MCFM

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

From The President: Lynda J. Robbins

My term as MCFM president is coming to a close. I want to leave office by issuing a challenge.

MCFM is a wonderful organization with hard-working and dedicated professionals. But, we can do better. I've mentioned before that mediation tends to be a solitary occupation. Attending MCFM professional development meetings, our annual Fall Institute and other networking opportunities is important for our personal and professional growth as mediators. MCFM presents a wide variety of such opportunities to its members yet, they are under-attended. How can we better serve you and what needs are we not meeting? Your recent responses to our survey will not go unheeded but, while I thank those who responded, only a small percentage of our membership did so. Get involved. Tell us. Be part of the solution. We need you to come out of your offices and participate in your organization. We appreciate your dues but, we want more from you. In addition to the professional presentations, our Family Mediation Quarterly is a high quality publication offering articles that teach and inspire as well as stimulate thought and discussion. We know you read and appreciate it. But, it doesn't write itself. Our editor does an exceptional job. Give him more to work with. Write. Refer something you've read and would like to share. Ask questions. And, we need you to work on a committee or consider joining the Board of Directors. Our directors are dedicated and hard-working and some of the finest individuals I've been privileged to know but, fresh ideas and perspectives keep us relevant as an organization.

And, getting involved in the wider alternative dispute resolution community is imperative. When something happens that you don't like, don't bury your head in the sand. Don't take your marbles and go home. Step up. Speak out. When you see progress being made, step up and speak out then, also. The present debate about the Uniform Mediation Act is a good example. There are benefits to the legislation but, also, drawbacks. Help make it a bill that works for our community. Or, speak up about maintaining the status quo. Get into the discussion.

Other ways to expand and develop are through "sister" organizations such as the Association for Conflict Resolution and its New England Chapter,

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MOTHERS AS SUCKERS
Pity, Partnership, and Divorce Discourse
Part II of II

By Cynthia Lee Starnes

Editor's Note: *Part I appeared in the last edition of the FMQ (Vol. 7, No. 1, Winter, 2008). Dean Starnes' entire law review article, including all footnotes, is available on MCFM's website at www.mcfm.org (click on RESOURCES).*

DEPATHOLOGIZING MOTHERHOOD: THE PARTNERSHIP METAPHOR

Even as language can convey a dispiriting message of incapacity and pity about mothers, it can also convey an affirmative message of empowerment and dignity. A partnership model of marriage conveys the latter message, offering a vocabulary and concept that cast mothers as full stakeholders in marriage, equal in status to fathers, regardless of who brings home the bigger paycheck. Partnership provides an alternative reform discourse, free from the stubborn remnants of old ideologies that sabotage reform efforts long after they are spoken in polite society. Under partnership, the equality of husbands and wives — in contribution, in responsibility, in right — thus becomes an analytical starting point for reform.[111]

PARTNERSHIP PRINCIPLE AND PRACTICE Partnership offers an intuitive metaphor for marriage. In both principle and practice, partnership and marriage have much in common. Both are consensual relationships[112] that typically begin with the exchange of commitments, often without written agreement or legal advice.[113] Both often involve specialization, with one party primarily contributing money, and the other primarily services,[114] a practice that describes both the traditional marriage and many contemporary ones between primary breadwinners and primary caregivers.

Expectations of gain, broadly understood, generally motivate both partners and spouses to enter the relationship.[115] In marriage, anticipated gain may be emotional, spiritual and sexual as well as economic, but in some way, couples ordinarily expect that marriage will make life better, a hope evident in the celebration that commonly accompanies marriage. As Elizabeth Scott observes, marrying couples are often motivated by self-interest, each believing that "individual self-fulfillment will be promoted by a substantial investment in a stable, interdependent, long-term relationship with a marital partner."[116] Similarly, couples may believe that "having and raising children together in a loving home is important to self-0realization."[117]

While the nature of expected gain in marriage is surely more personal, more intimate, and more complex than in a commercial partnership, an expectation of some type of gain describes both

relationships.[118] Most compelling, however, is the normative appeal of partnership. The "ideal to which marriage aspires [is] that of equal partnerships between spouses who share resources, responsibilities, and risks."[119] Much of the attraction of partnership thus lies in its egalitarian principles of mutual contribution, reciprocal responsibility, and shared fate—principles that infuse family norms if not family realities. Absent agreement otherwise, "[e]ach partner has equal rights in the management and conduct of the partnership business"[120]; a rule consistent with modern equality rhetoric and with community property law. Not unlike spouses, partners have "the right to know what is going on in the partnership, the right to be involved in conducting the business, the right to commit the partnership to third parties, the right to participate in decision making, and the right to veto certain decisions."[121] Partners also undertake a duty of loyalty[122] and of good faith and fair dealing toward each other,[123] obligations consistent with social norms of mutual trust and responsibility between spouses. Partners also share equally all profits and losses,[124] a principle that tends to encourage partners "to view their economic fate as linked with the fate of the enterprise as a whole."[125] A similar sense of shared fate is inherent in normative concepts of egalitarian marriage.[126] The distinction between status as a partner and status as a mere participant such as a wage earner is significant: a partner participates in important decisions, while a wage earner obeys instructions; a partner contributes property while a wage earner merely works in the business; a partner may agree to share losses while a wage earner is not affected by loss.[127]

It would be foolish, of course, to insist that partnership perfectly describes marriage. The question, however, is not whether anyone would mistake a business partnership for a marriage, but rather whether any gain can flow from an analogy to partnership. Such an analogy need not be an all-or-nothing proposition, for partnership can inform discourse without dominating it.[128]

Breaking a promise is not the same as never having made one. No-fault divorce law allows parties to break promises; it does not pretend promises were never made.

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MARITAL PARTNERSHIP MODEL: DISSOCIATION AND BUYOUT

Marriage is a lifetime commitment—from both a traditional and a normative perspective, marriage is for life.[144] However, it is also a commitment that spouses may break. Marriage serves an important social function by enabling parties to tie themselves together in a significant and formal, if intensely personal, relationship that family, friends and the public at-large recognize as

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legally binding. Why would anyone do this? As Elizabeth Scott observes, couples may believe their best hope for long-term personal happiness lies in a lasting commitment to another person.[145] So, too, may they believe that their children will benefit from a stable parental relationship. Couples may thus not want to be free to succumb to temptations that, while gratifying in the short-term, interfere with their ultimate goal. And so, much like Ulysses asked his crew, couples ask the law to bind them to the matrimonial mast.[146]

Much like Ulysses asked his crew, couples ask the law to bind them to the matrimonial mast.

No-fault divorce does not change this view of marriage. While marriage licenses still do not designate a term other than life, everyone understands that spouses are free to change their minds, to break their promises of lifetime commitment at any time and for virtually any reason. High divorce rates make it clear that many do indeed change their minds. Marriage, however, need not be an inescapable commitment in order to be a lifetime one. Even though divorce laws recognize spouses' freedom to end their relationship, these laws do not change the terms of the initial marital commitment any more than the ability to terminate a business contract alters its initial terms. In neither case are parties compelled to specifically perform their promises, nor are their broken promises penalized through punitive damage awards.[147] The point is that breaking a promise is not the same as never having made one. No-fault divorce law allows parties to break promises; it does not pretend promises were never made.[148]

But if promises can be broken, what is the point of insisting they were initially made? The answer is that freedom to terminate a relationship does not necessarily meanfreedom to terminate it without cost. To say marriage may be dissolved upon request and without penalty is not to say it may be dissolved without a price, by walking away with all the assets or income accumulated during the marriage. Unlike cohabitation, which parties traditionally may end without legal involvement or economic consequence,[149] marriage is a legal status,[150] which ends only with state involvement and, absent agreement otherwise, with state determination of the economic price of exit.[151]

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A PARENTING PARTNERSHIP MODEL: CHILDREN AS UNFINISHED PARTNERSHIP BUSINESS When marital partners are also parents, they implicitly undertake an additional mutual commitment to support and nurture their children. This parenting partnership complements but does not supplant the marital partnership, which continues to define the couple's spousal relationship. While no-fault divorce laws empower a spouse to divorce a co-parent during their children's minority, they do not empower a parent to divorce her child.

Parental responsibility to children continues after divorce, normatively and pragmatically linking divorced parents to each other as they continue to support and nurture their children. Family law, however, generally ignores the economic equities between divorced parents during their children's minority, leaving the primary caretaker parent largely alone to bear the post-divorce career costs of child rearing.[160] Partnership remedies this inadequacy in current law, providing a compelling model for economic equity between divorced parents during their children's minority.[161]

When the marital partnership ends, a buyout should be required in order to ensure fair play for adults, whether or not they are also parents.

Partnership law recognizes that the departure of a partner does not always trigger an immediate termination of the partnership. Even after a partnership dissolves, it may continue to operate until its affairs are wound up.[162] During windup, partners "complete the business of the partnership, liquidate assets, settle liabilities, and distribute profits, if any, among the partners."[163] Only after this process is complete does the partnership terminate. The UPA ("Uniform Partnership Act") thus recognizes a three-step process for ending a partnership: dissolution, windup and termination.[164]

As partners wind up their affairs, they continue to be linked by mutual obligations and continue to share a fiduciary relationship.[165] However "strained" the relations between the partners may actually be,[166] the UPA views the process of winding up as a "cooperative venture."[167] During this period, profits and losses are allocated to the former partners according to their respective interests in the partnership;[168] in the absence of an agreement otherwise, they continue to share as equal partners.[169] Additionally, in a change from prior law, the RUPA generally authorizes extra compensation for a partner who bears a disproportionate burden during windup.[170]

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Family law can gain much from a loose analogy to the partnership rules on windup. When parents divorce during their children's minority, the children represent unfinished work of the parenting partnership, to be completed before that partnership terminates.[171] Though a divorcing spouse may ardently wish to jettison the other parent from her life, this desire is often inconsistent with normative views of children's best interests,[172] with the pragmatics of child rearing and with the mathematics of child support. But is parenting really a shared responsibility that survives divorce, rather than the individual responsibilities of two independent persons? Clearly, some divorced parents are more willing to coordinate their caretaking and financial

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responsibilities than others. In the best-case scenario, parents communicate amicably and work together to ensure that their children receive appropriate physical, emotional and financial support. But even between parents less inclined toward amicability, parents' obligations are in many ways interdependent.

