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MCFM

Family Mediation Journal

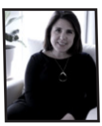
The Massachusetts Council On Family Mediation is a nonprofit corporation established in 1982 by family mediators interested in sharing knowledge and setting guidelines for mediation. MCFM is the oldest professional organization in Massachusetts devoted exclusively to family mediation.

EDITOR'S MESSAGE

Dear Mediators,
Welcome and thank you for taking the time to take a look at this recent publication of the Family Mediation Journal (FMJ). We appreciate all of the submissions we received for this edition. We want to continue to use the FMJ, the MCFM newsletter and blog as a means to embrace our community of mediators through education and connection and we want you all to be a part of that! Moving forward, we are always open to new content and any feedback you may have so we invite you to send any and all blog or FMJ articles to us for publication at erin@ewpennocklaw.com and clmaylaw@verizon.net.

Thank you!

Your Editors,



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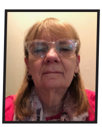

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PRESIDENT'S MESSAGE
By Kim Whelan

I started my term as MCFM President last May, a little over two years after the global pandemic began. I had watched proudly as the MCFM organization and our members stepped up and adapted to the challenges of COVID, finding new ways to support our clients and also our fellow professionals. Personally, as I slogged my way through the pandemic, I was very grateful for the personal and the professional support I received from this wonderful mediation community.

I also appreciated the work of MCFM's Diversity, Equity & Inclusion Committee, whose work took on an increased significance and meaning in the aftermath of George Floyd and other events that motivated us to seek change. MCFM renewed our commitment to making mediation more welcoming to more diverse professionals and clients – striving to advance mediation to transform the way ALL families resolve conflict.

One of my colleagues and a mentor I admire greatly, John Fiske, often quotes one of his own mediation mentors, Margaret Shaw. "In mediation, everything we do has an advantage and a disadvantage." I think this is particularly applicable to the various responses we all made to the challenges of the pandemic. At the beginning of COVID, there was not a whole lot of choice. As individual mediation professionals and as an organization, we were forced to pivot from in-person meetings to virtual meetings – and we had to get up to speed quickly! Zoom came with some significant disadvantages but also with some surprising advantages and benefits.

Now, as things shift back to "the new normal", we are again faced with adapting to new circumstances – both as individuals and as a professional organization. What changes in how we do business do we want to keep? What do we want to get back to? What new changes are needed now?

The MCFM board is focused on how our organization continues adapting in order to best serve our members and the public moving forward. Zoom offers some advantages: the convenience of attending events from home, more inclusion for geographically diverse participants, the ability to bring in remotely-located presenters, and even the environmental benefit of reduced commuting to meetings. But as Margaret Shaw would say "everything we do has its advantages and disadvantages". The convenience of Zoom comes at a price. Many of us are hungry to meet again in person (at professional development workshops, peer support groups, mediator meals, etc.) because, while Zoom has its perks, in-person gatherings can offer more opportunities (both formal and informal) to begin and/or deepen valued connections with our MCFM.

The challenge now is to balance these competing priorities and to develop a blend of formats that make our MCFM events and educational outreach the right combination of "inclusive/convenient" as well as "connecting/meaningful". The MCFM Board is wrestling with these issues and we welcome your input. It will be a balancing act. Our Annual Institute this December will again be virtual. Our bi-monthly professional development workshops will likely be some mix of virtual and in-person going forward. We are also exploring ways to offer more in-person opportunities to gather in the near term – such as re-invigorating our Mediator Meals offerings and our geographically-based peer support groups. Please reach out to us if you have questions or suggestions.

And stay tuned because we will be celebrating MCFM's 40th anniversary this year. We were founded in 1982 but we decided to postpone the forty-year celebration for one year (until 2023) in the hopes that we can plan an in-person extravaganza. More details to follow.

I will close by thanking you for your continued support of this community. I am honored to serve as President of MCFM because I am passionate about the capacity of mediation to help families in conflict. I want to acknowledge the significant time and talent contributed by the dedicated directors on MCFM's board. I also want to express my gratitude for the generosity and enthusiasm of the mediation community and all of you. Together, we can continue to make progress on MCFM's important mission:

THE MCFM MISSION: ***Advancing mediation to transform the way families resolve conflict.***

- Increasing public awareness of family mediation
- Providing mediation resources to the public
- Promoting high standards of professional practice
- Delivering premier professional development
- Advocating for the use of family mediation
- Forging alliances in the dispute resolution community

Thank you.
Kim

Kim Whelan is a mediator and CDFA® (Certified Divorce Financial Analyst). Kim is the President of MCFM and also serves on the board of MCLC (Massachusetts Collaborative Law Council). Kim focuses her practice on mediation and divorce financial analysis with the goal of helping her clients maintain their financial and emotional integrity for their lives going forward. Kim has spoken at several national conferences including APFM and IACP, and she presents regularly on divorce financial analysis at trainings at DMTA and workshops in Massachusetts.

CAVANAUGH - MANY QUESTIONS NOW AND HOPEFULLY MORE ANSWERS IN THE FUTURE

By: Carol Lynn May

EDITOR's NOTE: The recent case Cavanaugh v Cavanaugh, 490 Mass. 398, 191 N.E. 3d 975 (2022) is a hot topic of conversation amongst divorce professionals these days! Thank you to Jonathan Fields, Susan Miller and Fern Frolin for their great insight and discussion of the impact this case during the MCFM Family Mediation Institute. Here is some additional insight from our own, Carol Lynn May!

In September of this year, the Supreme Judicial Court caused not quite an earthquake, but certainly shockwaves in the Probate and Family Court with its groundbreaking decision in *Cavanaugh v. Cavanaugh*, 490 Mass. 398, 191 N.E. 3d 975 (2022).

This post-divorce case arose out of a modification action where both parties sought a review and modification of the support order issued in a divorce action and where the mother sought alimony for the first time.This case involved a long-term marriage of 23 years, where the parties had enjoyed a comfortable middle class lifestyle during the marriage.The parties had 3 sons, with the two older sons over the age of majority and the younger son was a minor who attended the same private preparatory school his older brothers attended.

In *Cavanaugh*, the SJC discusses a number of legal principles and practices in the Probate and Family Court, and concludes as follows:

1. *Concurrent Alimony and Child Support Orders*

Since the passage of the Alimony Reform Act in 2011, the Probate Court generally ordered only child support (although sometimes only alimony or an unallocated order) where the parties' combined income fit within the threshold of the Child Support Guidelines. (The courts often relied on Section 53(c)(2) which instructed that "When issuing an order for alimony, the court shall exclude from its alimony calculation:...gross income which the court has already considered for setting a child support order." This reading of the Alimony Reform Act ("ARA"), is now clearly discredited in *Cavanaugh*.)

In 2021, the Appeals Court in the case of *Calvin C. v. Amelia A.*, 99 Mass. App. Ct. 714 (2021), held that concurrent orders for alimony and child support could be ordered in the same case. Cavanaugh broadens and extends this holding by now requiring Probate Court judges to consider concurrent orders in cases where child support and alimony are both available.

