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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

Did you know… MCFM is now a subscriber to Divorcenet.com since the spring of this year. This gives MCFM extra internet exposure and directs interested searchers to our MCFM online Referral Directory. Several members have already reported new clients coming from this source.

Mediation Tips – Language is the Key Start a little notebook of key phrases, analogies, and alternative approaches to issues that you may find particularly challenging to deal with. In a quiet moment, try to think about different ways to approach issues that are a nemesis for you to manage. For example, use the term spousal support in place of alimony. Or use taxable and non-taxable family support in place of alimony and child support. Ask where they see themselves a year, three years, five years from now which is an alternative approach to a more common question of – who's keeping the house? Ask if they are interested in being problem reporters or problem solvers. Develop new language to add to your bag of skills.

Practice Tips – Parenting Plan Calendar When doing a parenting plan in your more contentious cases, give your clients 12 months of blank calendars. Ask them to bring in their children's school schedule for the year. Help them mark their regular parenting schedule (in pencil) on the blank calendars. Then note all significant dates on the calendar such as holidays, half day or no school days, birthdays, family events, etc. Help them make revisions to their regular schedule to accommodate all of the significant dates with time and overnight changes so that transitions back and forth flow comfortably. Doing 12 full months and assisting with the discussion gives parents a model to work from for the future.

Business Tips – Your Website Designing an effective website is both an art and a science. Just because you are dynamite mediator does not necessarily mean you are a dynamite artist or scientist. We all know that a good website can be a very cost effective way to get your message out. If your goal is increased business, think about what may soothe a fearful, angry, sad potential client – maybe some empathy, certainly some education, easy navigation of your website, and simple connectivity to your office. Look to an expert to help you.

MCFM – Your Best Friend Your board is always on the lookout for new leadership potential. Interested in being on the board? Join a committee to get acclimated and let us know of your interest.

Mediation World A delegation of Massachusetts judges from all court departments are collaborating with some Russian colleagues. The Russian group plans to institute mediation into all of their court departments in certain regions. They are looking for some trainers to go to Russia and assist. Expenses will be paid, but otherwise it would be pretty much of a volunteer effort. If you are a trainer and are interest in further information, contact your board president Kathy Townsend.

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FAMILY MEDIATION WITH CHALLENGING PERSONALITIES PART II of II

Deborah C. Silver & Robert B. Silver

Editor's Note: *In Part I (FMQ Vol. 8, No. 2) the authors introduced three problematic parent personalities often encountered in their mediation practices: the Nitroglycerin Parent, the Self-Focused Parent and the Ardent Parent. Part II explores four other difficult parenting personalities frequently facing mediators. The purpose of this article is to provide mediators with a working model for understanding and guiding professional interventions with difficult people.*

The Exacting Parent: The most common counterpart to the *Ardent Parent* is the *Exacting Parent*. When encountering the ardent individual more often than not their mate will likely be an *Exacting Parent*. By appreciating the natural association of these two personality types, family law professionals will be better prepared to manage associated challenges. For the conscientious and security-sensitive *Exacting Parent* the *Ardent Parent* offers an exciting break from drab reality. The contributions from the *Exacting Parent* that are particularly attractive to the *Ardent Parent* are best appreciated during the early phases of this relationship. The *Exacting Parent* offers a break from insecurity, chaos and fear associated with a dramatic lifestyle. Structure, stability and grounding are powerful initial attractions offered by the *Exacting Parent*. Unfortunately, as time wears on these differences, which initially were quite engaging become irritating, and then, ultimately, create an insurmountable chasm between the two. The *Exacting Parent* begins to perceive their previously adored partner to be erratic and capricious. They are unable to meet their partner's intense and ongoing need for adoration. The *Ardent Parent*, on the other hand, becomes bored with their too-predictable mate, characterizing them as much too serious, detached, uncaring and joyless. The mediator should be prepared for a stack of well-documented binders prepared by the *Exacting Parent* filled with data proving the instability, erratic nature and unsuitability of their dramatic spouse for continuing to serve as an appropriate caretaker for their children. The *Ardent Parent* will passionately plead the case to spare the children of the "abuse" certain to be meted out by their overly rigid spouse, driving the children insane through irrational and merciless demands for perfection.

