

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

Dear Mediators/Members:

I know that many of you out there, like myself, have chosen work in the challenging field of mediating divorces in order to leave a piece of our world in a better, healthier place than we found it. The families with whom we work want this too, for their children, and often carry the burden of great anxiety over their children's welfare when they find themselves in the middle of a divorce.

Part of our work as mediators is to help our clients create the best divorce possible for their families. We try to help them to understand and shoulder ownership of the tremendous part they play in shaping their children's development post-divorce for the better.

When I mediate for families with children, I always tell them that each of their interests are important, and their children are my clients as well. No one has ever argued with me about that.

I'm always looking for resources to help families make the hard choices they have to make in order to protect their children from unnecessary suffering in their divorce, and I want to share some wonderful resources with those of you who haven't already discovered them.

Many of you already use UpToParents.org (for divorcing families) and ProudToParent.org (for unmarried parents). Many of us have read Judith Wallerstein's books as well as E. Mavis Hetherington's *For Better or For Worse* to help us in our work. The best book I have encountered lately for helping parents help their children through divorce and beyond is [The Intelligent Divorce: Because Your Kids Come First](#) by Mark R. Banschick, MD and David Tabatsky (Copyright 2010, published by Intelligent Book Press).

My personal beliefs are echoed on page 145 of this book: "After examining what these prominent researchers have found and reflecting on all the families I have encountered in my clinical practice, I believe we have reason to be optimistic about divorce, particularly if they are orchestrated with care. When parents collaborate with some success, their children will probably benefit. You and your ex-spouse both decided to bring your children into this world and now you must commit to proactively protecting their innocence. This is the recipe for a good divorce. In fact, it's the only recipe for a humane and compassionate experience. If you really commit to making an intelligent divorce happen, it can be done.... The challenge in divorce is to provide the needed structure and love to your kids so that they can flourish, and with luck, be even healthier than you." This easy-to-read book, full of examples and behavioral suggestions, empowers parents and shows them what they actually have to do to make this happen.

I wish all of us and the families we work with a new year filled with health, peace, joy, and the love of our friends and families,



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ARE ALL PARENTING PLANS FOR YOUNG CHILDREN EQUAL?

Marsha Kline Pruett

The Meaning of Time Parenting plans are about each parent's desire for access to his or her children, and an opportunity to be involved in the activities and responsibilities of parenting. The plans are all about time – how much, in what schedules. What parents often forget is that young children's sense of time is very different from their own adult perspective.

In their landmark book *In the Best Interests of the Child*" (1971; 1996), Goldstein, Freud, and Solnit were the first clinicians to discuss children's foreshortened sense of time. Young children have no understanding of what a day or a week means. Infants have no sense of time as long as they get fed, diapered, and prepared for sleep when they are hungry, soiled, or tired. Days can feel like years to toddlers or preschoolers, and they don't understand what it means to have one more or less day with one parent to balance out time with the other. Moreover, children of this age "forget" about their connection between visits with significant adults in their life; they need a little time to re-familiarize themselves and feel comfortable in a place or with a person they haven't seen on a regular and frequent basis. It is because of this sense of time and children's need to re-establish levels of comfort during each new encounter with a

loved one that professionals began to question the idea that children should spend most of their time with one caregiver and see the other relatively infrequently.

Michael Lamb and Joan Kelly (200) suggested that, in fact, young children should have more frequent transitions between caregivers when they could do so with minimal discomfort, so that the young child would stay more familiar with the secondary caregiver, experiencing him or her as a stable and predictable part of the child's care. Though this view has been debated by other clinicians who prescribe to the view that having one primary caregiver supports secure attachments (see Family Court Review's special issue on *Young Children and Overnights*, 2000), research has established that even the youngest children are capable of developing multiple important attachments (2-3 in infancy) and that frequent transitions do not work well when parents are in conflict with each other. Then each transition and change becomes another opportunity for parents to fight in front of or over the child, and to undermine each other's attempts to provide consistent care for the child's biological and psychological needs, such as predictable feeding and bedtime routines. In the absence of such conflict, it is agreed upon that



children develop best in a stable environment, but that stability includes involvement with both parents when they are available, interested, and nurturing caregivers. The balance of transitions versus less contact is one of values and nuance, based on a number of competing variables related to the family's characteristics and situation.

In addition to transitions, parenting plans often become tangled up on the issue of overnights for young children. My own research has found that particular parenting plans with overnights in varying schedules was not associated with infant or toddler distress as much as irregular schedules that changed week to week. For co-parents with low to moderate levels of conflict, it was not the number of overnights that caused problems for very young children. Mothers' felt more anxiety when their children under the age of three did overnights during the week. Hypothetically, such anxiety in some cases could spill over to the child and become manifested in the child's distress, as well. Whether Mother should be helped to manage her distress, or overnights during the week held back until the child is older, again would be subject to a weighing of myriad child and family factors particular to each case.

Quality Time with Fathers As parenting plans are established, each parent usually expresses a wish for spending "quality time" with his/her children. The key to devising a parenting plan that is child centered rather than adult centered is to bear in mind what quality time actually entails. As the parent who tends to spend less time in direct childcare activities, many fathers find themselves in the position of fighting for more time than their divorcing spouse is willing to cede. Many research studies have found that is

You cannot divide a married family's life by the same denominator as a divorced family's life. The rules have changed, and so has the system as a whole.

not the amount of time a father is involved with his child that matters, but the quality of his involvement. Quality involvement is involvement that is sensitive to the child's needs, based on the parent's understanding of the child's developmental stage and unique personality. Research and clinical wisdom show that what involvement means to many men is that they want to be involved with daily activities that center around drop-off at childcare, bedtime routines, sick days, and other times when the care of a child requires more caregiving than just doing

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normal activities on weekend days. Such involvement appears to promote the fathers' sense of paternal responsibility, his sense of authority, and his sense of inclusion – all of these feelings result in more nurturing and structured caregiving that is essential to optimal parenting. Children respond favorably to such warm and “authoritative” parenting throughout childhood, but especially in toddlerhood and later school years when they are struggling to achieve autonomy and independence.

There really isn't quality time in the minds of children. They don't talk to parents when parents have four hours to spend with them; they talk when they are making transitions, feeling particularly relaxed or anxious, or stalling to stretch bedtime out a little longer. If they do not see both parents on a regular and frequent (weekly) basis, they feel it deeply. But they don't keep track of how many hours and whether an extra dinner is included. They want each parent around to help them grow and take

The absolute amount of parenting time should be emphasized less than a plan that allows for a schedule that enables both parents to feel and act engaged and responsible.

delight in their daily achievements or offer support for their small and large disappointments.

The absolute amount of parenting time should be emphasized less than a plan that allows for a schedule that enables both parents to feel and act engaged and responsible. That typically does require some extended periods of being together or parenting over weekend-weekday transitions. Then parents learn they can handle the good, the bad, and the ugly moments of parenting, and children develop a sense of trust that each of these parents can handle whatever “I throw at him/her”.

Because children do not count love in quantities of time, the idea that a 50-50 time split is important arises out of parents' sense of loss from the divorce, not from children's needs. Children are rarely parented “equally” in terms of time. Mothers still do the lion's share of housework, scheduling, and administrative aspects of parenting among most married (or living together) couples. It is inefficient to divide such responsibilities up in halves, when one person is generally making more money and one or the

other generally has more flexibility in his/her job. Children have never been seen or heard to say ... “Daddy's home, but I am more excited to be with Mommy because she

stayed home and did my laundry today.” So do not get stuck on establishing equal time. I realize it



counts for child support. But perhaps there are other ways support can be fiddled with to make it palatable to both parties. Becoming locked into a fight over an extra day or two a month does not meet any child's needs, nor would the child stop and count.