Specifically, *Cavanaugh* instructs the Probate Court Judge now to:

> 1. Calculate alimony first, in light of the statutory factors enumerated in Section 53 (a) of the ARA, and, with the exception of reimbursement alimony, that the amount of alimony should be determined with reference to the recipient spouse's need for support to allow the spouse to maintain the lifestyle enjoyed prior to the termination of the parties' marriage.Then child support is to be calculated using the parties' post-alimony incomes.
>
> 2. Calculate child support first.Then alimony is to be calculated, considering to the extent possible the statutory factors enumerated in Section 53(a) of the ARA.
>
> 3. Compare the base award and tax consequences of the order that would result from the calculations in step (1) with those of the order that would result from the calculations in step (2).

The judge "should then fashion an order which would be the most equitable for the family, considering the mandatory factors set forth in G.L.c. 208, Section 53(a), and the public policy that children be supported as completely as possible by their parents' resources...Where the judge chooses to issue an order that does not include any award of alimony, the judge must articulate why such an order is warranted in light of the statutory factors set forth in Section 53(a)."

And it is in a footnote [Note 9], where the SJC explains that: "Likely the only scenario where a judge may properly avoid articulating where the judge denies alimony is where such denial is pursuant to a valid separation agreement, either independent from or as incorporated into a divorce judgment. However, where a separation agreement providing that no alimony shall issue has been both incorporated and merged into a divorce judgment, a judge should first evaluate a later request for new or modified alimony under the "material change in circumstances" standard. If a material change in circumstances warranting a modification of the divorce judgment is found, the judge should then proceed according to the three-step framework outlined [by the Cavanaugh Court].

The omission of an alimony award in the merged divorce judgment of the parties in Cavanaugh, did not mean that the Court in a post-divorce action could not newly consider alimony.

<u>Questions for mediators and attorneys:</u>
Will a financial person be needed in certain cases now to provide these calculations? What is to be done where the parties cannot afford a financial or tax expert?

As the new calculations are likely to require higher support orders, what sort of factors will a Court consider to deviate from the calculated support order? How frequently will probate court judges factor equitable considerations in fashioning their support orders? Will Child Support Guidelines now in certain cases need to be completed and filed in multiple versions?

2. *Computation of Income*

Pursuant to the Child Support Guidelines, income is defined very broadly to include "gross income from whatever source, regardless of whether that income is recognized by the Internal Revenue Code or reported to the Internal Revenue Service or state Department of Revenue or other taxing authority.'

Cavanaugh held, pursuant to the Guidelines, that "interest and dividends" are to be included, without qualification, in the calculation of gross income. Cavanaugh further held that "the income and capital gains on [the] Father's savings and 401K plan" were improperly excluded by the trial judge from the calculation of the father's gross income for purposes of calculating child support." The SJC, however, gave no guidance to the Probate Courts, or to practitioners, as to how capital gains are to be calculated on a 401K or other retirement plan. Nor did the SJC provide any guidance as to how to calculate these contributions when they are not generally withdrawn until some date in the future, when their value can be higher or lower given the stock and bond markets, or when penalties can be assessed due to the age of the participant in the Plan, or other possible tax consequences as a result of withdrawing these funds.

Further, citing a Pennsylvania Superior Court case that has not received uniform support from other states, and despite the fact that it is not specifically included in the list of income sources provided in the Guidelines, Cavanaugh held that employer contributions to a retirement account "constitute income for the

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purposes of calculating child support". The Cavanaugh Court found persuasive the conclusion of the Pennsylvania Court that "if we were to determine that an employer's matching contributions are not income, it would be possible for an employee to enter into an agreement to take less wages in exchange for a heightened matching contribution." Interestingly, there was no evidence offered before the trial court in Cavanaugh that this was the case, and query how many employees are in a bargaining position to effectuate such an agreement with their employers in most cases.

Cavanaugh also held that employer contributions to a health savings account are also to be considered income for purposes of calculating child support.

Finally, Cavanaugh found that it was an abuse of discretion for the trial court to exclude the income from the father's second job. This may be fact-specific to the Cavanaugh case, as it does not appear that the SJC intended to overrule or modify the Child Support Guidelines which provide that, "If after a child support order is entered, a payor or recipient begins to work overtime or obtains a secondary job, neither of which was worked prior to the entry of the order, there shall be a presumption that the overtime or secondary job should not be considered in a future child support order."

<u>Questions for mediators and attorneys:</u>
Will the Probate Courts consider applying some of the definitions of income concerning the calculation of child support in Cavanaugh to alimony calculations? What sort of equity considerations will be considered acceptable or applied, when reviewing the calculations and determinations of the Probate Court in the future where alimony is not awarded in a divorce action?

3. *Retroactive Relief*

The SJC confirmed that it is in the discretion of the trial court whether to award retroactive relief to a modification order. However, if retroactive relief to a reduction in child support were to be awarded due to the emancipation of the parties' oldest son, the SJC noted that the order should be retroactive "to the week immediately following... the date when the oldest son graduated from college and became emancipated."

<u>To attorneys:</u> A word of caution in crafting requested orders for retroactive relief and as to when a child graduating college is emancipated.

4. *Findings Beyond the scope of the pretrial order*

The SJC noted that child custody and parenting time were not among the issues identified in the trial judge's final pretrial order. "Thus, all the issues to be decided at trial related to the finances of the parties; child custody and parenting time were not among the issues to be decided."

To attorneys: Attorneys in divorce trials will now need to be extremely careful in fashioning their requests for the issues to be considered and heard at trial with respect to the final Trial Orders issued by the trial judge.

5. *Spousal disqualification*

General Laws c. 233, section 20...provides in relevant part that [e]xcept in a proceeding arising out of or involving a contract made by a married woman with her husband...neither husband nor wife shall testify as to private conversations with the other." On the facts of this case, held the Court: "although no separate action may be maintained on a separation agreement that has merged with the judgment of divorce, it is not clear to us that an action, such as this, arising out of a divorce judgment that incorporated and merged the provisions of a separation agreement, does not in some capacity "involve" a contract made by spouses...Therefore, where we understand the current action to involve a contract made by the parties, such action falls within the contract exception to the spousal disqualification such that, on remand, both parties shall be permitted to testify about private marital communications concerning the relevant provision of the separation agreement, as incorporated and merged into the judgment of divorce."

This ruling in Cavanaugh allowed the trial court on remand to consider statements made by the parents regarding the younger son's attendance at preparatory school, the payment for which was an issue in the trial court. The effect of this evidentiary-related ruling will be seen in future trials in the Probate Court, but is unlikely to cause the same level of concern raised by the financial-related matters considered in Cavanaugh.

6. *Emancipation of Children*

The parties' middle son attended West Point Academy. The Father contended that the middle son was emancipated, eliminating the child support obligation for this child. The parties in their Separation Agreement provided that "for all provisions [hereunder], including those related to child support, emancipation of the children occurs 'upon the happening of any of' a number of enumerated events, including 'entry into the military service of the United States."

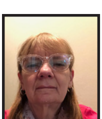
The SJC agreed that where the middle son was not principally dependent on either parent for support, but instead "is principally dependent on the United States military, the [trial] judge properly ruled that he was emancipated as of his entry at West Point."

The SJC then went further, and strongly expressed its disapproval of the parties' definition of emancipation in the Separation Agreement. Noted the SJC: "[I]t is well established that 'parents may not bargain away the rights of their children to support."