What the *Exacting Parent* most fears is a loss of control. The mental health professional might identify this person as suffering obsessive-compulsive features of personality, at the very least. This individual seeks to dominate their world by imposing rules and organization upon others, while primarily enforcing these over themselves via perfectionistic strivings. In mediation they are apt to demand a prearranged agenda and become preoccupied with details, thereby missing broader goals. Another danger in mediation with the *Exacting Parent* is that it will break down into an impasse due to

their rigid insistence on what they consider right or correct. Moreover, they tend to be miserly about money matters.

Once again, the interests of a difficult parent are best served by appreciating the positive qualities that exist within a person who would otherwise be seen as downright impossible. Redeploying the energies of this remarkable person allows family law professionals to appreciate the value of the double-edged sword nature of the *Exacting Parent*. The same ability that enabled this person to develop an exhaustive, comprehensive detailing of their partner's every misstep and human frailty can also be engaged in a constructive process of developing concrete solutions. By engaging the *Exacting Parent* in a positive competition their careful, precise thinking can constructively be put to good purpose. This parent can readily appreciate the value of investing their physical and mental energies in the process of solution-focused mediation. Cooperation can sometimes be inspired by encouraging a positive rivalry, allowing all family members to become winners. With the *Exacting Parent* it is always a challenge to redirect them so that resources are not depleted in the exhausting wheel spinning associated with criticizing others for what they lack or cannot do perfectly.

The *Exacting Parent* might be more ably moved into a positive competition by responses from the mediator such as:

> "It is understandable that you could feel quite frustrated from time to time, feeling that your spouse does not care is much about this issue as you do and, thus, may not meet their responsibilities as completely as you would like. Furthermore, I would bet that you might find yourself working even harder at times to make up for these lapses. One concern that does come to mind, however is if your children might begin to believe the other parent is the fun person and spontaneous parent and you are the drudge parent... but then, with your capabilities you probably could excel in that area as well."

> "Dealing with your spouse's persistent tardiness can feel quite frustrating... adding to that is the fear associated with children arriving at home with homework assignments left incomplete. It is quite apparent that you really care about their academic performance. Many parents who stepped into your shoes would feel just as angry and irritated but as you now know, from all of the research you have been doing on supporting children at a time of marital separation, children are most predictably harmed when they perceive parent-to-parent conflict. I wonder whether your spouse will be able to offer the same level of graciousness that you do in shouldering responsibilities, even if they may perceive you as not

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deserving that extra courtesy. You on the other hand, appear to appreciate that when children feel safe and well care for when they're with their mom and that sense of security is more vital for their quality of life than identifying her faults. In the years that I have worked with families of divorce I have seen children grow up and as adults acknowledge that a parent such as yourself who was seen as the capable problem solver and peacemaker, rather than the problem maker and fault finder got them through that difficult time."

"Not many people have such a comprehensive plan about how best to investigate their spouse's conduct. However, I have seen people with a similar approach who spent a considerable amount of money to enhance their dossier of investigation into the misdeeds of their parenting partner learn they wasted a lot of time and money. In the end the information about their spouse's many faults and infractions were not even reflected in the settlement agreement or parenting plan. This gets me to wondering if it might be a wiser investment of energy and money if we began prioritizing your ultimate goals and aspirations for the kind of family you would like to create once this divorce is concluded."

"You can, of course, pursue that course of action. However, the consequences may result in ——, ——, or ——." (with particular emphasis on the undesired ones).

The On Alert Parent: Another very commonly encountered "warrior" in custody battles is the *On Alert Parent*. With such a parent the mediator is vulnerable to being perceived as not liking them or, worse, working against their best interests, if they do not similarly share their reality. The world for this parent is undeniably separated into polarized positions involving right and wrong and good and bad. It is important for the mediator to begin by knowing that the *On Alert Parent* inherently is always right and always good. Not surprising, it is very common that this parent has already hired and fired a string of family law professionals, jettisoning them at the first hint of disloyalty. If the mediator is perceived not to side with their position instantly they will have become wrong and bad, thus crossing to the dark side in the "enemy camp." Mediators might ask themselves whether they are attempting to assist an *On Alert Parent* when discovering this individual is now consulting with their third or fourth attorney.

Active listening is hard work and should not be under estimated in its value.

