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

PRESIDENT'S PAGE: JONATHAN E. FIELDS

Dear Mediators:
As the annual MCFM Institute nears in November, I started thinking about why I look forward to it so much every year. There's the substantive learning – developments in family law, practice pointers. There's the excellent food. But what draws me most is the gathering itself. The community.

As individuals, we all belong to various different communities – neighborhood, college friends, high school friends, colleagues, former colleagues, etc. – each of them enriching in different ways. And, of course, as MCFM members, we are part of this community. For many years now, I have belonged to a mediator peer group which meets monthly – we discuss practice issues, legal developments, and schmooze. If I have questions in between meetings, I email my peer group without hesitation – and I always get a response. We help each other because we're part of a community.

Crystal Thorpe initiated the Mediator Meals program with the same idea; by connecting mediators with each other, we develop bonds, friendships, learn from each other; we cultivate community. Deborah Danger started a group that meets at the Newton Marriott once a month – it's very informal – you never know who will show up. It, too, is founded on the same premise. I went one month and there were four of us – I had a great time learning and connecting with John Fiske, Justin Kelsey, and Susan Klebanoff. Other times, there are many more people and the possibilities of many different conversations. There are many other peer groups that meet on a regular basis – if there's not one in your area, start one. These are micro-communities.

The larger MCFM community – about 100 of us – meet every year at the Institute. And I look forward to learning, connecting, and schmoozing with many of you there.

Yours,

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CONTENTS

The Mediator Confronts Fear

By John A. Fiske

A recent telephone conversation with a woman who called to discuss divorce mediation despite her basic fears, prompts this article, which I hope will interest anyone who negotiates. She voiced a list of worries:

One. "I am afraid my interests won't be represented. I will have no one in the room with me to back me up."

Two. "Yet when I talked with a lawyer he completely overreacted. He wanted to sue my husband and be very aggressive. We don't want that at all."

Three. "Divorce has its own culture of contentiousness. It's as if all my friends hear that I am getting divorced and they are telling me I have to fight with my husband. We don't want that at all. We have good will towards one another."

Four. "Yet I am afraid that my husband will get mad at me for asking for something and I will back down."

Five. "We have been separated for two years and are cooperating well around our children. Yet when I decided to move out I was told that I'm screwed in the divorce because I was the one who left."

There are many responses available to the listening mediator. How much time does one spend on the phone with one spouse before even meeting them? Do you compromise your neutrality if you spend half an hour with this woman and not talk on the phone with the husband before they come to your office? What if you have already talked to the husband and encouraged him to tell his wife to call? After talking to the husband would you ever telephone or email the wife if she did not call you? How do you reassure her about having left?

There are, of course, advantages and disadvantages to any answer to those questions. The listening mediator decides what (s) he feels will help the mediation, which usually means listening a lot to the wife and then trying to answer her questions as directly and simply as possible. That first phone call is your first chance to connect with her, and once you have connected something good may happen, i.e. she comes in with her husband to meet with you and they hire you to mediate their divorce. (The last thing you want to do is call a person who has not called you first, so it is up to her to bring in her husband, not you.)

One way to connect with her is to acknowledge her fear. Here I was struck by how much she had already figured out, and asked her how she had come to realize what was troubling her: she would feel alone in the mediation room. "What are my concerns?" she had asked herself, an all time GREAT question. Try it some time. Morton Deutsch writes about what he calls "intra-psychic conflict" in The Resolution of Conflict, Yale University Press (1973), p. 33:

> "Inner conflict is an experience no one can avoid. It occurs in relation to such temptations as eating a piece of Nesselrode pie rather than staying on one's low calorie diet as well as in such major decisions as whether to resist or submit to an unjust authority. It is experienced as one attempts to juggle the conflicting responsibilities of various social roles: father, husband, teacher, scholar, citizen and so forth."

The problem with negotiating is we don't always know what we want. We don't spend the time and hard lonely work walking in the wilderness to figure it out. People who ask themselves about what their own concerns are will be on the right track, and may be astonished at some answers.

In a voluntary process such as mediation, no one should be agreeing to anything before he or she is ready.

Until you know what you want, any negotiation is dangerous. My wife wonders how one answers the question, and suggests therapy may help a client focus: "What is most important to me? What do I care about the most? Why?" In addition to therapeutic insight, divorcing clients benefit from living apart for at least six months. In a course I took years ago at the Boston Psychoanalytic Institute about the psychology of divorce, neither the teachers (psychiatrist Dan Jacobs and Judge Sheila McGovern) nor the students (lawyers and therapists) could agree on anything except: it is easier to work with clients who have been living apart for at least six months rather than those still living together or only recently separated. After six months they have experience with what works and what does not and are beginning to figure out their own priorities.

When you have nothing else to do, Google Mary Oliver's poem

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The Journey, given to me years ago by a divorcing husband; I still hand it out to clients who are grappling with their own fears and searching for their own inner guidance. It is an amazing journey to watch. Listen to two therapists in my office discussing their own divorce:

Husband, exasperated: "Why does it take you so long to make a decision?"
Wife: "I have to consult with my Committee."
Husband: "Who the hell is that?"
Wife, putting her fingertips on her stomach, "I have all these voices."
So I am constantly slowing people down and telling them, "Don't agree to anything until you are sure it is right for you."

It's also about readiness. When people are ready to agree they will agree, and not a moment sooner. When Hamlet says at the very end of the play, "The readiness is all," he could be talking about our clients and ourselves. In a voluntary process such as mediation, no one should be agreeing to anything before he or she is ready. Rush into nothing: the process and the result will be worthy of respect for years to come.

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Reason guides but a small part of man, and the rest obeys feeling, true or false, and passion, good or bad.

Joseph Roux

THE DISESTABLISHMENT OF MARRIAGE

By Stephanie Coontz

At first glance, the prognosis for marriage looks grim. Between 1950 and 2011, according to calculations by the University of Maryland sociologist Philip Cohen, the marriage rate fell from 90 marriages a year per 1,000 unmarried women to just 31, a stunning 66 percent decline. If such a decline continued, there would be no women getting married by 2043!

But rumors of the death of marriage are greatly exaggerated. People are not giving up on marriage. They are simply waiting longer to tie the knot. Because the rate of marriage is calculated by the percentage of adult women (over 15) who get married each year, the marriage rate automatically falls as the average age of marriage goes up. In 1960, the majority of women were already married before they could legally have a glass of Champagne at their own wedding. A woman who was still unwed at 25 had some reason to fear that she would turn into what the Japanese call "Christmas cake," left on the shelf.

Today the average age of first marriage is almost 27 for women and 29 for men, and the range of ages at first marriage is much more spread out. In 1960, Professor Cohen calculates, fewer than 8 percent of women and only 13 percent of men married for the first time at age 30 or older, compared with almost a third of all women and more than 40 percent of all men today. Most Americans still marry eventually, and they continue to hold marriage in high regard. Indeed, as a voluntary relationship between two individuals, marriage comes with higher expectations of fairness, fidelity and intimacy than ever.

But marriage is no longer the central institution that organizes people's lives. Marriage is no longer the only place where people make major life transitions and decisions, enter into commitments or incur obligations. The rising age of marriage, combined with the increase in divorce and cohabitation since the 1960s, means that Americans spend a longer period of their adult lives outside marriage than ever before.

The historian Nancy F. Cott suggests that recent changes in marriage could produce shifts similar to those that accompanied the disestablishment of religion. Most American colonies, following the British model, had an official church that bestowed special privileges on its members and penalized those who did not join it. Residents were sometimes fined or whipped if they failed to attend the established church. After the American

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Revolution, states repealed laws requiring people to belong to a particular church or religion to qualify for public rights. When the official churches were disestablished, new religions and sects were able to function openly and compete for followers. And the old church had to recruit members in new ways.

