

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,

We are excited to release another edition of the FMJ (Family Mediation Journal) after a hiatus felt by many during COVID. With so many changes to our practices and lives over the past year and a half, there is no time better than the present for us to celebrate this community and all we as mediators can offer to families in times of conflict.

We have been overwhelmed and invigorated by the quality submissions the FMJ has received since our last publication and appreciate the patience of our membership and those who made submissions as we put together a quality journal for you all.

As a mediation community we are all virtually coming together for our MCFM Annual Institute December 2 and December 3 and have put out this edition in anticipation of the Institute. The list of speakers and workshops is comprehensive, and it is sure to be a great event. We encourage you as readers to use this event to inspire you to connect with other mediators and share your knowledge with us!

We want to continue to use the FMJ, the MCFM newsletter and MCFM 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,



Erin Pennock is a collaborative family law attorney and mediator with a practice in Belmont, MA. For more information on Erin and her practice go to www.ewpennocklaw.com. Erin can be reached at erin@ewpennocklaw.com



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



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PRESIDENT'S MESSAGE

by Justin Kelsey

Honestly, the President's Message is something I usually skip when reading a publication. While the president should be available to respond to the needs of the membership, the opinions or goals of the president never mattered to me as much as the substantive actions the organization was taking. If I'm doing my job as president, this message shouldn't matter to you. What does matter is what MCFM and its members have accomplished this year and what it means for our mission.

In the second year of a global pandemic, the Massachusetts family mediation community has continued to be a resource for reducing conflict to our many clients, and a resource for each other. We've supported each other professionally and personally through these difficult times. Our Professional Development Committee continued to host high quality educational programs including respected practitioners and judges as speakers. Our Membership Committee hosted numerous virtual movie discussions giving our members a chance to have some fun with their fellow mediators.

Our Annual Institute Planning Committee will be presenting a packed 2-day Virtual Institute on December 2nd & 3rd making sure that we continue to connect, learn and lead as a community, even while still restricted from being together indoors. This is a can't miss event with topics ranging from the new child support guidelines to polyamory and consensual non-monogamous relationships.

I could go on and on about the amazing work of our Board, and Committees, but the bottom line is that MCFM has maintained its membership and continued its mission during the most difficult of challenges. In addition to the individual challenges we each have faced during this pandemic, MCFM has lost a lot this year as a community. We've lost a founder, numerous long-time mediator-members, and our most recent recipient of the John Fiske Award for Excellence in Mediation. As mediators of family conflict, we know that losses cannot be ignored, and must be grieved, all in our own way. We also



know that losses don't prevent us from achieving progress. They help us recognize what's important.

As president in what has been a difficult year, globally and personally, this community means everything to me. You are my colleagues, my friends, and my family. Together we help others reduce conflict and spread a message of hope and peace. I hope, personally and professionally, that we at MCFM continue spreading light through and over darkness, both internally and externally. Through the work of our Diversity, Equity & Inclusion Committee, and all of us supporting them, we have the opportunity to truly make our mission more complete: Advancing mediation to transform the way **ALL** families resolve conflict.

Thank you for joining us, and make sure you tell the next person you meet "I am a Mediator". Say it with pride and the knowledge that as our numbers grow the world becomes a better place for everyone.



Justin L. Kelsey is a Collaborative lawyer and an MCFM Certified Mediator. Justin is the President of the MCFM and a Past President of the Massachusetts Collaborative Law Council. Justin is also the vice chair of the Massachusetts Bar Association Dispute Resolution Section. Justin is a partner at Skylark Law & Mediation, PC and the owner of Gray Jay Endeavors, LLC, where Justin focuses his practice on dispute resolution for families. Justin also trains mediators through Divorce Mediation Training Associates, LLC, MCLE, & New England Law Boston.



BEARING WITNESS IN MEDIATION

by Laurie Israel

Recently I've been pondering a certain aspect of my experience with mediating divorces. It's about something that often comes up in my encounters with my mediation clients.

What I'm referring to is something I call "bearing witness."

When clients bear witness in mediation, and when you, as the mediator, bear witness for the clients, it can be quite a powerful force in helping clients resolve their divorce. But it needs to be handled properly, or it can be dangerous and even get out of control. If that happens, it can lead to destabilizing and destructive results, impairing the mediator's ability and the mediation process to address and resolve conflict.

Bearing witness can occur either during meetings, or as part of the clients' email exchanges to the mediator, or as part of clients' email exchanges to each other, which I am often copied on.

Let's look at a typical mediation session and see the application, the benefits and the challenges of bearing witness.

What exactly is bearing witness in mediation?

Bearing witness is a way to process an experience, to share it, and to elicit empathy or support. It makes sure that the person's experience, usually a painful one, is heard. As Maya Angelou put it, "There is no greater agony than bearing an untold story inside of you." That's why it's called *bearing* witness. It's an experience that the speaker *bears*. It gives the speaker a path to having their distress over past events acknowledged. That's why mediation clients may tend to verbalize their anxiety or pain in mediation sessions.

In the context of mediation, the mediation client who is speaking is carrying or bearing the weight of the past anguish and is carrying the perceived (and maybe real) injustices of their marriage. The client is asking us (the other spouse and the mediator) to witness the pain they are bearing.

Bearing witness in a face-to-face meeting or video conference.

These days, your mediation sessions are probably done using video conferencing – Zoom, Skype or Facetime. But nonetheless, at its core, it's still like an ordinary pre-Covid-19 face-to-face meeting.

Let's begin with one of my clients. Imagine that he or she is giving testimony as to his or her pain. We (the mediator and the other spouse) are the witnesses. That's how the word "witness" comes into "bearing witness." But



we are also acknowledging or bearing the pain of the spouse who is speaking vicariously. (Well, maybe the other spouse is not...) The speaker is sharing their perceptions about the behavior of the other spouse or an incident in their marriage, and what the effect was on the person speaking.

It's important that we (the other spouse and I) remain quiet as we listen to the narrative of the speaker. We must do this, even though the non-speaking spouse (and perhaps the mediator) may disagree with the veracity of what has been said. It's very important to counsel the spouses not to contest or counter the speech of the bearing-witness spouse. The importance is that we just receive it. At a different point in the mediation process, that second spouse might bear witness also, and may want to, in order to "get even" with the other spouse.

However, there is an inherent problem with the concept of bearing witness in mediation. Mediation looks to the present and the future and not to the past. In divorce mediation, the historical systemic problems in the marriage, are why the marriage is ending. It's why we're here today in this three-way meeting, and it's why the clients are getting a divorce. It can't be fixed by rehashing the past.

We're here to solve the problem of their future divorce and to work on a viable solution. What terms will be fair and allow the couple to function financially and with understanding each other's positions? What terms can be positive and helpful if they will be continuing to raise children together? That's the work of mediation. It's forward-looking.

