

MCFM
FAMILY MEDIATION QUARTERLY

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



PRESIDENT'S PAGE: Jonathan E. Fields

Dear Mediators:

This issue of Family Mediation Quarterly is Les Wallerstein's last as editor. As most of you know, Les created FMQ and has been its steward since the first issue. One cannot overstate the FMQ's role in our organization. When MCFM comes up in conversation with many people I meet for the first time, more often than not, they mention – unprompted – that they read the quarterly. That's the association – MCFM/FMQ. We send it to Probate and Family Court judges across the state; and when I talk to them at various MCFM events and elsewhere, it's clear to me not only that they are aware of it but also that they also read it.

The FMQ is widely read and widely respected. And that's because of Les – who has devoted himself to publishing this outstanding product, issue after issue, year after year. I thank you, Les, on behalf of MCFM, for all your work. Your service to FMQ has been truly appreciated and will be greatly missed.

Thankfully, although no one can truly fill his Birkenstocks, Board member Kate Fanger has volunteered to take over as editor. Kate is an experienced mediator. She is thoughtful about mediation and cares deeply about our community. With her writing skills and talent for graphic design, her patience and sense of humor, she is a great fit for FMQ. I'm sure I speak for all of us in wishing her the best in the new role and in looking forward with her to this next chapter.

As John Fiske signs off on all his e-mails: "Onward."

Yours,



jfields@fieldsdennis.com



EDITORIAL: WHAT'S PAST IS PROLOGUE

*The time has come, the Walrus said, To talk of many things:
Of shoes and ships and sealing-wax, Of cabbages and kings,
And why the sea is boiling hot, And whether pigs have wings."*

Lewis Carroll

In July, 2002, MCFM launched the first edition of the Family Mediation Quarterly into unchartered waters. Since then the FMQ has chronicled the course of family mediation in Massachusetts and beyond, and has surfaced as MCFM's signature publication.

At first, printed editions were mailed only to MCFM members. Today the FMQ is mailed to a membership that has more than doubled; plus all Probate & Family Court Judges, local Dispute Resolution Coordinators, Family Service Officers, and law school libraries in Massachusetts. In addition an archive of all editions is available online.

Despite my inexperience editing a quarterly journal, MCFM entrusted me with its new venture. Backed by solid support from the Board of Directors, I welcomed readers to the first edition of the FMQ with an invitation, hoping it would resonate with a broad-spectrum of the mediation community:

"We believe that no one is more expert on the subject of family mediation than its practitioners. We intend to share the wealth of our collective experience. We will strive to disseminate the widest possible array of information that effects the practice of family mediation. We seek to explore the ethical issues and paradoxical complexities that underlie our work. We invite every MCFM member, each practitioner and all friends of family mediation to contribute...."

I was delighted as the response surpassed my expectations. The FMQ owes its success to the contributions of over 160 mediators and mediation-friendly writers, commentators, graphic artists, cartoonists, photographers and book reviewers.

In the spring of 2002 I made a commitment to edit the FMQ for two years, personally doubting whether it would last that long. But now... eleven years, forty-five editions and some 1,900 pages later... I no longer doubt the FMQ's viability.

As years passed I wondered when the right time for me to retire would come. For reasons that I no better understand now than my initial reasons for offering to edit



the FMQ... I believe that time has come. So it is with great pleasure that I introduce MCFM's (and my) choice of vice-president Kate Fanger as the next editor.

Of course the future success of the Family Mediation Quarterly remains where it has always been... in the hands of mediators willing to risk sharing stories of their real work... pig's wings and all. It is our collective responsibility to provide Kate the wherewithall for future FMQs. Let's be generous.

Looking back, the FMQ has been a labor of love. I am grateful to everyone who encouraged me along the way, and helped the FMQ achieve the success it has. It has been an honor to rub shoulders with so many wonderful mediators. *Thank you all!*



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“The spread of no-fault divorce has reduced the bargaining power of whichever spouse is more interested in continuing the relationship. Yet... whenever a state adopted a no-fault divorce law, the annual rate of female suicide there dropped by 8 to 16 percent, and the incidence of domestic violence declined by roughly 30 percent.”

Stephanie Coontz, June 16, 2013



QUIT PRO QUIT

By Bruce D. Clarkin

I often hear John M. Haynes' voice during a mediation. Sometimes instructing, other times inspiring and always sharing his wry humor. When I listen to a client relating a bit of marital history, I hear John's observation that unhappy spouses always talk about their marital issues in such a way that the other spouse is responsible for the problem.

Haynes, with his wife Gretchen published "Divorce Mediation: A Practical Guide For Therapists and Counselors." In the same year Haynes became the founding President of the Academy of Family Mediators (1981-1985). Haynes' work provided a substantial part of the foundation of our divorce mediation practice and theory. Above all things, Haynes has been the inspiration and conscience of the divorce mediation movement in the United States.

"Sometimes," mused Haynes, "I find myself, in the course of a mediation, doing some pretty good therapy." We all sometimes find ourselves in our mediation lives yielding to the gravitational pull of our vocations of origin. The line between therapy and divorce mediation can be especially fine. Much of our mediation process is grounded upon family therapy: the empathetic client-centric environment we provide, our willingness to work from the "one-down" position, our recognition that the client is the expert in his/her world, our open ended questions and many of our interventions. And, of course, though

divorce mediation is clearly not therapy, our process can, for our clients feel therapeutic because of our willingness to support them as they deal with the pain, fear and anger of divorce.

We have all experienced, in the eleventh hour of what we thought was a successfully concluding mediation, the emergence of a comparatively small issue disguised as an impasse. I was finishing the fifth, and I believed, final session with Bob and Sally. They were an easy couple to care for: after many years of operating a restaurant that was a diner favorite, the recession tipped them into insolvency. They lived in an affluent suburb and considered their home to be a great investment. But between the second mortgage with which they attempted to defibrillate the restaurant, and the tumbling real estate market, their equity stake was now in the negative. And, of course, their children were going off to college and redeeming their parent's promises to pay for the college educations of their choice.

The mediation process had proceeded slowly. We started with a temporary plan to stabilize their lives while they figured out the business problems, worked for a while with a financial plan when they believed that the short sale of their house would be approved and then dealt with the ugly options that remained when their short sale plan was rejected. Bob had become re-employed but was laid off after approximately a year. Sally had



caught on with a local financial institution and though she was not earning the amount that she wanted, she was grateful to be employed.

In our last session, we worked through the final draft of their Separation Agreement, negotiated the sharing of the children's expenses, attended to a few details and the end of the mediation was in sight. In earlier sessions Bob had mentioned that his parents had financially assisted the family. As our final session wound down, Bob announced that: "I'm not done until Sally agrees to reimburse me for half of the \$500 loan I owe my parents." The parties had separated in the summer of 2009 and apparently, during the separation, Bob's parents "loaned" money to Bob (and Sally?). You could feel Bob's heels digging in as Sally, laughing out loud, exclaimed: "Not only would your parents not loan me a penny...but they refuse to speak to me!"

I put on my best imperturbable visage and carefully teased out their positions. Bob described the painful process by which Sally "left" him and said that the \$500 loan from his parents was used to pay "their bills" during the period of separation. Sally spit back: "Those were your bills and I'm not paying them!" We went back and forth a few times but my questions unfortunately locked them more tightly in their positions.

Haynes' Quaker beliefs subtly informed his mediation process. He believed that his task in mediation was to help parties

get in touch with "that piece of God" in each of them and each other. In my agnostic belief system, I understand that my task was to help parties connect with their goodness and with the goodness of each other. I feel pretty lucky to have a job in which this is an abiding aspiration.

I suggested to Bob and Sally that it seemed to me that their dispute had little if anything to do with the money. I asked for their permission to further explore my thought with a few questions. They nodded in the affirmative.

The line between therapy and divorce mediation can be especially fine.

I asked each to share the emotions and feelings that accompanied their description of their position with respect to the \$500 "loan." Words poured forth from Bob describing the pain, fear and terror that he experienced when Sally requested the divorce and left. Sally said that she was angry and felt disrespected: "I've bent over backwards trying to take care of the kids expenses knowing that Bob is not in a position to help... I have continually looked out for Bob and this is the thanks I get!"

I asked Bob how he would feel if Sally conceded... he ignored the question and suggested that they "split the difference." "That's one way to do it Bob," I countered, "but the result might be that you would both be unhappy. You may want to think about how to get a better result for both of you."

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“How would you feel Sally if Bob conceded?” “Respected.”

I suggested that one way to think about this would be to consider a concession to be a gift that one or both of you may want the privilege of giving to the other. Neither blinked.

“Would you like an idea?” More affirmative nods.

“What if the two of you chose a restaurant...planned a dinner for the two of you and the children...the money in dispute could fund the dinner...the four of you can express your appreciation to each other and propose a toast to your family for surviving the divorce. It would be an end to the hard times of divorce and the beginning of something better. You can split the cost and plan the event together.”

Quiet.

Bob: “I know exactly the right place.”

Sally: “Don’t tell me.... I know...it’s.....”

Bob: “Yes.”

Sally: “Great choice.”

Of course this would be an ideal way to end the story. However, though it was the end of the mediation, it is not the end of our story.

Several days later Sally called with information about the forwarding of the final draft of the Separation Agreement.

“So,” I ventured, “How is it going?”

“Not well,” said Sally.

“I’m sorry to hear that” I offered.

“He reneged on the dinner and insists I pay him the \$250.”

“What did you do?”

“I sent him a check and it’s finally over,” she said.

It was a good lesson for me. Who was I to think that I had a good solution for Bob and Sally? A misadventure in social engineering.

Haynes was right when he said we mediators need to watch ourselves carefully. We are attracted to our vocation of origin like moths to a porch light on a summer night.

Mediate and learn.



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DOMA IS DEAD BUT NOT BURIED

By Joyce Kauffman

On June 26, 2013, the U.S. Supreme Court confirmed that section 3 of the Defense of Marriage Act is unconstitutional as a violation of the equal protection clause of the US constitution. *United States v. Windsor*, 570 U.S. (2013). This landmark decision represents a tremendous victory for the LGBT community not only because it means that legally married same-sex couples will have access to all federal benefits but because many legal observers and LGBT activists believe that equal protection for the LGBT community *in all areas* is but a few SCOTUS decisions away. It is important to remember that the LGBT community continues to face discrimination in areas of employment and public accommodations in most states; there is no federal protection against discrimination on the basis of sexual orientation or gender identity; children of same-sex parents in many jurisdictions have no way to protect their relationships with a non-legal parent; married same-sex couples who live in non-recognition states have no access to divorce; and LGBT youth face crippling discrimination and, often, violence, homelessness, and high suicide rates. The *Windsor* decision is remarkable and welcome on its own, but even more important as a basis for future progress in all of these areas, as our Supreme Court recognizes the humanity of this community.

Now, for the first time in our history, same-sex married couples should have full federal recognition.[1] President Obama has directed all federal agencies to ensure a “swift and smooth” transition. There remain significant questions for couples seeking federal benefits who reside in states that have a Defense of Marriage Act and/or constitutional amendment.[2] For example, social security benefits are dependent on a marriage being recognized in the state where one *resides* where immigration benefits are dependent on a marriage being recognized in the state where the marriage was *celebrated*. President Obama has said “My personal belief, but I’m speaking now as a president as opposed to as a lawyer, is that if you’ve been married in Massachusetts and you move someplace else, you’re still married, and that under federal law you should be able to obtain the benefits of any lawfully married couple”. Without going into excruciating detail (after all, there are over 1,000 federal rights and benefits impacted), there are areas in which the President can issue executive orders to make certain changes and others that will ultimately require either further legislative action or lawsuits filed by same-sex couples seeking benefits.

