

MCFM

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



PRESIDENT'S PAGE: FRAN WHYMAN

Dear Mediators:

Happy New Year!

Have you made your professional New Year's resolutions for 2016 yet? Do they include participating in more professional development opportunities, trying new approaches to your most challenging mediations, growing your mediation practice, connecting with other mediators in your area? If so, here are some suggestions for getting started on realizing your goals for the new year.

Join a peer group for mediators in your area. This is a terrific way to get help with your most challenging cases while you get to know and establish regular communication with others in the field. Check MCFM's website and Family Mediation Quarterly for more information about how to locate or start a peer group in your geographic area.

Plan to regularly attend MCFM's professional development meetings and the annual Institute in 2016, and mark your calendar as the dates for those events become available. These programs provide an excellent opportunity to hone your mediation skills and explore in depth an array of substantive topics in Family Law. These events also afford an opportunity to connect with other mediators.

Write an article for MCFM's Family Mediation Quarterly on a topic of general interest to the mediation community. FMQ publications are sent to more than 250 recipients and archived on the MCFM website for future viewing. Due dates for submissions can be found on the MCFM website.

If you have the qualifications but keep putting it off, make 2016 the year you apply for MCFM Certification. The MCFM's Certification Committee will answer your questions about certification and help you navigate the application process.

Join an MCFM Committee. You will be richly rewarded by helping to achieve MCFM's goals while experiencing the wonderful camaraderie enjoyed by committee members.

Attend MCFM's Spring Social this coming May and get to know other members of our mediation community.

Take a personal inventory of your best practices, biggest successes, and mistakes of the past year so you can learn from them. Schedule time to meet with other mediators over lunch, and use that time to learn about favorite practices others have incorporated into their mediations with success so that you might improve client experiences when they mediate with you.

May we all try something new in our mediations in 2016!

A final word about 2015 - I would like to thank the MCFM mediators who volunteered their time to mediate cases on-site, in the Courthouse, in the Marlborough Probate and Family Court during 2015, and the MCFM Board for its hard work serving our members and promoting increased awareness of mediation and expansion of its use in Massachusetts.

My best to all for a healthy and most fulfilling 2016.





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MEDIATING OR ARBITRATING TEMPORARY ORDERS

By Howard Goldstein, Esq.

The traditional start to a divorce case in Massachusetts is the filing of a complaint, service of a summons and scheduling of temporary orders. The temporary orders are designed to tide over the parties with custody and financial orders that maintain the status quo, or at least the peace, until the case is ready for trial. In Massachusetts a contested no-fault divorce cannot be scheduled for trial any earlier than six months after filing of the complaint, but in practice it usually takes more than a year to get a trial. Because we have a single calendar system now, the judge who decides the temporary orders is likely to be the same judge who presides at trial. For that reason, the decision on temporary orders can determine the entire course of a case and have a major impact on the outcome.

“Even in a case that will eventually go to trial, mediating or arbitrating at the temporary order stage can be quite beneficial.”

The decision to promptly proceed to temporary orders carries some serious risks however. It is not likely that meaningful discovery will have taken place before the hearing, the clients and lawyers are new to each other, and the tensions and drama

attendant to the early stages of a divorce combine to make it more likely that the Judge at the temporary order stage could get it wrong. It is never clear at the outset which party will benefit from the riskiness of the procedure. It is almost impossible once a temporary order is entered by a judge to get it modified. So with a year or longer to a trial, a bad result at the temporary order stage could create undue pressure on at least one of the clients, to either capitulate and settle, or escalate the litigation to try to force a more favorable result. All of this comes at great expense both financially and emotionally. The family can be effected for generations by a hastily convened hearing on temporary orders.

Even in a case that will eventually go to trial, mediating or arbitrating at the temporary order stage can be quite beneficial. Consider the following:

1. A settlement arrived at by mediation may, by agreement, not be filed in Court and therefore the parties will not prejudice the trial judge one way or another.
2. Even if the parties wish to file the settlement in Court, the stipulation can be clear that it is without prejudice to a future contested motion for temporary orders. Since the trial judge did not make the decision and it's a settlement, it will be much easier to modify if circumstances change and much less likely to reflect the point of view of the trial judge, so that the settlement negotiations, or the trial, if necessary, is much more of a “blank slate” process.
3. The stipulation for temporary orders can recite a short period of time during which it is operative: perhaps 3 months or 6 months, to give the parties



time to negotiate a comprehensive settlement after all discovery has taken place and everyone has access to all relevant information. In mediation there is no winner or loser, so neither party will feel they have an edge or an advantage, contributing to a better negotiating climate for final resolution.

4. Typically a Motion for temporary orders will get 15 or 20 minutes of a judge's attention in Court. The parties can devote as much time as they want to the mediation.
5. If the parties are unable to agree on temporary orders with the assistance of a mediator, they can agree to arbitrate—in that case a neutral person is given the power by the parties to make the decision. There is a process that is called Med/Arb in which the parties make a good faith effort to settle their motions with the assistance of a mediator, and if it's not possible, the mediator can be authorized in advance to just make a decision after a certain amount of time has passed. Such a process creates incentives to settle, but also gives the parties confidence that if they can't reach an agreement someone will make a binding decision. The parties can agree in advance with an arbitrator to boundaries that will make the process less risky. For example, the arbitration can be what is called a high low arbitration. The parties set the boundaries within which the decision will be made. So the arbitrator can be authorized to set alimony but it has to be within a predetermined range, acceptable to both parties, or it can be limited to a period of time, such as three months or six months. None of this flexibility is available at a hearing on temporary orders before a judge.

If parties are willing to be creative there are many opportunities to come up with a dispute resolution process that is more client friendly and more flexible than what is available in the Courts. In my experience mediation most often considered only at the end of a case when it is close to a trial date. This may come from a misguided assumption that appearing too eager for a settlement is a sign of weakness. The opposite is true. Mediating or Arbitrating the temporary orders stage of a case make it more likely that the case will settle in its entirety. Clients and opposing counsel can see through posturing. Demonstrating thoughtfulness and creativity in reaching solutions will be respected by your opposing counsel and appreciated by your clients.



Howard I. Goldstein is a mediator and collaborative divorce attorney, in Newton, Massachusetts, and a former Board Member of MCFM at the time of its founding in 1982. He has contributed a chapter to MCLE's award winning book on Collaborative Divorce and is co-editor of MCLE's new book on Financial Aspects of Divorce, which is coming out this Spring. He has been a frequent presenter on topics relating to family law and law firm marketing for the MCFM, Massachusetts Collaborative Law Council, Boston Bar Association, Massachusetts Continuing Legal Education and the Massachusetts Academy of Trial Attorneys.



IS THERE A "LAVENDER CEILING" IN THE MEDIATION PROFESSION?

By Frederick Hertz, Esq.

First published in the ABA Section of Dispute Resolution Just Resolutions E-News.

The San Francisco Magazine recently published its annual list of "Super Lawyers" – including a section on ADR experts. There were many fine mediators on the list. At the same time, of the forty-eight lawyer-mediators included on their list, only five were women. But even more disturbing, only two or maybe three of the listed mediators are lesbian, gay, bisexual or transgender. Similarly, there is now an association of Minorities in Dispute Resolution (MIDR), but last time I checked, hardly anyone on that list self-identifies as L, G, B or T.

I frequently attend gatherings of mediators and mediation conferences – some in the family law sector, some in the commercial mediation world, and some that include mostly community mediators. One thing that all these gatherings have in common is that they appear to be almost entirely straight. Mind you, I don't pretend to have perfect "gaydar" (the ability to sense who is gay and who is straight). But after thirty-three years of active engagement in the gay legal community in the San Francisco area, most LGBT lawyers are already known to me – or to one of my friends. I've asked my gay and lesbian colleagues, and they report the same observations.

And this is in the San Francisco Bay Area – which probably has the highest percentage of LGBT lawyers in the nation. When I attend professional gatherings in other cities or participate in national mediation conferences, the crowds seem even less "lavender" (lavender is the color given many gay events and organizations, such as Lavender Law, the annual national LGBT legal conference). Consistent with these perceptions, when I attend gay legal events, including the Lavender Law Conference, I hardly ever meet anyone who is engaged in the practice of mediation.

Could this be a coincidence? I am not sure, but somehow I don't think it is.

There are probably many factors that contribute to this skewing of the population of professional mediators. Some of these conditions may be similar to what makes the mediation world so white and (except for some areas of family law mediation), so male. It's a crowd of experienced lawyers, many of whom held senior positions in the legal profession (i.e. judges or law partners), and it's a world that is heavily influenced by the dynamics of insider references and preferences. Both of these characteristics tend to lead to an older, whiter, and straighter crowd.