Child support offers a prime example of this interdependency. Under the popular income-shares formula underlying many child support guidelines, the amount of financial support a noncustodial parent must contribute to a child's care generally depends not only on his income, but also on the income that the custodial parent can contribute to the child's care.[173] The mutuality of the parents' financial obligations is evident in such a computation.

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Even after spouses end their marital partnership, their work as parenting partners continues to support a complex infrastructure of time, money and effort; of market labor and home labor; of paychecks and child care; of enhanced human capital associated with primary breadwinning; and lost market opportunities associated with primary caregiving.[194] Because parenting and the infrastructure necessary to support it do not end when parents divorce, neither should their sharing of these profits and losses.

Even after divorce, the individual labor of a parent in the nurture and support of minor children should be viewed as labor expended on behalf of the parenting partnership. During the period in which children require continuing financial and physical support, no individual parent should bear all the losses associated with caretaking and no individual parent should enjoy all the gain associated with ideal worker status.[195] As equal partners in the work of parenting minor children, this model supports equal income sharing, i.e., equalization of household standards of living until the youngest child reaches majority.[196]

This parenting-partnership model may provoke the criticism that it overcompensates a mother who benefits both from income sharing and from a disproportionate share of the benefits of child rearing. The answer to this concern is that, much as the law might like to do so, it is not possible to value psychic gain and then to offset it against financial gain. Psychic benefits simply cannot be quantified. Even an assumption that a primary caretaker of children enjoys more psychic benefits than the other parent may be erroneous, since psychic benefit is not necessarily time dependent. A primary caretaker may devote long hours to the daily drudgeries necessary to maintain a home for the child—shopping, cooking and cleaning—yet reap little psychic benefit in the process. On the other hand, a non-primary caretaker who devotes little time and energy to caretaking may reap huge psychic benefits, as when he and his child enjoy a heart-to-heart talk about the child's perceptions, troubles and hopes.

The quantity of time spent on children will not always reflect the quality of that time and is thus a poor proxy for psychic gain. Moreover, opening the door to a balancing of parental joys would raise a host of questions about the children themselves and their propensity to inspire more joy than worry or sorrow or any of the other psychic costs of parenting, which may fall disproportionately on the children's primary caretaker.

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Fundamentally, spouses are partners in an adult relationship that begins with an exchange of adult commitments, an expectation of adult joy, and a risk of adult sorrow. When children are present, they may have a profound effect on the adult relationship, but at least as a normative matter, spouses do not abandon their commitments to each other when they become parents. Instead, parents take on an additional mutual commitment toward their children. As a practical matter, no-fault divorce laws do not mistake parental commitments for spousal commitments, recognizing that termination of the latter does not terminate the former. As childless couples understand, and as empty-nesters discover, marriage is not exclusively about children.[197] It would be a mistake to allow a legitimate interest in children to obscure what should also be a legitimate interest in the adults who bear them. When the marital partnership ends, a buyout should be required in order to ensure fair play for adults, whether or not they are also parents.

CONCLUSION The ALI's response to the costs of mothering is a reform proposal that seeks to protect mothers by casting them as economic casualties of marriage entitled to reparations for their loss. When intractable quantification problems impede the effort to quantify loss, the ALI resorts to the mathematics of the expected-gain models they shun. Casting mothers as losers might be less disturbing if it were more necessary to achieve the Institute's goals. It is not. Equally available is a reform model based not on relief for suckers, but on rights for partners. Partnership casts mothers as full stakeholders in a joint venture, infusing reform discourse with an egalitarian vocabulary free of stigmatizing conceptions of husbands and wives. Moreover, partnership establishes a baseline of spousal equality—in contribution, in responsibility, in right—against which all inequalities must be justified, all old law tested for its ability to fit within a gender-neutral paradigm.

Cynthia Lee Starnes, *Mothers as Suckers: Pity, Partnership, and Divorce Discourse*, 90 IOWA L. REV. 1513 (2005) (reprinted with permission).

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MEDIATING SAME-SEX DISPUTES
Understanding the New Legal and Social Frameworks
Part II of II

By Frederick Hertz

Editor's Note: *Part I appeared in the last edition of the FMQ (Vol. 7, No. 1, Winter, 2008).*

The Impact of Community Issues

A crucial component of many gay divorces – and something that has little equivalent in heterosexual divorces – is the looming shadow of the larger social community and the broader political dynamics that can envelope a particular dissolution. Mediators need to be aware of the power of these influences, even when they are lying unseen in the hidden recesses of the immediate dispute.

The first of these is the deep distrust and resentment of the legal system and of lawyers and other professionals may lesbians and gay men feel. For many years the "law" was rarely on the side of lesbians or gay men. Rather, it was a tool of oppression, taking children away from lesbian mothers or prosecuting gay men who tried to explore their sexuality in socially "inappropriate" locales. The recent community appreciation of the legal efforts to obtain the "benefits" of marriage or domestic partnership can for some partners become a legal nightmare, especially when "the law" imposes spousal support or other financial obligations or requires an expensive legal dissolution process, or imposes heavier tax burdens on gay divorces than on straight ones.

This dynamic can be especially heightened when the mediator is straight. One party may suspect that the mediator is unfairly judging the relationship or making money off the dissolution, or is unsympathetic to his or her underlying concerns. A deep sense of being judged harshly by a homophobic society is hard to shake off, even with a sympathetic mediator, and even when the presenting issues are those of money and property and both of the parties are lesbian or gay.

The intensity of these reactions may have little to do with the immediate problems being discussed, but more likely, can arise out of the underlying psychological needs and history of each party. A perception of being judged, even where misperceived, can cause a party to hide important information or feelings from the mediator. If one of the parties is more "atypical" with regard to gender roles or has experienced a greater intensity of discrimination in the past, that party may feel especially vulnerable and thus be resistant to the mediator's inquiries.

Homophobia can also rear its ugly head in the oppressive nature of many of the legal rules the couple is grappling with, in ways that have few parallels in a straight dissolution. The tax complexities of a same-sex dissolution, for example, are most likely due solely to the federal government's refusal to accept a same-sex

partnership as a legal marriage. A couple forced to spend thousands of dollars on tax counsel or pay more in taxes upon dissolution will react to such burdens in a wholly different manner than would a straight couple facing complex tax problems simply because they own a thriving business. The gay couple's problems are solely the result of homophobic laws, as opposed to those complexities that are voluntarily brought on by the other couples' deliberate actions.

So too, when the legal rules are adverse to one of the parties, there is a great tendency to experience this burden as an intensification of broader social oppression – and not just the result of neutral rules that could have affected any married spouse. Even where the partner has not previously experienced any significant discrimination, hitting a wall of legal discrimination can precipitate a very deep sense of anger, compounding the sense of loss that any divorcing partner may experience.

For many years the "law" was rarely on the side of lesbians or gay men.

For those who do not marry or register or who live in a state where such is not allowed, the lack of marital rights typically creates a severe dissonance between the "felt" emotional reality and the legal framework of the dissolution. Unmarried straight couples may regret their failure to marry, but they had the option of marriage and they consciously elected to not marry. Most gay couples, by contrast, did not have such options, and so the lack of legal protections reinforces a sense of invalidity and unworthiness for an economically dependent partner.

Conversely, many couples who have partnered or married legally may have had no idea of the legal consequences of their actions – especially those who registered or married more as a political act than as a personal commitment. For some of these partners, being required to pay lawyers to obtain a legal dissolution or pay alimony to an "undeserving" ex-partner may be perceived as an unwanted imposition of alien rules upon their relationship. Heterosexual spouses may regret their marriage or hate their ex, but even those spouses engaged in a voluntary act of marriage and, in general, had an awareness of the basic rules of marriage.

Compounding these problems, many same-sex couples have managed their affairs in unconventional ways, making the dissolutions all the more difficult. In some instances these actions are a direct result of the homophobic laws, such as those affecting transfer taxes or loan qualifications, and in other instances, may be a result of the "marginal" status of the couple. With regard to children, the prohibition of second parent adoptions creates inequities that rarely would ever arise in straight dissolutions. As a result, when these couples break up the assets (or even the children) are often sitting legally

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in one person's name alone, with little resemblance to how the couple actually lived and how they viewed their lives prior to their dissolution.

Unique Emotional Dynamics of the Gay Divorce While every breakup is painful, there are other dimensions to a gay or lesbian dissolution that distinguish it from the dynamics in straight divorces. First, while historically a break-up may have been more readily accepted in the gay community (consider, for example, how the lack of marriage acceptance can alleviate either partner feeling that theirs is a "failed marriage" upon a breakup), the growing emergence of the marriage paradigm within the gay community can put enormous emotional pressure on couples who dissolve a legally recognized relationship. The same-sex partners who were plaintiffs in the marriage lawsuits certainly experienced that pressure, but even less well-recognized couples often feel such anxieties.

For some partners the gender role issues can be especially painful, especially for those in the economically dependent "domestic spouse" role. For a man who has not succeeded financially and has been the weaker partner in terms of societal success, facing the long-term consequences of that role and seeking protection (even when the law provides some protection in the form of spousal support) can be extremely painful. Old fears of being in the "woman's" role can play out, and the societal disdain for the unsuccessful man may be felt far more painfully by a gay man than a straight economically dependent husband. Lesbians who are thrust into the "husband" role and are required to provide post-separation support can be enraged in ways that may not be the same as higher-earning heterosexual women are likely to experience. Women in lesbian relationships may behave very differently than the way straight women have tended to negotiate their breakups, and the dynamics of gay male dissolutions may be very foreign to a mediator who has only worked with straight male spouses.

