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

PRESIDENT'S PAGE: JONATHAN E. FIELDS

The MCFM Institute was a great success – well-reviewed and well-attended – another sold-out crowd. Once again, Laurie Udell's tireless effort manifested in a vibrant and exciting event. Laurie had a great team working with her – Fran Whyman, Vicki Shemin, and Kate Fanger—thanks to all of you from MCFM.

Speaking of recognition, two highlights of the Institute: Michael Leshin received the John Fiske award and Les Wallerstein received a special award for his founding and stewarding of the FMQ for these many years.

A few weeks later, I attended a Professional Development meeting, "Wounded in Love, Welcome in Mediation," that combined the music of Bob Dylan, two great singing voices in Barbara Kellman and David Kellem, not to mention a guitar and harmonica player. Barbara and David sung duet-versions of Bob Dylan classics for the "wounded in love" part. One would sing and the other would answer in song. And after each song, the group discussed issues that might arise if these two were to mediate their issues – the "welcome in mediation" part. Probably the most creative program I've ever seen. Many thanks again to John Fiske and Steve Nisenbaum who continue to conceive and present the most interesting programs. As always, I'm looking forward to the next one.

Wishing you all a healthy and happy new year!

Yours,

jfields@fieldsdennis.com

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ARE YOU ALLOWED TO NOTARIZE AGREEMENTS YOU MEDIATE?

By Les Wallerstein

Or more precisely... is it is legal for a Massachusetts mediator who is a Notary Public to notarize the Separation Agreements (or any other documents s/he mediates) **in which s/he is named as the mediator?** The illogical Massachusetts answer to this question is yes for some... and no for others. Here's why.

All Massachusetts Notaries Public are bound by "Standards of Conduct" promulgated in May 2004 by his Excellency Governor Mitt Romney. [1] These standards are embodied in Revised Executive Order No. 455 (04-04), in which Section 6 states (in relevant part): **"A notary public shall not perform a notarial act if the notary public is named in the document that is to be notarized ... except a notary public who is licensed as an attorney** in the Commonwealth of Massachusetts **and is named in any fiduciary capacity...." (Emphasis added.)**

Since Massachusetts notary-mediators who are licensed lawyers may notarize documents in which they are *named in any fiduciary capacity*... the next step in the analysis turns on the definition of a fiduciary — a simple task that proves as elusive as defining any word with a long history and multiple meanings.

Complicating this task is the fact that of the 26 jurisdictions that have enacted some version of a Uniform Fiduciaries Act, Massachusetts is not among them. [2] Without any uniform, black letter Massachusetts law to rely on, I turned to a learned legal treatise, Black's Law Dictionary (Fifth Edition, West, 1979), which states (in relevant part):

> **Fiduciary**
>
> The term is derived from the Roman law, and means (as a noun) a person holding the character of a trustee, or a character analogous to that of a trustee, in respect to the trust and confidence involved in it and the scrupulous good faith and candor, which it requires. A person having a duty, created by his undertaking, to act primarily for another's benefit in matters connected with such undertaking. As an adjective it means of the nature of a trust; having the characteristics of a trust; analogous to a trust; relating to or founded upon a trust or confidence.
>
> **Fiduciary Capacity**
>
> One is said to act in a "fiduciary capacity" ... when the business which he transacts ... is not his own or for his own benefit, but for the benefit of another person, as to whom he stands in a relation implying and necessitating great confidence and trust on the one part and a high degree of good faith on the other part. The term includes an attorney at law....

Fiduciary or Confidential Relation

A very broad term.... It exists where there is special confidence reposed in one who in equity and good conscience is bound to act in good faith and with due regard to interests of one reposing the confidence. A relation subsisting between two persons ... of such a character that each must repose trust and confidence in the other and must exercise a corresponding degree of fairness and good faith. Out of such a relation, the law raises the rule that neither party may exert influence or pressure upon the other, take selfish advantage of his trust, or deal with the subject-matter of the trust in such a way as to benefit himself or prejudice, the other except in the exercise of the utmost good faith and with the full knowledge and consent of that other... Examples of fiduciary relations are those existing between attorney and client....

The gospel according to Black's Law Dictionary makes clear that attorneys are fiduciaries to their clients, but lawyer-mediators do not practice as attorneys with their mediation clients, they practice as mediators. This raises the basic, underlying question: are mediators' fiduciaries?

According to David Hoffman: "...Most successful mediators inspire trust...." Citing three recent studies he says that "... the central conclusion to be drawn ... is that a—if not the—core element in mediator success is the mediator's ability to establish a relationship of trust and confidence...." [3]

The plain meaning of the elements described in the definition of fiduciary reveals that mediators embody each key attribute. Like a fiduciary, a mediator has the power and obligation to act for another ... under circumstances that require total trust, good faith and honesty.... Like a fiduciary, a mediator has greater knowledge and expertise

"[I]f non-lawyer notary-mediators... notarize agreements they mediated in which they are named as the mediator – they do so at their peril..."

about the matters being mediated... and like every fiduciary s/he must avoid self-dealing, conflicts of interest, and at all times act for the sole benefit of the clients.

The logical conclusion seems inescapable: all divorce mediators are fiduciaries. Accordingly, all Massachusetts licensed lawyer-notary-mediators are legally allowed to notarize any document in which they are named in a fiduciary capacity, i.e., as the mediator.

The Massachusetts Standards of Conduct for Notaries Public carved out an explicit exception allowing licensed attorneys to notarize any document in which they are named in any fiduciary

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capacity. It created no comparable safe-haven for non-lawyer notaries. This pro-lawyer bias created a double standard for mediator-notaries, forcing all non-lawyer notary-mediators to contend with a set of unnecessary and difficult choices.

They may choose to comply with the Standards and refrain from notarizing documents in which they are named as mediator. Since Separation Agreements in Massachusetts must be notarized, this likely negates the very reason why most non-lawyer notary-mediators aspired to be commissioned as Notaries.

Alternatively, they may choose to comply with the Standards and not name (themselves as) the mediator—stating instead that the parties have mediated an agreement without specific mediator attribution. This denies non-lawyer notary-mediators the credit they deserve while obscuring their personal responsibility for drafting the documents they mediated.

However, if non-lawyer notary-mediators ignore the Standards and notarize agreements they mediated in which they are named as the mediator—they do so at their peril—risking the revocation of their notarial commissions for official misconduct. [4]

Without a shred of logical justification Massachusetts treats non-lawyer notaries as less trustworthy than lawyer notaries. This inequity renders a paraphrasing of George Orwell's famous Commandment in *Animal Farm* [5] especially apt: "All notaries are equal, but some notaries are more equal than others."

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Footnotes:

1. http://www.ips-notary.com/download/Exec_Ord.pdf

2. To date the following 26 jurisdictions have enacted some version of the Uniform Fiduciaries Act: Alabama, Arizona, Colorado, District of Columbia, Hawaii, Idaho, Illinois, Indiana, Louisiana, Maryland, Minnesota, Missouri, Nevada, New Jersey, New Mexico, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Dakota, Tennessee, Utah, Virgin Islands, Wisconsin and Wyoming. [http://www.law.cornell.edu/uniform/vol7.html]

3. David A. Hoffman and Boston Law Collaborative, Mediation: A Practice Guide for Mediators, Lawyers and Other Professionals, § 109.8.2, MCLE New England (2013).

4. http://www.ips-notary.com/download/Exec_Ord.pdf (Section 15)

5. George Orwell, Animal Farm, Penguin Books, New York (1946). [Note: Of the "Seven Commandments of Animalism" the most important began as: "All animals are equal." Eventually it was replaced by: "All animals are equal, but some animals are more equal than others."]

To believe in something,
and not to live it,
is dishonest.

Mahatma Gandhi

"DIVORCE CORP" DOCUMENTARY TAKES UNFAIR AIM AT FAMILY COURT JUDGES AND LAWYERS

By David A. Hoffman

"Divorce Corp," a feature-length documentary that excoriates divorce lawyers and Family Court judges, is slated for national release in January 2014. Having played a tiny role in the film, I was shocked when I saw the finished product – but more on that point later.

My primary concern is the film's misguided message, which boils down to this: divorce lawyers and Family Court judges are in cahoots – engaged in a sinister enterprise designed to fleece divorcing couples. Parents in the movie provide harrowing accounts of courtroom battles in which they lost access to their children and spent their last nickel on lawyers and court costs.

The film may have been intended to improve the way our society handles divorce, which can be a horrible, messy process under the best of circumstances. The expense, animosity and delays associated with a litigated divorce can be maddening for the divorcing spouses – and, at times, for the professionals. A legal system that cannot provide a more civilized way to end a marriage needs repair.

However, by lambasting Family Court judges and matrimonial lawyers as the villains primarily responsible for the problems, the film paints a misleading and potentially dangerous portrait of what is actually going on in Family Courts.

The danger in "Divorce Corp" is three-fold. First, the film's director, Joe Sorge, takes the worst cases of injustice and overreaching and generalizes them into a blanket indictment of Family Courts that the film calls a "wild west" in which constitutional rights do not apply. The reality, of course, is that – even though the rights to a lawyer and a jury trial are constitutionally guaranteed only in criminal cases – Family Court proceedings are, in every respect, governed by statutory and constitutional strictures. The film's narrator also states that "lawyers have been granted complete immunity in court" – a proposition that would be laughable to attorneys who have paid fines or even spent time in a lock-up because of a courtroom infraction.

Second, by claiming that greedy lawyers and corrupt, power-hungry judges are responsible for bad outcomes in litigated divorces, Sorge feeds that dangerous strain in our political culture that undermines respect for our legal institutions. Family Court judges – like the rest of the judiciary in the United States – consist for the most part of lawyers who have taken a steep pay cut in order to perform a critical and underappreciated service on the bench. And while there may be *some* matrimonial lawyers who seek to extract the maximum revenue from each case, the market rewards lawyers known for putting their clients first, and

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corrupt lawyers are a primary focus for the bar's disciplinary boards.

Finally, the film ignores the alternatives to courtroom battle – such as mediation, family law arbitration, and collaborative law – that are burgeoning throughout the United States with encouragement from the courts. Such processes dramatically reduce the animosity, cost, and delay caused by courtroom battles. The film's only comment on this subject is: "Methods outside the courtroom like mediation, have been tried, but they've never caught on because the financial incentive to fight is just too powerful."