"...Additionally, G.L.c. 208, Sec. 28, confers on the court the power to award support for a child who has attained the age of eighteen in certain circumstances. 'The parties by [their] agreement, cannot deprive the court of this power.' Thus, the parties may not and if so, agree that a child is emancipated under conditions broader than provided for by statute and thereby prevent the court from considering whether to award child support for a child who may otherwise receive support under the statute, as such agreement would amount to the bargaining away of the child's right to support."

Given Cavanaugh's strong emphasis that "it is well established that parents may not bargain away the rights of their children to support," query as to the extent and limits of any deviations from the Child Support Guidelines that will be allowed in the future.

In sum, Cavanaugh raises numerous questions for mediators and attorneys in divorce and modification matters. Hopefully, as the courts deal with cases involving the possibility of, or actual, concurrent child support and alimony orders, these answers will become clearer.



Carol Lynn May is an experienced family law attorney, whose practice is now primarily concentrated in mediation, conciliation, and collaborative law. Her office is located in Wayland, Massachusetts, and she can be reached at clmaylaw@verizon.net

VACATION HOMES IN DIVORCE: ANOTHER ASSET TO CONSIDER

By: Dr. Lynne C. Halem

The marital home may not be the only real estate that requires consideration at the time of divorce. What to do with the family vacation home or homes is a frequently asked question, one that may not produce ready answers.

Some couples own timeshares that they consider the family "vacation spot." When these real estate investments are actually used by the family or exchanged for other vacation destinations, they often become a meaningful asset to the family. In other situations, the timeshare goes virtually unused, incurring service, membership, and even mortgage fees that may go unpaid for months or years. Over time this type of real estate investment has decreased in value, making the sale of timeshares a difficult undertaking. Couples often relinquish them in exchange for outstanding debt on the property or try to sell them for pennies on the dollar. In summary: when regularly used, timeshares can provide a needed family retreat; when unused, they present a drain on revenue and often engender regret for dollars wasted.

<u>To Keep or Sell the Vacation Home: Not a Simple Question</u>

- One party may argue that the vacation home has afforded the family the advantage of summer or winter vacations or a new community of friends, and thus represents an irreplaceable part of the children's family history.

- One party may feel that the home is too expensive to maintain and is simply not affordable, particularly if the family is going to maintain two principal homes. Indeed, the sale of the vacation home may be a necessary means to generate funds for each spouse to have their own residence.

- One party may argue that the vacation home has the added benefit of generating rental income, while the other feels burdened by the tasks involved with renting the property and may worry about the unpredictability of the rental income vis à vis the rising costs of upkeep.

<u>Working Toward Compromise</u>

Regardless of the arguments posed for keeping or selling the family's vacation home, the couple is faced with the task of determining the disposition of this asset. In the final analysis, the parties have to weigh each other's needs, concerns, and priorities in conjunction with sources of income and budgetary requirements. The retention of a vacation property may be reduced to a dollars and cents solution: is this an asset that is affordable to the couple or to either spouse as an individual?

Let's take a look at some of the choices made by divorcing couples in mediation: Families with more than one vacation home may elect for each spouse to retain one property, with the decision being based on preferences for the home and/or its affordability, or perhaps even its perceived value as an appreciating asset. In this kind of division, the value of the property is obtained and considered as part of the overall division of assets. Each spouse will own a designated piece of real estate and have control of its future disposition.

Couples with one or more vacation property(ies) may decide to hold the properties jointly, sharing the costs and the usage of the property(ies). Often, usage schedules are devised with specified times and rules governing each party's access to the property and responsibility for its expenses and oversight.The usage as well as the percentage ownership, may be equally divided or proportionately shared.

Families may decide to sell the vacation property, with the net proceeds being used to purchase a home for the spouse who is vacating the marital home. Alternatively, the proceeds of a sale may be divided between the parties equally or proportionately. Naturally, sale proceeds can be used for many different purposes, including funding for children's education, or as a source of funds to supplement the family's budgetary shortfall, or for starting a business or returning to school, and so the list goes on.

Another family may decide to retain the property as a source of income. This solution may be particularly attractive if the property is "underwater" with more money owed on the mortgage than its sale value. Here the objective is to keep the property until it appreciates in value. This solution strategy may well require renting the property to generate income in order to cover the taxes and operating costs of the property, thereby reducing out-of-pocket expenses needed to retain the property.

Sometimes the couple may elect to have one party buyout the other party's interest in the property, in cash or in exchange for other assets. Alternatively, buyouts may be structured over time, in installments.

Mediation: A Forum for Balancing Need and Priorities

In an effort to structure an agreement that is fair to all involved parties, it is especially important to evaluate the basis for each party's preferences. The mediator takes an active role in helping couples explore their options and weigh the family's needs and priorities. The mediator leads the couple in an analysis of the following considerations:

- The careful projection of the family's budgetary needs after the divorce is an essential undertaking. An emotional attachment to a vacation home, however strong, rarely takes priority over meeting the family's basic living costs.

- Considering children's preferences may help to weigh the "real" value of the property, although affordability cannot be ignored.

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- Part and parcel of the mediation process is to consider each individual's thoughts, feelings, and priorities in the context of actual moneys available and projected financial changes, if any, now and in the years to come.

- A couple may decide to stretch their finances in the present in order to retain a vacation property because they are anticipating a reduction in other expenses or an increase in sources of income in the future.

In mediation, couples need to view the entire picture, currently and in anticipation of future changes. Stepping outside the here-and-now helps the parties to fashion an agreement that is neither shortsighted nor overly optimistic, an agreement that makes sense not only at the time of divorce, but also in the years to come.

Dr. Lynne C. Halem (drhalem@cmdronline.com) is the director of the Centre For Mediation and Dispute Resolution in Wellesley, MA and has worked in the mediation field since 1982. She served two terms as President of the Massachusetts Council of Family Mediation. She is a recognized specialist in family policy and family law with a doctorate from Harvard University. Dr. Halem is the author of two scholarly books on Divorce: **Divorce Reform: Changing Legal and Social Perspectives** (1980) and **Separated and Divorced Women** (1982). She has been featured in *The Boston Globe* and *Boston Herald* articles on divorce mediation and has appeared on television and radio programs as an expert in the field of mediation and alternative dispute resolution.

**"Appreciation is a wonderful thing.
It makes what is excellent in others
belong to us as well"**

Voltaire

MEDIATION – A SOUND FIRST STEP TO A SUCCESSFUL PRENUP

By Laurie Israel

Prenuptial agreements are not always necessary when embarking on a marriage. They usually create more problems than they solve. The parameters set forth in the agreement sometimes causes a couple to become economic adversaries during their marriage. This can result in marital strife, and even divorce.

On the other hand, prenups can be very useful in creating marital equity in a number of situations, among those being if a future spouse owns a business (either his or her own, or a family business), has future inheritances and/or interests in trusts, or if one or both parties are embarking on a second marriage having children from their first marriage.

But there are problems even in generating these "necessary" prenups, a principal one of which is the process itself.

Typically, the process starts with the more-moneyed spouse being advised by a financial planner or lawyer (or family member or friend) to get a prenup drawn up, at which point, the prenup becomes a ping-pong match between the initiator's lawyer and the lawyer for the less-moneyed spouse. The future spouses are unfortunately caught in the middle and are usually left bruised by the process.