But I suspect that there may be additional factors at play here as well. There may be assumptions – both spoken and unspoken – about gender and sexuality that discourage LGBT attorneys from joining the mediation profession, and



negatively impact the efforts of LGBT mediators to thrive and succeed. Some observers might suggest that there are particular career paths (i.e. small firm or public sector employment) that are more heavily populated with LGBT attorneys, and are less likely to lead to mediation work. From another angle, perhaps there is something about the attitudes or preferences amongst those who hire mediators that contributes to the lack of sexual orientation diversity. Unlike the notable efforts at increasing the gender and racial diversity of the mediation profession, very little if any attention has been paid to this dimension at all.

Assuming that most of us would like to change this situation, it is equally unclear how might one accomplish that goal. My sense is that we can't really begin to fix the problem until we have a better understanding of what's going on here. We should start by talking with lawyer-mediators who have been discouraged from entering the mediation field, in the hope that they can explain what is going on. We also can listen to the stories of successful LGBT mediators, to learn how they overcame the limitations and barriers. But we also need to be exploring how bias might be working in this arena. Is the bias of mainstream lawyers and those who hire mediators so unconscious that there's no real awareness of how the mediation selection process might discriminate? Part of that inquiry is to uncover whether there are perceptions, valid or otherwise, that there are intrinsic skills that mediators need to have that are somehow lacking amongst LGBT lawyers.

As complex as those questions are, it is even trickier when it comes to meeting these challenges and trying to fix this problem. Are there LGBT lawyers needing to be mentored? Can one educate those who select mediators on the benefits of engaging with a non-straight mediator? Do LGBT mediators bring unique skills and insights into mediation, inspired by their own personal history of being an outsider? Some folks have suggested that women are especially good mediators because they have been acculturated to listening to the concerns of others – and maybe that is something that LGBT mediators can offer. Part of the inquiry should include the issue of whether there are particular areas of practice where there might be greater resistance to these approaches (such as commercial mediation) and more open territories (such as family law).

The mediation profession hasn't done such a good job when it comes to increasing the gender and racial diversity of the profession, and it's unlikely that addressing sexual orientation and gender identity diversity will be any easier.

This is a conversation that is only in its infancy, with the first step being the recognition that there is a problem that needs to be addressed. As part of this process, the National LGBT Bar Association (which hosts Lavender Law) has asked the ABA/ADR Section to designate a representative to its ABA Liaison Committee. I've agreed to serve in that capacity, and we are meeting regularly to discuss issues of mutual concern to the ABA and the LGBT Bar

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Association. In furtherance of these goals, we plan to convene an informal small-group gathering at the next ABA ADR Conference in New York next April, where we will discuss these issues in an open and candid manner.

It is our hope that LGBT mediators – and their colleagues and allies – will join in the conversation. Hopefully these discussions will lead to a deeper understanding of the dynamics involved in these patterns and constraints, and over time, will result in an increased diversity of the mediation professional nationally. It's time to “lift” the Lavender Ceiling in the mediation profession.

If this is something that interests you, please contact me at Fred@FrederickHertz.com.



Frederick Hertz is an attorney and mediator in the San Francisco bay area, specializing in the mediation of same-sex dissolutions. He is the author of two Nolo press legal guides for gay couples, as well as the ABA treatise on counseling unmarried couples.





MISTAKES IN MEDIATION: 10 REFLECTIVE QUESTIONS

By Lisa J. Smith, Collaborative Attorney & Mediator

As mediators we all want to improve our skills and abilities. As we practice, we invariably make mistakes. Each mistake is an opportunity for growth. We can choose to learn from these opportunities – and to do so takes thoughtful analysis. This process can begin with understanding, identifying and learning from our mistakes. The following are a list of questions to guide a mediator in analyzing mistakes.

1. **What is a mistake?**

The Merriam-Webster defines making a mistake as “to be wrong”. This doesn’t provide much assistance. Therefore, the preliminary questions involve how to determine if the mediator has made a mistake.

2. **From who’s perspective?**

Does it matter from whose perspective the action or inaction is viewed? Is the mistake viewed from the mediator’s perspective, the client’s perspective or the perspective of the mediator’s peers? What if one or more of these perspectives conflict? For example, what if the mediator thought an error did not occur but a client thought otherwise. Is that a mistake?

3. **Mediation Style?**

Is the mediator offering facilitative, evaluative, transformative mediation or a blend of two or more approaches? An action considered a mistake in a transformative mediation may be considered appropriate in an evaluative session? The context, therefore, is important to the analysis.

4. **Type of Mistake?**

- Factual v. process mistake? Usually when a mistake is one of fact then the mistake is clearly identified. For example, if the mediator refers to the client by the wrong name or incorrectly describes an asset, it can be clearly identified as a mistake. Mistakes of process, on the other hand, are more difficult to ascertain.
- Action v. inaction? Is the mistake one of omission or of actual behavior? This subject has received recent discussion in MCFM as mediators have debated how to inform clients about the new alimony statute and child support guidelines. For example, some consider it a mistake, for many reasons, to withhold specific information about the new alimony statute to a divorcing couple. Others consider the furnishing of such information as adversely affecting neutrality.
- Verbal v. non-verbal mistakes? Facilitation skills expand beyond mediator’s choice of words to the mediator’s expression, body language and tone, as well as, how the setting is structured. Subtler mistakes may require different responses than the more obvious ones.

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- Large v. small? How does the mediator determine whether the mistake is large or small? The type and the possibility of harm may determine its significance. Further inquiry may include determining whether the harm is to the process, to the mediator, or to the clients?
 - Accidental v. intentional actions or behaviors? An unintentional mistake may involve blurting out an opinion. This type of mistake requires a different analysis than an intentional action that the mediator later deems inappropriate for that mediation session.
5. **Why?** Why did the mediator make the mistake? Some common mistakes related to how mediators attempt to balance competing needs.
- Was the mistake based on lack of preparation? Or was it caused by too much preparation that led to inflexibility?
 - Was the mistake from the mediator inserting him or herself in the process? Or was it from being too absent from the process?
 - Did the mistake occur because the mediator was rushing? Or was it because the mediator failed to maintain a meaningful pace?
 - Other mistakes are not related to balancing interests. For example, did the mediator fail to appreciate a cultural difference between the mediator and one or more clients, e.g., communication and decision making? Another type of mistake may involve the mediator feeling fatigued or being distracted.
6. **When?** When did the mistake occur?
- Stage of the process? Did the mistake occur during preparation, during the meeting, during an individual caucus or after the session?
 - Thinking about when the mistake occurred can help inform how to respond to the mistake. It can, also, be useful in understanding why the mistake occurred and identifying a pattern, if one exists.
7. **How?** How was the mistake identified?
- Self Identified. Did the mediator realize the mistake without any cues or assistance? If so, when did the mediator understand that a mistake was made? Was it immediate or sometime after the mediation?
 - Client Identified. Did the client tell the mediator there was a problem? If so, the mediator has an opportunity to explore the client's concerns more directly and contemporaneously. Or did the mediator observed cues from a client indicating something was amiss?
 - Reviewing attorney, supervisor, peer identified? Upon reviewing the mediation with peers, did the mediator then learn that a mistake occurred? If so, then the mediator has an opportunity to discuss with these peers appropriate responses, if any.



8. **Is a “mistake” defined by the outcome?** This query starts with the question: what is a successful mediation? Then assuming that the mistake did not impede the success of the process (however one chooses to so define success) is it still a mistake? Mistakes can and do occur in many successful mediations. The mediator who recognizes and responds appropriately to mistakes may be able to keep the process moving forward.
9. **Response?** After the mediator has identified a mistake, what should the mediator do?
 - Respond? Type of mistake and the how it was identified affects whether there should be a response and the type of response.
 - Repair? If the mediator chooses to repair the mistake, how should it be repaired? When should it be repaired: real time or later? How can the mediator contain the effects of the mistake so as not to impede the process?
 - Identify patterns? Has the mediator done something like this before? What are the triggers and thought processes? What can the mediator do differently next time?
10. **Fear of making mistakes?**
 - Was the mistake because the mediator attempted something new?
 - How does the fear of making mistakes affect the mediator's practice?
 - How to manage the fear so that mediator can develop skills, try different approaches with different clients and provide a better process.

Let's remember how important this topic is to our profession. By taking the time to self-reflect on or to participate in conversations with peers about possible errors, we will improve our services. While mediators won't stop making mistakes, if we are thoughtful, we will prevent repeating the same ones.