An analogous process is taking place with marriage. Many alternatives to traditional marriage have emerged. People feel free to shop around, experimenting with several living arrangements in succession. And when people do marry, they have different expectations and goals. In consequence, many of the "rules" we used to take for granted — about who marries, who doesn't, what makes for a satisfactory marriage and what raises the risk of divorce — are changing.

Until the 1970s, highly educated and high-earning women were less likely to marry than their less-educated sisters. But among women born since 1960, college graduates are now as likely to marry as women with less education and much less likely to divorce.

And it's time to call a halt to the hysteria about whether high-earning women are pricing themselves out of the marriage market. New research by the sociologist Leslie McCall reveals that while marriage rates have fallen for most women since 1980, those for the highest earning women have increased, to 64 percent in 2010 from 58 percent in 1980. Women in the top 15 percent of earners are now more likely to be married than their lower-earning counterparts.

Similar changes are occurring across the developed world, even in countries with more traditional views of marriage and gender roles. The demographer Yen-Hsin Alice Cheng reports that in Taiwan, educated women are now more likely to marry than less educated women, reversing trends that were in force in the 1990s. High earnings used to reduce a Japanese woman's chance of marrying. Today, however, such a woman is more likely to marry than her lower-income counterpart.

People are not giving up on marriage. They are simply waiting longer to tie the knot.

Until recently, women who married later than average had higher rates of divorce. Today, with every year a woman delays marriage, up to her early 30s, her chance of divorce decreases, and it does not rise again

thereafter. If an American woman wanted a lasting marriage in the 1950s, she was well advised to choose a man who believed firmly in traditional values and male breadwinning. Unconventional men — think beatniks — were a bad risk. Today, however, traditionally minded men are actually more likely to divorce — or to be divorced — than their counterparts with more egalitarian ideas about gender roles.

Over the past 30 years, egalitarian values have become increasingly important to relationship success. So has sharing housework. As late as 1990, fewer than half of Americans ranked sharing chores as very important to marital success. Today 62 percent hold that view, more than the 53 percent who think an adequate income is very important or the 49 percent who cite shared religious beliefs.

Two-thirds of couples who marry today are already living together. For most of the 20th century, couples who lived together before marriage had a greater chance of divorce than those who entered directly into marriage. But when the demographer Wendy Manning and her colleagues looked at couples married since 1996, they found that this older association no longer prevailed. For couples married since the mid-1990s, cohabitation before marriage is not associated with an elevated risk of marital dissolution.

In fact, among the subgroups of women facing the greatest risk of divorce — poor minority women, women who have had a premarital birth or were raised in single-parent families, and women with a history of numerous sex partners — cohabitation with definite plans to marry at the outset is tied to lower levels of marital instability than direct entry into marriage. America may soon experience the transition that has already occurred in several countries, like Australia, where living together before marriage has become a protective factor against divorce for most couples.

All these changes make it an exciting time to research marriage — and a challenging time to enter it. But it's not that we're doing a worse job at marriage than our ancestors did. It's that we demand different things from marriage than in the past. And marriage demands different things from us.

NY Times, 6/23

Stephanie Coontz, a guest columnist, teaches history and family studies at The Evergreen State College in Olympia, WA, and is Director of Research and Public Education for the Council on Contemporary Families.

Screening for Domestic Violence and Coercion in Divorce Mediation

By David A. Hoffman

There can be little doubt about the importance of screening for domestic violence and coercion in family mediation, although there may be differences of opinion regarding how it should be done. The following article provides a statistical backdrop for the subject, as well as tools and questions to be employed for an effective approach to domestic violence screening in mediation cases. It is excerpted from a chapter co-authored by David A. Hoffman, Annie O'Connell, and Nicole DiPentima in a forthcoming book from MCLE ("Mediation: A Practice Guide for Mediators, Lawyers, and Other Professionals," by David Hoffman and Boston Law Collaborative, LLC), which will be published later this fall.

According to a study by the U.S. Department of Justice, intimate partner violence is pervasive in U.S. society. Nearly 25.5% of surveyed women and 7.9% of surveyed men said they were raped and/or physically assaulted by a current or former spouse, cohabiting partner, or date at some time in their lifetime. (See http://goo.gl/eZAjBZ.)

According to another Justice Department report, there is compelling evidence that spousal abuse is present in at least half of custody and visitation disputes referred to family court mediation programs [and] divorced and separated women report being physically abused 14 times as often as women living with their partners. (See https://www.ncjrs.gov/pdffiles1/nij/grants/164658.pdf.)

A survey of divorce mediation programs found that the incidence of domestic violence in their cases ranged from 50 percent to 80 percent. (See id. at ii.) Domestic violence occurs in a variety of forms and varies in intensity and duration. As noted in one of the Justice Department reports:

> The public stereotype tends to be of the most extreme cases that involve severe physical violence, injury and shelter residence. In actuality, mediators see many more cases that are "less black and white." These cases often involve distant events, isolated and episodic events, and mutual provocation.

(Id. at 76.) Considerable controversy has surrounded the use of mediation even when both parties are voluntarily requesting mediation if there has been a history of domestic violence in the relationship.

For those who question the appropriateness of mediation in such cases, there are several concerns:

- an abused party may not be able to fully participate in the mediation because of fear of reprisal;

- an abused party may have developed a pattern of accommodation to the other party as a survival mechanism and may have difficulty even identifying her own needs and interests; and

- encouraging an abused party to assert her own needs and interests may put her in greater danger of an attack.

See Holly Joyce, Comment, Mediation and Domestic Violence: Legislative Responses, 14 J.Am.Acad. Matrim. L. 447, 452 (1997) ("[t]he most dangerous time for a battered woman is when she separates from her partner").

For those who believe that mediation may be appropriate in some cases with a history of domestic violence, the following considerations are significant:

- there is empirical evidence that the adversarial process in court tends to increase the level of violence in such relationships;

- the adversarial process can be disempowering or worse for the abused party because of efforts by the opposing attorney to discredit her testimony; and

- mediation, if handled properly, can be empowering for the abused party by creating an opportunity to be heard and for the abuser to acknowledge, and apologize for, his behavior in a confidential setting.

In recent years, a more nuanced attitude has emerged concerning the potential value of mediation in cases where there is a history of domestic violence. The techniques described below for screening for domestic violence enable the mediator to determine whether the problem is so severe as to preclude the use of mediation or, if not, what precautions should be taken to protect an abused party in the mediation process. One important consideration in making this determination is that, even when there is no history of domestic violence in a relationship, there may be a pattern of other controlling and abusive behavior, such as intimidation, coercion, threats, isolation, financial control, or insults, and that such a pattern can be just as problematic as an incident of physical assault.

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(a) Why Screen for Domestic Violence? Because of the potential danger associated with disclosing a history of domestic violence to a mediator or other third party, as well as feelings of shame associated with a history of such violence, mediators seldom learn about this aspect of the parties' past unless they inquire.

There are two primary reasons why mediators should screen for domestic violence. First, if the mediator is unaware of the problem, she could elicit information in a joint session that would put one of the parties in danger of reprisal. Second, the mediator could be unaware of a power dynamic related to a history of domestic violence that puts one of the parties at a severe disadvantage regarding her ability to safely assert her own interests.

One of the hallmarks of mediation is that the parties reach a non-coerced resolution of their conflict. A history of domestic violence can distort the negotiation. It is for this reason that Massachusetts has enacted legislation that prohibits the courts from ordering mediation when domestic violence has occurred. See G.L. c. 209A, § 3 ("No court shall compel parties [in a chapter 209A case] to mediate any aspect of their case.").

Practice Note

Standard X of the American Bar Association Model Standards of Practice for Family and Divorce Mediation (approved by the ABA House of Delegates in 2001) states that "[a] mediator should make a reasonable effort to screen for the existence of domestic abuse prior to entering into an agreement to mediate. The mediator should continue to assess for domestic abuse throughout the mediation process."

(b) Methods of Screening

Several domestic violence screening tools are available to mediators. Some of them are more detailed than others. All are designed to be administered in an in-person interview without the other party present.

