

# Family Mediation Quarterly



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



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## PRESIDENT'S PAGE

**Did you know...** MCFM is the only Massachusetts mediation organization that offers a professional and meaningful certification process for its members. To date, there is no state certification or licensing board for mediators in Massachusetts. If you are not MCFM certified, look at our website at [www.mcfm.org](http://www.mcfm.org) and click on Standards and Certifications for more information and an application.

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**MCFM – June Elections** Our annual meeting and board of directors' election takes place in June. If any member is interested in serving on the board, your name would be welcomed for consideration by the Nominating Committee at this time as it considers vacancies to be filled. You may email Lynda Robbins, chair of the Nominating Committee at [ljobbinsesq@verizon.net](mailto:ljobbinsesq@verizon.net).

**Mediation World – International Family Mediators** For anyone interested in seeing how the rest of the world does it, the Association of Family and Conciliation Courts (AFCC) is an international organization that sponsors an annual US or Canada conference where mediators and other family law professionals from around the world meet. The conference is always at the end of May and will take place in New Orleans this year. About a dozen of the 2009 presenters are well known Massachusetts' professionals. Check it out.



*Kathleen A. Townsend*

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## EDITOR'S NOTICE

# MCFM Family Mediation Quarterly

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

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

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

The FMQ is mailed 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](http://www.mcfm.org)>, accompanied by a cumulative index of articles to facilitate data retrieval.

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

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

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

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



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## HOW COLLABORATIVE IS COLLABORATIVE DIVORCE?

By Susan Zaidel

“Collaborative Law” is a dispute resolution model in which both parties to the dispute retain separate, specially-trained lawyers who sign a contract that precludes them from representing either client in the event a client wants to litigate the matter. When I read about collaborative law several years ago, I found the idea appealing, as it meant that family law attorneys were accepting the idea of resolving divorce issues *out of court* and through agreement, as opposed to using adversarial litigation.

At the time, however, I also suspected that the collaborative law movement was an attempt on the part of the legal profession to regain control of the divorce market, perhaps because mediation had had a negative impact on the central role that attorneys used to have in the divorce process.

While family mediators come from both the mental health professions and the legal profession, the core of “Collaborative Law” is the exclusive domain of lawyers! Nevertheless, my feeling was that a more family-friendly manner of lawyering would be better than the traditional adversarial approach, in any case. Moreover, it was suggested at that time that the use of a neutral mediator would be part of the collaborative law process in cases in which the 4-way conferences (two parties and two lawyers) were not successful in resolving a dispute.

This assured me that the role of mediation in resolving disputes was being acknowledged and respected by the collaborative law model.

My enthusiasm about the new model of “lawyering” led me to write two articles on the topic that were published in Israeli law journals (in 2002), but the idea seemed to fall upon deaf ears.

More recently, a number of Israeli family law attorneys who practice mediation have shown interest in the practice of “Collaborative Divorce,” so I became curious about this latest model and the people who are marketing it.

I read Pauline Tesler and Peggy Thompson’s 2006 book, *Collaborative Divorce*, to get the inside story of what they describe in the subtitle as “The revolutionary new way to restructure your family, resolve legal issues, and move on with your life.”

The book is intended for the general divorcing public—not for divorce professionals. Although I was disappointed at the simplistic level of writing, the authors are not to be blamed for addressing the layperson, a task they accomplished quite adeptly.

However, I found the book quite offensive in the way they presented the method of collaborative divorce (the “cure-all” for the evils of divorce) and the negative



descriptions of other means of resolving divorce issues, including mediation.

It was an overly simplistic, black and white description of “good guys” (collaborative attorneys and coaches) and “bad guys” (everyone else, especially the “old-style” divorce attorneys). Although mediation was not exactly in the category of the “bad guys,” it was presented inaccurately and in a negative light as lacking all the good parts that only collaborative divorce offers its clients. Is this the authors’ idea of interdisciplinary collaboration?

There are only three pages on which mediation is mentioned at all and then, only as an inadequate process in contrast to collaborative divorce.

I wonder how many mediators would agree with the following descriptions of mediation: “No one teaches you how to improve your communications with your spouse during or after the divorce or how to be a more focused and effective participant in negotiations” (p. 33); or “No one helps the children express their needs and wishes or teaches you or your children what you need to know about the stresses and challenges children generally, and your children specifically, experience

during divorce. So as long as you and your partner reach agreement about dividing up time with your child, the job is done, whether or not the arrangement is likely to work well for your child” (p.34).

The authors dismiss mediation as inadequate and never acknowledge that

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mediators make use of outside experts when needed, as part and parcel of a thorough mediation process.

What kind of collaborative approach to divorce is that? I was left wondering if the new collaborative lawyer was merely a disguise for the traditional, competitive, adversarial lawyer — a new tactic to lure the public away from mediation and back into the lawyers’ den, only this time a den with chairs for mental health professionals in the role of divorce coaches and experts in children.

I understand that there are many variants

*Continued on next page*



of the collaborative divorce model sprouting up across North America and beyond and, perhaps, they are less “adversarial” in their marketing techniques. One website that I checked followed the Tesler-Thompson model, with the use of two divorce coaches, two lawyers, a child expert and a financial expert, all of whom claim to have training in mediation.

Their website compares collaborative divorce with mediation, stating that “Both processes use problem-solving techniques to resolve disputes, but in collaborative divorce *the neutral third party is eliminated and replaced with counsel that use mediation techniques to assist with resolving issues and give legal advice at the same time.*” [Emphasis added.] So, instead of one neutral mediator, there are

**How necessary it is for the clients they (collaborative lawyers) serve to have two, four, five or six mediators with different areas of expertise.... Apart from the financial cost of so many professionals (all in private practice), there seems to be an underlying message that two divorcing adults are incapable of doing anything right without massive and continual professional assistance.**

two lawyer-mediators who prefer to wear their “lawyer hats” because they like to give advice to their individual clients! They use mediator techniques, but remain one-sided lawyers who do their best to avoid going to court (the collaborative

model stipulates that they lose their clients if litigation becomes the chosen path for either client).

No wonder they may still need a mediator, as the set-up remains somewhat adversarial by the very nature of having legal representation for each party. Even if an external mediator is not needed, the parties are unwittingly employing the services of six mediators instead of just one, although their official titles and roles are not as mediators but as divorce coaches, attorneys, child expert and financial expert.

From the standpoint of the mediation community, the addition of divorce coaches and other experts in the collaborative divorce model is certainly preferable to the simpler model of collaborative law, because there is now work for them too.

In collaborative divorce, mediators from the mental health professions have “equal opportunity” to serve the divorcing clients (although their title and job description is restricted to their professional expertise in dealing with the emotional side of divorce) — a situation which can be viewed as a win-win solution to the competition among the mediators from the various professions.



However, the question remains as to how necessary it is for the clients they serve to have two, four, five or six mediators with different areas of expertise. Moreover, the model seems to be a return to the pre-mediation era, in which attorneys gave legal advice and the mental health practitioners helped the clients cope with the emotional crisis, effective communication and improved parenting skills.

Apart from the financial cost of so many professionals (all in private practice), there seems to be an underlying message that two divorcing adults are incapable of doing anything right without massive and continual professional assistance.

They are presented as the helpless “victims” of emotions, requiring ongoing assistance and hand-holding to make sure the outcome of divorce will be good for all members of the family.

In contrast, mediation is based on a view of the divorcing partners as competent people who are able to obtain and process the relevant information with a little guidance, and who are capable of making good decisions for themselves and their children. Mediators may utilize additional experts when necessary, but the emphasis is on empowering the clients.

Clearly, not all divorcing couples and families are alike, and different people need different services. The collaborative divorce approach has many valuable aspects and is likely to serve clients well. However, I am concerned that the approach does an injustice to a large

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number of divorcing couples who are not in need of a team of expert consultants from beginning to end.

Apparently, not all models of collaborative divorce are built on such a full team of professionals, but the involvement of two collaborative attorneys is essential to the model.

While one divorce coach may serve both parties and may also serve as the child expert, each party must retain his or her own attorney. This two-attorney model is clearly a residual from the adversarial model of divorce, even though one legal expert is sufficient in the context of a non-adversarial approach to resolving divorce issues (the attorney’s role is to provide information about the law, to write the legal agreement and process it in court).