The approximation rule was designed as an idea for establishing parent plans based on how much time each parent had spent with the child up to the point of parental divorce. The idea is for the child's relationship to each parent to remain consistent with the family division of time and labor when the parents were married. Such a concept ignores the sine qua non of family life identified by family therapists decades ago: that the whole of a system is greater than the sum of its parts. You cannot divide a married family's life by the same denominator as a divorced family's life. The rules have changed, and so has the system as a whole.

A cardinal rule in maintaining civility in any family life – married or divorced – is not to keep tabs on who is giving more to whom. Disengaging from counting the number of hours and days each parent spends with a child supports optimal early child development. Here are two reasons why.

First, on average, children pass through different periods of preference for one parent or the other during the first two years of life. Michael Lambs research showed that

when children were in a research room with both parents and they needed comfort, they would more typically seek out their mother if they were about a year old; they would choose either parent and gender did not matter so much when the child was 1? years old; and they would prefer the father when the child was about 2 or 2? years old. Over the course of the first years of life, the child emerged from a being that was driven primarily by biological needs for comfort and psychological needs for a

Your child won't keep score if you don't.

parent to provide a safety net during distress, to a being who is excited by her venture into the wider world. She notices Father's ability to come and go from the home and have adventures away from and aside from Mother. She wants a part of that too, and so identifies with Father's role as link to the world outside of mother. He has a different way of comforting than Mother does, and it fits with this mood and desire for exploration rather than comfort. So as the child became more interested in shaking off the hurt and returning to play and mastery, the father's way of comforting became more desirable than the mother's. For a little while. This preference will change many more times as the child grows older. As young children become more sophisticated in social relationships, they quickly learn that mom is best for some needs and Dad for others.

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Preference for one parent over the other is evident in adolescence too, as many children in shared custody move to the other household for a substantial time period; it may be to get what the teen wants from the “easier” parent, but is often out of a healthier realization that one parent’s style or relationship works better for

child’s life. But over time, the balance generally shifts and things equal out. What matters is not if the parenting plan is equal, but if your partner is responsive when you need to make a change, and whether he/she will make adjustments to create a sense of optimal sharing (not equality), now and in the future.

Don’t confuse equal time with equal relationships.

the adolescent at certain stages of development. The strengths of each parent may depend a bit on gender, but far more on who each parent is and what he or she does best or cares about most. Then each parent’s parenting style can be assessed in terms of who the child is and what he or she needs...maybe it is more structure, more flexibility, more stimulation or a slower pace, to be nearer or further from peer influences, and so on.

Second, in competitive relationships like sports, we track who has most touchdowns, who has the most points, and the best record. But within teams, the focus is on what each person contributes to the group to support its optimal functioning. As my husband and I discuss in our book *Partnership Parenting*, bean counting never offers the solution to conflict or inequality that parents seek. It leads instead to petty and intense focus on “fairness.” In any family, the burdens of parenting are unevenly distributed, especially in the early years of the

If children designed an approximation rule instead of parents, they would count what each parent offers them in terms of nurturance and understanding, guidance, discipline, and play – not hours or days. Their rules would be based on what each parent represents to their care, their interests, and their dreams as they get older. If we used your children’s interests as the yardstick, ask yourself whether a different parenting plan would be created at the end of the day.

Parenting Plan Considerations Based on “Real” Time

Where time matters most in parenting plan development is in the speed at which a plan is put into place so that family members are not twisting in the wind while the court process grinds slowly forward. It is fine to make a temporary plan with built-in re-examination time in which the plan will be assessed for which aspects work well and which do not. It is a fallacy that a parenting plan can and should be permanent; again that is ignoring a cardinal rule of child development, children change rapidly and unpredictably. Rather than use



rigid schedules to keep families out of the court system, it is best to make a plan that has “room to grow” but includes very specific ways the family can make modifications without returning to court. This includes choosing a therapist or mediator to help the family adjust the plan to their changing dynamics. It helps to have someone both parents trust already designated, and for a preventive visit to be scheduled. Just as we go to doctors for a regular check-up to identify small health problems before they get to be big ones, a parenting plan check-up can be useful in building in the expectation that things will evolve for the first years after divorce, in particular.

Let’s use a commonly offered example of a situation where Mom has been much more present on a daily basis than Dad and she isn’t sure she trusts him to adequately and sensitively meet the child’s needs. A parenting plan can be designed that calls for fewer overnights for a specified time period, such as 6-8 months, and then a modification that allows for more time during the week. A move toward parity is built up slowly and steadily. Then Dad who is afraid that not having enough overnights now will mean he will never have them can begin to trust that as his spouse gets used to the change in family status and works through losing some time and autonomy over parenting, he can build up a relationship with his children that ensures everyone’s comfort with more time spent away from Mom.

Some specifics to think about in shared parenting plans for young children:

1) It is the consistency of schedule, not an extra night away, from week to week that matters. Try to keep the schedule the same from week to week, especially during the week. It makes it easier for very young children to establish a rhythm, and for slightly older children to recall the details of where they will be living and on what days.

2) Making too many transitions back and forth between houses is usually an adult’s idea, not a child’s. In my

A crucial aspect of sharing is equalizing influence.

research on young children’s (ages 0 to 6) responses to divorce (Ebling, Pruett, & Kline Pruett, 2008), we used play to learn what the children thought about transitions. The back and forth clearly took a toll on these youngsters. One child described, “Back-and-forth makes me sick. I want to throw up—both ways.” A 5-year-old girl used a Band-Aid to help the dolls figure out where they belonged: “This [Band-aid] tells you if you’re in the right house.” Another child stuffed play items into a toy vehicle or her pockets, and then explained that by the time the dolls were packed up, drove around, and arrived at Dad’s house, “it was time to go back to Mom’s.” Using these children’s voices as a guide, make sure the transitions make sense, that they are built around natural breaks in the child’s life such as going

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to daycare or school. Avoid when you can transitions that take place after dinner and when a child is tired – which is a notoriously fragile time for most young children.

3) When there are commutes and transitions, the burden should fall to parents, not the children. Parents should do most of the traveling, deal with awkward timing, and change their schedules as best they can to accommodate the child. Parenting plans usually are designed for parental convenience. I have often had parents “birdnest” (move in and out of the family home which the children stay in) for a specified time period. They get to experience first hand what it is like to move in and out. After maintaining such a plan for a brief time, I find that parents become more empathic to what their children are being asked to do, they often become more flexible in their thinking and expectations, and they may change the plan to consider the child's point of view more closely.

4) My research also shows that parenting plans (overnights, consistency of schedule, and number

of caregivers) matter to fathers' relationships with their children more than mothers' do. The parenting plans are also related to children's behavioral outcomes and the family's legal outcomes (the cost and litigiousness of the divorce).

5) In families with more than one child, it is important to build in time for each child to spend time alone with his or her parent(s), without siblings. So much of family life consists of parents switching off, not being all together. One parent stays with or drives a child in one direction, while another parent does the same with another child in a different direction. This time spent alone allows parents to key in to each child's developmental needs and temperamental preferences without the dilution of the other children's presence. After divorce, most parenting plans involve the children moving together from house to house. If the plan was designed to look more like family life in a married household, each parent will have fewer time frames without any children at home, will have more time with children alone, and the children will have more opportunity for alone time to refuel in relative peace. Some parents have said they don't like to do this because they appreciate their solitary time to pursue their own interests, careers, or new relationships. That is a luxury I ask parents to rethink. In married



families, parents do not have the luxury of taking off a few days because they want to do something non-parental. It is that constant commitment that is the core of parenting. It is tiring, and often draining – not always rewarding – but it is part of the package. It helps to remind parents that free time as such is not a privilege of divorce, just a by-product that could be minimized to the benefit of the children involved.