Since the *Goodridge* decision ten years ago, I have maintained that the best thing about same-sex marriage is... divorce.

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Having the ability to end a relationship in the context of a legal structure (previously unavailable to same-sex couples) provides safeguards and equity otherwise unavailable. With the demise of DOMA, the legal structure has expanded to include same-sex couples.

What does this mean for mediators in Massachusetts? Same-sex couples will now have all the federal tax benefits that are available to heterosexual divorcing couples: transfers of property are non-taxable events; retirement assets can be transferred by QDROs; alimony can be taxable to the payee and deductible to the payor. For those of us who have been working with same-sex couples for the past ten years, this is a huge relief. No more do we have to advise our clients that they will have to cash out retirement funds (paying penalties and taxes) in order to create an ‘equitable’ division of assets. No more do we have to be concerned about possible gift tax or capital gains tax implications of property transfers. No more do we have to worry about alimony recipients being audited by the IRS for unexplained income.

Not all problems have been resolved by *Windsor*, however. Establishing parentage remains crucial. Although the birth certificates of children born to same-sex couples in Massachusetts will reflect both parents, a state with a marriage ban (a “non-recognition state”) will not recognize this presumption of parentage of children born into a same-sex marriage. For that reason, it is *essential* that married same-

sex couples continue to do co-parent adoptions following the births of their children. The adoption decree will be afforded full faith and credit in non-recognition states even if such adoptions are not granted in that state. It is worth noting that same-sex couples may have children born to them prior to their marriage for whom they have not done co-parent adoptions. If this is the case, they must do the co-parent adoption; otherwise, that child is arguably not a child of the marriage. The Court cannot reach the best interest analysis if both parties are not legal parents. Adoptions can be done even while a divorce is being contemplated or is pending. The Courts do understand the importance of establishing parentage. If a party is not a legal parent and the legal parent refuses to consent to the adoption, the non-legal parent’s only option is to file an action to establish de facto parent status. Unfortunately, even if such a person were successful in establishing such status, a de facto parent does not stand on equal legal footing, is not obligated to pay support, and may only get visitation if it is in the best interests of the child. Absent an agreement by the parties, a de facto parent will not be awarded legal custody.

Fortunately, there are numerous resources available to assist mediators, attorneys, and the community as we navigate through this next phase of marriage equality. The most comprehensive resource has been put together by several national LGBT legal organizations (American Civil Liberties



Union, Center for American Progress, Family Equality Council, Freedom to Marry, Gay & Lesbian Advocates & Defenders, Human Rights Campaign, Immigration Equality, Lambda Legal, National Center for Lesbian Rights, National Gay and Lesbian Task Force and OutServe-SLDN) and can be found on the GLAD website at:<http://www.glad.org/current/post/after-doma-fact-sheets>.



Joyce Kauffman, Esq., is a founding principal of Kauffman Crozier LLP in Cambridge. She is a mediator and collaborative lawyer whose practice focuses exclusively on family law, with an emphasis on issues impacting the LGBT community. Joyce is a founding member of the National Family Law Advisory Council of the National Center for Lesbian Rights, and can be reached directly at joyce@kauffmancrozier.com

Divorcing same-sex couples deserve the respect that the *Windsor* decision has provided. And mediators now have the necessary tools and the absence of pre-*Windsor* restrictions to help them through this process.

Footnotes

1. Same-sex marriage is allowed in the District of Columbia and thirteen states: California, Connecticut, Delaware, Iowa, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New York, Rhode Island, Vermont, and Washington (and five Native American tribes).
2. Thirty states have constitutional bans and an additional eight states have legislative bans; other than the jurisdictions that allow same-sex marriage, only New Jersey and New Mexico have neither a constitutional or legislative ban.



**“Every society honors
its live conformists
and its dead
troublemakers.”**

Mignon McLaughlin



A MEDIATOR'S GUIDE FOR UNDERSTANDING THE 2013 CHILD SUPPORT GUIDELINES CHANGES

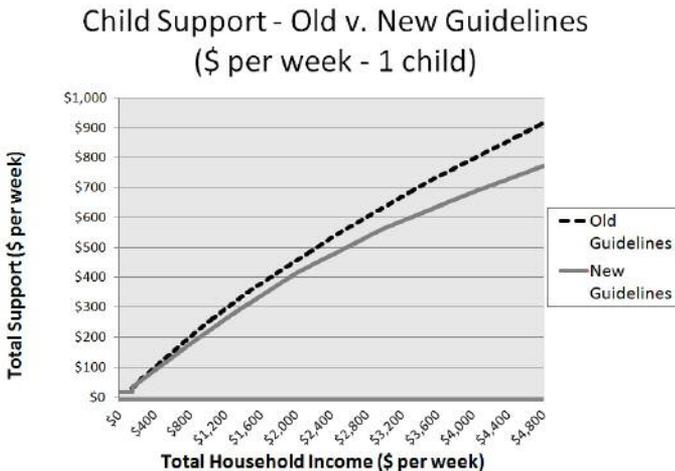
By Justin L. Kelsey, Esq.

The Chief Justice of the Trial Court, Robert A. Mulligan, recently announced the latest revisions to the Massachusetts Child Support Guidelines which will become effective on August 1, 2013. Federal rules require that the court review the guidelines every four years. Since the current guidelines were enacted in January of 2009 family law practitioners were expecting a Task Force report this year. Some of the changes that were made, though, were unexpected and could change child support orders significantly.

The Chief Justice's Press Release summarized the language changes to the guidelines, but did not discuss the changes to the formula. In this article, I will summarize the changes to the formula itself, and review the language changes in greater depth. Many of these changes can be described simply as clarifications of the existing language. One change, however, will significantly affect how parenting plans will interact with child support calculations, while another may open the door for many more modification cases. For all of these updates, I will discuss how each could affect mediation cases specifically and potential traps this new language could create for mediators.

I. The Child Support Formula – A Decrease in Most Support Orders

As the below chart shows, the new guidelines will result in a typical reduction of between 10 and 15% for many cases. The chart displays a comparison of child support totals for 1 child vs. household income (before dividing the child support by proportion of income):





Because the multiplier for additional children increases in the new guidelines, as shown below, the impact of this overall formula reduction will be felt less in cases with multiple children, and in some instances with multiple children the overall support will actually increase:

OLD GUIDELINES		NEW GUIDELINES	
TABLE B: ADJUSTMENT FOR NUMBER OF CHILDREN		TABLE B: ADJUSTMENT FOR NUMBER OF CHILDREN	
CHILDREN	ADJUSTMENT	CHILDREN	ADJUSTMENT
1	1.00	1	1.00
2	1.20	2	1.25
3	1.27	3	1.38
4	1.32	4	1.45
5	1.35	5	1.48

As mediators we know that each case has its own unique factors, and a new guidelines formula won't necessarily tell us what the support should or will be in each case. Many of the language changes to the guidelines could be significant and to truly understand their impact, especially on mediation cases, we have to understand the new language, how it changes the calculation of child support, and how it may affect other areas of a case as well.

II. Clarification of the Guidelines Language – An Increase in Judicial Discretion

In reviewing many of the “minor” language changes to the text of the guidelines two themes stand out. The first trend is clarification. The Task Force made numerous changes that clarify language from the 2009 guidelines. These changes typically deal with ambiguous or contradictory language in the 2009 guidelines.

The second trend is towards more judicial discretion. Many of the changes either imply the need for the judges to use their discretion or, in some cases, explicitly indicate that judicial discretion is necessary in weighing certain factors. While many will certainly debate the benefit of greater judicial discretion, the result for mediators is obvious. Greater judicial discretion means less predictability in court and that is more reason for people to make their own choices in mediation.

The specific changes as outlined in the Chief Justice’s Press Release are:

1. SSI and similar benefits income is excluded from the definition of income.

The 2009 Guidelines defined income as “gross income from whatever source” and provides a non-exclusive list of what that might include. There were no exclusions prior to the 2013 guidelines, which added specific language excluding income “derived from a means-tested public assistance program (for example, TAFDC, SNAP and SSI benefits).” While this change will only affect a small number of cases, that impact could be significant.

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What does this change mean for mediators? In mediation, parties can agree to deviate from the guidelines and their reasoning for doing so could be based on many different factors. Since under the old guidelines all income was included, discussions over excluding certain types of income were rare. This new language opens the door for parties to discuss the fairness of including other types of income more often. It is also important to note that the Alimony Reform Act also defines income based on the Child Support Guidelines definition, so these types of income are no longer included in alimony calculations either.

2. Attribution of Income must include evidence of Availability of Employment.

In many divorce cases, one party is unemployed, or employed at a rate lower than what they once earned. In these cases, the 2009 guidelines allowed the court to attribute income to the unemployed or underemployed party if a finding was made, and provided a list of factors that the court should consider. Since the list was not exhaustive, the court could consider additional factors such as the availability of employment at the attributed income. This seems like an obvious factor, and the new guidelines make it an explicit one.

What does this change mean for mediators? When one party in a mediation brings up the issue that the other party “could be making more money,” it can often be helpful to point them to the exact language of the child support guidelines. This doesn’t just tell them what a court could consider without taking sides, it also allows them to better structure their discussion regarding the many factors.

For example, if the unemployed or underemployed party points out that their age could affect their ability to find new work at their old rate, a mediator can point out that age is one of the factors listed but it is also not the only factor. The addition of this new factor suggests that when this subject arises in mediation, both parties could benefit from doing some homework to see what employment is actually available.

3. Clarification of broad discretion as to income from secondary jobs or overtime.

While the 2009 guideline language clearly allows the court to exclude overtime or second job income, the language required the court to first consider a list of factors, strongly suggesting that income earned prior to separation and relied upon should still be included unless no longer available. The Task Force added the following sentence: “The Court may consider none, some, or all overtime income even if overtime was earned prior to entry of the order.” This clarifies that the Judges have great discretion in how to handle overtime income.



What does this change mean for mediators? This clarification of just how much discretion Judges have is a great way to convince mediation clients of the importance of applying their own standards of fairness. The Court could consider **none, some, or all** overtime income. No one can predict how the Judge will apply this broad discretion so it truly is up to the parties to discuss what they think is fair.

4. Reference to the 2011 Alimony Reform Act and Judicial Discretion

This “reference” doesn’t provide any direct guidance but does make some suggestions in order to ensure that the court reaches “the most equitable result for the child and the parties.” Specifically, the new guidelines state

“Depending upon the circumstance, alimony may be calculated first, and in other circumstances child support will be calculated first. Judicial discretion is necessary and deviations should be considered.”

While the Task Force does not have the authority to over-ride the statutory requirements for either child support or alimony, they are pointing out both to Judges and to parties that neither statute requires that child support or alimony be run before the other. Thereby allowing for some creativity when trying to calculate “equitable” results.