To his credit, Sorge recognizes the systemic nature of the problems that our Family Courts – and therefore divorcing couples – face. An adversarial system is better suited for determining guilt or innocence in criminal matters

"The film paints a misleading and potential dangerous portrait of what is actually going on in Family Courts."

than for solving complicated family problems such as custody and parenting schedules. But the film suggests that the problem is overfunding the courts ("The more funding the courts get from the state, the larger they get, the more business they can handle from the law firms") – when it is really the opposite.

Our courts are woefully *under*funded. Even the briefest visit to a Family Court session shows that we expect the judges there to handle an enormous docket with inadequate resources. Fifty percent of marriages end in divorce, and the Family Courts handle myriad forms of dysfunction – domestic violence, addiction, mental illness, teenage pregnancy, child abuse, and parental abandonment, to name just a few.

Family Court judges are operating with minimal support staff, outdated computer systems, and no funding relief in sight. Court clinics – utilizing social workers and other mental health professionals – exist in only a few of our courts. Parent education programs for divorcing spouses need to be expanded – particularly in high conflict cases. Legal services for the poor are badly underfunded, as is mediation.

"Divorce Corp" may serve a useful function in sounding the alarm that Family Courts need help, but a more balanced and discerning approach to the problems will be required if we are to avoid making the treatment worse than the disease.

* * * * *

A Cautionary Tale

On a personal note, I am embarrassed about my appearance in the film. My involvement was brief. More than three years ago, filmmaker James Scurlock was travelling around the U.S. and Scandinavia, interviewing people for a documentary that he was making about divorce. He talked with divorcing spouses, mediators, judges, lawyers, and law professors, and I was asked to talk with him.

Wondering whether it was wise to participate, my wife and I watched one of his films, "Maxed Out: Hard Times, Easy Credit and the Era of Predatory Lending," a critically acclaimed 2006 documentary about abuses in the credit card and mortgage industries. Scurlock brought a fresh, populist perspective to his subject (including extensive footage of Elizabeth Warren, whose passion and perceptiveness on the subject steal the show), and so I agreed to talk with him.

On a gorgeous summer day, Scurlock's crew set up their equipment on the back deck of my house, and we talked about divorce – primarily about mediation and Collaborative Law, which I described as vital remedies for the cost, acrimony, and delay associated with litigated divorces. (A representative sample of Scurlock's interview with me can be found at http://tinyurl.com/divorce-corp-mediation.) Scurlock interviewed at least five other people in Massachusetts.

Then we interviewees heard nothing for three years. In late October 2013, the "Divorce Corp" staff sent me a password-protected Internet link, so that I could get an advance look at the 90-minute film, and I noticed in the credits that James Scurlock was no longer the director – he was replaced by one of the producers, Joe Sorge, who has never directed a film before.

To say that I was angered and appalled by what I saw is an understatement. If you want a taste, check out the trailer, which can be found at http://tinyurl.com/divorce-corp-trailer. The rising crescendo of disturbing music in the trailer matches the hysterical tone of the narration.

On a more personal level, I saw that *nothing* that I said about mediation or Collaborative Law was included in the film.

On the other hand, Sorge did post at www.YouTube.com some outtakes from the film in which mediation and Collaborative Law are discussed – a link to one example is cited above. When Sorge sent me that link, I wrote to him, expressing my disappointment about "Divorce Corp" and asking why mediation is mentioned only once in the 90-minute film and without much enthusiasm. Sorge responded: "I fully agree with you that mediation and collaborative divorce are vastly preferred options for the resolution of divorce and custody matters. . . . . I wish we could have made a 3-hour movie, covering many more topics. But the reality of the format is that you only get so much time."

My own experience in the Probate and Family Court persuades me that Massachusetts has been fortunate in attracting excellent judges, who skillfully and conscientiously handle some of the most difficult cases facing the judiciary.

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My brief experience of participating in this worrisome film may provide a cautionary tale to those who are asked to participate in such ventures. Agreeing to be interviewed means accepting the risk of being selectively quoted, or quoted out of context. One needs to trust the filmmakers or journalists, who, to some small degree, hold your reputation in their hands.

More importantly, I worry about how the sensationalistic tone of what Sorge chose to include in this film is likely to distort the public's view of our Family Courts and complicate the task of improving them. How many young lawyers will choose to practice family law if their motives for doing such difficult and important work will be questioned? How many experienced family law attorneys will choose to go on the bench if they know that their work there will subject them to such unwarranted contempt?

My own experience in the Probate and Family Court persuades me that Massachusetts has been fortunate in attracting excellent judges, who skillfully and conscientiously handle some of the most difficult cases facing the judiciary. Although I spend more of my time as a mediator, courts and mediators have a closely inter-dependent relationship. (*See* David Hoffman, "Courts and ADR: A Symbiotic Relationship," ABA Dispute Resolution Magazine, Spring 2005 (http://tinyurl.com/symbiotic-relationship). Mediators often talk about the parties "bargaining in the shadow of the law" (a phrase coined by Bob Mnookin and Lewis Kornhauser – or, to use John Fiske's insightful and optimistic restatement of that phrase, "bargaining in the *light* of the law"). We need good judges to fairly interpret and apply those laws and thus establish precedents that will guide the rest of us in negotiation and mediation.

Although I am chagrined about my role in "Divorce Corp," I hope that whatever notoriety the film attains will contribute to genuine debate about what our Family Courts need and, at the same time, encourage divorcing couples to consider mediation, Collaborative Law, and other alternatives to courtroom battle.

Postscript: After this article was published in the Massachusetts Lawyers Weekly, a mediator sent me a link to the California Court of Appeals decision in 2012 in connection with Joe Sorge's divorce: http://caselaw.findlaw.com/ca-court-of-appeal/1590652.html. The Court's opinion describes a lengthy and acrimonious battle that began with a divorce filing in the year 2000, and provides a helpful context for understanding why Sorge is so upset with the Family Courts . In Sorge's court proceedings, he argued that, despite their 50/50 parenting schedule, his ex-wife should be paying him child support, and she should be paying his legal fees, even though his net worth was $68 million and five times greater than hers. (His argument was based on some operating losses

from companies that he invested in after he sold his bio-tech business for $100 million.) Although Sorge contended that he should not pay any child support because he had a negative net income, the court noted that he "continued to use private jets for international travel" and that his "losses have not hampered his lifestyle." Also, noteworthy (in terms of understanding Sorge's unhappiness with the Family Courts) are the Court's order that Sorge pay his ex-wife $75,000 in monetary sanctions and $260,000 for her attorney's fees; its finding that he engaged in intimidation tactics in the litigation, including threatening a malpractice suit against the parties' jointly hired forensic accountant; and its finding that he had "engaged in conduct that frustrated settlement and furthered the litigation."

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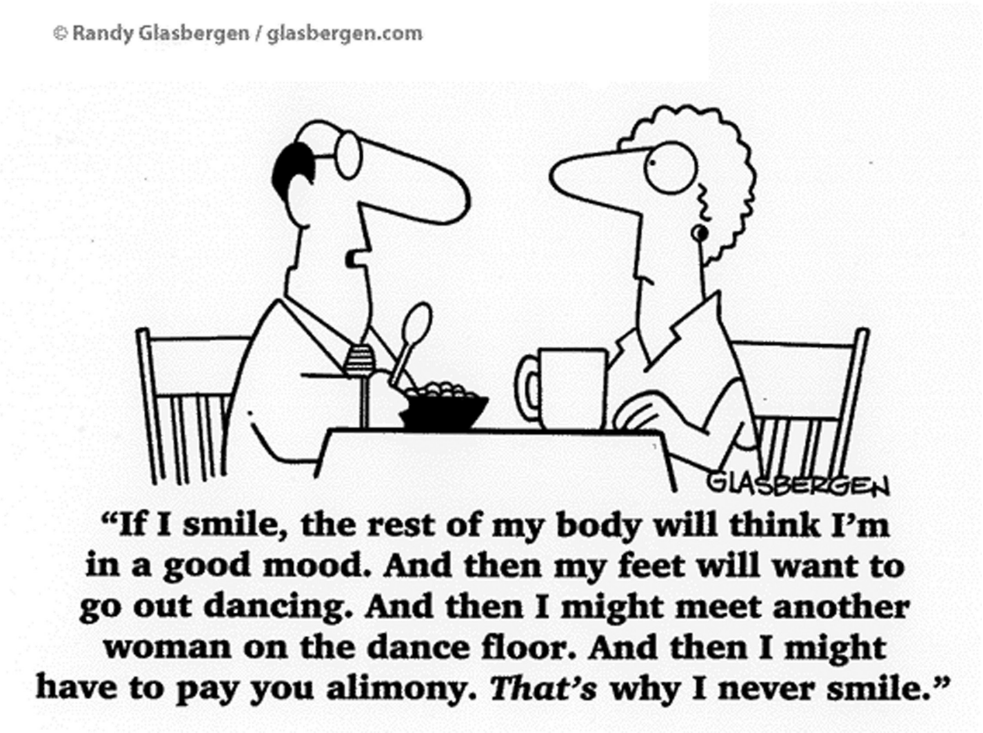

SABER-TOOTHED TIGERS IN DIVORCE AND FAMILY LAW MEDIATION

By Rackham Karlsson

"He won't listen to reason at all. It's like he's gone crazy." "She's not making any sense. Can't she see what's going on here?" "I'm not acting like myself anymore, and I don't understand why." If any of these phrases sounds familiar, then you have seen firsthand how stress can affect people going through difficult situations, whether it be a divorce, the passing of a loved one, or even something more mundane like a bad day at work. Why do people seem to lose their grip on reasonableness in stressful situations?

Blame the Cavemen

To understand why normally rational people sometimes act irrationally when they are under stress, it helps to consider some important biological processes that are in motion in such times. In 1929, Walter B. Cannon, M.D., a professor of psychology at Harvard University, released the second edition of his book titled *Bodily Changes in Pain, Hunger, Fear and Rage: An Account of Recent Researches into the Function of Emotional Excitement*. In it, Cannon examined how animals' bodies respond to actual or perceived danger. In one passage, he observed: The increase of blood sugar, the secretion of adrenin [sic], and the altered circulation in pain and emotional excitement … [are] biological adaptations to conditions in wild life which are likely to involve pain and emotional excitement, i.e., the necessities of fighting or flight. In this manner, Cannon coined the now-famous term "fight or flight," a reference to the various biological processes that, together, are perhaps more accurately described as the "stress response."