Tips for Shared Parenting In summary, here are a few tips for developing parenting plans around the concept of “shared parenting”:

****Don't get caught in the 50-50 trap.*** Don't confuse equal time with equal relationships. Set up your plan to minimize transitions between homes and the amount of time and energy put into the back and forth. Try letting the children stay longer in one place and the other parent moving in and out of the child's world by, for example, picking him up and taking him to a music class and then dropping him off again.

**** Plan 1:1 Time*** Develop your plans to have time with each child alone, so that each parent is spending nearly as much time with his or her children as prior to the divorce, though maybe not with both or all of the children and not altogether.

**** Listen to What matters to Your Child*** Make a plan that fits with your

child's temperament and activities, even if it means one parent spends less time than he/she would like. With young children, you will have to listen through their behaviors rather than their words. Build in fairness in the long term, not the short term.

**** Be Honest About Who The Child is Favoring at That Developmental Period*** Take the competition out of it and view such favor as evidence of normal development. If the skew begins to feel like a schism, then it is important to have fall-back plans in place that shore up the less-favored parent's time with the child to re-establish balance between the parents.

**** Moms – Shore Up Dads' Influence.*** A crucial aspect of sharing is equalizing influence. With most young children and in cases of older children in which Moms have taken on the primary parenting role, it is easier for Moms and children to maintain their relationship after divorce than it is for fathers and children. It is critical to establish a plan that allows for ample weekday and nighttime access for fathers. Otherwise, you risk losing Dad's positive influence in the life of his children, and the benefits to involved fathering for children are numerous and substantial.

**** Dads – Don't Push for Equal Over Involved.*** It is fathers' desires to stay involved, and their fears of being left out of the child's life on a regular

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basis, that often spurs conflicts regarding parenting plans. These conflicts can intensify in level and length, as fathers dig in their heels. Put your energies into accepting that the change toward a more balanced access plan may take time. It may never be equal. Your child won't keep score if you don't. What he needs to know is that he can count on you to be available, take interest, know what he's up to, understand what he needs, and want to be part of every aspect of his life. He needs to know you will not give up, not that you will fight over him or "time".



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**“No matter
how thin
you slice it,
there will
always be
two sides.”**

Baruch Spinoza



YOU CALL YOURSELF A MEDIATOR?

By Oran Kaufman

One of the best lines my teenage daughter ever used on me was, “You call yourself a mediator?” This was after an especially explosive argument during which I lost my cool and as much as I hate to admit it, I was screaming at her. She was right. I should have been ashamed of myself. All that conflict resolution training I have received and all that training I have provided others and I could not apply it myself. The truth is that my daughter, a skilled tactical arguer since age 4, brings out the worst in me when it comes to resolving conflicts. I can try to make myself feel better by hearing my friends’ war stories about their travails with their teens and I can try to rationalize it by rereading the many articles and books I have which seem to say it is just a normal part of teenage development. But ultimately I should know better.

So it was with surprise, glee and some shock that in a recent potentially explosive argument with our daughter my wife and I, for once, felt like we handled it correctly. We had not necessarily planned it- it just happened. But in many ways it was textbook for how to conduct a conflict resolution session with your teenager. I had tried different approaches in the past but they never really worked. The only time I ever remember a tactic working was when she was around 6 years old. I recall having just read

“How to Talk so Your Children Will Listen and Listen so Your Children Will Talk.” My daughter was in the bathtub and was throwing a fit. She was screaming at the top of her lungs and having an all out tantrum. My impulse was to yell at her and tell her enough already – grow up, stop! What I did however, (and it is memorable because I don’t recall this ever happening again) was say, “Wow, it seems like you must be having a really hard day!” At that point she just melted and said, “Yes, it has been” and proceeded to tell me about her horrible day. Tantrum over, disaster averted.

Flash forward 12 years, and our daughter (now 18) calls us up on Saturday night from her friend’s house where she is spending the night and out of the blue asks, “do you still have that CD account because I need to buy the tickets for Portugal tomorrow” to which I reply, “What trip to Portugal?”

We thereafter agreed to talk about it the next morning. We had heard rumblings about her plans to go to Portugal with her three best friends after graduation but had heard nothing about it for months and certainly had no specifics. The next day, as she showed up an hour and half later than she told us, we were already armed for bear before the discussion had started. We had already delayed our plans to take a hike that day and the daylight

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hours were waning. And we were already upset about completely being out of the loop about plans and feeling like the only reason we were being put in the loop was she needed money. We did however make the first right decision by moving the conversation to our bedroom rather than in the middle of the dining room. The location was

Teenagers are masters at making situations seem more urgent than they truly are.

sunny, cozy and warm. The downside may be that it was our turf and therefore not neutral. Nevertheless, having it there made it feel like we were dedicating ourselves to the conversation and not doing it while chopping vegetables, sweeping the floor or engaging in a multitude of other multitasking activities that we would have been doing in the main part of the house.

As the discussion ensued, it quickly devolved into an argument. We were upset about her not communicating with us and making assumptions about money. On her part she lashed out at me over my audacity at contacting one of her friend's parents to inquire about what they knew about this plan. After 15 minutes of arguing and tensions rising, my wife and I announced that we were ending the conversation, going on the hike we had planned and said we would be back in two hours to discuss it further.

The hike in the woods was beautiful, the fresh air exhilarating. The distance from the conversation allowed us to process what had happened. It allowed us to separate out which part of our reaction was emotional and which part was based on practical concerns and logistics. What part of our reaction was based on this specific situation and what part was based on historical baggage? The walk allowed us to get on the same page, it allowed us to realize what buttons had been pushed and helped us formulate a strategy that we felt comfortable with. As we drove home, with the self imposed artificial "emergency" deadline for purchasing the tickets approaching and our daughter repeatedly calling my cell phone and then my wife's, (we were not about to pick up the call!) we took notes on what we had discussed.

The ground rules we established upon our return were that we were going to talk and she was going to listen. There was not going to be back and forth. At the end she could respond or take some time and then respond. We finished telling her what we had decided. Being two lawyers we also decided that we were going to memorialize the agreement in writing, signed by all parties (we did not insist on notarization). Further ground rules were that any eye rolling or signs of disrespect on her part and the conversation was over and we would not tell her what we had decided. After hearing us out, she left the room without a word. She came down later and proceeded to carry on as though



nothing had happened. She signed the contract and we went about our business. We had agreed to front her the money for her tickets subject to her agreement to pay it back before her trip. At that point, the decision about buying or not buying the tickets right then and there was no longer our problem. We were no longer engaged in the drama and urgency of when to buy the tickets. (As of this writing, the tickets have not yet been purchased.)

Here is what I think we did right.

1. We consciously thought about the location of our conversation. The location helped focus the conversation and keep us on task.

2. After initial information gathering, we stepped back and took time to analyze, assess and figure out our reactions and responses. The time we took also allowed us to figure out a strategy for resolving the problem. The resolution we came up with was a win-win. She got what she wanted. What we got was an opportunity to have her take financial responsibility for what actions she ultimately took.

3. We established ground rules for the second part of the discussion. (We probably should have also done this for part one as well.)

4. We used a technique that is very effective- we talk and all she did was listen. When we were done she would

get a chance to do the same and all we do is listen. A variation of this technique that is also very effective and has the effect of slowing down the conversation is this: person number one talks, person number two repeats back what they heard person number one say and person number one tells them if they got it right. The whole conversation proceeds this way. It forces active listening and slows down the conversation.

5. Finally, we memorialized our agreement to make sure we all have the same understanding and there is not the possibility later of saying that is not what I agreed to.

