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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.

Family Mediation Quarterly

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From The President

The times they are a-changin'. And we mediators are fortunate to be actively involved at this time of recognition of the importance of mediation in resolving family disputes.

At the recent Family Law Conference 2004 sponsored by Massachusetts Continuing Legal Education, Professor and former Dean David Hall of Northeastern University School of Law, presented the keynote address on "the Spiritual Revitalization of the Legal Profession," focusing on the notable trend in law toward just the sort of conflict solutions that mediation promotes. A few months ago, the Boston Globe Magazine featured as its cover story an evolving change among several Boston lawyers in their approach to problem-solving and their careers. In recent years, a group of lawyers, including active members of the Massachusetts Council on Family Mediation, founded the Massachusetts Collaborative Law Council, to formalize a negotiated alternative to litigation in disputes.

Of course, mediators are not required to be lawyers. Therapists, social workers and others are leading members of our community. But mediation operates "in the shadow of the law" and is clearly affected and influenced by the law. At our April member education meeting, John Fiske, Jerry Weinstein and Janet Wiseman — three of the founders of the MCFM in 1982, but only one of whom is an attorney — discussed their early experience in establishing their mediation practices, when mediation was often openly questioned by members of the bar and the bench. Flash forward to now when some courts are requiring litigants to participate in mediation and a number of retired judges are serving as mediators themselves. We all are now meeting knowledgeable clients deliberately seeking an alternative to the bruises and expenses of litigation.

Mediation's time has certainly come. Congratulations to the early mediators upon the result of their hard work. Let's take pride in and continue to promote our profession as an important problem-solving approach to family conflicts.

Mary L. Johnston

Contents

The Door to Closure – A Case Study

By Kenneth Cloke

Author's Note: *Excerpted from The Heart of Conflict: A Practical Guide to Transformation and Transcendence, to be published in 2004.*

Jim and Frances were married in the Midwest in 1953 and moved to Los Angeles where they raised three children and bought a home. Frances worked as a secretary at a local college and Jim worked as an engineer at an aerospace company. Jim was a quiet man, uncomfortable with emotional communication, yet proud. His first response to confrontation was sullen withdrawal, which angered Frances and made her more shrew-like and bitter, resulting in further sullen withdrawal, and so on. As the kids grow older, they slowly moved further apart.

Their silences grew deeper and their separations longer, until Jim withdrew into the garage not just to work, but to sleep, watch TV, and drink himself into a silent, morose, resentful cocoon, waiting for the chrysalis of reconciliation that never came. Years went by, thirteen of them. The chasm between them widened and the silence grew louder. When the youngest child began college, though still living at home, Frances declared the marriage over and asked for a divorce. Jim was angry and uncooperative, as he had been for years, but Frances persisted and forced Jim to come to mediation or face an expensive court battle instead.

At the first session, Jim was still trying desperately to resist making any changes in his life. He had grown accustomed to living in the garage and maintaining a distant relationship with his family. He was happy to continue dying by degrees, rather than face what he feared would be certain death through separation. Sensing his resistance, I asked Frances to confirm her decision to end the marriage. She said there was a huge discrepancy between what Jim preached and what he practiced, that she no longer trusted him, that he was an alcoholic who had been arrested twice for driving under the influence, and was clear that she wanted a divorce.

Jim countered that the arrests had occurred three or four years earlier and he no longer drank and drove. I asked him if he was happy in the marriage. He answered emphatically "No!" I asked him, since he was unhappy, whether he also wanted a divorce. He said that for him to move out and separate from Frances, he needed to overcome his fear of suicide and death, and felt he was unable to look positively on his future as a single man. He said he was now nearly sixty and living completely without joy.

I asked him whether there was anything he enjoyed doing. He said: "Nothing really" Where did he like to go? "Nowhere in particular" Any hobbies? "No" Any special interests? "No" Where did he go on vacation? "Just stayed at home." These passive responses encouraged me to use a more direct approach, particularly since his lack of interest and affect indicated a possibility of suicidal ideation. I said that this year, since they would probably be separating, it would be unlikely that he would remain in the home. Of all the places in the world where he could go, which would be his favorite? He answered clearly, and with the first glimmer of positive feeling: "Oregon" "What do you like about Oregon?" I asked. "The trees, the air, the quiet." His whole expression and demeanor began to change as he spoke about his experience of being in Oregon on the one time when he had visited. I continued to expand this heart opening, and discovered an additional source of enjoyment in woodworking. He agreed in the end that it would make sense for him to move to Oregon where he could get a house and garage and develop his woodworking skills.

Their silences grew deeper and their separations longer.... The chasm between them widened and the silence grew louder.

I now felt the mediation could begin because a way had been found to avoid his resistance to separation due to a spiritual lethargy and literal fear of death as a consequence. Jim seemed to respond well to visual imagery, so I incorporated visual metaphors into my questions, for example, by periodically asking him if he could "see" himself living separately, or "envision" the possibility that he could be happier than he had been in years. I also used visual imagery to positively reinforce his acceptance of the separation, create a life of his own, and affirm it as his solution rather than Frances'.

During the time I spent discussing these issues with Jim, Frances began to change as well. She stopped offering cynical, biting assessments of his character that revealed a sense of frustration and anger that had been smoldering for thirteen years. She shifted to being amazed at the disappearance of his resistance to separating, and his open, honest, interest in self-analysis and self-discovery. She became much more engaged and empathetic, and expressed a positive hope that he would find something that would really make him happy.

On this note, I asked them if they would be willing to discuss the issues that needed to resolve in order to separate, and they agreed. The first of these, Frances said, was for Jim to find another place to live and move out. Jim again became resistant and did not understand why Francis wanted him to move out so quickly. I asked him if he wanted to find out why she wanted him out of the house so badly. He said he would. I asked him to ask Frances directly why she felt he needed to move out so quickly. He turned, asked her, and she answered with great bitterness and anger, "Because you're driving me crazy! I just want to get on with my life, like you do, and I can't do it with you holding me back. I want to reorganize the house, and I want you and your things out. It's time, Jim, for us to move on."

I asked Jim if he understood, and he said he did. I asked him if he would tell Francis what it was he understood. He told her he heard her and was willing to move out. I told him that the longer he stayed in the

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house the more their relationship would deteriorate, and that he had a choice, which was to do it quickly and easily, or take longer and increase the anger and frustration between them.

Jim said he would start looking for a place, but had no idea where he would go. I asked him concretely how he would go about deciding, who he could consult to help him decide, whether he was going to speak to real estate agents or look in the newspapers; would he rent or buy; did he want to be close to work or his kids; how long did he think he needed to look; and when he planned to move out by, all in order to make the move feel real to both of them and draw him step by step into actions that would reinforce his commitment to move. He agreed that he would start looking immediately and would call a real estate agent he knew for help right after the mediation ended.

The mediation could begin because a way had been found to avoid his resistance to separation due to a spiritual lethargy and literal fear of death as a consequence.

At the second meeting, Jim had still not moved out or located a place to live, and Frances was furious. I let her vent her anger, acknowledged her feelings, and allowed Jim to do the same. I reaffirmed that the longer it took for them to separate the more they could expect to get angry at each other and that their relationship, poor as it was, would deteriorate even further. I asked Jim what efforts he had made to find a new home. He spoke of several meetings with real estate agents, ads placed in newspapers, and visits to houses, but not being able to find anything that was suitable. I appreciated his efforts, asked Francis to do the same, and inquired what he planned to do next. He said he would continue looking as hard as he could. I asked him if he felt he could set a firm deadline for moving out, which he did, in two weeks time. I asked Francis whether that would work for her, and she said it would. Since Jim had not met his earlier commitment, I asked him to turn to Francis and tell her in detail what he planned to do.