Domestic Violence Evaluation (DOVE) The Domestic Violence Evaluation (DOVE), developed by Desmond Ellis and Noreen Stuckless, contains nineteen questions and additional sub-questions, and a scoring sheet for assessment. See Desmond Ellis and Noreen Stuckless, "Domestic Violence, DOVE, and Divorce Mediation," 44 Fam. Ct. Rev. 658 (2006). The scoring of this instrument is more complicated than that of the other screening tools.

Tolman Screening Model Developed by Richard Tolman at the University of Illinois, the Tolman Screening Model contains ten questions (available at http://xrl.us/bpzkw2). This straightforward instrument is appealing in its simplicity, but the questions are closed-ended (i.e., "yes" or "no") in form, and therefore less likely to elicit a nuanced answer.

Conflict Assessment Protocol (CAP) The Conflict Assessment Protocol (CAP), developed by Linda Girdner, is outlined in an article describing an interview process and providing advice about suitability for mediation. See Linda Girdner, "Mediation Triage: Screening for Spouse Abuse in Divorce Mediation," 7 Med. Q. 365 (1990). This very thoughtful approach is divided into sections: questions about patterns of decision making, conflict management, and anger expression; and then questions about specific abusive behaviors.

Mediator's Assessment of Safety Issues and Concerns (MASIC) The Mediator's Assessment of Safety Issues and Concerns (MASIC), published in 2010 by the Family Court Review, is a detailed questionnaire and somewhat difficult to score (available at http://xrl.us/bpzkw6). It asks closed-ended questions, but with a useful degree of detail designed to elicit information about coercive behavior and domestic violence.

ABA Commission on Domestic Violence The ABA Commission on Domestic Violence "Tool for Attorneys to Screen for Domestic Violence" contains seven fairly blunt questions (available at http://tinyurl.com/m5w57n6). This approach is too direct to be entirely useful.

1. The Michigan Courts Model The Michigan Courts Model provides a scripted introduction to mediation, with good open-ended questions about domestic violence included as part of the discussion, and useful instructions for setting up the initial interviews with the parties (available at http://xrl.us/bpzkxa).

Model Mediation Screening Tool Published in 2013 by the Women's Law Project, the Model Mediation Screening Tool consists of twenty-four questions and contains useful guidelines for interpreting and acting on the results (available at http://xrl.us/bpzkxn). This screening tool is similar in some respects to the Michigan Courts Model, but with closed-ended questions.

There is something to be said for each of these model tools, though each may require some adaptation to the mediator's style. The CAP and Michigan Courts Model seem more nuanced and better suited to mediation than the others. All of the models provide the mediator with

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insight into coercive behaviors – i.e., more than just physical intimidation or violence.

One important consideration in making [the determination whether mediation is appropriate] is that, even when there is no history of domestic violence in a relationship, there may be a pattern of other controlling and abusive behavior, such as intimidation, coercion, threats, isolation, financial control, or insults, and that such a pattern can be just as problematic as an incident of physical assault.

What to Do With the Results

In her description of the Conflict Assessment Protocol (described above), Linda Girdner describes a triage approach to the information obtained from domestic violence screening:

> Based on the assessment of responses, the mediator needs to decide whether the parties (1) are likely to benefit from the mediation conducted in the usual manner; (2) are likely to benefit from mediation if specific ground rules, resources, and skills are applied; or (3) are likely to experience harm from participation in mediation or concurrent with mediation. The categories represent sections of a continuum from non-abusive and non-controlling relationships with equal power on one end to severely abusive, controlling, potentially lethal relationships on the other end. Determining the gray boundaries between these three levels is the difficult part of the process.

2. Referring Cases Out

Screening may show that mediation is inadvisable. If domestic violence has been severe or recent, mediation may be too dangerous to be worth trying, even with adaptations of the kind described below. One of the essential elements of mediation is empowerment, while the motivation behind most patterns of domestic violence and coercion is control. The very process of empowering the person who has been subjected to violent or coercive behavior can have the effect of triggering new instances of such behavior by the other party.

If the abused party is not represented by counsel and needs a referral, there are lawyer referral services at state and local bar associations and, in Massachusetts, the Women's Bar Foundation provides volunteer lawyers to victims of domestic violence through its Family Law Project. (Information about the Project can be found at http://xrl.us/bpzkxe.)

5. Modified Forms of Mediation For those cases in which mediation is not precluded, and both parties clearly want to mediate, there are two methods that can offer greater protection and support for the abused party: (a) encouraging the abused party to bring her attorney, or a friend or relative to the mediation sessions, and (b) conducting the mediation in separate rooms so as to avoid joint meetings. Even if the parties express a preference for joint meetings, it is essential that the mediator conduct separate meetings at intervals throughout the process to make sure that abusive behaviors have not recurred and the abused party is not feeling intimidated.

6. **Safety Precautions** Because of the risk that mediation could exacerbate patterns of behavior that may have been dormant, mediators should make sure that an abused party has a safety plan, and is prepared to call the police if necessary. (The National Domestic Violence Hotline at 1-800-799-SAFE offers a wealth of information on safety planning at its website: http://www.thehotline.org/get-help/safety-planning/.)

The mediator should consider scheduling meetings with the parties at staggered times, so that they do not meet each other at the mediator's office, and so that the mediation sessions are held in a location that does not expose the abused party to danger. (For a disturbing account of a murder that took place just outside the divorce mediator's office, see Robert Badgley, "Mediator Liability: A Survey" 2 (2010), available at http://www.cemins.com/pdf/medarticle.pdf.)

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The secret of a happy marriage remains a secret.

Henny Youngman

Massachusetts Alimony Reform and Divorce Mediation: Is it Information or Legal Advice?

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

Alimony reform, effective March 1, 2012, created a number of important time sensitivities that did not exist previously in the spousal support law of Massachusetts. Addressing these timing issues in divorce mediation raises important challenges for the practitioner, one of which is how to find a balance among three imperatives: mediator impartiality, informed client decision-making and avoidance of giving legal advice. Here, we ask: when we "inform" clients about particulars of the alimony statute that carry timing perils or opportunities, are we giving information or legal advice?

Why does this question matter? It certainly matters to attorney-mediators whose licensure is subject to Supreme Judicial Court's Mass. Uniform Rules on Dispute Resolution 9(c)(iv), which permits lawyer to "…use his or her knowledge to inform…" but "… shall not provide legal advice… in connection with the dispute resolution process." This rule is consistent with the American Bar Association's Model Standards of Practice for Family and Divorce Mediation, Standard VI (16) ("…a mediator may provide information that the mediator is qualified by training and experience to provide. [But] [t]he mediator shall not provide…legal advice."

Meanwhile, for all mediators, including non-lawyers, Standard VI(B) of the Association of Family and Conciliation Courts (AFCC) Model Standards of Practice for Family and Divorce Mediation echoes the ABA standard; and the MCFM Standard of Practice 4(C) falls just short of prohibition, stating that "The mediator may give general information that will help the parties make their decision, but shall not recommend specific course of action regardless of professional background." In short, whether or not individual theorists or mediators agree, the prevailing consensus rules out legal advice, across the board. (For non-lawyers this implicates the profound challenges posed by the unauthorized practice of law dilemma discussed by David A. Hoffman in his piece in the Spring 2013 issue (Vol. 12, No. 2, p.22) of *Family Mediation Quarterly*. That issue is outside the scope of this article.)

Returning to the alimony information/advice question, it arises in the broader context as we addressed in the Spring 2013 issue (Vol. 12, No. 2, p. 1) of *Family Mediation Quarterly*: a

collection of rules and statutes that trigger rights, obligations and protections that accompany the start of court actions involving family law disputes. These range from automatic financial retraining orders, to mandatory financial disclosure, retroactive modification and statutory interest on contempt judgments. For the most part, they are procedural; where substantive, they are peripheral if nonetheless important.