Although our understanding of the stress response has expanded significantly since Cannon's seminal publication (for example, "fright" is frequently included in the short list of responses – imagine a possum playing dead, or a deer in the headlights), the general principle holds true today: when exposed to actual or perceived danger, animals undergo various biological changes that (ideally) help them respond appropriately. The process begins when the brain receives sensory input that it perceives as threatening. The brain then triggers a stress response in the hypothalamus, which in turn mobilizes the adrenal glands to release adrenaline, cortisol, and aldosterone. These hormones cause various other reactions that raise the heart rate and metabolism, constrict the blood vessels, and increase blood flow, among other things. In short, the brain commands the body to marshal its resources in response to the threat.

Modern Conceptions of Danger

Hearing the term "fight or flight," many of us probably envision a caveman encountering a saber-toothed tiger, or some other image of impending physical danger. However, as noted above, the phenomenon is more broadly referred to as the "stress response," a term that aptly captures the wide range of threatening stimuli and concordant responses that plague modern humans. As Lauralee

Sherwood, professor of physiology at Michigan State University, has noted: Most of the stressors in our everyday lives are psychosocial in nature … yet they induce these same magnified responses. Stressors such as anxiety about an exam, conflicts with loved ones, or impatience while sitting in a traffic jam can elicit a stress response. Tight deadlines, excess workload, interpersonal conflicts, and other such pressures that, for many of us, are part and parcel with our daily lives may also provoke the stress response. Sleep loss and poor diet are similarly common markers of many people's lives that further increase stress levels.

Excessive Stress Impairs Decision-making

In 2003, researchers at the National Institute for Occupational Safety and Health published a review of cross-disciplinary literature relating to stress and decision-making. Among their findings was the observation that individuals' decision-making performance may be either positively or negatively impacted by stress. In the same way that athletes require a certain amount of pressure to perform optimally, our decision-making abilities can benefit from a certain amount of stress. However, excessive stress exhausts the body's resources and hampers performance. In other words, the more stressed we get, the more likely it becomes that the stress response will impair decision-making. For example, studies suggest that stress increases the likelihood of hasty decisions that either fail to examine all possible alternatives or consider those alternatives at a relatively shallow level.

Implications for Divorce and Family Law Mediation

In light of these findings, it seems clear that in situations involving difficult family situations — be it divorce or something else — the stress response will likely be active to a high degree. Equally important is the observation that our ability to make rational decisions in these situations will decrease over time, if stress levels continue to increase. This connection helps explain, at least in part, why putting off difficult decisions about family issues can lead to hasty and ill-advised decisions, if the stress increases to the point that one can no longer respond rationally to perceived psychosocial dangers (e.g. feeling undervalued, deceived, etc.). While these observations certainly don't excuse poor decision-making, they do offer guidance for managing stress in divorce and family law mediation.

1. Cultivate Self-Awareness

At the outset, clients' self-awareness is critical. We all experience mounting stress a bit differently. Mediators should help clients be aware of their physical and emotional states, so clients can identify when their own stress levels are increasing. This can be accomplished using the fundamental mediator's techniques of active listening ("From what you just said, it sounds like you are angry about this topic.") and checking in with the clients ("How are you doing right now?"). The best time to act on stress is before it reaches that critical tipping point. If it seems like a client's stress levels are mounting, the mediator has various tools at his or her disposal. A break — whether a five minute recess or an adjournment until the next session

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— might stop the stress from increasing even further. A private caucus can allow a stressed client to explain themselves without the added pressure of the other client's immediate presence. Or, it might simply be enough to acknowledge what is happening; remember, we are not trying to avoid all stress (and cannot realistically do so), but rather to keep it at a manageable level where the clients remain capable of participating productively in the mediation session.

2. Let Them Eat Snacks

As noted above, loss of sleep and poor diet can be aggravating factors. Mediators should try to be aware if a client is operating under a sleep deficit, and it is no secret that conveniently placed snacks can be a welcome addition to the conference table. If a mediation session is scheduled near a mealtime, the mediator should be sensitive to the fact that one or both clients might not have eaten before coming. In general, the mediator should pay close attention to the ways in which fatigue or hunger might be affecting clients' thinking and demeanor, and try to mitigate them to the extent possible.

3. Accept the Challenge

Ultimately, stress is inevitable in divorce and family mediation. Clients will get angry, they will make irrational statements, and progress will be momentarily derailed. In those situations, it is important to recognize that clients are, to some extent, victims of their own biology. As much as they might want to act calmly and rationally, they could very well be chemically incapable of doing so at any given moment. As mediators, it is incumbent on us to accept those situations, avoid casting blame, and employ all the techniques at our disposal to keep the process moving in a productive direction. Thus, we are more able to fulfill our roles as neutral facilitators and bring our clients toward a lasting agreement — even if they had to face a few saber-toothed tigers along the way.

Rackham Karlsson is a family law mediator and collaborative attorney based in Cambridge, Massachusetts. He lives in Cambridge with his wife and children, two dogs, and two cats. His contact information can be found at zephyrlaw.com.

My wife Mary and I have been married for forty-seven years and not once have we had an argument serious enough to consider divorce; murder, yes, but divorce, never.

Jack Benny

WOUNDED IN LOVE; WELCOMED IN MEDIATION…

By Barbara Kellman, with John Fiske, David Kellem and Steve Nisenbaum

January 4, 2014

Wounded in Love; Welcomed in Mediation…

…was a workshop produced on December 11, 2013 by MCFM members John Fiske, David Kellem, Barbara Kellman, and Steve Nisenbaum in reflection on the work of singer-songwriter Bob Dylan. This article is an expanded version of pre-workshop conversations and also incorporates workshop discussion. Participants in addition to the above, included Melinda Milberg, Kate Fanger, William Levine, Lynne Cooper, and Jerry Weinstein. Deb Asbrand provided technical assistance. Special thanks to musicians Jordan Kellem and Jim Richardson.

Riffing on the Music in our Work

We do the work of mediation to help people in pain, to learn about others and ourselves, to share knowledge and information about the law, and to help people reach reasonable agreements with which they can live.

How can music help us in our work? Can we see our clients and ourselves from different angles? Can we find new words (lyrics) to help someone see him/herself differently? Can we help clients create new melodies for their futures? Find new rhythms to carry them along a different and perhaps scary path? Find ways to help clients normalize and live with new feelings and perceptions?

Conflict, Change, Acceptance

Many of us choose to work as mediators because we like to see people approach change and conflict in their lives in as constructive a way possible. And, we like to help in the healing that often accompanies the pains of separation and divorce rather than potentiate pain in the adversarial process.

How do we do this? By encouraging honest reflection and acceptance of clients' personal realities and helping to create the new rules of the parties' changing relationships. We do this in the shadow and light of the law and hopefully, where there are children, with the help of child development theory and practice.

On to Dylan…

The Times They are a Changin'

Come gather 'round people
Wherever you roam
And admit that the waters
Around you have grown
And accept it that soon
You'll be drenched to the bone
If your time to you
Is worth savin'
Then you better start swimmin'
Or you'll sink like a stone
For the times they are a-changin'.

When people to come to see a mediator they are usually in the midst of conflict and change. They probably individually

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don't see either the cause or the nature of the conflict in the same way as the other, and most likely they don't value the change and the potential resolutions in the same way either.

For example, "…It is not uncommon to find one enraged or defiant parent, and a second parent who no longer harbors anger, has emotionally disengaged, and attempts to avoid or mute conflict that involves the child."

From Joan B. Kelly and Robert E. Emery, "Children's Adjustment Following Divorce: Risk and Resilience Perspectives" (2003)]

But to be sufficiently present in the mediation and to work toward resolution they must at least begin to accept the facts of conflict and change. One task of the mediator is to help each individual accept that there has been or will be shifting and moving around in her or his life and that he or she had better "start swimming " or s/he'll "sink like a stone".

Another set of tasks for the mediator involves helping people see that while it may also be frightening (for a variety of personal reasons that the mediator can't begin to guess and may or may not need to know), conflict is natural; it is part of all of our lives. Conflict can be positive; it can be expressed peacefully, and can provide opportunities for positive change. And yes, change itself, no matter how scary, can ultimately be positive.

As Dylan said in It's Alright Ma (I'm Only Bleeding) "He not busy being born is busy dying ". Without being too lofty in our goals, we hope to help direct clients toward creating their future lives, rather than wallowing in the past.

Regret, Resentment, Ambivalence, Letting Go

Don't Think Twice, It's All Right
by Bob Dylan

Ain't no use to sit and wonder
why, babe
It don't matter anyhow
And it ain't no use to sit and
wonder why, babe
If you don't know by now

When your rooster crows at the
break of dawn
Look out your window, and I'll
be gone
You're the reason I'm a-traveling on
But don't think twice, it's all right.

I wish there was somethin' you
would do or say
To try and make me change my
mind and stay
We never did too much
talking anyway

I ain't a-saying you treated
me unkind
You could have done better but I
don't mind
You just kinda wasted my
precious time…

Rarely does a couple come in to mediation without ambivalence, particularly at the end of a long relationship. Each individual has invested time and emotion in the other and now may feel s/he has 'just wasted precious time'. Part of the process can be to help them recognize the ambivalence – the duality of mixed feelings, the desire to be done and the

sadness over leaving. One person may be out the door, resigned to the ending, and the other still harboring a strong desire to work things out.

If the couple 'never did too much talking anyway' what does it mean to them when/if they are able to start talking during the divorce process? Perhaps they are wishing that the other would say something new, something that would pull them back together, but knowing it is too late, too far gone.

The mediator's job is to be open to recognizing the discomfort of resentment, regret, and ambivalence and to help the parties give voice to their feelings if that is useful to them and to the process. How do you know when to do this? There is no cookbook or right answer. The mediator can always check in with the parties about sharing feelings in a particular session but then he or she must be prepared to respond if things get too heated, time consuming, or vituperative.

Practice Tips

1. Ask yourself and/or the parties if the discussion is likely to help one or the other or both to let go of difficult feelings or will more likely be a repetition of the past. Give them some time but not too much. Develop your instinct and intuition for what that means.
2. Kate Fanger shared a nice way of redirecting arguing parties, saying: "It looks like you've done this before. [Pause.] So I'm guessing you don't need my help with that. [Pause.] Is there something else I could help you with?" [Tranlsation: You can be angry on your own time. You don't need mediation for that. We're going to do something different here.]