What does this change mean for mediators? The Task Force has highlighted the difficulty of calculating orders in cases where child support and alimony are both possible and/or likely. In these cases, the different options for running these guidelines, as well as the different tax implications of each, strongly suggest the importance of including a financial expert in your mediation. Especially in these cases when the tax implications of support could significantly affect that after-tax income for each party, a non-financial mediator’s expertise is likely not enough to demonstrate for the parties the real world outcome of various support scenarios.

5. Clarification for cases where the combined income exceeds \$250,000.

Clarification has been provided for how to allocate the **minimum presumptive** support for cases where the combined income exceeds \$250,000. In those cases the new guidelines and worksheet assist in calculating the proportion to total income for each party, and this results in a proportional division of the minimum presumptive support. However, “the child support obligation for the portion of combined available income that exceeds \$250,000 shall still be in the discretion of the Court.”

While this language clarifies the calculation of support at the minimum presumptive amount, the remainder is still discretionary leaving a significant question in these

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cases as to total support. The new worksheet displays the additional income over \$250,000 in a weekly amount presumably to assist the court in evaluating any additional award.

What does this change mean for mediators? For cases where the parties' income exceeds \$250,000, filling out the guidelines worksheet together could be even more helpful than in other cases. For mediation clients who complete it on their own, they might not take the time to complete the last section once they have the child support figure. Seeing how much each party has in additional income over the \$250,000, though, will be extremely helpful information for any discussion surrounding additional support above the minimum presumption. Walking through the worksheet together will ensure that both parties have the chance to consider this additional section.

6. Guidance and clarification for support orders when children are over 18.

While the Task Force added language indicating that child support for children over age 18 is provided for in the statute, they also pointed out that the formula only creates a rebuttable presumption up to age 18. When a child is over the age of 18, other factors should be weighed in ordering support. The 2009 guidelines included some factors, but the 2013 revisions specifically call out "contribution to college costs" and the allocation of same.

What does this change mean for mediators? The easiest way to deal with college costs and children over 18 in a Divorce Agreement is to reference the emancipation statute and indicate that the parties will determine the division of college costs when that gets closer. But is this the best way? In both cases, the parties are left with little guidance and will likely return to court or mediation when that time comes.

It is important when reviewing the parties agreements with relation to child support, to also ask them how they want to handle college and the emancipation of the child(ren). While married parents will often plan for college with young children, divorced couples are too often encouraged to put off resolution of this issue because a court would not address it with young children. Since the guidelines contain specific language suggesting that child support can be revisited at 18 and depends partly on the allocation of college expenses, that language can be used to encourage parties to consider how they would make that allocation if they want to create a joint plan for their child's college education.

7. Deviation Factors are Expanded

While the guidelines create a rebuttable presumption of the amount of child support to be ordered, there is a list of factors the court can use to deviate. The 2013



revisions add three additional deviation factors: extraordinary health insurance expenses, child care costs that are disproportionate to income, and when a parent is providing less than one-third parenting time.

What does this change mean for mediators? In mediation, parties can agree to deviate from the guidelines but the court must ultimately approve any deviation. These deviation factors can be useful both to ensure the court will approve an agreement, and to assist parties in deciding what figure is fair to them. When a discussion over support stalls because the parties have difficulty negotiating a figure, this list can be helpful in framing a discussion about what the parties think is fair rather than focusing on the numbers.

As with all of the changes discussed above, additional deviation factors give the judge more discretion, and avoiding this discretion should be discussed as a benefit of mediation with potential clients. The cost of litigation, with less and less certainty of outcome, cannot compare to the benefits of self-determination.

III. Parenting Time – A New Formula

One of the new deviation factors suggests that the court can order more child support when one parent is providing less than one-third of the parenting time. This has the affect of making the presumptive child support order a minimum for sole custody cases. However, this is only one end of the spectrum and the new guidelines attempt to provide more clarity for the many different possible parenting time divisions.

The change in the new guidelines that is likely to create the most confusion and disagreement is the inclusion of a new formula for calculating support when parenting time falls between equal time and the “assumed standard split of two thirds/one third.” The new formula is simply an average of the results from those two situations. It sounds simple, but in application this will be the most difficult new section because it is not entirely clear when to apply the new formula and because the results at times will be counterintuitive. The best way to demonstrate this difficulty is with two examples:

Case Study 1 – What is the numeric equivalent of the word “approximately?”

Case 1 Scenario: Parents share physical custody. Mother has 54% of the time. Father has 46% of the time. Mother works as a teacher and has gross income of \$35,000. Father is an engineer and has gross income of \$120,000. Father covers health insurance at a cost of \$50 per week. The parties have 2 children, ages 10 and 12.

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Case 1 Calculation: The 54/46 split of time is obviously closer to 50/50 than one-thirds/two-thirds. However, the 2009 guidelines are not exactly clear on what to do in this situation. Is a 54/46 split “approximately” equal? If 56/46 is handled as a traditional (one-thirds/two-thirds) division, then under the old guidelines Mother would receive \$574 per week. If 56/46 is considered approximately equal, then under the old guidelines you would run the guidelines both with Mother as the recipient and with Father as the recipient. Under the old guidelines this cross-guidelines approach results in \$453 per week still paid by Father to Mother.

However, under the new 2013 guidelines there is one additional category between the “traditional” one-thirds/two-thirds division and a 50/50 division. This new category is defined as follows: “Where parenting time and financial responsibility are shared in a proportion greater than one-third, but less than 50%.”

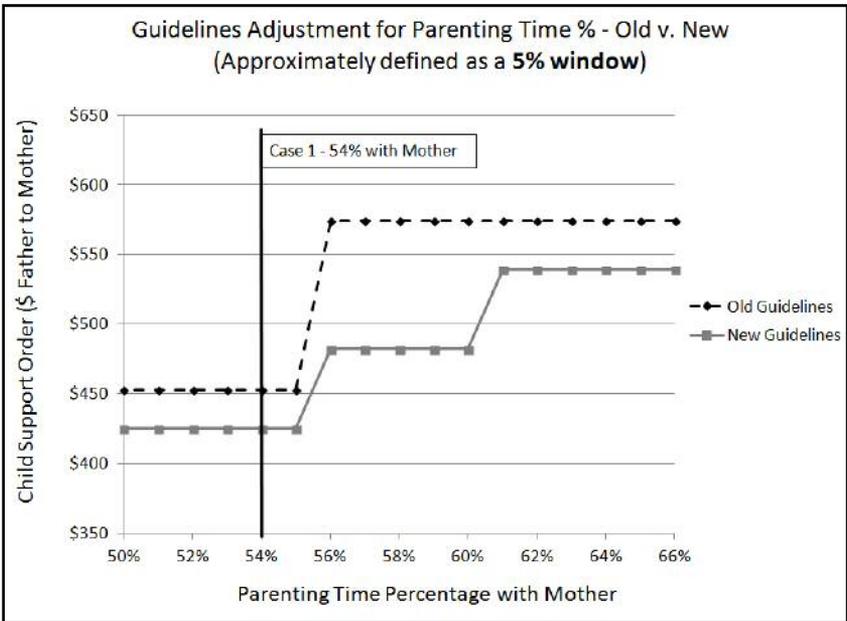
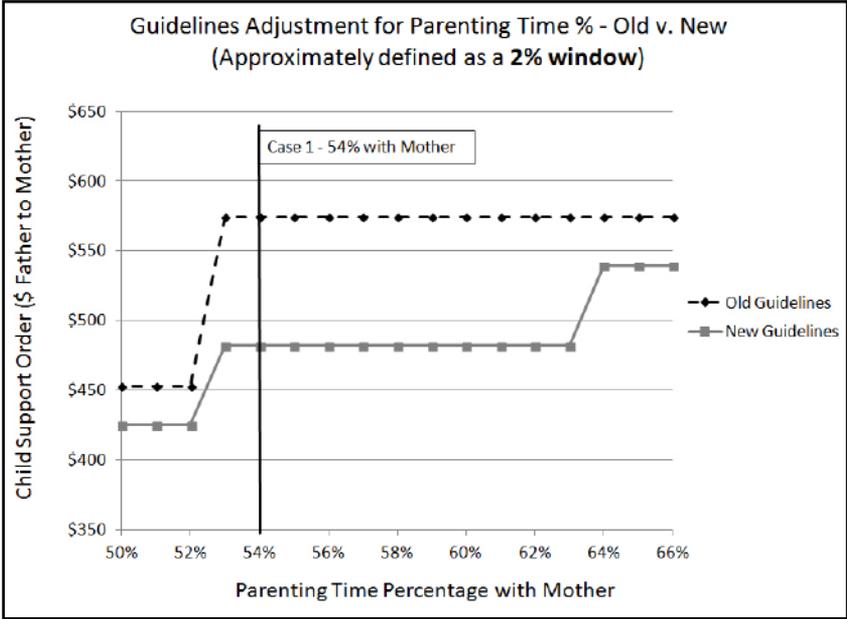
While on the surface this addition would seem to clear up the 2009 guidelines’ ambiguity over what qualifies as “approximately equal,” in practice the new language is actually much more confusing. Because the “approximately equal” cross-guidelines formula still remains in the 2013 guidelines, it is just as difficult to decide where to draw the line between this new third category and the two previous ones. Now instead of deciding when a case goes from a one-thirds/two-thirds case to an approximately equal case, we must decide when is a case one-thirds/two-thirds, approximately equal, or in between.

In the Case 1 example, a 56/46 division is both “approximately equal” and “in a proportion greater than one-third, but less than 50%.” If you consider it as an in between case then, then the new formula requires that we take the average of considering the Mother as the recipient and the shared custody result. Under the new guidelines this results in \$482 per week (13% higher than the cross-guidelines amount).

If you’re confused at this point, don’t feel bad. The parenting time section attempts to use precise formulas with imprecise language, resulting in a confusing mess. While the guidelines reference percentages, the use of the word approximate makes it unclear when to shift from one formula to the next.

To help visualize this problem, I have provided two charts below. The first chart presumes that “approximately” means within 2% and applies that standard to Case 1. If the term “approximately equal” doesn’t apply to 54% then under the old guidelines, Mother would receive \$574 and under the new guidelines \$482.

The second set presumes that “approximately” means within 5%, which is just as reasonable of a presumption. In that case, however, under the old guidelines, Mother would receive \$453 per week and under the new guidelines \$425.



Continued on next page



How can the mediator help? While the ambiguity may be frustrating for some clients (especially those who have a tendency to focus on the numbers), the charts above show that the old guidelines still created the same ambiguity. Whether under the new or old guidelines, clients should be encouraged to consider that ambiguity as providing them with a range of reasonable outcomes. Nobody can guarantee for them what the court might order and the guidelines, although designed to output one result, are anything but exact. Therefore any figure within that range is a potentially reasonable and fair result, and the parties should consider what factors might result in them determining the exact number within that range that both are comfortable with.

Case Study 2 – A Parent with More Parenting Time but More Income could end up Paying Support:

Case 2 Scenario: Same as Case 1 but Father has 58% of the parenting time.

Case 2 Calculation: 58% falls squarely between one-thirds/two-thirds time and 50/50. Under the old guidelines this would most likely result in a pure guidelines calculation with Mother paying Father \$121 per week.

Under the new guidelines, 58% is the clearest example of parenting time “in a proportion greater than one-third, but less than 50%.” Therefore, under the new formula we calculate the amount Father would receive from Mother if he had a full two-thirds time: \$114 per week from Mother to Father. Then we calculate what would be paid if the parties shared custody equally. In that case, cross-guidelines would require that Father pay Mother \$425 per week. Since one of these orders is from Mother to Father and the other is from Father to Mother, the average of the two results in Father still paying Mother \$155.50 per week.