Alimony "reform" places central, substantive alimony rights and exposure squarely in play. Simply put, when a divorce complaint is filed and served *matters* in numerous potential ways. These timing issues are new, important and help illustrate this important mediation practice issue; while bearing fully in mind that principles discussed apply far more broadly.

In relevant part, the new alimony statute introduces time limits for alimony in all marriages of fewer than 20 years. "Marital" months are tabulated, and for each 5 years, a progressively higher percentage (50% - 80%) determines the maximum alimony term. The law also provides two new kinds of short term or lump sum alimony that cannot be extended for any reason, but only in marriages that are shorter than 5 years' duration. Critically, the length of marriage is confined to the *number of months elapsed from the date of marriage to the date of service* of a summons and complaint for divorce.

In summary, the decision of a party to file and serve a complaint for divorce, or to not do so, can alter the substantive course of the mediating parties' divorce by:

a. supporting one party's claim for a time limited and final alimony duration, or not;
b. increasing the length of maximum general term alimony both by a fraction of each month that passes before service, and if those months complete five, ten and fifteen years of marriage, by increasing that fraction from 1/2, to 3/5 and 4/5 respectively, or conversely, stopping the "alimony clock"; and
c. enabling an expected alimony recipient to request unlimited duration alimony for 20+ year marriages, or otherwise being limited to 80% of the marriage's length.

If parties are actively working with counsel during mediation, we may infer that they are aware, or should be, of these basic legal facts. The physical presence of counsel in a mediation session may mitigate our uncertainty

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because first, there is opportunity to inquire of counsel or to hear counsel's comments on point; and second, because the attorney's presence serves to delineate roles in the clients' minds as in: "my lawyer is here to advise me, the mediator to mediate".

[A]s mediators, we are all about people having sufficient information to make their decisions knowing and voluntary.

As partly noted by David A. Hoffman's recent piece (above), according to one pertinent authority, the Commonwealth of Virginia's Unauthorized Practice of Law standards:

> Mediators may make statements that are declarative of the state of the law on a given legal topic and these statements are generally permissible.
>
> [and]
>
> Mediators may rely on their training, experience, or even their own analysis of statutes or case law when making these declarations…
>
> [but]
>
> [A] permissible statement declarative of the law in one context may constitute unethical… legal advice in another. Mediators must carefully consider whether, under the totality of the circumstances, a law-related statement is likely to have the effect of predicting a specific resolution of a legal issue or of directing the actions of the parties…[S]tatements made by a mediator in the presence of the disputants' attorneys are less likely to influence or direct their actions than if made outside of the attorneys' presence.

Even if counsel is not present, and a client volunteers awareness of the alimony rules in a session, the mediator's response can be sensitive to these cautions by being fairly straightforward. Confirm what is accurate; correct what is not; fairly explain the internal interaction among various statutory provisions, and impact with prior, but still "good" law, and that there is much to be clarified over time by interpretive case law. If we do not urge a result, if we try to refrain from predictions and be sure to give fair balance to the various factors involved, we should not trip the wire between information and advice. As a consequence, we should avoid the appearance of introducing impermissible bias by

urging a particular result that one party may not fully embrace.

What is more problematic is the scenario when the parties exhibit no clue about this legal framework or that it even exists; or they have only vague or misinformed ideas. Yet we know the basic facts of the marriage, i.e., the date of marriage and the presence or absence of service. We are thus aware that one statutory milestone or another is approaching. Do we initiate or cause an awareness of the statute? If so, are we informing or advising?

As cautioned above, it depends. For every rule of substantive law, one party or the other may stand to gain, and the other less so. So, when we bring a point of law to the clients' attention we risk that it be construed as legal advice, especially if the parties do not have lawyers in attendance; because that piece of information may change the way the parties' think about the issue at hand, and thus, may indirectly push the outcome in one direction or another.

But, does this make it advice, and as advice, does it subvert mediator impartiality? Without parsing the way in which the information is framed and stated (which can easily shift information into advice), and assuming a neutral statement of law, we believe not. After all, as mediators, we are all about people having sufficient information to make their decisions knowing and voluntary. With profound rights and obligations at stake, how can ignorance of the basic rules advance these twin goals?

As importantly, may not silence, like carefully provided information, create an equal if opposite impact on the parties' negotiation? Whether informing or choosing to remain mute, the mediator is (hopefully) making a conscious decision, and either choice may advantage one client or the other in their negotiations. It is unreasonable, in our view, to condemn the choice to inform as legal advice, with resulting exposure to the claim of partiality, while excusing silence from either.

Plainly, we need to inform clients. We must do so with care; and with high consciousness of the neutrality with which we do it. As one of our pioneering colleagues, John Fiske, says frequently, there is opportunity and risk in everything that mediators do. If we have a practice bias, it is in favor of more relevant information rather than less. Figuring out how to thread the needle with useful information input that is neither advice nor improperly biasing is one of the joyful challenges that we face every day in helping

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couples resolve their family law matters without litigation; and we embrace it.

Acknowledgement: Thanks to colleague and friend David A. Hoffman, Esquire, of the *Boston Law Collaborative*, for focusing us on the Commonwealth of Virginia UPL Guidelines, for teaching and talking with us about the information-legal advice frontier.

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"In every marriage more than a week old, there are grounds for divorce. The trick is to find, and continue to find, grounds for marriage."

Robert Anderson

THE GRAY DIVORCE

Denise Tamir

Is it just me — or does anyone else feel like everyone they know is either divorced, in the process of divorcing, or contemplating divorce? Now empty nesters, my husband and I scratch our heads in dismay as we watch couples we have known for decades decide they have little in common once their children leave home. Instead of looking for ways to reconnect and find new common interests to replace the parental responsibilities that have all but disappeared, they decide they would prefer to chart the next phase of their lives solo. It has become our new sad guessing game at dinner: "Guess who's getting divorced?"

This trend isn't limited to my circle of friends, or even South Florida. Sadly, the divorce rate among couples over 50 has skyrocketed from one in ten couples in 1990 to one in four today. Interestingly, two-thirds of the time it is the wife asking for the "gray divorce." Many sociologists are trying to explain why middle-aged women are heading for the marriage exit and they have come up with several interesting hypotheses.

Though the fact that divorce has become more common and less of a stigma has some impact, it does not explain why the gray divorce rate is climbing while the general divorce rate is going down. One factor is the entrance of women into the workforce decades ago. As women became more financially independent, they felt less trapped in a marriage for financial reasons. Women can now support themselves and have chosen to do so when they are unhappy in the marriage. Another factor is that people are living longer. When a woman realizes she is unhappy at ... say 50, she contemplates three or more decades of unhappiness and often decides being alone is preferable.

Susan Brown, Co-Director of the National Center for Family and Marriage Research at Bowling Green State University and author of "The Gray Divorce Revolution," also raises an important sociologic factor; a change in the way society views marriage as an institution. In the 1950s and 1960s, marriage was "role orientated." As long as the spouses fulfilled their roles as provider or homemaker, the marriage was considered successful. Personal happiness was less important. Today couples focus on fulfillment rather than roles and are more concerned with what they get out of the marriage than what they put in.

Another factor Brown points to is the complex marital histories of the spouses. Most people divorcing after 50 are in their second marriage and having been married before statistically doubles the risk that the second marriage will also end in divorce.

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Whatever the cause of this increase, gray divorcing couples have very different issues to grapple with than their younger counterparts. First, they will be dividing their assets to support two households at a time when they should be planning for retirement. They are close to, or already in, the phase when they are no longer producing and acquiring assets, and must plan to support themselves from what they have acquired. Sustaining two households from a fixed income is often more difficult than the couple expects.

The disruption in family relationships is also different. Though gray divorcing couples usually do not have to redesign the day-to-day logistics of co-parenting minor children, the impact on adult children is no less profound. They must think in terms of co-grand-parenting and attending family functions like children's weddings harmoniously. Also, even though they usually do not have legal child support obligations, many older couples provide financial support to their adult children or grandchildren, which will have to be reevaluated now that they must sustain two households.

