

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



PRESIDENT'S PAGE

This is my last “President’s Page”. They say “time flies when you’re having fun” and that’s been true for me in my role as your President for these last two years.

I’ve enjoyed this job because I’ve had a wonderful Board filled with people who care about their work, who care about the field of family mediation, and are willing to contribute ideas and time and energy to help it grow.

Their efforts made possible our exceptional quarterly publication; our excellent new website; and an active certification process (still the only one in the state to recognize mediators whose training, experience, and divorce agreements are evaluated by their peers).

Our program committee continues to generate quarterly educational experiences that get rave reviews from attendees and are becoming so well attended that we keep needing larger venues and more parking!

Our most recent Institute was oversubscribed and so excellent that I’m betting folks will be motivated to sign up early for the next one (stay tuned for more information).

Our membership and nominating committees have not only supported our growth in numbers, but continue to enrich our Board with new faces and new energy.

And we continue to put effort into enhancing our connections with MCLC, with whom we share many members and values.

There are exciting new plans under discussion for creating volunteer programs providing mentorship for new mediators along with mediated divorce help for our overburdened Family and Probate Court system.

My final message to all of you is one of appreciation for the past and present work you’ve done, and one of encouragement to invest yourselves in our future as family mediators.

Join us! Work together to support, protect, and enhance this exceptional field and this work that we love. And there’s one more (not so secret) little thing: because of your colleagues, a lot of this work can be fun!



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CONTENTS

- 1 THE TIES THAT BLIND**
By Robin Marantz Henig
- 5 THE FIVE PERCENT: Finding Solutions To
Seemingly Impossible Conflicts**
By Peter T. Coleman
- 7 GOING DEEPER IN MEDIATION**
By Rachel Fishman Green
- 9 “LAWMERICKS”**
By David Aptaker
- 13 TWO CHARTS TO HELP NAVIGATE
THE ALIMONY REFORM ACT OF 2011**
By Judge Amy Lyn Blake & Judge Anne M. Geoffrion
- 15 TIPS FOR NEW MEDIATORS**
By Paul Stenzl
- 17 CONTRACT? YES OR NO? IF YES...
IS IT ENFORCEABLE? An Email Exchange**
- 21 MASSACHUSETTS FAMILY LAW: A Periodic Review**
By Jonathan E. Fields
- 23 WHAT’S NEWS? National & International Family News
Chronologically Compiled & Edited By Les Wallerstein**
- 27 MCFM MEMBER PROFILE: Anthony C. Adamopoulos**
- | | |
|-------------------------|---------------------------|
| 29 Daumier | 42 Join Us |
| 30 MCFM News | 43 Directorate |
| 35 Announcements | 44 Editor’s Notice |

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THE TIES THAT BLIND

It's tough enough making decisions about elderly parents. What if you don't like the siblings you have to agree with?

By Robin Marantz Henig

"You should sell her," Clyde said when his mother came home with a baby sister. That's the kind of thing jealous big brothers often say when they feel displaced; the comment becomes a cute part of family lore. But Clyde was 13 at the time, too old for cute. His hostility toward his sister Nancy was no passing phase, either. For most of their lives Clyde had nothing but harsh words for Nancy. But when their mother got old and needed their help, the two siblings were forced to interact—and they didn't really know how.

Eighty percent of American adults have siblings, and while the love between them can be singularly sweet—two-thirds of adults name a brother or sister as one of their best friends—22 percent consider their relationship "apathetic" or downright "hostile." Most of the time, your less-than-perfect sibling relationships can sputter along unattended, with contact limited to a noncommittal exchange of Christmas cards. But as your parents age and die, you may be forced to make fateful decisions with siblings you spent most of your life barely tolerating. Even among siblings with good relationships, old hurts, old patterns, old disagreements can erupt again, disguised as fights over whether Dad really needs a nursing home, or how to divide up the Royal Doulton figurines.

With 85-plus already the fastest-growing cohort in America, and boomers turning 65 at the rate of 10,000 a day, more and more siblings are struggling with each other over their elderly parents. There are even professional referees for fights like these. An elder mediator gathers squabbling siblings around a table and, for a fee of about \$250 to \$350 an hour, helps them deal with whatever it is they're really arguing about. The story of Clyde and Nancy and the elder mediators who helped bring them together demonstrates how complicated these struggles can be—and how, in cases involving elderly parents, sadness touches even the happiest of endings.

In elder mediation sessions, the silly slights of childhood can loom large. "It might be as small as the red wagon you got for Christmas that I really wanted," said Blair Trippe, an elder mediator in Massachusetts and a co-author of *Mom Always Liked You Best: A Guide for Resolving Family Feuds, Inheritance Battles and Eldercare Crises*. These hurt feelings are difficult to get over, maybe because they seemed so crucial at the time, bubbling out of the complex stew of emotions—love, jealousy, rage, adoration—that siblings stir up in each other. They can also be a bit embarrassing for adults to fess up to. A red wagon? Really?



Clyde and Nancy's mediation session did not begin well. Nancy, a soft-featured woman with a steel-gray bob, was standing outside with her husband waiting to greet Clyde, but he brushed right past her, plopped himself down at the round conference table in mediator Neil Rodar's Burlington, Vermont office, and waited for things to begin. He wasn't at all happy about being there; he had only come because his daughter had insisted.

What brought Clyde and Nancy to mediation was a dispute over whether to take out a reverse mortgage on their 98-year-old mother's tiny house in New Hampshire. Their feisty mother managed to live alone with a succession of paid assistants. But Nancy said the money was about to run out; a reverse mortgage, she said, was the only way to get the cash they needed to keep their mother out of a nursing home. Nancy had power of attorney, but Clyde had taken the deed she needed for the application and refused to turn it over, thinking her real motivation was to get their mother's house for herself.

Nancy always considered Clyde a larger-than-life figure, the much-older brother who wouldn't let her play with his Erector set. In the mediation session, she didn't want to confront Clyde in any way. "I knew he was just going to jump all over me and belittle me, which he was very good at doing," she told me.

By then Clyde, though still handsome, was a physically diminished man. He was almost 77 years old (Nancy was 64),

skinny and stooped, his voice half-gone with the loss of one vocal cord to throat cancer and further damage in surgery after his first aneurysm (he'd had two). He was reduced to talking in a raggedy whisper—but even whispering, Clyde was the sort of man who made his opinions known loud and clear.

The mediation got underway with Clyde and Nancy stating and re-stating their grievances in an endless loop. They were trying to be civil, but it wasn't working. All the "I" statements in the world were no match against some of the hurtful things Clyde had said in the past, like that Nancy had no initiative and would never amount to anything—a blistering comment that rang in her head even as she sat in Neal Rodar's conference room more than 50 years later.

So many of the stories I've heard from adult siblings in conflict might cause an outsider to think, "Grow up, already." These are men and women in their 50s and 60s bickering over small injustices, and not only the old ones left over from when they were kids: not getting invited to a nephew's wedding, not getting enough help packing on the day Mom and Dad moved, not getting the retirement ring you wanted that Dad gave to your sister.

**As your parents age and die,
you may be forced to make
fateful decisions with siblings
you spent most of your life
barely tolerating.**

Continued on next page



Some people enter mediation almost as afraid of succeeding as they are of failing. “If I make up with my sister,” one client said to Trippe, “how are we going to relate? What are we going to fight about if we can’t fight over the house?”

After lunch, Susanne Terry, Rodar’s mentor and co-mediator in this case, opened the afternoon session by turning to Nancy. “This is really going to sound stupid,” she said, using a mediator’s trick of placing all blame for lack of insight on herself. “But please explain it again to so Neal and I can understand: Why is this reverse mortgage such a big deal?”

Nancy walked them through it, explaining how it all would work in dollars and cents. As she spoke, it became clear how worried she had been, how many nights she had lost sleep over it, how urgent she thought the situation was. “Clyde was jolted,” said Terry later. “He was completely unaware that the finances could have that effect.”

Some people enter mediation almost as afraid of succeeding as they are of failing.

“Oh, my, I hadn’t realized,” Clyde said when Nancy said she was unable to sleep at night. It was the first of a series of aha moments that peppered the rest of the afternoon.