In working with clients wishing to have prenups, I have found that mediation is often the best first step.

This process begins with the couple working with a neutral mediator. For a prenup, the mediator should be someone well-versed in divorce law, business law, tax law, and estate planning. The clients provide the mediator with all the necessary financial information so that they (and the mediator) can obtain a complete and accurate picture of each of their financial situations. This picture will include information relating to the clients' business interests, expectancies from inheritances and gifts, as well as present and future interests in trusts.

During the sessions (these days, conducted mostly via Zoom), the mediator will guide the couple through discussions of the various possibilities for terms they may wish to enter into in their prenup. I like to call a prenup a "financial plan for the marriage," which is essentially what it is. This gives the sense that a prenup is (or can be) a cooperative and collaborative process between two people who wish to marry each other.

The mediator can help the clients brainstorm about various options that they may not have thought of – ones that can create a "win-win" situation for both parties. The end result, after a number of sessions, is a simple and clear Term Sheet in plain English that sets out their jointly conceived financial plan for their marriage. Unlike the usual attorney-to-attorney negotiations, the couple generally enjoy the mediation sessions, and find that it helps support their relationship and maintains their positive feelings about the future of their marriage. In many instances, these mediated sessions may even result in an enhancement of their relationship.

Once the Term Sheet is finalized by the clients, the next step is for the clients to each choose an attorney to review the terms on their behalf. As a prenup mediator,

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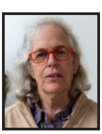
I use the internet to search for a list of 6-8 attorneys in the state in which the clients reside and who I believe will understand the couple's goals as expressed in their Term Sheet, and not just treat the prenup as an exercise in asset protection. (The problem is by just protecting assets of one spouse without giving corresponding security or benefits to the other, there will likely be a significant financial inequity in the marriage resulting in marital discontent.)

During the process of choosing their respective attorneys, the couple and I have a session (which is actually quite fun) to look at the website or web presence of each attorney on the list that I have compiled. The clients determine which attorneys might be a good fit. It's somewhat like a beauty contest. The clients then decide who they each would like to approach to be their respective reviewing/drafting attorney. It's generally important to use a "newly chosen" attorney rather than a client's prior attorney or a "family" attorney.

After that, I as the mediator, arrange to meet (via Zoom) with both of the clients' chosen attorneys. During that meeting, I share some background about the couple and how they decided on the terms they chose for the prenup. I also provide a detailed explanation of the Term Sheet.. This saves a lot of attorney time and serves to expedite the process.

The mediator can also transmit (securely, of course) to the reviewing/drafting attorneys all the financial information that the mediator received from the clients. The mediator can stay in the mix, if and as needed, to solve problems or issues as and if they occur or just review the drafts that come from each of the attorneys. The clients have the benefit of starting with a simple Term Sheet, rather than seeing draft after draft generated by attorneys as the document reaches completion. This saves wear and tear on everyone!

So, the next time you suggest that a client gets a prenup, think about starting the client on the path of beginning with mediation, developing a Term Sheet in structured mediation sessions with his or her intended, and then consulting with separate attorneys to get the prenup drafted and finalized. I'm fairly sure the outcome will be a more equitable, and surely a more peaceable one, for everyone involved!



Laurie Israel is a collaborative lawyer and mediator based in Massachusetts. She is the author of *"The Generous Prenup: How to Support your Marriage and Avoid the Pitfalls"* (2018). Laurie now concentrates her practice on prenups, and has been mediating prenups and postnups in Massachusetts as well as throughout the U.S. She has written extensively on prenups and on the art and skill of mediating prenups, which she believes is the optimal way to help couples mutually address the terms of a prenup and how they may affect each of the parties in the future.

Laurie began her involvement in the area of prenups as a representative for clients negotiating their agreements. She has experienced first-hand how couples can hurt each other during the negotiation process in a way that may not easily be forgotten. Laurie believes that if not dealt with in an equitable manner, the content and process of some prenups can do irreparable damage to a couple embarking on marriage. The message in her book *"The Generous Prenup"* is that prenups are not to be taken lightly and should be used only when absolutely necessary, and when both parties are comfortable with the entire process. She believes the professionals involved should be keenly aware of the issue of fairness to both parties and consider the ultimate health of the ensuing marriage.

“You cannot shake hands with a clenched fist”

Indira Gandhi

IS A 30% DIFFERENCE IN RETIREMENT INCOME FAIR AND EQUITABLE?

The Potential Impact of Social Security on Divorced Retirement Income

By Chris Chen

Social Security and Divorce

The complexities of Social Security retirement benefits make it a difficult topic to mediate. It is an exceedingly important source of income for retirees, especially divorced and even affluent retirees. However, Social Security and its place in a person's retirement income plan are critical items for mediators to understand to achieve the elusive goal of fairness and equity.

The maximum benefit in **2023** is **$54,660 a year**. Of course, most people don't get the maximum. Still, as the benefit decreases, I find that it constitutes a greater percentage of income. And, Social Security retirement benefits are challenging to address in divorce settlement negotiations because State courts do not have jurisdiction over its allocation.

For example, if Jack and Jill are retired, are both 66, each have a house of equal value (to simplify), $1.7M in their IRAs, and $300,000 in other liquid assets for a total of $2M, a 50-50 division leaving each party with $1M should be a fair division, right?

Maybe. But let's first go over some Social Security background.

A Short History

The Social Security Act passed in 1935 included benefits for workers but not their spouses. At the time, women who did not work outside of the home could not qualify for Social Security retirement benefits. A sweeping series of amendments enacted in 1939 extended Social Security to spouses and minor children. Wives who had not earned a social security retirement benefit or whose retirement benefit was less than 50% of their husbands qualified for the first time.

Catching up with a changing society, another reform extended Social Security retirement benefits to divorced wives in cases when the divorce happened after a marriage longer than 20 years. The word "spouse" replaced the word "wife" in the 1970s, allowing husbands to collect retirement benefits on their ex-wives' records.

Later, the length of marriage required to qualify for benefits after a divorce was reduced to 10 years. When SCOTUS legalized same-sex marriage in 2015, survivor and divorce benefits extended to same-sex couples.

This short history of Social Security shows how it has evolved. Ex-wives and ex-husbands can now all receive retirement benefits based on an ex's work record.

However, qualifying conditions must be met. The rules can be confusing and challenging to keep track of, especially for those who have had more than one marriage and divorce or those whose ex-spouse has died.

Benefits for Divorced People

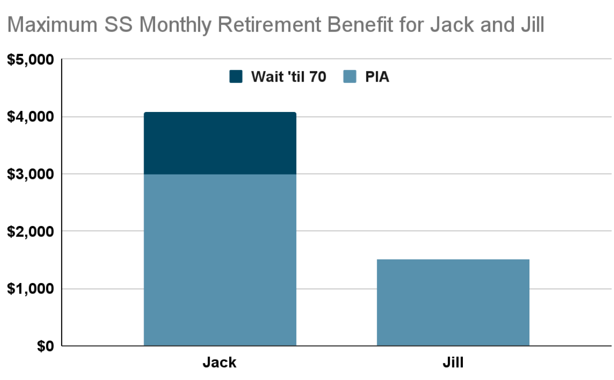
When a divorced spouse claims their benefit at full retirement age or later, they will qualify to receive 50% of their ex-spouse's Primary Insurance Amount (PIA), so long as they have not remarried before 60 years of age and their own benefit is less than 50% of their ex-spouse's.