Lisa J. Smith is a collaborative attorney and mediator whose practice is exclusively settlement focused. She has served as the MCLC President, MCLC Vice President of Education and Training and chairperson on many committees. Last year, Lisa served on the International Academy of Collaborative Professionals (IACP) Task Force focused on Practice Groups. Due her to experience and training, Lisa is a Massachusetts Council on Family Mediation (MCFM) Certified Mediator. She has served as a Mentor to mediators at the Community Dispute Settlement Center (CDSC) and as a Mentor to collaborative professionals involved with the Massachusetts Collaborative Law Council (MCLC).





MCFM'S 14th ANNUAL FAMILY MEDIATION INSTITUTE & 11th ANNUAL FISKE AWARD HONORING GAIL PACKER

Presented by Barbara Kellman, Accepted by Gail Packer,
Photos by Debra Smith

John Fiske Award Ceremony

Barbara Kellman's introduction of Gail Packer:

Why is Gail Packer this year's Recipient?

First, Gail is completely like John Fiske:

She is friendly, thoughtful, and incredibly smart about mediation. She is natural, serious, and direct.

Not to mention Gail is constantly and quietly (that part might be different than John Fiske) advocating to bring mediation to the place it belongs - EVERYWHERE.

Now on to Gail herself: Gail spent ten years at the Probate and Family Court, and then brought her knowledge to the streets and neighborhoods of Cambridge and has maintained its presence with strength and prominence for 25 years. Wonderfully, Gail is a social worker who is not intimidated by lawyers.

At the Community Dispute Settlement Center (CDSC), Gail oversees a roster of 60 pro bono mediators who mediate a broad range of disputes... including divorce, parenting, elder care, landlord tenant, consumer, workplace, and LGBT long before it was fashionable.

The first CDSC training that Gail was involved was in the Spring of 1990; 1990 was also the first year CDSC conducted an advanced training in divorce mediation practice. From 1990-2015 CDSC has trained 364 mediators in divorce practice.

CDSC is now approved to provide divorce mediation services in 3 Probate and Family Court divisions: Suffolk Middlesex and Norfolk. They are not currently on-site in any of those courts; but they receive referrals from the Middlesex Probate and Family Court.

I was trained by Gail in both basic and family mediation and have had the privilege of working with Gail at Newton North High School in a Peer Mediation Program (known as PAWS) and of serving on the Board of CDSC. Gail has designed and delivered numerous training programs which focus on mediation and conflict management for diverse groups such as human services staff, youth and youth advocates, public housing residents, college residential life advisors, and police.

What thrills me is that 25 years after I was first trained by Gail I still, with confidence, refer potential trainees to CDSC every year.

By the way, Gail's article, *Takin' It To the Streets: How a Community Mediation Center Responds to an Emerging Need* was published in the Dispute Resolution



Magazine of the American Bar Association, Winter 2013. She authored the chapter, “*Mediating Disputes Between Non-married Partners*,” in the MCLE publication *Representing Nontraditional Families* (2000). Gail received a Distinguished Contribution to Dispute Resolution award from the University of Massachusetts Boston Graduate Programs in Dispute Resolution in 2002.

Why is all of this so important – I know I’m preaching to the choir – but as the world around us increases the sophistication of its violent methods of dispute resolution,

Gail Packer remains a calm but powerful and consistent beacon for reason and change, teaching literally hundreds and probably at more than a thousand people the tools and skills for the peaceful resolution of disputes.

Thank you.

Barbara Kellman



ACCEPTED BY GAIL PACKER

Why this honor matters so much to me....for 2 big reasons:

#1= I grew up as a mediator in the Family court.

I had just finished my graduate studies in social work at Boston College

I knew I did not want a traditional clinical job ...

and I landed in the Probate & Family Court in Bristol County

This was the late ‘70’s... mediation was just starting In its early beginnings in the family courts of Massachusetts. And Bristol County had a progressive innovative judge at the helm: Judge Ernie Rotenberg(of blessed memory) and an equally dynamic Probation Department headed up by Jim Casey.

We were affectionately known as Family Service Officers though one of my treasured possessions was my probation officer badge....which was very useful on a couple of occasions!..But I digress!

There I was ...in Family Court...right at the intersection of social work and the law.

The mediation work captured my spirit...helping families in the crisis of divorce. Being at the forefront of paving a new way for couples to navigate life after break-up

AND indirectly improving the lives of their children.

Before this chapter was over, I had transferred to Suffolk County

(the commute from Brookline to Fall River and New Bedford was aging me fast)

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I had an amazing decade in the Probate & Family court of learning and growing... and maybe dealing with divorce 24/7 contributed to the reality of my being single during those formative years and ultimately to the stability of my 28 years of marriage... having witnessed so much of other people's drama....in our wedding vows Warren had to promise to never use the "W word"....WIFE....since I had only ever heard it said with such disdain!

And then when I was ready for a work change, what great fortune to fill the vacancy to head up a community-based mediation center, dedicated to providing affordable and accessible services AND to promoting mediation as an alternative to that court system I knew oh so well.

It's been a great run!

Divorce mediation has remained my personal passion. I stay involved vicariously through our amazing crew of pro bono mediators, training and mentoring.... as divorce mediation continues to be a growing, ever challenging and oh so rewarding area of our practice at the Community Dispute Settlement Center.

#2 =John Fiske

To receive an award connected to John Fiske is the icing on the cake....I have known John since back in my Suffolk Probate & Family Court days...and just last year we honored John with a Community Peacemaker Award for his life time achievement! So with his legacy attached to this award, I am enormously grateful Thank you!



John Fiske Award Recipients
David Hoffman, John Fiske, Gail Packer, and Oran Kauffman



Beth Aarons and Howard Goldstein



Vicki Shemin



Bill Eddy



Fran Whyman and Oran Kauffman



Dave Joseph, Emily Gould, and Bill Eddy



Kim Whelan, Lisa Smith, and Amy Bricker



Jonathan Fields and Fern Frolin



Halee Burg, Tanya Gurevich, and Karen Van Kooy



EVOLUTION OF THE INTERNAL FAMILY SYSTEMS MODEL

By Dr. Richard Schwartz, Ph. D.

Editor's note: What follows is the second in a series of articles about Internal Family Systems (IFS) which appear in the FMQ over several issues. A number of mediators in our community believe, as I do, that IFS concepts and tools can have great utility in family mediation work. My goal here is to share some general ideas of IFS, not to provide the detailed information that can be found elsewhere, or to train anyone in it. This second article is both background and outline of the IFS model, excerpted from an article that appears at www.selfleadership.org, the IFS website. It is intended to excite curiosity, rather than to explain the uses of IFS. Much more information can be found on the website, or at a training. -KF

- **Managers, Firefighters, and Exiles**
- **The Self**
- **The Self-Led Person**
- **Qualities of the Self**

The Internal Family Systems Model (IFS) has evolved over the past twenty years into a comprehensive approach that includes guidelines for working with individuals, couples, and families. The IFS Model represents a new synthesis of two already-existing paradigms: systems thinking and the multiplicity of the mind. It brings concepts and methods from the structural, strategic, narrative, and Bowenian schools of family therapy to the world of sub-personalities. This synthesis was the natural outcome that evolved after I, as a young, fervent family therapist, began hearing from my clients about their inner lives. Once I was able to set aside my preconceived notions about therapy and the mind, and began to really listen to what my clients were saying, what I heard repeatedly were descriptions of what they often called their “parts” – the conflicted sub-personalities that resided within them.

This was not a new discovery. Many other theorists have described a similar inner phenomenon, beginning with Freud's id, ego, and superego, and more recently the object relations conceptions of internal objects. These ideas are also at the core of less mainstream approaches such as transactional analysis (ego states) and psychosynthesis (sub-personalities), and are now manifesting in cognitive-behavioral approaches under the term schemata. Prior to IFS, however, little attention was given to how these inner entities functioned in relation to each other.

Since I was steeped in systems thinking, it was second nature to begin tracking sequences of internal interactions in the same way I had tracked interactions among family members. As I did, I learned that parts take on common roles and common inner relationships. I also learned that these inner roles and relationships were not static and could be changed if one

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intervened carefully and respectfully. I began conceiving of the mind as an inner family and experimenting with techniques I had used as a family therapist.

The IFS Model, which evolved as a result of this exploration, views a person as containing an ecology of relatively discrete minds, each of which has valuable qualities and each of which is designed to – and wants to – play a valuable role within.

“[T]HE IFS MODEL... VIEWS A PERSON AS CONTAINING AN ECOLOGY OF RELATIVELY DISCRETE MINDS, EACH OF WHICH HAS VALUABLE QUALITIES AND EACH OF WHICH IS DESIGNED TO -- AND WANTS TO -- PLAY A VALUABLE ROLE WITHIN.”