The emotional exchange went on for another five minutes, each apologizing again and again for not having understood the other’s point of view. Finally Nancy said, “I haven’t hugged you in a long time. Would you like a hug?” Clyde bolted to his feet and opened his arms.

Nancy went around the table to embrace Clyde. Everyone, even the mediators, burst into tears.

“That went well,” Nancy said to her husband when they finally got back to their car. As they were about to pull out, Clyde walked up to Nancy’s side and tapped on the window. He leaned in. “We’ve laid the foundation,” he told her. “Now we can build the house.” Nancy wasn’t sure how much to believe this—Clyde was a smooth talker, and hadn’t he said such things before?—but she reveled in the sentiment nonetheless.

The day after the mediation, Clyde collapsed from a third aneurysm. He was taken by helicopter to Mass General for surgery, and six days later, on June 4, 2008, he died.

“I think that this was a lifetime of animosity that had come to a halt,” Clyde’s daughter Sally told me recently. “I think my dad finally facing it and stepping up and saying, ‘All right, I need help, we’ll work this out,’ and stepping toward his sister for the first time in his life—I think it was a big reason that he was able to let go.”

But there’s a coda to this story, one that shows that transformations aren’t built in a day, and that elder-care issues can get the best of even newly-repaired sibling relationships.

The truth is that most siblings manage on their own to get past childhood feuds. Parents die, friends disappear, spouses leave through either death or divorce, but brothers and sisters endure. As the losses of middle age accumulate, siblings often



become more and more important. Sibling ties might fray, but they also have a quality that sociologist Ingrid Connidis calls “a taken-for-grantedness.” Connidis interviewed 60 sibling pairs, ranging in age from 25 to 89, to see how their relationships changed over the life span. Feelings of loyalty and love remained dormant, she wrote, “to be rekindled or ‘mobilized’ only when needed.” Connidis called it “intimacy at a distance.”

Clyde’s sudden death after embracing Nancy helped sear the family’s mediation session in the memories of everyone who witnessed it. What better demonstration of the power of conciliation than a man finally able to rest in peace after he makes amends with the sister he has kept at arm’s length for so long? “It was a good note for him to leave on,” Nancy said. “A person’s got to hope that if we’d had the chance to work on things we’d have become much closer.”

But the story’s coda suggests a different interpretation—not about the blessing of rapprochement with a long-estranged sibling, but about its fragility. What Clyde most wanted was for his mother to live out her life in her own home. But Nancy says the reverse mortgage didn’t come through fast enough, and she ran out of money to pay for round-the-clock home health aides. So three weeks after their mediation—and two weeks after Clyde’s death—Nancy moved their mother into a nursing home, where she lived (unhappily, according to Sally, Clyde’s daughter) for another two years. She died there shortly after her 100th birthday.

Sally says she tries not to judge her aunt Nancy too harshly—her grandmother did take a sharp decline after Clyde’s death and probably did need to be in a nursing home—but she felt stung by how quickly Nancy made the decision without consulting anyone. She prefers to focus on the mediation session, and the hug. “We all celebrate that moment,” Sally says. “That was a golden moment.”

Nancy’s quick turnaround shows that rapprochements can be tenuous, especially in feuds that have festered for a lifetime. Many mediation clients need to come back for further sessions, but these two never got a chance, and their still-unresolved issues took on a life of their own. As Max Rivers, a family mediator in Philadelphia, often tells his clients, old wounds between siblings are like beach balls. “You can hold them under water, but they never give up,” he said. “As soon as you stop holding them down, they resurface.”



Robin Marantz Henig is a journalist, author, science writer, lecturer and teacher. Amongst others, Robin has won two Science in Society awards from the National Association of Science Writers, and a career achievement award from the American Society of Journalists and Authors. Her eighth book, *The Monk in the Garden*, was a finalist for the National Book Critics Circle Award. Readers are invited to visit her online at www.robinhenig.com. This article was first posted on Slate.com.



THE FIVE PERCENT: Finding Solutions To Seemingly Impossible Conflicts

By Peter T. Coleman

When faced with complex problems, we typically respond in one of three ways. Often, our initial reaction is to feel overwhelmed. We may feel anxious and despair of our ability to respond effectively. This motivates our attempts to deny or avoid a problem. We might fail to recognize it altogether, or acknowledge the issues while simultaneously refusing to engage them. This characterized Anthony and Kasha's initial approach to their divorce proceedings, when they chose to leave discussion about their vacation house until the end of the process. This strategy can have short-term benefits, such as the temporary management of anxiety, and long-term negative consequences, such as a missed opportunity to deescalate the conflict. It could even intensify the problem.

A second common response to complex problems is to prematurely simplify the problem. The demanding nature of these situations understandably attracts us to simplification: to thinking that circumscribes their intricacies by focusing on very few aspects. When situations offer contradictory information, simplification often involves a cursory comparison of different sides of the information, resulting in a polarized decision that one side is right and the others wrong. Such responses help alleviate our anxiety, cope, identify what to do, and begin to feel a sense of efficacy and control over the problem. But they can also lead to a misreading of the

problem, resulting in what cognitive scientists label the revenge of the unjustly ignored.

In other words, premature oversimplification can lead us to actions that result in unintended negative consequences — consequences regarding important but neglected aspects of the problem. For example, some have argued that the Oslo Accords between the Israelis and Palestinians, despite their merits, failed because they neglected to address many of the key concerns of marginalized factions in the conflict and other serious issues voiced in the streets.

The third type of response to complex conflicts, much less common than the others, is to actively engage with complexity. This can take different forms but typically entails an iterative process of differentiation of the relevant aspects of and perspectives on the problem. And then an integration of this information within some coherent framework that makes it comprehensible and useful. This does not mean getting lost in the nuances and complexities of problems or prematurely simplifying them. It means doing both in an iterative, ongoing fashion. In other words, we break it down and then put it together before and after we decide.

Research on this type of information processing, called integrative complexity, has been conducted on the writings of a



variety of effective decision makers, including diplomats, presidents, revolutionary leaders, and Supreme Court justices. Generally, higher complexity is associated with reaching mutually beneficial compromise agreements, successful diplomatic communications, employing cooperative tactics during negotiations, and increased managerial effectiveness. Additionally, leaders with high levels of complexity are more likely to be open minded, more effective in highly turbulent environments, and less likely to jump to conclusions too quickly when facing ambiguous situations. Although this manner of problem engagement can be demanding and requires certain skills, and is unnecessary with more mundane problems, the benefits of employing it with the 5 percent will greatly outweigh the consequences of denial, avoidance, or oversimplification.

Clearly, complex problems like the 5 percent present daunting challenges to our human capacity for comprehension and effective action. Determining the relevance or irrelevance of the countless aspects of such problems can overwhelm even the most careful, rational thinker. Under normal circumstances, we must locate the problem at an appropriate level

and scope, mindful of how our point of view affects what we come to see as fact. We must struggle with limitations to our

Premature oversimplification can lead us to actions that result in unintended negative consequences....

cognitive processing of information and remain open to how important unfolding changes may impact the situation. And if we face conditions of protracted threat, the demands on us are further exacerbated by anxiety, impaired cognitive functioning, a chronic concern for safety, and a context that provides contradictory and politically consequential forms of information. Like athletes who play extreme sports, we must be aware of the challenges the 5 percent present to our perception and judgment, and respond accordingly.



Peter T. Coleman is a Professor of Psychology and Education at Teachers College, Columbia University, and the Director of The International Center for Cooperation and Conflict Resolution. He is the author of *The Five Percent: Finding Solutions to Seemingly Impossible Conflicts*, from which this article was excerpted.



“Where there is love there is life.”

Mahatma Gandhi



GOING DEEPER IN MEDIATION

By Rachel Fishman Green

Zero-sum disputes present the hardest challenge for divorcing couples and mediators alike. Whenever an issue is framed as “if you win I lose” or “the more you get the less I get” spouses tend to become less flexible and to focus on their side of the argument rather than seeing the bigger picture. Digging deeper to reveal the needs and emotions that lay underneath the “numbers” may help break the win-lose situation and help spouses look beyond their immediate interest.

The following story shows how diverting the discussion from numbers and charts to “what really bothers me” or “what I am afraid of” can help couples reach an understanding even in the most complicated issues.