We then discussed the division of their assets and provisions for support, and I asked them what goals or values they wanted to use in making these decisions, what they wanted to accomplish, and where they wanted to be at the end of the divorcing process. They reached consensus on the following set of goals and values:

- We will behave respectfully toward each other, and end the process amicably without bad feelings.
- Frances will get the house.
- We will both get to retire comfortably.
- We will equally divide our assets without bankrupting anyone.
- We will each have enough money to live modestly, but no more.
- Jim will work three more years and then retire.
- Jim will be able to move to Oregon.
- We will resolve everything quickly and complete the divorce by the end of the year.

We discussed these issues in detail and reached a number of agreements regarding their assets and debts. At the end of the session, I assigned them as homework to each write up a proposal for settlement with at least three outcomes they thought might be acceptable to the other person, and to meet and agree on final figures for several of the financial items, including the fair market value of the house.

When they returned two weeks later, Jim had still not moved out and Frances' anger had increasing significantly. Frances again vented and I acknowledged her frustration and rage, and again turned to Jim for an explanation. He said he had actually made an offer on a house, but that it had been taken off the market. He recognized that his living in the house was becoming a serious problem and that Frances was more angry than he had ever seen her. After some discussion, he agreed to move into a motel for a few days until he could find something more permanent, and would do so that weekend without fail. I asked him if he would be willing to name a penalty that would encourage him meet his commitment, and he said he would pay Francis a thousand dollars if he failed. I asked Francis if that was acceptable, and she said it was.

I felt a deeper discussion of the reasons for their impasse was needed, and asked them what life must have been like for them during a marriage in which they lived apart for so many years, with only the door between the kitchen and the garage in common. They spoke about the door as a kind of metaphor for their relationship, which was squeaky and had not worked for years for either of them. They agreed that the door kept them separate – not only from each other, but from their own true selves. They started their divorce thirteen years ago, but without the positive elements that came from completing their old relationship and starting a new one. Now they wanted to complete what they had begun and make it positive by creating new lives for themselves. They spoke of the good times they had had together, of their children and the opportunity they each now had to establish newer and closer relationships with them.

Because their hearts had been opened by this conversation, they were able to quickly put the last touches on their agreement. Final figures were put in place and a plan was worked out under which Frances kept the house, they each kept their own retirement plan, each had some cash available, Jim would pay off the mortgage, and alimony would be paid by a money market account that would accumulate with company contributions over the next three years while Jim continued on payroll, after which he would retire and they would cease. On review, each said they felt the agreement incorporated their goals and values, and each had gotten 100% of what they wanted.

Because their hearts had been opened... they were able to quickly put the last touches on their agreement.

They signed the agreement and I

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congratulated them on the way they had handled the difficult issue of their physical separation, on their willingness to compromise and satisfy each others interests, on their courage in facing an unknown future, and on their honesty and cooperation throughout the process. I then worked with them to design a ceremony with their children that would mark the end of their marriage. They agreed that they would meet at the house with their children and conduct a ritual of closure in which they would announce that their divorce was final, talk about the lives they now wanted to live, and how they wanted their children to share in their future lives. They agreed to acknowledge that they had loved each other, but now needed to separate and live their new lives apart, and to wish each other well. Afterwards, they agreed that they would take down the door to the garage, build a bonfire in the back yard, and burn it. At the end of the session they laughed, shook hands, hugged, cried, and left in good spirits.

This final ritual invited them to move beyond ending or completion to perfect closure and the ability to walk away from their conflict feeling good about themselves and each other. Their earlier heart-felt conversation had set the stage for a collaborative design process that permitted them to ritually transcend the dysfunctional issues in their relationship, separate amicably, and move forward with their independent lives.

Ken Cloke is the director of the Center for Dispute Resolution in Santa Monica, CA. He has been a mediator, arbitrator, university professor, and judge, and the author of several books, including *Mediating Dangerously*. Ken can be contacted at <Kcloke@aol.com>.

“The miserable have no other medicine, but only hope.”

William Shakespeare

SURVIVOR BENEFITS UNDER QDROs AND OTHER COURT ORDERS

By Lisa M. Ehrmann & Franklin E. Peters

Editor’s Note: *This is the second article in a two-part series concerning the provision of survivor benefits in domestic relations orders. Part One covered survivor benefits in Qualified Domestic Relations Orders. Part Two covers survivor benefits in non-ERISA plans, including government and federal pensions.*

Non-ERISA Defined Benefit Plans State and other government pensions have defined benefit plans which are not governed by ERISA. These plans are often very different from private, ERISA plans, and domestic relations orders (“DROs”) for these plans are quite different from QDROs. This article focuses upon DROs for dividing Massachusetts public employee pensions (M.G.L. Chapter 32), and Court Orders Acceptable for Processing (“COAPs”) for federal pensions under the Civil Service Retirement System (“CSRS”), the Federal Employee Retirement System (“FERS”) and military pensions. The authors do not recommend that you draft any of these court orders unless you are well-versed in the specific details involved.

1. Massachusetts pensions (M.G.L. Chapter 32) M.G.L. Chapter 32 governs pensions for state, county and local government workers in Massachusetts, and despite different ways in which Massachusetts state pensions are calculated for different types of state employees, all participants in these plans are subject to the same survivorship rules.

There are three different options (A, B and C) from which a participant in the retirement plan must choose at retirement, and the option chosen impacts the amount of benefits to be divided, as well as the amount of post-retirement survivor benefits to be provided.

Under Option A (M.G.L. chapter 32, section 12(2)(a)), there are no death or survivor benefits available for an alternate payee but the monthly annuity is the largest (since the pension is not reduced to provide for survivor benefits). If a participant chooses this option at retirement and dies before the alternate payee, the alternate payee’s benefits will cease.

Under Option B (M.G.L. chapter 32, section 12(2)(b)), there is a limited death benefit which is paid from the participant’s employee contributions (if any are left by the time the participant dies). Part of the monthly annuity paid to the retired participant comes from his accumulated contributions. If the participant lives approximately twelve or more years after retiring, depending on the age at retirement, there is a good chance that there will not be any employee contributions left to provide the alternate payee with a death benefit.

Under Option C (M.G.L. chapter 32, section 12(2)(c)), there is a true survivor benefit but the monthly annuity is

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considerably less than under Option A, to account for the cost of providing the full survivor benefit. However, if the alternate payee is remarried before the participant retires, and the participant chooses Option C at retirement, then the alternate payee becomes ineligible for and simply loses her claim to the survivor benefit. A domestic relations order may be drafted such that if the alternate payee is married at the time of the participant's retirement, then the participant is directed to choose Option B, which at least might provide some death benefit for the alternate payee. The alternate payee must therefore notify the participant if she remarries.

Despite different ways in which Massachusetts state pensions are calculated for different types of state employees, all participants in these plans are subject to the same survivorship rules.