Probably the most critical aspect of what we just stumbled into because of our planned hike was the ability to step away, analyze, assess, take a breath and then continue the conversation. Teenagers are masters at making situations seem more urgent than they truly are. By forcing the time out we allowed ourselves to not get sucked into the drama and artificially created emergency.



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THE PSYCHODYNAMICS OF MEDIATION: Overcoming Ego to Resolve Conflict

By Jonathan E. Fields

A provocative new law journal article deconstructs the psychodynamics of the mediation / negotiation process. Professional mediators certainly understand, if only instinctively, the primacy of ego, self-esteem, and self-identity in any mediation; but the piece articulates a framework and diagnostic that even experienced mediators may find useful.

Essentially, the author, Elizabeth Bader, posits that there are three stages to a typical mediation or negotiation – Inflation, Deflation and, if the matter settles, Realistic Resolution. In Bader’s shorthand, this is the “IDR Cycle.”

In Stage-1, the Inflation stage, the participant is overconfident in their position, full of hopes that are wrapped up in their sense of self-worth. This is personal: the outcome of the mediation is “a reflection of who they are.”

Stage-2, the Deflation stage, begins when the participant learns of the opponent’s initial position. “Reality hits home,” as Bader puts it. The preferred outcome may not be as achievable as they believed. Often, parties in Stage-2 are personally offended by the position of the other.

These Stage-2 “deflationary

dynamics” can often lead to impasse because, in Bader’s rendering, the “narcissistic crisis created when the parties’ overconfident expectations and investments collide.”

Here, at Stage-2, Bader advises the mediator to depersonalize the impasse and to help the parties generate objectively useful options – even though those options may not mirror exactly what the parties intended.

This leads to the final stage, hopefully: settlement or, as Bader puts it, “Realistic Resolution.” In order to settle the matter, she writes, the parties “may have to release their psychological investments in the outcome.”

Mediators, too, must confront their own issues of ego and self-identity during the process – for example, self-doubt about their effectiveness as a mediator, particularly during impasse. In Bader’s words, mediators may have to release their own “sense of narcissistic self-investment in the outcome.”

Bader understands, of course, that the “IDR Cycle” will not manifest precisely in every mediation. It is, however, a compelling archetype. And I believe that mediators attuned to the psychodynamic framework



she describes will better serve both the process and the clients.

Interested readers are directed to the source: Elizabeth Bader, *The Psychology of Mediation: Issues of Self and Identity and the IDR Cycle*, 10 PEPP. DISP. RESOL. L. J. 183 (2010). It is also on the Pepperdine Law website at

<http://law.pepperdine.edu/dispute-resolution-law-journal/issues/volumeten/Bader%20Article.pdf>



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MEDIATOR DEFINED: A Brief Reminder

Editor's Note: Massachusetts General Laws, Chapter 233, Section 23C, (excerpted below) is highlighted for clarity.

For the purposes of this section a **“mediator”** shall mean a person not a party to a dispute who **enters into a written agreement** with the parties to assist them in resolving their disputes **AND has completed at least thirty hours of training in mediation AND who EITHER has four years of professional experience as a mediator OR is accountable to a dispute resolution organization which has been in existence for at least three years OR one who has been appointed to mediate by a judicial or governmental body.**



DIVORCE MEDIATION

By Steve Manos

All of us know someone who is thinking about divorce, in the process of getting divorced, or already divorced. If you don't, you and those around you lead charmed lives.

This essay views divorce mediation with a mediator's eye. It is intended to give you a pretty good sense of what divorce mediation and mediation in general are all about. While it is not aimed specifically at those who are considering divorce or other forms of family mediation, they might nonetheless find it useful.

It is informed by the wisdom of three divorce mediators – Josh Hoch, Nnena Odim, and Bill Levine, whose thoughts and anecdotes are sprinkled liberally throughout. Since the introduction does not do them justice, their bios are included at the conclusion of this essay.

The Miracle of Mediation Mediation often produces a resolution of conflict that is, against all odds, sometimes totally unpredictable and deeply satisfying.

There was one case, a married couple seeking divorce. One of them had been unfaithful. That was part of the breakup. They were tough. Each took their turn being unreasonable, explosive. There was yelling; quite a few times one or the other stomped

out of the room. Once, the wife took a break, went out of the room, and just screamed. This case took over a year, but the parties reached an agreement. More important, the parties left the mediation with their relationship better than when they came in. That's important when there are kids. It's not like a business dissolution.... Nnena Odim

Background About 90% of divorce mediations end in an agreement. Of course, most parties self-select; they come to a mediator saying they want a divorce. Nonetheless, this is a remarkable record for three reasons. First, the issues are frequently complex, and the parties are simply at a loss to deal with them or ready to throw up their hands and leave the whole mess to a judge.

Second, these mediations are mostly emotion-laden. They may involve guilt, shame, anger, sadness, fear, and more. They may involve spousal or child abuse. They may involve depression. These are hard walls for the parties to scale... and for the mediator. And third, the parties may be so angry at each other that they consider lobbing hand grenades at each other in front of a judge to be a reasonable option.

Given that, it is surprising that divorce mediation accomplishes so much in so



little time. Mediation sessions last about two hours, sometimes more, sometimes less, and though unusual, agreement may be reached in some with as little as one meeting. Four to six sessions is more the norm, but the amount of time will vary with the parties, the issues, and the practitioner. Bill and Nnena each recalled a successful mediation they had done lasting twelve sessions.

Fees Fees vary among mediators and may depend, among other factors, on the type of problems clients bring to the mediator – Bill, for example has expertise in complicated business transactions - and the clientele the mediator has chosen to serve.

Josh, at Mediation Works Incorporated (MWI), charges \$350 per hour for both parties, but a public service initiative allows him to use a sliding fee scale to make mediation affordable. Both Nnena and Bill are on MWI's divorce mediation panel and maintain private practices as well. Bill, also an attorney, has a litigation rate of \$700 per hour.

To Mediate Or Not To Mediate

Unless competence and a residue of trust and good will allow a couple to end their marriage without assistance, they usually head to an attorney, less often to a mediator. There are good reasons, however, why the first stop should be a mediator.

First, when parties are working together to produce an agreement, they have their best chance to optimize resources. A couple of

When parties are working together to produce an agreement, they have their best chance to optimize resources.

examples. A forced sale of assets (splitting the pie) can result in lower proceeds than allocating assets between the parties to maximize revenue generation and cost savings (enlarging the pie). Bill Levine gives an example of a couple that worked out how best to share and time the distribution of resources so that the husband, an entrepreneur, could develop a business, potentially enriching both the husband and wife.

Second, a mediated parenting plan can result in better parent-child relationships because it takes account of the children's needs in ways that an arm's-length or court-imposed plan is less likely to. And producing a better, less hostile relationship between former parents is also good for the kids.

Third, the probability that mediation will cost less is very high. A 2007 study by a "high end" mediation firm estimated that the median cost of a

Continued on next page



mediated divorce was \$6,600 for both parties, while the median cost of a litigated divorce was \$78,000 and for a divorce handled by attorneys and settled without litigation, \$27,000. Don't take the numbers as gospel – it is highly likely that most mediations cost less - but the relative sizes of the costs are surely in the ballpark.

Who Will Do Well in Mediation?

Although divorce mediation usually results in an agreement, not every couple is well suited for it.

I see plenty of cases where there is such a power imbalance or an intellectual imbalance or an emotional imbalance between the two people that

Capable mediators manage their demeanor and focus on the process and the parties' interests, not their own feelings about the parties. That's neutrality.

I think mediation would be disruptive for them, certainly in cases where there has been domestic violence – these are not good candidates. But if you take out those cases, maybe ten or twenty percent of cases at most, I think the others would benefit from trying mediation.