Hitting a wall of legal discrimination can precipitate a very deep sense of anger, compounding the sense of loss that any divorcing partner may experience.

Parentage conflicts certainly play out differently than in straight divorces. When one parent has no legal status as a result of the inability to marry or obtain a second parent adoption, the feelings of disempowerment will play out differently than what occurs for a lesser-involved but still legal parent in a heterosexual divorce. A two-mom dispute where one mother has been less involved in child-rearing also will be experienced very differently than where the uninvolved parent is a man. And, where only one parent has a genetic connection to the child, the competition

over who is the "real" parent (even when both are legal parents) can emerge in ways that have few parallels in the straight divorce.

There are two inter-related tasks in mediation that most pointedly bring to the surface all of these issues: (1) determining what is "fair" in a world where marriage was historically not allowed and where social norms and personal expectations are changing so quickly, and (2) deciding what the role of the law should be where both partners would most likely admit – but for their conflict – that the "straight" divorce law is not the appropriate framework to resolve their conflicts. Neither of these dynamics exist in a straight divorce, where the underlying legal rules are not in dispute and where, for the most part, the broader social rules more closely match the normative conduct and unspoken expectations of the parties.

In so many ways, a straight divorce can be analogized to a contract dispute between two partners of the same culture, who formed their "agreement" under the same rules that now apply and where the underlying rules are perceived by both parties as fair and appropriate. Gay divorces, by sharp contrast, similarly present a layer of personal "contractual" disputes, but they are laid upon a shifting ground of changing social and cultural expectations and are most often resolved in a world of inapplicable legal rules constructed by a predominantly homophobic society.

Successful Strategies for Mediating Gay Divorces The first challenge for every mediator is getting hired for the mediation, and in some instances this will prompt the mediator to address the question of his or her own sexual orientation — and his or her identity in the larger community. Clients will want to know the mediator's orientation, and the mediator needs to be open to discussing this issue without judgment or fear. It is not sufficient to simply say "some of my best friends are gay." The straight mediator who wants to work in this area must clearly demonstrate his or her openness and cultural sensitivity in order to be hired, and must also be open to discovering dynamics of bias and prejudice that have previously remained hidden.

The best place to start is by learning the basic legal rules applicable to gay couples in your jurisdiction. Being ignorant of the legal biases and being unaware of the new legal developments in your jurisdiction will brand you as an outsider, but this can be readily avoided if you do the required homework.[1]

Be humble about your own uncertainties – and when you don't understand what is going on, ask in a polite way.

Where possible, attend continuing education courses on legal issues facing

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gay couples. An indirect benefit will be that you will get to know the lawyers and mediators who work in this area. If you are active in your local mediation society or family law bar committee, invite a local expert on gay legal issues to do a presentation at your next meeting. If possible, go to lunch with the expert and demonstrate your interest in this emerging and complex field of law. Make the personal connection, and don't hide your awkwardness and confusion as you express your curiosity and compassion.

It is also essential to come to terms with your own possible biases and take steps to change your attitudes and modify your experiences where appropriate. Ask a gay friend to take you to a social or political event, and attend the annual dinner of the local gay and lesbian bar association or political association. Pick up a local gay newspaper and attend an event that connects with your own interests. If you are involved in a local religious institution, work to make your congregation truly inclusive of lesbians and gay men. The more you mix with the gay community the more you will be seen and acknowledged, and the more comfortable you will become with those whose business you are seeking. You will learn the correct (and the incorrect) vocabulary, you will relax in the face of new challenges, and you will acquire a sense of comfort that will benefit you in your meetings with the parties. Where appropriate, make a donation to a local gay cause, so that your willingness to "give back" to the community is demonstrated publicly.

Accepting differences between cultures and people is not a form of discrimination.

So long as you have an open mind and are aware of the legal complications that surround the dissolution that is unfolding around you, your existing mediation skills will serve you well. The basic mediation practices are no different here; what is different is the settings you will find yourself in and the histories and perceptions of those you are helping. In some instances the social behavior you encounter may be unconventional, and the modes of expression and expectations may be different – but the underlying needs and the basic tasks are no different than in any straight divorce.

Be humble about your own uncertainties – and when you don't understand what is going on, ask in a polite way. Sexual affairs may have played out differently than in a straight marriage, and in some instances drug use may be more openly tolerated. Strong displays of emotion may occur, and each partner's inner expectations may be different than what you have observed in the straight men and women you have worked with before. And, the couples may follow along different paths to resolution than what you have seen in your straight divorce mediations.

Remember, accepting differences between cultures and people is not a form of discrimination; rather, it is the key to overcoming bias and prejudice. By contrast, being unable to see what is special in the people you are serving and trying to squeeze everyone in to the same social mold constitutes bias and discrimination. Keep an open mind even in difficult situations, recognize that the legal rules that you have used to resolve prior conflicts may not apply to these dissolutions, and allow the parties to resolve their conflicts in unique and personal ways that are consonant with their chosen lives.

With this perspective and with an expanding knowledge of how these particular partners have created their families and organized their emotional and sexual relationships, soon you will be able to successfully mediate even the most challenging gay breakup.

Frederick Hertz is an attorney and mediator in Oakland, California, with a practice emphasizing the formation and dissolution of non-marital relationships, both same-sex and opposite-sex. More information on his practice can be found at www.samesexlaw.com. The author thanks the therapists, lawyers and mediators participating in the "Equally Empowered" study group for many of the insights discussed in this article.

Endnote

1. See, "Mediating Separation of Same-Sex Couples," in Divorce and Family Mediation, edited by J. Folberg, Guilford Press, New York, 2004. A summary of the legal issues nationally can be found in the author's book, Legal Guide for Lesbian & Gay Couples, Nolo Press, Berkeley, 2007.

"The course of true love never did run smooth."

Shakespeare: A Midsummer Night's Dream

MASSACHUSETTS FAMILY LAW
A Quarterly Review

By Jonathan E. Fields

Editor's Note: *Following is Jon Fields' first quarterly column offering synopses & comments on cutting edge changes in Massachusetts family law that affect mediators and their clients.*

Restraining Order against Out-of State Man - The SJC held that a District Court could issue a 209A abuse prevention order against a Florida resident even though it had no personal jurisdiction over him. The court noted that so long as the order imposed no affirmative obligations on him, personal jurisdiction was not required. *Caplan v. Donovan*, 450 Mass. 463 (January 17, 2008)

Parental Fitness – Drug Use - The Appeals Court overturned a Juvenile Court judgment finding the mother of a child unfit and terminating her parental rights. While the mother had a history of drug use, the Appeals Court found there was no evidence that such use was linked to her ability to parent. The case reminds practitioners of the long-standing requirement of a "nexus" between drug use and the ability to parent. Drug use alone, past or present, is simply insufficient. *Adoption of Zoltan*, 71 Mass.App.Ct. 185 (February 7, 2008)

QDRO Needed to *Disclaim* Interest in Retirement Plan? – The United States Supreme Court agreed to hear an appeal from a decision by the Fifth Circuit Court of Appeals. At issue is whether a QDRO is required even in the event that the non-participant spouse *disclaims* all interest in the at-issue retirement plan, as the Fifth Circuit held. This, of course, would be a radical departure from current practice. Although a handful of other federal and state courts agree with the Fifth Circuit, the majority of courts appear to follow the traditional practice of not requiring a QDRO unless an interest in a retirement plan is actually being divided. The First Circuit (which covers Massachusetts) has not squarely addressed the issue but case law suggests that it follows the majority rule. *Kennedy v. Plan Adm'r for Dupont Sav. and Inv. Plan*, 497 F.3d 426 (2007), *cert. granted in part by Kennedy v. Plan Adm'r for Dupont Sav. and Inv. Plan* 128 S.Ct. 1225 (February 19, 2008)

Unauthorized Practice of Law – In an opinion that should be of interest to non-lawyer mediators, the SJC found that a suspended attorney violated the terms of his suspension order by practicing law. On behalf of an acquaintance, the suspended attorney had prepared a complaint for divorce, a motion to file marriage certificate late and a motion to vacate the marital home. The acquaintance appeared *pro se*. The court, finding him in violation of the suspension order, noted that the practice of law "includes preparation of pleadings, process, and other papers incident to an action or proceeding." Non-lawyer mediators who draft separation

agreements and financial statements may wish to reconsider this practice. *Matter of Kafkas*, 451 Mass. 1001 (March 28, 2008)

Child Support – One Child with Each Parent – Where one child resided with the mother, who earned about $119,000 and the other child resided with the father who earned about $32,000, the Probate Court did not order the mother to pay child support to the father. The Appeals Court, troubled by the failure to award support to the father, vacated the support determination and remanded the case to the Probate Court. The case may be instructive, as well, for shared physical custody arrangements in which there is significant income disparity between the parents. *Meade v. Meade*, 71 Mass. App. Ct. 1118 (April 9, 2008) (Unpublished).

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"The difference between divorce and legal separation is that a legal separation gives a husband time to hide his money."

Johnny Carson

VENTING LESSONS

By Roland A. Turmaine

After 10 years of mediating divorce cases, which followed 20 years of litigating them, I can easily say the change has been the most delightful of my entire career. It is a joy to encounter people who behave as most people who select mediation do.

Twice, in fact, I have witnessed "arguments" in which the payor insisted on exceeding the child support guideline because the figure would not allow the payee and the children to get by as they should.