Despite the fact that the Father has more parenting time than the Mother, and under the old guidelines would likely receive support, under the new guidelines the Father now has to pay child support to Mother because of his higher income.

How can the mediator help? The result in Case 2 under the new guidelines is counter-intuitive at first because the Father has the children more. However, the key to keeping the new parenting time language in perspective is to keep in mind that the language also references sharing of “financial responsibility.” While the Case studies mention the parenting time breakdown, they failed to mention whether the parties are also sharing the financial responsibility in the same proportion. If the Mother, with income significantly lower than the Father, is truly paying 42% of the children’s expenses then the new guidelines result makes more sense.



Focusing clients on the complete language, and not just a calculation based on the parenting schedule, can lead them to a more fair resolution of both support and child-related expenses. While many clients may assume what child support includes or doesn't include for expenses, basing agreements on those unspoken assumptions will lead to problems. Defining each party's specific "financial responsibility" in addition to their parenting time, should ensure clearer agreements and less modifications.

On the other hand, until we have clearer agreements and better understanding by co-parents of how they will share financial responsibility, we are likely to see many, many more modifications under these new guidelines.

IV. Potential Modification in Every Case: For Better or Worse

The recent decision in *Morales v. Morales*, 464 Mass. 507 (2013), clarified that the child support statute allows for a modification whenever there is any "inconsistency between the amount of the existing order and the amount that would result from the application of the child support guidelines." In theory, this means that almost everyone who has a child support order is entitled to file a Modification and receive an order consistent with the new guidelines.

What does this change mean for mediators? In practice, the cost of returning to court (both emotional and financial) may not be worth the change that many people might receive. While the overall rates have lowered, other factors might carry different weight or allow for greater judicial discretion, which could result in no change or unexpected changes. For lawyers representing individual clients, these changes could mean a lot of business, but will likely also require clear disclaimers as to the potential results.

Mediators should capitalize on this uncertainty by encouraging parties to discuss what both of the individuals think is fair rather than taking their chances in court. Traditionally this is more difficult in modification cases, because the person who doesn't want to see a change in support is often unwilling to even sit down and negotiate. Parties unfamiliar with mediation are likely to believe that they are better off waiting until the other party files a Complaint for Modification.

As mediators we need to begin educating the public better about the advantages of mediating changes to agreements in addition to mediating the original agreement. Waiting to be served with a Complaint is a refusal to acknowledge that sharing financial costs is one aspect of co-parenting and requires discussion and cooperation, not litigation.

Continued on next page



Mediators can be a resource to both individuals and the courts when such significant changes as the Alimony Reform Act of 2011 or these new 2013 Child Support Guidelines threaten to result in an overwhelming number of Modification cases. To become such a resource, mediators need to be on the forefront of discussions like these. Take what you have learned about the new guidelines from this article and talk about it, write about it, blog about it, etc. Make sure that everyone who knows that you mediate also knows that mediators can help parties understand the new child support guidelines so they can apply the changes to their individual circumstances in a way that is fair for their children.



Justin L. Kelsey is an attorney and mediator, who also practices collaborative divorce. His firm, Kelsey & Trask, P.C. is located in Framingham, MA and concentrates on Family Law and Bankruptcy. Learn more at www.KelseyTrask.com.



**“We could never
learn to be brave
and patient, if there were only
joy in the world.”**

Helen Keller



TO EMPOWER OR NOT TO EMPOWER, IS THAT THE QUESTION?

By Diane C. Pappas

After attending my second MCFM's Annual Family Mediation Institute in November, I was inspired to explore the issue of whether a mediator's professional background plays a role in their effectiveness as a mediator. Sitting amongst a sea of accomplished lawyers and mental health professionals, I was forced to ponder whether my background and training in financial planning would be an asset or a detriment to the mediation process. It also made me wonder whether, as a divorce financial analyst, I could work within the realm of mediation, because my first instinct was to give (empower) the divorcing couple all the financial information they need to know and then some. Could I be an effective mediator, even though I was not a lawyer or mental health professional? And more importantly, could I empower couples with the financial information they needed, without compromising my role as a neutral, whether I was the mediator or the divorce financial professional?

This is a twofold question. As Jonathan Fields recently said in the most recent FMQ (Winter 2013), there is much debate regarding the scope of the mediator's role as far as substantive law goes and what type of information you can/should provide the parties. Is the legal information you are providing the parties, really legal advice? The same can be said about providing the parties with financial information vs. financial advice. Where does that line get crossed? If, as a mediator, we cannot recommend or direct,

but we may use our knowledge to inform, do we inform (empower) or not? And if I inform, am I no longer a neutral?

The first topic addressed at the Institute in November, pertained to the different styles of mediation - evaluative, facilitative and transformative. A generalization was made that mediators with a legal background tend to be more evaluative while the mental health professional tends to be more facilitative. There are mediators who use a blended style of both and then there are mediators who are more transformative in nature. Mediators with a financial planning background might fall under the category of being more transformative.

The primary goal of transformative mediation is to have the couple approach their current problem through empowerment and recognition. Empowerment, according to Bush and Folger¹, means "increasing the skills of both sides to make better decisions for themselves." They can then use this empowerment to "make their own clear and deliberate decisions". Having gone through the divorce process myself, I do not understand how anyone could go through the process *without* being informed and empowered.

As a Certified Divorce Financial Analyst™ (CDFA™), I feel very strongly that everyone involved in a mediated divorce should be informed about the financial issues that may arise during the process, even if that means providing the

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parties with information that may alter the proposed settlement. The same can be said about legal information. Better to inform and change it now while you still can, rather than end up with a settlement that doesn't work, causes more heartache and stress for years to come and costs one or both the parties more money down the road.

When there is unintended financial/legal ignorance in the room it has to be addressed up front to ensure a workable and viable settlement. A CDFATM can help address the financial part of this issue, while preserving the role of the mediator as they stay within the perceived scope of mediation. A divorce financial analyst can add value to the mediation process by providing the clarity the parties need to make their own informed decisions. Clarity comes about when each spouse understands what their individual needs are, what financial resources are available to them, what their options are with respect to different settlements and future impacts and finally, what *they* want out of the settlement. Without having that clarity, one or both of the spouses, may be unable to make any informed decisions. Fostering that clarity by working together as a team (mediator and divorce financial professional) addresses the issue of the mediator remaining neutral throughout the process.

To address my question as to whether I could be an effective mediator given my background, Duane Ruth-Hefflebower had this say in one of his articles. "In one way a mediator's background doesn't matter. The standard mediation process can be led by anyone who prepares for it." He goes on to say, "It is a very good idea

to make sure you (as the mediator) are exposed to other styles and unfamiliar subject matter as part of your professional growth plan. Being able to address a client's needs with an appropriate style and method is part of being a client-centered professional who preserves client self-determination."²

Self-determination can be achieved when the parties are aware of their deficits and are allowed the opportunity to obtain information. An effective 'team' can help to provide the missing information to the parties. To be effective, all team members — mediators, mental health professionals, lawyers and divorce financial professionals — must be open to new ideas, pursue professional growth in areas of weakness and must strive to put their client's needs first. An informed client is an *empowered* client, and *that*, should remain the centerpiece of any alternate divorce resolution process.



Diane C. Pappas, CDFATM is a financial planner and partner at Insight Financial Strategists. Diane empowers families, divorcing couples, single parents and professionals with the financial knowledge they need to achieve their personal and financial goals. Diane can be contacted at: 978-833-6144, or at: diane.pappas@insightfinancialstrategists.com.

Footnotes:

1. *The Promise of Mediation - The Transformative Approach to Mediation*, Revised Edition by Robert A. Baruch Bush and Joseph Folger, 2005, John Wiley & Sons, Inc.
2. ACResolution, Winter 2012 - Duane Ruth-Hefflebower, M.DIV., J.D. 'I'm a (fill in the blank) Mediator; How A Mediators' Profession of Origin Affects their Practice'.



UNCONTESTED ACTIONS TO MODIFY A JUDGMENT OR ORDER

Rule 412: The New Tool in Every Mediator's Tool Box

***Editor's Note:** On June 28, 2013, The Probate and Family Court announced significant changes to Rule 412 of the Supplemental Rules of the Probate Court. Previously, Rule 412 was limited to modifications of child support. The revised Rule 412 will allow parties to jointly request modification of a judgment or order of the Probate and Family Court where the parties are in agreement, the agreement is in writing, and all other requirements of the Rule are met.*

The new Rule 412 becomes effective August 1, 2013. Instructions and forms required by the Rule will be released and posted on the Probate and Family Court website before August 1, 2013. The new Rule 412 appears below. For more information go to:

www.mass.gov/courts/courtsandjudges/courts/probateandfamilycourt/index.html

Rule 412: In order to facilitate uncontested actions to modify a judgment or order, including, but not limited to, actions to modify child support consistent with the Child Support Guidelines, the following uniform procedure is to be followed:

(a) The parties shall file with the court a joint petition to modify a judgment or a joint motion to modify an order, on a form approved by the Probate and Family Court. The petition or motion shall be accompanied by a copy of the judgment or order to be modified and:

(1) an agreement setting forth the agreed upon modification(s), which must be notarized if modifying a judgment. If a child's primary residence or custody is being modified, the agreement must specifically state whether any terms in a prior judgment or order related to child support, health, dental, vision or life insurance coverage are also modified, or if they remain in effect. If child support is being modified and the parties deviate from the guidelines amount, the agreement must include specific facts that justify departure from the guidelines, and if the parties agreement terminates child support upon the age of 18, the agreement must acknowledge that G. L. c. 208, § 28 or G. L. c. 209C, § 9 is not applicable;

Continued on next page



(2) complete and accurate financial statements signed by each party, and counsel, if any, pursuant to Supplemental Probate and Family Court Rule 401, with supporting documentation (attach W-2, and 1099 forms for prior year), if financial issues are being modified;

(3) a complete and accurate Child Support Guidelines Worksheet, if child support or medical, dental or vision insurance is being modified;

(4) a written assent from the Department of Revenue Child Support Enforcement Division as the IV-D agency when a party, and/or a dependent child, is a current recipient of public assistance or owes a past-due child support debt assigned to the Commonwealth, and any term relating to child support or medical insurance is being modified;

(5) a proposed Child Support Findings form, if child support is being modified and the parties deviate from the guidelines amount;

(6) an Affidavit Disclosing Care or Custody Proceeding form by each party, pursuant to Trial Court Rule IV, if the care, custody or visitation of a child is being modified;

(7) any other assent or document required by statute or court rule; and

(8) a proposed judgment or order on a form approved by the Probate and Family Court.

(b) Formal notice or service shall not be required.

(c) Neither party shall mark the joint petition or joint motion for hearing. In the event that the court believes that a hearing is necessary or helpful to a disposition of the matter, the court will set the time and date for the hearing and will notify the parties within twenty-one (21) days of the filing of the petition or motion. If the pleadings are deficient or incomplete, an in-person hearing will be required.

(d) A joint petition or joint motion that is not scheduled for a hearing will be decided on the papers filed in accordance with this rule within thirty (30) days of such filing.