Evaluating the Value of a Degree Earned During Marriage – The Story of Sam and Charlene

Sam and Charlene were a young couple who came in to mediation in order to settle their divorce. They had been married about 7 years, and had no children. During their first mediation session, Sam and Charlene resolved all issues regarding their separation – timing for separating, which of them would stay in the apartment, dividing bank accounts, separating wedding gifts and other things. The only question remaining was what payment, if any, Charlene, the newly admitted, presently unemployed attorney, would pay to Sam

for the value of her law degree and license earned during the marriage.

Under NY law, a degree or license earned during the marriage would be considered to be marital property, subject to discussion about how to equitably divide it. The value is based on the projected (imagined) future earnings of the spouse, during the lifetime of her/his career.

Charlene and Sam initially thought that the law would provide “the answer.” They asked me to prepare a legal memo outlining arguments and summarizing published decisions, regarding law degrees. In addition, while I gathered that information, I polled some groups of mediators and attorneys, to get anecdotal evidence of how people resolved this issue, outside of published cases.

The information I presented did not resolve the case.

Sam was a guy who loved spreadsheets, and he came in to our next session with 8 different possibilities for equitable distribution, with 8 different possible values for the license.

This did not resolve the case.

It seemed to me that the arguments went round-and-round, with each person repeating his/her view – neither coming closer to understanding the other. I grew



frustrated; this was not rocket science, surely we could resolve it.

Sam had supported Charlene through law school, and felt that he thus had a stake in her new career.

Part of the problem was that Charlene was not working. She got out of law school during a recession, and had not been able to find a job for a year. She was working – but not as a lawyer – so she felt that her degree was worthless.

We could not accurately project what she would earn, over the course of her career, with her law degree, since we had no idea of what earnings she might – or might not – have as a lawyer. Sam came in with numbers gleaned from other people’s law degrees – where payouts to the spouse were more than \$300,000 – but Charlene did not see how she could possibly pay such an amount to Sam. We discussed having payments over a period of years, based on her future actual earnings – but neither of them wanted to be tied together for the future.

In our 6th mediation session, Sam surprised me by saying, “I now understand that the problem is more about feelings, so it isn’t going to be solved by spreadsheets. Charlene, because unemployed, is concerned about financial security for the future. When I realized this, I asked her, ‘How much money would you need in the bank in order to feel secure about moving forward?’ We subtracted this from our

joint savings account, and I will take the balance, so here is the division which we have decided upon.” (And he gave me another spreadsheet.)

Zero-sum disputes present the hardest challenge for divorcing couples and mediators alike.

Surprisingly, what they came up with was a lower settlement in monetary terms, than some of the options which Sam had put on the table at another point, but because it was matched to both of their interests – because everything was named correctly for them – and because he could not understand her insecurity about the future – and she could now understand his need for a logical basis for the outcome - they were both happy with the settlement.

It took many hours of discussion, and of considering different ways of resolving their question, as well as different options for resolution, until we came up with something that felt right for Charlene and Sam.



Rachel Fishman Green is an attorney-divorce mediator, and the director of Legal Mediation Services in Park Slope, Brooklyn. In addition to helping hundreds of couples to end their marriage in a civilized, less traumatic way, Rachel is a true advocate of divorce mediation who devotes much of her time to promoting public awareness for the field. She can be contacted at rachel@mediate2resolution.com.



LAWMERICKS 2012

By David Aptaker

Editor's Note: In years past, a high point at annual MCLE Family Law Conferences has been David Aptaker's recitation of some leading family law cases in rhyme, to the tune of popular songs. This year the conference was held the day before Saint Patrick's Day, so David parsed cases with "limerick" pairs instead. The first "lawmerick" paraphrases the facts of the case and the second paraphrases the law.

Woodside v. Woodside, 79 Mass. App. Ct. 713 (2011). The parties' separation agreement did not specifically designate either party as having sole physical custody, but evidence supported the conclusion that the mother was the primary caretaker of the children. The court allowed her to remove the children to Maine by applying the "real advantage test" in *Yannas*.

To Maine with the children Mom wanted to move
 She hoped there she would find her new groove
 That she was primary caretaker was clear
 And her motives were sincere
 Real advantage she was able to prove.

When the primary caretaker parent seeks out-of-state relocation
 And the agreement contains no formal custodial designation,
 The real advantage test from *Yannas*
 Once again is upon us
 After a functional parenting analysis provides clarification.

Mitchell v. Lynch, 79 Mass. App. Ct. 1126 (2011). After the mother was found to have locked their minor child in her home while she went to a local bar, the court awarded the father sole legal and physical custody of their minor child.

Mom went to the tavern to drink
 Locked her young son in the house like a clink.
 But the boy left home alone
 Could still dial the phone,
 So mom lost custody before she could blink.



This case told us little that's new
It reiterated both standards for review.
Material and substantial change to modify
On appeal abuse of discretion will apply
So I'll end it without further to do.

Cesso v. Cesso, 79 Mass. App. Ct. 1131 (2011). A husband's conduct in hiring a private investigator at considerable expense to prove his wife an alcoholic was an unwarranted dissipation of marital assets, which the court weighed heavily in her favor in the equitable distribution of their property at divorce.

A private eye, like Spenser, dad chose to hire
For proof mom's drinking was truly dire.
Those assets he spent were all wasted.
So, dad, the judge lambasted.
Now he'll have to earn more to retire.

The Court gave a short dissertation
On how conduct can create dissipation.
In the present case (not of beer)
The one wasted was clear
In the property division calculation.

Wolcott v. Wolcott, 78 Mass. App. Ct. 539 (2011). A wife appealed from a divorce judgment awarding her husband almost 90% of the marital estate, alleging that the trial judge abused his discretion by giving undue weight to her criminal conviction for solicitation of murder of the husband.

Wife tried to arrange for the death of her mate.
She failed so her husband was ex,... but not "late."
Her conduct was more egregious
Than Ripa's split from Regis.
A 90/10 asset division was her fate.

If from a marriage one hopes to quit,
On one's spouse don't try to take out a hit
'cause that conducts a fact
that will surely impact
On how marital assets are split.

Continued on next page



Simpson v. Bonanni, 940 N.E. 2d 521, 78 Mass. App. Ct. 1124 (2011). The unwed father of a child with autism successfully appeals from a decision ordering the parents to designate their child as beneficiary of all their respective assets upon death. While the court has broad discretion to enter orders for the support and maintenance of children born out of wedlock, the statute (G.L. c. 209C, § 9) does not authorize the court to limit (beyond the continuing duty to provide support) the testamentary freedom of a parent.

Two unwed dentists did a little extra drilling
 Was more than just oral they found thrilling.
 Apparently, prophylactic care
 Was just for those in the chair.
 Soon they had a new mouth they were filling.

Sadly, the son who was sown from their seed
 Had a severe and long-term special need.
 Could the trial Court make the parties provide
 From future Probate assets when they died?
 Not per the statute the appeals court decreed.

Cosgrove v. Hughes, 78 Mass. App. Ct. 739 (2011). The decedent was believed by his family to have died a childless bachelor without a will. Subsequently, a woman named Verna claimed to be his out-of-wedlock daughter. Some of the decedent's nieces and nephews brought an action seeking a judgment against Verna, asserting that she was not his daughter, and therefore was not an heir and could not inherit from his estate, estimated in excess of \$32 million. The court held that while the decedent's name was not on Verna's birth certificate, he acknowledged in writing that she was his daughter before his death... so Verna prevailed.

The teen boy with an older woman laid
 Perhaps he thought he had it maid.
 Though they were not yet wed
 She made more than the bed;
 A child was born after their escapade.

When a probated estate an estate involves intestacy,
 But with an acknowledgement of paternity,
 The one acknowledged will prevail
 Others objections will fail
 Despite claims related to biology.



David Aptaker previously worked as an attorney for the Massachusetts Department of Social Services, Massachusetts Office for Children and the Department of Mental Health. Since 1991 he has been in private practice. His office is in Stoneham where he currently practices in the areas of mental health law, family law and probate law with an emphasis on serving as a neutral (Mediator, G.A.L., Conciliator, Special Master, Parenting Coordinator). David is also an adjunct faculty member at Tufts University. He can be contacted at (781) 438-5222 or at davidaptaker@gmail.com



HEARSAY

After a 38-year marriage husband’s counsel argued that her client worked for his pension, and did not want to share it with his wife.