Positively 4th Street by Bob Dylan

You say I let you down, you know it's not like that
If you're so hurt why then don't you show it?... You see me on the street, you always act surprised …
When you know as well as me you'd rather see me paralyzed

Why don't you just come out once and scream it? And now
I know you're dissatisfied with your position and your place
Don't you understand, it's not my problem …

I wish that for just one time you could stand inside my shoes
And just for that one moment, I could be you

Yes, I wish that for just one time, you could stand inside my shoes
You'd know what a drag it is to see you …

Anger and Rage

How often in our personal and professional lives do we hear anger articulated as directly as Bob Dylan spoke it in this song? The answer varies for all of us. But as the professional in the mediation room, for many if not most of us, this kind of directly expressed anger causes discomfort and a desire to redirect the conversation and perhaps even a strong desire to leave the room.

Continued on next page

So what do we do? We learn to expect it in some sessions with some parties. We learn to tolerate it. And we learn to help the parties refocus.

David Kellem shared a story of letting a man fume and walk around his office. The wife stayed seated, zinging the husband verbally, and, appearing to David to be controlling the situation despite the husband's fuming and storming. The wife later called David to rebuke him for letting her husband abuse her. David asked himself and the group, can 'venting' be healing? How long does the mediator let it go on? What can the mediator say to stop it if he/she feels it is either not productive or possibly even destructive?

Practice Tips

1. Researcher and teacher John Gottman has defined the "Four Horses of the Apocalypse" in his work with married couples as: criticism, contempt, defensiveness, and stonewalling. As mediators we must recognize them as they come riding into the room. Then we may need to intervene by naming them, re-routing them, questioning them, or even squarely turning them away.

2. Example: "This does not seem [productive] [effective] [useful] [the kind of conversation you agreed to have here]. Shall we take a break?" Or "Let's get back to your feelings and interests here.

3. Can you use an "I" phrase to describe what you feel now and what you need from the other person?"

Fear

Many fears come up for people during divorce, including: fear of change; fear of loss of relationship with children; fear of being single and of being lonely; fear of financial change; fear of losing the house. Sometimes it is discomfort with fear that generates rage and anger.
These fears may not be conscious. They need to be approached carefully, if at all, by the mediator. It may be enough to be aware that they might be there. It may or may not be useful to ask, gently, if there is a rear the person can name and/or describe.

Practice Tip

1. Approach all inquiries about feelings gently and with curiosity. Don't assume you know what is behind a particular expression or statement. Be tentative rather than presumptuous.

2. While most of us were taught not to caucus in family mediation, many folks say they now use individual caucuses successfully. If there is so much anger in the room that the mediator is uncomfortable, that might be a sign that a caucus would be useful. It is important to think through your own views of caucusing and to let the parties know in advance when and how you might use individual meetings. Be cautious and clear and get input from your colleagues if you aren't comfortable with this practice.

And, select lyrics from our last song,

"If You See Her Say Hello"
by Bob Dylan

If you see her, say hello, she might be in Tangier
She left here last early spring is living there I hear
Say for me that I'm all right though things get kind of slow
She might think I've forgotten her, don't tell her it isnt' so.

We had a falling-out like lovers often will
To think of how she left that night it still brings me a chill
And though our separation it pierced me to the heart
She still lives inside of me we've never been apart.
… the bitter taste still lingers on from the night I tried to make her stay….

Poignancy, Sadness, Uncertainty, Fear, Ambivalence (again).

What if one party expresses the desire to stay together and the other is clear that divorce is going to happen?

During her intake process, Kate Fanger asks both clients whether there is anything that could happen that would make them want to stay married. One 'no' is all it takes to establish that the divorce process has to move forward. Whatever the answers, they provide useful information to the mediator for supporting both the process and the clients as individuals.

Should mediators ask why couples are divorcing? Some never do this. Some routinely ask. I sometimes say to people that I need to know those things that will help me to help them move forward in the mediation. In general I have found that it is important to hear what their reasons are for divorcing even if they are not volunteered at the start. Using individual caucuses before beginning the formal joint sessions can be a useful tool.

What if there's an unmentioned *something* in the room, an incident that obviously meant much to the parties and may have been the tipping point for divorce? Should it be asked about? Kate Fanger's suggestion: One reference can be left along, but if it gets mentioned two or three times, it is a sign that the speaker needs some acknowledgment: *ask permission to ask about it.*

What if the mediator realizes that one party doesn't want to get divorced and is trying to use the mediator as a marriage counselor? As divorce mediators, we need to learn to exemplify the kind of clarity we are asking for from the parties. So, once one realizes that this is happening, it would be important to be clear that this is not "Marital Mediation". If that is what both parties want, there needs to be a re-evaluation of the process and whether a referral to a different mediator or marriage counselor is in order. Parties have to agree that regardless of individual desire, there is going to be a divorce; they can't participate in a settlement if they don't agree there is going to be a divorce. It's the essence of divorce mediation.

Practice Tips

1. In this situation as in all of your work,

Continued on next page

you need to be empathic to both parties so it is clear that there is emotional neutrality. If you're connecting with one party emotionally, don't leave the other party hanging; turn to him or her as soon as possible.

2. If the parties are at impasse over this or any other issue, you want to find out what the issues are causing the impasse. What is preventing them from wanting to move forward? Remember they may or may not experience a particular moment of impasse as being as important as you do.

More Practice Tips

Could music be used more literally in mediation?

1. Ask clients about music they like in conversation; use these questions as a way to help get to know them as individuals and understand who they are, what moves them.

2. If there is ongoing tension in the process, the mediator could ask the parties to bring in some music to play either in background during the meeting or as part of convening.

3. Beyond music, some mediators have their pets in the office and this can bring comfort. Others will ask for photographs of children to be brought in and placed on the table as a reminder of where the focus needs to be.

Conclusion

Let's return to the idea of being wounded or hurt, as we reflect on impasse and end this little medley. Is there a particular interest or need or wound or perceived or real injury that is holding one or both of the participants back? Can you gently probe them to learn about it? Can you reflect at home by reading over your notes? Call a colleague? Talk to your own friends or therapist? The more open you are to understanding what underlies your clients' difficulties the more effective you are likely to be in your work as a mediator.

Without exhausting the metaphor, let me suggest that as mediators we must listen to our own music and try to hear the parties' music as well.

Attributed to Albert Einstein: "If I were not a physicist, I would probably be a musician. I often think in music. I live my daydreams in music. I see my life in terms of music. I get most of my joy in life out of music."

Barbara Kellman is a Partner at SneiderKellman PC in Brookline, MA. She is an attorney, mediator, and collaborative lawyer who has been practicing law since 1983.

You cannot simultaneously prevent and prepare for war.

Albert Einstein

A RESPONSE TO JOHN FISKE'S ARTICLE "CONFRONTING FEAR".

By Dominique Stassart

Last November, I attended a conference in Belgium, on Psychosis. Besides many wonderful clinicians, the organizers had invited legal experts and unbeknownst to me, a family mediator, with a degree in law. The conference was very much European in that psychosis was approached as a practical and clinical issue, rather than a medical one.

It is in that context that the mediator was asked to speak about a part of her work that has included working with people qualified as "mentally ill" and in crisis!

A dozen years ago, she was approached by a psychiatrist,about a patient who was in a manic phase and institutionalized and her husband who was home taking care of the children. This mediator first rejected the proposition, thinking that this woman was not in any mental condition to sign an agreement. However, the psychiatrist was more persistent, and argued that it would be helpful to this couple if they could talk with a mediator and address their worries. What the psychiatrist conveyed to this then young mediator was the fact that because there were children involved, the whole caring team, including the husband, thought that it might help this mother "walk the way" through her craziness, if she could sit down with a mediator and her husband and make sure her children would be okay. "That is", said the mediator "what brought me to the table. **Confronting my fears, I started listening".**

Since then, she has mediated many cases involving one parent suffering from mental illness. She said that she has observed and experienced on her own how mediating under those circumstances has helped the mentally ill person to find some peace, express their own sense of caring for their children. I has also helped the spouse and family to go through the experience feeling more connected and less taken apart.

Working as a mediator with people in crisis challenges some of the mediator's biases.According to this Belgian mediator, mediating means that the partners will start the mediation by laying down the grounds for a separation, therefore taking very seriously a request that comes from two human beings, mentally ill or not. Starting mediation under those circumstances will obviously require time before any agreement is signed. In those situations, mediating becomes a team effort, including sometimes more clients than just the 2 spouses. In most cases, a clinician would be added to the meeting, at the request of both partners.

When I read John Fiske's article,I thought about this mediator, overcoming her fears. She recognized in her fears, her own biases against mentally ill people and responding to the psychiatrist call, she found herself in the unique position to help a parent reconnect with her humanity. You can also imagine the relief for the other parent, the one who will eventually end up with the custody of the children when an agreement can eventually be signed peacefully.

Dominique Stassart, LICSW and family mediator www.dominiquestassart.com

SPLIT: A MUST-SEE FILM FOR DIVORCE MEDIATORS AND THEIR CLIENTS

Review by Crystal Thorpe

Ellen Bruno is a visionary who has found a way to open the hearts of divorcing couples – through the voices of children. Her 28 minute documentary, SPLIT: Divorce Through Kids' Eyes, features intimate interviews with children about day-to-day aspects of their lives – witnessing their parents' divorce and spending time living in both parents' houses. Conceived initially as a support to children of divorce, the film is a potent resource for parents and divorce professionals as well.

I interviewed Bruno in November after being introduced to her film at a conference of the Academy of Professional Family Mediators the previous month. She described coming up with the concept during a conversation with a friend who, as a child, had never talked with anybody about his parents' divorce. He felt like his family was broken, and his experience of holding in his emotions was all-too-common.

Without being able to talk about it, children often construct stories to explain their parents' behavior, she said. They may even interpret the fighting and ongoing tension, coupled with their parents "being really nice to the children" as unspoken evidence that something is wrong with them. For example, during the tense period prior to her own parents' divorce, when a minor illness fueled her imagination as a child, she constructed a story that she was dying, finally demanding to see her doctor – "If I'm dying, I deserve to know!"

Divorce "is a big drama," Bruno continued during our interview; "the gift is being able to have the conversation." Often though, children don't share what's on their minds with parents. "When they see their parents stressed-out or sad, they don't want to add to the [stress of] the divorce." She hopes that by giving parents the chance to hear what their kids aren't telling them, her film will help parents be more open to talking with their kids, and also that parents will be motivated to make different choices.