I have also, of course, seen people who had much more difficulty considering the needs of anyone other than themselves. Nothing, however, had prepared me for the Smiths who came into my office in the middle of January. During the next four sessions, we spent $8^{1/4}$ hours together before finally inking an agreement less than 24 hours before their next scheduled court appearance.

It quickly became apparent in our sessions that this case would be particularly unusual, not because it involved people desperate to settle after having been to court twice and paid a lot of money to lawyers in the process. In fact, I have seen that happen on a number of occasions, and have found the parties in those mediation cases quite motivated.

No, the foremost difference I noticed was how amazingly little the Smiths had accomplished in their trips to court, which totaled 11 hours. The couple had been married 13 years and had children ages 5 and 7. The husband worked in civil service earning about $63,000 a year, in addition to at least one side job in a business, all of the income from which might well not have made its way onto the tax returns. The wife had just picked up a part-time job and might well have had her own part-time business, all the funds of which might well have not been onto the tax return either. The debt of the parties exceeded $100,000 in credit cards, and the mortgages totaled about $350,000; obviously significantly more than the parties were able to handle.

They were desperate for an agreement, but it was striking how completely unable they were to forego massive verbal assaults on one another.

Because the parties were so different from the norm, I decided to take an approach different from my norm. Rather than aiming for a resolution acceptable to the court, I thought that I might only help these parties make some progress toward that goal.

I was relieved to see that in most matters pertaining to the children the parties were fairly able to reach agreement. The exception, of course, was child support, since there was not enough money to go around. The parties had been alternating staying in the house with the children, exchanging places every three or four

days. This seemed to work, and the wife had planned to move out in the near future into subsidized housing. An agreement was reached early on for joint physical custody.

The most significant issue was the extreme bitterness the parties demonstrated toward each other. While I was able during most of the first two-hour session to control this behavior, it seemed that the closer we got to an agreement in succeeding sessions, the less able the parties were to move past their animosity to reach accord.

I am not at all used to this behavior, and have always required, when necessary, that (a) there be no yelling, and (b) that the parties direct their communications to me, but the Smiths seemed virtually unable to control themselves. The matter became so out of hand in the second session that I closed the file and informed them that I so abhor wasting my time and their money that I'd found it necessary to terminate the session. I asked them to leave, but they were as able to ignore me as they were to ignore each other, and carried on undeterred.

Emboldened by their attitudes, I decided to show some attitude as well and became somewhat more vocal in exerting control. I am embarrassed to report that, during the third session, I raised my voice and informed Mr. Smith that he was indeed a "*jerk*" and would he please be quiet (though my language was not that polite). Neither party changed their behavior much, though I think Mr. Smith was taken aback a little bit.

Although I learned long ago that sometimes, some parties need to vent, and I have trained myself to allow that in a somewhat controlled manner, the venting in this case was Olympic. By the last session, however, I had discovered their pattern for it:

Each time I would raise an issue, the parties would immediately begin to hurl wild and nasty accusations at each other until the phase ran its course, regardless of my attempts to intervene. After 5 or 10 minutes of it, they would be able, upon my insistence, to address the issue as adults.

They were desperate for an agreement, but it was striking how completely unable they were to forego massive verbal assaults on one another.

When I finally did recognize their pattern, I chose to "show them" and maybe even take advantage of it. After raising an issue, I would turn my attention to my computer, completely ignoring the parties, and tend to other business. I did this 7 or 8 times, and not once did either party even notice, never mind complain. The first time, I thought I might get their attention and help them to focus. But they never realized what was happening until they were fairly spent, and then they were able

Continued on next page

to work constructively with my strong direction. To my amazement, it worked the same way every time.

The agreement we reached might not pass muster with the judge, I thought, for a couple of reasons that I explained to the parties. It may be that they return to work those out, assuming they are not able to do so with the Family Service Officer at the court. I am not sure whether, in different circumstances, I would have allowed the agreement to proceed. But as I said, I felt it was necessary to help the parties make progress, as they certainly could not afford to continue with the lawyers as they had been.

Twenty-four hours after signing, they were divorced.

Don't ask if I felt guilty for billing them for the full time, even though I spent perhaps 40 minutes working on other cases!

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"Marriage is really tough because you have to deal with feelings and lawyers."

Richard Pryor

THREE PROBATE & FAMILY COURT PRESS RELEASES: Changes to Parent Education Program Attendance, New Standards for Computer Generated Forms & Impounding Court Orders

Editors Note: All changes listed below are now in effect. *Massachusetts Probate & Family Court announcements are available online at www.mass.gov/courts/courtsandjudges/courts/probateandfamilycourt/*

CHANGES TO PARENT EDUCATION PROGRAM ATTENDANCE STANDING ORDER

The Probate and Family Court Department announces the deletion of Standing Order 1-03 relative to Parent Education Program Attendance and has inserted in its place Standing Order 4-08.

The change to the Standing Order requires that the parties pay $80.00 to the provider in advance of the class to offset the cost of materials and facilitators. This fee may be reduced to $5.00 upon a party submitting a copy of his or her allowed Affidavit of Indigency and Request for Waiver, Substitution or State Payment of Fees and Costs. **Parties have paid $65.00 to the providers since 2003.** (Emphasis added.)

The Probate and Family Court now has 31 providers who offer the program at 63 locations around the state. The program is also offered in Spanish at 3 locations. Massachusetts was one of the first states to include mandatory parent education as part of the divorce process in 1994. Now, a majority of states have implemented similar mandatory parent education programs across the country. Programs help parents understand their children's emotional needs and the effects of divorce on child behavior and development. The programs also provide information to parents about constructive conflict management, dispute resolution methods and practical suggestions on parenting after divorce as well as information about available community resources. All approved programs are required to disseminate consumer satisfaction surveys to the parents at the end of each class. The Probate and Family Court has found that a common theme keeps arising in these surveys in which parents state that they wish they had attended the parent education classes sooner in the divorce process.

STANDARDS FOR COMPUTER-GENERATED FORMS

Preamble: This Uniform Practice governs the use of computer-generated forms by counsel and parties.

Continued on next page

Definition: For the purposes of this Uniform Practice XXXIII, the "official form" shall be defined as either: (i) the paper form promulgated and distributed by the Administrative Office of the Probate & Family Court or (ii) the electronic form most recently posted on the Massachusetts Judiciary website, www. mass.gov/courts and approved by the Administrative Office of the Probate & Family Court.

I. Use

The use of computer-generated forms is hereby permitted, except where the Court blank ("official form") is a multi-part form, such as the G.L. c. 209A Complaint For Protection From Abuse form.

II. Specifications

A. Paper. $8^{1/2}$ x 11 inch, acid free paper shall be used for all computer-generated forms. Acid free paper is specified to ensure archival quality and permanence.

B. **Paper and Ink Color.** A computer-generated form shall be printed with black ink on white paper **except for forms CJ-D 301 S Financial Statement (short form) and CJ-D 301 L Financial Statement (long form), which shall be printed with black ink on *pink colored paper*, and form CJ D 304 Child Support Guidelines Worksheet shall be printed with black ink on *yellow colored paper***. (Emphasis added.)

C. Printing. All computer-generated forms shall be printed with "letter quality" or "near letter quality" output. "Draft" quality output is not acceptable.

III. Consequences of Failing to Follow These Standards

The Register of Probate may reject any form that fails to comply with these standards. In the event that a Register deems a submitted form to be outside these standards, such determination may be reviewed by the Chief Justice of the Probate & Family Court at the request of the submitting counsel or party. It is the responsibility of the submitting party to ensure that the form adheres to the above standards. If the form is rejected, the submitting party shall forfeit the filing fee. The submitting party's attorney shall not be allowed to pass this cost on to his/her client, but shall bear the financial burden personally. Accordingly, the submitting party's attorney shall either reimburse the client for the forfeited fee or the attorney shall personally pay the filing fee when he/she refiles the form.

THE IMPLEMENTATION OF STANDING ORDER 3-08

The Probate and Family Court Administrative Office has announced that Standing Order 3-08, Impoundment of Qualified Domestic Relations Orders, Domestic Relations Orders, and Orders commonly known as Mangiacotti Orders will be effective on March 10, 2008. These orders contain highly sensitive personal and financial information. Thus, in order to protect the privacy of parties to a case, we have written this Standing Order which will keep the orders separate and unavailable for public inspection.

STANDING ORDER 3-08

Unless otherwise ordered by the court, all qualified domestic relations orders, domestic relations orders and orders issued pursuant to Contributory Retirement Board of Arlington v. Mangiacotti, 406 Mass. 184, (1989) are impounded. As used herein, "impounded" shall mean the act of keeping the orders separate and unavailable for public inspection.

The following procedure will be followed:

1. Upon filing with the court, the orders shall be kept separate from the case file and unavailable for public inspection. Access to inspect the impounded orders is limited to the court, the attorney(s) of record, if any, and the party(ies), unless otherwise ordered by the court.

2. In accordance with Trial Court Rule IX, Rule 2, Uniform Rules on Subpoenas to Court Officials, the Register shall not provide a copy of the impounded orders to a person who is not a party to the case.

3. Relief from impoundment may be sought by Motion supported by affidavit, and may be granted after notice by the court only upon written findings.

4. Service of the Motion for Relief from Impoundment and affidavit shall be made on all parties in accordance with Rule 5 of the Massachusetts Rules of Domestic Relations Procedure. The time periods for hearing shall be as set forth in Rule 6 of the Massachusetts Rules of Domestic Relations Procedure.

"I was married by a judge.
I should have asked for a jury."

Groucho Marx

THE GREAT BANANA WARS
Deconstructing a Marital Dispute

By Laurie Israel

Marital disputes are an inevitable fact of life. It is the way that couples deal with these disputes that makes the difference between a viable marriage and one that is too unpleasant to bear. Usually, people are quite unreflective as to what is at the root of the arguments. People get angry, the speech gets "hot," and the couple goes down the road of hurtful communication with no resolution in sight.