The most important thing is that the trust level is not so damaged, there's nothing left. By that I mean that both parties know the other will be essentially truthful. Second,

intellectual parity or close to it, and, third, the issues must be understandable to both. The third criterion may come up when there are complicated business issues....Bill Levine

My area of expertise is family rather than business relationships. I think trying to mediate is appropriate for everyone, even many domestic violence situations. For that, you need strong and experienced mediators, and I would think they would have to be expert in the field of domestic violence.... Nnena Odum

Most people should try it. If parents recognize they're going to parent their children after the divorce, they're ripe for mediation. Others are people who want to get divorced but don't know how. They don't know what to talk about. They don't know what papers to file.... Josh Hoch

Conclusion? Most mediators lean toward mediating divorce cases – not surprising – but they do assess whether the case and parties are appropriate. As we'll see, they have to consider, too, whether they themselves are appropriate.

Differences Among Mediators Philosophy, training, individual predilections, personality, and clientele shape how a mediator chooses to



mediate. They find what works for them. Since mediators may differ in their objectives – some care more about the empowering experience of the process more than the agreement itself – and since there is no way to do a random distribution, double blind study of mediating styles, the superiority of one over the other is a matter of conjecture and faith.

Bill spoke fondly of one of his cases, one that did not involve embittered, embattled parties.

The couple was very kind to each other, but what I liked about that one, the guy was a serial entrepreneur in the startup phase of a new business. In a litigation setting he would have taken the position that the business was off the table. He didn't and the focus of the mediation was the structure of the business between the two of them. She was just as smart as he was and found a reasoned way to feel she was getting a share of the partnership spoils of the marriage, while recognizing that he was the guy in the trenches taking risks every day. She respected that a lot, and it doesn't always happen in our business. So I really liked working with them through a very ornate business deal between the two of them.

I asked Bill if they had structured the deal themselves.

Not at all. It was several sessions of brainstorming and my looking at each

Mediation often produces a resolution of conflict that is, against all odds, sometimes totally unpredictable and deeply satisfying.

proposal and offering variants to each one. There are, though, sessions where I am very quiet and very non-directive and some where I am very active. I use different kinds of mediation in different settings. It all depends on what the people want.... Bill Levine

So, in mediation jargon, Bill is prepared to be both directive, contributing his own ideas, and facilitative, helping the parties to find their own way. Purely facilitative mediators aim for party autonomy and self-determination, concerned that offering proposals, assessing ideas, and predicting court outcomes will detract from those goals. Parties, when encouraged and guided by a capable mediator, can be surprisingly creative, much to their satisfaction.

Another way a mediator might influence the mediation, is by being subtly directive:

There is a lot more empathy that can be shown in divorce mediations than other mediation. So I may actually talk about my personal experience. When there are children involved, I may refer to my own two children, saying I know what you must be feeling. Or I might comment on what I observed in a niece

Continued on next page



or in a neighbor's children.... Nnena
Odim

good enough to put things aside....
Nnena Odim

Josh would firmly and happily identify himself as a facilitative mediator. Nnena is usually facilitative, but more eclectic in her approach than a purely facilitative mediator would be. Bill is eclectic, but is comfortable when he feels it appropriate, with problem-solving with his clients. Which style is better? All three are superb and successful mediators with satisfied clients. And, to be honest, there is a vast overlap of the methodology and tools that they use.

Mediator Neutrality I asked Nnena, Bill, and Josh whether they would mediate for friends. I was interested in their views of how mediators meet their goal of remaining neutral, favoring neither party over the other.

Yes, (I'd mediate for friends) if both parties are okay with it. It might challenge my neutrality. I'd be coming in with some preconceived notions about each party, probably, but I hope I'm a good enough mediator to put those aside.

That doesn't mean that I will change my mind somehow about whether I like somebody or not. If I think a party's a jerk, I will always think that party's a jerk, but it doesn't mean that I can't help that person reach resolution. My feeling about one party or another doesn't matter so much. As you and I agreed before, mediators cannot be perfectly neutral. But I believe I am professional enough and

Mediating for friends has never come up, but I'd be very reluctant to do it. When I mediate, my thinking is about the process and how the process works. If these are friends of mine or somebody I have an investment in, then I'm more concerned about the outcome than I am about the process.

In litigation, sometimes I like the opposing party more than my own client! You can like one person more than another in mediation too. That's where your professional side has to come in. You don't show it, and you keep yourself balanced and neutral, because ultimately, it's not about liking. It's about the process and a fair result. It's not about what I feel.... Bill Levine

For his part, Josh has mediated divorces for friends, and successfully too, but only with their clear consent and his own sense that he could be neutral and use the process to both parties' advantage.

Mediators are human. Friendship, acquaintance, and normal human feelings of liking and disliking could distort the mediation. Capable mediators, however, manage their demeanor and focus on the process and the parties' interests, not their own feelings about the parties. That's neutrality. If they can't do that, then they should choose not to mediate, or, if started, terminate the mediation.



Steve Manos specializes in mediation for colleges and universities, but he mediates more broadly for MWI's College and University Mediation Program, the Community Dispute Settlement Center, the EEOC, and the Boston Bar Assn.'s ADR Program. He can be reached at smanos@mwi.org. This article was first published in MWI College and University Mediation News. Additional information can be found at www.mwi.org/university. Copyright 2010, MWI. All rights reserved.



Joshua M. Hoch is director of mediation services at MWI. Josh has been mediating family, divorce, parenting, child support, and never-married parents disputes since 1996, and he also serves as MWI's liaison

for the Mediation Practicum at the Fletcher School of Law and Diplomacy at Tufts University.



Nnena Odim is a mediator, trainer, attorney, and consultant who has been mediating since 1997. While her practice focuses on family mediation, Nnena is also the Associate Director of the Family/DV/LGBT Law Clinic at Harvard Medical School's Wilmer/Hale Legal Services.



William M. Levine is an attorney, mediator, arbitrator, and a partner at the law firm Lee & Levine LLP. Bill's practice focuses predominantly on divorce and related matters, including property, support, custody, paternity, and premarital agreements.



**“What the large print giveth,
the small print taketh away.”**

Anonymous



SIXTH ANNUAL FISKE AWARD HONORS THE HONORABLE GAIL L. PERLMAN

Presented by John A. Fiske

Editor's Note: John delivered the tribute below at MCFM's 9th Annual Family Mediation Institute. Here is a printable version of what happened orally in the introduction of Gail Perlman.

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

That's a quote from Gail Perlman quoting Albus Dumbledore, an important person in her life as you know if you read the speech called "Harry Potter, Mediation and Us" which she gave at MCFM's May 2000 Gathering of Family Mediators in New England. You may remember this speech because Les included it in the fall edition of our favorite MCFM journal: as great timing for this Institute and for this deliciously deserved award to her.

Your choices to be a mediator, to be members of the Mass Council, to come today, to improve your mediation skills and knowledge, show what you truly are. That is only one of Mediator Perlman's lessons.

To illustrate in this introduction the many roles of Mediator Perlman I asked her clerk for a resume and received 12 pages. So I highlighted only some of her accomplishments and ask you all to raise a hand if you knew that:

1. In 1988 she was a lawyer in Northampton and an Assistant Clinical Professor at the Smith College School for Social Work? (About 5 hands went up.)