These parts are forced out of their valuable roles, however, by life experiences that can reorganize the system in unhealthy ways. A good analogy is an alcoholic family in which the children are forced into protective and stereotypic roles by the extreme dynamics of their family. While one finds similar sibling roles across alcoholic families (e.g., the scapegoat, mascot, lost child), one does not conclude that those roles represent the essence of those children. Instead, each child is unique and, once released from his or her role by intervention, can find interests and talents separate from the demands of the chaotic family. The same process seems to hold true for internal families – parts are forced into extreme roles by external circumstances and, once it seems safe, they gladly transform into valuable family members.

What circumstances force these parts into extreme and sometimes destructive roles? Trauma is one factor, and the effects of childhood sexual abuse on internal families has been discussed at length (Goulding and Schwartz, 1995). But more often, it is a person's family of origin values and interaction patterns that create internal polarizations which escalate over time and are played out in other relationships. This, also, is not a novel observation; indeed, it is a central tenet of object relations and self psychology. What is novel to IFS is the attempt to understand all levels of human organization – intrapsychic, family, and culture – with the same systemic principles, and to intervene at each level with the same ecological techniques.

Managers, Firefighters, and Exiles

Are there common roles for parts across people? After working with a large number of clients, some patterns began to appear. Most clients had parts that tried to keep them functional and safe. These parts tried to maintain control of their inner and outer environments by, for example, keeping them from getting too close or dependent on others, criticizing their appearance or performance to make them look or act better, and focusing on taking care of others' rather than their own needs. These parts seemed to be in protective, managerial roles and therefore are called managers.



When a person has been hurt, humiliated, frightened, or shamed in the past, he or she will have parts that carry the emotions, memories, and sensations from those experiences. Managers often want to keep these feelings out of consciousness and, consequently, try to keep vulnerable, needy parts locked in inner closets. These incarcerated parts are known as exiles.

The third and final group of parts jumps into action whenever one of the exiles is upset to the point that it may flood the person with its extreme feelings or make the person vulnerable to being hurt again. When that is the case, this third group tries to douse the inner flames of feeling as quickly as possible, which earns them the name firefighters. They tend to be highly impulsive and strive to find stimulation that will override or dissociate from the exile's feelings. Bingeing on drugs, alcohol, food, sex, or work are common firefighter activities.

The Self

One other key aspect of the IFS Model also differentiates it from other models. This is the belief that, in addition to these parts, everyone is at their core a Self containing many crucial leadership qualities such as perspective, confidence, compassion, and acceptance. Working with hundreds of clients for more than two decades, some of whom were severely abused and show severe symptoms, has convinced me that everyone has this healthy and healing Self despite the fact that many people initially have very little access to it. When working with an individual, the goal of IFS is to differentiate this Self from the parts, thereby releasing its resources. When the individual is in the state of Self, we can work together to help the parts out of their extreme roles.

I had no clue about the Self until I began this journey almost twenty years ago. Like many other young people in the sixties, I had experimented with meditation for respite from my inner cacophony. From these experiences, I sensed other dimensions of myself but had no framework to understand them. I was also an athlete and, on the football field and basketball court, had occasionally entered that delicious flow state in which my mind was still and my body could do no wrong. Like most people, however, I was primarily concerned with finding ways to counter the undercurrent of worthlessness that ran through my psyche. I believed the inner voices telling me I was basically lazy, stupid, and selfish. That's who I thought I really was.

I was led to knowledge about the Self less through direct experience than, later as a therapist, through witnessing what happened to my clients as I helped them explore their inner worlds. I had several clients in the early 1980s who began talking about different parts of them as if these "parts" were autonomous voices or sub personalities. As a family therapist, these inner battles were intriguing to me, and I began asking clients to try to alter them in the same ways I'd been trying to change their family's communication. It seemed that many clients could actually converse with these thoughts and feelings as if they were real personalities.

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Without knowing it, I had stumbled onto a new way of helping people access the Self that is well-known in many spiritual traditions, but I didn't realize this until years later. At the time, I was thrilled to have found a way to make therapy so much more effortless and effective for my clients, as well as for me. Diane and the others began relating to their parts in ways that the parts seemed to need. Their emergent compassion, lucidity, and wisdom helped them get to know and care for these inner personalities. Some parts, like Diane's pessimist, needed to hear from her that, while at one time she had been very hurt and needed to withdraw, she no longer needed it to protect her in that way. Sub-personalities, like the pessimist, seemed like inner trauma victims, stuck in the past, their minds frozen around a time of great distress. Other parts needed to be held, comforted, loved, or just listened to. The most amazing thing of all was that, once in that Self state, clients seemed to know just what to do or say to help each inner personality. It gradually became clear that I didn't have to teach them how to relate differently to these thoughts and emotions they were calling parts because they would either automatically begin doing what the part needed, or they would begin asking questions that would lead to ways of helping the part. My job was mainly to try to help them remain in the state of Self and then get out of their way as they became therapists to their own inner families.

Since I was still a family therapist, I also experimented with this Self-leadership approach to interpersonal relationships. When I could help family members get their parts to step back and let their Selves communicate, they resolved long-standing issues on their own with little guidance from me. Rather than reacting to each other's extreme views and positions, the Self in each partner seemed to have an automatic empathy for the other, just as individual clients had for their own parts. They could sense the hurt behind their partner's protective walls and weren't afraid of losing face by apologizing for how they might have contributed to that hurt. I began to see the potential of Self-leadership for healing but was frustrated because these flights into Self-leadership often would not last long, and in subsequent sessions the inner and/or outer family systems would revert to their old patterns. Plus, many clients couldn't attain Self-leadership to begin with. Their parts wouldn't step back or would do so only temporarily. I would later learn that for Self-leadership to be a lasting presence, we needed to heal the parts that swam in their inner pools of pain and shame. To access those parts, however, we had to get permission from the parts that protected them. Not knowing that then, I could only glimpse the vision of what helping people access their Self could do, but that glimpse was so exhilarating that I devoted my professional (and much of my personal) life to pursuing it.

The Self-Led Person

I was also finding that the Self wasn't just a passive witness state. In fact, it wasn't just a state of mind, but could also be an active healing presence inside and outside people. It wasn't only available during times when, in therapy or meditation, people



concentrated on separating from or witnessing their thoughts and emotions. Once a person's parts learned to trust that they didn't have to protect so much and could allow the Self to lead, some degree of Self would be present for all their decisions and interactions. Even during a crisis, when a person's emotions were running high, there would be a difference because of the presence of Self energy. Instead of being overwhelmed by and blending with their emotions, Self-led people were able to hold their center, knowing that it was just a part of them that was upset now and would eventually calm down. They became the "I" in the storm.

Over the years of doing this work, it becomes easier to sense when some degree of Self is present in people and when it's not. To rephrase a joke, you get the impression that "the lights are on and someone is home." A person who is leading with the Self is easy to identify. Others describe such a person as open, confident, accepting – as having presence. They feel immediately at ease in a Self-led person's company, as they sense that it is safe to relax and release their own Selves. Such a person often generates remarks such as, "I like him because I don't have to pretend – I can be myself with him." From the person's eyes, voice, body language, and energy, people can tell they are with someone who is authentic, solid, and unpretentious. They are attracted by the Self-led person's lack of agenda or need for self-promotion, as well as his or her passion for life and commitment to service. Such a person doesn't need to be forced by moral or legal rules to do the right thing. He or she is naturally compassionate and motivated to improve the human condition in some way because of the awareness that we are all connected.

Whenever I begin describing this Self-led person, it triggers parts of me that feel inadequate. While there are times when I can remember embodying some of those qualities, there are more times when I'm a far cry from that person. I believe that this is one of the mistakes that some organized religions make. They hold up the image of a saintly person as a model of what their followers should be, yet they provide little practical advice on getting there, other than by using willpower or prayer. As a result, people feel chronically inferior and get angry at their emotions and thoughts that aren't so evolved.

Qualities of the Self

Let's continue examining this presence we call the Self. To clarify this discussion, I find it useful to differentiate between what people report while meditating – while being reabsorbed into the ocean – and what people are like when their Self is actively leading their everyday lives. If meditation allows immersion into a seemingly Self-less oceanic state, then the Self is a separate wave of that ocean. It is that oceanic state which seems so difficult to describe. People report feeling as if they have no boundaries, are one with the universe, and lose their identity as a separate being. This is accompanied by a sense of spaciousness in body and mind, and can be an experience of great contentment, often with moments of bliss. They often feel a pulsating energy or warmth running through their bodies and may sense a kind of light in or around them.