The judge replied, “yes, I’m sure he has worked hard for it, and that’s why he’s going to get to keep some of it.”

Reported by Connecticut Attorney Suzanne Kelly in a recent mediation training as an exception to John Fiske’s advice to mediators not to ‘hide behind the judge.’



TWO CHARTS TO HELP NAVIGATE THE ALIMONY REFORM ACT OF 2011

By Judge Amy Lyn Blake & Judge Anne M. Geoffrion

Editor's Note: The Alimony Reform Act of 2011 revised M.G.L. c. 208, §34, and created M.G.L. c. 208, §§48-55, as of March 1, 2012.

ALIMONY CATEGORIES				
	GENERAL	REHABILITATIVE	REIMBURSEMENT	TRANSITIONAL
Length of marriage	Any length	Does not state in Act	Not more than 5 years	Not more than 5 years
Purpose	Granted to a spouse who is economically dependent	Granted to a spouse who is expected to become self-sufficient by a predicted time	Recompense for contribution to payor's financial resources	Transition recipient to adjusted lifestyle or location
Type of payment	Periodic	Periodic	Periodic or one-time payment	Periodic or one-time payment
Duration	See BELOW*	Not more than 5 years	Does not state in Act	Not more than 3 years from date of divorce
Termination	Death of either party, recipient's remarriage, court order, payor's retirement or cohabitation	Death of either party, recipient's remarriage, or a specific future event as ordered by the court	Death of recipient or a date certain	Death of recipient or a date certain
Modifiable	Yes	Yes	No	No
Income Guidelines to Determine Amount	Applies	Generally Applies [see G. L. c. 208, § 53(b)]	Specifically does not apply [see G. L. c. 208, § 51(c)]	Generally applies [see G. L. c. 208, § 53(b)]
Cohabitation Clause	Applies	Does not apply	Does not apply	Does not apply
Retirement Clause	Applies	Does not apply	Does not apply	Does not apply

* **Duration of General Term Alimony:** See G. L. 208 § 49 (b)1-4 & (c)

- 5 years or less = 50% # of months of marriage
- 10 years or less (but more than 5) = 60% # of months of marriage
- 15 years or less (but more than 10) = 70% # of months of marriage
- 20 years or less (but more than 15) = 80% # of months of marriage
- more than 20 years... court may order alimony of indefinite duration



MODIFICATION		
Basis	Burden/Standard	Filing Date Restrictions
Existing order exceeds durational limits as <u>sole</u> basis (see G. L. c. 208 § 49(b))	Enactment of G. L. c. 208, § 49(b) deemed a material change of circumstance that warrants modification (see Act § 4(b))	See Act § 5 <ul style="list-style-type: none"> • Payor married 5 years or less: on or after March 1, 2013 • Payor married 10 years or less: (but more than 5) on or after March 1, 2014 • Payor married 15 years or less: (but more than 10) on or after March 1, 2015 • Payor married 20 years or less: (but more than 15) on or after September 1, 2015
Payor's full retirement age (see G. L. c. 208 § 48)	Enactment of G. L. c. 208, § 48 <i>alone</i> <u>not</u> deemed a material change of circumstance that warrants modification (see Act § 4(b))	See Act § 6 <ul style="list-style-type: none"> • Payor who has attained full retirement age or will by March 1, 2015, or on or after March 1, 2013
Cohabitation / maintaining a "common household" (see G. L. c. 208 § 49(d))	Enactment of G. L. c. 208, § 48 <i>alone</i> <u>not</u> deemed a material change of circumstance that warrants modification (see Act § 4(c))	None



**“Human beings,
vegetables, or
cosmic dust,
we all dance to
a mysterious tune,
intoned in the distance
by an invisible player.”**

Albert Einstein



TIPS FOR NEW MEDIATORS

By Paul Stenzel

On the occasion of the New Year 2012, I reflected back on my nascent mediation practice. With about 100 child custody and civil mediations under my belt, I am still near enough the beginning of my mediation career to relate to new mediators, but far enough along to have made a few observations.

How you do is at least as important as what you do. So you're a new mediator in with the parties for the first time. You're trying hard to stay on script. You've been taught that mediation is a process and, if nothing else, you want to follow the right steps. This is good. Mediation is a process and the steps are important. However, as you begin to relax and become more familiar with the steps, take some time to think about all of the other factors at play.

As communication experts will tell you, there is a whole world of communication occurring at many different levels besides the surface discussion. Parties in disputes are often in a heightened state and as such are

“Mediators do ‘nothing’ well.”

more likely to be attuned to non-verbal cues. Pay attention to the tone of your voice, your demeanor, your facial expressions, your posture, your inflection and your choice of words. As I have mediated more and more, I find that I am having more success not by changing what I say, but how I say it.

As a newer mediator, you don't know for sure what will work; so be open to using everything. One of the common metaphors used in mediation is the mediator's toolbox. (Sounds better than a bag of tricks). When I started out, I was very averse to caucusing. I believed that the parties needed to face each other and the only way they could reach an agreement was by talking to each other. As I mediated more cases, I had a stronger sense of things to tell the parties about the case and used caucus in limited circumstances. I was pleasantly surprised by the results; sometimes the parties just need a break and an opportunity to vent, if nothing else.

Another example is phone mediation. I never would have been in favor of it, but in one of my cases, geography made in-person mediation impractical. Before the mediation, I thought, “This can't work; everyone's going to miss all the non-verbal stuff.” It was a family case and it turned out that the phone provided a useful buffer between the parties' emotions. An hour and a half later, we had an agreement, and you could have knocked me over with a feather.

Less is often more. The first set of trainers from whom I learned facilitative mediation, had a favorite saying: “Mediators do ‘nothing’ well.” One of the hardest and subtlest skills for a mediator to learn is when to talk and



when to be quiet. As a newer mediator, there might be a tendency to over mediate a case due to eagerness. The other way this issue manifests itself is when a mediator clings to continuing the mediation at all costs. I've found that telling the parties we're wrapping up and that some disputes have to go to court can, in certain cases, lead to a breakthrough.

Let go. When the parties don't follow the path I think I've shown them, I used to think, "They're ruining my mediation! Why can't they see where they should be?!" Now, I focus on the journey without attachment to the outcome. Am I seeing hidden offers? Am I giving the parties

enough space? Am I talking too much? Some of the mediations I feel the best about are not always those that end in agreement.



Paul Stenzel has been an attorney in Wisconsin for 16 years and been mediating for the last four. He learned facilitative mediation at the Winnebago Conflict Resolution Center in Oshkosh, Wisconsin, and is on the roster of family mediators in Milwaukee and Washington Counties in Wisconsin. Readers are welcome to share comments at paul@paulstenzel.com, or to visit Paul's website at www.stenzelmediation.com



**“God is a comedian
playing to an audience
too afraid to laugh.”**

Voltaire



CONTRACT? YES OR NO? IF YES...
IS IT ENFORCEABLE?
An Email Exchange

From: Les Wallerstein <wallerstein@sociallaw.com>

I have an unusual case and would appreciate your thoughts.

In the late fall of 2009 a couple mediated their divorce with a lawyer-mediator (not me) and executed a signed, notarized separation agreement. In January 2010 they appeared pro se before Judge DiGangi in Cambridge.

According to the wife, (my client), Judge DiGangi objected to the amount and duration of child support and alimony in their agreement, allegedly saying she was entitled to more. He instructed them to step into the hall to make the changes he recommended and return. They followed his instruction to go into the hall and apparently kept going... never returning to the courtroom.

The court never issued "Findings and Order" or any other post-appearance paperwork, except for a hand written note on a blank sheet of paper (mailed in the court's envelope to the wife) inviting them to schedule another appearance several weeks later... that has never occurred.

In October, 2011 I was retained by wife to help facilitate their divorce. Husband's counsel asserts that their separation agreement is null and void.

I assert that in the absence of "Findings and Order" actually rejecting their agreement (which unquestionably would render it null and void)... their separation agreement continues to exist as a contract between a husband and wife.

So what say you? Does a signed, notarized separation agreement that has never been accepted or rejected by a judge retain contractual enforceability several years after it was executed?

From: Bill Leonard<NashobaMediation@verizon.net>

I take it that the case has not yet been dismissed for non-prosecution.