For that reason, it's usually problematic to rehash the past in mediation. That's why I try to limit (and even prevent) "bearing witness" in face-to-face mediation sessions when it comes up. It hinders the parties' ability to come to concrete terms that will apply to the couple's new relationship as ex-spouses.

If the bearing witness by a spouse starts, I might tactfully cut the narrative fairly short, and say after a suitable (but short) time, something like, "I see you've experienced a lot of hurt..." or "There is a lot of hurt that you both have experienced." (Saying that is a little more dangerous.) But then I might say, "But we're here to talk about the future. Let's look to the future and try to create some workable terms for your divorce."

The fact that a mediation client might feel that they are in a safe place in mediation to tell their story is very important to the effectiveness (even sanctity, if you will) of the mediation process. It's highly significant that this "telling" or "bearing witness" takes place in front of the neutral mediator, with the other side listening. However, it's probably best to curtail it.

Continued on next page



Bearing Witness in an email stream.

Mediation clients may also bear witness in a stream of emails between each other (which I am purposely copied on). This happens quite a lot. I am copied on these because the “speaker” wants me to know what they went through and to bear witness to their pain. It’s helpful that they have these email discussions in front of a neutral mediator, who is potentially a referee of their disputes. They are better behaved with each other when arguing in front of the mediator, whether by email or in person. The mediator is like the Wizard of Oz behind the green curtain. It’s a powerful function.

Usually they are discussing (really, arguing about) certain specific terms that are being generated or considered for their divorce agreement. Even though I may be copied on some of these emails, my silent “presence” helps keep their argument somewhat civil and not become too “hot.” I function as a limbic brain anger regulator. It helps the clients discuss the issues more rationally.

This method can eliminate the painful face-to-face arguments they would certainly have if discussing the terms with each other without me, the neutral third-party, “in the room.” They are each bearing witness to me as they write. I imagine that this allows them to feel very comfortable having their discussions mediated in this way.

I never respond to or weigh in on these emails. This is a really important technique. Stay away from the fray. I just “listen.” When we have our next mediation session, I may include some of the issues they raised in their email stream and work them into our agenda. As a result, this type of “bearing witness” actually works quite well.

Doing nothing can be good sometimes.

Listening is all that is required of the mediator and of the other client when one of them is bearing witness. You don’t have to have an opinion or be a judge. What is expressed by one client is not to be parsed, investigated, or found to be true or false (or both). Try not to think analytically. Try not to evaluate or think about solutions. Bearing witness is simply an acceptance of that person’s story (their version) in a safe setting.

It is very therapeutic to the speaker just to be listened to and feeling heard. Listen quietly. Don’t respond. Don’t let the other spouse respond by countering what was said. Arguing about the past almost always has no relevance to the mediation. The fact that the information is shared in front of the neutral mediator, and is accepted by the mediator in a neutral way, tends to have a calming effect on the clients. This is extremely helpful in setting the stage for a successful mediation.

The silence, acceptance and non-judgmental stance of the mediator is one of



our strongest suits. We are (theoretically) neutral and unbiased. We constantly learn as mediators – and continue to re-learn – not to take sides, not to judge. When we develop internal opinions about the clients – which one is justified, and which one is in the wrong – time and time again we are proven wrong. Bearing witness without judgment is a gift you can give your mediation clients as they work through the financial terms of their parting from each other.

When you as mediator are the witness, you are helping to carry someone else's burden of their version of the truth. By carrying it for them, you are lightening their load. As a result, listening should be done with your full attention. We are receiving and witnessing their pain. Absorbing a client's version of past history without judgment is a practice that lets us connect with and serve our clients who are suffering. We are in effect validating their feelings.

As you listen, keep the word “empathy” in mind. If you begin to judge, think about the word “compassion.” That's all that is required. Be open-minded, quiet, and aware while listening. Being a compassionate observer is a comfort to our clients. We are not there to fix their suffering. But we can share and bear witness to their experience openly without taking sides.

Conclusion.

Being chosen to be a mediator by your clients as they end their marriage is a high honor and imparts great responsibility. Giving your clients the gift of bearing witness is a profound act which can help them validate their feelings. By listening to their version of the story without judgment, you are essentially acknowledging your mediation client's truth, without invalidating the views of the other partner. The empathy they experience helps them move on. Moving on means working through and solving the issues of their divorce, which is the reason your clients chose to work with you in mediation in the first place!

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Laurie Israel is a lawyer/mediator practicing in Brookline and in western Massachusetts. She has represented clients in connection with their prenups for over 25 years and has mediated prenups and postnups for over 10 years. Laurie's book, “The Generous Prenup: How to Support your Marriage and Avoid the Pitfalls,” is a result of this work, and was published three years ago and is available on Amazon.

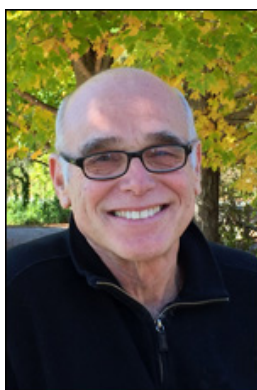
Laurie is currently mediating prenups and doing prenup consulting in Massachusetts and throughout the U.S. Her writings have appeared in *The Wall Street Journal*, *New York Times*, and *Huffington Post*.

For more about Laurie Israel and her work, visit www.ivkdllaw.com, www.laurieisrael.com and www.mediate.com.



Editors' Note: This was previously published on the MCFM Family Mediation Blog on May 11, 2021. Howie Goldstein received the 2021 John Fiske Award for Excellence in Mediation – you can view his receipt of this award on the MCFM Family Mediation Blog (www.mcfm.org/blog). Sadly Howie passed away on July 20, 2021 and will be missed and fondly remembered by so many. We thank Howie for all he contributed to the mediation/collaborative community and MCFM.

Commit to Being a Peacemaker - A Message From Howie Goldstein



Dear Members of the mediation/collaborative community:

As many of you know, I am in the end stages of what has been a fairly lengthy experience with Prostate Cancer. I had originally considered describing it as a battle, but that terminology is certainly not appropriate in this community and frankly I cringe when I hear that said about anyone who dies of Cancer. Because the implication is that if you succumb to that disease, you are a loser who did not have sufficient strength or toughness to prevail. Now where have we all encountered that kind of language in our professional lives?

We all will die. I am very sad that I will not live longer — My family is so precious to me and every day with them is a gift. Also, after many years of ambivalence about whether to forsake litigation I finally walked away from litigation as a result of a workshop on peacemaking led by David Hoffman and Woody Mosten in 2015. I have always enjoyed being a lawyer but I truly loved all the mediation and collaborative work I have done over the years and fully intended to keep doing it for a long time.



So why did I take so long to commit?

Many of you have heard me obsess about how and when to quit litigation. I suppose part of it was economics. It was easier to make a living litigating. Those who litigate know that we make more money and have to do less marketing when we represent angry difficult people who can pay our bills. But I think there was more to it than that.