(e) A judgment or order entered on a joint petition or joint motion involving child support will be entered in the State Case Registry pursuant to G.L. c. 119A, § 4.

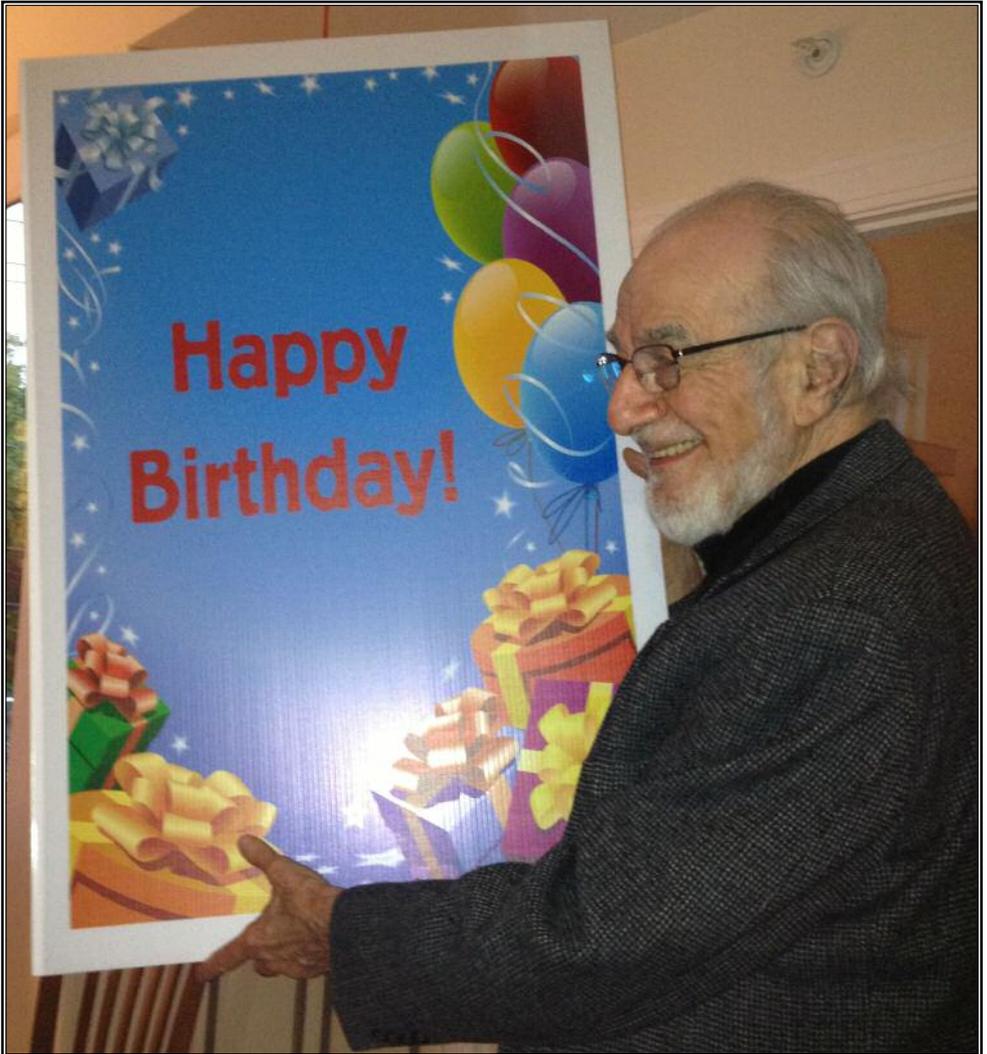
(f) This rule cannot be applied to actions governed by G. L. c. 209A.



JERRY WEINSTEIN'S 85TH BIRTHDAY CELEBRATION, A MASSACHUSETTS GENERAL COURT CITATION & JERRY'S THANKS!

Photos by Lynn K. Cooper & Diane Neumann

Editor's Note: On May 15, 2013, Diane Neumann hosted a party at her home to celebrate Jerry Weinstein's 85th birthday. Jerry was the first divorce mediator in Massachusetts and the first president of MCFM. The party was attended by friends and colleagues... including 11 of MCFM's 19 past presidents. In recognition of his achievements John Fiske presented Jerry with a Citation from the Massachusetts House of Representatives, honoring his life's work.





Jerry Weinstein, Deb Raymond (owner: Angel Foods Catering) & Jeanne Kangas



Mary Johnston, Jerry Weinstein & John Fiske



Frank Farley & Steve Nisenbaum



Edward Ginsburg & Gail Perlman



Jerry Weinstein & Phil Woodbury



Jerry Weinstein & Diane Neumann



Harry Manasewich, Laurie Udell & Les Wallerstein



HAPPY 85TH BIRTHDAY JERRY!

Continued on next page



The Massachusetts General Court



Resolutions

CONGRATULATING JEROME "JERRY" H. WEINSTEIN ON HIS EIGHTY-FIFTH BIRTHDAY.

WHEREAS, JEROME "JERRY" H. WEINSTEIN WAS BORN IN BROOKLYN, NEW YORK, ON MAY 13, 1928, AND THIS YEAR MARKS THE OCCASION OF HIS EIGHTY-FIFTH BIRTHDAY; AND

WHEREAS, JERRY WEINSTEIN, WHO GRADUATED FROM CITY COLLEGE OF NEW YORK AND OBTAINED A MASTER OF SCIENCE DEGREE IN 1952, MARRIED MIMI KIMINSKY IN 1957, AND TOGETHER THEY HAVE 3 CHILDREN, JULIE, DAVID AND ARI; AND

WHEREAS, JERRY WEINSTEIN MOVED TO MASSACHUSETTS IN 1961 AND WORKED FOR THERMO ELECTRON CORPORATION AS AN ENGINEER AND IN HUMAN RESOURCES FROM 1961 TO 1971; AND

WHEREAS, IN 1976 JERRY WEINSTEIN MOVED TO HIS PRESENT HOME IN THE CITY OF NEWTON WHERE HE BECAME INTERESTED IN MEDIATION AS A NEW APPROACH TO HELPING COUPLES OBTAIN A DIVORCE IN AN INFORMED AND PEACEFUL MANNER; AND

WHEREAS, JERRY WEINSTEIN BECAME ONE OF THE FOUNDING FATHERS OF FAMILY MEDIATION IN NEW ENGLAND, CREATING THE DIVORCE RESOURCE AND MEDIATION CENTER ON MASSACHUSETTS AVENUE IN THE CITY OF CAMBRIDGE, WHICH OFFERED MEDIATION, COUNSELING AND OTHER SUPPORT SERVICES; AND

WHEREAS, JERRY WEINSTEIN BECAME A LICENSED SOCIAL WORKER AT AGE 65, ASSISTED MANY OTHER PEOPLE IN BECOMING MEDIATORS AND FOUNDED THE MASSACHUSETTS COUNCIL ON FAMILY MEDIATION, OR MCFM, IN 1982 AND SERVED AS ITS FIRST PRESIDENT; AND

WHEREAS, THE MCFM NOW HAS OVER 250 MEMBERS AND THE MEDIATION PROCESS HAS BECOME AN ACCEPTED METHOD OF ALTERNATIVE DISPUTE RESOLUTION IN OUR COURTS THANKS IN LARGE PART TO THE SELFLESS EXAMPLE AND TIRELESS ENCOURAGEMENT GIVEN BY JERRY WEINSTEIN; THEREFORE BE IT

RESOLVED, THAT THE MASSACHUSETTS GENERAL COURT HEREBY CONGRATULATES JEROME "JERRY" H. WEINSTEIN ON THE OCCASION OF HIS EIGHTY-FIFTH BIRTHDAY AND FURTHER EXTENDS TO HIM ITS SINCERE BEST WISHES FOR CONTINUED HAPPINESS IN THE FUTURE; AND BE IT FURTHER

RESOLVED, THAT A COPY OF THESE RESOLUTIONS BE FORWARDED BY THE CLERK OF THE HOUSE OF REPRESENTATIVES TO JEROME "JERRY" H. WEINSTEIN.

HOUSE OF REPRESENTATIVES, ADOPTED, MAY 9, 2013.

Robert A. DeLeo
ROBERT A. DELEO
SPEAKER OF THE HOUSE

Steven T. James
STEVEN T. JAMES
CLERK OF THE HOUSE

SENATE, ADOPTED IN CONCURRENCE, MAY 9, 2013.

Therese Murray
THERESE MURRAY
PRESIDENT OF THE SENATE

William A. Welch
WILLIAM A. WELCH
CLERK OF THE SENATE

OFFERED BY:

Kay Kilian
KAY KILIAN
REPRESENTATIVE KAY KILIAN

Cynthia Stone Creem
CYNTHIA STONE CREEM
SENATOR CYNTHIA STONE CREEM





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WHEREAS, BECAME A WORKER AT AGE MANY OTHER BECOMING FOUNDED THE COUNCIL ON MEDIATION, OR AND SERVED AS PRESIDENT; AND

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THANKS TO WONDERFUL COLLEAGUES

By Jerry Weinstein

Thanks to those who attended my 85th birthday party and those who tried to get there and were thwarted by traffic problems. Special thanks to Diane Neumann who organized it and provided the venue. Special thanks also to John Fiske, who arranged the congratulatory resolutions from the Massachusetts House of Representatives.

Before starting mediation I had some very interesting and enjoyable and professional experiences in engineering, college teaching and research management, but none could match the satisfaction of helping people solve the problems of family issues (especially for children) as a mediator and family consultant.

And nowhere did I find a group of people with the enthusiasm for their work and support for colleagues as in mediation and especially in MCFM. It was especially touching to experience the camaraderie of long time colleagues who have worked to build the organization that a small group of us started 30 years ago.

Mediation and the Mass Council have been a major influence in my life and one of our vintage "T" shirts says it all—**MEDIATORS HAVE**



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RESOLVED, THAT A COPY OF THESE RESOLUTIONS BE FORWARDED BY THE CLERK OF THE HOUSE OF REPRESENTATIVES TO JEROME "JERRY" H. WEINSTEIN.



FAR FROM THE TREE: PARENTS, CHILDREN AND THE SEARCH FOR IDENTITY

A Book Review by Marion Lee Wasserman

“All offspring are startling to their parents,” says Andrew Solomon in his book *Far From the Tree: Parents, Children and the Search for Identity* (Scribner, 2012). *Far From the Tree* is one of the most extraordinary and illuminating books I have ever read. This 960 page study (706 pages of text, followed by extensive notes, plus a valuable bibliography and thorough index) is the product of a herculean research effort — research conducted by Solomon over a ten year period. In addition to doing extensive background research, Solomon interviewed more than three hundred families, producing nearly forty thousand pages of interview transcripts. It is apparent from the book that these interviews were deeply probing inquiries, leading in many cases to sustained relationships between the author and the interviewees.

Far From the Tree is an exploration of parental love and the tension between the identity of the parent and the identity of the child. “Our children are not us,” Solomon writes, “they carry throwback genes and recessive traits and are subject right from the start to environmental stimuli beyond our control. And yet we are our children; the reality of being a parent never leaves those who braved the metamorphosis.”