2. In 1967 she was a social worker in the Brookline Public Schools? (About 3 hands.)

3. In about 1995 she was a Mediator Trainer in the Peer Mediation Program at Northampton High School? (maybe two hands)

4. She was on the Standing Committee on Dispute Resolution of the SJC? (Many hands.)

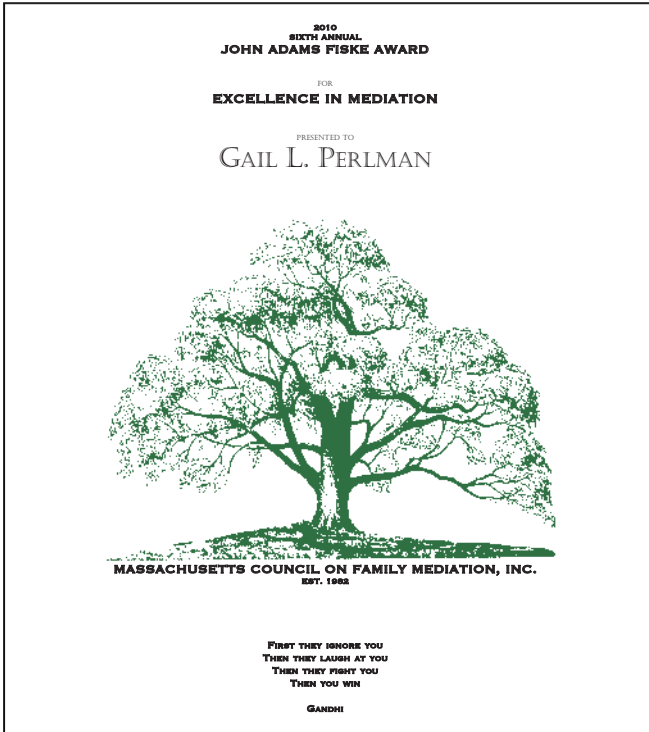
5. She was a member of the Board of Bar Overseers Hearing Committee 2, District 6? (No one knew.)

6. Lastly to keep it short: she won a Judicial Award with Judge Rudolph Kass at the ADR and the Law MCLE conference last year? (Many hands.)

That last award is as worthy as this one. Few people have worked so tirelessly to exemplify and promote mediation as Mediator Perlman. Few judges have worked so long and done so much to bring mediation into closer cooperation with the Probate and Family Court as Judge Perlman.

The introduction ended and all hands applauded for a long time, after which I read the Gandhi quote on the award.

**FIRST THEY IGNORE YOU
THEN THEY LAUGH AT YOU
THEN THEY FIGHT YOU
THEN YOU WIN**





MCFM'S 9th ANNUAL FAMILY MEDIATION INSTITUTE

A Photo Array By Debra L. Smith



Diane Neumann, Jerry Weinstein, Gail Perlman & John Fiske



Kathy Townsend, Marsha Kline Pruett & Lynn Cooper



Gail Perlman



Tracy Fisher & Mark Zarrow



Betsy Williams & Oran Kaufman



Susan Miller & Fern Frolin



Bill Leonard & Allison Bell



Donna Valanzola & Cathy Kligler



Lynda Robbins & Kate Fanger



Tony Adamopoulos & Kevin Lawless



Michael Lavender & John Fiske



Marion Wasserman



Justin Kelsey



Susan DeMatteo, Larri Tonelli Parker & Pauline Scalley



David Burgess & Laurie Israel



Lynn Cooper & Carol Lynn May



Larry Dannenberg



Karen Levitt, Amy Bricker & Allison Bell



Michael Leshin & Paula Noe



Les Wallerstein



Susan Matthew & Jon Fields



Rachael Goldman & Lynn Cooper



Mary Socha, Mary Samberg, Kathy Townsend, Gail Perlman & Betsy Williams



Debra L. Smith is a mediator, collaborative attorney and the photographer who took all the Institute photos in this issue of the FMQ. Her photographs were on display at the Watertown Free Public Library in December 2007 and 2008, and at the Arlington Center for the Arts at the Tufts Street Community Gallery in February 2010 in shows called "Art of the Seasons." In April and July 2010, Deb's photographs were on display at the Watertown Free Public Library in shows called "Positive Emotions." To see more of Deb's photos, please visit www.debsmithphotography.com



DON'T LET YOUR ATTORNEY HIJACK YOUR DIVORCE!

By Laurie Israel

You have embarked on a divorce, selected a lawyer, and now are ready to begin the process. Be careful of the many pitfalls as you work with your attorney. Here are some things to avoid as your divorce wends its way through the legal process:

1. The Letter The divorce usually starts with your lawyer sending a letter to your spouse telling him or her of your intention to divorce. Your story, as told to your lawyer, may become unrecognizable in the letter sent to your spouse. The tone may be cranky, nasty, aggressive, accusative, or all of the above. It may distort facts or contains information you did not want to express to your spouse. Your attorney may have sent it without your approval. You are mortified, regretful and embarrassed. The letter is the opening salvo, sets the tone for the entire divorce, and is never forgotten.

2. The Filing Many divorce attorneys believe that it is correct operating procedure to file a divorce first, and ask questions later. Filing a divorce sets court calendars in motion, and the timing is no longer yours to choose. The non-filing spouse may have to be served by a constable appearing at their door or place of work. Litigation is war — there is no other way to describe it. So what began as a magical, loving association ends with a

war. War is nasty by definition, and people get injured. Innocent bystanders are harmed. The divorce lawsuit will never be forgotten. Granted, sometimes filing is a necessary way to start the divorce, but often it is not. A divorce process can be started by face-to-face meetings with your spouse and your attorneys or with a mediator. These methods set a very different tone than a constable at the door.

3. Are You Really Ready for Divorce? You may have hit bottom in your marriage, and believe the only thing to do is to get divorced. Upon your first visit to an attorney, beware that many attorneys will go into full-force fighting gear and start the divorce process without considering that you may need more time to think about it. Attorneys are sometimes like plumbers — they see a problem and take the steps to “fix” it without considering that a person who is contemplating divorce may be just thinking, envisioning, and fact-finding. If your divorce attorney takes a zealous role, you won't have time to consider whether you really want to divorce. In fact, hitting bottom can be a wake-up call towards reclaiming and revitalizing your marriage. You won't find the space to do that if you visit an overly aggressive divorce attorney who starts the process right away.

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4. Money Issues Distort the Process

Yes, money issues in divorce are very significant. When separating a family into two households, there is almost always economic scarcity. Divorce lawyers tend to do money division very aggressively. Remember, a litigated divorce is a war in which the lawyers view more money as a win, and less money as a loss. But divorce trials will always create harsh feelings, and very often will produce unfair results. If there are children, the corrosiveness caused by fighting over money will spill over into the children's emotional well-being for their entire lives. Children see and hear very clearly and will know what's going on. Spouses who work through money issues directly (or through a four-way process with their lawyers, or through mediation) almost always can come to terms which are reasonable and workable. The spouses feel better because they, and not their attorneys, are in control and their

needs are fully expressed and acknowledged. The bitterness that comes with winning and losing in Court can be eliminated by working through the financial problem together. In a sense, working on money issues together can be the last act of the marriage. And it can be a loving and respectful one.



Laurie Israel is a writer, mediator and collaborative lawyer. She is one of the early practitioners of marital mediation, in which mediation is used to improve and heal marriages. She is a frequent presenter on marital mediation and prenuptial and postnuptial agreements. She has recently co-founded a website devoted to marital mediation at www.maritalmediation.com. © 2010 Laurie Israel. All rights reserved.



**“Lawyers,
I suppose,
were once children.”**

Charles Lamb



MASSACHUSETTS FAMILY LAW A Periodic Review

By Jonathan E. Fields

Wife's Misconduct Results in a Disproportionate Asset Split or... Conduct Counts if it's Really, Really Bad....

Conventional wisdom has it that bad conduct doesn't really matter in an equitable division case except to the extent that it has a financial impact. Tell that to Donna Wolcott.