Unless the Agreement states that it has to be approved by a judge to take effect, I agree with your analysis with one caveat: What is the effect, if any, of the judge's comments (and I think it's necessary to know exactly what he said to the parties on the record) on the enforceability of the agreement as a contract? It may be that the Wife can enforce the agreement as a contract and still seek additional child



support/alimony through the divorce case, since hubby is on notice that the judge found the figure inadequate.

In any event, the hubby's argument - "Since the child support/alimony figure set forth in the executed, notarized agreement was found inadequate by the judge, I don't have to pay any child support/alimony" - won't get him very far.

From: "Lynda J. Robbins"<lynda@familydisputesolutions.com>

I think it is a contract but, enforceability is almost impossible without a Court order. No Court other than Probate will touch a child support question. How does the new alimony law impact the agreement they had?

From: Barbara Kellman<barbara@kellmanlegal.com>

I agree with Lynda. My other questions would be, was it fair and equitable at the time they signed it? (apparently the judge didn't think so). Is it fair and equitable in their current circumstances?

From: Diane Spears <dspears@me.com>

I have several thoughts and points:

1. Usually the agreement says that it is effective upon signing, so I would check the language first. If the agreement is only effective upon approval by the court then it is not effective, obviously.

2. The enforceability of the agreement is another matter. I believe the Superior Court has jurisdiction over divorces - never done it though. Correct me if I am wrong.

3. In any event, as a practical matter you have several other options:

a. Go back to Probate court with an attorney representing the Wife whereas it seems the judge was concerned she was giving up too much. If she has an attorney who can articulate the reasoning behind the "unfair" provisions he/she may be able to persuade the Judge to approve it.

b. Renegotiate the agreement with the other side.

4. As a mediator I have written agreements which are, objectively unfair, but desired by both sides. In these cases, I generally insist that the parties, particularly the one giving up too much, seek legal advice from an attorney then come back to the table. If the parties continue to want the "unfair" agreement, I write into the agreement the basis for what they have done, tell them it might not pass muster with the judge and

Continued on next page



to be prepared to articulate to the judge the basis. Why does the Husband's attorney say it is null and void, if it favors his client?

From: "David Hoffman"<dhoffman@BostonLawCollaborative.com>

I think it's enforceable, at least in theory.

But I have heard people say that the Superior Court usually dismisses such enforcement cases, unless the parties include in their Separation Agreement that they intend it to be specifically enforceable in the Superior Court, regardless of whether it is submitted to the Probate and Family Court for approval in connection with their divorce.

Usually such agreements have provisions stating that the parties intend to file it with the P&FC and request that it be approved.

I think this type of provision may add to the Superior Court's reluctance to enforce them, since such provisions suggest that the intent was to have the agreement reviewed by the P&FC.

From: john fiske<jadamsfiske@yahoo.com>

First, as to alimony, the Internal Revenue Code section 71 refers to a "separation instrument" and does not require the agreement to be approved by a judge. Hence married couples can theoretically pay alimony to one another if they file separately.

Second, don't they have a binding contract enforceable in the superior court. The probate court did not issue an order saying their contract is void. BUT read the statute, which seems to say otherwise:

"In the event the court does not approve the agreement as executed, or modified by agreement of the parties, said agreement shall become null and void and of no further effect between the parties...." Doesn't that describe exactly what happened here? If they had never presented it to a court it would not have been disapproved. It sure sounds like "the court does not approve the agreement as executed."

Very important point. Let's see what others say.

From: "Oran Kaufman"<oran@orankaufman.com>

What a lovely distraction! I did not have the pleasure of having the initial question but thanks John for including me!

1. I agree with John's point about the alimony (It is always nice to have an excuse to re-read IRS regs- I always re-learn something new!)



2. I agree with John's second point about the fact that it is a contract.
3. I respectfully and I mean respectfully, disagree with John's third point. See <http://www.malegislature.gov/Laws/GeneralLaws/PartII/TitleIII/Chapter208/Section1A>.

I read that section as requiring a full hearing and the court "officially" accepting or not accepting the agreement. It sounds like what the judge did is what I think judges are know to do in these situations which is to say, "I am not happy about something in your agreement, go out and work on it and bring it back so that I do not have to reject it." There was no actual court finding or order rejecting the agreement so I think the agreement/contract still stands- at least as a contract-enforcement is another matter.

From: Bill Leonard<NashobaMediation@verizon.net>

To take Oran's point one step further: Did Judge DiG dismiss the action? Dismissal appears to part and parcel of "non approval" under the statute. ("In the event that the court does not approve the agreement as executed, or modified by agreement of the parties, said agreement shall become null and void and of no further effect between the parties; and the action shall be treated as dismissed, but without prejudice.")



**“...when you have
eliminated the impossible,
whatever remains,
however improbable,
must be the truth.”**

Sir Arthur Conan Doyle



MASSACHUSETTS FAMILY LAW

A Periodic Review

By Jonathan E. Fields

Value of Inherited Nantucket Home Divided Equally The Appeals Court upheld a Probate and Family Court judgment that divided equally between the parties the value of the husband's interest in a Nantucket home. In upholding the trial court's wide discretion, the appellate court was impressed by several factors. The island home had been gifted to the husband in trust by his family halfway through a presumably long-term marriage. The trust did not "limit the property to the husband (or ... exclude it from assets available for division upon divorce)." Finally, the family had "use and enjoyment of the property" during the marriage. The Appeals Court also dismissed the husband's argument that his minority interest in the home should be discounted for its lack of marketability. Citing *Bernier v. Bernier*, 449 Mass. 774 (2007), since the property was not currently intended for sale, such a discount would be inappropriate. *Gribbell v. Gribbell*, 2012 Mass.App.Unpub. LEXIS 104 (February 1, 2012) (Unpublished)

Must a Changed Circumstance be Unanticipated? (Or is a Change is a Change?) In a modification action, to what extent does it matter whether the alleged material change in circumstance should have been anticipated? In a recent case, Lee Werling, a husband with

a pre-existing medical condition at the time of divorce, agreed to a merged provision requiring him to pay alimony until the wife, Deborah Nutting, remarried or either party died. A few years later, the pre-existing medical condition came to fruition and Mr. Werling returned to court with a modification to terminate the alimony. The Probate and Family Court allowed the modification. Ms. Nutting appealed for a number of reasons, one of which caught my attention. Relying on *Huddleston v. Huddleston*, 51 Mass.App.Ct. 563 (2001), she argued that the "husband *should have anticipated* in the separation agreement the effect of his preexisting disability on his finances and should be precluded from obtaining termination of alimony on any basis other than those enumerated in the agreement." The Appeals Court pointed out that *Huddleston* has a "common sense and justice" exception and found that Mr. Werling had met the criteria for this exception. In fact, although the Appeals Court does not note it, the modification statute itself requires only a "material change in circumstances" – and makes no mention of whether the change should have been anticipated. A change is a change, it seems to me, whether it's anticipated or not. *Nutting v. Werling*, 81 Mass.App.Ct., 1116 (February 24, 2012) (Unpublished).



Life Insurance to Secure Alimony is not an Improper Post-Mortem Alimony Award

The husband appealed from a judgment in the Probate and Family Court which provided the wife with security in the event the husband died while under an alimony obligation to her. He argued that this amounted to an award of “post-death alimony” and that, since Massachusetts law mandates that alimony terminate upon the payor’s death unless otherwise agreed, such a requirement was unlawful. The Appeals Court affirmed the judgment, relying on *Braun v. Braun*, 68 Mass.App.Ct. 846, 856 (2007), in which it held “a judge may order that a party maintain life insurance as security for alimony even where the order for alimony does not

continue after the support obligor’s death.” The Court continued: “[s]uch an order, and the payments of premiums, may be seen as a component of alimony and other payment requirements.” There is no post-death alimony obligation because “payments under the policy flow from the *insurer* to the beneficiary” and not from the *obligor’s estate* to the beneficiary. *Mastrocola v. Mastrocola*, 81 Mass.App.Ct 1122 (March 19, 2012).



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**“Last words
are for fools who
haven’t said enough.”**

Karl Marx



WHAT'S NEWS?