The lens through which Solomon explores his subject is the lens of

difference. In order to better understand parental love generally, Solomon interviews families where the parents are especially challenged in their love — challenged because their children are different from them in the extreme. In each of these families, there is a child who has, in a special way that sets him or her apart, “an inherent or acquired trait that is foreign to his or her parents” and that demands of the parents unanticipated accommodations, sacrifice and wisdom, beyond what we think of as the norm. In these families, the child is, to a significant degree, cut off from the parents and “must therefore acquire identity from a peer group.” A mother whose grown son with Down syndrome lives in a group home purchased by her and maintained and staffed by Arc tells Solomon, “I really, really admire him tremendously. I’m also sad for him, because he’s smart enough to know that almost everybody is accomplishing things that he’s not, smart enough to realize that his life is different.”

Identity shared by peers who possess in common a defining trait setting them apart from their parents is what Solomon calls “horizontal identity.” All children differ from their parents to a greater or lesser extent, and all children have various horizontal identities. The degree to which a horizontal identity is understood and accepted by parents and by the larger society varies over time



and place. Solomon, who writes in the book about his own gay identity, shows us that for him, as a gay child born to straight parents, gay identity has been a horizontal identity and a lifelong lesson in the parent-child divide. Speaking

from personal suffering and triumph, he explains that the gay child of straight parents, “learn[s] gay identity by observing and participating in a subculture outside the family.” By contrast, “vertical identity” is shared by parent and child. Vertical identity may be genetically inherited (for example, ethnicity) or acquired (for example, language or nationality).

Children of the families Solomon interviewed fall into certain categories of horizontal identity, and the book is organized according to those categories. The first chapter examines families where at least one child is deaf. The other chapters are each devoted to a different distinguishing horizontal identity: dwarfism; down syndrome; autism; schizophrenia; disability; prodigies; rape (that is, children produced by the mother’s rape); crime (children who are criminals); and transgender.

Solomon delves so deeply into each of these categories that reading *Far From the Tree* feels like a kind of immersion in the various subcultures — be it the culture of the deaf or of musical prodigies or of dwarfs (also referred to, we learn, as little people or LPs within the dwarf community). It is impossible

to read this book and not deepen your understanding of the human condition; the parent-child bond; love; and your own individual search for identity.

“... we are our children; the reality of being a parent never leaves those who braved the metamorphosis.”

The exceptional families revealed to us in *Far From the Tree* help us think anew about all families. “These most dramatic situations,” Solomon tells us, “are merely variations on a common theme. Much as we learn the properties of a medication by studying its effect at extremely high doses, or look at the viability of a construction material by exposing it to unearthly supertemperatures, so we can understand the universal phenomenon of difference within families by looking at these extreme cases. Having exceptional children exaggerates parental tendencies; those who would be bad parents become awful parents, but those who would be good parents often become extraordinary.”

Far From the Tree is available as an e-book, in case you prefer not to purchase this tome in hardcopy. If you read the electronic version, be sure not to miss the notes and bibliography, well worth perusing.

Solomon’s earlier book, *The Noonday Demon: An Atlas of Depression* (Scribner 2001) won the National Book Award and was a finalist for the Pulitzer

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Prize. Solomon has an unusual history, interweaving his literary and journalistic accomplishments with his achievements as a researcher and educator in the field of human behavior. He is a lecturer in Psychiatry at Weill-Cornell Medical College.

Solomon is a masterful writer. To read this monumental work is to be rewarded on every page. The experience, overall, is transformative. But even if you choose not to read *Far From the Tree* in its entirety, I urge you to give yourself a gift

and at least read Solomon's elegantly written introductory chapter, titled "Son."



Marion Lee Wasserman is a family lawyer and mediator with an office in Newton. She is sole proprietor of Reach Accord Law and Mediation Services. She can be contacted at 781 449-4815, or at mlw@reachaccord.com. She invites you to visit her website at www.reachaccord.com.



**“What
we do
to children,
they will do
to society.”**

Karl Menninger



DIVORCE AND CO-PARENTING: THERE'S AN APP FOR THAT!!

By Annie O'Connell

Introduction

Communication, organization and schedule management are key functions for parents as they facilitate relationships with their children through a separation or divorce. While mediators and parenting coordinators may be needed to manage major conflict, the day-to-day decisions about soccer practice and dental appointments can be managed with new tools available on the Internet and smart-phone applications. Some of these systems are also valuable for single parents. Some of these tools are free, and the others are affordable, ranging from a one-time fee of \$4.99 to \$99.50/year, and most offer a free trial period. The following is a description of each program, followed by recommendations.

2Houses In 2011, divorced parent Gill Ruidant founded 2Houses to help other parents, who are divorced or separated, easily communicate about and make arrangements with regard to their children. 2Houses services include a calendar to organize child custody and events, sharing reports about school and medical information, an expense module to track and balance expenses, a journal for notetaking, an information bank to store information about the children, albums, and a platform for messages and notifications. After the two month free trial period, users can pick from the free or basic plans. (Standard and Premium plans are coming soon.) 2Houses also offers a free guidebook for professionals who work with separated/divorced parents

(i.e., mediators, attorneys, psychologists, coaches) in which they lay out ten important rules for handling the situation of co-parenting. Learn more about 2Houses at <http://www.2houses.com/en/>.

JointParents JointParents was founded and created by a joint custody family. The site is designed to work not only for divorced parents, but also for married and single parents, to help keep better track of events and activities. Their extensive services include a custody calendar, message board, photo library, daily routine information sharing, medical manager, expense tracker, contact manager, diary, overnight reporter, articles, and virtual visitation. JointParents offers a 30 day free trial period and there are two payment options: monthly at \$9.95 or annually at \$99.50. Learn more about JointParents at <http://www.jointparents.com/>.

CustodyJunction Custody Junction helps parents with their scheduling needs during and after divorce. Parents can schedule, track and monitor current and future sole/joint custody, visitation and support arrangements. Events (up to two years in advance) such as child exchanges, parenting, holidays, vacations, phone time, and support payments are recorded in the tracking center. The schedule can be shared online with the other parent or a third party such as a lawyer. CustodyJunction also generates reports that analyze customized parenting

Continued on next page



situations. These reports can be viewed and printed by the other parent, attorney or the court, which makes it easy to collect and organize information. Reports include data on hours of spent with a child, overnights, expenses, grandparent/relative visitation, and support payments. CustodyJunction offers a free 30 day trial period, after which you can sign up for a yearly subscription for \$47. Learn more about CustodyJunction at <http://www.custodyjunction.com/>.

Custody Planner Custody Planner is a free online tool that allows separated and divorced parents to share a calendar of events such as sports practice, doctor's appointments and school functions along with their custody and visitation schedule. Learn more about Custody Planner at <http://www.custodyplanner.com/>.

Parenting Together Parenting Together allows parents to share parenting time schedules, and accurately record their communication and expenses. Parenting Together offers a one month free trial for parents, and then the service is available to parents for \$6.95/month or \$69.96/year. Free accounts are always available for children, relatives, caregivers, and any involved professionals. Learn more about Parenting Together at <http://www.parentingtogether.net/>.

Our Family Wizard Our Family Wizard was created by a divorced couple looking for a better way to exchange information and schedules. The website offers a calendar, message board, journal,

information bank, expense log, notifications, videos and tutorials. Like Parenting Together and CustodyJunction, Our Family Wizard has separate types of restricted accounts for children and third parties. There are also accounts for professionals to monitor client activity, manage cases, resolve issues and help with parenting plans and schedules. Information reports can also be created and printed summaries of information are available. These features are also available as an app for the Android and iPhone. The parent subscriptions are priced for each parent at \$99 for one year, and \$179 for a two-year subscription. Again, like the Parenting Together platform, the child, third party and professional accounts are all free. Our Family Wizard offers a 30 day money back guarantee, discounts for military families, and discounted or free accounts for low-income parents. Learn more about Our Family Wizard at <http://www.ourfamilywizard.com>.

Phone Apps While Our Family Wizard is available as an online and app tool, there are two other apps available for co-parents: The Divorce Log and Cozi. The **Divorce Log** app is available for Android, iPhone, iPad and iPod users and keeps track of different types of data that can be used in a legal case, including incoming and outgoing child support/alimony payments, time spent with a child, expenses, and correspondence. All entries stored in the app can be forwarded directly to an email address for relevant parties such as an attorney, child support office or court. The Divorce Log app costs \$4.99. The **Cozi** app includes a



family calendar and family journal. The Cozi app is available for Android, iPhone, iPad, iPod Touch, Blackberry, and tablets, and it syncs with Microsoft Outlook. While this app costs \$4.99 like the Divorce Log app, the Cozi app is offered for free (but you have to deal with ads)!

Recommendations While all of these digital tools are aimed to help facilitate parenting, Our Family Wizard is unique because it offers communication systems through both a website and a phone application. At Boston Law Collaborative several of our clients and attorneys have used the Our Family Wizard program with much success. Although one of the more expensive options, Our Family Wizard is comprehensive, offering a variety of information sharing tools and types of accounts, along with reduced rates for those in need of financial assistance. Custody Junction is another

good option – it costs less than Our Family Wizard, has a myriad of functions, and generates reports to analyze customized parenting situations; one down-side: it doesn't offer a phone application. The bottom line on all of these programs is that they improve upon the flurry of phone calls, emails, and misunderstandings that co-parenting can generate – and therefore offer a low-cost improvement for the lives of the children of divorce.



Annie O'Connell, Esq. is a Project Manager at Boston Law Collaborative where she manages research and writing projects on legal issues and mediation conflicts. Annie also supervises intern projects, serves as the Employment Panel Administrator and is a trained Family Mediator.



**“I never think of the future.
It comes soon enough.”**

Albert Einstein



MEDIATORS SERVING AS CONCILIATORS

An Email Critique by John A. Fiske

From: john fiske<jadamsfiske@yahoo.com>

Date: March 17, 2013

To: henriettecampagne<henriette.campagne@lawyersweekly.com>, timothy linnehan<timothy.linnehan@jud.state.ma.us>

Subject: Mediators Serving as Conciliators

Dear Henriette and Tim:

It's a leap for a mediator to serve as a conciliator. For over thirty years I've been training lawyers, including myself, to become mediators by NOT telling people what they should do. When divorcing couples ask the mediator, "You've seen this problem many times. What do you think we should do?" the mediator is trained NOT to express an opinion which, as most lawyers know, is very hard. Mediators simply remind the clients, over and over again, they should make their own informed decisions.

I admire the conciliation program for many reasons. It's a great opportunity for us lawyers to help the courts deal with many cases that do not require a trial. I want to take the MBA 8 hour conciliation training as soon as I can and then try my hand at "assisting the parties to settle a case by clarifying the issues and assessing the strengths and weaknesses of each side of the case," to quote the Uniform Rule. But that's the direct opposite of what I've been doing as a mediator since 1979 and training mediators to do since 1989.

Mediation is a "voluntary, confidential process in which a neutral is invited or accepted by disputing parties to assist them in identifying and discussing issues of mutual concern, exploring various solutions, and developing a settlement mutually acceptable to the disputing parties," says the Rule. Vive La Difference.

I'm sorry to read in Lawyers Weekly that the Trial Court Chief Justice has approved this change as recommend by the Standing Committee on Dispute Resolution, to allow graduates of approved mediation programs to serve as conciliators. At least the article says this mutation is "subject to the approval of the conciliation program and the completion of the necessary court orientation."