In Jack's and Jill's case, Jack's PIA is $3,000 per month, and Jill does not qualify for a retirement benefit on her own record. She can file for her divorced-spouse benefit at her full retirement age of 66. She will qualify for 50% of Jack's Primary Insurance Amount, $1,500, as her divorced-spouse benefit.

The earlier Jill claims her benefits, the less she will get, consistent with other Social Security retirement benefits. Conversely, Jill will receive more if she waits to claim. To maximize Social Security retirement benefits, you will typically need to delay them until 70.

However, divorced people who claim on their ex-spouse's record will not get more if they delay their benefits past full retirement age, 66 to 67 depending on the birth year.

Note that should Jill's own benefit be more than 50% of Jack's, she will receive her own Social Security retirement benefit. She will not also receive her divorced benefit!



Sometimes people wonder how the age difference with their ex-spouse can affect their benefits. The good news is that the ex-spouse's age when they claim it is irrelevant. As long as Jill claims at Full Retirement Age, she will receive her maximum divorce benefit independently of the timing of Jack's claim.

Continued on next page

Who Qualifies?

A person who claims benefits based on a former spouse's record must be single at the time. So unfair, you say? If Jill has remarried, generally, she could get 50% of her new husband's benefits, or her own, if her own is greater than 50% of her new husband's. So let's continue with a single Jill.

Jack may be married or unmarried. It makes no difference. If Jack is (re)married, Jill and the current wife could both qualify for the 50% benefit from Jack's record.

Suppose Jill, who receives the 50% benefit, remarries. In that case, her 50% benefit from Jack's record stops unless Jill's new spouse also gets a divorced spouse benefit. That's except if the remarriage occurs after age 60.

Jill's marriage must have lasted ten years or longer to claim Social Security retirement benefits on Jack's record. Because of that requirement, sometimes people who think of divorce will delay until ten years of marriage are achieved. For example, if you've been married for 9.5 years, it may be worth waiting another six months. And with the slow speed of divorce proceedings, that is entirely possible without trying too hard!

Sometimes people are not sure when they got divorced. People often mark their court appearance date as the divorce date. In most states, however, the actual divorce date is later than the court appearance. For example, in Massachusetts it is 90 or 120 days after the court appearance depending on the filing type.

More Marriages and Divorces

People sometimes ask: what if you had two or more ten-year marriages?
Then, it can become complicated. Those who have divorced more than once from marriages of ten years or longer get the higher of the two divorced-spouse benefits, so long as they are currently unmarried.

For example, suppose that Sheryl was married to Patrick for 20 years and to John for 12 years. Sheryl has now divorced for the second time and has remained single for more than two years since her last divorce from John.

Patrick's PIA is $3,200, and John's PIA is $2,800. So let's suppose that Sheryl's retirement benefit, based on her own record, is $1,200. However, she is at Full Retirement Age (66 or 67, depending on the birth year).

When Sheryl files, she can receive $1,600, half of Patrick's PIA, because it is higher than John's $1,400. And, no, she cannot get both Patrick's and John's retirement benefits!

If Sheryl divorced less than two years before, she must wait until her last ex, Patrick, in this case, has filed for his benefit. In addition, the worker on whose record the retirement benefit is claimed, Patrick, must have reached 62 years of age.

Patrick's filing status is irrelevant to Sheryl's claim if they divorced more than two years before. So unless Sheryl tells him, Patrick will never know if his ex-spouse has claimed.

When Your Ex dies

Mike and Marie are 66 and have been married for more than ten years and divorced for more than two. Because Marie is single and not remarried, she qualifies for a divorced-spouse retirement benefit based on Mike's record, whether or not Mike has filed.

If Mike has passed away, Marie receives a divorced-spouse survivor benefit based on Mike's record if she is currently unmarried or if she remarried after age 60. In addition, Marie's benefit will be 100% of Mike's Primary Insurance Amount (PIA), the amount that Mike would have received at Full Retirement Age. In the case of Mike dying, Marie's retirement benefits are capped to full retirement age.

What if the same two people have married, divorced, remarried with each other, and divorced again? In that case, the length of the two marriages can be added together (including the time in between) to reach the ten years qualifying minimum. That is, if the remarriage happens before the end of the calendar year following the divorce!!

Say Mike and Marie were married for seven years, from May 2002 to August 2009. They remarried in December 2010 and re-divorced in November 2013 for three years. The total for the two marriages is ten years. Mike and Marie meet the 10-year requirement because their second marriage happened before the end of the calendar year after the first divorce.

If, instead, Mike and Marie had remarried in January 2011, the ten-year clock would have been reset to zero.

Pension Repercussions

When Jill applies for her divorced spouse's retirement benefit, what if she also worked for an employer not participating in the Social Security system? For example, many state and municipal government employees are exempt from paying into the Social Security system. For instance, if Jill was a teacher for her

Continued on next page

town's school system, she could qualify for a State pension. But, then, her divorced spouse's Social Security benefit would be reduced by 2/3 of the amount of her pension because of the Government Pension Offset rule. As a result, Jill's Social Security benefit may be zero, depending on the size of her pension.

How would that work? Jill currently receives a $3,000 monthly pension from a police department in Texas. She has divorced Jack after more than ten years of marriage. Jack's PIA is $3,200. Jill's divorced-spouse benefit of $1,600 would be reduced by $2,000 (2/3 of $3,000), which reduces the benefit amount to zero. She doesn't get any Social Security.

If Jack dies, Jill becomes eligible for a divorced-spouse survivor benefit. After the GPO reduction she will receive $800 ($3,200 - $2,000 equals $1,200).

Suppose the spouse with the benefit also qualifies for a pension from an entity that doesn't pay into social security. In that case, the Windfall Elimination Program kicks in. That reduces the spouse's benefit payments, and the ex-spouse's benefit adjusts downward as well.

What Does It All Mean?

As a reminder, Jack and Jill are retired and decided to divide their assets 50-50. Jack also benefits from a $3,000 Social Security PIA retirement benefit, and Jill has a divorced spouse benefit of $1,500. Jack opts to delay his Social Security until 70 when his benefit would increase to $4,081. Jill has no such option.

A common (but potentially dangerous) rule of thumb in retirement planning is that if a retiree begins retirement by taking a 4% distribution from assets and increases it annually with inflation, the retiree will not run out of assets in their lifetime (1).

As detailed in the table below, Jack and Jill may have divided their assets 50-50, which may look fair. However, Jill's income will be 35% less than Jack's.

	Jack	**Jill**	**Difference**
Assets	$1,000,000	$1,000,000	0%
4% Income	$40,000	$40,000	0%
Social Security	$48,972	$18,000	-63%
Total Income	$88,972	$58,000	-35%

Last Words

In the example, the difference between Jill's and Jack's total incomes comes to slightly more than **$2,500 a month**. Over a 20-year lifetime, it can easily add to more than **$600,000**. When you add COLA increases, the difference will be more than **$875,000**.