National & International Family News

Chronologically Compiled & Edited by Les Wallerstein

Georgia Rejects Law to Control Assisted Suicide The Georgia Supreme Court ruled that a law aimed at controlling assisted suicide was unconstitutional, a decision that is likely to help shape the national debate over the practice. Doctor-assisted suicide is legal only in Washington and Oregon. In Vermont, a bill to legalize it is working its way through the Legislature. In Massachusetts, a citizens' initiative called the Death with Dignity Act could appear on the November ballot if the legislature does not take up the issue by May. The legislation would allow doctors to give life-ending drugs to people who are believed to have six months or less to live. The Montana Supreme Court in 2009 opened the door to the practice, although it remains legally ambiguous in that state. Thirty-seven states criminalize assisted suicide, according to the Patients Rights Council, a nonprofit organization that opposes assisted suicide. (Kim Severson, *New York Times*, 2/7/2012)

California Court Strikes Down Ban on Same-Sex Marriage A three-judge panel of the United States Court of Appeals has ruled that California's voter-approved ban on same-sex marriage violated the US Constitution. The majority stated explicitly that they were not deciding whether there was a constitutional right for same-sex couples to marry, instead ruling that the disparate treatment of married couples and domestic partners

since the passage of Proposition 8 violated the Constitution's Equal Protection Clause. Both sides in the case made clear that they intended to take the case before the Supreme Court in hopes of prompting the high court to settle once and for all an issue that has been fought out in courts, state legislatures and ballot boxes going back at least to a 1971 case in Minnesota. That said, there is no guarantee that the court will ultimately take it. The narrow parameters of the court's reasoning — and the fact that the ruling was written in a way that it applies only to California — may prompt the court to let this stand and wait for a clearer dispute before weighing in. (Adam Nagourney, *New York Times*, 2/7/2012)

Washington: Same-Sex Marriage Legalized Washington has become the seventh state to legalize same-sex marriage, but opponents said they would try to seek its repeal through a ballot measure. Connecticut, Iowa, Massachusetts, New Hampshire, New York and Vermont recognize same-sex marriage, as does Washington, D.C. The measure will take effect 90 days after the legislative session ends. (Reuters, *New York Times*, 2/14/2012)

US Interracial Marriage Rates Soar According to the Pew Research Center, about 15 percent of new marriages across the country in 2010 were between spouses of different races or ethnicities, more than



double the share in 1980. Viewed in aggregate, interracial married newlyweds seem similar to all newlyweds. But when the pairings are broken down by sex and race, distinct patterns emerge. White-Asian couples have the highest earning power, surpassing white-white couples and Asian-Asian couples in median income. And among Hispanics and blacks, those who marry outside their race are more likely to have college degrees. There are gender disparities as well: black men marry outside the race at a far higher rate than black women. But the opposite is true of Asians: women marry outside the race at a higher rate than men. Regionally, intermarried couples are more likely to live in the West, a result of the concentration of immigrant minority groups there. (Susan Saulny, *The New York Times*, 2/16/2012)

For US Women Under 30, Most Births Occur Outside Marriage After steadily rising for five decades, the share of children born to unmarried women has crossed a threshold: more than half of births to American women under 30 occur outside marriage. Once largely limited to poor women and minorities, motherhood without marriage has settled deeply into middle America. The fastest growth in the last two decades has occurred among white women in their 20s who have some college education but no four-year degree, according to Child Trends, a Washington research group that analyzed government data. Among mothers of all ages, a majority — 59 percent in 2009 — are married when they have children. But the surge of births outside marriage among

younger women — nearly two-thirds of children in the United States are born to mothers under 30. (Jason DeParle & Sabrina Tavernise, *New York Times*, 2/18/2012)

Maryland Legalizes Same-Sex Marriage Maryland has become the eighth state in the nation to legalize same-sex marriage, just as opponents were ramping up efforts to repeal the new law at the ballot box. Under the new law, religious groups are not required to provide services linked to gay marriage that may violate their beliefs unless they receive federal funding. Such protections would allow the Knights of Columbus, a Catholic group, to refuse to rent a meeting hall for a same-sex wedding and not require a church counseling service to counsel same-sex couples. Massachusetts, Iowa, Vermont, New Hampshire, Connecticut, New York and the District of Columbia currently allow gay and lesbian nuptials. Washington state will join the list of states with same-sex marriage in June unless opponents stop it ahead of a possible ballot initiative, and Maryland will be added in January 2013 unless its law, too, is overturned by a threatened referendum in November. (Ellen Wulffhorst & Paul Thomasch, *Reuters*, 3/1/2012)

More Americans Rejecting Marriage in 50s and Beyond Over the past 20 years, the divorce rate among baby boomers has surged by more than 50 percent, even as divorce rates over all have stabilized nationally. At the same time, more adults are remaining single. The shift is changing the traditional portrait of older Americans:

Continued on next page



About a third of adults ages 46 through 64 were divorced, separated or had never been married in 2010, compared with 13 percent in 1970, according to an analysis of recently released census data conducted by demographers at Bowling Green State University, in Ohio. Sociologists expect those numbers to rise sharply in coming decades as younger people, who have far lower rates of marriage than their elders, move into middle age. In 2010, about 12 percent of unmarried adults ages 50 through 64 were living together but not married, up from 7 percent in 2000, census data show. (Rachel L. Swarns, New York Times, 3/2/2012)

Childbirth Changes for US Women

Scientists at the National Institute of Child Health and Human Development and elsewhere compared 39,491 births from 1959 to 1966 with 98,359 births from 2002 to 2008. All the women initially went into labor without complications. Compared with the women in the first group, those in the more recent group were, on average, two and a half years older, the researchers found. They were also heavier — women giving birth in the later years had an average body mass index of 29.9, compared with 26.3 50 years ago. Medical intervention was much more common in the 2002 group. Only 4 percent of women in the 1959 group received epidural anesthesia, compared with 55 percent in the recent group. About 12 percent of the women in the first group received oxytocin to induce labor, compared with 31 percent in the 2002

group. After controlling for a variety of factors, the researchers found that labor was, on average, 2.6 hours longer in the 2002-8 group for women having their first baby, and a little under two hours longer for women who had previously given birth. (Nicholas Bakalar, New York Times, 3/31/2012)

Asian-American Interracial Marriages Decline

Interracial marriage rates are at an all-time high in the United States, with the percentage of couples exchanging vows across the color line more than doubling over the last 30 years. But statistics show that the rate of interracial marriage among Asians has been declining since 1980. From 2008 to 2010, the percentage of Asian-American newlyweds who were born in the United States and who married someone of a different race dipped by nearly 10 percent, according to a recent analysis of census data conducted by the Pew Research Center. Meanwhile, Asians are increasingly marrying other Asians, a separate study shows, with matches between the American-born and foreign-born jumping to 21 percent in 2008, up from 7 percent in 1980. Nevertheless, Asian-Americans still have one of the highest interracial marriage rates in the country, with 28 percent of newlyweds choosing a non-Asian spouse in 2010, according to census data. (Bryce Vickmark, New York Times, 4/1/2012)

Tuna Again? In Fault-Finding Britain, It's a Cause for Divorce

Under current British law, divorces are granted only under one of five categories, including



adultery and abandonment. About half of the cases fall under the heading of a broad category called unreasonable behavior, in which one party has to accuse the other of acting so unreasonably that living together has become intolerable. Unreasonable behavior actions have included a man who accused his wife of maliciously and repeatedly serving him his least favorite dish, tuna casserole; a woman who said her husband had not spoken to her for 15 years, communicating only by Post-it note; and a husband who insisted that his pet tarantula, Timmy, sleep in a glass case next to the matrimonial bed, even though his wife requested “that Timmy sleep elsewhere.” In the United States, where divorce falls under state law, every state allows for some version of no-fault divorce. In 2010, New York became the last state to approve no-fault divorces. (Sarah Lyall, New York Times, 4/8/2012)

US Teen Birth Rate Drops to Record Low The teenage birth rate in the United States has fallen to a record low in the seven decades since such statistics were last collected. A report released Tuesday by the National Center for Health Statistics showed the teenage birth rate for American teenagers fell 9% from 2009

to 2010. The national level, 34.3 teenage births per 1,000 women between the ages of 15-19, is the lowest since 1946. The rates dropped across all racial and ethnic groups, and nearly all states. (Posted by Madison Park, CNNhealth.com Writer/Producer, April 10, 2012)

Sexual & Domestic Violence at Epidemic Levels in Massachusetts Two new reports show sexual and domestic violence at epidemic levels in Massachusetts. Advocacy group Jane Doe Inc. said nearly half of women and a quarter of men have experienced some form of sexual or domestic violence in their lifetime. Executive Director Mary Lauby said better methodology around research is returning better numbers. “When I say better I don’t mean bigger, I mean numbers that in fact reflect what the experiences of advocates and experts in the field know about this work.” (Posted by the WBUR Newsroom, April 10, 2012)



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



“Never let your sense of morals prevent you from doing what’s right.”