On the positive side, couples who divorce later in life are often more rational and less angry than their younger counterparts. They understand the value of time and money, and choose not to squander either on a protracted court battle. They are, therefore, more likely to seek methods that will preserve with dignity the good memories of the years they spent together, like mediation.

On the positive side, couples who divorce later in life are often more rational and less angry than their younger counterparts.

Though mediation may occur at any time during the divorce process, pre-suit (before the lawsuit is filed) pro-se (without attorneys) mediation provides the greatest benefits. A neutral and impartial mediator facilitates a discussion between the husband and wife to help them identify the issues they need to resolve and help them decide for themselves how best to resolve them. In this way, the couples reach their own agreement before the lawsuit is filed, rather than waiting for a judge to impose an agreement on them. At the final hearing, the judge incorporates the couple's agreement into the final order of divorce in a process that takes several weeks instead of months or years.

Though most couples could benefit from pre-suit pro-se divorce, gray divorcing couples seem to be embracing this method in greater numbers. Perhaps because so many

of them have already been through a litigated divorce, they appreciate the benefits of mediation such as saving time, money, and the relationship as well as privacy, creative problem-solving, and self-determination. This trend validates the old saying "older and wiser;" as divorcees may be older, they seem to be making wiser choices in how they choose to handle their divorce.

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"I love being married. It's so great to find that one special person you want to annoy for the rest of your life."

anonymous

TWENTY-FIVE PRENUPTIAL QUESTIONS

By Kenneth Cloke

Author's Note: *These are possible questions to consider asking in mediating prenuptial agreements, or to be filled out separately and exchanged by the parties, or done as homework then read aloud and discussed by them after completion. Not every question will be helpful for everyone and each may require some modification or revision.*

1. Does this feel strange to you, discussing your divorce before you are even married? What do you hope to achieve through this conversation that might strengthen your marriage rather than weaken it?

2. How did you meet?

3. What attracted you to each other? What do you love about each other?

4. What made you decide to get married?

5. Why are you interested in reaching a prenuptial agreement?

6. Do you have any fears, anxieties or concerns regarding talking to each other and negotiating a prenuptial agreement? What are they?

7. What can we do in this conversation to reduce those fears, anxieties or concerns?

8. Have you had any arguments or conflicts in your relationship so far? What happens when you do that you wish would happen differently?

9. What is one thing the other person could do or say that would help you communicate better when you have a disagreement?

10. What is one pattern you have in conflict that you would like to break?

11. Are there any ground rules you would like to propose for this conversation, or for future conflicts and disagreements with each other?

12. What words or phrases would you use to describe the kind of relationship you most want to have with each other?

13. What are the patterns in your family of origin regarding conflict? Money? Intimacy? How did people fight in your family? Over what issues? How did they resolve or overcome their differences? What would you like to do differently?

14. What does the word "Wife" mean to you? The word "Husband"? The word "marriage"?

15. Why do you think it is important to clarify your intentions and agreements regarding the legal, monetary or property issues in your marriage?

16. What does money or property mean to you? Why do you want it? What are you afraid will happen if you don't reach an agreement about it?

17. What would you like to have happen, once you are married, with respect to these issues, or any others you want to add:

- Property or investments you acquired before you were married?
- Property or investments you will acquire after your marriage?
- Contributions either of you may make to your life together?
- Income either of you will earn?
- Debts you may have acquired before you were married?
- Debts you will acquire after you are married?
- How you will pay for your joint living expenses?
- How to take care of children you already have or may have?
- How to take care of family members who may need assistance?
- How to handle illness, old age and retirement?
- Other issues?

18. What would you like to happen in the event that either of you dies or is seriously injured while you are married?

19. What would you like to happen if you decide to separate or divorce? What would you most like to avoid? How would you like to feel about each other?

20. Do you want to place any pre-conditions on the payment of support, or the distribution of property and debts if that were to happen?

21. If you are not able to agree, what would you like to do to resolve your differences? What methods of resolution would you like to use? Who would you like to use as a mediator or arbitrator?

22. What other issues would you like to discuss in advance of your marriage? If you were to write a "Marital Constitution," what would you want to include? What would the Preamble say? The Bill of Rights? How would you like to make decisions regarding different issues? What will you want to do or say, and not do or say when you find yourselves in conflict? Would you

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each be willing to write a draft of a "Marital Constitution" and read it to each other at our next meeting?

23. What questions would you most like to ask your prospective spouse that you haven't dared to ask?

24. What questions would you most like to be asked?

25. What would you like to say to your prospective spouse as reassurance that, in spite of having separate interests, you really want to be married to each other?

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"I know one husband and wife who, whatever the official reasons given to the court for the break up of their marriage, were really divorced because the husband believed that nobody ought to read while he was talking and the wife that nobody ought to talk while she was reading."

Vera Brittain

10 HELPFUL TIPS FOR MEDIATING CHILD-RELATED ISSUES

By Lisa Nelson

Some of the considerations discussed in this article apply generally to mediating a successful parenting plan regarding children of all ages, while others are more important depending upon the age of the children. Domestic relations courts will require that the parties submit a parenting plan that addresses a variety of key issues. In divorce mediation, you are able to negotiate and resolve those key issues, and address other parenting issues that may be personally important to you, but beyond the scope of what a domestic judge would normally decide.

I. Considerations for Children Ages Birth to Toddler

Consistent Schedules The general aim is to try to do what is in the best interest of your children. With very young children, you should attempt to keep consistent schedules at both homes. Consistent feeding and sleep schedules are especially important. Also, you should try their best to communicate and support one another with development tasks such as potty training.

Emergencies Another very important issue to discuss in mediation, regarding children of all ages, is how to handle emergencies. Every parent wants to be made aware of an emergency. You should discuss who will be called, when, and provide one another with contact numbers and backup emergency contact numbers.

Handling Change Parents need to realize that change is inevitable, and that even with the most comprehensive and thoughtful plan, unanticipated situations will occur. This is especially the case when you are crafting a shared parenting plan that is intended to suffice through an entire childhood. Thus, it is important to have a conversation in divorce mediation regarding how you will handle the unexpected situations that your parenting plan does not address. Heading into court to resolve an unexpected conflict is normally a costly and unsatisfying experience. Including a provision that you agree to attempt mediation before getting the court involved is normally a more effective option.

II. Considerations for Children of Grade School Age

Of course with grade-school-age children, consistency and having emergency plans are still important. However, now a few more issues deserve discussion in divorce mediation.

Consistent Parenting Time Schedules Children will pretty much go along with any parenting schedule and be okay with it, so long as it is consistent. Children need to know when they are coming and going, and it must not change (at least not very often

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and not without good reason). Keeping to the schedule and making that schedule readily available to the children are very important. Once a schedule is worked out in divorce mediation, it is a good idea to highlight it and post it on the refrigerator (or other common place) at each home. You should attempt to negotiate a parenting time schedule that works best for both of you and the children, with the understanding that both parents' and children's schedules will likely change throughout childhood. Be prepared to have to sit down and mediate again as jobs change, or activities for children change.

[Both parents] have very good incentives to communicate and work together, not only for the kids' sake, but [theirs] too.

Keep in mind that you will only ever be able to effectively control what happens during the time when your children are with you. Thus, if there are particular activities that you want your children to experience, you will only be able to advance those activities during your time. You will need the support of your former spouse regarding other activities, which may interfere with his or her time. Thus, you both have very good incentives to communicate and work together not only for the kids' sake, but yours too.

Appropriate Conversation & Communication It is important to discuss and agree upon during mediation what is and what is not appropriate conversation and communication with (and in front of) your children. For example, telling your children that you are divorcing is appropriate. Telling them why you are divorcing is not. Also, it is not appropriate for either parent to talk negatively about the other parent in front of (or in earshot of) the children. This is putting your children in the middle of your fight and it will negatively affect your children. Talking about issues related to your children such as money or other adult issues you may have with your former spouse is not appropriate. Again this is putting your children in the middle of adult matters. It is in your children's best interest if you and your spouse can agree in mediation to not discuss such matters in front of the children.