There is one other "option" which is the pre-retirement option, often referred to as "**Option D**" (M.G.L. chapter 32, section 12(2)(d)), which allows a participant to choose a beneficiary for his or her pre-retirement survivor benefit. However, if the participant dies prior to retirement, the alternate payee will only receive this benefit if the participant has not remarried, (as explained in the next paragraph). If the alternate payee has remarried, she cannot receive the Option D benefit, so the DRO should state that in this situation, the participant shall name the alternate payee as the beneficiary for the death benefit of the accumulated contributions. Whether the alternate payee receives the Option D benefit or the return of the accumulated contributions, she will not receive any other benefits. The pre-retirement refund of accumulated contributions death benefit may be extremely small compared with what the alternate payee would have received had the participant lived past his retirement.

Option D is the only way to provide a pre-retirement survivor benefit for the alternate payee if the participant is not remarried. If the participant has remarried and dies pre-retirement, the Option D benefit is automatically paid to the current spouse of the participant, regardless of whether or not the alternate payee has been named as the beneficiary, and no other benefit is paid to anyone. This is a very harsh result, and can only be changed legislatively.

The following scenarios illustrate the above discussion. Assuming that the participant dies pre-retirement:

1) If the participant has no current spouse at his time of death, and the alternate payee is not named as either the Option D beneficiary or the beneficiary for accumulated contributions, then the alternate payee gets nothing at all.

2) If the participant has no current spouse at his time of death, and the alternate payee is named as the Option D beneficiary and has not remarried, she gets this survivor benefit under Option D, and nothing else.

3) If the participant has no current spouse at his time of death, and the alternate payee is named as the Option D beneficiary, or as the beneficiary for accumulated contributions if she is remarried, and she has remarried, she gets the limited death benefit of the accumulated contributions, and nothing else.

4) If the participant has a current spouse at his time of death, regardless of whether or not the alternate payee is named as the contingent Option D beneficiary or the beneficiary of the accumulated contributions, the current spouse automatically gets the entire survivor benefit by operation of law, and the alternate payee gets nothing at all.

If there are enough marital assets to offset the Chapter 32 pension, then it may be better for the alternate payee to take other marital assets in lieu of her share of the pension. If this is not feasible, the next best solution is to have the alternate payee own a life insurance policy on the life of the participant. This may be very expensive, particularly as the participant gets older.
It is a good idea to clearly describe how the parties will divide the Chapter 32 pension in the marital agreement. Simply stating the parties shall divide the pension 50-50 is ambiguous and inadequate. By fully addressing options and survivor benefits in the agreement, the parties will fully understand the quirks of the Chapter 32 survivor benefits during their negotiations before their court date.

One of the biggest problems with these non-ERISA plans is that there are so many, picky details concerning when DROs should be drafted, and where to send the orders.

2. Federal Pensions – CSRS and FERS
Federal government employees have pensions under either CSRS or FERS. The Office of Personnel Management (OPM) administers both of these retirement systems. You should find out before drafting your separation agreement, which retirement system pension you will be dividing. You may also wish to obtain a copy of a government publication, "A Handbook for Attorneys on Court-ordered Retirement, Health Benefits, and Life Insurance" which covers CSRS and FERS. This publication can be downloaded free from the OPM web site, or purchased from the U.S. Government Printing Office.

In a Court Order Acceptable for Processing (COAP), the Participant is referred to as the "Employee" and the Alternate Payee is referred to as the "Former Spouse." COAPs are unique in that they treat survivor annuities completely separately from the employee annuity. If an employee receives his pension as a Refund of Employee Contributions, neither he nor his former spouse has any further pension rights, so it may be best to bar the employee from receiving a refund of employee contributions.

Under either retirement system, counsel for the Former Spouse should provide survivor benefits in the COAP, as survivor benefits

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are not automatic. Providing survivor benefits will reduce the employee annuity. Under CSRS, the former spouse may receive up to 55% of the employee annuity as her survivor annuity, and under FERS, the maximum amount is 50% – but there is an additional benefit under FERS called the "Basic Employee Death Benefit," which is a fixed sum. A former spouse's survivor annuity may be stated as a monthly, fixed-dollar amount, but if that amount exceeds the maximums allowed, she will receive only the maximum allowed.

Providing survivor benefits protects the former spouse if the employee, separated employee or retiree predeceases her. Should the employee/retiree die before the former spouse, she must notify the OPM in writing in order to receive her survivor annuity and the writing must include specific information along with a certified copy of the court order, (even though the order was previously submitted in accordance with OPM procedures). A former spouse survivor annuity will cease if the former spouse either dies or remarries before the age of 55. So if your client is receiving a monthly check representing her portion of the survivor annuity and wishes to remarry, she may be wise to wait until after her 55th birthday.

If the former spouse dies before the retiree, her share of the pension reverts to him unless the COAP specifies otherwise. If her share does not revert to the retiree, then the order must specify that it be paid to minor children of the marriage or to the court.

3. Military Pensions Domestic relations orders to divide Military Pensions are called, "Military Qualifying Court Orders." The participant is the "Member" and the alternate payee is the "Former Spouse." Counsel for the Former Spouse should also provide survivor benefits in these kinds of orders as again, they are not automatic. The Separation Agreement ought to state that the Member is required to provide Survivor Benefit Plan ("SPB") protection for the Former Spouse. If the Former Spouse is to receive survivor benefits equal to the benefit payments she was receiving before the Member's death, then you should state this in the Separation Agreement.

The Member will have to make an affirmative election to provide SPB coverage within a year after the divorce decree, and if he does not, the Former Spouse must make the election within one year from the entry of MQCO which names her as the SPB beneficiary (called a "deemed election"). If she fails to do this, she completely loses her rights to a survivor benefit. Currently, if the Former Spouse marries before age 55 she loses her right to the SPB, but can reinstate her right if she subsequently becomes a widow, has her marriage annulled, or divorces.

Parting Advice with Regard to Survivor Benefits One of the biggest problems with these non-ERISA plans is that there are so many, picky details concerning when DROs should be drafted, and where to send the orders. The parties should set forth in their Separation Agreement how they will divide the plans and how they will handle survivor benefits. Before negotiating your

Continued on page 29

BRINGING PEACE INTO THE ROOM
How the Personal Qualities of the Mediator Impact the Process of Conflict Resolution

A Book Review by Lynda J. Robbins

Even born "peacemakers" benefit from learning strategies and processes of mediation. Mediation as a profession is relatively young—it is a product of the baby-boomers' generation, As such, it is still developing and growing in quantity of practitioners as well as in quality.

Most professional mediators have thus far focused on developing their skills. This comes through learning and practice. As we grow and grow older, experience also affects our practice. Mediators and the profession of mediation are moving into the second generation. David Hoffman and Daniel Bowling help us move into this next phase with their collection of articles and essays that focus on the personal qualities of the mediator and how they impact the process.

David and Daniel brought these chapters together "for the ever-growing community of mediators in the United States and beyond who are seeking to enhance their ability to be dispute resolvers by moving beyond knowledge and skills to deeper levels of engagement in their work... The next task after knowledge and skills are acquired is developing a sense of identity with their role and responsibility of being a mediator."

Daniel and David and their contributors give us permission to be human and to acknowledge that our humanity shapes our mediations. From the physical affects and manners of the mediator to the personal experiences of the individual mediator, to the role of "mediator as trickster," our personal qualities effect us as mediators. And this is good. Clients want us to be human and super-human at the same time. These articles help us balance these demands in ways that ultimately assist in the conflict resolution.

In our skills classes, we are taught that mediators must be neutral, that we must follow proscribed processes depending on what school of thought we ascribe to in our practice and that we must not allow our personal beings to infiltrate our role as mediator. This book does not attempt to teach mediation skills, although wonderful "tidbits" are scattered throughout and each

Mediators must not shy away from conflict but learn to embrace it and facilitate the changes that conflict begs.

article is followed by several reflective practice questions that are designed to stimulate the application of what we have just read to our own practice.