I look forward to the conciliation training and hope to join lots of our colleagues who are volunteering to tryto help our beleaguered Probate and Family Court as a conciliator. I am among others who hope to develop a robust court-connected mediation program for the same reasons.



John A. Fiske, Of Counsel at Healy, Fiske, Richmond & Matthew, a Cambridge firmconcentrating in family law and mediation; also a partner in Divorce Mediation Training Associates.



MASSACHUSETTS FAMILY LAW: A Periodic Review

By Jonathan E. Fields

“Agreed upon Educational Expenses” and the Price of Silence. Because “agreed upon expenses” recurs so frequently in our agreements, this recent case from the Appeals Court should be of great interest. The separation agreement, incorporated into a California divorce judgment and registered in Massachusetts, provided that each party would pay one-half of all agreed-upon educational expenses. At the evidentiary hearing on the mother’s complaint for contempt, the father admitted that no one prevented him from participating in the child’s college application process. He also never objected to the child’s decision to apply to, accept, or attend the college. In addition, he had ample resources (over \$5 million) to pay for the child’s private college education. Consequently, the Probate and Family Court found that the father’s awareness, acquiescence, and ability to pay, along with his current wife’s active assistance in the college application process, was sufficient to constitute his agreement to the child’s college choice and its associated expenses which finding the appellate court affirmed. Two additional matters, secondary to our purpose here, merit some attention. The Probate and Family Court found father in contempt and awarded the wife counsel fees. However, the Appeals Court found that the expense provision was not sufficiently “clear and unequivocal” to warrant a contempt finding. Further, although the counsel fees award was premised on the contempt, the Appeals Court upheld it, pointing out both that the agreement

authorized such an award and that the judge has discretion under G.L. c.208 s.38 to award such fees. *Cooper v. Keto*, 83 Mass. App. Ct. 798, (June 26, 2013).

Probate Court has Authority to Allocate Federal Dependency Exemptions After a divorce trial, a Probate and Family Court judge ordered that the non-custodial parent father is “entitled to claim both the unemancipated children as dependents on his state and federal tax returns...” The mother (the custodial parent) appealed, arguing that a state court judge has no authority to allocate federal tax exemptions. The Appeals Court disagreed, citing in support two cases: *Bailey v. Bailey*, 27 Mass.App.Ct. 502 (1989) and *Department of Rev. v. Foss*, 45 Mass.App.Ct. 460 (1998). Notwithstanding mother’s arguments, subsequent amendments to the tax code have not changed the “vitality” of those cases, the Appeals Court noted. The appellate court also noted a technicality that drafters should keep in mind – the Probate and Family Court should have placed an affirmative obligation on the mother, *i.e.* by directing her to execute and deliver to the father Form 8332 releasing her claim to the exemption. *Iv v. Hang*, 83 Mass.App.Ct. 598 (May 14, 2013).

New Child Support Guidelines The biggest change in Massachusetts family law in the last quarter is the new child support guidelines that were introduced a few weeks ago and become effective August 1, 2013. An in-depth analysis is not possible in this space; thankfully,

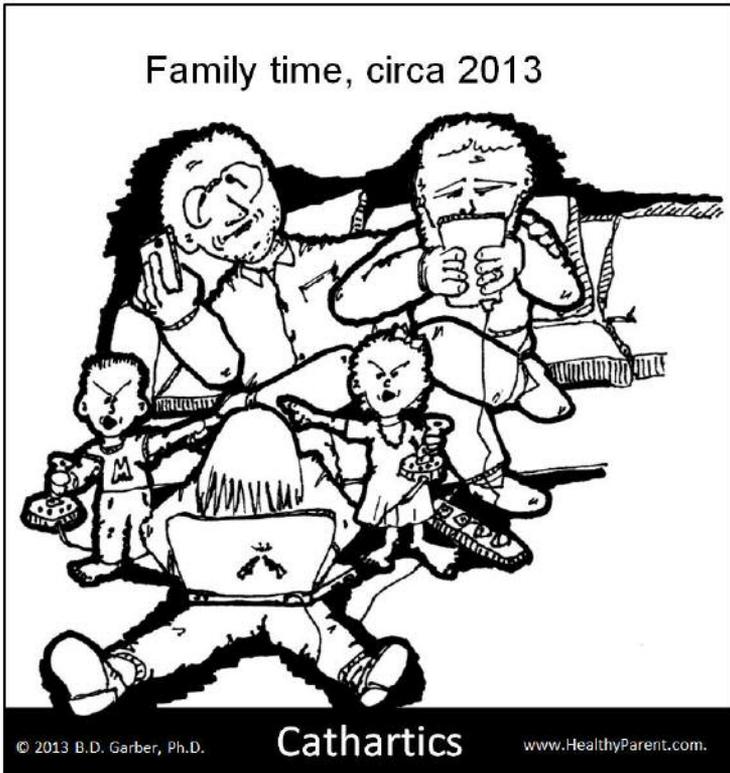
Continued on next page



Justin Kelsey has written a detailed article on the subject in this issue. In short, the biggest difference between the current and new Guidelines is that the latter considers, to an extent, the time each parent spends with the children. The result: I think we can safely predict an increased emphasis on parenting time in our mediations.



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



Benjamin D. Garber, Ph.D. is a New Hampshire licensed psychologist and certified Guardian ad Litem and Parent Coordinator. Ben is a nationally renowned speaker, researcher and an award winning freelance journalist, writing in the areas of child and family development, as well as an accomplished cartoon artist. He invites you to visit his website at www.healthyparent.com, and he can be contacted at papaben@healthyparent.com



WHAT'S NEWS?

National & International Family News

Chronologically Compiled & Edited by Les Wallerstein

UNICEF Details Worldwide

Malnutrition in Children According to the United Nations Children's Fund, more than a quarter of children under the age of 5 worldwide are permanently "stunted" from malnutrition, leaving them physically and intellectually weak. The UN report found that 24 countries with the highest levels of stunted children were concentrated in sub-Saharan Africa and South Asia, even though the organized provision of vitamins and clean water and a focus from birth on breastfeeding could have helped the 165 million children affected achieve normal brain and body development. (The Associated Press, NY Times, 4/16/2013).

New Zealand: Gay Marriage Bill

Passes Parliament has voted to legalize same-sex marriage, which will make New Zealand the 13th nation in the world and the first in the Asia-Pacific region to allow gay couples to marry. The new law will allow gay couples to jointly adopt children for the first time and allow their marriages to be recognized in other countries. The law will take effect in August. (The Associated Press, NY Times, 4/17/2013).

U.S. Suicide Rates Rise Sharply

According to the Centers for Disease Control and Prevention, suicide rates among middle-aged Americans have risen sharply in the past decade, prompting concern that a generation of baby boomers who have faced years of economic worry and easy access to prescription painkillers may be particularly vulnerable to self-inflicted

harm. From 1999 to 2010, the suicide rate among Americans ages 35 to 64 rose by nearly 30 percent, to 17.6 deaths per 100,000 people, up from 13.7. Although suicide rates are growing among both middle-aged men and women, far more men take their own lives. The suicide rate for middle-aged men was 27.3 deaths per 100,000, while for women it was 8.1 deaths per 100,000. The most pronounced increases were seen among men in their 50s, a group in which suicide rates jumped by nearly 50 percent, to about 30 per 100,000. For women, the largest increase was seen in those ages 60 to 64, among whom rates increased by nearly 60 percent, to 7.0 per 100,000. More people now die of suicide than in car accidents. (Tara Parker-Pope, NY Times, 5/3/2013)

RI Allows Same-Sex Marriage

Rhode Island is the 10th state in the country and the last in New England to approve same-sex marriage, which will be legal starting Aug. 1st. Approval in Rhode Island followed a 16-year struggle in the heavily Roman Catholic state, with intense opposition from clerics and many Republicans. But in a sign of the changing times, all five Republicans in the 38-member State Senate supported the measure — the only time in any state where the entire caucus of either party has approved such a measure unanimously. Delaware, Illinois and Minnesota are also on track to approve same-sex marriage, but 30 states have constitutional provisions limiting marriage to a man and a woman.

Continued on next page



(Katharine Q. Seelye, NY Times, 5/3/2013)

Delaware Allows Same-Sex Marriage

Delaware has become the 11th state to permit same-sex marriage, the latest in a string of victories for those working to extend marital rights to gay and lesbian couples. Same-sex couples will be eligible for marriage licenses on July 1. The Supreme Court is due to announce two decisions in June that could alter the marriage landscape. (Erik Eckholm, NY Times, 5/7/2013)

Minnesota Legalizes Same-Sex Marriage

Minnesota has become the 12th state in the nation to permit same-sex marriage, and the first state in the Midwest to allow same-sex marriage through legislative action, rather than court action. Last fall, opponents campaigned for a constitutional amendment to define marriage as between a man and a woman in the state, but voters rejected the measure. Same-sex couples in Minnesota will be able to marry beginning in August. (Monica Davey, NY Times, 5/14/2013)

France Legalizes “Marriage For All”

France’s first same-sex marriage officially began after President François Hollande signed the country’s “marriage for all” act into law. The law allows all married couples to adopt children, but it does not provide state aid to help same-sex couples procreate. France is now the 14th country to legalize same-sex marriage. In the United States, Washington, D.C., and 12 states have legalized same-sex marriage. (Steven Erlanger, NY Times, 5/18/2013)

U.S. Women Increase as Family Breadwinners

Women are not only more

likely to be the primary caregivers in a family. Increasingly, they are primary breadwinners, too. Four in 10 American households with children under age 18 now include a mother who is either the sole or primary earner for her family, according to a Pew Research Center analysis of Census and polling data released Wednesday. This share, the highest on record, has quadrupled since 1960.

Demographically and socioeconomically, single mothers and married mothers differ, according to the Census Bureau’s 2011 American Community Survey. The median family income for single mothers — who are more likely to be younger, black or Hispanic, and less educated — is \$23,000. The median household income for married women who earn more than their husbands — more often white, slightly older and college educated — is \$80,000. When the wife is the primary breadwinner, the total family income is generally higher. Such marriages are still relatively rare, even if their share is growing. Of all married couples, 24 percent include a wife who earns more, versus 6 percent in 1960. (The percentages are similar for married couples who have children.) (Catherine Rampell, NY Times, 5/30/2013)

One-Third of Women Assaulted by a Partner, Global Report Says

In the first major global review of violence against women, a report released Thursday found that 30 percent of women reported having been physically or sexually assaulted by a former or current partner. The head of the World Health Organization called it “a global health problem of epidemic proportions,” and other experts said



screening for domestic violence should be added to all levels of health care. Among the findings: 40 percent of women killed worldwide were slain by a partner. Researchers used a broad definition of domestic violence, and in cases where country data was incomplete, estimates were used to fill in the gaps. The report also examined sexual violence against women by someone other than a partner and found about 7 percent of women had been victims. The report was based on studies from 1983 to 2010. (The Associated Press, NY Times, 6/21/2013)

US Supreme Court Rules Key DOMA Provisions Unconstitutional In striking down part of the Defense of Marriage Act of 1996, a 5-to-4 majority of the Supreme Court in the case of United States v. Windsor overturned a law that denied federal benefits to same-sex couples. The decision does not guarantee a right to same-sex marriage, but it allows people who live in states that allow same-sex marriage to receive the same federal benefits as heterosexual couples. (John Schwartz, NY Times, 6/27/2013)