"This is really comforting to kids – to know they are being told truth. Their struggles are affirmed, and their pain is affirmed. Also, these kids [in the film] are funny and alive, and have the perspective that things are OK for the most part."

The film features exclusively the voices of children and their experiences. As Bruno began talking with them, she was delighted by their wisdom and surprised at how much they had to say. "It was really clear what the kids wanted to talk

about. Most kids feel it's their fault. Most kids want to change it. And most kids want their parents back together even if they have already gotten remarried."

She asked children to speak about what they would want to share with other kids – "the good, the bad, and the ugly." And she asked them to be honest, explaining that otherwise, "the other kids won't believe you."

When watching the film, it's clear that the children are indeed being honest. There's a presence they bring, and some of the emotion still feels raw. When one of the children, Trevor, talks about his dad not showing up at his fifth grade graduation, his face reveals more of the pain than his words. Such pain can make parts of the film difficult to watch for parents, and in focus groups, parents tended to want the message softened. But the children in focus groups asked to see more of the "hard stuff" – and more of Trevor.

"This is really comforting to kids – to know they are being told truth" says Bruno. "Their struggles are affirmed, and their pain is affirmed."

And even with the pain, the ultimate message of the movie is one of hope. "These kids are funny and alive, and have the perspective that things are OK for the most part…. [For children watching the film,] seeing other kids who have gone through [divorce] is helpful. Kids think everything will last forever, but these kids are actually acting like they are enjoying life."

The film is punctuated by artwork drawn by children (many of whom are featured in the film) – curated mostly from boxes under their beds – and animated by a team bringing experience from Sesame Street and Pixar. The animation sequences "honor [children's] fears or dreams, or allow them to go into a fantasy world…" said Bruno. "The crude simple movements started to take on energy." The end result is visually captivating, skillfully drawing viewers into the children's experiences.

Behind the camera, award-winning cinematographer Ellen Kuras and her team capture facial expressions and hand movements that speak volumes. The film is also beautifully edited – with subtle elegant transitions (such as when one girl's eyes seem to follow the previous animated sequence to the moon before beginning to speak). Melancholy, airy, and whimsical acoustic music helps match and shift the mood.

But the stars of the film are the children themselves. Their frankness and resilience shines. They range in age from 6 – 12, and represent diverse backgrounds and family structures. They talk about the challenges of adjusting to limited time and access to each parent, and the unexpected benefits (seven Christmases one year!) as well. And they offer suggestions to both kids and parents on what helps.

Jonah, a boy who seems to have come to a comfortable place, despite initial shock that his parents were separating, shares: "I think it's kind of nice that my parents…told me that I could go over

Continued on next page

to either house that I wanted, if I really missed the other person. That's what really helped for me."

When new partners are inevitably introduced to the mix, the children have wisdom to share here, as well. Jonah worked up the courage to ask his dad if it was OK if he liked his mother's boyfriend, "and he said it was fine, so that helped." Says another child, Jane: "I have a list of what my parent's girlfriend/boyfriend needs to be. I have a 'must be' list and a 'may be' list. He or she needs to respect my mom and me, or my dad and me, and needs to respect our stuff, and needs to really adore the parent. Really." (You'll have to watch the film to learn where a fondness for snakes ends up on the list!)

When I asked Bruno what was most surprising to her while making the film, she spoke about "how universal kids' experiences are…. It doesn't mean that there aren't variations – but [divorce] is something that is profoundly hard for children. Into their adulthood they continue to wish that either it didn't happen, or that their parents would get back together, and they have the idea that something they did contributed to the divorce, and that somehow they can fix it…. Kids stayed up at night plotting about how to fix it and get their parents back together."

She was also surprised at "what effective teachers they are, speaking from their hearts." Bruno's dream is that "this piece of heart can be integrated into the divorce process in some way…to help families have a different conversation in a way that's most supportive for all involved."

"The fact that kids find the movie comforting and affirming is deeply satisfying" and she's eager to share the message with parents that there are lots of options for them that can create not only less suffering for their children, but also less suffering for themselves. If parents are "primed" with the voice of kids by watching the film prior to entering a mediation session or a courtroom, they'll be more likely to "work from their hearts rather than from their bitterness."

To complement the movie, Bruno and her team are developing an activity book for kids, along with guides for families and professionals on how to use the film. She's optimistic about the potential impact based on what she's already witnessed. "If you can bring people into a place of love for their children, then anything is possible."

Crystal Thorpe is a mediator and Principal of Agreement Resources, LLC and its division, Elder Decisions®. She mediates divorce and elder / adult family conversations. She and her colleagues are celebrating Agreement Resources' 10th anniversary with a free screening of SPLIT followed by a conversation with Ellen Bruno on Friday morning, February 14th, at the Wellesley Public Library. All are welcome to attend. Learn more and register at www.AgreementResources.com; for more about SPLIT see www.splitfilm.org. Crystal can be contacted at crystal@AgreementResources.com or by calling 617-621-7009, x24.

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Les Wallerstein

With deepest appreciation and gratitude for your tireless work, professionalism, good humor and singular dedication over the past 11 years, 45 editions and nearly 2000 pages as

Editor of the Family Mediation Quarterly

November 22, 2013

Massachusetts Council on Family Mediation

MCFM's 12th ANNUAL FAMILY MEDIATION INSTITUTE & 9th ANNUAL FISKE AWARD HONORING MICHAEL LESHIN

Presented by John A. Fiske, Accepted by Michael Leshin
Photos by Debra L. Smith

EXCELLENCE IN MEDIATION FROM MICHAEL LESHIN

Michael is a gifted mediator and individual who cares about his clients, his colleagues and his profession in a way that is inspirational. He is a splendid choice for this award.

Michael exemplifies excellence in mediation in several ways. He recognized the benefits of mediation for his clients and his own law practice at Hemenway & Barnes a long time ago and set about to master the field of mediation, taking basic training in 1989 and an advanced course in 1994. During this training he distinguished himself by so covering his course notebook with Post It Notes that no one else but he could follow along. This great penchant for organization and the written word contributes to his extraordinary facility to produce. Here come examples.

Start with yearly editions of the irreplaceable MCLE Family Law Sourcebook & Citator, without which no informed mediator can travel anywhere. This amazingly thorough work covers everything from Abandonment to Wives, for which the index says, "See also Spouses." If that doesn't show how modern he is, the 2013 edition even includes a list of self-insured employers as of October 12, 2012 and tells you how to get a more updated list after that.

Second example is his happy law firm. Michael and Julie Ginsburg started mediation in Wellesley years ago. Now they collect and nurture other splendid mediators and have fun doing it, while other mediators as well as the MCFM Institute itself find Wellesley a fertile place to practice.

Final example is his performance as the facilitator for Governor Patrick's Working Group on Child-Related Family Law. This group of about 20 covers many different constituencies, from father's rights to women's rights to the Massachusetts Child Advocate. For years these people had been arguing over presumptions and some of their own unhealed wounds, getting nowhere. Since July of 2012 I have had the privilege as the Boston Bar Association representative to watch Michael in action. He is an extraordinary communicator. He connects with people. He listens. He affirms each person. He limits each of us for the sake of the rest of us. He communicates that he cares about each person. He makes sure everyone is heard. In his words: "I will reach out to you. Then I will circle back." That's what he does. He reaches out and circles back. Without his skill in listening patiently to everyone and guiding us to consensus, this group would have fallen apart a year ago. He is now circulating for comment Version 8 of a proposed section 31 and related laws, and consensus may yet emerge.

So he is extraordinarily productive, yet so gentle and kind. What a difference it makes to his clients, and to the rest of us, that Michael is gentle, and that Michael is kind. You all know what that means.

(JAF Nov. 6, 2013)

ACCEPTED BY MICHAEL LESHIN

Thank you for this honor John Fiske has been an extraordinary mentor, colleague and friend. I am very grateful to MCFM for this award which was created in recognition of his tremendous leadership and contributions to mediation.

As I look around this room I see so many friends and colleagues with whom I have worked and learned from. In particular I want to acknowledge my wonderful partner of 15 years, Julie Ginsburg, and our two new partners, Laura Gibbs and Alex Jones. We continue to have a "great run" as a firm committed to rational approaches to resolving conflict. And, I also want to acknowledge my son, Jonah, and his wife Dahlia, and my wife of nearly 35 years, Roz, to whom I owe so much and who are all here today; and our two daughters, Miriam and Rachel who are away at school.

When I first learned of mediation, it had an immediate resonance as a pathway to help people create order out of chaos.

I think we all embrace mediation as more than simply a profession. This craft informs our personal lives as well. Principled negotiation, focused on interests, lifts us to a sphere of compassion and grace. We aspire to live in this "space"; as we nurture and sustain our personal relationships.

So thank you for this award. And thank you all for being you. We are all better mediators for the support and learning we provide each other and the heartfelt camaraderie of sharing this wonderful profession.

John Fiske and Michael Leshin

John Fiske Award Recipients:
David Hoffman, Janet Wiseman, John Fiske, Jerry Weinstein, Michael Leshin, Lynda Robbins

Amy Bricker, Helena Friedman, Kathleen Townsend, Oran Kaufman, Mary Samberg, Mary Socha

Fran Whyman, Laurie Udell, Vicki Shemin

Lynn Cooper

Fern Frolin

Bill Leonard

Kate Fanger

Lisa Smith and Mindy Milberg

Lynda Robbins and Kathy Townsend

Bob Zibbell and Julie Ginsburg

Sherri Stepakoff and Justin Kelsey

Jon Fields, Bill Levine, Chouteau Levine

WHEN THEY SAID "I DO" BUT IT TURNS OUT THEY "DIDN'T": MEDIATING ANNULMENTS

By Justin Kelsey

Before a divorce mediation begins, either in the first meeting or in the initial consultation, the mediator typically addresses the question of whether both parties want to end the marriage. If both parties don't agree that the marriage is irreconcilable, then a potential reconciliation is the first issue to be resolved. Or so you might think.

When signing an agreement offering their services in settling a divorce case, the mediator has assumed two things: his expertise has value to these clients and there is a case to help with. So what questions do you ask to ensure that there is a case? Do you gather enough information to ensure jurisdiction in the state where you practice? Do you gather enough information to ensure the parties are actually married? If not, should you?