Mediators have the reputation of being against conflict. David and Daniel acknowledge that conflict is a progenitor to change. Conflict, in context, can be good,

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and mediators must not shy away from conflict but learn to embrace it and facilitate the changes that conflict begs.

Mediation does not simply promote an end to conflict. It also promotes healing. Several essays address the "culture of healing" and the creation of a "sacred space." These approaches may be more comfortable for the therapist/mediators than attorney/mediators but the articles help put these theories into prospective and encourage us to try new approaches.

The articles also encourage us to develop our abilities to focus on the present in order to better assist our clients in their focus. We are also given permission to cry, maybe the ultimate recognition of our humanity.
Sara Cobb, in her article, "Creating Sacred Space—Toward a Second-Generation Dispute Resolution Practice," summarizes that "In the first-generation mediation practice, we learned that there was a formula that could be useful for resolving conflicts. We learned to bring parties to the table, to structure the process so each side had a turn to speak, and to help parties invent options on the basis of the elaboration of their interests. In the first-generation practice, practitioners clung to our belief that the process alone could yield outcomes that not only resolved disputes but also increased the humanity of those involved. We trusted neutrality as well as the ground rules of turn taking. We worked to witness the pain of the parties and struggled not to tamper with the content of their stories, as that was thought to constitute a violation of our practice as neutrals." She goes on to say "...in this second-generation practice, we are ...freed from the arbitrary constraints imposed by the secular discourse of mediation." By acknowledging what many experienced mediators have learned but, perhaps, been afraid to voice, the authors move us beyond the dogmatic to a deeper and fuller understanding and appreciation of how each of us brings peace into the room.

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"There are two ways of spreading light: to be the candle or the mirror that reflects it."

Edith Wharton

GOOD MEDIATION NEEDS DIVERSE SKILLS: A Response to Collaborative Law

By John W. Heister, Ph.D.

Matrimonial attorneys have re-framed the way in which they approach their practice of law with regard to divorcing couples. They now work directly with the couple in a "four-way" conference in a collaborative mode to help the couple resolve their issues. As a practicing mediator, this is a welcome and positive change. However, it needs to be seen in the larger perspective of options divorcing couples have in selecting the optimum provider. Based on over twenty years as a full-time practicing divorce and family mediator (who is not an attorney) I have these reflections.

The goal of most divorce professionals is to help couples (and their families) to go through the divorcing process in the most positive way. Generally agreed marks of success are:

(1) The couple sustains a positive relationship after the divorce so that they can continue parenting their children and relating to other extended family members.

(2) The couple learns life skills about communication, parenting, asset management, and support issues and each party is better able to manage all these areas separately after the divorce.

(3) The length of time of the divorce process is minimized so that all the members of the family are delivered from the ongoing stress of unfinished business.

(4) The couple and family avoid the deleterious effects of the adversarial legal process, which tends to pit them against each other.

(5) The process should help the family to benefit from all the economic and tax benefits of collaborative tax planning.

(6) The outcome provides some measure of economic parity after the divorce.

(7) The process is cost-effective.

(8) Both parties are, as much as possible, satisfied with the outcome and understand why each gave up some things and received others.

There are four essential skills needed to assist the divorcing family to achieve the above goals. These include skills in:

(1) Conflict resolution (conflict transformation).

(2) Understanding in the implementation of the applicable law.

(3) Understanding financial and tax considerations to minimize taxes and increase cash flow.

(4) Communication and human relations to assist in family and parenting issues.

Clearly, this professional needs to be competent in all of the above or else able to

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assist the couple in connecting with the appropriate professionals to fill in where he or she cannot.. None of us is qualified in all of the above. Legal knowledge is only one of a number of areas that is significant for helping the couple. I do not believe that a background in law provides superior qualifications for achieving the above eight goals better than the background of mediators coming from other disciplines.

Although some attorneys are skilled mediators with much experience, most of the attorneys starting up in collaborative law have not had the amount of training or experience that would give them an edge over an experienced mediator from another discipline.

Although some attorneys are skilled mediators with much experience, most of the attorneys starting up in collaborative law have not had the amount of training or experience that would give them an edge over an experienced mediator from another discipline. It is not even clear to me that separate, "collaborative" attorneys best dispense legal advice. In my practice, if a couple is close to impasse regarding a legal matter, I bring into the mediation an experienced, matrimonial attorney, who in neutral terms, will describe an appropriate interpretation of the law. This "second opinion" or "non-binding arbitration" costs the couple the expense of one attorney and gets them appropriate legal information upon which to make necessary decisions. The parties will also have separate legal counsel before any legal documents are signed.

Finally, collaborative law is expensive. If each spouse meets individually with his or her collaborative attorney for two hours in preparation for the "four way" and then meets for two hours in the "four way" and the legal fees for each attorney are $200 per hour (average in Rochester, NY), the couple has spent $1,600. Many couples in my office, on our sliding fee scale, complete the mediation for $1,600. Extrapolate the hourly figure of the two attorneys out over a ten or twenty (or thirty?) hour collaboration and the excess expense becomes apparent.

I believe that we need to reconsider the collaborative model in light of the diverse skills needed for effectively intervening with divorcing couples.

John W. (Jack) Heister, Ph.D., is Director of the Mediation Center of Rochester, NY, one of the largest private mediation centers in the nation. He was the founding President of the New York State Council on Divorce mediation, and he can be contacted at <heister@mediationctr.com>. This article first appeared in the winter, 2004 edition of Family Mediation News, a publication of the Association For Conflict Resolution.

WHAT I HEAR HER SAYING

A Book Review by Barry L. Shelton

At least half of what we do as students, lawyers, counselors, teachers, judges, administrators and mediators is listen. Rebecca Z. Shafir, author of "The Zen of Listening: Mindful Communication in an Age of Distraction" asserts that we've become conditioned to thinking that listening is a passive process. Here's text from her book to meditate on: " In American schools, about twelve years of formal education are focused on teaching us how to read, write, and speak. Yet .... only about half a year, doled out in bits and pieces without any structured format, comprises listening training."

Many books and workshops about listening teach you to behave like an active listener-maintain eye contact, nod empathetically, lean in the speaker's direction - but not how to listen. Yet the threshold requirement for "mindful listening" is not technique but a change of mindset, to a willingness to acknowledge the possibility that each and every verbal encounter contains a "golden nugget" or two of valuable information. Blending her experience as a speech pathologist and her knowledge of communication disorders, psychology, and Eastern philosophy, Rebecca maintains that mindful listening can be a powerful tool for change.

Mindful listening requires curiosity for learning and respect for the speaker, a readiness to enter into the speaker's "movie" or story. The major barriers to this are mental: listener misconceptions, misperceptions, and biases about people and their message. Status, gender, age, race, appearance, past experience, negative self-talk, and my favorite, "focusing on the outcome instead of the process of listening," are some of the obstacles discussed. For listening is not so much an active process as a receptive one that demands that we be present, in the moment, ready to learn.

The first step toward working with mental obstacles is to examine our individual natures, identify our obstacles, and acknowledge their power to drown out information and knowledge with evaluations and judgments. The goal is not to overcome these internal constraints, but rather to better understand their effects on us. Once we become aware of them and their effects, we then can attempt to quiet the internal noise they stir up.