Bring Documents To successfully negotiate some divorce issues in mediation, tangible documents must be readily available. Child support is one of those issues. All domestic courts require that that the parents address child support issues for all minor children. To calculate child support amounts, your mediator will need to know various income-related information, childcare costs, health insurance costs, and possibly other child-related expense information. It makes no sense to discuss those issues

without having documents to support those figures. Parents can avoid conflict by bringing to divorce mediation documents to support those numbers.

Not only are documents that evidence financial figures necessary to run child support calculations, but documents such as school and activity schedules are also essential for negotiating parenting time. Do not waste your time in a divorce mediation session by not having these necessary documents with you.

III. Considerations for Teenage Children

If you are ending a marriage and teenage children are involved, you should consider addressing a few other issues in your divorce mediation sessions – such as transferring children, involving counselors, and setting healthy, consistent boundaries.

Communication & Consistency Appropriate communication with and in front of your children is still an important matter to discuss in divorce mediation when teenagers are involved. Additionally, being consistent with schedules is essential. As teenagers begin to have independent lives and get involved in activities such as employment, it becomes increasingly significant to have a schedule in place upon which they can depend and plan around.

Transfer Wars How to handle the physical transfer of children between households is something parents should consider discussing in divorce mediation for children of all ages. As always the focus should be on minimizing conflict — as this is in the best interests of the children. Particulars that might be discussed in divorce mediation include: where will the transfer occur and who will be present at the transfer. If the the two of you cannot engage without conflict, maybe it is better to pick-up and drop-off children at a neutral home, such as that of a grandparent. If a new romantic interest is going to be upsetting to the situation, then perhaps efforts should be made to avoid that person being present. If child-related issues need to be discussed, how will they be handled? For instance, can the two of you agree to go somewhere outside of the earshot of the children, or discuss them on the phone before or after the pick up? Keep in mind that it is very upsetting to children to be in the middle of any sort of conflict between their parents. Efforts now to address some of these issues in divorce mediation, and come to agreements, will be helpful later.

Counseling It is not uncommon for teenagers (and school-age children too) to have a difficult time adjusting to their parents' divorce. Even with the most well-intentioned parents, children often feel in the middle of the conflict, or blame themselves for the situation. Behaviors to watch out for include failing grades, personality changes, disassociation from friends or family, depression, withdrawal from normal activities, and drug use. It is a good idea to discuss in divorce mediation what

Continued on next page

you intend to do if you observe that your child is not adjusting well to the divorce. Will you get your children into counseling? How will you choose a counselor? Who will pay for it? Children may or may not be receptive to the idea of therapy, but they will definitely be more receptive if both parents are encouraging.

Boundaries While it is tempting to want to be more of a friend to your children when they reach their teenage years, this is precisely the time when they are looking to you as parents to help them set good, healthy boundaries. This is sometimes a tricky area to mediate, but the discussion might center around keeping similar rules regarding when children need to be home, how they are to check in, how and what information needs to be provided regarding sleepovers, etc. This is your opportunity to try to get on the same page with your spouse about these issues. It will have negative ramifications for your children if one parent is the "good-time Charlie", while the other attempts to set healthy boundaries. Children unfortunately end up learning the hard way (often through unfortunate experiences) when parents give their children mixed messages.

Lisa Nelson, Esq. has been a mediator for over 13 years, primarily focused on helping couples resolve issues related to ending their marriage. She has advanced training in mediation, and ran a family law and mediation practice for many years before shifting her practice solely to mediation. She has worked with families and children through various court systems, non-profit & for profit organizations, and universities for over 20 years. Lisa invites you to visit her website at www.sf-mediators.com

"If you made a list of reasons why any couple got married, and another list of the reasons for their divorce, you'd have a hell of a lot of overlapping."

Mignon McLaughlin

HOW TO MAKE 'A MEETING OF THE MINDS' ENFORCEABLE Cautionary Tax Advice

By James McCusker

When do you know you have a "meeting of the minds" in a divorce negotiation? That ephemeral term was just given some clarity in a recent Tax Court Memorandum (2013-143) — at least as it relates to alimony payments made prior to divorce.

Internal Revenue Code Section 71 defines alimony through what amounts to a 7-part mechanical test. If you fail on any one of those 7 parts you do not have alimony and therefore no related tax deduction for those payments. One of those 7 parts states that in order to qualify as alimony, payments must be made under a "divorce or separation instrument." The Code then defines the term "divorce or separation instrument" as follows:

> (A) a decree of divorce or separate maintenance or a written instrument incident to such a divorce.
>
> (B) a written separation agreement, or
>
> (C) a decree (not described in (A)) requiring a spouse to make payments for the support or maintenance of the other spouse.

The common element in this definition is that whatever form the agreement takes it must be in writing. The case cited in the aforementioned memorandum involved a Taxpayer who was denied a tax deduction for alimony paid as the result of pre-divorce negotiations because it missed this key component.

The parties involved in the case entered into negotiations through their attorneys to determine an appropriate amount for temporary support.

A document signed by one party and acceptance of payments by the other does not constitute the necessary mutuality.

Numerous drafts were exchanged between the parties and their attorneys outlining proposed amounts for monthly support. One of the letters by the Taxpayer's attorney went so far as to say that the Taxpayer and his Spouse had reached an agreement with respect to the amount of temporary support. It was subsequently rejected by the Spouse's attorney. None of these drafts were signed by either party.

Apparently frustrated by the process, the Taxpayer began to make support payments in line with the verbal agreement he had with his Spouse and

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pointed to their exchanged correspondence as evidence that constituted a "meeting of the minds" on this matter. At tax time he included these payments on his return as alimony. The IRS subsequently disallowed the deduction because their "meeting of the minds" was not memorialized in writing.

In reviewing cases that were cited in this memorandum, it appears to me the written requirement does not mean that the document has to be court approved. It only means that the agreement needs to documented and signed by both parties. A document signed by one party and acceptance of payments by the other does not constitute the required mutuality. Back-dating a document signed by both parties will not pass muster either. The payments must be coincident or subsequent to the signing of the agreement.

So if you think you've reached a "meeting of the minds" get it on paper and signed before the IRS forces you to change your mind.

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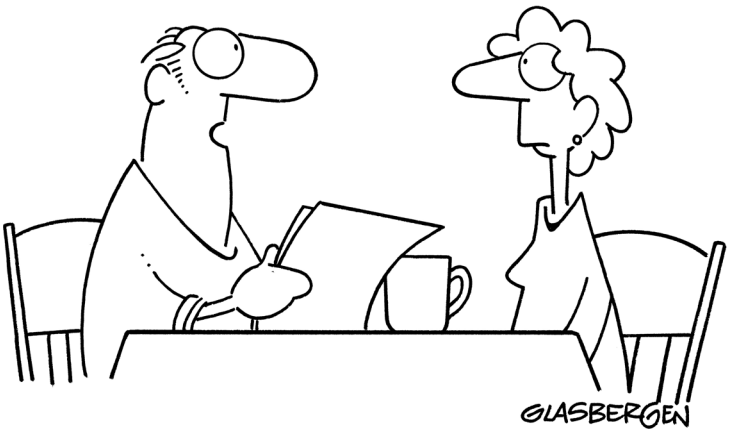

"Here's our new retirement plan: at age 65, we'll get divorced then marry other people who planned better."