While some facts may not become obvious until a mediation begins, mediators should be asking some basic questions to ensure that he and the parties aren't wasting their time. Jurisdiction could be the subject of a whole article unto itself, but suffice it to say that mediators should know the jurisdictional requirements for filing a case in their state and ask some basic questions about addresses and length of residency at the beginning of a case. In addition, mediators should know the difference between a valid marriage and one that may not be valid. Practically speaking these issues may be too complex to be raised as initial questions, but if a mediator doesn't spot the potential issue later in the mediation he might commit malpractice.

When is a Marriage not a Marriage?

A disturbing item of recent news is the proliferation of positive pregnancy tests for sale on craigslist and similar sites. Aside from the grossness factor of buying a stick someone urinated on, this practice raises some obviously and some not-so-obviously concerning scenarios. Are the potential purchasers of these positive tests looking to commit a prank, or actually trying to convince someone that they are pregnant? If such a test was used to obtain a marriage proposal are there legal ramifications to that fraud? Fraud can carry criminal sanctions if the intent was to extort money or sex from someone, and can also result in actionable civil damages. Taken one step further, if the fraud resulted in an actual wedding, would the resulting marriage be legal?

While there are ways in which a marriage can be void, fraud does not automatically void a marriage. However, marriage as a contract can be voidable. In other words a marriage can be annulled if the contract was entered into upon the innocent party's reliance on a fraudulent misrepresentation, that the offending party intended would cause the marriage. While this type of

Continued on next page

fraud is unlikely to be discovered with basic questions at the beginning of mediation, there are some issues that might be more easily discovered. In addition, mediators should consider where the line is between legal advice and legal information when a question arises relating to a fraud-induced marriage.

Depending on how serious an alleged fraud is in a case, some mediators may feel that interjecting the possibility of voiding the marriage by annulment crosses the line into legal advice. But if the mediator discovers that a marriage is likely void, it would be malpractice to continue preparing for a divorce action that the mediator knows is unnecessary (or worse, impossible).

When is a Marriage Void vs. Voidable?

Avoidable marriage is not automatically void but may be annulled by a court for certain reasons. If a party can prove that the basis for the marriage contract is improper then it is possible the marriage could be annulled. The fraud example given above would be a voidable marriage.

Since this is a decision based on a factual analysis of the circumstances, the court could also consider other factors. For example, if the marriage continued well beyond the original fraud, was consummated and affirmed in other ways then it might not be voidable after a certain point. These types of cases will rely heavily on the particular circumstances, and it is certainly not up to a mediator to provide advice on how these facts should be evaluated. However, this is a perfect example of a circumstance where a mediator should require that clients seek individual legal advice to make sure they understand their options. A successful annulment would have significant differences from a divorce action and to fully understand the consequences of entering into a divorce agreement, parties with a voidable marriage should have the opportunity to be educated about their other options.

In contrast to a divorce, a void marriage is considered to have never happened without a court having to annul it. A divorce action requires that there be a valid marriage. Therefore a divorce action on a void marriage should be dismissed and any work leading up to an agreement for that action could be wasted time. Some of the issues that would cause a marriage to be void include affinity or consanguinity (incest in violation of M.G.L. c. 207 s. 1 or 2), polygamy (marrying someone when you are already married in violation of M.G.L. c. 207 s. 4), and under-age spouses (under common law when a wife is under 12 and husband is under 14).

As an example, if a mediator discovered that one party had a previous marriage that was never properly ended, then the mediator should inform the parties that their marriage might be void and that they should investigate that potential further before continuing to prepare

for a divorce action. However, parties with a void marriage may still have issues that require resolution. Although not required to end a void marriage, in most cases it is worth having void marriages annulled through the court process to clarify the vital statistics records and ensure a clean break.

Can you mediate an Annulment?

If the parties obtain independent legal advice and determine that their marriage is void or voidable, then they may still have a need for mediation. An annulment action deals primarily with the validity of the marriage, but unwed parties who lived together or had children together may still have significant legal issues that require resolution.

In the case of unwed parents, agreements may be reached that result in a paternity action being filed with an Agreement. Mediators can assist in this process in much the same way they do with child related issues in a divorce, while remaining aware of the different issues that can arise in unwed parent cases and how the court forms are different.

If the parties have joint property, liabilities, or other claims against each other, even absent a marriage there may be value in using a mediator to resolve them. It may be necessary for the mediator to understand the differences in property law between a married couple and an unmarried couple, and how a contract might resolve these issues without the need for any court action. While an annulment generally won't deal with child-related matters, property division agreements can be included in an Agreement for Judgment on Annulment. Since this process is different from divorce, mediators who intend to handle such matters should educate themselves about the annulment process so they can provide the correct legal information to clients and know when to recommend that clients seek appropriate legal advice.

Understanding the standards for void and voidable marriages is both useful and necessary knowledge for a divorce mediator. While mediation clients cannot rely on their mediator to resolve their issues for them, it is the mediator's obligation to help clients spot any issues that they themselves may not even be aware of.

Justin L. Kelsey is a collaborative divorce attorney and mediator. His firm, Kelsey & Trask, P.C. is located in Framingham, MA and concentrates on Family Law, Bankruptcy and Firearms Law. Learn more at www.KelseyTrask.com.

MASSACHUSETTS ALIMONY AND CHILD SUPPORT: MUCH ADO ABOUT DOUBLE COUNTING

By William M. Levine and Hon. E. Chouteau Levine (Ret.)

At the November 22, 2013 *MCFM Institute*, and in many other settings, divorce lawyers, mediators and judges have considered and debated aspects of the interaction between the March 1, 2012 overhaul of Massachusetts alimony laws and the August 1, 2013 revamp of the Child Support Guidelines, here. One of the hottest topics was the apparently inconsistent way in which each body of law treats the other! At *LDRC*, we waded into the deep end by addressing the subject in two blog entries (www.levinedisputeresolution.com/divorce-mediation-blog), which we have edited only lightly here for *FMQ*.

What's new about that?

Massachusetts alimony law and child support rules conflict. What's new about that?

As the state's matrimonial bench and bar grapple with the comprehensive spousal support overhaul (eff. 3/1/12), and the quadrennial review and revision of the Chief Justice of the Trial Court's Child Support Guidelines (CSG) (eff. 8/1/13), a prominent conflict grabs much of the attention:

– The CSG formula, old and new, requires that all family income equal to or less than $250,000.00 per year be considered a formulaic source of child support

– The alimony statute says that once a dollar is subjected to child support treatment, it may not be counted again, as a source of alimony.

– The new CSG say that a judge *may* calculate alimony *first*, and then apply the re-allocated family income shares to the formula for casting the presumptive minimum child support payment.

Did the Trial Court contradict the legislature? Probably, but to what effect?

In cases where family income is equal to or less than $250,000.00 per year, the alimony law suggests that there never be any alimony. This is because the CSG applies all of this income to its presumptive minimum child support payment. Since that income has already been subjected to CSG treatment, the alimony law precludes its second use, as a source of alimony. The result in higher income cases: a presumptive support sum that is paid in the most inefficient economic way possible, all non-taxable, non-deductible child support; and with 2013 reductions in most CSG amounts, this will challenge many payees.

Yet, CSG has long given courts leave to re-cast child support payment as taxable alimony or unallocated support, enhancing tax efficiency, so long as the payee's net economic benefit does not fall below that of a pure child support order. So, that is nothing new. What is new, is a tool that permits judges to assay

alimony first, creating the potential for conflict.

There is no doubt that if a judge calculates general term alimony first, then uses the resulting income shares to run the CSG formula, a substantially higher payor support burden can result. It seems to be most dramatically true in cases of great income disparities. The results, if applied indiscriminately, can be fairly termed confiscatory. But, neither CSG nor alimony reform laws have repealed decades of case law that otherwise contours support law; nor does the CSG grant a judge leave to impose confiscatory orders.

To be sure, fear of irrational results in a court system where appeals of court orders are beyond practical utility for most people, is fueling this anxiety. But, there are some cases where flipping

"It would be silly to deny that the alimony law and Child Support Guidelines conflict at some level; but the conflict is not irreconcilable."

the order of alimony and child support calculations can result in a rational and more tax-efficient result. There is nothing in CSG that prevents a judge from determining alimony first, then applying the results to CSG and concluding, under the circumstances, that the minimum child support payment has been rebutted, reducing or eliminating non-taxable payments.

As divorce mediators, we are all about clients knowing and understanding the ramifications of what they are doing. The new CSG support what we have been doing right along: applying legal tools and economic analysis critically and with an eye towards getting to fair and tax-efficient results. As business valuation case law demonstrates, not all double counting is avoidable, let alone forbidden. If addressed uncritically, abuse can result. Isn't that the challenge?

What's so bad about that?

Previously, we blogged about the conflict between the Massachusetts alimony law and our Child Support Guidelines, and the now raging chicken-and-egg question: which is calculated first?

We attended three events in late 2013 where this was addressed: the MBA Family Law Conference Annual Conference, the Probate and Family Inn of Court November dinner meeting, and most recently, the Massachusetts Council on Family Mediation Institute on Nov. 22. What we know for sure is that judges and lawyers are debating two distinct views:

- computing child support first (and in most cases eliminating alimony because there is less than $250,000.00 of annual family income to apply), and then alimony if any income remains from which child support has not already been taken; or
- calculating alimony first, and applying the re-allocated income

Continued on next page

to the Child Support Guidelines formula, to determine the presumptive minimum child support sum.

As we have here before, this conflict does not trouble us as divorce mediators, because the differing approaches encourage parties to look at a broader spectrum of possible results that meet *their* needs, and not simply flop into a formula. We believe that neither approach mandates a particular result or licenses abusive orders. To that, we might add that the generally reduced 2013 Child Support Guidelines amounts may compel a more flexible process to assist in finding a fair and sustainable result. Time and again, our mediation clients (*all* of whom have lawyers) have taught us that the truth often lies somewhere in between.

The arguments, essentially, are these:

"Anti-Double Counting"

- Statute trumps rule, therefore the alimony law's ban on double counting of available dollars for two kinds of support negates the court's discretion to follow the Child Support Guidelines' permission to calculate alimony first; and that

- The Child Support Guidelines themselves define income by a laundry list that includes alimony from a prior spouse but does *not* mention alimony from a current one.

"Pro-Double Counting"

- The rules of bridge don't apply because the double counting prohibition of the alimony law does not exist in the Child Support Guidelines, and sometimes it's necessary and justifiable;

- The Child Support Guidelines' definition of income is not exhaustive but is inclusive and expressly not limited to the laundry list provided; and that

- The 2013 Child Support Guidelines punish dependents by their reduced yield (except in very few, very low income cases).