Isaac Asimov



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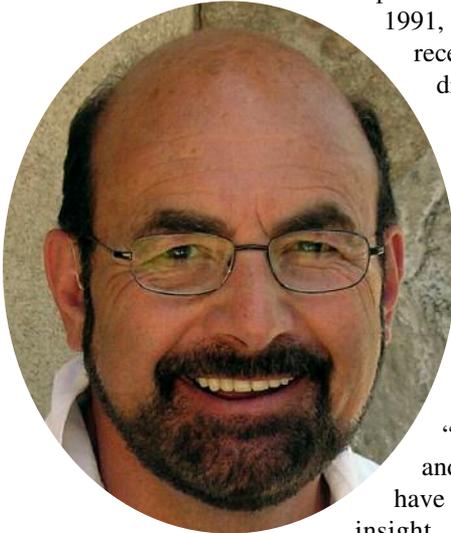
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Professional background and mediation history: My formal learning in negotiation and mediation was received at Harvard Law School's Program of Instruction for Lawyers (Negotiation and Mediation) and the Center for Dispute Settlement in Washington, D.C. Since

1991, my career-long learning has been received from my practice of adversarial divorce and collaborative divorce and being a mediator and arbitrator.

Prior to practicing law full time, I was a college teacher. As an assistant professor, I helped my students understand legal concepts they could apply to the world in which they would live and work. Serving as a master, guardian or arbitrator has given me valuable insight as to what it is to "sit on the other side of the bench" and see much of what a judge sees. I have applied the lessons learned from this insight when serving as a mediator.



My mediation practice: My mediation practice is a "practice" that concentrates on finding what the real interest is, e.g., "What is she afraid of?" "What is he afraid of losing?"

My mediation workspace: A large comfortable office with a desk, antique table, armchairs, an Oriental rug on the floor and a calming quilt on the wall, additionally, a private conference room seating six and a private library space, which sits ten.

What made me decide to be a mediator? In about 1991, Judge John Ronan, the then Regional Administrative Judge of the Superior Court, asked seven other trial lawyers and me to help reduce the backlog of civil cases.



Among other innovations, we developed the Conciliator/Master Program which resulted in my (as well as the other seven lawyers) individually evaluating pending cases as to trial or settlement potential, conciliating those cases with settlement potential and ruling (as a master) on certain pending motions for those cases destined for trial. From this initial involvement, I was asked to mediate cases.

Most memorable mediation moment: Receiving a letter from a couple who had just completed a successful divorce mediation with me. The letter, in part and paraphrased, said: “It was not until you told us - *‘I don’t give a damn about either of you two, I am only concerned about what this divorce is doing to your children’* that we knew we had to come to an agreement. Thank you.”

Most helpful advice offered to me when starting to mediate: “*You have two ears and one mouth. Use them in that proportion and you will settle cases.*”

Advice to new mediators: “*You have two ears and one mouth. Use them in that proportion and you will settle cases.*”

Philosophical outlook on life: Our future, more often than not, is the product of luck, chance and the exercise of acts of love.



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Honoré Daumier (1808 – 1879)

Honoré Daumier was a French political cartoonist who penned thousands of satirical drawings. A compilation of some of his most famous lithographs on the subject of marriage was entitled “Moeurs Conjugales” which could be translated as “Humours of Married Life” or “Manners of Married Life” or “Habits of Married Life” or just “Married Life.” **French-English translations were provided by Barbara Kellman and Marion Lee Wasserman.**



I got married to bring enchantment to my life and now there is nothing that gives me more pleasure than to have nothing at all to carry!



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North Suburban Mediators Group: Join fellow mediators meeting to learn and share and network. Meetings are held at 8:30 a.m. on the second Tuesday of the month from January to June and from September to November at the offices of Lynda Robbins and Susan DeMatteo, 34 Salem Street, Suite 202, Reading. Please call Lynda at 781-944-0156 for information and directions. All MCFM members are welcome.



Pioneer-Valley Mediators Group: This Western Mass group will be meeting monthly in December on the first Wednesday of every month at the end of the day, from 4 to 6 pm or 6 to 8 pm (depending on the interest) in Northampton at a location to be announced. Please email Kathy Townsend for further information at Kathleen@divmedgroup.com.

Mediators in Search of a Group? As mediators we almost always work alone with our clients. Peer supervision offers mediators an opportunity to share their experiences of that process, and to learn from each other in a relaxed, safe setting. Most MCFM directors are members of peer supervision groups. All it takes to start a new group is the interest of a few, like-minded mediators and a willingness to get together on a semi-regular, informal basis. In the hope of promoting peer supervision groups a board member will volunteer to help facilitate your initial meetings. Please contact Kathy Townsend <Kathleen@divmedgroup.com> who will coordinate this outreach, and put mediators in touch with like-minded mediators.



OFFER MCFM's NEW BROCHURES

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

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



**“Be careful about reading health books.
You may die of a misprint.”**

Mark Twain

Continued on next page



AN INVITATION FOR MCFM MEMBERS ONLY

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



CLASSIC MCFM "T" SHIRTS

Equal blends of cotton & polyester

Choose black or cream

CAN'T DECIDE? ORDER ONE OF EACH!

All lettering & graphics are green

SIZES AVAILABLE: S, M, L, & XL

SUPPLIES ARE LIMITED

Cost \$10 each plus S&H*

*S&H: \$3 for 1 shirt, \$4 for 2, \$5 for 3, etc...

Make checks payable to MCFM, Inc.

SEND YOUR CHECK & ORDER TO:

Ramona Goutiere

P.O. Box 59

Ashland, NH 03217-0059

QUESTIONS? CALL: 781-449-4430



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.**



**“Men marry women
with the hope
they will never change.
Women marry men
with the hope
they will change.
Invariably they are
both disappointed.”**

Albert Einstein



ANNOUNCEMENTS

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

**MASSACHUSETTS COUNCIL ON FAMILY MEDIATION
WELCOMES EVERYONE TO ITS**

**30th ANNIVERSARY CELEBRATION
AT THE ELEGANT MIT ENDICOTT HOUSE IN DEDHAM**

**SEPTEMBER 13, 2012,
FROM 6:00 PM TO 10:00 PM**

- **Enjoy cocktails in the tastefully appointed living room.**
- **Partake of a sumptuous dinner on the terrace, overlooking magnificent gardens.**
- **Listen to live and lively entertainment, locally grown, of course.**

All as we join together to celebrate thirty years of contributions to the field of family mediation and to honor those who contributed their time, hard work, and wisdom to make the MCFM a vibrant and significant mediation organization.

Limited overnight accommodations are available on the premises.
Make your reservation now to ensure availability.
Contact Diane Simonds at 617-715-4904.
visit mcfm.org for updates



ELDER DECISIONS
A Division of Agreement Resources, LLC

**ADVANCED ELDER/ ADULT FAMILY MEDIATION TRAINING
July 17-19, 2012, Newton, MA**

Lead Trainers:
Arline Kardasis, Rikk Larsen, Crystal Thorpe and Blair Trippe



“This training was an unmitigated success for the organizers and I could not praise their work enough, from choosing their topics to their choice of presenters, this was indeed a formidable and professional effort that they can rightly be very proud of. I will certainly be looking to attend another of their events.” David Bogan, International Mediation Services, Auckland, New Zealand

FOR INFORMATION & REGISTRATION call: 617-621-7009
email: training@ElderDecisions.com
visit: www.elderdecisions.com

\$100 DISCOUNT FOR MCFM MEMBERS



**ABA/BLC ADVANCED FAMILY
LAW MEDIATION TRAINING**

**Boston Law Collaborative, 99 Summer Street, Boston, MA
May 2, 3 & 4, 2012**

The Boston Law Collaborative will be offering an Advanced, Family Law Mediation Training co-sponsored the American Bar Association Sections of Family Law and Dispute Resolution at BLC's offices. The 20-Hour Advanced Family Mediation Training “Breaking Impasse and Managing Difficult Personalities in Mediation” is designed to provide you with an in-depth look at the mediation process while examining the various reasons impasse occurs (economic, emotional, cultural, psychological, etc.) to reaching agreement. It will also provide you with the tools and resources needed to break through these barriers and impasse in mediation. BLC founding member David Hoffman, will lead the training along with BLC team members Israela Brill-Cass, Rachel Goldman, Don Greenstein, Vicki Shemin, and Dr. Richard Wolman. They will be joined by Marguerite Fletcher, Susan Miller, Ranna Parekh, and Douglas Reynolds.