These obstacles set limits on what we let ourselves experience. A mindful listener however, lacks the obsessive self-consciousness that interferes with the ability to concentrate fully. Entering into the speaker's movie provides the path of least resistance. Rebecca cites a study that calculates that understanding a speaker is conveyed through 55% gestures and facial expressions, 38% tone of voice, speech rhythms and emphasis, and 7% spoken words. Getting into the speaker's movie synthesizes these elements.

Continued on next page

Listen to establish a relationship, advises Rebecca. "When there is less emphasis on the outcome and more emphasis on the process of listening, a relationship is established." Trust is developed through this kind of receptive listening. And genuine curiosity about the speaker and his message elicits honest responses, because people sense that the listener is less judgmental and critical. "To widen the gap of time between perceiving a message and interpreting its content is the essence of mindful listening."

In order to muffle her internal noise and widen that gap of time, Rebecca's preference is meditation in the Zen tradition. She doesn't proselytize. She does, however, provide simple, straightforward instructions and suggestions how to concentrate on meditating on the breath for several minutes twice a day. In addition, she also devotes several chapters on helpful communication techniques, such as reassurance, paraphrasing and the strange and wonderful power of silence. She also ticks off a list of less desirable habits for speakers that she suggests avoiding, like talking too much, interrupting and non-verbal cues that may alienate. In fact, each chapter concludes with a highlighted section containing practical information and simple exercises geared towards developing mindful listening skills. For those of us who want help with more goal-oriented listening, the book also gives tips on how to boost your listening memory, for example, common sense ways to remember names and how to listen in meetings and classes.

A mindful listener however, lacks the obsessive self-consciousness that interferes with the ability to concentrate fully.

I'm grateful for Rebecca's book and her dynamic workshops about listening, because they have helped me become a better mediator. They helped because they made me focus again on process and the importance of listening as a receptive and imaginative process skill. Whether or not you're into Zen, I recommend her sensible, accessible book.

Rebecca Z. Shafir, M.A., CCC, author of the book, The Zen of Listening: Mindful Communication in an Age of Distraction, published by Quest Books, is a certified speech/language pathologist at the Hallowell Centers in Sudbury and in Andover, Massachusetts. A fourteen year student of Zen, she also teaches communication workshops nationwide and has coached media personalities and political candidates since 1980. For more information about Rebecca and her work, please visit her web site at www. mindfulcommunication.com.

Barry L. Shelton is a family lawyer and mediator from Wellesley. He can be contacted at (781) 237-0541, or by email at sheltonbls@attbi.com. For more information about him please visit his web site at www.helpfamilymediate.com.

2004 Administrative Regulations Update for Family Mediators

Fern L. Frolin

The Board of Bar Overseers and Governor Romney have promulgated new regulations that will change the administrative practices of lawyer-mediators who hold client funds and all mediators who notarize documents for their clients. The BBO's new client fund regulations go into effect on July 4, 2004. Governor Romney's Executive Order 455 changing rules for notaries was initially scheduled to take effect in mid April. As of this writing, the governor has postponed the date to May 15, 2004. Mediators who hold client money or notarize documents will want to immediately prepare to comply with both new sets of regulations.

Rules for holding client's money pertain to all retainers that a lawyer-mediator may receive in advance of actually performing work. Although these rules do not apply to non-lawyers, the new rules are instructive for all mediators who take retainers. The rules can be fairly described as a codification of former "best practices" for all professionals who hold client money in a fiduciary capacity.

Two requirements have not changed. As before, client funds must be segregated from a lawyer-mediator's personal and operating accounts. Also, clients' money must still be maintained either in an interest bearing account in the individual client's name or in a pooled IOLTA account. New rules for maintaining records, billing the client, and transfer of funds to the mediator's own account are stringent and comprehensive.

The new BBO rules mandate strict record keeping. A lawyer-mediator who holds client retainers must maintain two sets of records: one set of bank records, and another set of personal records. Bank records, including statements, checks, deposit receipts ledgers and electronic transaction records must be retained for six years. In addition, the lawyer-mediator must create and retain for six years a bank ledger or check register for all client fund accounts and a separate ledger for each client showing deposits, withdrawals or transfers of all funds. Further all accounts must be reconciled no less than every sixty days.

The new client fund rules require notification to the client at the time of or before withdrawal of any fee from the client fund account. Notification must now be in the form of an itemized bill or statement of services and must state the date on which the funds have been or will be withdrawn. The rules prohibit ATM withdrawals and checks payable to cash. Notification of withdrawal must also set forth the client's remaining balance.

Like the client fund rules, new administrative requirements for notaries are rigorous. Executive Order 455 requires that all notaries maintain a journal listing

Continued on next page

all documents notarized in chronological order, that all persons whose signature is notarized appear personally before the notary, that the notarization contains express information, and that the notary must use a conforming seal.

Mediators who hold client money or notarize documents will want to immediately prepare to comply with both new sets of regulations.

In addition, the notary must ascertain proof of the signer's identity. It is sufficient that the person is personally known to the notary or to a credible in-person witness, who affirms or swears that he or she personally attests to the signer's identity. Otherwise, the notary must require picture identification.

Notarization language has four specific components. As before, it must contain the date and location, the name of the individual whose signature is notarized, and a statement that the signature is voluntary. The fourth component is new language that describes the form of identification, including the document number of the signer's driver's license, passport, or other form of picture identification. If the notary personally knows the signer, the notarization must specifically so state. Identification through a credible witness requires that the witness also sign the document and attest to identity under oath.

Under the new notary rules, all notarization signatures must be in black ink and accompanied by a notarization seal. Conforming seals must now include five elements. These are: the notary's name; the words "notary public," the words "Commonwealth of Massachusetts," the date of expiration for the notary's commission, and the seal of the commonwealth.

Finally, the new rules will require all notaries to maintain and be prepared to provide for inspection a bound and numbered journal. Each notary must maintain his or her own personal journal, and only one journal volume may be in use at any time. The notary will ledger every notarized document, in order, noting the date of notarization, the type of document, the names of the parties and the form of identification presented.

Fern L. Frolin is an attorney, mediator and partner of Grindle, Robinson, Goodhue & Frolin in Wellesley, and a fellow of the American Academy of Matrimonial Lawyers. Fern is a frequent lecturer for MCLE, the MBA, and the MCFM, who can be contacted at ffrolin@grgattys.com.

"Trifles make the sum of life."

Charles Dickens

ADR COURT NEWS

By Christine W. Yurgelun

ITEM 1: The rule setting forth qualification standards for neutrals who provide court-connected dispute resolution services was adopted by the Massachusetts Supreme Judicial Court (SJC) in November 2004 and will take effect on January 1, 2005 (except for dispute intervention, which will be delayed, per the Note below.) The qualification requirements are designated as "Rule 8" of the Uniform Rules on Dispute Resolution (SJC Rule 1:18). Additionally, on February 6, 2004, Chief Justice for Administration and Management Robert A. Mulligan announced that, pursuant to Rule 8 (b)(iv), he had approved Guidelines required to implement qualification standards for neutrals and approved programs.