MASSACHUSETTS FAMILY LAW: A Periodic Review

By Jonathan E. Fields

PC Agreement Held Enforceable. A recent Appeals Court decision held that an agreement to use a parenting coordinator (PC) was enforceable, even where one party does not want to use one anymore. The father had sought the appointment of a new PC after the PC's initial one-year term ended; the Probate and Family Court judge refused, asserting "I'm not appointing a [PC]. I don't ever appoint them and I'm not going to start today." The father appealed; the Appeals Court construed the agreement of the parties to mean that when the initial term of the PC ended, and the parties are unable to agree on a subsequent PC, the Court is empowered to make that decision. Notably, the decision *does not reach the question of whether a Court may impose a PC on parties in the absence of their agreement. Ruddy v. Ruddy, 2013 Mass.App.Unpub. LEXIS 902 (September 16, 2013)*

Post-Retirement Alimony Obligations. Mediators and lawyers read with interest every time the Appeals Court confronts the Alimony Reform Act. The most recent case involves a 47-year marriage and two 68-year-old spouses in which the Probate and Family Court ordered (1) a roughly equal division of assets and (2) even though the husband had reached retirement age, payment of alimony until actual retirement. Among the assets divided equally was the husband's teacher's pension which, important to the Appeals Court, had not been valued. Also central: the parties agreed to treat the husband's other pension as a stream of income and not a divisible asset (and the judge ordered the husband to maintain the wife as the sole beneficiary of this pension upon his death.) Although unelaborated in the decision, the latter is critical. Post-alimony, the husband would continue to enjoy the fruits of the pension while the wife would not. Post-alimony, the two would not be equally situated.

On appeal, the Appeals Court upheld the (1) property division, (2) amount of alimony, and (3) the husband's obligation to pay alimony past retirement age. As to (3), the Court found that the Probate Court did not abuse its discretion in deviating from the presumption in the new law that alimony terminate on the payor's retirement age; it was apparent from the findings that the Probate Court had considered the relevant factors for deviation – "including the wife's age, poor health, and lack of employment opportunity."

The appellate court disagreed, however, that the husband could stop paying alimony post-retirement. Without evidence of the income that the wife would receive from the husband's teacher's pension, the Court held, the judge erred in assuming that it would be adequate for her. The case was remanded to determine the wife's income stream from the pension and "what amount of alimony (if any) the wife should receive after the husband's retirement from teaching." *Green v. Green, 84 Mass.App. Ct. 1109 (August 30, 2013).*

WHAT'S NEWS?
National & International Family News
Chronologically Compiled & Edited By Les Wallerstein

Before Saying 'I Do,' Define Just What You Mean Many brides and grooms are choosing to say vows they have written themselves, whether marrying in a meadow or a cathedral. Brides and grooms began writing their own vows in the mid-19th century, according to Elizabeth Abbott, who has written several books about marriage. American feminists and the like-minded men they married were among the first to reword traditional vows. In the 1960s and 1970s, couples often wrote their own vows as a way of rebelling against their parents' marriages. Today's homemade vows rarely aim to change society, but they can be remarkably personal and idiosyncratic. On the Weddingbee blog, couples share and discuss one another's homemade vows-in-progress. (Lois Smith Brady, New York Times, 8/16/2013)

U.S. Circumcision Rates Are Declining The percentage of newborn boys who are circumcised in the United States declined to 58.3 percent in 2010 from 64.5 percent in 1979, according to a new analysis from the National Center for Health Statistics. The report is based on annual surveys of about 450 hospitals nationwide. But rates varied over the period. They went down during the 1980s after a task force of the American Academy of Pediatrics found that there were no medical benefits to the procedure, then rose during the '90s after the medical group revised its position, claiming there were potential benefits. In 1999, the academy changed its view again, stating that despite potential benefits, there was insufficient evidence to recommend routine circumcision. That announcement was followed by another slight decrease. There are regional variations as well. In 2010, about 71 percent of babies in the Midwest were circumcised, 66.3 percent in the Northeast, 58.4 percent in the South, and 40.2 percent in the West. (Nicholas Bakalar, New York Times, 8/22/2013)

New Census Numbers Show Recession's Effect on Families The portion of American households made up of married couples with children under 18 fell to 20 percent from 40 percent from 1970 to 2012, the Census Bureau said as it detailed other fundamental changes in family life. The share of people living alone rose 10 percentage points, to 27 percent. The analysis also found that the recession profoundly affected American families from 2005 to 2011, resulting in a 15 percent decline in homeownership among households with children and a 33 percent increase in households where at least one parent was unemployed. The recession also saw more mothers

enter the work force and an increasing dependence on food stamps. The severity of the decline often depended on whether the parents were married. Nine percent of married families were living below the poverty line and receiving food stamps. The proportion among single-mother households was four times greater. The census found stark differences in family structure by race and ethnicity. Married couples made up 81 percent of Asian, 80 percent of non-Hispanic white, 62 percent of Hispanic and 44 percent of black family groups. Twenty-eight percent of children over all live with one parent — 55 percent of black children, 31 percent of Hispanic, 21 percent of white and 13 percent of Asian. (Sam Roberts, New York Times, 8/27/2013)

Americans on the Edge of Poverty The Department of Agriculture has released a 2012 survey showing that nearly 49 million Americans were living in "food insecure" households — meaning, in the bureaucratic language of the agency, that some family members lacked "consistent access throughout the year to adequate food." In short, many Americans went hungry. The agency found the figures essentially unchanged since the economic downturn began in 2008, but substantially higher than during the previous decade. (Sheryl Gay Stolberg, New York Times, 9/5/2013)

The Rich Get Richer The top 10 percent of earners took more than half of US total income in 2012, the highest level recorded since the government began collecting the relevant data a century ago. The top 1 percent took more than one-fifth of the income earned by Americans, one of the highest levels on record since 1913, when the government instituted an income tax. The figures underscore that even after the recession the country remains in a new Gilded Age, with income as concentrated as it was in the years that preceded the Depression of the 1930s, if not more so. The income share of the top 1 percent of earners in 2012 returned to the same level as before both the Great Recession and the Great Depression: just above 20 percent, jumping to about 22.5 percent in 2012 from 19.7 percent in 2011. The incomes of the very richest, the 0.01 percent, shot up more than 32 percent. (Annie Lowrey, New York Times, 9/11/2013)

Spanish Judge Partitions Home of Feuding Couple The economic crisis in Spain has had the unintentional consequence of forcing warring couples who cannot afford divorces to remain together. Now, a judge in Seville has ordered a divorcing couple to split their 2,700-square-foot apartment down the middle. The property belongs to the husband's parents, but the judge ordered the man to bisect it to create two independent abodes, citing economic considerations and

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the well-being of the couple's two daughters, ages 6 and 7. In her ruling, the judge reasoned that since the husband's parents had not taken any action against their daughter-in-law, it was evident that they did not want to expel her and her two daughters from the apartment. She said that the husband had his offices downstairs from the apartment and that the proximity would benefit his daughters. The ruling requires the husband to pay for the division. But it does not specify whether he must erect walls or can simply put tape across the floor, a penny-pinching solution that some splitting couples have tried. But this couple appeared to have means. When the judge ordered the family to cut down on expenses, she noted that horse-riding and sailing lessons for the girls were unnecessary extravagances. The ruling noted that until now the husband had insisted that his wife stay at home, but the financial crisis could now compel her to find a job. The ruling did not specify whether she should get rid of the maid. (Dan Bilefsky and Silvia Taulés, New York Times, 9/13/2013)

Divorce After 50 Grows More Common For the first time, more Americans 50 and older are divorced than widowed. A half-century ago, only 2.8 percent of Americans older than 50 were divorced. By 2000, 11.8 percent were. In 2011, according to the Census Bureau's American Community Survey, 15.4 percent were divorced and another 2.1 percent were separated. Some 13.5 percent were widowed. While divorce rates over all have stabilized and even inched downward, the divorce rate among people 50 and older has doubled since 1990. That's especially significant because half the married population is older than 50. In 1990, 1 in 10 persons who divorced was 50 or older. By 2011, according to the census's survey, more than 28 percent (more than 1 in 4) who said they divorced in the previous 12 months were 50 or older. Most divorces among older couples, as in younger ones, are initiated by women. (Sam Roberts, New York Times, 9/22/2013)