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Why not offer co-mediation teams that include one mediator with psychological training and one mediator with legal training, and call it “collaborative divorce”? Why not have just one mediator, who uses external experts (financial, children’s issues) as needed? In fact, mediation is often conducted

## **Mediation is often conducted between two spouses who each have their own attorney to consult with, so what is so “revolutionary” or new about collaborative divorce?**

between two spouses who each have their own attorney to consult with, so what is so “revolutionary” or new about collaborative divorce?

The mediation process was developed as an alternative to the adversarial method of divorce and it welcomed all professionals who were concerned about the well-being of families.

Mediation encouraged a collaborative divorce process from the beginning — collaboration of attorneys and other experts for the common goal of assisting divorcing families to reach agreements that considered the needs and the welfare of both parties and their children.

Some families require only minimal assistance, while most require guidance and information, and some families require a battery of professionals to get the job done. Mediation is not the best or the most suitable method for all cases, nor are the various collaborative models necessary or cure-alls for the entire divorcing population.

I hope that the “pushers” of collaborative divorce will be more modest in their claims and more accurate in their

descriptions of the mediation process so that potential users can choose the path that suits their needs.



**Susan Zaidel, Ph.D.**, is a clinical psychologist, family therapist and family mediator in private practice in Haifa and Tel-Aviv, Israel. She is the author of books in Hebrew about divorce mediation in Israel for professionals and for the divorcing population. This article was originally published in the Summer 2008 edition of Family Mediation News, the newsletter of the family mediation section of the Association of Conflict Resolution.



**“Yes we can!”**

**Barack Obama**



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## MASSACHUSETTS' NEW (AND IMPROVED?) CHILD SUPPORT GUIDELINES: AN ECONOMIC PERSPECTIVE

By Mark A. Sarro

New child support guidelines took effect in Massachusetts on January 1, 2009. Many aspects of the guidelines and formula are new, the question is whether they are new *and improved*?

Where you stand on that question may depend on where you sit. If you thought child support amounts under the prior guidelines were too low, you probably think the new guidelines are an improvement. If you thought amounts under the prior guidelines were already to high, you won't like the new numbers in most cases.

Child support amounts under the new guidelines are higher almost across the board (in all but the highest-income cases). In many cases, the guideline amounts are significantly higher – more than doubling for a wide range of payors, particularly in the middle-income range. Whether or not that is a good thing and what it will mean in practical terms are important policy questions. So what does economics say is the answer?

**Economics Provides the Ideas, Not the Answer** Economic principles, research, and empirical evidence have a lot to say about how to create economically efficient transfer payments, of which child support payments are just a special case. But the economically efficient formula isn't necessarily the best policy prescription in practice. The guidelines aren't purely economic. They inherently involve non-economic factors which economics either cannot model objectively, or does not model particularly well.

Economics does not even perfectly model many critical *economic* factors, since child costs simply are not directly observable. Many costs, like housing and food, are shared within a household and can't be precisely allocated between parent and child. Economic models make simplifying assumptions to deal with such practical limitations. Those assumptions are the best we can do, but they aren't precisely correct and sometimes they aren't even very reliable at all.

For example, economic models use child *expenditures* to proxy for child *costs* even though we know expenditures aren't the same as costs. (A wealthy family can spend much more than it truly costs to raise a child; a poor family may not be able to spend enough.) Comparing expenditures across households with different number of children, in turn, requires economic models to estimate each household's standard of living, so that can be held constant. But that requires even more assumptions, and so on.

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The guidelines have the force of law, and the law presumes the guideline amounts are the “right” amounts. But what truly are the “right” amounts is a wide open question. In reality, the amount spent on children varies wildly from household to household within and across demographic and income groups. Which households are spending the “right” amount on their children? Don’t believe anyone who tells you they know. No single chart of numbers could possibly be “right” for all households with incomes ranging from zero to \$250,000. So economics alone can’t say definitively whether Massachusetts’ *new* guidelines also are *improved*.

At the same time, you can’t form an objective, informed opinion on that question for yourself without first looking at the economics of the new guidelines.

**The Numbers Don’t Lie: They’re Higher** The bottom-line of the new guidelines are the resulting support amounts (literally the bottom line on the guidelines worksheet). So an obvious test of whether the new guidelines are an improvement is to consider the amounts under the new guidelines and decide whether they better reflect the “right” amounts relative to the prior guidelines.

To systematically consider the amounts under the new guidelines requires running the guidelines for a range of different income scenarios to get a high-level view of the resulting amounts across the range of income combinations. That is what the Task Force did in developing its recommendations for the new guidelines formula. I should know; I ran the numbers. We considered the results of alternative guidelines formulas and percentages over several hundred of hypothetical income scenarios before recommending the new numbers.

Table 1 condenses the results of that analysis into nine different income combinations representing the full range of incomes covered under the guidelines: low-, middle-, and high-income payors and recipients. For low incomes, I used \$10,000 per year of available income (i.e., the income measure used on line 1(f) of the guidelines worksheet). I used \$50,000 and \$200,000 for middle- and high-incomes, respectively.

**Table 1: New guidelines amounts and percent change from prior guidelines**

RECIPIENT’S INCOME	PAYOR’S INCOME					
	Low		Middle		High	
	\$ per Week	% of Change	\$ per Week	% of Change	\$ per Week	% of Change
Low	\$47	15%	\$235	6%	\$760	-19%
Middle	\$29	61%	\$219	59%	\$732	-11%
High	\$21	17%	\$144	200%	Off-chart	

Note: Low = \$10k/yr, Middle = \$50k/yr, High = \$200k/yr.

Dollar amounts are based on new guidelines for one child.

Percentages show percentage changes from prior guidelines to new guidelines.



Table 1 clearly shows the overall dollar impact of the new guidelines: amounts under the new guidelines are higher than under the prior guidelines, sometimes much higher, for all but very high income payors. Exactly how much higher depends on where you look in the range of income combinations. The amounts increase most for middle-income payors making payments to high-income recipients. In some cases, child support amounts under the new guidelines increase by 200 percent or more over the prior guidelines.

Are the amounts under the guidelines too high? The Task Force as a whole did not think so. Its report (well-written and a must-read) explains how and why a majority of members recommended the current numbers. But a few Task Force members, including me, do think the new amounts are too high in many cases, and significantly so in some. There is no single, objective economic standard by which to know who is right. But some simple sanity checks indicate the new numbers are high, especially in the middle income range. The minority report (also well-written and worth reading) presents some examples.

The new guidelines result in higher child support amounts due to the dollar amounts and percentages listed in Tables A and B on the new worksheet. More than anything else on the worksheet, Table A drives the new numbers. It sets the effective (i.e., weighted average) total support amount for one child at a *minimum* of 18 percent of combined income and as high as 25 percent. Then Table B grosses-up that number by 20 percent for a second child, and then by an additional 6 percent, 4 percent and 2 percent for a third, fourth and fifth child, respectively.

**The economically efficient formula  
isn't necessarily the best policy  
prescription in practice.**

Neither the dollar amounts and percentages in Table A nor the incremental increases for additional children in Table B have very precise economic underpinnings for the reasons I previously noted. So, in reality, they aren't precisely correct. While the Task Force carefully considered many financial and non-financial determinants of child costs in creating Tables A and B, there simply isn't any definitive source of data to dictate what numbers are right and wrong with certainty. The available data are, at best, incomplete and usually are only moderately informative or reliable.

That means reasonable people can disagree on whether the numbers in Table A are too high. Both my analysis and my intuition tell me the baseline amounts and percentages in Table A are frequently too high and the gross-ups for additional children in Table B are probably too low. On balance, the resulting amounts are too high in many cases,

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## Economics alone can't say definitively whether Massachusetts' new guidelines also are improved.

especially for middle-income payors, placing an unduly heavy financial burden on payors which may

have unintended non-financial consequences for them and their children.

So the new numbers, themselves, I think often are *not* an improvement over the prior guidelines amounts.

**The Numbers Don't Tell the Whole Story** But judging the guidelines *only* by the numbers is a trap. Even if the new guidelines numbers are too high, the new guidelines, themselves, may be an improvement over the prior guidelines. After all, the prior guidelines got the numbers wrong too, and for all the same reasons. No guidelines get the economics exactly right. It isn't their goal. The guidelines are public policy not an economic proof. Like all guidelines, Massachusetts' new guidelines ignore certain economic factors for legal, political, and practical reasons. The new guidelines don't create the perfect economic formula, but they don't have to be perfect to be better.