It would be silly to deny that the alimony law and Child Support Guidelines conflict at some level; but, the conflict is not irreconcilable. As we blogged previously, the Child Support Guidelines don't *require* that alimony be calculated first. They *permit* consideration of that approach. And, historic law of the purposes and parameters of "fair and equitable" support are not checked at the door of either construct. *Considering alimony or child support* first is a process, not a result. If one or the other view leads to an insufficient or a confiscatory result, the product of *either* is defective.

On the income definition side of the argument, it is true that the Child Support Guidelines expressly allow alimony received from a prior spouse to be tapped as a source of child support for a current child. Some argue that

this means that alimony from a current spouse may *not* be used to fund child support, and that by computing alimony first, that is exactly what happens. To us, this seems circular.

Both alimony and child support are tools to re-allocate *external income*, such as wages, *within the family.* Until alimony has actually been ordered, there is no alimony income. Until child support is set, there is no child support. Therefore, when one is setting alimony and child support simultaneously, there can be no impermissible double count: there are merely two different ways to search for a sufficient and non-confiscatory order.

There is nothing in the alimony law that says that alimony must cover 30-35% of the difference in the spouses' incomes. Alimony generally may not *exceed* that range. Similarly, the court is not required to apply the Child Support Guidelines resulting presumptive order. It may order less or more for good reasons. Taken together, the alimony law and the Child Support Guidelines can be used in tandem to fuel a process of inquiry that leads to a fair and tax-efficient result.

The legislature chose one way to address what they viewed as a potential for an impermissible double count. The Trial Court chose another for child support. Both bodies were authorized by law to act as they did. There's no substitute for good lawyering, negotiating, mediating and judging. Default to formulas is easy and in many cases sufficient: not all by a long shot.

As we noted earlier, the new CSG include the Good, the Bad and the Huh? We don't view this particular provision as fatal.

Of course, we reserve the right our change our minds!

William M. Levine, Esq. and Hon. E. Chouteau Levine (Ret.) are the principals of Levine Dispute Resolution Center LLC, of Westwood and Northampton, Massachusetts, where they mediate and arbitrate family law, probate and other matters. Bill may be reached at wmlevine@levinedisputeresolution.com; and Chouteau at eclevine@levinedisputeresolution.com. Their blog appears at levinedisputeresolution.com/divorce-mediation-blog.

For a while we pondered whether to take a vacation or get a divorce. We decided that a trip to Bermuda is over in two weeks, but a divorce is something you always have.

Woody Allen

MASSACHUSETTS FAMILY LAW: A PERIODIC REVIEW

By Jonathan E. Fields

Emancipation: Interplay Between Statute and Judgment. In a case examining the interplay between emancipation language in an agreement and that of G.L. c. 208 s. 28, the 19-year-old son of a divorced couple enrolled in college and moved in with his uncle who lived near the college. After the move, the parties entered into a modification agreement which was incorporated in a judgment where the father agreed to pay a reduced amount of support to the mother and some money to the uncle. The father subsequently failed to pay that amount and the mother filed a complaint for contempt. The father was found in contempt and appealed. In the appeal, he argued that the modification judgment was void because it violated the emancipation language in G.L. c. 208 s. 28 requiring that the child be domiciled with a parent, among other reasons. The Appeals Court affirmed the finding of contempt, holding that the stipulation he entered into was enforceable. G.L. c. 208 s. 28, the appellate court made clear, is not relevant here. The statute provides boundaries for a judge making a decision after a trial but, in this case, the stipulation – not the statute - was the relevant text. *Barnes v. Devlin*, 84 Mass.App.Ct. 159 (August 13, 2013)

Death, Divorce, and the Second Wife. During the pendency of a divorce, the husband died and, by law, the action abated. Three days prior to filing the complaint for divorce, the husband changed the beneficiary designation on his IRA from his wife to the children from his previous marriage. The wife brought suit against the children in Superior Court alleging, among other things, that the court should void the IRA designation change and that she was entitled to all of the proceeds from the sale from the marital home. The Superior Court judge held that the IRA designation would stand and the account would go to the children. The proceeds from the sale of the home would go to the wife since title was held as tenants by the entirety; and, therefore, by law, the proceeds would pass to the wife, as the surviving spouse. If there's a lesson in here for mediators, it's that we should make sure both spouses are aware of all the beneficiary designations. *Waxman v. Waxman*, 84 Mass.App.Ct. 314 (September 30, 2013)

Survived Health Insurance Provision. The separation agreement contained a provision relating to health insurance that survived the judgment. It required husband "to maintain his health and dental insurance, or their reasonable equivalent, for the wife." The husband retired and brought a modification, arguing that he could no longer to pay for the wife's insurance. The Probate judge refused the modification and, on appeal, the appellate court affirmed. Because the provision survived, the husband had a nearly impossible burden in undoing the obligation; he had to prove "countervailing equities," which he was unable to do. *Casey v. Casey*, 84 Mass.App.Ct. 1122 (December 2, 2013)

WHAT'S NEWS?
NATIONAL & INTERNATIONAL FAMILY NEWS

Chronologically Compiled & Edited By Les Wallerstein

Giving a Wife Her Front-Yard Grave, No Matter What Ever since James Davis granted his dying wife's wish by laying her to rest just off the front porch of their log house, he and the City of Stevenson, Alabama have been at odds. From City Hall to the courts, the government of this little railroad town in southern Appalachia has tried to convince Mr. Davis that a person who lives in a town cannot just set up a cemetery anywhere he likes. His front lawn with the grave features an outhouse and a large sign demanding that his wife be allowed to rest in peace. Alabama, like most states, has no state law against burying someone on private property, and family graves are not all that rare in the country. Even though the Alabama Supreme Court affirmed a judge's decision denying his right to bury his wife on his land, Mr. Davis, 74, is not inclined to back down. He and his wife, Patsy, first met when she was 7 and he was 11. They were married for 48 years and had five children. "There was never any couple in love like us," he said. "We was meant to be together…. I am not digging her up." (Campbell Robertson, New York Times, 10/23/2013)

Germany: A Third Option for the Sex of Babies A law has gone into effect allowing German parents to register their newborn babies as neither male nor female if they were born with traits of both sexes. The German Ethics Council, an advisory group, had urged the change to take the pressure off parents to make a hasty decision and possibly commit to surgery immediately after birth, the news agency DPA reported. The council had argued that many people born with both sex characteristics who were operated on as children later said they would not have consented to the surgery. Parents had previously been required by law to register their children's name and sex with the authorities within one week. (The Associated Press, New York Times, 11/2/2013)

Hawaii: Same-Sex Marriage Becomes Law Hawaii, the state that kicked off a national discussion of the issue more than two decades ago has legalized gay marriage. Fourteen other states and the District of Columbia already allow same-sex marriage. (The Associated Press, New York Times, 11/14/2013)

Illinois: Same-Sex Marriage is Legalized Illinois has become the 16th state to legalize gay marriage, allowing same-sex weddings to begin on June 1, 2014. (The Associated Press, New York Times, 11/21/2013)

Custody Battle Raises Questions About the Rights of Women Sara McKenna was briefly involved with Bode Miller in California. Unmarried and seven months pregnant she moved to New York. Mr. Miller accused her of fleeing to find a sympathetic court, and a New York judge agreed, castigating Ms. McKenna for virtually absconding with her fetus. The Family Court in San

Continued on next page

Diego then granted primary custody of the baby to Mr. Miller, who took the boy back to California. Subsequently, a five-judge appeals court in New York said Ms. McKenna's basic rights had been violated, adding, "Putative fathers have neither the right nor the ability to restrict a pregnant woman from her constitutionally protected liberty." In its scathing reversal of the lower court, the New York appeals court rejected the suggestion that "the mother needed to somehow arrange her relocation with the father with whom she had only a brief romantic relationship." The appeals court also ruled that jurisdiction belonged in New York, but a tug of war between courts in two states remains possible, because the San Diego judge has not yet ceded jurisdiction. (Erik Eckholm, New York Times, 11/22/2013)

The Changing American Family The nation's birthrate today is half what it was in 1960, and last year hit its lowest point ever. At the end of the baby boom, in 1964, 36 percent of all Americans were under 18 years old; last year, children accounted for just 23.5 percent of the population, and the proportion is dropping, to a projected 21 percent by 2050. Fewer women are becoming mothers — about 80 percent of those of childbearing age today versus 90 percent in the 1970s — and those who reproduce do so more sparingly, averaging two children apiece now, compared with three in the 1970s. As steep as the fertility decline has been, the marriage rate has fallen more sharply. As a result, 41 percent of babies are now born out of wedlock, a fourfold increase since 1970. The rise of the cohabiting couple is another striking feature of the evolving American family: From 1996 to 2012, the number jumped almost 170 percent, to 7.8 million from 2.9 million. (Natalie Angier, New York Times, 11/26/2013)

India Restores an 1861 Law Banning Gay Sex The Indian Supreme Court reinstated a colonial-era law banning gay sex. The 1861 law, which imposes a 10-year sentence for "carnal intercourse against the order of nature with man, woman or animal," was ruled unconstitutional in a 2009 decision. But the Supreme Court held that only Parliament had the power to change that law. There is almost no chance that Parliament will act where the Supreme Court did not, advocates and opponents of the law agreed. National surveys show that Indians widely disapprove of homosexuality and, on average, have few sexual partners throughout their lives. The law banning homosexuality is rarely enforced in India, but the police sometimes use it to bully and intimidate gay men and women. (Gardiner Harris, New York Times, 12/12/2013)

A Utah Law Prohibiting Polygamy Is Weakened A Federal Court in Utah has ruled that part of the state's law prohibiting "cohabitation" — the language used in the law to restrict polygamous relationships — violates the First Amendment guarantee of free exercise of religion, as well as constitutional due process. He left standing the state's ability to prohibit multiple marriages "in the literal sense" of having two or more valid marriage licenses. The judge's 91 page decision

reflects — and reflects upon — the nation's changing attitude toward government regulation of personal affairs and unpopular groups. The Supreme Court supported the power of states to restrict polygamy in an 1879 decision, Reynolds v. United States. (John Schwartz, New York Times, 12/15/2013)