Unlike some of my law school friends who went on to be corporate lawyers or estate planners, I always felt that I was not a real lawyer unless I was in the courtroom. I had the misfortune of winning my first jury trial in Superior Court and was off and running - high on testosterone and convinced that I was destined to be a brilliant trial lawyer. That was why I went to law school. Before I began limiting my practice to family law, I had one or two jury trials a year and lost more cases than I won (because as a plaintiffs lawyer you generally only try only your worst cases - those that can't be settled). Once I limited my practice to family law I continued to try cases regularly and I was always happy to be in the courtroom, enjoying the high of winning and accepting the fact that you don't win them all. So as much as I would complain about litigating divorce cases, I secretly loved it. Especially the "wins."

I stopped litigating for selfish reasons. The lofty ideals of the mediation and collaborative communities were a secondary motivation. But what did primarily motivate me was all of you. Our community contains the most wonderful practitioners in the legal, business and psychological community. I loved the relationships I had. No longer did I groan when I saw certain names on the caller ID. As difficult as the cases sometimes got, I always enjoyed the professionals on the cases and could see tangible benefits for our clients. No longer was there posturing. No more 5pm faxes for motion hearings the next day. No storming out of meetings to show off for our clients.

So my parting words to all of you are to encourage you to make an increased commitment to this community. You will not regret it. I have been overwhelmed by the number of people who have reached out to me in these last few months. I will miss all of you and the more you get involved in this work the more personal satisfaction and love you will experience. To have that opportunity is a blessing. So few lawyers can say that they have loved their "adversaries" on their cases. For me, you have all been friends and you owe it to yourselves to choose to be an active part of this beloved community. I am so grateful to you all.

It is hard for me to spend time on the phone but I would enjoy voicemails left at the office (617-964-8559) or emails to hgoldstein@gbpclawyers.com.

With love,
Howie Goldstein



HOW DIVORCE AND PARENT COACHING CAN HELP MEDIATORS AND THEIR CLIENTS IN DIVORCE CASES

by Magdalena Ellis, Esq., Divorce Coach,
and Tanya Gurevich, JD, LICSW

This article will demystify divorce and parent coaching, show how coaching can be of benefit to mediators and their clients, and present some perspectives from mediators in the MCFM community

1. Divorce Coaching

Divorce coaching is an emerging field that came about as a result of unmet needs on the part of clients involved in the divorce process. As divorce coaching is a relatively new profession, there is a lot of mystery and confusion about what it is and why it can be so valuable.

The American Bar Association defines divorce coaching as:

"[A] flexible, goal-oriented process designed to support, motivate, and guide people going through divorce to help them make the best possible decisions for their future, based on their particular interests, needs, and concerns. Divorce coaches have different professional backgrounds and are selected based on the specific needs of the clients. For example, some divorce coaches are financial planners, mental health professionals, lawyers, or mediators who have experience dealing with divorcing clients."

Divorce coaches help people navigate the divorce journey. Being trained professionals, divorce coaches understand and respect their boundaries and those of others such as mediators, therapists, and financial experts. Unlike a mediator, however, a divorce coach is not neutral and usually works with only one of the parties involved. The coach provides emotional support and clarity, helping the client make better legal, emotional, and financial decisions. Clients feel heard, understood, and hopeful, and they are better prepared for what can be a difficult process.

It is important to recognize that coaching is not the same as therapy. The biggest differences between coaching and therapy are as follows:

- Past vs. Present – Therapy tends to look towards the past and into why things are the way they are. Coaching, on the other hand, looks towards the future and focuses on helping the client achieve their vision of what might be.



- **Broken vs. Whole** – Therapy sees clients as patients who are broken in some way and in need of “fixing.” Coaching sees clients as naturally creative, resourceful, and whole. Coaching also recognizes that clients are in a state of temporary turmoil due to a major life transition. The coach’s role is to bring the client’s strengths and inner wisdom out into the open so they can move forward towards their ideal future.
- **Passive vs. Active** – Therapy primarily utilizes mirroring and listening with little or no homework and accountability. Coaching is an active and dynamic process where the coach asks powerful and challenging questions so that the client is empowered and motivated to grow.
- **Generalist vs. Specialist** – Therapists are typically not trained in the specifics of divorce. On the other hand, a divorce coach has received training on the divorce journey from beginning to end. The coach is very familiar with the nuts and bolts of the divorce process as well as the emotional roller coaster that accompanies it.

2. Parent Coaching

Parent coaching is an emerging field designed to support parents who are facing a variety of parenting issues such as child behavior problems, discipline strategies, custody issues, and parenting during transition or crisis. In recent years, parent coaching has become more prevalent to help bring a more positive, child-focused approach to the divorce process.

While divorce ends the romantic relationship between spouses, it does not end the relationship between them as parents. Although there is a clear process for getting divorced – whether through the court system, lawyer negotiation or mediation – there is no clear process or guidance for co-parenting after divorce. For some, this is not a challenge, but for others, the co-parenting road can be quite rocky. A mediator working with a couple gets to know their communications and conflict resolution styles and can often foresee the co-parenting challenges they will face going forward.

Like divorce coaching, parent coaching is not therapy. It is not designed to explore the past, figure out “whys” or work through the pain and anger of divorce. It is not a place to assign blame. The focus is forward looking. Coaching can consist of a few sessions to address a specific issue or become an ongoing engagement to help families discover their way forward after divorce. Goals may include learning positive communication skills,

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helping children deal with new environments such as dual homes, establishing regular “parental check-ins,” and managing resistance to change.

Another area where there has been some confusion is the difference between a parent coach and a parent coordinator. For professionals working within the legal process, it is very important to recognize that a parent coach does not serve the same role as a parent coordinator.

According to the American Psychological Association’s Guidelines for the Practice of Parenting Coordination (2012) (<https://www.apa.org/practice/guidelines/parenting-coordination>),

“Parenting Coordination is a non-adversarial dispute resolution process that is court ordered or agreed upon by divorced and separated parents who have an ongoing pattern of high conflict and/or litigation about their children (citation omitted). The underlying principle of the Parenting Coordination intervention is a continuous focus on children’s best interests by the Parenting Coordinator (PC) in working with high conflict parents and in decision-making. Parenting Coordination is designed to help parents implement and comply with court orders or parenting plans, to make timely decisions in a manner consistent with children’s developmental and psychological needs, to reduce the amount of damaging conflict between caretaking adults to which children are exposed, and to diminish the pattern of unnecessary re-litigation about child related issues.”

In Massachusetts, since 2017, the role of the parent coordinator has been clearly defined by the Probate and Family Court, Standing Order 1-17, which lays out their duties and qualifications.

Order 1-17 defines “Parenting coordination” as a child-focused process in which the parties work with a parenting coordinator in an effort to reduce the effects or potential effects of conflict on the child or children involved in the parenting plan. It defines “Parenting coordinator” as a court-appointed, third-party provider of parenting coordination services (emphasis added). Parenting Coordinators are also required to meet certain training standards and must be approved by the Probate and Family court (similar to the Guardian ad Litem standards and approval process).