Despite the high numbers, the new guidelines text and formula are a significant improvement over the prior guidelines. The new text takes into account the right economic principles and realities, and the new formula reflects them far better than did the prior guidelines. Even if you disagree with the numbers under the new guidelines, do not discount the importance of getting the right ideas into the text and onto the worksheet. By getting more of the economic principles right, the new guidelines better establish the right economic risks, rewards, and incentives today. They also are a basis for deviations – which, gladly, the new guidelines encourage – and for future improvements (e.g., to the numbers).

The most notable economic improvement is that the new guidelines symmetrically account for *both* parents' financial and non-financial contributions to their children. The guidelines are entirely even-handed; the same rules now apply to both payors and recipients. For example, the ad-hoc income disregard is gone. All of the income definitions and cost deductions apply equally to payors and recipients. So do the amounts in Tables A and B, in proportion to each person's share of combined income. Conditioning support amounts on the relative contributions of *both* households in the same way assures that each parent pays child costs in proportion to their relative ability

## Reasonable people can disagree on whether the numbers in Table A are too high.

to pay and under the same policy constraints.

The new worksheet also includes an explicit adjustment



(at lines 2g and 2h) to reduce payment amounts in cases where the recipient has significantly more income than the payor. Where the discount applies, it is phased-in gradually, so there are no cliff-effects. The adjustment is elegant in its simplicity and important in its economic effect. While such cases are rare and the resulting support amounts still are too high, the discount in any single case results in a more appropriate payment and will make a material difference to those payors.

The new worksheet also explicitly lists the recipient's share of the combined support amount (on line 2e). The new guidelines don't require a detailed accounting of that amount from a recipient, but for the first time the worksheet clearly indicates the minimum proportional dollar amount a recipient is expected to spend on a child's behalf. That is a material break from the past and an important step forward in establishing economic symmetry between recipient and payor on the worksheet itself. It also will be grist for discussion about deviations.

The new guidelines also establish a specific approach for calculating the net support amount where parenting time and cost are

**For the first time the worksheet clearly indicates the minimum proportional dollar amount a recipient is expected to spend on a child's behalf.**

approximately equally shared. Outdated, value-laden terminology such as "custody" and "visitation" are gone. That is not just semantics. That change is economically important because it eliminates the financial fiction of one parent exclusively spending time raising a child while the other parent exclusively earns the income required to pay the way.

The new guidelines recognize the economic reality of varying degrees of shared parenting on a case by case basis. That improves the economic efficiency and equity of the guidelines which, in turn, will improve the corresponding outcomes (e.g., collections, work/parenting time choices, parent/child and parent/parent relationships, children's quality of life, etc.).

Overall, because Massachusetts' new guidelines better reflect the right economic principles and treat both parents far more symmetrically, both the text and worksheet are a significant improvement over the prior guidelines. Many of the resulting amounts are too high, but that is a function of the numbers in Table A alone, not an inherent outcome of the new guidelines text or formula. Both the substance of the text and the structure of the formula are much improved.

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There is more room for improvement, most obviously to the numbers themselves. But the improvements to the guidelines are several and significant. This incremental improvement is a notable policy accomplishment, since consensus is so difficult to achieve and perfect policy solutions don't exist. Even if they did, holding out for them would simply assure inaction and prevent otherwise realizable progress.

The new guidelines aren't perfect, but they are progress.



**Mark A. Sarro, Ph.D.** was a member of the Massachusetts Child Support Guidelines Task Force. He is a financial economist and a director in Watermark Economics and in Point Carbon, where he specializes in developing and applying state-of-the-art financial models to analyze business practices, economic incentives, public policies, and valuation. Mark can be contacted at 508 785 9935, or at [msarro@watermarkeconomics.com](mailto:msarro@watermarkeconomics.com)



**“As far as the laws of  
mathematics refer to reality,  
they are not certain;  
and as far as they are certain,  
they do not refer to reality.”**

**Albert Einstein**



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## THE NEW CHILD SUPPORT GUIDELINES Number Crunching in the New Year

James McCusker

This holiday season while sipping eggnog and envisioning all the changes in store for America this year, I decided to take a look at the real changes that have come to the Child Support Guidelines in Massachusetts. For some financial types this is what passes for holiday cheer.

After reading the task force report, I decided to see how the “new” guidelines stacked up against the “old” guidelines with respect to the sharing of family income. In order to do this I created three fact patterns and ran them through both guidelines. I also calculated actual tax liabilities for each circumstance and arrived at net taxable income before household expenses for each of the new households. The fact patterns, although far from exhaustive, represent situations that I encounter in my practice on a regular basis.

In cases #1 and #2, I attributed \$150,000 of income to the payor and \$40,000 and \$0 to the recipient, respectively. In case #3, I set the payor’s and recipient’s income equal to \$80,000. I also assumed there were 2 children ages 10 and 8. And that the payor paid health insurance of \$4,000 and the recipient paid child care costs of \$5,000 (except in case #2 where there was no recipient income). I ignored alimony considerations when employing the “new” guidelines since they are set up to accommodate elevated income levels (\$250,000 combined). However, when using the “old” guidelines I used 2

methods to compute support. In one mode I ran the total compensation through the guidelines ignoring the caps on income (\$100,000 payor/\$35,000 recipient). In the other mode I used the prescribed caps on income and computed alimony on the excess income using the 1/3, 1/3, 1/3 method. Before discussing the results, the caveat to bear in mind is that net household income has been computed using current tax regulations. These are sure to change in 2009.

In case #1, where payor income was \$150,000 and recipient income was \$40,000, the share of net household income was very consistent across the 3 computations. The “new” guidelines gave the recipient approximately 53% of net household income (47% to the payor) and the “old” guidelines, ignoring income caps, gave the same results. The “old” guidelines, using income caps and alimony, only changed the allocation by 2% (51% recipient/49% payor).

In case #2, where payor income remained at \$150,000 and recipient income was changed to \$0, the calculated results for each formula were again fairly consistent with respect to the allocation of net household income. However, the share of net family income to the recipient was reduced to approximately 40% of the total net income from 53% of the total in case #1. This appears to indicate a

*Continued on next page*



computational bias toward income generation on the part of the recipient under both the “new” and “old” guidelines.

This bias is more pronounced when the 2 incomes, payor’s and recipient’s, are equalized as in case #3 (\$80,000 for both).

## **If your intent is to equalize net household incomes the “new” guidelines will not get you there in many circumstances.**

And this redistribution is even more skewed under the “new” guidelines. In this case the “new” guidelines give the recipient approximately 71% of net household income versus 29% for the payor. Under the “old” guidelines the recipient’s share of net income was only 63%.

To see if this discrepancy remained in tact at different but equal income levels, I ran the same calculations at incomes of \$75,000 and \$70,000. I found that the net income splits under the “new” guidelines stayed the same at 71% for the recipient and 29% for the payor. My impression is that this is an acknowledgement by the “new” guidelines that child support is more of a fixed cost (as a percentage of income) rather than a variable cost.

In all the calculations performed the “new” guidelines produced child support amounts that approximated 25% of payor gross income. Under the “old” guidelines

that percentage went down to approximately 14% when payor and recipient income reached parity. Therefore, if your intent is to equalize net household incomes the “new” guidelines will not get you there in many circumstances, especially in situations where incomes are close to equal.

In these circumstances you can perhaps close the income gap with a judicious allocation of the tax attributes available to the family unit. These tax tools might include allocating the dependency exemptions to the payor, substituting alimony for child support, or contemplating joint physical custody so both parties can claim head of household filing status.

After reading the task force report and running these limited calculations, I’m left with the impression that the “new” guidelines are more flexible than the “old” guidelines. But, given your setting and what is deemed equitable, they may need to be tweaked to achieve your desired results — which may not be much of a change after all.