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People encounter different levels and stages as they deepen their meditative practice, which the different esoteric traditions have explored and charted. Here we are more concerned with what people are like when they bring some of that awareness, spaciousness, and energy to their daily tasks and relationships – again, when they are a wave rather than the ocean. What qualities do they report and display when they live in the world yet hold the memory of who they really are? What are the characteristics of Self-leadership? I don't know the entire answer to that question. After twenty years of helping people toward that Self-leadership, I can describe what my clients exhibit as they have more of their Self present. As I sifted through various adjectives to capture my observations, I repeatedly came up with words that begin with the letter C. So, the eight Cs of self-leadership include: calmness, curiosity, clarity, compassion, confidence, creativity, courage, and connectedness.



Richard Schwartz earned his Ph.D. in Marriage and Family Therapy from Purdue University, after which he began a long association with the Institute for Juvenile Research at the University of Illinois at Chicago, and more recently at The Family Institute at Northwestern University, attaining the status of Associate Professor at both institutions. He is coauthor, with Michael Nichols, of *Family Therapy: Concepts and Methods*, the most widely used family therapy text in the United States.

He has also published four books and over fifty articles about IFS. His books include *Internal Family Systems Therapy*, *Introduction to the Internal Family Systems Model*, and *The Mosaic Mind* (with Regina Goulding), as well as *Metaframeworks* (with Doug Breunlin and Betty Karrer). His most recent book is about using IFS with couples, titled *You Are The One You've Been Waiting For*. Dr. Schwartz lives and practices in Brookline, MA.





KEEP COLLABORATIVE LAW AND LITIGATION SEPARATE?

By Rackham Karlsson, Esq.

Mediation and Collaborative law are close cousins. Indeed, depending on the practitioners involved in a case, Collaborative law can resemble a form of attorney-assisted mediation. The linchpin of Collaborative law, of course, is the attorney disqualification provision, which prevents a client from using the same attorney if the Collaborative process fails and the case moves into litigation. But why is the disqualification provision so essential? Some attorneys believe that the disqualification provision unacceptably limits their clients' options. So, why not allow clients the freedom to retain the same attorney for subsequent litigation, which we might call a hybrid "collab-lit" approach? Because many mediators also are Collaborative law practitioners, it seems worthwhile to explore that question here.

In *Keep Mediation and Arbitration Separate?*, published in the last issue of FMQ, John Sturrock weighed in on a related question: whether mediators should be willing to transition into the role of arbitrator at the parties' request, a hybrid approach sometimes referred to as "med-arb." Sturrock proposed that the risks of med-arb "outweigh any short term benefit in an individual case." There is a strong parallel argument against collab-lit.

Promoting Self-Determination

In mediation and Collaborative law, we ask clients to find a place where they feel informed enough and brave enough to make durable agreements about their families' interpersonal and financial futures. The alternative, we all know, is litigation, where the clients ask a judge — who is little more than a stranger and whose conscious and unconscious predilections will bear on the final outcome — to make those decisions for them. Many clients choose mediation or Collaborative law precisely because they want to avoid putting their families' lives in a judge's hands.

But negotiation is hard. Clients sometimes find themselves in a place of apparent impasse, searching desperately for a path forward. In those moments, litigation becomes increasingly tempting, notwithstanding its many disadvantages. In mediation, those are the moments where one or both clients turn to us and ask, "What should we do?" What they really mean is, "This question is hard and we want a way out." Of course, third-party decisions often fail to satisfy either party, and compliance with court orders is much lower than compliance with self-determined agreements. There is tremendous value — both emotional and financial — in self-determination.

The disqualification provision promotes self-determination. Without it, the Collaborative process agreement means very little; it becomes little more than an expression of good faith intent to make an *attempt* at self-determination. Ultimately, a collab-lit process is the same as attorney-to-attorney negotiation, where the attorneys offer an ostensibly "collaborative" mindset but reserve the right to seek judicial determination when the going gets tough. Reasonable minds will differ on what qualifies as "tough," but we can be fairly certain that collab-

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lit cases will fail prematurely in situations where the parties might otherwise have found their way to a creative, mutually agreeable, self-determined outcome. How many Collaborative practitioners among us have had to manage a client's temptation to litigate even *with* the disqualification requirement in place?

Trusting the Process and Its Participants

As Sturrock observes, parties and professionals alike “are affected by what we understand the process to be or what it may become.” In collab-lit, the knowledge that litigation is possible will taint the parties' ability to interact transparently with the professionals in the room. Just

“[Clients] will attempt to manipulate the professionals' perception of them, adopting false external personas (more than they already do), at the expense of candid discussion that promotes settlement.”

as clients already attempt to persuade mediators — even when they acknowledge that adjudication isn't the mediator's role — so they will attempt to manipulate the professionals' perception of them, adopting false external personas (more than they already do), at the expense of candid discussion that promotes settlement.

As Sturrock writes, we want to create a process where the professionals “[m]ay ask challenging questions and ponder with parties a range of possible solutions, outcomes, alternatives or ‘settlements’.” An attorney's role in Collaborative law is not only to advise his or her clients about the law, but also to encourage and promote an atmosphere of open dialogue and creative problem-solving. That atmosphere is difficult to maintain when the parties' know that their words may one day be used against them in litigation, by the same attorney now sitting across from them. This cowl over the collab-lit process will, as Sturrock suggests for med-arb, significantly “diminish the prospect of [an] outcome being achieved by the parties exercising self-determination.”

The Point of No Return

Once a collab-lit case has transitioned into litigation, it seems unlikely that it will ever transition back into the Collaborative model with the same attorneys. Litigation is an adversarial process, and the positions attorneys take in litigation are designed to persuade the judge as strongly as possible to adopt a particular outcome. Having seen the other party's attorney advocate against them — likely using knowledge that was obtained in Collaborative meetings — how can a client ever trust that attorney to work toward a settlement that addresses both parties' interests? It would be rare clients indeed who could ignore the adversarial events that transpired in the courtroom and return to the table with a spirit of mutual trust and problem-solving. Certainly not with the same attorneys at the table.

What Are We Protecting?

As noted gearlier, some attorneys believe that the disqualification provision unacceptably limits their clients' options. They insist that the option of proceeding



to litigation with the same attorney is an important legal right that must be preserved, to protect the clients. To the contrary, if self-determination in a private and mutually respectful process is an important goal, then the opposite is true: the disqualification provision is precisely what protects the clients. It encourages self-determination by creating a hurdle to litigation and allowing for a settlement environment where parties can trust that the professionals are on the same “team.” It is a *sine qua non* of the Collaborative process and its importance must never be neglected.



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**“The divorce was worse than anything I could imagine.
I got custody of her lawyer’s teenage children.”**



REVOKING THE IRREVOCABLE TRUST IN A DIVORCE OR NEVER SAY CAN'T, SAY DECANT

by Jonathan E. Fields, Esq.

In the last issue, I wrote about *Pfannenstiehl v. Pfannenstiehl*, 88 Mass.App.Ct 121 (2015), which involved an irrevocable trust in a divorce. And I just finished a chapter on trusts and inheritances in divorce for an upcoming MCLE publication, *Financial Aspects of Divorce*, due out later this year. Trusts and divorce. Bloodlines and equity. Spheres of law like battling neighbors who don't play nicely with each other. And, for some reason, like the rubberneck driver, I can't look away.

In a recent case of mine involving multiple irrevocable trusts, I came across the issue of decanting – that is, pouring assets from an irrevocable trust into a newly created trust. Hmmm. Then I thought: what if, during (or anticipating) a divorce, the trustee decanted the assets into a newly created trust that was, say, more divorce-proof than the original trust?

But, before we dive into that issue, a bit more about decanting. Many states have decanting statutes that spell out the particulars and the limitations about decanting assets from an irrevocable trust. Massachusetts, no surprise, does not. In fact, in its recent adoption of the Uniform Trust Code, Massachusetts declined to adopt the decanting provision.

In a case of first impression, our Supreme Judicial Court stepped into the breach with *Morse v. Kraft*, 466 Mass. 92 (2013). Essentially, the case involved an irrevocable trust created by Robert Kraft which contained four sub-trusts, one for each of the donor's sons who were very young when the trust was created in 1982. The sub-trusts were administered by a trustee, Morse, and, under the trust terms, the sons could not participate in any distribution decisions. Now that the children were all in their forties and financially sophisticated, Morse wanted to delegate his trustee powers to them.

Since the trust gave Morse no explicit right to decant and Massachusetts has no decanting statute, Morse filed a petition asking the court to interpret the trust's language as authorizing decanting without court approval.¹

The SJC agreed with Morse's position – that the trust authorized him to decant.