Fortunately, for many couples, there is a safety valve, which has been called the "Positive Sentiment Override" ("PSO") by John Gottman, an influential marriage researcher. What this means, is that no matter how hard you're fighting and no matter what angry words have been uttered, if the positive interactions outweigh the negative (and if the couple basically respects one another and has a high level of fondness and appreciation for the other spouse), they tend to ignore the small disputes, even if quite nasty and unproductive. In other words, if there is enough positive sentiment in the relationship, the positive sentiment will overcome negative interchanges. However, in some relationships, the negative interchanges far exceed the positive ones. Those are relationships which may be doomed to divorce, unless the couple works on their communication and dispute resolution skills.

It is important for all couples to address their disputes and to see if they can understand where the fighting is coming from. By deconstructing their marital disputes (an exercise very similar to literary analysis), the couple can identify the deeper causes of their quarrels. Knowledge is power; knowing the roots of their differences in attitude and why they push each other's buttons so strongly may lead a couple to mutual understanding and more peaceful interchanges.

Let me give you an example:

As a marital mediator, I have asked couples to keep a pad and take notes as to the arguments they have had between sessions. These notes, when "mined," can become fruitful areas of discussion and lead to furthering mutual understanding. It's best to take the notes out of eyeshot of the partner. However, it is especially good to write down the notes close to the time the dispute ends.

For instance, a couple may have a marital dispute involving a banana. Actually, it might be a dispute about a half of a banana. The dispute would present as follows:

One of the spouses may ask if he could eat one half of a banana. The other spouse might become extremely angry and may vocally express intense anger. When asked by the banana-eating spouse why she was so upset, she might say that did

not want to have to take care of the leftover half of a banana. Does this sound like an important argument? Not really, and yet this could result in a ferocious verbal brawl between the spouses, eliciting great emotion and anger, resulting in some very "hot" words. When parsing this dispute, deep-seated issues can be uncovered, and deconstruction of the "Great [Half-] Banana War" may turn out to be especially fruitful for the couple. (Sorry for the pun!)

How does one deconstruct this argument? First, one must look at the initial flashpoint of the argument: what will happen to the uneaten half of the banana? We'll begin with the spouse who initially voiced distress. When asked why she was upset, the caretaker spouse would say that she felt the eater spouse would not take care of the uneaten half, and that she would have to do so. When asked what she meant by "take care of," the spouse would reply that she would have to take responsibility for storing the uneaten fruit, tracking of how long it remained uneaten and eventually disposing of it in some way. She felt irked at the perceived added responsibility and the belief her spouse neither recognized the responsibility nor appreciated her for taking it.

Seemingly unimportant disagreements are rooted in important martial issues.

It is only with this answer that her deeper concerns begin to come to light. There are several issues at play here, those of contribution in the marriage, gender, family of origin and fairness. If asked to analyze her feelings about the banana incident, the caretaker spouse might say that she feels all the work around the house is up to her, even when her spouse is off work. She might say that she feels her efforts are ignored and that her contributions are not appreciated – reminding her of how her mother worked around the house (not so happily) during her childhood. She may also voice that the eating spouse's mother did everything for him around the house when he was growing up and continues to do so, and so he has become used to being served at home.

The deconstruction would not be complete without the eating spouse's perspective. Again, analysis reveals separate, but also key, deep-rooted issues. Based on his spouse's reaction, he would say that he felt like he was being pushed into eating the entire banana, when he only wanted to eat a half. (This raises issues of control.)

Being somewhat overweight, the eater spouse would say that he did not want eat the whole banana and did not want to function as a garbage disposal. (This raised feelings that he was being unprotected by his spouse, and therefore not loved. Did his spouse want to do him physical harm?) He also was very concerned about throwing away the uneaten half. He would be wasting food

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in a world in which people were hungry. (Deep-seated political and social values are relevant to him in this dispute.) He had been taught to clean his plate at meals as a child because of "all the starving children in China." (He is responding to family values and family-of-origin training.) And as the primary wage-earner in the relationship, he also thinks that by wasting a half banana, the other spouse is wasting the money he earns with much effort. (This raises financial issues that are at the root of many marital disputes, and also contribution in the marriage and gender issues.)

If there is enough positive sentiment in the relationship, the positive sentiment will overcome negative interchanges.

What does the deconstruction of this argument show? It shows how seemingly unimportant disagreements are rooted in important martial issues. As detailed above, this little argument over one half of a banana has revealed virtually all of the basic issues over which spouses struggle in their effort to achieve a harmonious marriage. If thoughtfully analyzed, the most innocuous and ridiculous-seeming arguments can provide fodder for mutual discussion of significant areas of concern for each spouse.

Summarized, these mega-issues are contribution to the marital enterprise, concern for the other spouse, gender roles and financial issues. Further analysis will show how the family of origin has shaped each spouse and how a spouse's personal belief system, political and social views and values, form the basis of his/her thoughts and behaviors that color almost every interpersonal interaction in a marriage. Heavy food for thought, even if only about a banana. (Well, actually, only about half of banana.)

So, the next time you enter into the Great Banana Wars with your spouse, write some notes when you have cooled down, and set aside some quality time to discuss the root issues with your spouse. When you peel away the surface of a marital dispute, such as this one, you will mine a great wealth of information that can help you and your spouse improve mutual understanding, and therefore lead to a better marriage.

Laurie Israel is a lawyer who helps clients resolve their disputes with a high level of dignity, integrity and creativity. She also helps people who wish to stay married through providing marital mediation and negotiation of postnuptial agreements. Laurie works in the areas of collaborative divorce, marital mediation, mediation to stay married, divorce mediation, and prenuptial and postnuptial agreements. You can find out more about her work and read her articles on her websites: www.LaurieIsrael.com and www.MediationToStayMarried.com.

MEDIATING PRENUPTIAL AGREEMENTS IN MASSACHUSETTS AND THE PROBLEM OF THE 23C DISQUALIFICATION

By Jonathan E. Fields

As prenuptial agreements themselves become more common[1], there has also been an increase in the number of such agreements that are the product of mediation. While the atmosphere and dynamics of mediation may viscerally appeal to the engaged couple eager to minimize confrontation before the "big day," the Massachusetts practitioner contemplating the mediation of such agreements faces some formidable challenges. Primarily, before taking on the couple as clients, the practitioner must consider the impact of mediation in a subsequent enforceability action concerning the agreement.

Practitioners, that is, must be mindful that in litigation regarding the enforceability of a prenuptial agreement, the history of the negotiations is a relevant, if not vital component for the court to consider.[2] At such a trial, it is routine for the lawyer or lawyers who drafted and/or negotiated the agreement to testify. They do so, of course, along with the parties themselves, because all of them have first-hand knowledge about the negotiation process that resulted in the agreement at issue.

What happens, then, if the parties negotiated their agreement, or the bulk of it, in mediation? Can the mediator be called as a witness at the trial on the enforceability of the agreement? Can the mediator's notes be allowed into evidence at such trial? The analysis centers on the Massachusetts mediator confidentiality statute codified at M.G.L. c.233. s.23C which provides, in relevant part:

> All memoranda, and other work product prepared by a mediator and a mediator's case files shall be confidential and not subject to disclosure in any judicial or administrative proceeding involving any of the parties to any mediation to which such materials apply. Any communication made in the course of and relating to the subject matter of any mediation and which is made in the presence of such mediator by any participant, mediator or other person shall be a confidential communication and not subject to disclosure in any judicial or administrative proceeding; provided, however, that the provisions of this section shall not apply to the mediation of labor disputes.

Unfortunately for practitioners, since its passage in 1985, there had been virtually no judicial interpretation of 23C until the

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single justice opinion of Leary v. Geoghan in 20023 — and scant attention since.

In Leary, a Superior Court judge entered an order compelling a mediator to testify in a civil trial about settlement negotiations that had taken place during mediation. The lower court judge found that the mediator had waived confidentiality by discussing the case with the media with the consent of the parties. The mediator took an interlocutory appeal to the Single Justice (Cohen, J.) who interpreted 23C to confer a "blanket" testimonial privilege that prohibited testimony regarding mediation communications from disclosure in a judicial proceeding, "without listing any exceptions." The privilege, according to Leary, cannot be waived.[4]

Before taking on the couple as clients, the practitioner must consider the impact of mediation in a subsequent enforceability action concerning the agreement.

Notably, although Leary only deals with the testimony of the mediator, the practitioner must remember that 23C protects all communication made during mediation - not just by the mediator but by the parties as well. [5]

The unavailability of the testimony of both the mediator and the parties (regarding communications made during mediation) during subsequent enforcement litigation may be harmful or helpful to one party or another as the case may be. [6] But that misses the point. So long as our courts consider negotiating history in determining enforceability, and for so long as 23C remains in effect[7], a couple's decision to mediate will absolutely have an effect on the enforceability of the agreement. Therefore, I argue that the practitioner is obligated to consider the impact of 23C disqualification on his/her clients.

The collaborative process is better suited to the negotiation of prenuptial agreements than mediation because there is no prohibition against disclosure in future enforcement proceedings.

To that end, one choice is to explain to the mediation clients the nuances of the law regarding prenuptial agreements and the pitfalls of 23C disqualification in the event of subsequent enforcement litigation. Their understanding, it seems to me, should be of a quality sufficient for them to make an informed decision and a meaningful choice between mediation and the traditional lawyer-to-lawyer negotiations that continue to be the norm.

Another choice (and my personal

preference at least until the legal landscape in the area changes) would be not to mediate prenuptial agreements at all. Such agreements can be negotiated using the traditional model which, in most cases, means that the lawyer who represents the proponent of the agreement, after consultation and discussion with his/her client, drafts an agreement and sends it to the opposing lawyer, and negotiations between the lawyers ensue.