**James McCusker, CPA**, is a certified financial planner. Jim invites your feedback and can be contacted at 978-256-1323, or by email at [James@McCuskerAssociates.com](mailto:James@McCuskerAssociates.com), or online at [www.McCuskerAssociates.com](http://www.McCuskerAssociates.com)



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## “OH, THE LAWYER AND THE MEDIATOR SHOULD BE FRIENDS”

By John A. Fiske

The relationship between mediator and lawyer was the focus of a recent panel discussion sponsored by the Massachusetts Council on Family Mediation. Applying to divorce mediation the basic principle and a slight change in title of a song from Oklahoma!\*, “Oh, the Lawyer and the Mediator Should be Friends”, Mary Johnston, a lawyer and mediator, moderated a panel composed of lawyers (Joanne Romanow of Casner & Edwards, and Donald Tye of Prince Lobel Glovsky & Tye, both of Boston) and mediators (Julie Ginsburg of Wellesley, and Diane Neumann of WatertownNewton). As the field of dispute resolution blossoms, roles of different professionals hired for different purposes by the same clients need constant clarification, and, above all, the professionals should respect these changing roles and communicate with one another. \*\*

Each panelist expressed his or her own concern about these roles and how they apply to divorce mediation. Speaking from the lawyer’s view, Donald Tye insists on shared information and full financial disclosure before mediation is advanced as well as a frank discussion between counsel so that everyone is clear as to each side’s positions and the reasons for them. Often, he tries to “spin off” parenting issues to a mediator to defuse conflict in that arena. He said it is important to be creative, including determining a mediator who has a personality particularly suited for the issues at hand so that the parties feel as comfortable as possible. It is also important to him that the lawyers control the direction the mediation takes so that the parties have an understanding in advance of what to expect. He values mediation as a creative trial practice tool and believes it should be part of law school curricula along with negotiation skills. He often writes mediation into separation agreements as a dispute resolution prerequisite before litigation is pursued post judgment should a disagreement arise concerning interpretation or modification of the terms of the agreement. He attempts to agree on selection of the mediator in advance to include in the agreement so that there is no delay in locating a mediator in the event of a breakdown in communication.

Joanne Romanow wants to be supportive of her client and believes mediation is not for everyone. As a result, she asks the client why he or she wants to mediate, inquiring, “Are you comfortable being alone? Do you negotiate something away just to be peaceful? Are you intimidated by the mediation process?” She educates her client about the legal parameters of divorce and insists her client knows and understands the finances of both parties.

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Speaking from the mediator's seat, Julie Ginsburg encourages both clients to make informed decisions and to consult with their own lawyers during the process. She utilizes the court Financial Statement form as the beginning of a complete disclosure process, and involves the lawyers in the basic discovery process. Diane Neumann, as a veteran IRS tax examiner, believes that her style of mediation is at its best when the parties engage her mutually exclusive of counsel. Both Julie Ginsburg and Diane Neumann urged that lawyers be realistic in the advice they give their clients when they send them to mediation: do not promise them the moon.

Diane Neumann gave an overview of where we all are now: change is in the air, with new emphasis on conflict resolution. Many divorcing couples want to use mediation more and lawyers less because mediation is significantly less expensive and more

**Think of Lincoln's observation:  
that the lamb and the wolf have  
different definitions of freedom.**

efficient than having two lawyers negotiating, with all the trappings of litigation, discovery, etc. The mediation process also teaches parents more cooperative models which will help them continue to be co-parents forever. She emphasized that mediation protects children by minimizing conflict between their parents, and she recommended that people considering divorce should explore the attributes of mediation independently, including interviewing possible lawyers, so they can make informed decisions about how they wish to proceed. She explains to each spouse every aspect of the divorce process, including the law and the financial implications of various choices available to them. She actively guides the couple through the exchange and discussion of all financial information. She agreed with the rest of the panel about insisting on full financial disclosure. All her clients submit their financial documents to her. Donald may have registered a little surprise to learn how a mediator, like Diane, believes that she can obtain the requisite full disclosure without the formalities of discovery and experts, and given the frequent imbalance in information between spouses; this was, perhaps, the most significant issue discussed by the panel. She wants to be in control of the process, hence disagreeing with Donald who believes that the appropriate time for a mediator to become involved may be after the parties have obtained values with which they are comfortable through their lawyers. They do not necessarily have to agree upon the value estimated by the other, but at least parameters are on the table for discussion of an overall settlement.

The panelists noted that a lawyer whose client is in mediation is in a different role, more a coach than a zealous advocate. Donald discussed different professional levels of zealousness, acknowledging the distinction in the SJC Rules of Professional Conduct between the lawyer as advisor who provides a client with an informed



understanding of the client's rights and obligations and explains their practical implications and the lawyer as advocate who zealously asserts the client's position under the adversary system. (See the SJC Preamble in the Rules). They all agreed that family lawyers need to understand this important distinction when they represent clients in the mediation process.

Based on the author's own 29 years of experience in this challenging and important dance, I think of Lincoln's

**“Gentle persuasion is better than force” reminds Aesop.**

observation that the lamb and the wolf have different definitions of freedom. Lawyers and mediators do not look at their clients from the same view, and do not always have the same goals.\*\*\* To the mediator, my advice is: if the clients have lawyers, you should always make sure the lawyers are involved in the process from the beginning, and feel so involved. To the lawyers, my advice is: take off your zealous hat. Remember your role is that of advisor, not advocate. Helping the client to figure out what the client wants and how to get it is the most appropriate goal for the lawyer coach. A specific suggestion to the lawyer: before filing a motion in court addressing an issue being discussed in mediation, consult first with the mediator to see if the parties should have another opportunity to resolve it by agreement.

In two of my recent mediations the lawyers for the wife who wanted her husband to move out behaved completely differently. One lawyer, more a coach, waited for mediation to work; when it did, the husband left the house voluntarily. The other lawyer, more an advocate, filed a motion to vacate without notifying me as mediator or giving the parties in mediation time to resolve when and how he moved out. She lost in court, was fired by her client and is now suing both the wife and the husband. The panel, and this article, encourage the former approach and discourage the latter. “Gentle persuasion is better than force,” reminds Aesop.

We all do well to remember the admonition of the Harvard Negotiation Project: ACBD. That means “Always Consult Before Deciding.” ACBD applies to any relationship you want to preserve: friends, co-workers, relatives, etc. Understanding our different roles helps lawyers and mediators to communicate effectively and to offer a cooperative informed process of great benefits to our clients and our own practices, as well as our own sanity.

\* “Oh, the farmer and the cowman should be friends,  
Oh, the farmer and the cowman should be friends,  
One man likes to push a plow,  
The other likes to chase a cow,  
But that's no reason why they can't be friends.”

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(If you like the principle, Google says you can download the song as a ring tone for your telephone. Now aren't you glad you read the fine print?)

\*\* For example, Rule 5 of the SJC Rules of Dispute Resolution requires attorneys to provide their clients with information about court-connected dispute resolution services, discuss with their clients advantages and disadvantages of the various methods of dispute resolution and certify their compliance with this requirement.

**\*\*\* Oh, the lawyer and the mediator should be friends,  
Oh, the lawyer and the mediator should be friends,  
One has to practice zeal,  
The other helps to make a deal,  
But that's no reason why they cain't be friends."**



**John A. Fiske** is an attorney and mediator with Healy, Fiske, Richmond and Matthew, a Cambridge firm concentrating in family law and mediation. John thanks the five panelists and moderator for their participation in this discussion, including their contributions to this article.



**“Nothing so fortifies a friendship  
as a belief on the part of one friend  
that he is superior to the other.”**

**Honore de Balzac**



JOSEPH P. HEALEY LIBRARY  
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ARCHIVES AND SPECIAL COLLECTIONS

Massachusetts Council on Family Mediation:  
Records, 1976-2008 (Bulk, 1982-2000)  
available online at [www.lib.umb.edu/node/238](http://www.lib.umb.edu/node/238)

**Update:** *In the fall of 2008 Frank Heffron, an early MCFM member discovered a trove of original MCFM materials and kindly donated them to the dispute resolution archives at U-Mass. They included 13 editions of the MCFM News that were previously presumed lost. Soon the newly donated material will be cataloged in the U-Mass archive, as cataloged below. Meanwhile, all 13 recently discovered editions of the MCFM News are now available at [www.mcfm.org](http://www.mcfm.org). Special thanks to Frank Heffron!*

**Quantity** 2 Record Cartons, 1.5 Document Cases

**Provenance** The records of the Massachusetts Council on Family Mediation were donated to the Archives and Special Collections Department of the Healey Library at the University of Massachusetts Boston Library by John A. Fiske and Jerome Weinstein on August 4, 2006.