One night in 2006, while Mr. Wolcott was ill and in a "weakened state," Mrs. Wolcott plied her usually-abstinent husband with alcohol, causing him to fall off a boat. Mr. Wolcott had to swim a mile to shore and walk for several hours before he got help. The fall caused him severe injuries – a broken nose, upper jaw and wrist, four broken teeth, and a "blown-out knee." Then, when he returned home, Mrs. Wolcott forced her injured husband to sleep on the couch because his "breathing" bothered her. Shortly afterwards, while he was still recovering, Mrs. Wolcott asked him to move out of the house.

Mrs. Wolcott's next action suggests that, even though her husband was now out of the house, she was still bothered by his breathing: She proceeded to solicit his murder, telling a cousin she wanted Mr. Wolcott to "disappear" and asking him if he knew anyone in the Mafia. Lucky for Mr. Wolcott, the cousin demurred. The husband was spared the bullet.

Mrs. Wolcott's lesser offenses – an adulterous "sexual affair," a "foolhardy landscaping plan," and \$24,000 worth of unnecessary plastic surgery.

Not surprisingly, the judge wasn't enamored with the sociopathic Mrs. Wolcott and awarded her only 10% of the marital estate. She appealed and the Appeals Court affirmed the decision. *Wolcott v. Wolcott*, 2011 Mass.App LEXIS 16 (January 6, 2011).



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WHAT'S NEWS?

National & International Family News

Chronologically Compiled & Edited by Les Wallerstein

Britain Recognizes Prenuptial Agreements

The U.K. Supreme Court ruled for the first time prenuptial agreements will have full legal status, saying that only grossly unfair contracts would be overturned by the courts. Their decision does away with hundreds of years of precedent that a married couple are meant to be together for life and their property shared, as stated in the Church of England's marriage ceremony since 1662 in which the groom states: "With all my worldly goods I thee endow." Some bishops said the decision undermines marriage. (United Press International, 10/21/2010)

Home Inspections During Divorce

Traditionally, divorcing spouses have tended to rely on appraisals to determine the value of their home, but appraisals tend to focus on how a home's features and square footage compare with comparable properties. Appraisers don't necessarily take into account the repairs a home may need – whether, for instance, it will need a new roof or has mold that has to be removed — that can lower its value. Home inspectors, on the other hand, would include such information in their reports. That information could then be provided to an appraiser or simply be used in divorce negotiations, to help ensure that the party getting the house is getting a fair deal. (Jennifer Saranow Schultz, New York Times, 10/30/2010)

Single Mothers and Live-In Partners

More than a quarter of the unmarried women who gave birth in a recent year were living with a partner, according to a Census Bureau report that for the first time measured the percentage of unmarried mothers who were not living alone. The report found that 28 percent of these women were living with an unmarried partner, whether opposite sex or same sex. While cohabitation has increased enormously over the last generation, the catchall category of "single mother" has often blurred the difference between those living alone and those living with a partner. (Tamar Lewin, New York Times, 11/5/2010)

US Census Bureau Reports New Family Statistics

The recession continued to batter families this year, with the number of stay-at-home mothers declining and a sharp rise in the number of children living with their grandparents increased by 8 percent compared with 2009. Over all, 6.5 percent of children in the United States lived with their grandparents, a 20-year high and double the rate in 1970. The report also highlighted increases in the marriage age for men and women, a long-term trend that began in the 1950s. This year, the median age for men to marry for the first time was 28, up from 26 in 2000. The age for women was 26, up from 25 a decade ago. In all, 54 percent of adults were married in 2010, down from 57 percent



in 2000 (Sabrina Tavernise, New York Times, 11/10/2010)

Other People's Divorces You don't have to be divorced to be sucked in by the new HuffPost Divorce section on The Huffington Post. One week after its debut on Nov. 8, HuffPo's divorce section was the eighth most popular area on the site (out of 27 sections), with about 500,000 page views its first week, thousands and thousands of comments, and grim, slightly creepy ads. (Judith Newman, New York Times, 11/28/2010)

Commitments Vary From State to State Same-sex couples have a broad array of legal rights and responsibilities. *Same-Sex Marriage* is legal in Connecticut, Iowa, Massachusetts, New Hampshire, Vermont and Washington, D.C. In California, same-sex marriage is not currently allowed, while the issue makes its way through the courts, but same-sex marriages were performed there in 2008 before voters amended the State Constitution to define marriage as between a man and a woman. *Civil Unions* are legal in New Jersey, and are expected to start in Illinois in July. *Domestic Partnerships* that grant nearly all the state-level spousal rights as civil unions exist for same-sex couples who register in California, Nevada, Oregon and Washington State. Domestic Partnerships that grant some rights exist in Hawaii, Maine, Wisconsin and Washington, D.C. (Monica Davey New York Times, 12/2/2010)

Chasing Profit in Divorce With some in the financial world willing to bet on almost anything, it should be no surprise that a few would see the potential to profit from the often contentious and emotional process of ending a marriage. So far, the number of companies investing in divorce is small, but some businesses are gearing up. A New York start-up, Churchill Divorce Finance is planning to enter the business. The company's chief executive previously co-founded a publicly traded Australian company that has invested tens of millions in divorce cases there. Banks, hedge funds and boutique firms now have a total of \$1 billion invested in lawsuits at any given time. (Binyamin Appelbaum, New York Times, 12/5/2010)

Iran's Divorce Rate Soars Divorce is skyrocketing in Iran. Over a decade, the number each year has roughly tripled to a little more than 150,000 in 2010 from around 50,000 in 2000, according to official figures. Nationwide, there is one divorce for every seven marriages; in Tehran, the ratio is 1 divorce for every 3.76 marriages, the government has reported. The numbers are still modest compared with the United States, which typically records about a million divorces a year in a population about four times as large. (William Yong, New York Times, 12/7/2010)

French Civil Unions Gain Favor Over Marriage French couples are increasingly shunning traditional marriages and opting instead for civil unions, to the point that there are now

Continued on next page



two civil unions for every three marriages. In 2000, just one year after the passage of the law, more than 75 percent of civil unions were signed between heterosexual couples. That trend has only strengthened since then: of the 173,045 civil unions signed in 2009, 95 percent were between heterosexual couples. As with traditional marriages, civil unions allow couples to file joint tax returns, exempt spouses from inheritance taxes, permit partners to share insurance policies, ease access to residency permits for foreigners and make partners responsible for each other's debts. Creating a civil union requires little more than a single appearance before a judicial official, and ending one is even easier - it can be dissolved with just a registered letter. (Scott Sayare & Maïa De La Baume, New York Times, 12/16/2010)

‘Doubling Up’ in Recession-Strained Quarters Recent

U.S. Census Bureau data shows that the number of multifamily households jumped 11.7 percent from 2008 to 2010, reaching 15.5 million, or 13.2 percent of all households. It is the highest proportion since at least 1968, accounting for 54 million people. Even that figure, however, is undoubtedly an undercount of the phenomenon social service providers call “doubling up,” which has ballooned in the recession and anemic recovery. The census’ multifamily household figures, for example, do not include such situations as when a single brother and a single sister move

in together, or when a childless adult goes to live with his or her parents. The average income of multifamily households in the records fell by more than 5 percent from 2009 to 2010, twice as much as households over all, suggesting that many who are living in such arrangements are under financial siege. (Michael Luo, New York Times, 12/29/2010)

Families Bear Brunt of Deployment Strains

The work of war is very much a family affair. Nearly 6 in 10 of the troops deployed today are married, and nearly half have children. Those families — more than a million of them since 2001 — have borne the brunt of the psychological and emotional strain of deployments. Siblings and grandparents have become surrogate parents. Spouses have struggled with loneliness and stress. Children have felt confused and abandoned during the long separations. Social scientists are just beginning to document the rippling effects of multiple combat deployments on families — effects that those families themselves have intimately understood for years. (James Dao & Catrin Einhorn, New York Times 12/31/2010)



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ANNOUNCEMENTS

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

MCFM'S NEXT TWO, FREE PROFESSIONAL DEVELOPMENT PROGRAMS

SILVER THREADS AMONG THE GOLD: Helping Families Grapple with Personal & Property Issues in the Context of Aging Parents

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With parents gone or weakened by confusion, family members sometimes need help with resolving issues such as placement of parent in appropriate care setting, allocation of estate property, use of summer cottage, distribution of family jewelry/heirlooms/antiques, care of disabled sibling, transfer of family business, etc. Old family grievances, unresolved disputes, jealousy, greed, or plain differences of opinions adds to the challenge of sorting out family differences.