<https://www.mass.gov/probate-and-family-court-rules/probate-and-family-court-standing-order-1-17-parenting-coordination>



Unlike a Parenting Coordinator who often acts as a referee in high-conflict situations, a parent coach is not court ordered or court appointed. In addition, a parent coach is not authorized to resolve disputes or make decisions for the family. The parent coach works with parents who voluntarily engage in the process and who are willing to work together to improve their co-parenting skills and make the divorce experience better for their children. Parent coaches can be utilized in any type of divorce environment and at any point in the divorce process.

In summary, there are numerous benefits of coaching to clients as well as mediators:

To Clients:

- An open mindset which seeks new possibilities and creative solutions when discussing settlements and beyond
- Better emotional grounding, being heard and understood during mediation, leading to more effective communication
- Greater awareness of their personal preferences, which positively impacts the quality of decision making
- Reduced anxiety and fear of the unknown
- Developing strategies for long-lasting change
- Offering new and broader perspectives
- Realistic and workable agreements and parenting plans that stand the test of time
- Improved communications with (ex)spouses and children

To Mediators:

- Improved effectiveness and efficiency, making the job of the mediator easier and less stressful
- Clients are more emotionally grounded and better prepared to negotiate and reach agreement
- Better communication and a more rational outlook during what can be a messy situation
- Clients feel more empathetic and empowered; they are less likely to see themselves as victims who are dependent on others
- Clients have more reasonable expectations about the fairness of the process and potential outcomes

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3. Perspectives of Mediators on the Benefits of Divorce and Parent Coaching

Ellen Waldorf, Esq., Divorce Mediator (<http://www.ewaldorfmediation.com/>): As a divorce mediator, my role is to create a process through which clients can make informed decisions. I can help most clients negotiate a parenting plan by asking them to think about the opportunities both parents have to connect/take responsibility for their children, their first choices for a parenting schedule, and the rationale behind their choices. However, in a portion of my cases, parents get stuck – in these cases, I recognize that one or both parents need more child-focused information – and I freely acknowledge that this information is beyond my expertise.

When offering suggestions for these stuck parents, I turn to parenting resources – mental health professionals that can share a child's perspective and educate clients about how to support that child. In contrast to other options for resolving their differences, parents can work with a parenting resource as frequently or infrequently as they need. Plus, by identifying a parenting resource at the time of divorce, clients have a professional they can reach out to post-divorce if they get stuck again.

Kim Whelan, Mediator, CDFA® (<https://kimwhelanmediation.com/>): Neutrality, informed consent and self-determination are three of the important tenets of mediation. I tell my mediation clients that my job is NOT to take sides and tell them what to do – but rather to facilitate their negotiation process and to make sure that they have all the information they need to make good decisions for their unique family. Bringing in an outside expert/coach can be so helpful in mediation – because a coach has benefits across all those dimensions.

Bringing in a parenting coach with credibility and experience can empower my clients with the information (and confidence in that information) that they need to make good decisions about co-parenting during and after divorce. The added benefit of bringing in a coach to provide insight on potentially challenging and emotionally charged issues is that it can help me maintain my neutrality in the eyes of the clients. Because the “expert” provides their seasoned perspective, I can potentially avoid appearing to “take sides” because I am not the one providing the information. And the added bonus is that I often learn new things about areas where I don't have as much knowledge. Win-win-win for everyone – the clients, the coach and me!



Ben Stich, Mediator, LICSW, M.Ed. (<https://benstich.com/>): Divorce is considered one of the most stressful experiences one can have in a lifetime. The layers of divorce are complex. In addition to financial and parenting matters, which are complex enough, divorce is an emotional puzzle that requires parties to explore their changing identity, sift through complex emotions, mourn loss, envision a new future, identify short and long-term goals, and so on. It can be overwhelming!

This is where a skilled divorce coach can be of great value! Divorce coaches are specially trained to help divorcees navigate these complexities. The clearer one understands their emotions; their goals; their hopes and fears – the easier the divorce process becomes. The coach provides the emotional support and structured process for clients to engage the divorce process with more confidence and clarity. My clients who have the benefit of a coach rave about the support and experience – and how it positively transformed the divorce experience for them!



Magdalena Ellis, Esq. and Divorce Coach is an ICF-Certified Life Coach and a Co-Active Coach (CPCC) certified through Coaches Training Institute (CTI). Magda obtained her J.D. from Northeastern University School of Law (2003) and practiced divorce law and mediation (2014-2019). She is a licensed CPA and a Certified Fraud Examiner (CFE). <http://www.magdaellis.com/>



Tanya Gurevich, JD, LICSW, is a Parenting Coach, a Therapist and a Mediator. Tanya holds a JD and a MSW from Boston College and has practiced divorce law until 2012. Since then, Tanya's practice, Needham Mediation & Counseling, has been focused on therapy, mediation and parent coaching. Tanya has served as a GAL and a Parent Coordinator and has been an instructor for the Parents Apart classes. www.mylifechanges.net



**“To handle yourself, use your head;
to handle others, use your heart.”**

– Eleanor Roosevelt



WHAT MEMBERS OF A DIVORCING COUPLE REALLY WANT FROM EACH OTHER

By Michael Lavender

I have repeatedly witnessed a hidden and powerful currency in one party's willingness to acknowledge the other's emotional reality. A mediated divorce negotiation can feel like an impasse with one party not willing to yield on a financial point, and then, if an acknowledgement of an emotional nature occurs, the other party's seeming rock solid unwillingness to concede a financial issue can suddenly and miraculously evaporate, to the astonishment of the couple, and including, sometimes, me. In other words, if one party can become willing to offer an undefended expression to the other of how he or she may have become unconscious to a behavior that had real consequence to the other, this can create a stunning breakthrough in the financial negotiations. Moreover, the gesture of conceding the emotional point costs nothing financially to the party doing so.

An example of same can be something like, *"I really can appreciate how it could feel to you that I did not include you in financial decisions, that this could have made you feel unimportant, dismissed or unintelligent, and that you could have harbored understandable resentments toward me. I am sorry."*

The biggest challenge to bringing a couple to see the value of this hidden currency is an understanding of how guilt operates covertly.

Packed away in every withholding is a belief that our unconscious and unloving behavior makes us bad, and deserving of punishment, and that any such acknowledgement would expose one to more judgment by the other, and then amplify the consequent painful judgment of self. Therefore, a party's non-conceding of a point of emotional consequence to the other is adhered to with a strength of conviction that only makes the other party more unyielding on the financial matters.

Helping a couple see the potentially transformative currency of this emotional humility is truly a fine, inexact art – a game changing offering when it is received. It requires a verbal and subliminal empathetic communication of the first order – that, at least on a conscious level, no



one really wants to inflict pain on another, and yet we all do this all the time. It does not come from our better selves, and that behaving from our darker selves does not make us bad, it makes us human.