**History** The Massachusetts Council on Family Mediation (MCFM) is a private non-profit organization 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. MCFM was the first organization to certify family mediators in Massachusetts.

The MCFM serves the public and its members by providing information about divorce and family mediation. The MCFM maintains a mediator referral directory, and provides continuing education to divorce mediators and other professionals. Additionally, the MCFM sets professional mediator standards and publishes *The Family Mediation Quarterly*, a journal of practical use to mediators, since 2002.

**Scope and Content** The collection is divided into four series: **I. Administrative**, consisting of the daily operational papers specific to the Massachusetts Council on Family Mediation; **II. Financial**, containing papers on all matters financial for the organization; **III. Training and Conferences**, including a collection of papers, programs and correspondence related to professional conferences, and related published materials; and **IV. Publications**, containing brochures, newsletters, and the professional journal

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published by the Massachusetts Council on Family Mediation.

Most of the collection was kept in its original order, which includes minutes and member lists being present throughout a number of folders in the Administrative series in addition to the folders listed as such which were relocated to the front of the collection. Most of the original folder titles were retained.

**Series I: Administrative** (45 folders, 1982-2000) This series includes the files pertaining to the administration and governance of the Massachusetts Council on Family Mediation (MCFM). The series contains the articles of organization, by-laws and amendments, and organizational standards. Additionally, this series includes sub-series files that contain Board of Directors meetings minutes, member directories, training guidelines for mediators, general correspondence, and event notices. This series provides both an overview of the MCFM and a glimpse of the daily operations of the organization.

**Series II: Financial** (15 folders, 1986-2002) The focus of this series is the

financial records of the MCFM. The series contains the Treasurer's fiscal year reports, quarterly financial reports, tax records and budget correspondence. These files deal with all matters financial concerning the MCFM.

**Series III: Training and Conferences** (21 folders, 1979-1991) This series contains files related to mediator training and professional conference papers. This series consists of mediation training materials, case evaluation papers, and related correspondence. There is also a sub-series consisting of papers, programs and correspondence related to professional conferences, and related published materials.

**Series IV: Publications** (8 folders, 1980-2008) The publication series includes the original publications of the MCFM, and the news and journal clippings collected by the organization. Included in these files are the *MCFM Newsletter* (1983-2002). This series also includes the *MCFM Family Mediation Quarterly*, a journal of practical use to mediators (2002-2008). The *Family Mediator Referral Directory* for the years 2000 through 2004 is also included.



**“History will be kind to me  
for I intend to write it.”**

**Sir Winston Churchill**



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## MASSACHUSETTS FAMILY LAW

### A Periodic Review

By Jonathan E. Fields

**Same Sex Marriage** A summertime decision that escaped my attention when it was first released may have some relevance to the manner in which the length of marriage is measured in a same sex divorce. The Supreme Judicial Court held that a same sex partner of a plaintiff in a medical malpractice action could not assert claims for loss of companionship since the couple was not married at the time the cause of action occurred. Although the couple was prohibited from marrying at the time and married almost immediately after *Goodridge*, this case turned on the fact that the couple did not have a legal relationship at the time the action accrued. The length of marriage factor is a crucial one in divorce. In same sex divorces, many practitioners have argued that in long term relationships that preceded marriage, a court ought to “tack on” years to account for the period during which the couple were not legally able to marry. That position, it seems, is at least a bit more tenuous now. Curious readers may wish to compare this decision to *Moriarty v. Stone*, 41 Mass.App.Ct. 151 (1996) in which the divorcing heterosexual couple enjoyed a long period of premarital cohabitation. In that case, the Appeals Court affirmed a divorce judgment that considered the respective contributions of the parties during the period of premarital cohabitation. *Charron v. Amaral*, 451 Mass. 767 (July 10, 2008)

### Mediation – Preparation of Documents

An opinion from a Texas ethics committee found that a lawyer acting as a mediator who also prepared the ancillary documents for both parties was in violation of that states rules of professional conduct. The opinion noted that while acting as a mediator did not constitute the practice of law, preparing the documents that effect the divorce did constitute the practice of law. This, according to the opinion, was akin to representing opposing parties and, therefore, an ethical breach. In Massachusetts, where it is common practice for lawyer-mediators to draft agreements and related documents, and where such drafting clearly constitutes the practice of law, see *Matter of Kafkas*, 451 Mass. 1001 (2008), there are, nevertheless, presently no such ethical constraints. Massachusetts mediators should take note of an ethics opinion from the Massachusetts Bar Association that squarely addressed the issue in 1985, stating that “an attorney may also represent both parties in drafting a separation agreement, the terms of which are arrived at through mediation, but must advise the parties of the advantages of having independent legal counsel review any such agreement and must obtain the informed consent of the parties to such joint representation.” *MBA Ethics Opinion 85-3* (1985). *Texas State Bar Professional Ethics Comm. Op. 583* (September 2008)

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**Imputed Income** The Appeals Court affirmed a divorce judgment in which an annual income of \$120,000 was imputed, or attributed, to the wife, finding that she could earn such income “with reasonable effort.” The wife in this case had a history of earning a salary in that range and her underemployment was a result of her “unilateral decision.” *Alexander v. Alexander*, 72 Mass.App.Ct. 1118 (Unpublished) (September 30, 2008)

**Late in Marriage Inheritance** In the same case as above, the wife sought to overturn the Probate Court finding that allowed the husband to keep an inheritance he received from his mother in November 2002. The Appeals Court affirmed the decision which turned on the finding that the marital partnership dissolved prior to the actual separation – in particular, when marriage counseling ended and the wife consulted with divorce attorneys in December 2000. *Alexander v. Alexander*, 72 Mass.App.Ct. 1118 (Unpublished) (September 30, 2008)

**Right to Trust Income Waived by Agreement** The parties entered into a separation agreement that included a surviving provision in which the wife waived the right to seek future modifications of alimony to the extent that they are based on distributions that the husband may receive from a particular trust. In the wife’s subsequent modification action, the Probate Court increased the husband’s alimony obligation, basing its decision in part on husband’s income from the aforementioned trust. The Appeals court

reversed on the grounds that the agreement barred any consideration of income from that trust. *Slosberg v. Slosberg*, 73 Mass.App.Ct. 1104 (Unpublished) (November 4, 2008)

**Premarital Asset Not Divided** In a case involving a 16 year marriage, the Appeals Court upheld a Probate Court judgment that awarded an equal division of assets but permitted the husband to retain a premarital gift worth \$600,000 on the date of their marriage (but not the appreciation of that asset which the court divided 60-40 in favor of the husband.) While noting that there are no “hard and fast rules” regarding premarital assets, the Court found significant the fact that the monies were kept in the husband’s name. The Appeals Court states, however, that it would have been preferable if the court had considered the role of each party in “managing the assets, and whether the assets in question had been kept separate or commingled with the couple’s jointly owned property.” *Burr v. Burr*, 73 Mass.App.Ct. 1105 (Unpublished) (November 18, 2008)

**Trust Principal Not Included in Marital Estate** In the same case as above, the husband was the beneficiary of a certain trust. The Appeals Court upheld the Probate Court judgment that the trust was not part of the marital estate because the husband “does not have a present, enforceable right to use the principal of the trust.” Further supporting the Probate Court conclusion, the Appeals Court noted that the terms of the trust gave trustees exclusive discretion to make



payments from principal and, therefore, the husband's interest in the trust principal was "too remote or speculative" to be included in the marital estate. *Burr v. Burr*, 73 Mass.App.Ct. 1105 (Unpublished) (November 18, 2008)

**Valuation Date of Marital Assets** The husband appealed from a divorce judgment in which the marital assets were valued as of the date of the filing of the divorce complaint in 2004. He sought a valuation date of ten years earlier when he alleges that the marriage irretrievably broke down. Noting that the marital partnership continued until 2004 with the wife assuming child rearing obligations and the husband assuming financial obligations, the Appeals Court upheld the trial court's judgment. The Appeals Court also noted that the marital estate is typically divided as of the date of the divorce trial which conflicts with the unusual "filing of divorce" timing employed here by the Probate Court. *Minasian v. Minasian*, 73 Mass.App.Ct. 1106 (Unpublished) (November 21, 2008)