American Way of Birth, Costliest in the World In the United States charges for delivery have about tripled since 1996, according to an analysis done for The New York Times by Truven Health Analytics. Childbirth in the United States is uniquely expensive, and maternity and newborn care constitute the single biggest category of hospital payouts for most commercial insurers and state Medicaid programs. The cumulative costs of approximately four million annual births is well over \$50 billion. From 2004 to 2010, the prices that insurers paid for childbirth — one of the most universal

medical encounters — rose 49 percent for vaginal births and 41 percent for Caesarean sections in the United States, with average out-of-pocket costs rising fourfold. The average total price charged for pregnancy and newborn care was about \$30,000 for a vaginal delivery and \$50,000 for a C-section, with commercial insurers paying out an average of \$18,329 and \$27,866, the report found. (Elisabeth Rosenthal, NY Times, 7/1/2013)

A Chinese Virtue is Now Law China enacted a law aimed at compelling adult children to visit their aging parents. The law, called “Protection of the Rights and Interests of Elderly People,” has nine clauses that lay out the duties of children and their obligation to tend to the “spiritual needs of the elderly.” Children should go home “often” to visit their parents, the law says, and occasionally send them greetings. It does not stipulate any punishments for people who neglect their parents. The classic text that has been used for six centuries to teach the importance of respecting and pampering one’s parents has been “The 24 Paragons of Filial Piety,” a collection of folk tales. In August 2012, the Chinese government issued a new version, supposedly updated for modern times, so today’s youth would find it relevant. The new text told children to buy health insurance for their parents and to teach them how to use the Internet. (Edward Wong, NY Times, 7/3/2013)



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



MCFM NEWS

ANNUAL ELECTION RESULTS FOR 2013

MCFM is pleased to announce that the following people will serve as Officers and Directors.

MCFM OFFICERS

President: Jonathan E. Fields
Vice President: Laurie S. Udell
Vice President: Kate Fanger
Vice President: Barbara Kellman
Clerk: Tanya Gurevich
Treasurer: Kathleen A. Townsend
Past President: Lynn K. Cooper

MCFM DIRECTORS

**David Burgess, S. Tracy Fisher,
 David Kellem, Justin L. Kelsey,
 William C. Leonard, Steven
 Nisenbaum, Vicki Shemin, Crystal
 Thorpe, Les Wallerstein, Marion Lee
 Wasserman & Fran L. Whyman.**

Directors Emeriti:

John A. Fiske, Janet B. Weinberger, Jerome H. Weinstein & Barbara N. White.

MCFM gratefully acknowledges the contributions of all serving officers and directors, and of recently retiring directors Rebecca J. Gagné and Diane W. Spears.



Friday, November 22nd

SAVE THE DATE!

**MCFM'S 12TH ANNUAL
 FAMILY MEDIATION INSTITUTE
 Returns to the Wellesley Community Center**

go to: www.mcfm.org for updated information

SAVE THE DATE!



9TH 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 12th Annual Family Mediation Institute on November 22, 2013. 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
jfields@fieldsdennis.com**

NOMINATE YOUR CANDIDATE NOW!



MEDIATION PEER GROUP MEETINGS

Peer Group Focused on Financial Issues in Divorce Open to all divorce professionals, the purpose of the group is to focus awareness on the financial intricacies of divorce in an open forum that promotes discussion of a wide range of issues. Discussions will be led by Chris Chen, CDFA, CFP, Diane Pappas, CDFA, and group members. Morning Meetings are usually from from 10:00 am – noon at Cambridge Savings Bank, Arlington Center, 626 Mass Avenue – upstairs conference room. **Seating is limited. Please contact Diane @ (978-833-6144), diane.pappas@insightfinancialstrategists.com or Chris @ (781-489-3994), chris.chen@insightfinancialstrategists.com**

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

Continued on next page



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 info 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 at Kathleen@divmedgroup.com, as she will coordinate this outreach, and put mediators in touch with like-minded mediators.**



OFFER MCFM's BROCHURES TO PROSPECTIVE CLIENTS

Copies of MCFM's brochure are available for members only. Brochure costs are: [1-20 @ 50¢ each, 21-50 @ 40¢ each & 51+ @ 30¢ each] plus shipping, (unless you pre-arrange to pick them up at a professional development meeting or other MCFM event). A blank area on the back is provided for members to personalize their brochures, or to address for mailing. **Remember: when you buy 21 or more brochures the "per copy" price is less than the cost to print!**

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



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@sociallaw.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.**



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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.**



ANNOUNCEMENTS

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

ELDER /ADULT FAMILY MEDIATION TRAINING

Presented by Elder Decisions - A Division of Agreement Resources, LLC

This program teaches mediators specialized skills and techniques for working with seniors and adult families facing issues such as living arrangements, caregiving, financial planning, inheritance/estate disputes, medical decisions, family communication, driving, and guardianship.

THREE-DAY TRAININGS

July 30 - August 1, 2013

OR

October 22 - 24, 2013

9:00 AM – 5:30 PM on days 1 & 2

9:00 AM – 4:00 PM on day 3

Newton, MA

Lead Trainers:

Arline Kardasis and Crystal Thorpe

Joined by Guest Experts in Aging & Elder Law

Cost: \$775 by early registration deadline, \$875 thereafter.

Trainings include lunches, snacks, and course materials.

For detailed information and registration:

visit: Elder Mediation Training

email: training@ElderDecisions.com

or call: 617-621-7009 X 29

\$100 DISCOUNT FOR MCFM MEMBERS



**ACADEMY OF PROFESSIONAL FAMILY MEDIATORS
2013 ANNUAL CONFERENCE
October 3rd – 6th, Denver, Colorado**

MEDIATING IN THE LANDSCAPE OF THE CHANGING FAMILY

APFM promotes professionalism in our field, and we intend to increase the credibility of mediation as a better option for consumers confronting family conflicts. APFM welcomes all practicing family mediators to join us. Share experiences with top presenters in the field in dozens of sessions, plus engaging lunch discussion groups, three great plenaries and 9 fantastic pre-conference Institutes.

**REGISTER EARLY FOR THE BEST DISCOUNTS
GET MORE INFO & REGISTER ONLINE
www.professionalfamilymediators.org/confreg.cfm**



**THE CAMBRIDGE CENTER FOR ADULT EDUCATION
DIVORCE IN MASSACHUSETTS: WITH OR WITHOUT A LAWYER**

Jerome Weinstein & Les Wallerstein

**42 Brattle Street
Saturday, October 5, 2013
9:30 AM - 12:30 PM**

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**

Continued on next page



COMMUNITY DISPUTE SETTLEMENT CENTER OFFERS 33-HOUR MEDIATION TRAINING

This training provides hands-on skill development, combining role plays, exercises and presentations. It meets the statutory requirements for mediator confidentiality related to the Massachusetts General Laws, Chapter 233, Section 23C and can be the first step toward certification under Rule 8: SJC Rules on Dispute Resolution.

Thursday, October 24th @ 9:30am–5pm

Friday, October 25th @ 9:30am–5pm

Monday, October 28th @ 4:30pm–7:30pm

Thursday, October 31st @ 9:30am–5pm

Friday, November 1st @ 9:30am–5pm

Gail S. Packer has been Executive Director of the Community Dispute Settlement Center since 1988. With a background in clinical social work, she spent more than 10 years mediating divorce and child custody cases in the Probate and Family Courts. An experienced mediator and trainer, Gail has provided trainings for a broad range of organizations and groups such as human resources professionals, college residential life RA's and staff, eldercare providers, and homeless shelter residents.

Jeanne Cleary has been facilitating difficult and transformative conversations for over 25 years in numerous settings. In her private practice in Watertown, MA, Jeanne provides relational and couples psychotherapy, mediation, conflict engagement strategies and facilitated retreats for corporate, religious, non-profit and educational organizations. Jeanne is an adjunct faculty at UMass Boston Graduate School of Dispute Resolution.

Art Stewart is a mediator and trainer with over 20 years' experience. Former Coordinator of Mediation with the Massachusetts Department of Education for 13 years, he is currently coordinating the mediation program for the Virginia Department of Education. Art is a pioneer and innovator in the field of dispute resolution, having trained and facilitated in nineteen states and Canada.

**Location: CDSC, 60 Gore Street, East Cambridge
(near Lechmere T, Galleria, courthouses).**

Cost: \$695 (\$650 if registration received by Sep. 24th)

**For more info contact CDSC: 617-876-5376
cdscinfo@communitydispute.org**



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 WEB GUIDE ONLINE ACCESS TO CHILD DEVELOPMENT INFORMATION

The Child & Family Web Guide was created in April 2001 by Professor Fred Rothbaum and Dr. Nancy Martland, of the Tufts University Eliot-Pearson Department of Child Development. The Web Guide 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 Web Guide is easily searched by subject, 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 Web Guide is to give the public easy access to the best child development information on the Web.**

www.cfw.tufts.edu



THE DIVORCE RECOVERY SERIES Led by Mary Vanderveer, M. Ed., LCSW

The Divorce Recovery Series is an outreach program of The First Congregational Church in Norwood, offered as a community service. Groups are ongoing and continue throughout the year. All participants are welcome, regardless of religious affiliation.

Divorce Recovery is a support group for those who are separated, considering divorce, or divorced. It offers support and healing to people experiencing the pain of separation and divorce. Group members gain knowledge regarding the emotional stages of divorce and how to cope with lifestyle changes. Each session includes discussion and presentation of topics such as denial and bargaining, anger, depression, acceptance,

Continued on next page



forgiveness, alone without loneliness, letting go, spirituality in one's life, and creating a new lifestyle. **The cost is \$90 for eight consecutive weekly sessions.**

Moving Ahead is a support group for those who have completed *Divorce Recovery* that addresses the needs of people who are rebuilding their lives after divorce. As a person's self-esteem takes a toll when experiencing divorce, the focus is to support people in creating a new and positive lifestyle. Topics include affirming and validating ourselves, self-acceptance, taking responsibility, changing negative thinking, reconnecting and developing spirituality, developing support systems, setting limits and boundaries. **The cost is \$90 for eight consecutive weekly sessions.**

FOR MORE INFORMATION VISIT: <http://firstcongregational-norwood.com>

TO REGISTER: call 781-762-3320, or email: firstcongo.norwood@verizon.net



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 Kate Fanger 617-599-6412
or email KF@katefangermediation.com

NOW'S THE TIME TO SHARE YOUR STORY!



JOIN US

MEMBERSHIP

MCFM membership is open to all practitioners and friends of family mediation. MCFM invites guest speakers to present topics of interest at four, free, professional development meetings annually. These educational meetings often satisfy certification requirements. Members are encouraged to bring guests. MCFM members also receive the Family Mediation Quarterly and are welcome to serve on any MCFM Committee. 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 listing 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 **Referral Directory**. Certified mediators must have malpractice insurance, and certification must be renewed every two years. Only certified mediators are eligible to receive referrals from the Massachusetts Probate & Family Court through MCFM.

Certification applications cost \$150 and re-certification applications cost \$50. For more information contact **S. Tracy Fischer at tracy@tracyfischermediation.com**. For certification or re-certification applications contact **Ramona Goutiere at masscouncil@mcfm.org**.



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EDITOR'S NOTICE

MCFM Family Mediation Quarterly

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

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

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

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

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

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

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

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

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