This is not a challenge that can be dealt with directly in litigation because the courts have no jurisdiction over Social Security. However, a couple mediating could potentially address the issue to achieve a more balanced retirement income for both and a more equitable settlement.

The example of Jack and Jill is simplified from cases we might run across. There may be other assets, such as a pension, a vacation home, and rental real estate. There may be child support and alimony. Maybe Jill qualifies for her own benefit. There may be an inheritance looming. Jack and Jill may be further away from retirement. Their investment style may differ.

Diverse circumstances will complicate the analysis. However, it is crucial for a couple and their mediator to understand the consequences of their decisions. That is so especially for women because they will need to stretch their assets to meet their longer statistical life expectancy.

Note:

(1) The 4% rule is widely used as a rule of thumb to estimate retirement income from assets. It was initiated in a 1996 study by Bill Bengen published in the Journal of Financial Planning. More recent revisions of the study imply that the safe withdrawal rule could be less than 4%. Other methods to plan retirement income may be more appropriate depending on the case.

(2) I have a series of handy flowcharts that can help guide mediators and clients through the decision complexities. Please ask for it at info@insightfinancialstrategists.com

Chris Chen is a fiduciary fee-only wealth strategist who works with individuals and families going through challenging life transitions such as retirement and divorce. His calming confidence and knowledgeable guidance through complex life transitions help clients gain clarity about their financial future, balance risks and opportunities and build a path to financial success. Chris is a CFP® professional and has the CDFA. He has also completed mediation training in accordance with M.G.L. ch.233 § 23C

SCRIVENERS BEWARE

By: Carol Lynn May

There are a number of recent cases where courts have highly scrutinized the language in separation agreements, or as in *Reid v. Kroll*, the drafting of a separation agreement itself by an attorney who mediated a divorce case as the focus of a lower court decision on a motion to dismiss.

1. Reid v. Kroll, No. 2181 CV 00769 (App. Ct. 2021)

Reid v. Kroll, 2181 CV 00769 (2021), is a case for concern to attorneys who mediate a divorce case and also draft the Separation Agreement for the parties.

In the Reid v. Kroll case, the defendant, who is an attorney, mediated the divorce for the parties and then drafted the Separation Agreement incorporating the terms arrived at in the course of the mediation. The agreement included "hold harmless" provisions, and declarations that the Defendant was not acting as an attorney in the matter.

After the divorce, the former Wife sued for and was awarded alimony. The former Husband then sued the Defendant for damages caused by what he claimed was a poorly drafted settlement agreement that allowed his former spouse to collect alimony, despite the original intent by the parties to collectively waive alimony. The former Husband alleged in this case filed in Superior Court that the Defendant was acting in his capacity as an attorney when he drafted the separation agreement, was allegedly negligent in his drafting of the agreement, and therefore, could be sued for legal malpractice.

Defendant moved to dismiss the negligence claims. The Superior Court denied the Rule 12(b)(6) Motion. There is a high standard for a party to meet to be successful in a Motion to Dismiss. The Court noted that based on prior case law applying Rule 12 (b)(6), "[T]he Court must accept as true the factual allegations in the complaint and attached exhibits, [and] draw all reasonable inferences in the plaintiff's favor…"

Although arguably this is only a lower court decision, it still presents a quandary for attorneys drafting separation agreements in cases they have mediated. It also presents a warning for attorneys who draft separation agreements in all divorce cases to be extremely careful about the language in their agreements going forward, including but not limited to provisions regarding future alimony.

2. Jones v. Jones, No. 20-P-1217 (App. Ct. 2017)

This case raised a number of issues on appeal, including whether the stock options issued to the former husband after the divorce should have been treated as bonus income, once exercised, for purposes of alimony. The former husband held an executive position in the company where he was employed.The primary issue on appeal was the meaning of the phrase “any manner of bonus” in the parties’ separation agreement, which merged into the judgment of divorce.

Held the Appeals Court, “In this case, after a careful and thorough review, the [trial] judge found that by referring to ‘any manner of bonus’ the parties did not include stock or stock options in the definition of ‘bonus’”. The Appeals Court held that finding was fully supported by the evidence and did not constitute an error of law as to the meaning of “bonus”.

The Appeals Court accordingly concluded that the trial judge did not abuse his discretion or err as a matter of law in his determination that the former husband’s stock options, issued and exercised after divorce should not have been treated as bonus income for purposes of alimony.

The case was remanded, however, in light of *Cavanaugh* for reconsideration of child support with the reminder that “the parties may not define “bonus” in such a way as to limit the father’s obligation to pay child support.

The Appeals Court, recognizing that “Executive compensation is a complex topic”, utilized the opportunity which is becoming a recurrent message from the courts to stress that: “We write today to emphasize what may be obvious –the importance of clear drafting regarding the division of income, bonuses, stock options, and other forms of executive or deferred compensation in separation agreements.”

3. Costin v. Bailey, No. 21P-724 (App. Ct. 2022)

In August, 2013, after 32 years of marriage, the Wife filed a complaint for divorce. Over the next 4 years, the parties engaged in extended negotiations regarding the division of their sizeable marital estate and other financially-related matters, with the assistance of their divorce counsel.

In November, 2017, the parties in this high-end divorce, filed a 66-page Separation Agreement with the Probate Court. The agreement was incorporated into, but not merged with the divorce judgment, but, instead, survived and retained independent legal significance.

The issue before the Appeals Court focused on the meaning of the agreement’s tax provisions. The tax section of the Agreement provided that the parties were to file joint tax returns for 2016 and that any tax liability “shall be shared equally by the parties”. The parties, also, agreed that “If there are any additional taxes determined later to be due for 2016 the parties shall share equally any such 2016 income tax liabilities/penalties.” The tax section in the agreement, as the wife pointed out, also provided that “[e]ach party…has duly paid all federal and state income taxes attributable to him or her on all joint returns heretofore filed by the parties.”

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As of July, 2017, the parties had paid over $8.2 million toward their 2016 taxes. Between the period of December 2016 and July 2017, the parties paid a total of $6.6 million; towards this total amount, $6.5 million came from an account held individually by the husband; and $100,000 was paid from an account held by the wife (the remainder of the amount paid for their 2016 taxes came from amounts applied from their overpayment of 2015 taxes and traditional and excess federal withholding).

In July 2018, the husband filed a complaint for contempt, alleging the wife had failed to reimburse him in the amount of close to $4.1 million, representing her one-half share of the 2016 taxes attributable to amounts he claimed were paid by him. The wife in her answer denied that the husband was entitled to the relief he sought and asserted that "all of the taxes due for the parties' 2016 federal joint returns were equally paid by the parties from the marital estate…prior to the execution of their Separation Agreement on November 13, 2017."

Both parties filed cross motions for summary judgment. The trial court, agreeing with the husband's position, granted the husband's summary judgment motion on this tax-related issue and ordered the wife to reimburse the husband for what it considered her one-half share of the taxes in question.

The Appeals Court reversed the trial court's granting of summary judgment to the husband. The Appeals Court found the tax provisions to be ambiguous, and remanded the case for an evidentiary hearing to determine the parties' intent regarding the 2016 income taxes paid prior to the agreement's execution. In doing so, the Appeals Court concluded that "[n]either party's interpretation… commends itself…to the exclusion of the other...and the agreement[] by [itself] do[es] not reveal an answer to the question at issue….This is the essence of ambiguity."