**Gifts from Parents as Income for Support** A Probate Court judge, in refusing to reduce a father's child support obligation, noted that he receives substantial cash gifts from his parents. The Appeals Court, affirming the judgment, expressly did not reach the question of whether such gifts may be considered in determining support. Curiously, the Appeals Court did cite to a 1961 case from the Supreme Judicial Court which held that since a gift could be discontinued at any time, it could not be relied upon in determining a payor's

ability to pay. *Forte v. Forte*, 73 Mass.App.Ct. 1107 (Unpublished) (November 28, 2008)

**Unequal Division Upheld** The Appeals Court upheld a Probate Court judgment that ordered a 60-40 division in favor of the wife, finding that the parties had contributed equally to the acquisition of marital assets but that the wife made superior contributions in terms of managing the assets and in her post-separation duties as the primary custodial parent. Further justifying the result was the husband's filing of four ancillary lawsuits that were consolidated with the divorce. *O'Connor v. O'Connor*, 73 Mass.App.Ct. 1109 (Unpublished) (December 9, 2008)

**Challenge to New Child Support Guidelines** The organization "Fathers and Families" brought suit in federal court seeking an injunction to prevent the implementation of the new child support guidelines that have since become effective (on January 1). According to the complaint, the guidelines were formulated without obtaining data on the cost of raising a child in Massachusetts in contravention of federal law. The suit also contends that because the law was implemented without a vote by the state legislature, but rather by a single "unelected judge," it violates the state and federal constitutions. Notably, according to the suit, Massachusetts is one of only three states in which child support guidelines are implemented without legislative action. In any event, the judge

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denied the plaintiff's request for an injunction. Moreover, he ordered the Attorney General to file a motion to dismiss by January 28, 2009 – not a good sign for the plaintiff. The issue, however, would still be viable even if the federal suit were dismissed as the suit could be refiled in state court. *Fathers and Families v. Robert A. Mulligan* (filed December 23, 2008)

**State Courts Cannot Allocate Dependency Exemption** In direct contrast to the consistent position taken by our appellate courts, most recently in *T.C. v. J.L.*, 67 Mass.App.Ct. 1111 (2006), a state court may not allocate a dependency exemption to a noncustodial parent, according to final regulations released last year by the IRS. Although the custodial parent may consent to release the exemption by stipulation or agreement and the court may incorporate the consent into a judgment, a state court cannot force the custodial parent to relinquish a federal right. As tax season is upon us, mediators should also know that the regulations retain the previous rule requiring any release of exemption to be made on IRS Form 8332 or a substantially

similar form. The new regulations also clarify for the first time that a court order or separation agreement is not effective as a release. 73 CFR 37797-02, 2008 WL 2600171

**Deductibility of Alimony in Case of Child Support Arrearage** A divorced taxpayer's support payment to his ex-wife must be allocated to child support and may not be deducted as alimony, according to the U.S. Tax Court. In disallowing the alimony deduction, the Court ruled that his payments had to be applied first to satisfy child support obligations. The taxpayer was obligated to pay approximately \$20,000 in annual child support and \$12,000 in annual alimony; instead, he paid only about \$18,000 that year and sought to deduct about \$12,000 as alimony. *Haubrich v. Comr.*, T.C. No. 24079-06 (December 30, 2008)



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**“A judge is a law student who marks his own examination papers.”**

**H. L. Mencken**



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## WHAT'S NEWS?

### National & International Family News

Chronologically Compiled By Les Wallerstein

**Infidelity Increases** The most consistent data on infidelity come from the General Social Survey, sponsored by the National Science Foundation, which has been tracking the social behaviors of Americans since 1972. The survey data in any given year show about 10% of married people — 12% of men and 7 % of women — say they have had sex outside their marriage. But detailed analysis of the data from 1991 to 2006 reveals that the lifetime rate of infidelity for men over 60 increased to 28% in 2006, up from 20% in 1991. For women over 60 the increase was from 5% in 1991 to 15% in 2006. There are also infidelity increases in younger marriages. In 2006 about 20% of men and 15% of women under 35 said they had been unfaithful — up from 15% and 12% respectively in 1991. (Tara Parker-Pope, New York Times, 10/28/2008)

**Multiple Same-Sex Weddings** Some same-sex couples say they need multiple unions to cover the nation's uneven legal patchwork. States such as Massachusetts and New York recognize out-of-state same sex marriages but don't recognize domestic partnerships. The reverse is true in Washington and Oregon, which recognize gay domestic partnerships but restrict marriage to a man and a woman. A retired lesbian couple said they pack powers of attorney, their domestic partnership papers and their marriage certificate when they travel. (Phred Dvorak, Wall Street Journal, 10/30/2008)

**Women Buying Health Insurance Pay a Penalty** According to new data from insurance companies and online brokers, striking new evidence has emerged of a widespread gap in the cost of health insurance. Women pay much more than men of the same age in the individual insurance market that does not cover maternity care. The co-president of the National Women's Law Center, an advocacy group that has examined hundreds of individual policies, said the wide variations in premiums could not possibly be justified by actuarial principles. (Robert Pear, New York Times, 10/30/2008)

**Economic Stress & Seasonal Divorce** Spring and summer are still the seasons for marrying, while fall and winter tend to be the high seasons for divorce. A New York divorce lawyer surmised that those spikes tend to occur late in the year because family vacations have already been taken and bonuses have already been doled out, and people in shaky marriages begin to ask themselves "Do I want to keep sailing on this lifeboat or is it time to bail out?"(Vincent M. Mallozzi, New York Times, 11/2/2008)

**Three States Ban Same-Sex Marriage** The electorate in California, Florida and Arizona banned same-sex marriages by amendments to their state constitutions. Since the California Supreme Court

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declared limiting marriage to a man and a woman was unconstitutional, 17,000 same-sex marriages have been performed since June 2008. An array of California cities and civil rights groups say they will sue to block the ban in that state. (Jesse McKinley & Laura Goodstein, New York Times, 11/6/2008)

**Global Gender Gaps** The World Economic Forum, a Swiss research organization released its 2008 Global Gender Gap report. Based on United Nations data it ranked Norway, Finland and Sweden as the countries that have the most equality of the sexes, and Saudi Arabia, Chad and Yemen as having the least. The report found that girls and women around the world had generally reached near-parity with their male peers in literacy, access to education and health and survival. But in terms of economics and politics, the gap between the sexes remains large. The United States ranked 27<sup>th</sup>, above Russia (42<sup>nd</sup>) and China (57<sup>th</sup>) and India (113<sup>th</sup>), but below Germany (11<sup>th</sup>) Britain (13<sup>th</sup>) France (15<sup>th</sup>) and Cuba (25<sup>th</sup>). (New York Times, Reuters, 11/13/2008)

**Britain Grapples With Islamic Divorce** The Church of England has its own ecclesiastical courts. British Jews have had their own religious courts for more than a century. But ever since the archbishop of Canterbury called for aspects of Islamic Shariah to be embraced alongside the traditional legal system, the government has been grappling with a public furor issue over the issue... and as the uproar continues the popularity of the courts among Muslims has blossomed.

Almost all of the cases involve women asking for divorce. According to the justice minister Jack Straw, "There is nothing whatever in English law that prevents people from abiding by Shariah principles if they wish to, provided that they do not come into conflict with English law, which would always remain supreme." (Elaine Sciolino, New York Times, 11/19/2008)

**California's High Court to Rule on Marriage Ban** California's Supreme Court will review the constitutionality of the voter-approved ban of same-sex marriage, while declining to suspend the ban. Oral arguments are expected in March 2009. (Jesse McKinley, New York Times, 11/22/2008)

**Nebraska Limits Safe-Haven Law** The Legislature revised a law permitting parents to hand children up to the age of 18 over to state custody without prosecution, limiting its reach to infants up to 30 days old. The original law was intended to protect newborns from being abandoned or killed by panicked young mothers. But since September 1<sup>st</sup>, 35 older children have been dropped off at hospitals, prompting national soul searching about the limits of parental responsibility. It has also highlighted what child welfare experts say is a widespread shortage of public and private aid — a shortage that is likely to worsen in the current economic crisis. (Erik Eckholm, New York Times, 11/20/2008)

**Surrogacy in America** Infertility affects about 7.3 million people in the United States. Approximately one-third



of infertility is attributed to the female partner, one-third to the male partner and one-third to a combination of factors that either affect both partners or cannot be explained. A national support group estimates that there have probably been about 28,000 surrogate births since 1976, a figure that includes gestational and traditional surrogacies. Surrogacy is largely unregulated, and laws vary by state. (Alex Kuczynski, NY Times, 11/30/2008)

**Frozen Embryo Dilemmas** At least 400,000 embryos are frozen around the country, and many people who are done having children are finding it harder than they had ever expected to decide the fate of those embryos. According to a new survey of 1,020 fertility patients (published in the journal of Fertility and Sterility), among those who wanted no more children, 53% did not want to donate their embryos to other couples, mostly because they did not want someone else bringing up their children, or they did not want their own children encountering an unknown sibling someday. While 43% did not want the embryos discarded, about 66% said they would be likely to donate the embryos for research. Embryos can remain viable for a decade or more if frozen properly. (Denise Grady, New York Times, 12/4/2008)

**Gay Rights Advocated at the UN** An unprecedented declaration seeking to decriminalize homosexuality won the support of 66 countries in the United Nations General Assembly, as opponents criticized it as an attempt to legitimize pedophilia and other “deplorable acts.”