There are seven ADR processes that specifically fall within the scope of SJC Rule 1:18. They are: arbitration, case evaluation, conciliation, dispute intervention, mediation, mini-trial, and summary jury trial. For each process, there are qualification standards in the following categories: 1) training; 2) mentoring and evaluation; 3) continuing education and 4) continuing evaluation. Additionally, for conciliators, case evaluators, mini-trial neutrals, and summary jury neutrals, there are professional qualifications, also. A neutral may meet one or all of these requirements using the alternative method, if any, specified for the particular process, pursuant to Rule 8(j). (The full text of Rule 8 and the Guidelines can be found at online at <www.state.ma.us/courts/admin/legal.html>. Qualification requirements were initially drafted by task groups consisting of experienced practitioners of each process, incorporating recommended thresholds based on the practitioners' insights, familiarity with "best practices" and determination of reasonable expectations. Those proposed qualifications were published and circulated for comment, and the feedback was reviewed by trial court departments and the Standing Committee on Dispute Resolution. After considering all suggestions, the Standing Committee submitted its revised recommendations to the SJC on August 1, 2003.

The Guidelines provide training goals and minimum requirements including curriculum outlines, and guidelines for mentoring and evaluating neutrals. For each process, the Guidelines also include skills evaluation checklists. The Guidelines also describe the types of prior experience needed to fulfill the alternative methods of satisfying training requirements as well as program documentation requirements.

Mediators should be aware of important distinctions between Rule 8 provisions. As noted above, Rule 8 (j) specifies alternative methods for meeting initial training, mentoring and evaluation requirements. Rule 8 (k) allows for a one-time exemption for mediators (inter alia) from the initial training, mentoring and evaluation requirements of Rule 8, if the Chief Justice of a particular department decides this

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exemption is appropriate for that department, and then, only if an approved program can demonstrate the neutrals' eligibility for the exemption. Exemption requirements are provided in Rule 8(k)(iii). Whether this one-time exemption, referred to as the "grandfathering" exemption, will be available in the Probate and Family Court Department will be announced by Chief Justice Dunphy in May. It should be noted that grandfathering only provides a limited exemption from initial training, mentoring and evaluation requirements; it does not exempt any neutral from complying with continuing education and continuing evaluation requirements.

Each approved program will have primary responsibility for certifying that neutrals on its roster satisfy qualification requirements (Rule 8) and continue to meet ethical standards (Rule 9). Current program approvals, previously due to expire on June 30, 2004, have been extended by Chief Justice Robert Mulligan to coincide with the effective date of Rule 8. Chief Justice Mulligan has announced the following time frame for the next application process for programs seeking to perform court-connected ADR services; 1) commencement of new application process in September 2004; 2) deadline for submissions of applications from programs to court departments by mid-November, and 3) completion of the approval process by each department so that the "new" set of approved programs will be in place by January 1, 2005. The Standing Committee has agreed to work with the Administrative Office of the Trial Court to update the program application form and to develop new forms so that, programs can easily comply with the requirements of Rule 8 and the Guidelines.

Note: In March, the Probate and Family Court Department ADR Coordinator met with Chief Probation Officers to discuss Rule 8 requirements which are not yet finalized for neutrals providing Dispute Intervention. Dispute Intervention is the only ADR process provided exclusively by court personnel (Probation Officers in the Probate and Family Court Department and Housing Specialists in the Housing Court Department) and requires consideration of additional factors, such as the Standards and Forms for Probation Offices of the Probate and Family Court promulgated by the Office of the Commissioner of Probation.

Whether this one-time exemption, referred to as the "grandfathering" exemption, will be available in the Probate and Family Court Department will be announced by Chief Justice Dunphy in May.

ITEM 2: The ADR Coordinator has met with representatives from other court departments and trial court IT staff to insure consideration of ADR processes and events during the development of MassCourts. We are working to insure that all ADR activities may be recognized, measured, and evaluated through automated case processing. This is

Continued on page 21

JUSTICE DELAYED IS JUSTICE DENIED

By Hon. David G. Sacks

"Performance" and "Accountability" are properly hot topics in many quarters regarding the judiciary. They are concepts that go far beyond judicial evaluations and enhancements and extend to creating demonstrable measures as to how the system is functioning and how management responds to that data.

While the courts clearly should never merely be reduced to an "assembly line," there is much potential benefit from having clearly defined standards and measurements to demonstrate and enhance both effective and efficient service to the Bar and the public. There really is no inherent contradiction between serving people and being productive.

On October 1, 2003, the Probate and Family Court Department's newly created Steering Committee on Performance and Accountability held its first meeting. Chief Justice Sean M. Dunphy charged the committee to work with standards created by the National Center for State Courts to in turn recommend appropriate standards for the work done by the judges and staff of the Probate & Family Court. The existing national prototype, and versions which have been implemented in family courts such as Delaware and Maryland, have provided the committee with a good foundation.

Chief Justice Dunphy has stated: "Creating standards by which we can define and measure our performance will allow us to improve the quality of service, recognize our achievements and better inform others about the work of the Probate & Family Court."

His top immediate priority area has been for the committee to review existing time standards and case management practices with an eye to enhancements and additions. One area which the committee has been exploring is how more use can be made of alternative dispute resolution to reduce the costs of litigation, and have cases resolved earlier and with results which the parties feel a degree of ownership.

The Probate & Family Court struggles with the same steep fiscal challenges existing throughout the court system, and has the added challenges of dealing with many of society's most perplexing and emotional family issues -- and doing so with many litigants who cannot or choose not to have legal counsel.

The Steering Committee has an array of well-experienced members from throughout the commonwealth, including judges Paula M. Carey (Norfolk), James V. Menno (Plymouth), Gail L. Perlman (Hampshire first justice), and Jeremy A. Stahlin (Suffolk); registers Steven Abraham (Worcester) and Richard Ianella (Suffolk); and chief probation officers Sophia O'Brien (Middlesex) and Leonel O. Souza Jr. (Barnstable), and others have joined as task force members.

The Steering Committee's work is designed to create meaningful benchmarks to empirically demonstrate to all the quality

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and quantity of the Probate & Family Court's work. MassCourts is the next form of automation for the Massachusetts court system and will be coming on line over the next few years. The advent of MassCourts gives the opportunity to measure performance. MassCourts can be a strong technological tool to "keep score" as to the quality of case management including the timeliness of the movement of cases.

There really is no inherent contradiction between serving people and being productive.

Through public meetings, the internet and email, many Judges, members of the Bar and other court staff and external users have given a variety of comments to the Steering Committee about the many aspects of the proposed time standards.

The proposed time standards draft can be found at www. and e-mail comments can be made to <pfct.standards@jud.state.ma.us>, or mailed to this author c/o Hampden Probate & Family Court 50 State Street Springfield, MA 01103. In brief the standards create three tracks for different categories of cases, ranging from six months to fourteen months for completion from filing to disposition. Starting with "filing" is a major shift from counting from request of the parties and represents a true cultural change by which the Court steps into the role of active case management.

In the end, the achievement of more efficient and timely access to justice can be greatly aided by the creation and implementation of performance and accountability standards, which makes the Steering Committee's work timely and worthwhile.

David G. Sacks, an Associate Justice of the Hampden Probate & Family Court, chairs the Probate & Family Court's Steering Committee on Performance and Accountability.

"The beginnings and endings of all human undertakings are untidy...."

John Galsworthy

ADR Court News, continued from page 19

especially important in light of the development of time standards, described more fully in a related article by Judge Sacks in this issue of the Family Mediation Quarterly.

Christine W. Yurgelun is an attorney who coordinates court-connected dispute resolution services for the Massachusetts Probate and Family Court. She can be contacted at (617) 788-6600.