Most importantly, however, in order to maximize a couple's receptivity and to lower their defenses, it must be communicated to the couple that: "I, the mediator, am here for you, without judgment, that both of you are safe, which also implies that both of you must be good, and deserving of kindness, and that neither of you deserves to be punished, that defenses are not needed, not here, in this judgment free sanctuary". As such I communicate: "I see through your understandable fears, even if you don't, and that I know both of you are worthy, no matter what you did or failed to do!" It is in this climate that a party can much more likely consider any acknowledgement of his or her contribution to the series of painful happenings that led them to the place of divorce. Just as attack and defense results in more of the same in another, so does this polar opposite invite a softening, a reminding to each of what is true underneath the chaos. This paves the way for an organic falling into place of a more satisfactory financial outcome for each.



Attorney Michael L. Lavender has been practicing divorce mediation on Cape Cod, Massachusetts since 1991. He can be reached at 508-362-1189, ml@capemediation.com and Capecodmediation.com.



**“If we can share our story with someone
who responds with empathy and
understanding, shame can’t survive.”**

– Brené Brown



THEIR LEGACY MOVES US FORWARD: REFLECTING ON THE LOSS OF JUSTICE RUTH BADER GINSBURG AND CHIEF JUSTICE RALPH GANTS

by Jennifer Hawthorne

Editors' note: This was originally published on the MCFM blog on September 23, 2020

The legal community lost two brilliant minds with the passing of the Massachusetts Supreme Judicial Court Chief Justice Ralph D. Gants, and the passing of Supreme Court of the United States Justice Ruth Bader Ginsburg. In very different ways, both of these great leaders influenced my career path. They each helped to define for me the way in which I wanted to use my advocacy skills to promote more access to justice and a justice system that promotes greater equality in outcome. While my story may be unique, these two zealous advocates had a memorable impact on the career of many of my fellow mediators, too.

When applying to law school, I wrote of my desire to affect change through litigation and advocacy to further women's and civil rights. I think for most female lawyers of my generation, Justice Ginsburg was a beacon of hope and inspiration. She was one of the few very public examples of a woman who had truly managed to have it all. She had a career and legacy that will likely only be matched by a small number of women in my lifetime. She managed to balance that with a fulfilling family life by finding a life partner who truly considered her an equal. She worked through pregnancy and motherhood, grief and her own illnesses, striking down barriers at every stage of her life. She cleared the path for many more to follow in the future so that hopefully woman rise in the ranks in equal proportions to men in the very near future, in every field, not just the law. There are not enough words to adequately describe the drive and inspiration I felt each time I read an opinion, majority or dissent, written by her during my legal education.

Justice Gants more directly impacted the way I think about the practice of law. I had the privilege of attending Northeastern University School of Law where I took Professor Deborah Ramirez's class entitled "Balancing Liberty and Security." Chief Justice Gants, who was then a Superior Court Judge and married to Professor Ramirez, often guest lectured. During one such lecture, Chief Justice Gants assigned us roles in previously decided cases that tried to strike a balance between liberty and security. As he



went around the room, I found myself hoping that I would be assigned a role I could argue passionately and thereby demonstrate my advocacy skills. Instead, when he got to me, I was assigned the position of arguing for the government in *Korematsu v. United States*, 323 U.S. 214 (1944). For those unfamiliar with *Korematsu*, my role was to argue in support of the Japanese internment camps as a means of creating security for non-Japanese-descendant Americans during World War II.

My face must have immediately registered my displeasure because without my speaking a word, Chief Justice Gants responded explaining to the class that as lawyers, it is our job to zealously advocate for our clients. By definition, a zealous advocate is someone who does everything reasonable to help a client achieve the goals set at the outset of the representation. Chief Justice Gants further explained that in this particular class, we did not have a choice with respect to our clients and that therefore we are bound to set aside our own judgments about morality and ideas about “good or bad” and step into the shoes of our clients to formulate the best legal arguments we could to justify our client’s actions and/or goals. He also took a moment to point out that in our careers, in contrast to school, we would have a choice about whether we wanted to choose a path where we would have little say over which clients we chose to represent or whether we wanted to be deliberate in choosing a career path that allowed us to align our morality with our zealous advocacy on behalf of others.

Although at the time I did not immediately think of Justice Ginsburg, it’s impossible not to see her as the quintessential example of a zealous advocate who carefully chose her clients to affect change increasing gender equality with every case she won. During her career as a lawyer, Justice Ginsburg worked to ensure that gender was no longer a factor with respect to federal military and social security benefits, that women had equal status when it came to property tax and ownership rights, that marital status and pregnancy could not derail a woman’s career, and that women had equal opportunity to sports, and that women had the right to make decision over their own reproductive decisions.

At this point, you may be wondering why an organization of mediation professionals who spend their professional lives focused on maintaining neutrality to help others resolve their own conflicts might be so interested in what it means to be a zealous advocate. While by definition zealous advocacy applies to the client one is hired to represent, it is our job as

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mediators to help clients (and sometimes their counsel) see past positions to understand their goals more broadly. Mediators know that the most effective zealous advocates help clients achieve goals and interests, rather than focus solely on one position while ignoring the bigger picture. In this way, the concept of zealous advocacy can also apply to a cause and to our values, and our willingness to do whatever reasonable to further that cause. Both Chief Justice Gants and Justice Ginsburg spent their careers not just zealously advocating for their individual respective clients but also for much larger systemic change and for their values.

Chief Justice Gants was deeply committed to and a zealous advocate for expanding access to justice. While he was Chief Justice, he strengthened the judiciary branch by cooperating with both the executive and legislative branches. His willingness to cooperate resulted in increased funding for the judiciary which then allowed for the creation of a budget line item for dispute resolution. He also influenced a pillar of chief justices who listen to their colleagues and constituents and lead their divisions of the trial court to provide what Judge Edward Ginsburg always called predictability and consistency. With the combination of these actions, he improved access to justice for litigants in the Probate and Family Court by expanding access to mediation allowing unrepresented litigants to mediate their divorce or child custody issues. During his tenure, through his appointees and their staff, he influenced the child support guidelines and he also wrote the majority opinion in *Young v. Young*, 478 Mass. 1 (2017), explaining the importance of evaluating the “need” of the recipient spouse to maintain the standard of living at the time of the divorce. Taken together, the clarifications in child support and alimony calculations are gifts to family mediators that allow us to help inform our clients in a way that leads to more mediated agreements. He was a friend of the courts and of all who need them, especially those who represented themselves. In so doing he created fertile soil for mediation to flourish, and our garden continues to grow thanks in part to his leadership.