The declaration sponsored by France found broad support in Europe and Latin America. The French state secretary for human rights asked, “How can we tolerate the fact that people are stoned, hanged, decapitated and tortured only because of their sexual orientation?” The United States refused to support the non-binding measure, as did Russia, China, the Roman Catholic Church and members of the Organization of the Islamic Conference. (Neil MacFarquhar, New York Times, 12/18/2008)

**Iraq GIs Fight War — And For Custody** The military does not track statistics on custody disputes, but as military divorce rates rise — particularly among enlisted female troops — so do child custody struggles in which military service overseas has become a wedge issue, according to experts in military family law. As spouses seek an ‘advantage’ by citing deployment as they battle for kids, female troops may be particularly at risk, because mothers are more likely to have custody of children after a divorce. More than 20 states have passed legislation over the past two years to limit the impact of deployments on custody decisions. Congress is expected to hold hearings on the issue next year. (Ann Scott Tyson, The Washington Post, 12/30/2008)

**In Housing Fall, Breaking Up Is Harder to Do** With nearly one in six homes worth less than the mortgage owed on it, according to Moody’s Economy.com, divorce lawyers and

*Continued on next page*



financial advisers around the country say the logistics of divorce have been turned around. In a normal economy, couples typically build equity in their homes, then divide that equity in a divorce, either after selling the house or with one partner buying out the other's share. But after the recent boom-and-bust cycle, more couples own houses that neither spouse can afford to maintain, and that they cannot sell for what they owe. For couples already under stress, the family home has become a

toxic asset. Some divorce lawyers say that business has slowed or that clients are deciding to stay together because there are no assets left to help them start over. (John Leland, NY Times, 12/30/2008)



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**A grandfather explains to his grandson that within every person are two wolves fighting—one the wolf of anger, resentment and fear, the other of compassion, hope and love. The grandson asks which wolf wins and the grandfather answers, “The one you feed.”**

**Anonymous Cherokee Tale**



# MCFM'S 7<sup>th</sup> ANNUAL FAMILY MEDIATION INSTITUTE:

A Photo Array By Lynn K. Cooper & Debra L. Smith

Photo By Deb Smith



John Fiske

**Janet Miller Wiseman, MCFM's  
2008 John Adams Fiske Award Honoree**

Jerry Weinstein



Photo By Lynn Cooper



Kathy Townsend    John Fields    Oran Kaufman & Harry Manasewich  
Photo By Deb Smith



**Deb Smith**

Photo By Lynn Cooper



**Ron Zagaja & June Adams Johnson**

Photo By Lynn Cooper



**Ramona Goutiere**

Photo By Lynn Cooper



**Patrice O'Brien & Diane Spears**

Photo By Deb Smith



**Mary Johnston**  
Photo By Lynn Cooper



**Julie Ginsburg & Charles Kindregan**  
Photo By Lynn Cooper



**Mary Socha, Rebecca Gagne, Marcia Tannenbaum, Lisa Smith & Steve McDonough**  
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**Mitch Gordon & Martha Ashe**  
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**Michael Leshin**  
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**Mark Zarrow & Lynda Robbins**

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**Jon Fields**

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**Lynn Cooper**

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**Jeanne Kangas, Shuneet Thomson & Harry Manasewich**

Photo By Deb Smith



**Phyllis Federico**

Photo By Lynn Cooper



**President Kathy Townsend**  
with an armful of MCFM's  
new recycleable shopping bags

Photo By Lynn Cooper



**Kate Fanger**

Photo By Lynn Cooper



**Laurie Udell Christine Yurgelun & Les Wallerstein**

Photo By Deb Smith



**Lynda Robbins, Charles Kindregan & Kathy Townsend**

Photo By Deb Smith



**Harry Manasewich & Jeanne Kangas**

Photo By Deb Smith



## MY GRATITUDE & OUR GOAL-SETTING FOR THE NEXT QUARTER CENTURY

To Members of The Mass Council on Family Mediation:

I am sending you heartfelt thanks for awarding me The John Adams Fiske Award for Excellence in Mediation for 2008. I believe that since 1981, when we created MCFM, we, as an official council, and, often, as an ad hoc committee, achieved a paradigm shift from the usual assumption of adversarial divorce in Massachusetts to the much more common assumption of mediated solutions. Together we worked hard to achieve institutional change. We could not have predicted in a million years just how successful we would be. Now, we may look back with satisfaction and say: “Yes, together, we brought about *much* needed change!”

John Fiske, who wrote a glowing tribute in the last issue of the MCFM Quarterly, has been pivotal to the success of our organization, with his fabulous networking skills, great contacts, diplomacy, and willingness to do much of the heavy lifting. That is why the John Adams Fiske Award for Excellence in Mediation exists.

Families and associates *need* mediation for *very* serious issues relating to finances, affairs, incest, estate settlement between adult siblings, disputes between co-owners of condominiums, family businesses and much more, *not* just for divorce. I, as many of you, primarily serve couples requesting divorce mediation. Nearly thirty years ago I designed “Mediation Therapy” or decision making for couples in crisis using the “collaborative negotiation mediation” model and principles I use for mediation and negotiation in businesses, schools, organizations and psychotherapy. Thirty years is both a long time and seems like yesterday.

Thanks to the housing, credit, and market crises, many of us who planned to work for sheer pleasure for another ten years, now have the opportunity to collaborate for twenty years or more, leading to the prospect of a fifty-year career and fifty years of working together!

We achieved a paradigm shift. Now it is time to set new goals. With the help of one another, who knows what we can achieve? Let’s take another look-back in October of 2033. I’ll be there, will you?



Photo By Deb Smith

My best regards to each and every one of you.

**Janet Miller Wiseman**  
**Certified Divorce and Family Mediator, MCFM**  
**The Negotiation Collaborative**  
**138 Lowell Street**  
**Lexington, MA 02420**  
**[www.mediationboston.com](http://www.mediationboston.com)**  
**[Millerwise@aol.com](mailto:Millerwise@aol.com)**



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## MCFM NEWS

**FOR MCFM MEMBERS ONLY**  
**visit [www.mcfm.org](http://www.mcfm.org)**  
**The *NEW* Child Support Guidelines Worksheet:**  
***AUTOMATED***

In early January 2009 all MCFM members received an email attachment with the NEW Child Support Guidelines Worksheet as an Excel spreadsheet. It is now available on the MEMBER'S ONLY section of MCFM's web site. Attorney Michael Tremblay has generously provided this new tool.

**Aside from automatically calculating guideline support, additional features include:**

- The display of decimals was removed, so all sums round off to the nearest dollar and all percentages are rounded off to whole numbers.
- To correct division by zero problems when income numbers are odd... like below-zero income scenarios... the spreadsheet will not let income go below zero. The guidelines are silent on that issue, but this is the only way for the remaining computations to come out valid.
- The spreadsheet also won't let the payor's proportional support drop below zero. In some scenarios, it could create a negative number, meaning the custodial parent would owe the non-custodial parent.
- The spreadsheet posts red warning flags if your income is above \$250,000 per year, or below \$100 per week, or more than 5 children, and tells you that the maximum or minimum has been applied.
- The spreadsheet caps the support at that minimum presumptive level (as the guidelines state) if the income is over \$250,000.
- The spreadsheet contains a "quick calculation box" that converts monthly, semi-monthly, biweekly and annual amounts into weekly amounts.