This adversarial paradigm has its defects, unfortunately, and for many couples, can be rather painful and unpleasant. The better model, it seems to me, is more collaborative in nature. Both parties, as in a collaborative divorce, are represented by counsel.[8] The parties and lawyers convene for one or more of a series of four way meetings, commit to providing full disclosure to one another, to taking a "reasoned stand on every issue" and to "negotiate in good faith."[9] As a product of these four way conferences, an eventual draft is prepared that "will not be a surprise to anyone, but rather will be the sum total of their work together."[10] This approach is not only more palatable to most engaged couples, it can, in one commentator's view, "strengthen the couple's relationship through experiencing the joint development of a mutually satisfactory plan for their marriage."[11]

In any event, apart from the less tangible psychic benefits to the parties (and their counsel), the collaborative process is better suited to the negotiation of prenuptial agreements than mediation because there is no prohibition against disclosure in future enforcement proceedings.[12]

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Footnotes

1) See generally Jonathan E. Fields, Prohibited Subject matter in Prenuptial Agreements, 2006 Family Law Year in Review (Aspen Publishers 2006)

2) See generally Jonathan E. Fields, Brief History of Prenuptial Agreements in Massachusetts, presented at the 2007 MCFM Fall Conference and on file with author (available upon request). Whether such negotiation history is vital to judicial analysis or merely relevant is certainly debatable. It is beyond dispute, however, that such history is, at the very least, relevant.

3) 2002 WL 32140255 (Mass. Super. Ct. Aug. 5, 2002)

4) At a trial, if testimony, work product or memoranda within the ambit of 23C is introduced and no objection is made, it is an open question whether the evidence is admitted for its full probative value. The spousal disqualification, for example, set forth in MGL c.233 s.20, is treated in this manner. See Miller v. Miller, 448 Mass. 320, 326 (2007) citing Bak v. Bak, 24 Mass.App.Ct. 608, 611 n.3 (1987).

5) Compared to those in most states, the "impenetrable mediator confidentiality statute" of Massachusetts is quite "unusual." Note, Just Between You and Me: The Blanket Mediation Privilege in Massachusetts Unnecessarily Undermines Access to Evidence, 39 Suffolk U.L.Rev. 540, 541 (2006) (hereinafter, Blanket Mediation Privilege).

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6) The problem remains critical even where the two parties have independent counsel review the mediated agreement so long as the bulk of the negotiations take place in mediation.

7) The Uniform Mediation Act, under consideration in Massachusetts, appears to permit the parties to control and predetermine what communications would be subject to disclosure. See Note, Blanket Mediation Privilege 39 Suffolk U.L.Rev. 540, 559 (2006).

8) The parties must not, however, enter into an agreement that would prohibit communications made during the proceedings from being disclosed in future enforcement litigation

9) David A. Hoffman and Rita S. Pollak, Collaborative Law Looks to Avoid Litigation, Massachusetts Lawyers Weekly (May 8, 2000) (describing the collaborative model generally but not with respect to prenuptial agreements specifically).

10) Donna Beck Weaver, The Collaborative Law Process for Prenuptial Agreements, 4 Pepp.Disp.Resol.L.J. 337, 344 (2004)

11) Id. at 342.

12) Indeed, as an aid to enforceability in subsequent litigation, counsel may wish to document the negotiations by preparing minutes of the meetings. Id. at 344.

President's Message Continued

the Association of Family and Conciliation Courts and its Massachusetts Chapter, the Massachusetts Collaborative Law Council and the International Academy of Collaborative Professionals. All of these organizations, like MCFM, offer professional development and networking opportunities and offer differing perspectives that we, as individuals, can consider, process and develop. This makes us better mediators and improves our professional and personal lives. As well as expanding our network of really wonderful people to hang out with! We share goals with these organizations. Maybe we have different approaches to problem-solving but, the basic skills cross disciplines and compliment each other. We can learn from one another and, as a result, provide better options for our clients.

I will be continuing on the Board as immediate Past President so, I invite you to contact me, or any member of our Board, with your thoughts and suggestions and concerns. And I look forward to seeing you at future MCFM events.

I am amazed at how quickly these two years have passed. It has been a pleasure serving you and working with all our wonderful members. Thank you for giving me this opportunity.

REMEMBERING LUCY STONE
The First American To Keep Her Own Name at Marriage

circa 1840 – 1860

Lucy Stone was a prominent American suffragist, and the wife of abolitionist Henry Brown Blackwell (1825-1909). She was best known for being the first recorded American woman to keep her own last name upon marriage as an assertion of her own rights.

Lucy Stone was born on the 13th of August, 1818, on her family's farm in West Brookfield, Massachusetts. She was the eighth of nine children, and as she grew up, she watched as her father rule the household and his wife by "divine right." Disturbed when her mother had to beg her father for money, she was also unhappy with the lack of support in her family for her education. She was faster at learning than her brother — but he was to be educated, she was not.

Since her father would not support her education she alternated her own education with teaching, to earn enough to continue. She attended several institutions, including Mount Holyoke College (then Mount Holyoke Female Seminary) in 1839. By age 25 (1843), she had saved enough to fund her first year at Oberlin College in Ohio, the country's first college to admit both women and African-Americans.

After four years of study at Oberlin College, all the while teaching and doing housework to pay for the costs, Lucy Stone graduated in 1847. She was asked to write a commencement speech for her class but refused because someone else would have had to read her speech as women were not allowed, even at Oberlin, to give a public address. Lucy Stone was the first woman in Massachusetts to receive a college degree.

She returned to Massachusetts and became a leader of the women's suffrage movement, lecturing extensively on both suffrage and abolition. Stone was hired by the Garrisonian Massachusetts Anti-Slavery Society as a lecturer and organizer. William Lloyd Garrison and the society were not fond of her mixing women's rights with abolitionism in her speeches, so she agreed to speak of abolition on the weekends and women's rights during the week.

During the war, Stone along with other abolitionist-women's rights supporters formed the Womans' National Loyal League which fought for full emancipation and enfranchisement of African Americans. Once Reconstruction began, she helped form the American Equal Rights Association. The AERA's main goal was acquire equal voting rights for both genders and all races. After the passage of the fourteenth and fifteenth amendment, Stone was pleased that someone was able to gain something out of her hard work, even if she could not complete her whole mission.

In 1870 she founded, in Boston, the *Woman's Journal*, the publication of the American Woman Suffrage Association, and she continued to edit it for the rest of her life, assisted by her husband and their daughter. That daughter, Alice Stone Blackwell (1857-1950), wrote her biography, *Lucy Stone: Pioneer of Woman's Rights* (ISBN 0-8139-1990-8), which was published in 1930 and again in 1971 (2nd edition).

Lucy Stone and her husband moved to Pope's Hill in Dorchester, MA around 1870, relocating from New Jersey due to their work in organizing the New England Woman Suffrage Association. There she spent the last 23 years of her life. Stone was diagnosed as suffering from a stomach tumor, and passed away on October 18, 1893, at the age of 75. She was interred in the Forest Hills Cemetery in Jamaica Plain, Massachusetts. She even achieved a "first" at death, by being the first person in New England to be cremated.

Lucy Stone's refusal to take husband's name, as an assertion of her own rights, was controversial then and is what she is most remembered for today. In 1921, the Lucy Stone League was founded in New York City. It was reborn in 1997. Women who continue to use their birth names after marriage are still occasionally known as "Lucy Stoners" in the U.S. In 2000, Amy Ray of the Indigo Girls included a song entitled "LucyStoners" on her first solo recording, *Stag*. In 1968, the U.S. Postal Service honored Lucy Stone with a 50-cent postage stamp. The birthplace of Lucy Stone can be seen on the top of Coy Hill in West Brookfield, Massachusetts. Lucy Stone Park is located in Warren, Massachusetts, along the Quaboag River.

circa 1893

Editor's Note: *The facts and daguerreotypes (photos) in this article were downloaded from information available online, mostly from Wikipedia.*

WHAT'S NEWS?
National & International Family News
Chronologically Compiled by Les Wallerstein

US Birth Rate Climbs For the first time in 35 years, America's total fertility rate — the estimated number of children a woman will have in her lifetime — reached 2.1, the theoretical level required to maintain the country's population, according to recent data from the National Center for Health Statistics. Demographers caution that it is too soon to say whether the increase is a blip or a trend, or to determine its causes. (John Leland, NY Times, 2/1/2008)

NY 'Recognizes' Same-Sex Marriages A New York appellate court ruled that valid, out-of-state marriages of same-sex couples must be legally recognized in New York, just as the law recognizes marriages of heterosexual couples solemnized elsewhere. Even though same-sex couples may not legally marry in NY, their marriage in Canada was upheld under the state's longstanding "marriage recognition rule." The decision enabled a lesbian employee to compel her employer to provide health benefits to her spouse. (Robert D. McFadden, NY Times, 2/2/2008)

Las Vegas Grapples with Multi-Chapel Brawls Las Vegas, which calls itself the Wedding Capital of the World, has more than 60 chapels where people can exchange vows — on gondolas, with an Elvis impersonator, aboard a pirate ship — almost any way they want. Competition for couples is fierce. In recent years, it has escalated to minor warfare. Accusations have flown: slashed tires, death threats, homeless men paid to hassle competitors. The wedding industry is a mainstay of the Las Vegas economy, pumping an estimated $900 million a year into the region. "People should be able to walk down the steps of the marriage bureau without getting a wedding deal shoved down their throats" said City Attorney Brad Jerbic. (Ashley Powers, Los Angeles Times, 2/10/2008)