Editorial: Marriage & Divorce after Goodridge

Despite a proposed constitutional amendment to ban same-sex marriage and last minute political maneuvers by the governor, the weddings of gay and lesbian couples will be celebrated in Massachusetts this May. As same-sex marriage becomes a reality in Massachusetts, there will be significant shifts in our legal landscape, some clear and others ambiguous.

At the outset, any couple planning to marry in Massachusetts must file a notice of intent in the office of the clerk or registrar in any city or town at least 3 days before the wedding. (M.G.L. c. 207 § 19.) Thus same-sex couples who file their notices of intent on May 17th will not be able to marry before May 20th.

Per a 1913 statute enacted partly to prevent interracial marriage, the governor now plans to stop out-of-state, same-sex couples from marrying in Massachusetts. M.G.L. c. 207 § 11 (which has never been tested in our courts) reads, in its entirety: "No marriage shall be contracted in this commonwealth by a party residing and intending to continue to reside in another jurisdiction if such marriage would be void if contracted in such other jurisdiction, and every marriage contracted in this commonwealth in violation hereof is null and void."

On the face of this antiquated statute, same-sex couples who travel to Massachusetts from states that have enacted laws banning same-sex marriage should expect local clerks and registrars to refuse to issue marriage licenses. But some reject the governor's interpretation of the law. For example, David J. Rushford, the clerk of Worcester (population 172,000) plans to issue marriage licenses to people from any state, without asking if they plan to become Massachusetts residents. "If the governor's directive tells clerks to do the opposite I will not abide by it." (NY Times: 4/16/04.)

The inevitability of same-sex marriage assures the eventuality of same-sex divorce. Where Massachusetts and federal laws intersect, unsettled issues abound. As mediators we will need to help our same-sex clients negotiate the minefield of conflicting laws with all the dignity and respect we accord our heterosexual clients. In anticipation of mediating same-sex divorces, we will have to rethink many assumptions previously taken for granted. Consider these examples:

• It is axiomatic in divorce that alimony can be deducted from the taxable income of the payor and taxed to the payee as income. Due to the federal Defense of Marriage Act ("DOMA"), federal tax laws do not recognize same-sex marriage. If same sex-couples are not married for federal income tax purposes, alimony becomes a non-taxable event. Could alimony in same-sex divorce be construed as a gift, possibly triggering federal gift tax?

Continued on next page

• The Massachusetts joint income tax return closely tracts the federal return. Since federal DOMA prevents same-sex couples from filing a joint federal income tax return, there is no federal tax return to track. Will same-sex married couples have to prepare "faux" federal returns to calculate their Massachusetts income taxes?

Despite all the legal ambiguities, marriage in Massachusetts has finally been recognized as a human right, not a heterosexual privilege.

• At death, asset transfers between opposite-sex spouses are generally tax free under federal law. Will testamentary transfers between same-sex spouses be subject to federal estate tax?

Legal quandaries are not confined at the intersection of Massachusetts and federal tax law. Judge Robert Langlois recently posed the intriguing hypothetical of two Massachusetts couples who live together for 20 years. Both decide to marry in May, 2004, and divorce in May, 2005. The opposite-sex couple clearly has a short-term marriage, as they chose not to wed for 20 years. But the same-sex couple was legally prevented from marrying for two decades. Under the equitable jurisdiction of M.G.L. c. 208 § 34, does a judge have discretion to construe the length of the same-sex couple's marriage as a long-term relationship at the time of divorce?

Despite all the legal ambiguities, marriage in Massachusetts has finally been recognized as a human right, not a heterosexual privilege. All married couples should be treated equally under the law—regardless of gender. That's the message of Goodridge. The sky will not fall when committed gay and lesbian couples ceremonially affirm their love for each other—nor when they divorce. Those who believe in equal justice should support same-sex marriage, and oppose the constitutional amendment to ban it.

The opinions expressed in this editorial are those of Les Wallerstein. He can be contacted at (781) 862-1099, or at <wallerstein@socialaw.com>.

"It is past all controversy that what costs dearest is, and ought most to be valued."

Miguel de Cervantes

MCFM News

ANNUAL MEETING & ELECTION
Wednesday, June 9th @ 2 PM
Concord District & Probate Court
For members unable to attend electronic ballots
or paper ballots will be provided.
Directions to the courthouse are available on-line at www.mcfm.org
IMMEDIATELY FOLLOWED BY A MEMBERS MEETING

NEXT MEMBERS MEETING
Wednesday, June 9th @ 2: 15 PM
Concord District & Probate Court

Rebecca Z. Shafir, author of The Zen of Listening: Mindful Communication in an Age of Distraction, is a fourteen year student of Zen. Rebecca is a certified speech/language pathologist who also teaches communication workshops nationwide. For more information about her work before her presentation please visit <www. mindfulcommunication.com>.

MEMBERS ARE INVITED TO BRING A GUEST

NEXT EXECUTIVE COMMITTEE &
BOARD OF DIRECTORS MEETINGS

May 17, Monday
5:00 PM: Executive Committee
6:00 PM: Board of Directors
Office of Mark Zarrow, Worcester
Directions to Mark's office are available on-line at www.mcfm.org

Please email any agenda items for consideration
to President Mary Johnston at <maryt.johnston@erols.com>,
or to any officer, all of whom are listed in the DIRECTORATE on page 31

TRANSITIONS

Two so longs—but no goodbyes! For entirely different reasons, MCFM and our community of mediators will bid farewell to **Janet Weinberger** and **Frank Benson** this summer. Janet is moving to Pennsylvania and Frank is retiring to Cape Cod. Each has made remarkable contributions to us as mediators. Janet was the 5th President of MCFM, and founder of the first open-ended, peer mediation supervision group in Massachusetts. She will soon be MCFM's first Director Emeritus in absentia. Frank was the founding director of the Middlesex Multi-Door Courthouse which pioneered mediator access into the Probate & Family Court. He has worked tirelessly as MCFM's Treasurer for the past three years. While leaving us geographically, we hope they will "drop in" at meetings from time to time, and look forward to their future articles in the FMQ! Feel free to stay in touch by email: with Janet at <JW@divmed.com>, and with Frank at <FDBenson@ix.netcom.com>.

MEDIATION PEER GROUP MEETINGS

Merrimack Valley Area
We are a group of family law mediators who have been meeting (almost) monthly for about three years. The criterion for membership is a desire to learn and share. Meetings are held at 8:15 AM on the last Tuesday of the month (April 27th, May 25th & June 29th) at the office of Lynda Robbins, 11 Summer Street, Chelmsford. Please call Lynda at (978) 256-8178 or Karen Levitt at (978) 458-5550 for information and directions.

Metro-West Area
Open to all MCFM members. Monthly meetings are (usually) held at 9:15 AM at Janet Weinberger's home- located at 206 Windsor Road, Waban. Please call (617) 965-4432 for dates and driving directions.

FMQs

The cost of additional FMQs is $5.00 each for members, and $7.50 each for non-members. Supplies are limited. Please mail requests for additional copies to DeLaurice Fraylick, 23 Parker Road, Needham Heights MA 02494-2001, and enclose a check made payable to MCFM.

An archive of all but the most recent edition of the FMQ is also available in PDF on the MCFM web site at www.mcfm.org. This resource offers an expanding trove of meditation materials which is supplemented by a cumulative index of articles to facilitate data retrieval

PDF editions of the FMQ can be downloaded and printed on any computer with "Acrobat Reader" software, which is available for free on the internet at www.adobe.com

ANNOUNCEMENTS

MARRIAGE OF SAME-SEX COUPLES UNRAVELING THE LEGAL ISSUES

Based on the momentous SJC decision in Goodridge, Massachusetts gay and lesbian couples will be legally empowered to marry in May. MCLE will present a panel of attorneys in two locations to help unravel the tangle of legal issues created by Goodridge. **Mary L. Bonauto**, Civil Rights Project Director, Gay & Lesbian Advocates & Defenders, who was lead counsel on Goodridge is scheduled to appear on both panels.