In its analysis, the SJC reminds practitioners that, in interpreting a trust, the donor's intent is the paramount consideration. Here, the trust gave Morse broad discretion to make outright distributions to or for the benefit of the beneficiaries. The SJC, therefore, concluded that the discretion encompassed a distribution to a new trust if doing so would serve the beneficiaries' best interests. In addition to considering the

1. Further, although it is beyond the scope of this article, this judicial approval was necessary in order to qualify the new trust as grandfathered under the Generation Skipping Tax rules.



language of the trust, the Court also relied on affidavits from the donor, the drafter, and Morse to the effect that each intended the trustee to have the right to decant.

While the Court agreed that the trustee had the right to decant, the SJC rejected the recommendation from the Boston Bar Association, who filed an amicus brief, requesting that the court recognize an inherent power of trustees of irrevocable trusts to decant, “irrespective of the language of the trust.” Such a step, according to the SJC, is better left to the legislature.

Notably, the *Morse* court put on notice drafters of future, post-*Morse*, trusts: if you want a trustee to have a right to decant, you would be best served by articulating that power in the trust.

With that brief background, let’s return to the issue that interested me in the first place – decanting the assets during a divorce to a more divorce-proof trust.

So, let’s dispose of the easy case first: with a post-*Morse* Massachusetts irrevocable trust without an explicit power to decant, it is likely that decanting would not be permissible.

With a pre-*Morse* Massachusetts irrevocable trust without an explicit power to decant, we look to *Morse v. Kraft*. That case tells us that a trustee may well be permitted to decant if three conditions are met. First, the trustee’s discretion must be sufficiently broad to make outright distributions to or for the benefit of the beneficiaries. Second, the decanting must be in line with the donor’s intent. And, finally, third, the decanting must be in the beneficiaries’ best interests.

What if the decanting occurs in the context of a divorce?

Consider a 2005 Massachusetts irrevocable trust set up by Richard and Cindy Smith for the benefit of their daughter, Wendy Smith, who is now anticipating a divorce from her husband Dana Jones. The 2005 Trust contains an ascertainable distribution standard (*i.e.* “Trustee must consider Wendy’s health, education, and welfare in making distributions.”) Assume that this provision, among others, bring the trust within the marital estate for purpose of equitable distribution under G.L. c.208 s.34. The trustee, Gabe Johnson, wants to decant the assets of the irrevocable trust to another irrevocable trust. The terms are virtually identical except that the distribution standard in the new trust gives the trustee “absolute discretion” in making distributions to Wendy. This “absolute discretion” standard, let us assume, takes the trust out of the marital estate.

If Gabe Johnson, the trustee, petitions the SJC, as Morse did, how does he make the case? On the one hand, the distribution standard is more restrictive to Wendy. On the other hand, it arguably protects her from the vagaries of divorce. Assume, similar to *Morse*, that Wendy’s parents, the donors, submit an affidavit that they intended the trustee to have the power to decant. Gabe Johnson, the trustee, further argues, similar to the trustee’s argument in *Morse*, that Wendy was not married at the time the trust was created, and that since

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she is now married, they want to protect her in the event of a divorce. Is that analogous to the Kraft boys not being financially mature enough to handle money when they were minors but, in their forties, they are? Might the SJC grant the petition? Let's imagine the trustee succeeds and the SJC grants the petition.

In the ensuing divorce, Wendy argues that the trust is outside the marital estate because, among other reasons, she has no ability to reach the monies – after all, she argues, the trustee has absolute discretion. Dana, her husband, encourages the court to consider the equities of the case; since the decanting occurred on the eve of the divorce, he argues, the trust should be included in the estate. Dana cites *Pfannenstiehl* where the court was impressed, in part, by the trustee shenanigans in continuing to distribute to all the other siblings except the divorcing spouse.

Dana argues, alternatively, that assuming the trust is out of the estate, the Court should give him more of the available assets. Or, failing that, Dana could argue that he receive a portion from the trust on an “if, as, and when” basis. Or, he could take an even more aggressive position and seek a present division, as in *Pfannenstiehl*.

Whatever the outcome, and considering the uncertainty, it is a lot of trouble to go through in order to decant the assets from a pre-*Morse* trust that has no explicit decanting provision.

Many of our cases involve parents setting up trusts in their home states for their adult children who live in Massachusetts. Consider, then, the same Massachusetts couple, Wendy and Dana, except that the trust involved is one from State X – a state with a decanting statute.

What do the decanting provisions from other states look like? And how might that impact a decanting in anticipation of a divorce – or, even mid-divorce?

In most states, it is common to restrict the beneficiary class to those identified in the original trust. Indeed, *Morse* supported this principle. See Wareh & Dorsch, *Decanting: A Statutory Cornucopia*, Trusts & Estates, March 2012, 24 (“no state permits the direct addition of a new beneficiary”).²

Most decanting statutes are silent on whether a distribution standard may be changed through decanting. See Wareh & Dorsch, *supra*, at 26. Alaska, Delaware, New York, North Carolina and Ohio do not permit the trustee to change distribution standards.

In the 22 states with decanting statutes, what authority must the trustee have in order to decant?

2. Query whether in Massachusetts a trustee could decant the assets to a second trust with additional beneficiaries if the trust language, donor intent and/or credible testimony indicated that a material purpose of the trust was that it was intended to be “divorce-proof.” Although in that case, where Wendy’s interest was diluted, it is difficult to see how that would be in her best interest (the third prong of *Morse*) simply because it devalues a potential marital asset that may be shared with her husband Dana.



Some states are very restrictive. Florida, Ohio, Indiana, and Rhode Island, require a trustee to have “absolute” power to invade principal in order to decant.

Other states are less restrictive. Alaska, Delaware, Illinois, Michigan, New York, North Carolina, South Carolina, South Dakota, Texas, and Virginia, permit a trustee to decant provided the trustee has discretion to distribute income or principal. In all of these states (except South Dakota), however, the distribution standard in the new trust must be the same as in the old trust.

In South Dakota, a trustee can decant from a trust with an ascertainable standard into a wholly discretionary trust – arguably taking the trust out of Wendy’s and Dana’s marital estate and wreaking more than a bit of havoc in their Massachusetts divorce.

Some states are quite permissive. In Arizona, Kentucky, Missouri, Nevada, New Hampshire, Tennessee, Wisconsin, and Wyoming the trustee’s distribution standard is irrelevant. A trustee with any power to distribute principal may decant those assets in further trust for the beneficiary.

In a recent unpublished Connecticut case, interpreting Massachusetts trust law, the parties (let’s call them Wendy and Dana) were involved in a divorce and the trustee decanted a substantial portion of the assets from a Massachusetts trust that permitted Wendy to withdraw principal to a Connecticut trust that prohibited such withdrawals without the trustee’s approval. *Ferri v. Powell-Ferri*, 2103 Conn.Super. LEXIS 1938, 2013 WL 5289955 (Conn.Super. 2013). Presumably, the decanting would advantage Wendy in her Connecticut divorce by removing the asset from the marital estate. The Superior Court judge, however, found that the elimination of Wendy’s withdrawal rights was a radical deviation from the original trust. Therefore, the court held, the second trust could not stand.

Ferri provides another caution. No matter the trust situs, Dana should pay careful attention to whether the interest decanted is a vested one. For example, an irrevocable gifting trust might grant withdrawal rights to a beneficiary which vest over time. Indeed, in *Ferri*, the beneficiary had a vested withdrawal right in 75% of the trust assets at the time the action was commenced. The Court noted, therefore, that these assets were unquestionably divisible marital property under Connecticut’s equitable distribution statute. The same analysis would apply to our own G.L. c.208 s.34.

As decanting becomes more widespread nationwide, the issue is likely to surface in more of our cases that involve local or out-of-state trusts. The recent *Morse* case was welcome guidance to practitioners and, perhaps, the legislature will step in to clarify further. In any event, in this evolving area, as family law practitioners and mediators, we should be reasonably versed so that we are able to identify the issues for our clients.



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MEDIATION PREP LETTER

By Dave Joseph, MSW

This was part of the printed materials provided at the 2015 MCFM Institute

Dear _____:

Welcome to this mediation session. I thought it might be helpful to tell you how I understand the mediation process and my role, and to invite you to do some thinking in preparation for your participation.

Purpose and Agenda:

Our time together offers an opportunity for you to fully discuss the issues that brought you here by speaking honestly and fully, listening openly and making decisions together about how to move forward. In doing so, you may come to understand each other's concerns—and your own—in new ways. The work will include:

- Creating and modifying agreements for this session.
- Identifying key issues.
- Gaining mutual clarity about your interests.
- Generating options for solutions to problems.
- Completing the session with an Agreement and/or clarity on issues that remain to be resolved.