The mental health professional might be

quick to identify this person as suffering some sort of paranoid disorder. If this is the case, the truth will become abundantly clear to all involved in due course. Mediators interacting with other family law professionals best support the needs of the *On Alert Parent* by sensitivity to transparency and openness. Moreover, a paradoxical approach is typically most effective when responding to this person. Even when the mediator tries to comfort and reassure, customary palliative strategies for most others, for the *On Alert Parent* this may have the paradoxical effect of heightening qualms in the mind of this reactively suspicious individual. Fear is best dissipated by a careful listening procedure, acknowledging this person's worries and carefully reflecting and cataloging each concern. Active listening is hard work and should not be under estimated in its value for what is being accomplished for the *On Alert Parent*. There will be an opportunity to raise questions in due course. However, success depends upon convincing the *On Alert Parent* that each and every one of their concerns is taken seriously.

The *On Alert Parent* most fears domination or exploitation. Such individuals are particularly prone to misinterpreting others actions and ideas as threatening. They bring a heightened sense of danger to any interpersonal encounter. They also tend to easily suspect sexual infidelity on their partner's part. It is usually unproductive to try to disabuse the *On Alert Parent* of their misinterpretation, since this is too easily interpreted as an affront. This can promptly put the mediator into the "enemy camp."

Difficult people have a number of things in common. They all share an exaggerated perception of danger and are dependent upon external blame.

Helpful approaches when responding to the *On Alert Parent* might include statements and inquiries such as the following:

> "Your position is understandable and quite believable, justifying some corrective solution. Have you yet identified safeguards that would adequately address this concern?"

> "This situation as you have described it could feel dangerous, even terrifying. Given the frightening circumstances that you currently are contemplating what can be done to increase the safety and security for all involved?"

> "There is no underestimating your concerns in this matter. I fully appreciate the inherent danger. However, I *am* confident in your ability to find a solution and I am willing to work on this as long as you are."

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The Yes, But Parent: Mediators encounter a particularly frustrating individual in the *Yes, But Parent*. Characteristic of this person is non-compliant agreement. Overtly this parent never directly disagrees but also does not follow through cooperatively either. There is persistent misunderstanding of agreements, chronic lateness, or characteristic lapses of memory associated with critical information. With their words the *Yes, But Parent* creates a misimpression of a "yes" response, while their behavior declares "no." Make no mistake, such an individual's mind can be completely closed to considering an idea, while at the same time their non-committal and vague response staves off further discussion for the time being yet leaves others with the impression that openness to consensus remains. Often the *Yes, But Parent* will disguise their resistance with a request for experts to decide what is best for their family, rather than reveal their actual belief that they should be granted at least equal, if not a dominant role, in parenting status. These parents comfort themselves by believing that if the expert guesses wrong, that is contrary to their unspoken wishes, it is the fault of the professional for their lack of discernment in divining the truth, rather than their being at fault for confusing or incomplete communication.

No matter how skilled, able or sensitive the mediator, there will always be difficult persons who exhaust the energies, abilities and creativity of the best mediator.

Mental health professionals might pronounce this parent as being passive-aggressive, recognizing the indirect nature of this interactional style. No doubt, it can be infuriating, frustrating and irritating to attempt to deal with this type of person. Promises chronically are unfulfilled and deadlines are typically unmet. Attorneys who attempt to represent this individual often are left dangling, as well as feeling foolish for believing that their client will follow through. Mediators will believe they have finally negotiated a very effective agreement that meets the needs of family members only to find an unsigned agreement languishes for months awaiting the signature of the *Yes, But Parent*. This person believes that their inaction and obstructionistic conduct works to their best advantage. The *Yes, But Parent* tries to hide in plain sight so to speak. Regrettably, their characteristic behaviors reliably provoke negative reactions in others by promising, but always putting off a solution.

As anyone who has been a fan of the Detective Columbo recalls, there is a technique that tends to bring into the open the internal world of the *Yes, But Parent*. The mediator can genuinely and persistently question the obvious in an extreme fashion that is characterized by curious benevolence and in this way gain necessary information. This parent is not motivated by mean-spiritedness but, rather, reacts out of fear. They are threat-sensitive and conflict-avoidant. Mediators who maintain a positive

mindset toward this person can sometimes constructively nurture decision-making, sidestepping the trap of becoming annoyed or discouraged in their dealings with the *Yes, But Parent*. Authentic empathy for this lonely and typically irritating person can arise by remaining attuned to the impact that intense stress has had on heightening this potentially self-destructive interactional style. Furthermore, by considering that this automatic behavioral repertoire likely originated during childhood as the result of primitive attempts to manage overwhelming circumstances can facilitate compassion for a person who rarely engenders a kindly response from others.