4. King v. Cerbone, 101 Mass, App. Ct. 783 (2022)

This case demonstrates the importance of careful drafting of provisions regarding the division of retirement plans and accounts, including what is to occur with all provisions of the plan that are subject to allocation or specification.

The specific dispute concerning the division of an aspect of the husband's federal pension plan (i.e. the Federal Employee Retirement System Plan (FERS), did not arise at trial and not until the stage of the preparation of the COAP (Court Order acceptable for processing, by the OPM, the federal agency that administers and approves these Orders).

This case is instructive for reinforcing the importance of drafting not only the specific detailed requested findings in a trial concerning the division of retirement plans, but also in reminding attorneys who draft separation agreements to be very careful in their drafting of provisions dividing these plans and to consider obtaining expert advice early on to advise on the interpretation and applicability of provisions in the retirement plans at issue, and in connection with the drafting of Orders needed for the approval and implementation by Plan Administrators for the retirement plans being divided.

5. Cavanaugh v. Cavanaugh, 490 Mass. 398 (2022)

Cavanaugh, also, provides a cautionary lesson for scriveners.

An issue not to be overlooked in *Cavanaugh* concerned the Father's obligation to pay for preparatory school. The parties' separation agreement, which was incorporated and merged into the divorce judgment, provided that the Father "shall be responsible for payment up to $20,000 per year toward [the middle son's] tuition cost at [a specific preparatory school] for his three years at the school…[and] shall contribute up to $20,000 per year toward an agreed upon prepatory [sic] school for [the youngest son]." The Mother agreed to be responsible for the payment of the youngest son's tuition at the Catholic school he was attending at the time of the parents' divorce.The agreement also provided that "[i]n the event of any dispute or disagreement concerning the performance, interpretation, meaning or application of the AGREEMENT, the parties shall make a good faith effort to reach a mutual agreement."

The trial judge, finding that "there was and is no agreement between the parties" that the youngest son attend the preparatory school at which the Mother enrolled him for the 7th and 8th grades, held the Father was not obligated to contribute up to $20,000 annually for the cost of the youngest son's attendance for those grades. The Appeals Court, in striking down this ruling, relied on the "undisputed and uncontroverted testimony that the Father absolutely refused to engage in discussions about a preparatory school for the youngest son for seventh and eighth grade while the Mother engaged in extensive efforts to come to a mutual understanding with the Father about the youngest son's education."

The Appeals Court continued by noting that the term "preparatory school" itself was ambiguous, and that an evidentiary hearing was required to determine whether the parties had agreed that the youngest son would attend the same school as his older brothers.

The remaining ambiguity dealt with by the Appeals Court was as to whether the definition of "preparatory school" encompassed seventh through twelfth grades, or only ninth through twelfth grades. In determining this question, the Appeals Court relied on the mother's undisputed testimony that the term "preparatory school" included seventh and eighth grade and that the father stated that they would have children at the preparatory school attended by the two older sons "consecutively for [thirteen] years in a row….Thus, the mother's understanding that the term 'preparatory school' include[d] seventh and eighth grades was

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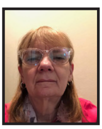
entirely reasonable.'" In addition, the Appeals Court relied on the "undisputed" fact that the father's counsel drafted the separation agreement. And unequivically stated, that "[t]herefore such language [i.e. the term preparatory school and what grades it encompassed] [would] be construed in favor of the mother." Query whether it was fair or reasonable for the Appeals Court to construe the term against the father on this basis, where a separation agreement is generally the product of often extended negotiation by the parties, through counsel, and the product of input by both attorneys. Drafters of separation agreements should strongly consider including in their agreements language countering the effect of a court's application of this old common rule law of construction.

In sum, the courts in a series of recent cases have raised enough red flags and cautionary warnings to be of concern to scriveners and to cause drafters of separation agreements to take extra care in their drafting of separation agreements in light of these cases.



Carol Lynn May is an experienced family law attorney, whose practice is now primarily concentrated in mediation, conciliation, and collaborative law. Her office is located in Wayland, Massachusetts, and she can be reached at clmaylaw@verizon.net

"I haven't failed. I've just found 10,000 ways that won't work."

Thomas Edison

“What wisdom can you find that is greater than kindness?”

Jean-Jacques Rousseau

MCFM MEDIA CORNER

REVIEW OF ELLEN BRUNO'S DOCUMENTARY FILM, SPLIT UP—THE TEEN YEARS

By Don Saposnek, Ph.D.

Editors' Note: *Here is a recent article by Dr. Don Saposnek on mediate.com reviewing the documentary Split Up- The Teen Years*

Saposnek, D. T. (2022). "When 'Happily Ever After…' becomes 'Under Construction Forever After'…". Review of Ellen Bruno's Documentary Film on Children of Divorce, *Split-Up—The Teen Years*. (September 2022).

Originally published on-line at: https://www.mediate.com/when-happily-ever-after-becomes-under-construction-forever-after/

Back in 2013, I reviewed for Mediate.com a documentary titled *"Split"* from award-winning filmmaker, Ellen Bruno**. Without their parents present and with no commentary by divorce professionals, twelve school-age children of diverse ethnicity and a range of socio-economic backgrounds were interviewed about their experiences of the divorce of their parents. Their unfiltered transparent descriptions gave a needed realistic jolt to parents and divorce professionals as to how children actually process and feel about divorce. That film was destined to become a classic in capturing the short-term effects of divorce on children in a poignant, artistic fashion, complementing the findings of thousands of academic articles that documented similar outcomes over the decades.

Bruno's new sequel to that documentary—*"Split Up: The Teen Years"*— revisited and interviewed these same children 10 years later, after they have grown into eloquent and articulate teenagers who are wise and seasoned beyond their years. As in the first film, the children clearly felt safe and comfortable with the interviewer to be able to reveal so much personal and sensitive information. With skillful editing, the gentle reminder of each child's earlier video interview is artistically and briefly juxtaposed with their current interview, allowing the viewer to relish the transformative development of these young philosophers. Interlaced throughout the video are beautiful impressionistic drawings of the children and creative sketches that expand the message of the film and keep it fresh throughout. As in the first version of this documentary, this film is subtly divided into sections that reflect and organize the themes of conversations, which include titles such as *close to whole; love + hate; what happened?; change; home is a feeling; switching; split; someone else; out of place; hard times; what i need; speaking up; there for me; no fairy tale;* and, *life goes on.*

The perspectives of these youth, as they reflect on how they have fared through the divorce across the years since their childhood, closely map the findings of the several ambitious longitudinal studies that have been published on the longer-term effects of divorce on children, and mirror the collective clinical findings gathered across the past five decades. These teens report how their parents' divorce (and, for some, multiple divorces) forced them to grow up more quickly, to question the solidity of long-term relationships, to be less trusting, to keep secrets, and to deeply question what is meaningful in their lives. They talk about the challenges in having to switch homes often, in being disorganized, and in having to "code switch" (remembering and adapting to the expectations of two different homes with two different lifestyles). Several report having deeper relationships with each of their parents now, and several report always worrying about their parents' happiness before their own, leaving them questioning their self-worth and their lovability.