Justice Ginsburg’s work on equality similarly has an impact on the mediation of family conflicts. Her focus on gender equality had a significant impact on the way in which family responsibilities could be shared. Her commitment and dedication to equality in sharing child rearing responsibilities between spouses provides an example for our clients. As professionals committed to spreading the word of the benefits



of mediation and dispute resolution, we can and should learn from her belief that it is important to “[f]ight for the things that you care about but do it in a way that will lead others to join you.” She also believed that “If you want to be a true professional, do something outside yourself.” That is what we all do every day while working with our clients. We strive to bring a balance to their family lives taking ourselves out of the conversation while providing a space for them to hear each other’s voices and to decide what works best for their families.

Taken together, the dedication to access to justice and ensuring that all voices are included at the table reflected in the lives and careers of Chief Justice Gants and Justice Ginsburg provide ongoing motivation and inspiration to all who believe in dispute resolution. We at the Massachusetts Council on Family Mediation hope that their memories provide the inspiration to continue the fight to increase access to fair outcomes both through the court and outside of court by providing a table for those voices involved in the conflict to be heard and to therefore increase just and fair results regardless of status, gender, sex, sexual orientation, race, ethnicity, country of origin or marital status. By doing our work, we honor their memory and carry on their legacy.



Jennifer Hawthorne is a mediator and Collaborative Attorney at Skylark Law and Mediation in Southborough. Jen focuses her practice on out-of-court resolutions to family conflicts. She can be reached at jhawthorne@skylarklaw.com or 508-655-5980.



**“When two people decide to get a divorce,
it isn’t a sign that they ‘don’t understand’
one another, but a sign that they have,
at least, begun to.”**

– Helen Rowland



REFLECTIONS A YEAR LATER – JUSTICE RUTH BADER GINSBURG

By: Carol Lynn May

It has been a year since the passing of Justice Ruth Bader Ginsburg. Her loss is still felt. And her voice continues to be sorely missed.

Ruth Bader Ginsburg was a pioneer and a trailblazer. With her extraordinary legal mind, she crafted a legal strategy that brought the issue of sex discrimination to the Supreme Court. By successfully briefing and arguing landmark cases before the Supreme Court, Justice Ginsburg helped persuade the Court to apply a strict scrutiny test to laws that were discriminatory on the basis of sex, and in the process helped achieve a more equal society in this country for both women and men. When Justice Ginsburg started law school in 1956, she was one of nine women in the class; now women represent approximately 52% of law school students. She initiated in so many ways “the arc of progress” in this regard, but there is no doubt, so much that still needs to be done.

As a U.S. District Court Judge and Justice on the federal Circuit Court of Appeals, District of Columbia, she continued championing the causes of equal rights for women and men, and wrote many opinions in the areas of civil rights, freedom of speech, and criminal law, as well.

In her later years on the U.S. Supreme Court, Justice Ginsburg began finding herself more frequently in the minority of the Court. Becoming referred to as the “Great Dissenter”, she wrote memorable dissents on a number of issues, including reproductive autonomy and affirmative action.

Justice Ginsburg will probably most be remembered for her scintillating dissent in the case of *Shelby County v. Holder*, where although she recognized that the Voting Rights Act (VRA) had brought dramatic changes in the realization of minority voting rights, the Act had not to date eliminated all vestiges of discrimination preventing the free exercise of the voting franchise by minority citizens. She illustrated the need for the requirements of the Voting Rights Act to remain in place by providing this analogy that is now often quoted:

“[t]hrowing out preclearance when it has worked and is continuing to work to stop discriminatory changes is like throwing away your umbrella in a rainstorm because you are not getting wet.”



Justice Ginsburg was a model for all of us, too, in her private life, where she shared a very loving and equal partnership in many ways with her husband Martin (Marty) Ginsburg of over 50 years. The two of them shared childcare responsibilities, housework, and cooking which was mostly done by Marty by the children's preference, who was the better cook by far as the couple acknowledged. An anecdote from their marriage which illuminates their common responsibility for the children was told by Justice Ginsburg, remembering how their younger child was often disruptive in school. Said Justice Ginsburg when she was often called by the child's school while at work, she told the school that the child has another parent and requested that the school please call his father, too.

Finally, Justice Ginsburg must, also, be remembered for reminding the Court in her *Shelby* dissent of the events of the historic Selma Campaign for voting rights and her quote of Martin Luther King that: "The arc of the moral universe is long, but it bends toward justice." Adding to this quote in her remarks from the bench, Justice Ginsburg noted, however, that the arc only bends, "if there is a steadfast commitment to see the task through to completion."

It is a tremendous task. And it is left up to us for completion, including in the work we do going forward as mediators and peacemakers in this world.



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



MCFM READING CORNER: SEE WHAT MCFM MEMBERS ARE WRITING!

Editors' Note: *So much great content from MCFM members! Janet Wiseman reflects on her wonderful book – Seven Visual Steps to Yes – Difficult Decisions, Mediations and Negotiations Made Easier below. We have also included a beautiful poem by Beth Aaron entitled Wonderland. Take a look!*

ARE THEY READY TO DIVORCE?

by Janet Miller Wiseman

How many times do clients come into your divorce mediation office when they aren't on the same page? She absolutely knows she wants a divorce; he absolutely knows he wants to continue the marriage. Or they both have ambivalent feelings about whether to divorce? Is this often? Is it a moderate amount of times or just sometimes? In my long-established divorce mediation practice sometimes clients are not on the same page. What do you do with them? Proceed with divorce mediation, anyway? Send them to psychotherapists or counselors?

Because they aren't unified in knowing their future direction, proceeding with divorce mediation may not be appropriate and neither is sending them to a marriage counselor or to a couples therapist. Most psychotherapists/counselors will tell you that couples therapy or marriage counseling have as their goals helping to strengthen an existing marriage. So, then, what to do?

Sending the couple to decision-making mediation is the key to unlock the door of indecision. My recent book "Seven Visual Steps to Yes – Difficult Decisions, Mediations and Negotiations Made Easier" describes a seven step visual approach for a couple or a decision-making mediator, who is helping a couple, to reach a wise, carefully thought out decision about the future direction of their marriage. The book details vignettes which are engaging, illustrative, educational and sometimes hilarious and beyond the wildest imagination. These case examples are real life examples, modified, of course, to protect the identities of the couples.



There is Adnan and Sherrie who came into the office unable to decide whether to add an addition to the home for her mother, Edith. Adnan came from a culture where two or three generations enjoy living together. Besides, he wants to include in the addition a workshop for himself and a painting studio for Sherrie. With their mortgage just paid off, Sherrie wants no – and that means NO– more mortgage debt. They resolved this dilemma reaching a solution that was way beyond what they could have hoped.

Bill and Sally had a considerable amount of assets to divide from his start-up company. They had begun the divorce mediation process. He'd invented a specific type of robotic arm for surgery and both of them thought they could retire for life with half the assets. Sally, however, wanted to be sure that if she kept the house, the interest and dividends on her mutual funds would last her lifetime so she would not have to work. A certified financial planner was brought in for “collaborative mediation” who demonstrated to Sally through charts and graphs that she had more than enough money and then some to spare. Bill decided to buy a house for himself, as well, that was considerably below the assessed value of the former marital home.

