ethical Concerns, Age Bias, Considering and Maximizing Capacity, Complex Multi-Party Role Plays and more!

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Along With Expert Guest Presenters: Jeffrey Bloom, Esq., Emily Saltz, MSW, LICSW & Jennifer Decker, Mediation Marketing Specialist.

Continued on next page

Cost $875 / $775 for MCFM Members
Includes breakfast pastries, coffee, lunch on site, snacks and course materials.

Social Work CEUs offered

To be held at The Walker Center
A Charming B&B and Conference Center in Newton
Just off Rte 95 and the Mass Pike (Rte 90)
Close to Riverside MBTA Station

See www.ElderDecisions.com for details

DIVORCE IN MASSACHUSETTS: WITH OR WITHOUT A LAWYER

Jerome Weinstein & Les Wallerstein

The Cambridge Center For Adult Education
Saturday, October 22, 2011
9:30 AM - 12:30 PM
42 Brattle Street

When the issue of divorce is raised, most people don't know where to turn. How do I get information? Do I need an attorney? Should I pay a retainer? What will happen to my children and my home? This course will give you information about what you can and cannot do and what kinds of risks are involved. It will also address when you need an attorney (with the attendant costs) or when you can use a mediator or do it yourself. You will also receive resources and a bibliography.

Online Registration: http://www.ccae.org
Phone Registration: 617-547-6789
Cost: $61 Limited to 20

METROWEST MEDIATION SERVICES
PROFESSIONAL MEDIATION TRAINING

Friday	**October 21**	**9 - 4:30**
Saturday	**October 22**	**9 - 4:30**
Tuesday	**October 25**	**4 - 8:00**
Friday	**October 28**	**9 - 4:30**
Saturday	**October 29**	**9 - 4:30**

MetroWest Mediation Services (formerly Framingham Court Mediation Services) announces a dynamic, 32-hour Basic Mediation Training Program. This training is designed for those interested in mediation as a means of enhancing personal/professional practices. Role-plays and interactive exercises will provide hands-on mediation skill development aimed at teaching how to identify parties' interests, generate solutions and resolve disputes. This training satisfies the statutory requirement for mediator confidentiality in Massachusetts General Laws, Chapter 233, Section 23C, and qualifies for CEUs and PDPs.

Space is limited. Tuition is $675. Registration before October 1 is $650. Cancellation policy: cancellation prior to October 1, full refund minus $75 administrative fee. Cancellation after to October 1, refund (minus administrative fee) only if the seat is filled.

For more details and to register go to
www.metrowestmediationservices.org
or call 508-872-9495.

DIVORCE MEDIATION TRAINING ASSOCIATES (DMTA)

October 26, 27 and 28, 2011, and November 4 and 5, 2011
Location: Wellesley College Club

John Fiske and Diane Neumann present Divorce Mediation Training, an intensive, 5-day training program that equips you with the skills of a divorce mediator and grants a certificate upon completion of the training. You do not need to be an attorney to take this course. We are one of the oldest and most recognized mediation training organizations in the country because we're not just trainers- we're both full-time mediators.

Continued on next page

John and Diane have been teaching mediation since 1988 and are proud that several Massachusetts Probate Court judges have completed our training program. Each of us has over 30 years of experience in our respective private mediation practice. This comprehensive training in mediation includes:

• 40 hours of training (exceeds the Massachusetts Mediator Confidentiality Statute)
• A Certificate of Divorce Mediation Training upon completion of the 40 hours of training
• Course materials include a DMTA training video and resource materials
• Approved by the National Association for Conflict Resolution (ACR)

For more information:
John Fiske: 617-354-7133
Diane Neumann: 617-926-9100

DIVORCE MEDIATION GROUP EXPANSION ANNOUNCEMENT & INVITATION

Kathleen Townsend and Bruce Clarkin, founders and principals of the Divorce Mediation Group, are seeking new principals to join our business. We are a for profit group with offices in Springfield and Northampton and cover most of Western Massachusetts. **We are seeking experienced mediators who are MCFM certified or willing to apply for MCFM certification and who would have an interest in becoming a managing partner or owner.**

INTERESTED??? Contact Kathleen Townsend at kathleen@divmedgroup.com

NEW BEGINNINGS

An interfaith support group for separated, divorced, widowed and single adults in the Greater Boston Area. **Meets year-round, every Thursday, from 7:00 to 9:00 PM, at** Wellesley Hills Congregational Church, 207 Washington Street. For more information call 781-235-8612. **Annual Dues $50.**

For program details & schedule visit
www.newbeginnings.org

THE CHILD & FAMILY WEBGUIDE
ONLINE ACCESS TO
CHILD DEVELOPMENT INFORMATION

The Child & Family WebGuide was created in April 2001 by Professor Fred Rothbaum and Dr. Nancy Martland of the Tufts University Eliot-Pearson Department of Child Development. The WebGuide describes trustworthy websites on topics of interest to parents and professionals that have been systematically evaluated by graduate students and faculty in child development. The WebGuide is easily searched by subjects, including many of constant concern to family mediators, e.g., divorce, separation and stepparents. It also offers several features requested by parents, e.g., 'ask an expert' sites and 'research news' sites. The goal of the WebGuide is to give the public easy access to the best child development information on the Web.

www.cfw.tufts.edu

COMMUNITY DISPUTE SETTLEMENT CENTER

Building Bridges • People to People • Face to Face

The Community Dispute Settlement Center Inc. (CDSC), a non-profit mediation center, would like to announce a volunteer opportunity. We are currently seeking pro bono mediators who are lawyers with experience in drafting Separation Agreements as part of our divorce mediation services.

If you would like more information about the many benefits of affiliation with CDSC, including our co-mediation model please contact Gail Packer, Executive Director, or Nelly Gonzalez, Case Coordinator. They can be reached by phone at (617)876-5376 or email at cdscintake@communitydispute.org.

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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!

MAHR (Arabic: also transliterated mehr, meher, mehrieh or mahrieh) is a gift, mandatory in Islam, which is given by the groom to the bride upon marriage in Islamic cultures, (in contrast to other cultures' bride price, which is paid to the bride's father). It is considered to be a form of appreciation, as well as providing certain guarantees for the woman.

The gift can be intangible or negligible; it can take the form of investments or real property. The mahr may also be divided into portions, one to be given to the bride at marriage, the other to be given to the wife if she is widowed or divorced. It should be given according to the social status of the bride.

Islamic scholars consider it as a way of emphasizing the importance of the marriage contract and preparing the husband to fulfill his marital responsibilities. It also can be a form of protection against arbitrary divorce.

Compiled from Wikipedia, the free, online encyclopedia

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. Annual membership dues are $90, or $50 for fulltime students. Please direct all membership inquiries to **Ramona Goutiere at masscouncil@mcfm.org**.

REFERRAL DIRECTORY

Every MCFM member with an active mediation practice who adheres to the Practice Standards for mediators in Massachusetts 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 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. **Every MCFM certified mediator is designated as such in the online 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

Les Wallerstein, Editor
1620 Massachusetts Avenue
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(781) 862-1099
wallerstein@socialaw.com

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

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

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

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

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

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

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

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

MASSACHUSETTS COUNCIL ON FAMILY MEDIATION

www.mcfm.org

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