Come to this event and learn from Alex Moschella, Blair Trippe and Suzanne Modigliani. You will gain knowledge about elder law and disabilities from an experienced attorney, and tips and techniques from a skilled and experienced mediator and geriatric care manager. Mixing fields of knowledge will help you enable families to devise creative and practical solutions.



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Elder mediation helps seniors and their adult children resolve conflicts around issues such as living arrangements, care giving, financial planning, inheritance/estate disputes, medical decisions, family communication, driving, and guardianship. This three-day course will cover:

Mental & Physical Effects of Aging: Normal Aging, Physical Changes, Cognitive Changes, Alzheimer's Disease and Other Forms of Dementia, Depression in the Elderly, Families and Caregiving- Intergenerational Relationships, Long Term Care and In-Home Services, Costs of Care, Who pays for Services and Maintaining Independence.

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!

Seminar on Marketing Your Mediation Practice: Interactive exercises and specific tools for elder mediators.

Elder Decisions' Training Team: Arline Kardasis, MAT & Crystal Thorpe, MBA, MSW

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

Cost \$875 / \$775 for MCFM Members

**Includes breakfast pastries, coffee, lunch
on site, snacks and course materials.**

See website for details www.ElderDecisions.com

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



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



DIVORCE IN MASSACHUSETTS: WITH OR WITHOUT A LAWYER

Jerome Weinstein
& Les Wallerstein

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.

THE CAMBRIDGE CENTER FOR ADULT EDUCATION

SATURDAY, FEBRUARY 26, 2011

9:30 AM - 12:30 PM

42 Brattle Street

Online Registration: <http://www.ccae.org>

Phone Registration: 617-547-6789

Cost: \$61.00, Limited to 20

Continued on next page



PARENTING SOLUTIONS PRESENTS... WINTER, 2011 PROGRAMS FOR PARENTS

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

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

February 9th: After Divorce: When Co-Parenting Seems Impossible

March 30th: Is It Worth Trying to Save This Marriage? What's Best for the Kids?

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

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

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!



30-HOUR BASIC MEDIATION TRAINING

Presented by The Mediation & Training Collaborative (TMTC)

GREENFIELD, MA

March 11, 19, 25 & April 2, 2011

This highly interactive, practice-based training is open to anyone who wishes to increase skill in helping others deal with conflict, whether through formal mediation or informal third-party intervention processes in other professional settings. TMTC is a court-approved mediation program, and this training meets SJC Rule 8 and Guidelines training requirements for those who wish to become court-qualified mediators. Social work CECs and attorney CLEs available upon request.

For more details or brochure contact:

Susan Hackney at mediation@communityaction.us or 413-475-1505



PART-TIME MEDIATOR POSITION AVAILABLE

Diane Neumann & Associates: Divorce Mediation Services, Watertown, MA, has an opening for a part time North Shore divorce mediator. The hours include two evenings per week. The mediator provides joint mediation sessions to clients, followed by substantial document drafting. These documents typically require complex financial and tax calculations. Preference will be given to attorneys who have mediation training, experience, and practice family law. **This individual would not be able to maintain a separate mediation practice.**

Requirements:

Licensed Massachusetts attorney

Continued on next page



Divorce mediation experience
 Divorce mediation training
 Knowledge of divorce law
 Excellent writing skills
 Financial expertise
 Tax knowledge of divorce related issues a plus
 Understanding of interpersonal couple and family dynamics
 Child development

**Please e-mail detailed cover letter and resume to:
 dnapplicants@aol.com
 No phone calls, please.**



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.**



COMMUNITY DISPUTE SETTLEMENT CENTER
Building Bridges • People to People • Face to Face



THE FMQ WANTS YOU!



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

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

NOW'S THE TIME TO SHARE YOUR STORY!



MCFM NEWS

COUPLES GONE WILD Presented by Joseph Shay, Ph.D.

This presentation will be a joint meeting for members of MCFM and the Massachusetts Collaborative Law Council. Dr Shay will explore the top 10 complications in couples therapy and their implications for divorce mediators and collaborative law negotiators. He will illustrate issues and dynamics with video clips from popular television shows including “The Sopranos” and “The Breakup.”

**MAY 4, 2011, 2-4 PM
LOCATION TO BE ANNOUNCED
CHECK WWW.MCFM.ORG FOR UPDATES**



MEDIATION PEER GROUP MEETINGS

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.



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

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

Les Wallerstein, Editor
1620 Massachusetts Avenue
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wallerstein@sociallaw.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.

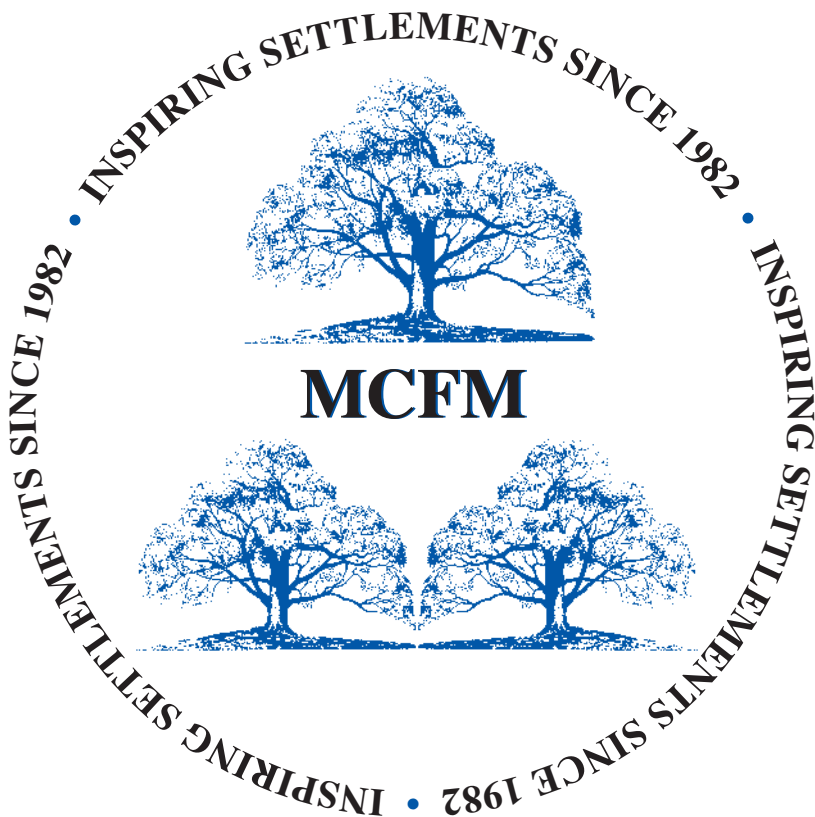
Please submit all contributions for the FMQ to the editor, either by email or computer disk. Submissions may be edited for clarity and length, and must scrupulously safeguard client confidentiality. The following deadlines for all submissions will be observed:

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.