Anne and Sam in the office for divorce mediation had lived together for three long years beyond their breaking point, unable to decide who would leave their marital home. She had the greater income, \$125,000/year, while he was earning \$35,000. He had designed the home and wanted to pass it on to the couples' children. He was to inherit \$3.2 million dollars when his mother, who had Alzheimer's Disease died, but he could not afford to buy out Anne's interest in the home at that point in time. She was not attached to the home, but could afford to buy it. I, as mediator, suggested that he attempt to get a loan from their bank, showing his equity in the home and that he was to be sole inheritor of his mother's trust. He was very doubtful, but he obtained the loan! The wife gave the husband enough alimony for the next two years until his Social Security began. He kept the house, the wife kept her full retirement fund and the marriage was finally over!

The book Seven Visual Steps to Yes – Difficult Decisions, Mediations and Negotiations Made Easier is perfect to read while waiting for one's plane, en route to one's destination and a vignette or two every evening before bedtime. Upon arrival back at one's airport of departure the

Continued on next page



reader will have prepared a carefully thought out strategy to begin a decision making process about the future direction of one's marriage. Decision making mediation is the appropriate method for those indecisive couples or those who are on radically different pages to arrive together at the same place, ready for divorce mediation or, who knows, perhaps in some even ready for reconciliation.



Janet Miller Wiseman LICSW, Certified Divorce and Family Mediator, was Co-Founder of the Massachusetts Council on Family Mediation, in 1982 and of The Negotiation Collaborative, Janet Miller Wiseman, Mediation Services in 1979. Janet was the author of "Mediation Therapy: Short-Term Decision Making for Couples and Families in Crisis" in 1990 and "Seven Visual Steps to Yes – Difficult Decisions, Mediations and Negotiations Made Easier" in 2016. She has developed and managed a successful practice of divorce, separation, couples and decision making mediation since 1979. With deep satisfaction she has facilitated thousands of couples in reaching decisions about the future directions of their marriages.



WONDERLAND

by Beth Aarons

I loved him in fathoms before cradling him yet,
Before beholding his face when our eyes first met,
Before his first breath unleashed his first cry,
Before his first bath and hushed lullaby.

While his tiny frame slept, I became quite aware
Of the unwieldy weight of being charged with his care,
Of schooling him in all the world's complex ways,
For his roots to run deep and his future to blaze.

I envisioned his childhood, a small boy growing strong,
Playing, exploring, and learning right from wrong.

I assumed, as his parent, I would impart what I know,
And he, as my son, would absorb it just so.

What was quite unexpected, but a welcome surprise,
Was to again view the world through a child's eyes—
To cherish the chance to revisit the place
That time had forgotten and adulthood erased.

Where all tastes are a first and each box a drum,
Delighting in snowflakes 'til fingers turn numb;
Where dogs become dragons and the cushions a fort,
And bubbles are magic of the most wondrous sort.

Where running means freedom and swings make you fly,
And there's pure joy in launching a kite to the sky;
Where leaping in leaf piles is sound autumn fun,
As is splashing in puddles warmed by the sun.

Where a hat makes a pirate with a stick for a sword,
And a handful of pebbles his vast treasure hoard;
Where play time's too short and nap times too long,
And rapture's complete in a dance and a song.

Where bugs are like aliens, foreign and strange,
And the child is the giant to them, for a change;

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Where a tree's made for climbing as high as can be,
And hermit crabs tickle when plucked from the sea.

Where summers are endless and time is unmeasured,
And the simplest of moments magnificently treasured.
Children's rush to grow up paves a trail bittersweet—
Life's amazement fades as their journeys complete.

Memories rush back from decades long past,
The details quite hazy, but the feelings held fast,
From a time when we marveled at every day's lore,
Before life takes its toll and we're carefree no more.

We see the same world, but with distinct points of view,
And who's to say which way is better or true?

Parenthood granted much more than I'd planned,
With a heartfelt revisit to youth's wonderland.



Beth L. Aaronson, JD, MSW, Aaronson Law & Mediation, and Of Counsel to Skylark Law & Mediation, PC, both in Southborough, MA. While her career is focused in law, her background in social work and psychology has informed her connection with clients, child-focused family law work, and ability to finesse complex family dynamics. Beth is a Certified Mediator through MCFM and APFM, primarily mediating divorces, parenting plans, prenuptial agreements, and inheritance dispute matters. Beth is also a Collaboratively trained attorney for divorce and probate matters, and has been a Guardian ad Litem court investigator for 25 years. She is Past President of the Mass. Collaborative Law Council, on the Boards of the Mass. Council on Family Mediation and Academy of Professional Family Mediators, and teaches Mediation at Suffolk Law School in Boston. Beth dabbles in creative writing in her spare time, and Wonderland helped her win the 2018 Natick Poetry Slam.



MCFM NEWS

RECENT NEWS IN THE COURTS AND AT MCFM

COURT NEWS

Child Support Guidelines

The new Child Support Guidelines implemented by the Task Force appointed by the Chief Justice of the Massachusetts Probate and Family Court went into effect on October 4, 2021. There are lots of new changes so we encourage you to take a look at the text of the Guidelines and calculator at <https://www.mass.gov/info-details/child-support-guidelines>

We also encourage you to take a look at a blog posted on the Skylark Law & Mediation website originally published on August 24, 2021 which cogently summarizes some of the changes. This can be found at <https://blog.skylarklaw.com/>

We note that the new Guidelines, while their changes can be both complex and challenging, offer significant opportunities mediators can explore with their mediation clients. These include, but are not limited to, the following:

1. The 2021 Guidelines apply to the first \$400,000 of combined gross income of the parties. Any child support obligation ordered by the Court for amounts in excess of \$400,000 is at the discretion of the Court, which the Guidelines provide is not to exceed 10%. The amount of child support to be paid when the combined gross income of the parties exceeds \$400,000 is a significant issue which can be mediated, including the percentage of child support to be paid on the amount over \$400,000, whether any of the additional child support amount should be paid as alimony, and the question itself of whether additional support should be paid in a given case where the combined incomes exceed \$400,000.

2. Child care costs under the new Guidelines are now shared proportionately. They are no longer capped at 15%, but are capped at \$355 per child per week. Mediation can address the issues this presents, including whether the child care expense should be shared equally between the parties or proportionately and perhaps be calculated and addressed outside the Guidelines (requiring a deviation form to be filed);

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and whether the child care cost (or a portion thereof) for a child in excess of the Guidelines cap of \$355 per week should be shared, and if so, whether any of that additional amount should be treated as alimony, rather than child support.