Northampton: Thursday, June 10th, 1 - 5 PM
Hotel Northampton, Exit 18 off I-91
Take a left a base of ramp, one mile on left side

Boston: Thursday, June 17th, 1 - 5 PM
MCLC Conference Center, 10 Winter Place via Winter Street, Boston.

Registration Costs & Information
Toll free: 1 (80-0) 966-6253
On-line: www.mcle.org

Can't Attend?
Written materials and/or audio cassettes available after June 24th

CHILDREN COPE WITH DIVORCE
A Seminar For Divorcing Parents

A six hour, educational program for parents that focuses on the needs of children during times of stress. Pre-registration is required, and each seminar is limited to 30 participants. A court required Certificate of Attendance is provided upon completion. No child care is provided.

Morning Seminars: Tuesday & Wednesday, 9:30 AM to 12:30 PM
May 4 & 5, June 8 & 9, July 13 & 14.

Evening Seminars: Monday & Tuesday, 5:30 PM to 8:30 PM
May 24 & 25, June 21 & 22, July 26 & 27.

Trainers: Zelda Schwartz, LICSW, Director of Family Therapy,
Beth Greenberg, Ph.D., David Hollis, LICSW,
Katherine Kaiser, LICSW, & Stephen Slaten, Ph.D.
Cost: $ 65.00

Location: Jewish Family Service of Worcester, Inc.
646 Salisbury Street, Worcester, MA 01609

For more information call: (508) 755-3101, or email <info@jfsworcester.org >

A CALL FOR WORKSHOP PROPOSALS

THE NEW HAMPSHIRE CONFLICT RESOLUTION ASSOCIATION
2004 Annual Conference
THE EVOLVING ADR PRACTITIONER:
SKILLS, STRATEGIES & SELF-AWARENESS
November 5-6, 2004
The Mountain Club at Loon Resort & Conference Center
Lincoln, NH - 1 hour from Concord, NH and 2 hours from Boston

The NHCRA Conference Committee invites proposals for workshop presentations. Preference will be given to proposals that explicitly connect with the development of three learning themes: (i) specific skills and tools, (ii) a consciousness and deeper understanding of the menu of conflict management styles, approaches and processes, and (iii) the individual practitioner's awareness of her own personal qualities (psychological, intellectual, spiritual). The conference expects to gather over 100 ADR practitioners from New Hampshire and neighboring states. **David A. Hoffman**, an attorney, mediator and arbitrator at the Boston Law Collaborative, LLC, will be the plenary speaker.

- Workshops will take place on Saturday, November 6, 2004
- Proposal due date - May 30, 2004
- Proposal acceptance notification date - June 15, 2004

PROPOSALS & INQUIRIES

- Complete and electronically submit the proposal form available at www.nhcra.org.
- If you have questions about this Call for Proposals, please contact Conference Co-Chair Tammy Lenski at tlenski@nhcra.org.
- If you have questions about the conference, please contact Conference Co-Chair Ellen Dinerstein at mediate@worldpath.net.

MASSACHUSETTS COLLABORATIVE LAW COUNCIL, INC.

The MCLC offers legal representation to people in conflicts who share a commitment to resolving disputes without litigation. To find out more, or to locate a collaborative lawyer near you, visit MCLC at <www.massclc.org>.

COMMUNITY DISPUTE SETTLEMENT CENTER

invites you to join our
25th ANNIVERSARY GALA!

featuring special guest
BEN AFFLECK

keynote speaker
STATE SENATOR JARETT BARRIOS

hosted by
SARA EDWARDS, NBC Film Critic

HONOREES:
Albie Davis
Kathy Grant
Jim Grumbach
Helen Ladd
Rick Reilly
Ronald Watson

Tuesday May 25, 2004
5:30 - 9:00 pm
Royal Sonesta Hotel, Cambridge
Tickets available at $100 per person. Seating is limited.

For more information contact CDSC at (617) 876-5376,
or cdscinfo@communitydispute.org

SAME-SEX MARRIAGE INFO ONLINE

Information from every town clerk in Massachusetts with details on getting a marriage license is available at <www.glad.org/marriage/townclerks.php>.

Find out about some of the potential legal dangers related to immigration and marriage for same-sex couples at: <www.glad.org>. Also available in Spanish, Portuguese, French, Haitian Kreyol and Chinese!

MCFM

INSPIRING FAMILY SETTLEMENTS SINCE 1982

Marilyn M. Levitt is a retired professor emeritus of art history, whose graphic illustration appears above. She can be contacted by email at <mlevitt@attibi.com>.

Survivor Benefits, Part II, continued from page 9

client's position, you should obtain whatever government materials are available concerning the plan to be divided, and study the drafting requirements. With the exception of many of the Chapter 32 plans, most government administrators will not review draft orders.

Lisa M. Ehrmann is an attorney practicing in Sudbury. Her practice focuses on drafting Domestic Relations Orders. She can be contacted at (978) 443-6006, or by email at <qdrolisa@aol.com>.

Franklin E. Peters, F.S.A., is a consulting actuary who assists family lawyers and mediators with matters relating retirement benefits. He is a Fellow of the Society of Actuaries, a member of the American Academy of Actuaries, and an Enrolled Actuary under the Employee Retirement Income Security Act of 1974 (ERISA). He can be contacted at (781) 891-7140 or by email at <frankpeters@att.net>.

Join Us

MCFM membership is open to all practitioners and friends of family mediation. MCFM invites guest speakers to present topics of interest at four, free, member education meetings annually. Educational meetings often satisfy certification requirements. Members are encouraged to bring guests at no cost. MCFM members also receive the Family Mediation Quarterly and are welcome to participate on any MCFM Committee.

All members are listed on-line at MCFM's web site, and all listings may be "linked" to a member's email and web site. Annual membership dues are $90. Please direct all membership inquiries to **DeLaurice Fraylick at <masscouncil@mcfm.org>.**

REFFERAL DIRECTORY: Every MCFM member is eligible to be listed in the MCFM Referral Directory. Each listing in the Referral Directory allows a member to share detailed information explaining her/his mediation practice and philosophy with prospective clients. The Referral Directory is printed and mailed to all Massachusetts judges, and to each listed member. The referral directory is also available on-line at the MCFM web site.

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. Copies of the MCFM Standards of Practice are available on-line at the MCFM web site.

The annual Referral Directory fee is $60. Please direct all referral directory inquiries to **Jerry Weinstein at <JWeinsteinDivorce@comcast.net>.**

CERTIFICATION: 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. A copy of the MCFM certification requirements is available on-line at the MCFM web site.

Every MCFM certified mediator is designated as such in both the electronic and the printed Referral Directory. Only certified mediators are eligible to provide mediation services to the Massachusetts Probate & Family Court through MCFM. Certification must be renewed every two years.

Certification applications cost $100, and re-certification applications cost $50. Certification and re-certification applications are available on request from **Lynn Cooper at <lynnkcooper@aol.com>.**

VISIT: www.mcfm.org

Directorate

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 effect 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 to all MCFM members. Copies are provided 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 on-line 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.