Two Rabbis Accused of Kidnapping Husbands for a Fee Among Orthodox Jews, a divorce requires the husband's permission, known as a "get," and tales abound of women whose husbands refuse to consent. While it's common for rabbis to take action against defiant husbands, such as barring them from synagogue life, two rabbis took matters much further. For hefty fees, they orchestrated the kidnapping and torture of reluctant husbands, using electric shocks from Tasers because they offered little physical evidence of abuse. Their wives were charged as much as $10,000 for a rabbinical decree permitting violence and $50,000 to hire others to carry out the deed. In what the authorities called the "kidnap team," 10 defendants appeared in Federal District Court in Trenton, NJ after a sting operation in which an undercover federal agent posed as an Orthodox Jewish woman soliciting one rabbi's services. All 10 were denied bail after appearing in court

on the kidnapping conspiracy charges. (Joseph Goldstein & Michael Schwirtz, New York Times, 10/10/2013)

New Jersey to Allow Same-Sex Marriages A judge cleared the way for same-sex marriages to start in New Jersey before the end of October, dismissing the state's request to prevent the weddings until after an appeal of the court decision allowing them is completed. "There is no 'public interest' in depriving a class of New Jersey residents their constitutional rights while appellate review is pursued," wrote Judge Mary C. Jacobson, who also wrote the decision last month that ordered the state to allow same-sex marriages. "On the contrary, granting a stay would simply allow the State to continue to violate the equal protection rights of New Jersey same-sex couples, which can hardly be considered a public interest." The state immediately requested that the appellate division grant a stay. It had already asked the New Jersey Supreme Court to hear the appeal on an expedited basis; the court has not said yet whether it will do so. (Kate Zernike, New York Times, 10/11/2013)

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

Let us move from the era of confrontation to the era of negotiation.

Richard Nixon

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SAVE THE DATE!

MCFM'S 12TH ANNUAL FAMILY MEDIATION INSTITUTE

FRIDAY, NOVEMBER 22, 2013
8:30 AM - 5:00 PM
Wellesley Community Center
219 Washington Street, Wellesley, MA

go to: www.mcfm.org for updated information

SAVE THE DATE!

MCFM'S NEXT FREE PROFESSIONAL DEVELOPMENT WORKSHOP

December 11, 2013
WELLESLEY PUBLIC LIBRARY
530 Washington Street, Wellesley, MA
Wakelin Room, 2PM – 4PM

PLEASE REGISTER IN ADVANCE AT WWW.MCFM.ORG

ATTENDANCE AT MCFM PROFESSIONAL DEVELOPMENT WORKSHOPS QUALIFIES FOR CREDIT EARNED TOWARDS BECOMING AN MCFM CERTIFIED MEDIATOR

CONTACT TRACY FISCHER FOR CERTIFICATION DETAILS
tracy@tracyfischermediation.com

PLEASE REGISTER IN ADVANCE AT WWW.MCFM.ORG

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

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.**

Continued on next page

OFFER MCFM's BROCHURES TO PROSPECTIVE CLIENTS

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

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

AN INVITATION FOR MCFM MEMBERS ONLY

All MCFM members are invited to fill out the Member Profile Questionnaire posted on the MEMBERS ONLY page of mcfm.org and submit it for publication in the FMQ. Please email your questionnaire with a personal photo (head shot) and an optional photo of your primary mediation space (or office) to wallerstein@socialaw.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.**

CLASSIC MCFM "T" SHIRTS

Equal blends of cotton & polyester
Choose black or cream
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SIZES AVAILABLE: S, M, L, & XL
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SEND YOUR CHECK & ORDER TO:
Ramona Goutiere
P.O. Box 59
Ashland, NH 03217-0059

QUESTIONS? CALL: 781-449-4430

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

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

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THE CAMBRIDGE CENTER FOR ADULT EDUCATION

DIVORCE IN MASSACHUSETTS: WITH OR WITHOUT A LAWYER

Jerome Weinstein & Les Wallerstein

42 Brattle Street
Saturday, March 22, 2014
9:30 AM - 12:30 PM

When the issue of divorce is raised, most people don't know where to turn. How do I get information? Do I need an attorney? Should I pay a retainer? What will happen to my children and my home? This course will give you information about what you can and cannot do and what kinds of risks are involved. It will also address when you need an attorney (with the attendant costs) or when you can use a mediator or do it yourself. You will also receive resources and a bibliography.

Online Registration: http://www.ccae.org
Phone Registration: 617-547-6789
Cost: $61 Limited to 20

THE DIVORCE RECOVERY SERIES
Led by Mary Vanderveer, M. Ed., LCSW

The Divorce Recovery Series is an outreach program of The First Congregational Church in Norwood, offered as a community service. Groups are ongoing and continue throughout the year. All participants are welcome, regardless of religious affiliation.

Divorce Recovery is a support group for those who are separated, considering divorce, or divorced. It offers support and healing to people experiencing the pain of separation and divorce. Group members gain

Continued on next page

knowledge regarding the emotional stages of divorce and how to cope with lifestyle changes. Each session includes discussion and presentation of topics such as denial and bargaining, anger, depression, acceptance, forgiveness, alone without loneliness, letting go, spirituality in one's life, and creating a new lifestyle. **The cost is $90 for eight consecutive weekly sessions.**

Moving Ahead is a support group for those who have completed *Divorce Recovery* that addresses the needs of people who are rebuilding their lives after divorce. As a person's self-esteem takes a toll when experiencing divorce, the focus is to support people in creating a new and positive lifestyle. Topics include affirming and validating ourselves, self-acceptance, taking responsibility, changing negative thinking, reconnecting and developing spirituality, developing support systems, setting limits and boundaries. **The cost is $90 for eight consecutive weekly sessions.**

FOR MORE INFORMATION VISIT: http://firstcongregational-norwood.com
TO REGISTER: call 781-762-3320, or email: firstcongo.norwood@verizon.net

COMMUNITY DISPUTE SETTLEMENT CENTER

For more info, contact CDSC:
Tel. 617-876-5376 • Fax: 617-876-6663
E-mail: cdscinfo@communitydispute.org

Continued on next page

NEW BEGINNINGS

An interfaith support group for separated, divorced, widowed and single adults in the Greater Boston Area. **Meets year-round, every Thursday, from 7:00 to 9:00 PM, at** Wellesley Hills Congregational Church, 207 Washington Street. For more information call 781-235-8612. **Annual Dues $50.**

For program details & schedule visit
www.newbeginnings.org

THE CHILD & FAMILY WEB GUIDE ONLINE ACCESS TO CHILD DEVELOPMENT INFORMATION

The Child & Family Web Guide was created in April 2001 by Professor Fred Rothbaum and Dr. Nancy Martland, of the Tufts University Eliot-Pearson Department of Child Development. The Web Guide describes trustworthy websites on topics of interest to parents and professionals that have been systematically evaluated by graduate students and faculty in child development. The Web Guide is easily searched by subject, including many of constant concern to family mediators, e.g., divorce, separation and stepparents. It also offers several features requested by parents, e.g., 'ask an expert' sites and 'research news' sites. **The goal of the Web Guide is to give the public easy access to the best child development information on the Web**.

www.cfw.tufts.edu

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!

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.**

DIRECTORATE

MASSACHUSETTS COUNCIL ON FAMILY MEDIATION, INC.
P.O. Box 59, Ashland, NH 03217-0059
Local Telephone & Fax: 781-449-4430
email: masscouncil@mcfm.org

www.mcfm.org

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EDITOR'S NOTICE

MCFM
Family Mediation Quarterly

Kate Fanger, Editor
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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.

Massachusetts Council on Family Mediation

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1982 MASSACHUSETTS COUNCIL 31st ANNIVERSARY ON FAMILY MEDIATION 2013

MCFM

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The Family Mediation Quarterly is printed on paper stock manufactured with non-polluting wind-generated energy, 100% recycled (with 100% post consumer recycled fiber), processed chlorine free & FSC (Forest Stewardship Council) certified.