3. The 15% cap on health insurance is now eliminated. Either parent can now be ordered to obtain or provide health insurance. However, private health insurance can only be ordered if it meets certain federal requirements, i.e., 5% of gross income or less, services provided to the child within 15 miles of the child's primary residence, and the parent's income is not less than 150% of federal poverty guidelines for the family size. Mediation can help the parties address which party will carry the health insurance for the family, whether the health insurance expense will be calculated outside the Guidelines (requiring a deviation form to be filed), how the expense will be paid or shared, and importantly how co-payments, co-insurance, and deductibles, which have significantly increased in the last few years will be allocated between the parties.

4. The treatment of the child care tax credit is another consideration for mediation cases, as the Probate Court will consider its effect only if it is specifically addressed and presented to the Court.

5. As the costs of health insurance premiums and child care in Massachusetts are among the highest, if not the highest in the nation, these issues will take on an even greater significance in mediation cases involving children, and mediators may need to deal in certain cases with the additional quandary of whether the costs of health insurance and child care may be so burdensome to a parent that a deviation from the Child Support Guidelines may need to be considered.

These are only some of the issues presented by the new Guidelines. The opportunities are certainly there for mediators to help our clients address and meet these new challenges presented.

Parenting Class Requirement

On July 8, 2021, the Massachusetts Probate and Family Courts announced a suspension to the requirement that divorcing parents complete a mandatory parent education program. For any cases filed after July 12, 2021 the parties will not be required to submit a parent education



certificate. For further information, please take a look at the at the mass.gov website for the announcement along with a blog post completed by Stephen McDonough with www.nextphaselegal.com (this blog post was also posted on the MCFM Blog)



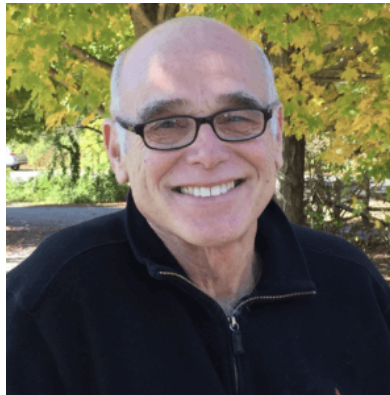
IN MEMORIUM

We remember MCFM members who have recently passed and whom we will miss (please look on the MCFM Family Mediation Blog www.mcfm.org/blog for posts with details on their obituaries)

Rebecca Cohan



Howard Goldstein



Continued on next page



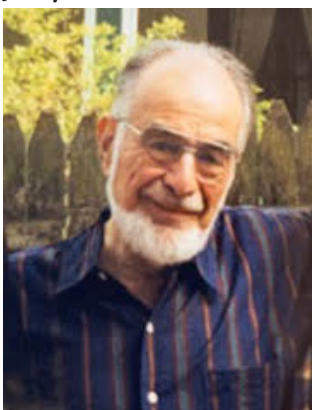
Barry Harsip



Sylvia Sirignano



Jerry Weinstein





MCFM PROGRAMS

November 15 Program Recap

On November 15, 2021 MCFM presented a panel on Separation Agreements on November 10, 2021. The impressive panel included the Honorable Thomas Barbar (Middlesex Probate Court (Woburn), Krishna Butaney (AJCM for the Honorable Melanie Gargas, Lowell), and Alexandra (Allie) Sisk (AJCM for the Honorable Justice Barbar).

For those fortunate enough to attend (the event was fully registered), the panel provided numerous helpful suggestions to take into account when drafting Separation Agreements to be filed with the Probate Court. These included:

1. Mediators are encouraged to include their name and information in the Agreement. This information is helpful to the Court, although the Court does not track the number of cases that are mediated and does not have any form that would allow the Court to do so.
2. Child Support deviation forms are tracked by the Court, and this information is provided to the Child Support Guidelines Task Force every 4 years.
3. Child Support deviation forms are required to be filed in every case when the Child Support Guidelines are not followed, including those cases where the child support amount is greater than what the Guidelines would require.
4. The Court will accept mediated Agreements where the mediator notarizes the signatures of both parties, but does not accept Agreements where an attorney representing one party notarizes the signatures of both parties.
5. The Probate Court is hearing most cases in person now. A virtual hearing can be requested when filing a 1A Petition, but anticipate a longer waiting time to obtain a hearing date, as most judges are now scheduling virtual hearings only one day a week.

Judges are able to hear exponentially more cases in person, than they can do virtually.

Many thanks to Laura Unflat and the MCFM Professional Development Committee, including John Fiske and Steven Nisenbaum for organizing this special event.

Continued on next page



MCFM Institute - 2021 - Please join us for the MCFM Institute December 2 and December 3!

December 2 8:30 am - 1:10 pm, December 3 8:45 am - 12:45 pm

Keynote on December 2 by Stephanie Coontz - **“The Changing Landscape of Marriage and Divorce”** Stephanie Coontz will discuss the challenges facing couples – and mediators who work with them – in light of the changing dynamics of marriage formation and breakup. Professor Coontz will discuss how historical and sociological perspective can help clients see important issues in a different way. She will also provide data on how “the tyranny of averages” can distort our understanding of the causes and effects of divorce.

SEMINARS AND WORKSHOPS – December 2:

“The New Child Support Guidelines”

Presenter: Fern L. Frolin, J.D.

«Mediating Prenups and Postnups: Challenges and Opportunities»

Presenter: Laurie Israel, J.D.

Video Clip: Presentation of the John Fiske Award for Excellence in Mediation to the late **Howard Goldstein** (recorded May 2021); remarks by Alex Goldstein

SEMINARS AND WORKSHOPS – December 3:

“Sometimes It Takes More Than Two to Tango”

Presenters: Beth L. Aarons, J.D., MSW; Jennifer Hawthorne, J.D.; and Kim U. Whelan, MBA, CDEA®

«The Write Stuff: Drafting Separation Agreements»

Presenters: Susan Klebanoff, J.D., and Mary Sheridan, J.D.

«Family Law: The Year in Review»

Presenter: Jonathan Fields, J.D.



JOIN US 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.



DIRECTORATE

MASSACHUSETTS COUNCIL ON FAMILY MEDIATION, INC.

P.O. Box 59, Ashland, NH 03217-0059

Telephone: 781-449-4430

Email: masscouncil@mcfm.org

Website: www.mcfm.org

OFFICERS

President	Justin L. Kelsey , Skylark Law and Mediation, 9 Main Street, Southborough, MA 01772, jkelsey@skylarklaw.com ; www.skylarklaw.com , 508-655-5980
Vice-President	Laurie S. Udell , Udell Family Law, 399 Chestnut Street, Needham, MA 02492, lsudellesq@aol.com , www.udellfamilylaw.com , 781-449-3355
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MCFM Family Mediation Journal

Erin Whelan Pennock, Co-Editor

Law Office of Erin Whelan Pennock, 83 Leonard Street, Suite 6,
Belmont, MA 02478, erin@ewpennocklaw.com, 617-489-2288

Carol Lynn May

Law Office of Carol Lynn May 260 Boston Post Rd, Wayland, MA 01778,
clmaylaw@verizon.net, 508-358-3350

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.

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