New Mexico Becomes 17th State to Allow Same Sex Marriage The New Mexico Supreme Court unanimously affirmed the right of same-sex partners to marry in the state, reasoning that the "protections and responsibilities that result from the marital relationship shall apply equally" to them and to opposite-sex couples. With the ruling, which takes effect immediately, New Mexico becomes one of 17 states and the District of Columbia to permit same-sex marriage. Thirty-three states limit marriage to opposite-sex couples. (Fernanda Santos, New York Times, 12/19/2013)

Federal Court Strikes Down Utah's Same Sex Marriage Ban A federal judge has struck down Utah's ban on same-sex marriage, saying it's unconstitutional. The ruling says a 2004 ban passed by the state's voters violates the due process clause of the 14th Amendment to the U.S. Constitution. Opponents vow to appeal the ruling. (Scott Neuman, http://www.npr.org, 12/20/2013)

Canadian Court Strikes Down Laws on Sex Trade The Supreme Court of Canada voted unanimously to strike down the country's laws governing the sex trade. Adults' exchanging sex for money is not illegal in Canada, so the judgment dealt with three laws that effectively criminalized most prostitution. While finding that those laws violate prostitutes' constitutional guarantee of "security of the person," the court has allowed them to remain in effect for one more year while Parliament considers alternatives. The court concluded that a ban on brothels forced prostitutes into the streets and other unsafe locations while also jeopardizing attempts to establish safe houses for them. The anti-pimping law eliminated their ability to use legitimate security guards, accountants and business managers. And the provision against soliciting made it difficult, if not impossible, to assess potential customers to avoid potentially dangerous ones before getting into their vehicles. (Ian Austen, New York Times, 12/21/2013)

Uganda Imposes Harsh Penalties on Homosexuals The Ugandan Parliament has approved legislation imposing harsh penalties on gay people, including life imprisonment for what it called "aggravated homosexuality." Specifically, the law — officially the Anti-Homosexuality Bill 2009 — provides for a 14-year jail term for a first conviction and "imprisonment for life for the offense of aggravated homosexuality." (Alan Cowell, New York Times, 12/21/2013)

Justices Halt Same-Sex Marriages in Utah In a move that cast doubt over the marriages of roughly 1,000 same-sex couples in Utah, the United States Supreme Court blocked further same-sex marriages there while state officials appeal a decision allowing such unions.

Continued on next page

The development created what Utah's attorney general called "legal limbo" for the same-sex couples who had wed in the state in recent weeks. (Jack Healy and Adam Liptak, New York Times, 1/7/2014)

Utah Won't Recognize Same-Sex Marriages it Licensed The fortunes of 1,300 newlywed same-sex couples in Utah were thrown into turmoil after the governor's office announced that it would not recognize their marriages while it presses its legal efforts to limit marriages to one man and one woman. It was the latest twist in the 19-day tale of same-sex marriage in one of the country's most socially conservative states. Last month, a surprise ruling by a federal judge overturned Utah's voter-approved ban on marriage among gay couples, prompting hundreds to rush jubilantly to county clerk's offices to obtain Utah marriage licenses. After unsuccessfully petitioning two lower courts to halt those weddings, Utah succeeded Monday in persuading the United States Supreme Court to issue a stay while the state appeals. The ruling blocked any additional same-sex unions from taking place and effectively reinstated Utah's disputed ban. Utah is now treading onto relatively untested legal ground. (Jack Healy, New York Times, 1/8/2014)

U.S. to Recognize 1,300 Marriages Disputed by Utah In the latest contribution to a fast-moving legal battle over same-sex marriage rights, the Justice Department said that the federal government would recognize as lawful the marriages of some 1,300 same-sex couples in Utah even though the state government is refusing to do so. It provided a new twist in a fight that has pitted notions of individual equality against the right of states to define marriage as a majority of their voters see fit, and added to the legal confusion surrounding the status of the same-sex couples in Utah who married. (Charlie Savage And Jack Healy, NY Times, 1/11/2014)

Les Wallerstein is a family mediator, collaborative lawyer, and the founding editor of the FMQ. He can be contacted at 781-862-1099, or at wallerstein@socialaw.com

MCFM NEWS

MCFM'S NEXT FREE PROFESSIONAL DEVELOPENT WORKSHOP

INTAKE: SETTING THE STAGE FOR YOUR MEDIATION PROCESS

Wednesday, February 12, 2014
2p.m. – 4p.m.
Wellesley Free Library
530 Washington Street
Wellesley, Massachusetts

Panelists: Israela Brill-Cass, Esq., Diane C. Pappas, CDFA, and Ellen Waldorf, Esq.

WHAT YOU'LL LEARN:
Your mediation process starts when you design your website or otherwise advertise your practice. Form follows function: what do you want your intake process to accomplish? Whether you have a website, whether you talk on the phone, whether you meet with the clients when they first come into your office or whether you have an assistant meet them to obtain basic information about them. Why you prefer one system over another.

What are the advantages and disadvantages of filling out basic intake forms with your clients as opposed to an assistant performing this function? What do you ask in your intake form? How do you use in your mediation the information you have gathered in your intake? What do you think your clients are learning during your intake?

Hear our expert panelists and share your own experiences – good, bad or ugly!

MEDIATION PEER GROUP MEETINGS

Peer Group Focused on Financial Issues in Divorce Open to all divorce professionals, the purpose of the group is to focus awareness on the financial intricacies of divorce in an open forum that promotes discussion of a wide range of issues. Discussions will be led by Chris Chen, CDFA, CFP, Diane Pappas, CDFA, and group members. Morning Meetings are usually from from 10:00 am – noon at Cambridge Savings Bank, Arlington Center, 626 Mass Avenue – upstairs conference room. **Seating is limited. Please contact Diane @ (978-833-6144), diane.pappas@insightfinancialstrategists.com or Chris @ (781-489-3994), chris.chen@insightfinancialstrategists.com**

Continued on next page

Central Massachusetts Mediators Group: We serve mediators in Central Mass and towns along Rt. 2 West of Rt. 128. We meet to discuss topics and/or cases, sometimes with guest speakers, in the offices of Interpeople Inc. in Littleton. Interpeople is located about 1/2 a mile off Rt. 495, at Exit 31. Meetings begin at 8:30 AM on the last Thursday of every month, except December, July and August. If you are a family and divorce mediator — attorney or non-attorney — you are welcome to join us. **New members are asked to please call ahead of time: 978-486-3338, or email Shuneet at drthomson@interpeople-inc.com.**

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

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

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

OFFER MCFM's BROCHURES TO PROSPECTIVE CLIENTS

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

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

AN INVITATION FOR MCFM MEMBERS ONLY

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

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HELP BUILD AN ARCHIVE!

In the spring of 2006, MCFM entered into an agreement with the Department of Dispute Resolution at the University of Massachusetts to create an archive of Massachusetts family-related mediation materials.The two key goals are to preserve our history and make it available for research purposes.

We're looking for anything and everything related to family mediation in Massachusetts — both originals and copies — including: meeting agendas and minutes, budgets, treasurer's reports, committee reports, correspondence, publications, fliers, posters, photographs, advertisements and announcements.

We need your help to maximize this opportunity to preserve the history of mediation in Massachusetts. **Please rummage through your office files, attics, basements and garages.** ***If you discover materials that you are willing to donate please contact Les Wallerstein at wallerstein@socialaw.com.***

THE FMQ WANTS YOU!

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

To submit articles or discuss proposed articles
call Kate Fanger 617-599-6412
or email KF@katefangermediation.com

NOW'S THE TIME TO SHARE YOUR STORY!

ANNOUNCEMENTS

* *

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

* *

30-HOUR BASIC MEDIATION TRAINING

Presented by The Mediation & Training Collaborative (TMTC)

Greenfield, MA
March 7, 15, 22 & 28, 2014 – 9:00 am to 5:30 pm each day

Highly interactive, practice-based training is open to anyone who wishes to increase skill in helping others deal with conflict, whether through formal mediation or informal third-party intervention processes in other professional settings. TMTC is a court-approved mediation program, and this training meets SJC Rule 8 and Guidelines training requirements for those who wish to become court-qualified mediators. Social work CECs and attorney CLEs available upon request. For more details or brochure, contact Debbie Lynangale at mediation@communityaction.us or 413-475-1505. Or see www.communityaction.us/upcoming-trainings-events.html.

ELDER / ADULT FAMILY MEDIATION TRAINING

Presented by Elder Decisions® - a division of Agreement Resources, LLC

This training teaches mediators tools and strategies for successfully facilitating adult family conversations around issues such as living arrangements, caregiving, financial planning, inheritance/estate disputes, medical decisions, family communication, driving and guardianship.

The new four-day format includes all the features of the popular three-day program plus additional content and even more multi-party role play opportunities and skill building exercises.

FOUR-DAY TRAININGS
April 8 - 11, 2014
OR
July 29 - August 1, 2014
Newton, MA

Continued on next page

Lead Trainers:
Arline Kardasis and Crystal Thorpe
Joined by guest experts in Aging and Elder Law

Cost: $1,050 by early registration deadline; $1,125 thereafter.
Trainings include lunches, snacks, and course materials.

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visit: www.ElderDecisions.com
email: training@ElderDecisions.com
or call: 617-621-7009 x29

34-Hour Divorce Mediation Training

May 1*, 2, 3, 16 & 17, 2014

In Greenfield, MA

Sponsored by The Mediation & Training Collaborative

Prerequisite - 30 hours Basic Mediation Training

A 34-hour advanced mediation training for those interested in working with separating, divorcing or already-divorced couples. Topics include the emotional and legal aspects of divorce, parenting issues, division of assets and debts, spousal support, working with non-traditional couples, mediator ethics, dealing with high conflict, and more. Fee includes training manual, coached role plays, parking and refreshments. Social Work CEC's or MA attorney CLEs available upon request. Trainers are Betsy Williams, Cate Woolner, Larry Saunders, Stephanie Levin, Oran Kaufman and Court Dorsey. Fee is $825. ($775 if postmarked by April 7)

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

*The four-hour May 1 session will focus on Massachusetts family law for divorce mediators and is open to divorce mediators who want a review of this topic. Fee for this session alone is $90. Attorneys taking the full training who have extensive experience in family law may choose to omit the May 1 session. Call for more information on either of these options.

JOIN US

MEMBERSHIP

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

REFERRAL DIRECTORY

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

PRACTICE STANDARDS

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

CERTIFICATION & RECERTIFICATION

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

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

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

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MCFM
Family Mediation Quarterly

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

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

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

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

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

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

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

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

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