My Role:

I am here to serve these purposes and will help you create a structure for your conversation, ask questions to stimulate your thinking or to help clarify your speaking, tell you where it seems to me that you are in the process, remind you of any agreements you make for your interaction today, and help you solidify and document any agreement you craft for the future. I may offer each of you one or more opportunities to speak with me privately to gain clarity, or you may request same. I will ask you to be active in monitoring the progress of your conversation and to let me know if you feel it is going off-track. I do not take sides, give advice, or render decisions.

Preparation and Reflection:

I believe that it's important and worthwhile for people to prepare for these kinds of conversations so that they may be clear about what their wishes are, about how they want to speak, and how they want to be listened to. To start your thinking about these things, I offer several questions for you to consider. You may want to jot down some notes as you think about your responses. You may or may not want to use them as part of your discussion together.

1. As you reflect on the issues, what is at the heart of the matter for you?
2. What factors beyond your control have contributed to the current situation?



3. What might you have done differently if you had the opportunity to go back and relive the relevant events?
4. If, by some miracle, you woke up tomorrow and everything was resolved to your satisfaction, what would be different?
 - How would your behavior toward the other person be different?
 - In what ways would his/her behavior toward you change?
 - How would the situation have been resolved?
5. What would you most like to talk about during this mediation? What do you imagine that the other person would most like to talk about?
6. What concerns do you have about how things might go wrong in this session? What ideas do you have about how to prevent that from happening?
7. In this session, how important is it to you to have your point of view understood by the other person?
 - How do you imagine that you might speak in ways that allow you to be heard and understood?
 - When and how have you been able to accomplish that with the other person in the past?
 - How will you know that the other is listening in the way you wish him to?
8. What do you want the other to do or refrain from doing in order for you to be able to really listen to him? What have you done in the past that's enabled you to listen in difficult situations?
9. What kinds of agreements or ground rules for this conversation might best help you to experience this as a worthwhile investment of your time?
10. What advantages and disadvantages might there be to creating an Agreement in this session?

Thank you for taking the time to read this letter and carefully consider these questions. After you've had a few minutes to think, we will begin.

With acknowledgements to Chris Goetz, Circuit Mediator, US Court of Appeals for the Ninth Circuit, Seattle, and Bob Stains, my colleague at the Public Conversation Project



Dave Joseph is Senior Vice-President for Program at the Public Conversation Project, where he has provided training and consultation in Reflective Structured Dialogue in the United States, Canada, Greece, Burundi, Nigeria and Liberia. He was trained as a mediator in 1995 and co-founded and served as Executive Director of the Community Mediation Center of Rhode Island. He is also a founding member and serves on the board of Mediators Beyond Borders.



BEYOND EMAIL: PRACTICE MANAGEMENT SOFTWARE FOR MEDIATORS

What is Practice Management Software?

Practice management software is a set of software tools that work together to allow you to more easily and reliably manage important aspects of your mediation practice, including:

- • contact management and conflict checks
- • time tracking and billing
- • secure file sharing
- • document assembly
- • scheduling and task management
- • accounting (including trust accounting)

All practice management products offer at least a subset of these features, and many go well beyond. In this article, we focus just on key features that you should look for in any practice management product.

Contact and Case Management

Contact management is at the core of practice management software's functionality. Once a contact's information is entered into the software, it is available for use by all the other features of the software. Cases are linked to contacts within the system, and storing a contact's email address unlocks a host of features such as file sharing and electronic billing. Maintaining a central database of contacts also means that running a conflict check is a trivial matter of entering names into a search box.

Time Tracking and Billing

Even a mediator who always takes payments at the time of service occasionally will have clients with outstanding balances due, and the mediator needs to keep track of those balances in order to get paid. For mediators who bill clients outside of sessions, even if they charge a flat fee, tracking requirements are more substantial, and those who work with retainers have the added challenge of trust accounting. Without an efficient, reliable time tracking and billing system, billing can be a loathsome task that consumes hours of valuable time each month.

Practice management software makes it very easy to track how much each client owes and generate invoices for balances due. One simply logs the time (or flat fee) to the client's matter through the software interface. At billing time, the software can quickly (*i.e.*, in a matter of seconds, not hours) generate the bill. If there is a retainer on a case, the system will calculate how much — if anything — is owed beyond the balance of the retainer. The bill can then be printed and mailed or, more ideally, emailed directly to the client with the click of a mouse. Many practice management products also integrate with credit card merchants to allow you to take online payments. The small credit card processing fee can be well worth the savings in time spent chasing down bills!



Secure File Sharing

In the Winter 2015 issue of FMQ, we discussed the importance of sharing files securely and various options for doing so. As we noted then, many practice management products include secure file sharing functionality. The mediator uploads the file to the secure website and then instructs the software to send a secure link by email to the client. In many cases, the software includes a log of when the file was accessed and downloaded, so the mediator knows the client received it successfully.

Document Assembly

Most mediators work with the same documents repeatedly: court forms, fee agreements, separation agreements with standard language, etc. Many practice management solutions now offer the ability to automatically generate these documents with a few clicks. The key is to make sure the necessary information is stored in the system, either at the level of an individual contact or the case level. The mediator then creates a template and uploads it to the software. On demand, the software can then populate the template with the necessary case-specific information. This functionality can save valuable time, which is particularly useful for mediators who charge a flat rate for document preparation.

Caveats

Practice management software is not without its caveats. One important consideration is that most practice management software is designed primarily for attorneys. This generally isn't a problem — family law mediators and attorneys have similar needs. However, attorneys usually only have one client in a given matter, whereas mediators have two clients. The difference is most apparent when generating invoices. If the software allows it, this issue can be overcome by customizing the invoice template to avoid listing just one client's name.

Cost is always a concern when adopting new technology, and practice management software isn't free. However, hourly service professionals know all too well the time value of money, and the opportunity cost of spending too much time on non-billable tasks. The cost of practice management software is generally far less than the value of the time a mediator will save. Also, be aware that many vendors offer discounts based on membership in professional organizations such as the American Bar Association and the Massachusetts Bar Association.

Some mediators will balk at using cloud-based practice management solutions, due to security concerns. Much has been written on cloud security as it applies to legal professionals, and we won't repeat that here. Cloud service providers are generally happy to supply documentation of their security practices. Also, attorney mediators in Massachusetts should be aware of Ethics Opinion 12-03, which states that "all lawyers should refrain from storing or transmitting particularly sensitive client information by means of the Internet without first obtaining the client's express consent to do so." This requirement may be satisfied by incorporating the client's consent into the fee agreement.

Continued on next page



Practice Management Options

There are numerous practice management solutions available, and it is beyond the scope of this article to recommend a particular product for every professional. Some of the authors of this article use Clio, but each mediator should research the options and determine which product best suits their practice's needs. The American Bar Association publishes a comparison chart at <http://bit.ly/1h0FuZM> that you may find helpful. (Unfortunately, the full chart is not well suited to replication in this journal.) Also, bar associations and CLE providers sometimes host seminars about practice management software. The Massachusetts Bar Association hosted a seminar on January 26, 2016 called *Practice Management Systems: What They Are and What They Do*; the on-demand video may already be available at <http://www.massbar.org/cle/mba-on-demand>. If you have experiences with particular products that you would like to share, please let us know!

The goal of this column is to be a “user-friendly” resource for improving your practice through technology. To that end, all of us welcome your questions, comments, and suggestions for articles.



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Dave Mitchell (davemitchelladr@gmail.com), a solo practitioner based in the SF Bay Area





PAYMENTS PRACTICE SURVEY FOR MEDIATORS

From our conversations with our mediator colleagues, we know that fee and billing practices vary widely throughout the profession. We are interested in learning more about those practices, including any ideas or experiences that might prove instructive. Please take a moment to complete this short survey. **Your answers are completely anonymous.**

You can complete the survey online at: <https://www.surveymonkey.com/r/77FV23V> or write your answers below and mail in (address at end). Thank you!

1. What payment methods do you accept? Circle all that apply.

Check

Credit Card

Cash

Other or Additional Comments:

2. What is your hourly rate, flat fee, or other fee structure? (Remember that this survey is completely anonymous!)

3. Do you take a retainer?

Yes No

If yes, how do you determine the amount (a round number, a particular number of hours, etc.)?