Religion in Child Custody Disputes Increases Across the country, child custody disputes in which religion is the flash point are increasing, part of a broader rise in custody conflicts over the past 30 years. Nobody keeps track of who wins in these religious disputes, but for constitutional reasons, judges are reluctant to base their rulings primarily on the religious preferences of parents. As a result, more and more states have tried to keep custody disputes out of court by mandating mediation, but the effect has been piecemeal. (Neela Banerjee, New York Times, 2/13/2008)

Two Sue to Void Ban on Same-Sex Marriage A lesbian couple in Colorado are seeking to overturn that state's constitutional ban on same-sex marriage, in what is thought to be the first challenge to the 2006 ballot initiative that

Continued on next page

established it. The couple filed a motion with the court claiming that Amendment 43, which defines marriage as the union of one man and one woman, violated their constitutional right to equal protection. They argued that "Marriage is a fundamental right which should be for all Coloradans, not just some Coloradans." (Dan Frosch, New York Times, 2/14/2008)

Most US Children Still Live in Two-Parent Homes According to the latest analysis by the Census Bureau, some 7 in 10 children live with two parents, about two-thirds live with two married parents, and about 6 in 10 live with both biological parents. The proportion who lived with two parents varied widely by race and ethnicity — 87% of Asians, 78% of non-Hispanic whites, 68% of Hispanics and 38% of blacks. Overall, 94% of the nation's more than 73 million children were living with at least one biological parent, and nearly 4 in 10 children lived with at least one sibling. (Sam Roberts, New York Times, 2/21/2008)

US Shifts in Pregnancy and Work Women are working longer into pregnancy and returning to work faster than they did four decades ago. According to the Census Bureau, 80% of the women who worked during their pregnancy from 2001 to 2003 continued to do so until the last month of pregnancy, compared with 35% from 1961 to 1965. In the early part of this decade 55% returned to work within 6 months after giving birth, compared with 14% in the early 1960s. (Sam Roberts, New York Times, 2/26/2008)

Families Help Care for Half of US Preschoolers According to the latest analysis by the Census Bureau, grandparents serve as the primary caregivers for about 20% of the 11.3 million preschool children with employed mothers. Fathers provide slightly less child care than grandparents, and about 25% of children under 5 spend most of their time in an organized program while their mothers worked. The new (2005) data shows little change from the 2002 data (published three years ago), or from the data in the late 1990s. (Tamar Lewin, New York Times, 2/29/2008)

India Nurtures Surrogate Motherhood Business Commercial surrogacy, which is banned in some states and some European countries was legalized in India in 2002. Reproductive outsourcing clinics that provide surrogate mothers for foreigners say they have recently been inundated with requests from the US and Europe. The cost comes to about $25,000, roughly a third of the typical price in the US. Critics argue that the ease with which relatively rich foreigners are able to "rent" the wombs of poor Indians creates a potential for exploitation. (Amelia Gentleman, New York Times, 3/10/2008)

"I Do" by Double-Proxy Montana is the only state in the US where you can get legally married without any travel or appearance before the civil authorities. For at least several decades it's been legal in Montana for proxies to "stand-in" for

couples when they wed. Last year the legislature amended the law to require that one party in a double-proxy marriage be either a Montana resident or a member of the armed forces on active duty. Currently, the cost to the actual bride and groom is $900, broken down as follows: $50 apiece to the proxies, $100 to the judge, $150 to the lawyer (and witnesses), $53 for court fees, $14 for two certified copies of the marriage certificate; and the rest to a Pennsylvania couple who run a business facilitating proxy marriages online at MarriageByProxy.com. (Dan Barry, New York Times, 3/10/2008)

Arkansas Fixes Error on Who Can Say "I Do" In 2007 the Arkansas legislature botched a law intended to make 18 the minimum age for marriage, and instead removed the limit entirely. As long as they had the consent of their parents, children — no matter how young — could have demanded matrimonial bonds. After months of red faces and dire warnings about the perils of pedophiles, lawmakers voted to fix the mistake. (Adam Nossiter, New York Times, 4/4/2008)

After War, Love Can Be a Battlefield The divorce rates for US Army personnel have been on the rise since 2003 — the year America invaded Iraq — when it was 2.9 percent. In 2004, divorce rates in the Army soared to 3.9 percent, propelled by a sharp rise in divorce among the usually much more stable officer corps. That rate has dropped according to Army demographics, to 1.9 percent for officers and 3.5 percent for the entire Army in fiscal 2007 — which represents roughly 8,700 divorces in total. Female soldiers are the exception; they divorce at a rate of about 9 percent. Internal Army studies show that couples are deeply stressed by the war and contemplating divorce at a much higher rate. (Leslie Kaufman, New York Times, 4/6/2008)

"It does not matter how slowly you go so long as you do not stop."

Confucius

MCFM NEWS

ANNUAL ELECTION

Wednesday, June 11th @ 2 PM
Weston Public Library
Community Room @ 87 School Street
(781) 893-3312
Driving directions available @ www.mcfm.org

IMMEDIATELY FOLLOWED BY A PROFESSIONAL DEVELOPMENT WORKSHOP FOR ALL MCFM MEMBERS & THEIR GUESTS

"SEPARATION AGREEMENTS: CONCISE OR DETAILED?"

John A. Fiske, Esq. and Jalene (present wife of Ed), whose Agreement John wrote as her mediator.

Lynne C. Halem, Ph.D. and Ed (present husband of Jalene), whose Agreement Lynne wrote as his mediator.

Professor David Matz, founder and Director of the Graduate Program in Dispute Resolution at U. Mass. will be the moderator.

CALL FOR PRESENTERS @ MCFM's 7th ANNUAL FAMILY MEDIATION INSTITUTE

Friday, October 17, 2008, 8:30 a.m. to 5 p.m.
Wellesley Community Center

The Institute traditionally offers one or two keynote speakers in the morning for all participants. The afternoon breakout sessions provide participants with a choice of three workshops for the early afternoon, and three workshops for the late afternoon. We are seeking proposals for 90-minute early afternoon and late afternoon sessions.

All proposals must be relevant to family mediation issues and in the past have included topics such as child support and alimony considerations, college financial aid planning, mortgages and refinancing, recent developments in the law, power imbalances, mediating elder divorces, coaching, intervention skills, and high-conflict couples.
Prospective presenters must provide a summary of 100 words or less describing the proposed workshop; a one-page outline of the proposed workshop; and resume(s) and complete contact information for each presenter.

Electronic submissions via e-mail are preferred with Word and Word Perfect attachments only. E-mail your proposal directly to lsudellesq@aol.com You may also mail your proposal to Laurie S. Udell, Esq., 399 Chestnut Street, Needham, MA 02492.

THE DEADLINE FOR PROPOSALS IS TUESDAY, MAY 20, 2008
MCFM OFFERS A REDUCED REGISTRATION FEE FOR PRESENTERS
Questions? E-Mail lsudellesq@aol.com or call 781-449-3355

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QUESTIONS? CALL: 781-449-4430

FMQ COPYRIGHT NOTICE RE-REVISED

The last issue of the FMQ (Vol. 7, No. 1, Winter, 2008) had a 'new' copyright notice at the bottom of the table of contents. It was designed to encourage the widest possible distribution of FMQ articles, with author permission. This edition has made several changes to that 'new' notice. The re-revised notice allows dissemination of FMQ materials for commercial purposes (e.g., to help mediators market their practices) and replaces the "free' requirement with a 'not-for-profit' requirement — allowing the disseminators to recoup their cost to reproduce articles without running afoul of the FMQ's current copyright requirements. Questions? Call the editor @ 781-862-1099.

MEDIATION PEER GROUP MEETINGS

Merrimack Valley Mediators Group: We are a group of family law mediators who have been meeting (almost) monthly since before the turn of the century! The criterion for membership is a desire to learn and share. Meetings are held at 8:15 AM on the last Tuesday of the month from January to June, and from September to November, at the office of Lynda Robbins, 11 Summer Street, Chelmsford. Please call Lynda at (978) 256-8178 or Karen Levitt at (978) 458-5550 for information and directions. All MCFM members are welcome.

Metro-West Mediators Group: The Metro-West group (usually) meets on the first Friday of the month at the home of S. Tracy Fischer in Newton. Monthly meetings begin at 9:15 AM and are open to all MCFM members. Please call (617) 964-4742 or email <tracyfischer@rcn.com> for confirmed dates and directions.

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.***

MCFM BROCHURES AVAILABLE

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

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

"There is nothing like returning to a place that remains unchanged to find the ways in which you yourself have altered."

Nelson Mandela

ANNOUNCEMENTS

CONGRATULATIONS JUDGE FIDNICK!

Linda S. Fidnick has been confirmed as a judge in the Hampshire County Probate and Family Court. She will fill the vacancy created by the retirement of Sean M. Dunphy, the former Chief Justice of the Massachusetts Probate and Family Court. Linda has written for the FMQ and has been a long-time advocate of mediation.

FMQ ECOLOGY UPDATE

As you can see from the notice on the back cover, this edition of the FMQ is printed on paper stock that is manufactured with non-polluting wind-generated energy, and 100% recycled (with 100% post consumer recycled fiber), processed chlorine free and FSC (Forest Stewardship Council) certified. Future editions will continue this ecological improvement.

PARENTING SOLUTIONS PRESENTS

Spring & Summer Programs for Parents

DISCIPLINE THAT WORKS

With Sylvia Sirignano, Ph.D.