**For more information about this program, contact
Israela Brill-Cass at [<ibrillcass@BostonLawCollaborative.com>](mailto:ibrillcass@BostonLawCollaborative.com)**

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34-HOUR DIVORCE MEDIATION TRAINING

May 3*, 4, 5, 18 & 19, 2012

In Holyoke, MA

**Co-Sponsored by The Mediation & Training Collaborative
And HCC Kittredge Center for Business & Workforce Development**

Prerequisite - 30 hours Basic Mediation Training

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 role plays, parking and refreshments. Social Work CEC's or attorney CLEs available upon request.

**Trainers are Betsy Williams, Cate Woolner, Larry Saunders,
Stephanie Levin, Oran Kaufman and Court Dorsey.**

Fee is \$825. (\$775 if postmarked by April 1)

**For brochure or more information contact
mediation@communityaction.us or 413-475-1505**

* The four-hour May 3 session will focus on Massachusetts family law for divorce mediators and is open to divorce mediators who want a review of this topic. Fee for this session alone is \$80. Attorneys taking the full training who have extensive experience in family law may choose to omit the May 3 session. Call for more information on either of these options.



DIVORCE IN MASSACHUSETTS: WITH OR WITHOUT A LAWYER

Jerome Weinstein & Les Wallerstein

THE CAMBRIDGE CENTER FOR ADULT EDUCATION

**42 Brattle Street
Saturday, May 26, 2012
9:30 AM - 12:30 PM**



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

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

Phone Registration: 617-547-6789

Cost: \$61 Limited to 20



**SPRING 2012 ("RDFR")
REPAIRING DISRUPTED FAMILY RELATIONSHIPS
A 12-WEEK PSYCHO-EDUCATIONAL,
PILOT PROGRAM FOR FAMILIES**

Dr. Peggie Ward and Dr. Jane Appell announce a 12-week psycho-educational group program for high-conflict separated or divorced families where a child or children are in danger of losing a relationship with one parent. The RDFR program consists of 4 components for each family:

- Weekly parent groups (11 meetings) with a combination of favored parents and non-favored parents. Parents from the same family will be in different groups.
- Children's groups held on Saturdays (5-6 sessions)
- Family Intervention Meeting
- Development of follow-up recommendations

The program is a research based psycho-education and experiential program which targets specific feelings, cognitions and behaviors on the part of parents and children in families disrupted by post separation conflicts. **We are seeking 8 families for this pilot program. We will require a minimum of 6 families to run this program.** We are looking for families that fit the following criteria:

- One or more children aged 9 or above who have a disrupted relationship with one parent
- Parents who are in moderate to high conflict who are both willing (or court ordered) to participate and are open to possibility of change
- Families who are able to commit to 12 group meetings (one weeknight meeting for each parent and a Saturday meeting for the children approximately every other week)

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The cost of the program, including the weekly group for each parent (separate groups), groups for children, one full weekend of parent-child or family meetings is \$5,300. If you would like to refer a family to the program, please contact one of us or have the family contact us.

Jane Appell, Ph.D. at 978 287-4300, ext. 307; jappell@verizon.net
Peggie Ward, Ph.D. at 508 655-1775, peggieward@comcast.net



ACADEMY OF PROFESSIONAL FAMILY MEDIATORS FOUNDING CONFERENCE

Returning to our roots, family mediators have come together and formed a new, national organization: the Academy of Professional Family Mediators. Our first national conference will launch our national organization and, in spirit, launch a new Family Mediation Movement! Our conference will include sharing and developing of our vision, as well as sharing advanced mediation concepts, skills, friendship and lots of fun.

SAVE THE DATES
September 27-30, 2012
Sea Crest Beach Resort in Cape Cod

For more information visit
www.professionalfamilymediators.org



LEVINE DISPUTE RESOLUTION CENTER, LLC LAUNCHES DISPUTE RESOLUTION PARTNERSHIP

The husband-and-wife legal team of E. Chouteau and William M. Levine is proud to announce the launch of Levine Dispute Resolution Center, LLC (LDRC), a partnership for those seeking confidential, cost-effective and technically suitable out-of-court solutions to an array of legal disputes. With offices in eastern and western Massachusetts, LDRC services are especially well suited for those who hope to emerge from dispute with a capacity to work together on future problems with little loss of or, in some cases, even enhanced good will.



For further information please visit www.levinedisputeresolution.com, or email info@levinedisputeresolution.com, or call either LDRC location to arrange a confidential consultation.

36 Service Center Road,
Northampton, MA 01060
413.341.1017

100 High Street, Suite 200
Westwood, MA 01090
781.708.4445



THE CHILD & FAMILY WEBGUIDE ONLINE ACCESS TO CHILD DEVELOPMENT INFORMATION

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

www.cfw.tufts.edu



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

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

Divorce Recovery is a support group for those who are separated, considering divorce, or divorced. It offers support and healing to people experiencing the pain of separation and divorce. Group members gain knowledge regarding the emotional

Continued on next page



stages of divorce and how to cope with lifestyle changes. Each session includes discussion and presentation of topics such as denial and bargaining, anger, depression, acceptance, forgiveness, alone without loneliness, letting go, spirituality in one's life, and creating a new lifestyle. **The cost is \$90 for eight consecutive weekly sessions.**

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

FOR MORE INFORMATION VISIT: <http://firstcongregational-norwood.com>
TO REGISTER: call 781-762-3320, or email: firstcongo.norwood@verizon.net



NEW BEGINNINGS

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

For program details & schedule visit
www.newbeginnings.org



COMMUNITY DISPUTE SETTLEMENT CENTER

Building Bridges • People to People • Face to Face

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

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



JOIN US

MEMBERSHIP

MCFM membership is open to all practitioners and friends of family mediation. MCFM invites guest speakers to present topics of interest at four, free, professional development meetings annually. These educational meetings often satisfy certification requirements. Members are encouraged to bring guests. MCFM members also receive the Family Mediation Quarterly and are welcome to serve on any MCFM Committee. Annual membership dues are \$90, or \$50 for fulltime students. Please direct all membership inquiries to **Ramona Goutiere at masscouncil@mcfm.org**.

REFERRAL DIRECTORY

Every MCFM member with an active mediation practice who adheres to the Practice Standards for mediators in Massachusetts is eligible to be listed in MCFM's Referral Directory. Each listing in the Referral Directory allows a member to share detailed information explaining her/his mediation practice and philosophy with prospective clients. The most current directory is always available online at www.mcfm.org. The annual Referral Directory fee is \$60. Please direct all referral directory inquiries to **Rebecca J. Gagné at rebecca@gagneatlaw.com**.

PRACTICE STANDARDS

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

CERTIFICATION & RECERTIFICATION

MCFM was the first organization to certify family mediators in Massachusetts. Certification is reserved for mediators with significant mediation experience, advanced training and education. Extensive mediation experience may be substituted for an advanced academic degree.

MCFM's certification & recertification requirements are available online at www.mcfm.org. Every MCFM certified mediator is designated as such in the **online Referral Directory**. Certified mediators must have malpractice insurance, and certification must be renewed every two years. Only certified mediators are eligible to receive referrals from the Massachusetts Probate & Family Court through MCFM.

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



DIRECTORATE

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Local Telephone & Fax: 781-449-4430
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EDITOR'S NOTICE

MCFM Family Mediation Quarterly

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

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

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

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

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

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

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

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

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

MASSACHUSETTS COUNCIL ON FAMILY MEDIATION



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