***THANKS MIKE!***

**Attorney Michael J. Tremblay**  
**P.O. Box 557**  
**Marlborough, MA 01752**  
**508-485-4500**  
**[attorney@tremblay.com](mailto:attorney@tremblay.com)**  
**[www.attorney.tremblay.com](http://www.attorney.tremblay.com)**






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## 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.

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



### ***HELP BUILD OUR 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@sociallaw.com](mailto:wallerstein@sociallaw.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](mailto:masscouncil@mcfm.org)



## CLASSIC MCFM "T" SHIRTS

Equal blends of cotton & polyester  
Choose black or cream

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**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.

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**Ashland, NH 03217-0059**

**QUESTIONS? CALL: 781-449-4430**



Front



Back

**All lettering  
& graphics  
are bright  
GREEN**



## ANNOUNCEMENTS

\*\*\*\*\*  
*All mediators and friends of mediation are invited to submit announcements of interest to the mediation community to [wallerstein@sociallaw.com](mailto:wallerstein@sociallaw.com), for free publication.*  
 \*\*\*\*\*

### THE MEDIATION & TRAINING COLLABORATIVE (TMTC) *offers*

#### 34 HOUR, BASIC MEDIATION TRAINING

Northampton, MA

March 7, 12, 19, 26 and April 2, 4, 2009

This highly interactive, practice-based training is open to anyone who wishes to increase skills in helping others deal with conflict, whether through formal mediation or informal third-party intervention processes in other professional settings. TMTC is a court-approved mediation program, and these trainings meet SJC Rule 8 and Guidelines training requirements for those who wish to become court-qualified mediators.

**For more details or brochure, contact Susan Hackney  
 at [shackney@communityaction.us](mailto:shackney@communityaction.us) or 413-774-7469 x 16**



### DIVORCE MEDIATION TRAINING ASSOCIATES

*offers*

#### DIVORCE MEDIATION TRAINING

March 11, 12, 13, 20 and 21, 2009

Divorce Mediation Training Associates, John A. Fiske and Diane Neumann, offer this forty-hour training to equip people with basic knowledge and practice of divorce mediation skills and steps. Their approach is to explain these skills and then offer the trainees numerous opportunities through role-play to help Bill and Sally Johnson get divorced. No one has succeeded yet. With now retired Philip D. Woodbury they trained approximately 1,000 people, including six of our currently sitting probate and family court judges, since 1988. They continue to offer a great start for those interested in learning more about divorce mediation.

**For more information, or to register for one of our next trainings, go to  
[www.dmtatraining.com](http://www.dmtatraining.com) or email  
 Diane at [dianeneumann@aol.com](mailto:dianeneumann@aol.com) or John at [jadamsfiske@yahoo.com](mailto:jadamsfiske@yahoo.com).**



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**PARENTING SOLUTIONS PRESENTS  
UPCOMING WORKSHOPS**

**7:30 - 9 PM**

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

**DISCIPLINE THAT WORKS SERIES**

**With Sylvia Sirignano, Ph.D.**

March 12: What To Do When Your Child Won't Listen

**FOR PARENTS OF TEENS**

**With Glenn Smith, LICSW**

March 4: Sex, Drugs, Rock 'n Roll and the Internet

**PARENTING TOGETHER WHETHER  
MARRIED OR DIVORCED**

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

March 18: After Divorce: Co-parenting with a Difficult Ex-Spouse

**PRE-REGISTRATION IS REQUIRED FOR ALL WORKSHOPS**

**Register by phone: 508-366-7557**

**Register online: [www.ParentingSolutionsPrograms.com](http://www.ParentingSolutionsPrograms.com)**

Location: 6 Colonial Drive, Westborough, MA



**FRAMINGHAM COURT MEDIATION SERVICES**

*presents*

**BASIC TRAINING IN MEDIATION**

This 36-hour course emphasizes facilitative mediation as a method of alternative dispute resolution. It is taught according to Rule 8 of the Supreme Judicial Court.



**Course dates are:**

Tuesday	March 24, 1-5 pm
Friday	March 27, 8:30-3:30
Saturday	March 28, 8:30-3:30
Tuesday	March 31, 1-5 pm
Friday	April 3, 8:30-3:30
Saturday	April 4, 8:30-3:30

**For more information and to register, call 508-872-9495 or email [info@framinghammediation.org](mailto:info@framinghammediation.org).**



**ELDER DECISIONS / AGREEMENT RESOURCES, LLC**

*presents*

**ELDER MEDIATION TRAINING FOR MEDIATORS**

**Two Day Training with *NEW, Optional Post-Training-Intensive on Day 3*  
Tues, Wed, Thurs - April 28-30**

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.

Trainers: The Elder Decisions Team: Arline Kardasis, Rikk Larsen, Crystal Thorpe, Blair Trippe, Emily B. Saltz, and attorney Harry S. Margolis or Jeffrey A. Bloom.

**This comprehensive two-day training program will cover: LEGAL PLANNING** (Planning for Financial Management, MassHealth Eligibility Medical Decision Making, Asset Protection & Guardianship); **MENTAL & PHYSICAL EFFECTS OF AGING** (Maintaining Independence, Coping with Loss, Caregiving and Aging Families & Long Term Care Options for Elders); **ADVANCED MULTI-PARTY MEDIATION SKILLS & CHALLENGES OF ELDER MEDIATION** (Neutrality vs. Mediator Advocacy, Common Hurdles, New Strategies for Intake, Working with Large, Dispersed Family Groups, Ethical Concerns, Challenges of Aging, and Marketing your Elder Mediation Practice).



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**Optional Post-Training Intensive on Day Three** (NEW: in response to requests by previous trainees) Extended Multi-Party Role Play Marketing Your Elder Mediation Practice... Optional Day 3 from 9:00 am - 3:00 pm

**Two Days Training: \$525 six weeks prior to program date (\$595 thereafter).**  
**Post-Training Intensive: \$200 six weeks prior to program date (\$230 thereafter).**  
Includes lunches, snacks and course materials  
**Location: The Walker Center, 171 Grove Street, Newton, MA**

**Log on now to register at [www.ElderDecisions.com](http://www.ElderDecisions.com)**  
**OR call: 617-621-7009; OR email: [training@ElderDecisions.com](mailto:training@ElderDecisions.com)**



**ELDER DECISIONS / AGREEMENT RESOURCES, LLC**

*presents*

**CONFLICT RESOLUTION SKILLS TRAINING  
FOR ELDERCARE PROFESSIONALS, NURSES &  
SOCIAL WORKERS**

**9:00 am -3:00 pm in Newton, MA**  
**Tuesday, May 5, 2009**

**What You Will Learn:**

- **To facilitate multi-party decision-making**
- **To work with clients, patients and families with strong emotions**
- **To build Conflict Resolution skills**

**Qualifies Attendees for:**

5 hours of CCM continuing education credits  
5 Social Work CEUs  
4.75 hours of Nursing CEUs

**Cost: \$195 six weeks prior to program date (\$225 thereafter)**  
**Includes lunch, snacks, and course materials.**

**Location: The Walker Center, 171 Grove Street, Newton, MA**  
**Log on now to register at [www.ElderDecisions.com](http://www.ElderDecisions.com)**  
**OR call: 617-621-7009; OR email: [training@ElderDecisions.com](mailto:training@ElderDecisions.com)**



## ***THE FMQ WANTS YOU!***



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

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

***NOW'S THE TIME TO SHARE YOUR STORY!***



## **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](http://www.massuma.com)



## **COMMUNITY DISPUTE SETTLEMENT CENTER**

**Building Bridges • People to People • Face to Face**

60 Gore Street  
Cambridge, MA 02141

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](mailto:cdscinfo@communitydispute.org), or at our web site: [www.communitydispute.org](http://www.communitydispute.org).



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## JOIN US

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

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

**REFERRAL DIRECTORY:** Every MCFM member is eligible to be listed in MCFM's Referral Directory. Each listing in the Referral Directory allows a member to share detailed information explaining her/his mediation practice and philosophy with prospective clients. The Referral Directory is printed and mailed to all Massachusetts judges, and to each listed member. **The most current directory is always available online at [www.mcfm.org](http://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](http://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](http://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 <lynncooper@aol.com>**. For certification or re-certification applications contact **Ramona Goutiere at <masscouncil@mcfm.org>**.



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