The kids in the first film, *Split*, were more animated, spunky, and overtly expressive, partly as a result of their young ages, and partly because of the fact that they had no way of knowing what the years ahead would bring for them. In contrast, those kids now as teens, in the current film, are generally more subdued, reflective, and deeply thoughtful. While there clearly is a tragic and sad tone embedded in many of their personal disclosures, that will bring the viewer to tears of empathic sadness, there is also an impressive amount of revealed strength, insight, and perceptiveness about the human condition, coming out of these children of marital dissolutions. And, both implicitly and explicitly, these wise children offer divorcing parents helpful guidelines from the trenches, with their goal being to reduce the damage to other children going through their parents' divorce.

I would recommend that divorcing parents, divorce professionals, and family court personnel purchase *both* of these films, as a set, and watch them sequentially, in order to get the full developmental understanding of this artistic documentation of children's experience of parental divorce.

Split-Up—The Teen Years stands as another fine contribution to our knowledge of the effects of divorce on children and families. Together with *Split,* they will become classics in our field. Bravo to filmmaker Ellen Bruno for this powerful contribution to our growing knowledge of the effects of parental divorce on children!

*Quote from one of the teenagers in the film

**Ellen Bruno, an award-winning documentary filmmaker based in San Francisco, is the Producer, Director, and Editor of this film. With a background in international relief work, Ellen's films have focused on issues at the forefront of human rights, including sex trafficking in Burma, political prisoners in Tibet, the social alienation of people with leprosy, and genocide in Cambodia. Ellen earned an MA in Film at Stanford University. She is a recipient of Guggenheim and Rockefeller Fellowships, a Goldie Award for Outstanding Artists, an Alpert Award for the Arts, an Anonymous Was A Woman Award for the Arts, and was an Artist-in-Residence at the Yerba Buena Center for the Arts. Ellen serves on the Boards of the International Buddhist Film Festival, the Pacific Pioneer Fund, and Ethical Traveler.

To acquire the film, go to: http://splitfilm.org/professional_video.html

Continued on next page

[Images from the film are below:]

Donald T. Saposnek, Ph.D., is a practicing clinical-child psychologist, child custody mediator, and national and international trainer in mediation and child psychology. He has published extensively, taught on the psychology faculty at the University of California, Santa Cruz for 41 years, and currently teaches at Pepperdine Law School's Straus Institute. His website is: www.mediate.com/dsaposnek.

MCFM NEWS

MCFM Institute: Our 21st annual conference was held virtually on December 1 and 2. More than 70 people signed up to attend via Zoom over 2 busy, half-day sessions. Thank you to registrants and presenters for making this year's conference a success!

Psychologist and author Abbie Goldberg delivered a well-received keynote address on divorce among LGBTQ parents and parents of trans children. Other topics presented included Graying Divorce and Medicaid (Bob Jutras), Community Mediation (Lisa Wood, Sara Barnes, David Feldman, and Kristin J.B. Mirliani), Annual Family Law Review (Jon Fields), and Child Support and Alimony in light of the controversial Cavanagh v. Cavanagh decision (Susan Miller and Fern Frolin). MCFM thanks all of our presenters for generously sharing their time and expertise.

Kudos also go to Institute Planning Committee Co-Chairs Susan Klebanoff and Mary Sheridan, along with Committee members Barbara Kellman, Jennifer Hawthorne, Fran Whyman, Beth Nussbaum, Justin Kelsey, and Kim Whelan. Well done, conference organizers!

2022 John Adams Fiske Award Honoree Jonathan Fields

2022 Fiske Award: The highlight of the Institute is always the presentation of the John Adams Fiske Award for Excellence in Mediation. This year's honoree was former MCFM President, Clerk, and longtime Board member Jonathan Fields. Congratulations on this career achievement, Jon! You're in very distinguished company.

Mediator Meals: Returning in Spring 2023!

Our next round of these small, members-only social events will begin in March. Join up to 8 of your MCFM colleagues for a meal and conversation where you'll get to know more about one another in an informal setting. These networking events are perfect for new as well as seasoned members.

Check your inbox in February for more info . . .

MCFM Professional Development Workshop

March 8, 2023 (tentative) • 2 p.m. - 4 p.m.

Final date/format/location to be determined . . . stay tuned!

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MEMBERSHIP

MCFM membership is open to all practitioners and friends of family mediation.

Our members include mediators, professors, mental health professionals, attorneys, judges, court employees, financial professionals, social workers, and others interested in furthering the use of family mediation and promoting excellence in mediation.

Annual membership dues are $90 for the Basic Annual Membership and $190 for the Premium Annual Membership.

Basic Annual Membership includes:

- Newly updated website with more info and exclusive "Members Only" section
- Standard online member listing (name/address/phone)
- Access to at least four free professional development events (guests also welcome)
- Annual Family Mediation Institute—attend at member rate
- Certification program for qualified divorce mediators
- Subscription to the "FMJ"
- Access to MCFM's network of mediators and allied professionals
- Welcome to participate in ANY of MCFM's committees

Premium Annual Membership includes:

- All the benefits of Basic Annual Membership
- Enhanced profile in the online "Find a Mediator" Referral List. Market yourself to prospective clients by showcasing your skills, training and experience. Get listed in advanced online searches, including practice area and geographic location. You can even upload a photo!
- If you have completed 30 hours of mediation training and are actively practicing mediation, the Premium Annual Membership with Referral List and Profile offers the best value for your membership dollar.

Did you know that 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. Practice Standards are available at www.mcfm.org/pro/about-mcfm.

MCFM was also the first organization to certify 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 and recertification requirements are available at www.mcfm.org/standards-certification. For more information, contact Laurie Udell at lsudellesq@aol.com.

Please direct all membership inquiries to Ramona Goutiere at masscouncil@mcfm.org.

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EDITOR'S NOTICE

MCFM Family Mediation Journal

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The FMJ intends to be a resource for family mediators, Probate and Family Court Judges and court personnel, and those interested in learning more about conflict resolution for families. The FMJ strives to be a journal of practical use to practitioners.

The FMJ recognizes that all family mediators share common interests and concerns regardless of their clients' family structures, gender identities, sexual orientations, races or religions. As mediation is designed to resolve conflicts, the FMJ, like it's predecessor, the FMQ, will not shy away from controversy. The FMJ welcomes and aims to publish the broadest spectrum of diverse opinions that affect the practice of family mediation.

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

The FMJ is mailed and emailed to all MCFM members, Family and Probate Court Judges, all local Dispute Resolution Coordinators, all Family Service Officers, and all law school libraries in Massachusetts. Many of the articles can be found on MCFM's blog, The Family Mediation Blog, located at www.mcfm.org/blog. The Family Mediation Blog also publishes articles not published in the FMJ.

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 to the FMJ or The Family Mediation Blog by emailing the Co-Editors at the addresses above. If you are only interested in having your submission considered for either the FMJ or The Family Mediation Blog, please note your preference in your email. If you do not specify your preference, it will be assumed we may use our discretion to determine whether your submission is appropriate for the FMJ, The Family Mediation Blog, or both. Submissions may be edited for clarity and length and must scrupulously safeguard client confidentiality.

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

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