4. How often do you bill clients?

Each session

Once per month

Twice per month

Other or Additional Comments:

5. Do you draft agreements, and if so, do you charge for drafting?

___ I don't draft agreements.

___ Yes, and I charge an hourly rate for drafting.

___ Yes, and I charge a flat fee for drafting.

___ Yes, and I do not charge for drafting.

Other or Additional Comments:



6. Do you prepare session notes for clients, and if so, do you charge for preparing them?

- ☐ I don't prepare session notes for clients.
- ☐ Yes, and I charge an hourly rate for preparing them.
- ☐ Yes, and I charge a flat fee for preparing them.
- ☐ Yes, and I do not charge for preparing them.

Other or Additional Comments:

7. Do you charge for emails and phone calls between sessions?

- ☐ No
- ☐ Yes, for all emails and phone calls.
- ☐ Yes, for emails and phone calls dealing with substance only.

Other or Additional Comments:

8. Do you charge a cancellation fee for missed appointments?

Yes No

If yes, how much do you charge?

9. Have you ever had a non-payment issue? If so, how did you handle it? Did you change your payment practices as a result?

Thank you for taking the time to complete the survey!

Mail to: Kate Fanger Mediation, 21 Properzi Way - G, Somerville MA 02143



Nota Bene

All family mediators should be aware of a change made to terminology used in the Probate and Family Court:

PARENTING TIME (instead of “visitation”)

The Massachusetts Probate and Family Court has replaced the term “visitation” with the words “parenting time” in various custody-related court forms and on the self-help portion of the Probate and Family Court website. The following forms reflect this change: (CJD 103) Complaint for Civil/Criminal Contempt; (CJD 106) Complaint to Establish Paternity; and (CJD 109) Complaint for Custody-Support-Parenting Time. The revised forms are available at:

<http://www.mass.gov/courts/forms/pfc/pfc-forms-gen.html>

The change of wording went into effect on July 15, 2015.

The term “parenting time” is already widely used in Massachusetts, reflecting the broader awareness and understanding that words matter to families. This is consistent with the national trend and practice of keeping parents involved in their children’s lives.





WHAT'S NEWS? NATIONAL & INTERNATIONAL FAMILY NEWS

Chronologically Compiled & Edited by Les Wallerstein

Egg Donors Challenge Pay Rates, Saying They Shortchange Women In a federal lawsuit, a group of women are challenging industry guidelines that say it is “inappropriate” to pay a woman more than \$10,000 for her eggs. The women say the \$10,000 limit amounts to illegal price-fixing, and point out that there is no price restriction on the sale of human sperm. A federal judge has certified the claim as a class action, which will most likely go to trial next year. The guidelines do not have the force of law, though they have been widely followed. The case could shake up the \$80 million egg-donor market by spurring more negotiation. It is a potent reminder that egg donation is a big business, though one with many more inherent ethical issues than others. (Tamar Lewin, NY Times, 10/16/2015)

Catholic Bishops Crack Open Door on Divorce After a three-week global assembly on family issues that exposed their deep divisions, the church doors opened just a crack for Catholics who divorced and remarried without receiving an annulment of their first marriages, and for those living together without being married. The doors remained firmly shut to same-sex marriage, even as the document said gay people should be treated with respect. It also says divorced and civilly remarried Catholics must not feel excommunicated, and their children also must be integrated into the church. (Laurie Goodstein & Elisabetta Povoledo, NY Times, 10/24/2015)

More Older Couples Are Divorcing Late-life divorce (also called “silver” or “gray” divorce) is becoming more common, and more acceptable. In 2014, people age 50 and above were twice as likely to go through a divorce than in 1990, according to the National Center for Family and Marriage Research at Bowling Green State University in Ohio. For those over 65, the increase was even higher. At the same time, divorce rates have plateaued or dropped among other age groups. Perhaps the biggest reason for the increase in late-life divorce is the changing status of women, who initiate about 60 percent of divorces after age 40, according to AARP. (Abby Ellin, NY Times, 10/30/2015)

Saudi Arabia: A Small Step for Women Saudi Arabia will let divorced women and widows manage their family affairs without approval from a man or a court order, a state-aligned newspaper said Wednesday. The rights of Saudi women are severely restricted by a powerful clergy and an ultraconservative society. The newspaper, Al Riyadh, said the Interior Ministry would issue family identity cards not only to men, but also to divorced women and widows, granting them powers that include having access to records, registering children for schools and authorizing medical procedures. (Reuters, NY Times, 12/3/2015)



Happiness Doesn't Bring Good Health A study published in *The Lancet* following one million middle-aged women in Britain for 10 years finds that the widely held view that happiness enhances health and longevity is unfounded. "Happiness and related measures of well-being do not appear to have any direct effect on mortality," the researchers concluded. "Good news for the grumpy" is one way to interpret the findings, said Sir Richard Peto, an author of the study and a professor of medical statistics and epidemiology at the University of Oxford. The new study says earlier research confused cause and effect, suggesting that unhappiness made people ill when it is actually the other way around. (Denise Grady, *NY Times*, 12/10/2015)

Japan Upholds Rule That Married Couples Must Have Same Surname Japan's Supreme Court has ruled that a 19th-century law forcing married couples to use the same surname – almost always that of the husband – does not violate the constitution. In a minor victory, however, the country's top court said that a second legal provision preventing women from remarrying for six months after they divorce violates the constitution's commitment to gender equality. But the court said that a remarriage ban on women of up to 100 days was reasonable. While the law found constitutional does not stipulate which name married couples should adopt, in practice women take their husband's name in 96% of cases – a reflection, critics, say of Japan's male-dominated society. (Justin McCurry, *The Guardian*, 12/16/2015)



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





MC FM NEWS

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, CFP®, CDFA™, Thomas E. Seder, CDFA™ and group members.

Morning Meetings are usually from 10:00 am to 12:00 pm at the offices of Insight Financial Strategists, 271 Waverly Oaks Road, Suite 2, Waltham. Seating is limited. **Please contact Chris at 781-489-3014, chris.chen@insightfinancialstrategists.com or Tom at 781-489-3014, to m.seder@insightfinancialstrategists.com for more information.**

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: **[10 brochures – \$10, 100 brochures – \$50. Postage included.]**, 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.**



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!





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.**



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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.

Elder Decisions® - Elder & Adult Family Mediation Training

May 11-13, 2016

Newton, MA

This training provides mediators with tools and strategies for mediating adult family conversations around issues such as living arrangements, caregiving, driving, family communication, medical decisions, Powers of Attorney / Health Care Proxies / Guardianship / Conservatorship, financial planning, estate planning, will contests, family real estate, and personal property distribution.

Join trainers Crystal Thorpe and Arline Kardasis, with guest experts from the fields of elder law and gerontology, for three days packed with content, skill-building, role plays, and opportunities to interact with fellow participants (who often travel from around the world to attend).

Cost: \$795 early rate by March 31st, \$895 thereafter.

Includes lunches, snacks, and course materials.

Held at The Walker Center in Newton, MA.

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

For more info, visit: www.elderdecisions.com/pg19.cfm,

[email \[training@ElderDecisions.com\]\(mailto:email_training@ElderDecisions.com\)](mailto:email_training@ElderDecisions.com),

or call: 617-621-7009 x29.

Social Work Continuing Education Credits: *This program has been approved for Continuing Education Credits for relicensure in the period of October 1, 2014 - September 30, 2016, in accordance with 258 CMR, as follows: 21.25 hours for all 3 days. Boston University School of Social Work Authorization Number B-16-067.*

This training is approved under Part 146 by the New York State Unified Court System's Office of ADR Programs for 16 hours of Additional Mediation Training. Please note that final placement on any court roster is at the discretion of the local Administrative Judge and participation in a course that is either approved or pending approval does not guarantee placement on a local court roster.

Please contact us with questions regarding Continuing Legal Education credits for specific states.



**Advanced Internal Family Systems Training for Mediators with
BLC Founder David Hoffman and The Center for Self Leadership
Founding Developer Dick Schwartz:**

This 3-day program will provide participants with a more in-depth opportunity to learn and work with the IFS model in the mediation setting. Participants should have either attended a prior 1-day IFS Training or have demonstrated understanding of the IFS model and how it can be applied to mediations. *For those interested but who have not attended a prior IFS training, please contact Jenna Goodman (JGoodman@BostonLawCollaborative.com) for additional information.*

Dates: May 20-22 (9:00am-5:00pm on May 20 & 21, 10:00am-1:00pm on May 22)

Registration fee: \$500 (with financial assistance available)

To register: Return your completed registration form to Jenna Goodman at JGoodman@BostonLawCollaborative.com

Location:

Boston Law Collaborative, LLC
99 Summer Street, Suite 1600
Boston, MA 02110





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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EDITOR'S NOTICE

MCFM Family Mediation Quarterly

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

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

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

The FMQ is mailed 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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Council on
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