Thursday Evenings 7:30 - 9 pm

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

$75 for three workshops | $120 for six workshops

Temper, Temper: Dealing With Your Child's Anger … March 6th

When You Feel Like Screaming ... April 10th

Strategies for Engaging Cooperation with a Strong-Willed Child … May 15th

Secrets of Successful Discipline … July 17th

What To Do When Your Child Won't Listen … August 14th

Knowing When and How to Say 'No!' … September 17th

FOR PARENTS OF TEENS

With Glenn Smith, LICSW

Wednesday Evenings 7:30 - 9 pm

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

Sex, Drugs, Rock 'n Roll, AND the Internet … March 12th

Parenting Teens: Is It Them or Just Me? … April 23rd

PARENTING IN STEPFAMILIES

With Glenn Smith, LICSW

Wednesday Evenings 7:30 - 9 pm

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

Great Expectations: Debunking Old and New Myths About Stepfamilies …May 7th

Step-Parenting: The Good, the Bad and the Ugly! … June 4th

PARENTING TOGETHER

With Sylvia Sirignano, Ph.D. & Glenn Smith, LICSW

Wednesday Evenings 7:30 - 9 pm

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

Is It Worth Trying to Save This Marriage? What's Best for the Kids? … March 19th

Making Parenting with Your Spouse More Fun … July 23rd

After Divorce: Co-Parenting with a Difficult Ex-Spouse … August 13th

PRE-REGISTRATION IS REQUIRED FOR ALL WORKSHOPS

Register by phone: 508-366-7557

Register online: www.ParentingSolutionsPrograms.com

Location: 6 Colonial Drive, Westborough, MA

ADVANCED DIVORCE MEDIATION TRAINING

May 8*, 9, 10, 23 & 24, 2008

Holyoke, MA

A 34-hour advanced mediation training for those interested in working with separating, divorcing or already-divorced couples. Topics include the emotional and legal aspects of divorce, parenting issues, division of assets and debts, spousal support, working with non-traditional couples, mediator ethics,

dealing with high conflict, and more. Fee includes training manual, coached roleplays, parking and refreshments. Social Work CEC's available upon request. **Trainers are Betsy Williams, Cate Woolner, Stephany Levin, Oran Kaufman and Court Dorsey. Fee is $795 or $750 with registration postmarked by April l4.**

For brochure: shackney@communityaction.us
For more information - 413-774-7469 x16, or shackney@fcac.net
Co-Sponsored by HCC Kittredge Center for Business
& Workforce Development and UMass Legal Services

Prerequisite - 30 hours Basic Mediation Training
*** Attorneys with extensive training or experience in family law may choose to omit the 4-hour, May 8TH session.**

ELDER MEDIATION TRAINING FOR MEDIATORS

Wednesday and Thursday - May 7-8, 2008
9:00 - 5:00, Newton, MA

Elder mediation helps seniors and their adult children resolve conflicts around issues such as living arrangements, caregiving, financial planning, inheritance/estate disputes, medical decisions, family communication, driving, and guardianship. This comprehensive two-day training program will cover: legal planning, mental & physical effects of aging, advanced multi-party mediation skills, the challenges of elder mediation and ways to market your elder mediation practice.

Trainers - The Elder Decisions Team:
Arline Kardasis, Rikk Larsen, Crystal Thorpe, Blair Trippe
Emily B. Saltz, LICSW, Director, Elder Resources, Newton, MA
Harry Margolis, Elder Attorney, Margolis & Associates, Boston, MA

Log on now to register at www.ElderDecisions.com, OR
Call 617-621-7009 OR email training@ElderDecision.com

THE MASSACHUSETTS UNIFORM MEDIATION ACT "MASSUMA" WORKING GROUP

Welcomes input from everyone in the mediation community!
Go online for updates, reports, committee links and contact information.

www.massuma.com

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

THE FMQ WANTS YOU!

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

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

NOW'S THE TIME TO SHARE YOUR STORY!

VOTE ✶ VOTE

On Wednesday, June 11, 2008, at 2:00 p.m., MCFM will hold its annual meeting and election at the Weston Public Library in Weston. **ALL members are eligible to run for any open position. Every member who would like to become more involved in MCFM and is willing to commit to regular attendance at directors meetings and to participation in planning MCFM activities is encouraged to submit his or her name in nomination.**

All officers are also directors. All officers and directors are elected for two-year terms. However, the directors' terms are staggered, with the intent that half of the directors will be elected every other year. Since all officers serve the same two-year term, when an officer ceases to serve, her or his replacement serves the duration of the ex-officer's term.

OFFICERS: The present offices of President, Vice-President, Clerk and Treasurer will be open for election in 2008.

DIRECTORS: Directors serving two-year terms that expire in 2008 who are running for re-election (to serve until 2010) are: S. Tracy Fischer, Mary T. Johnston, Patricia A. Shea, Debra L. Smith, and Les Wallerstein. Directors elected to two-year terms that expire in 2009 who will continue to serve are: Lynn K. Cooper, Rebecca J. Gagne, Harry E. Manasewich, Steven Nisenbaum, Mary A. Samberg, and Diane W. Spears.

THREE VOTING OPTIONS

IN PERSON All MCFM members are welcome to vote at the annual meeting.

BY EMAIL Following the distribution of ballots in May, MCFM members may vote by e-mail at any time before the annual meeting. A ballot will be sent to members, which should be filled out and **emailed to jfields@fieldsdennis.com. The deadline for receipt of electronic voting will be 5:00 p.m., June 10th.**

PAPER BALLOT After the distribution in May of the names of nominated candidates, if you would prefer to vote by paper ballot at any time before the annual meeting, please email Ramona Goutiere at admin@mcfm.org. Upon your request, you will receive a paper ballot and TWO envelopes. **To assure secrecy, only ballots mailed in "official" MCFM envelopes will be counted. The deadline for receipt of paper ballots is on June 10th.**

All votes cast before the election will be counted with those cast on June 11th. If you have any questions please contact either co-chair of MCFM's nominating committee: Jonathan Fields (jfields@fieldsdennis.com) or Marion Wasserman (mwasserman@comcast.net).

VOTE ✶ VOTE

JOIN US

MEMBERSHIP: MCFM membership is open to all practitioners and friends of family mediation. MCFM invites guest speakers to present topics of interest at four, free, professional development meetings annually. These educational meetings often satisfy certification requirements. Members are encouraged to bring guests. MCFM members also receive the Family Mediation Quarterly and are welcome to serve on any MCFM Committee.

All members are listed online at MCFM's web site, and all listings are "linked" to a member's email. Annual membership dues are $90, or $50 for full-time students. Please direct all membership inquiries to **Ramona Goutiere at <masscouncil@mcfm.org>**.

REFFERAL DIRECTORY: Every MCFM member is eligible to be listed in MCFM's Referral Directory. Each listing in the Referral Directory allows a member to share detailed information explaining her/his mediation practice and philosophy with prospective clients. The Referral Directory is printed and mailed to all Massachusetts judges, and to each listed member. **The most current directory is always available online at www.mcfm.org.** The annual Referral Directory fee is $60. Please direct all referral directory inquiries to **Jerry Weinstein at <JWeinsteinDivorce@comcast.net>**.

PRACTICE STANDARDS: MCFM was the first organization to issue Practice Standards for mediators in Massachusetts. To be listed in the MCFM Referral Directory each member must agree to uphold the MCFM Standards of Practice. **MCFM's Practice Standards are available online at www.mcfm.org.**

CERTIFICATION & RECERTIFICATION: MCFM was the first organization to certify family mediators in Massachusetts. Certification is reserved for mediators with significant mediation experience, advanced training and education. Extensive mediation experience may be substituted for an advanced academic degree. **MCFM's certification & recertification requirements are available online at www.mcfm.org.**

Every MCFM certified mediator is designated as such in both the online and the printed Referral Directory. Certified mediators must have malpractice insurance, and certification must be renewed every two years. Only certified mediators are eligible to receive referrals from the Massachusetts Probate & Family Court through MCFM.

Certification applications cost $150 and re-certification applications cost $75. For more information contact **Lynn Cooper at <lynnkcooper@aol.com>**. For certification or re-certification applications contact **Ramona Goutiere at <masscouncil@mcfm.org>**.

DIRECTORATE

MASSACHUSETTS COUNCIL ON FAMILY MEDIATION, INC.
P.O. Box 59, Ashland, NH 03217-0059
Local Telephone & Fax: 781-449-4430
email: masscouncil@mcfm.org
web site: www.mcfm.org

TOLL FREE: 1-877-777-4430

OFFICERS

President — **Lynda J. Robbins,** 11 Summer Street, Chelmsford, MA 01824 978-256-8178, ljrobbinsesq@verizon.net

Vice-President — **Kathleen A. Townsend,** Divorce Mediation Group, Inc., 1441 Main Street, Springfield, MA 01103, 413-733-4444, kathleen@divmedgroup.com

Vice-President — **Marion Lee Wasserman,** 199 Wells Avenue, Suite 201, Newton, MA 02459, 781-449-4815, marionlw@comcast.net

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Treasurer — **Mark I. Zarrow,** Lian, Zarrow, Eynon & Shea, 34 Mechanic Street, Worcester, MA 01608, 508-799-4461, mzarrow@lzes.com

DIRECTORS — **Lynn K. Cooper, S. Tracy Fisher, Rebecca J. Gagne, Mary T. Johnston, Harry E. Manasewich, Steven Nisenbaum, Mary A. Samberg, Patricia A. Shea, Debra L. Smith, Mary A. Socha, Diane W. Spears, Laurie S. Udell & Les Wallerstein**

DIRECTORS EMERITUS — **John A. Fiske, Janet B. Weinberger, Jerome Weinstein & Barbara N. White**

ADMINISTRATOR — **Ramona Goutiere,** Goutiere Professional Business Services, P.O. Box 59, Ashland, NH 03217-0059, 781-449-4430, masscouncil@mcfm.org

EDITOR'S NOTICE

MCFM
Family Mediation Quarterly

Les Wallerstein, Editor
1620 Massachusetts Avenue
Lexington, MA 02420
(781) 862-1099
wallerstein@socialaw.com

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

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

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

The FMQ is mailed 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 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.

Family Mediation Quarterly
Les Wallerstein, Editor
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