For this type of individual the mediator may find helpful statements involve a matter-of-fact but compassionate style of Socratic inquiry such as:

> "I could really use your help so that I might understand some things... maybe you can help to end my confusion... you are saying that your toddler has such a busy social calendar that they're unable to find any moment to share with their father... with those unrelenting parenting responsibilities how do you ever managed to find a moment to do things for yourself?"

> "I really need your guidance on this matter... I am so befuddled by this entire situation... maybe you can help to clear up the mystery... now what were the circumstances that prevented yet another opportunity for your son to spend time with his mother at baseball practice?"

The Trouble Shooting Parent: Validation of ones own importance through the mechanism of undervaluing the worth of others reflects the fundamental thinking of the *Trouble Shooting Parent*. Any credit offered to the other parent for their skill in child rearing is corrosive to the *Trouble Shooting Parents'* view of themselves as worthy. Faults and imperfections in others serve to bolster self-esteem. Only their way is the right way. Without their controlling maneuvers and micromanagement chaos would reign. Rather than recognizing the inherent value of people and ideas that differ from their own, the *Trouble Shooting Parent* focuses on potential problems and deficiencies. This includes their soon-to-be ex-spouse, losing sight of the fact that due to their being so perceptive and discriminating they were formerly able to identify a capable parenting partner.

This persistent pessimist and grievance collector can exhaust the good will, patience and optimism of the mediator without a unified team of family law professionals at their side. In this circumstance the attorney is essential to redirecting this person into a more positive and ultimately satisfying position. The *Trouble Shooting Parent* does respond to a kindly, gentle and caring approach from their attorney who can shepherd them to see that their own interests are best served by considering approaches that may initially appear

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foreign. Active and reflective listening needs to characterize this effort. Family law attorneys can serve as effective “therapists” if they can assume the role as a sort of “Dutch uncle” for this individual. Mediations that include the attorney at the side of the *Trouble Shooting Parent* typically are most productive, when their legal representative encourages more constructive mental constructs and decorum.

During the mediation considerable passive “work” is involved. For the *Trouble Shooting Parent* advice-giving, or more directive approaches tend to work at cross-purposes. Instead, exhaustive probing for desired outcomes tends to produce the best result. Resistance in addressing mundane matters can be met with offers of assistance, such as by directly completing paperwork. Resistance to perceived external force is typically the automatic response of the *Trouble Shooting Parent*. The mediator could respond with:

> “While your partner may have a lot of faults it was your discerning judgment originally that contributed to your ability to choose your parenting partner as the father of your children.”
>
> “You seem unwilling to do…so please let us know the actions you *are* willing to take.”
> “You are the key person in this decision…I am neutralized without your guidance.”
>
> “If you do not develop your own agreement would you be interested in possibilities that that have worked for families in similar circumstances?”

Observations & Conclusions Difficult people have a number of things in common. They all share an exaggerated perception of danger and are dependent upon external blame. These individuals seek a sense of psychological safety by imposing control on the external world. Their “locus of control” resides outside of themselves rather than within. When bad things happen they believe they are the victims of some external force. Rather than appreciating their own power to take corrective action they begin first by generating machinations to make others repair the damage. They do not recognize that the best “helping hand” is the one located at the end of each of their own arms. In addition, they tend to be aggressively defensive when they feel threatened. Finally, criticism tends to escalate their negative behavior.

Because difficult persons are not good interpersonal problem solvers, they gravitate to engaging the services of advocates. Accepting the mandates of their professional roles that prohibits advocacy, mediators must remain vigilant to their own internal vulnerability to revert to the role as champion for these individuals who are persuasive blamers. While acknowledging this vital professional obligation, the mediator concomitantly needs to avoid verbal confrontation with these individuals as they will only activate more extreme defensive behavior.

What is generally the best way to work with difficult clients? Don’t confront or contradict. Be agreeable without agreeing.

Difficult clients are not seeking objective information, your opinion, your advice, or neutrality. What they want is emotional affirmation. Relating to others through intense emotions is the only way they know. It is easy to become annoyed by the extreme hypersensitivity and cognitive distortions shown by difficult people. Instead, it is best to show empathy and respect while avoiding necessarily agreeing with their position.

Avoid expressing behaviors that could signal rejection or anger. Remain sensitive to signs that you have triggered their core fears: abandonment, lack of support, not validating their sense of importance or neglect. To counter these regressions and mitigate their ill effects, focus instead on clarifications of the client's perspective, feelings and positions. Mediators can enhance effectiveness by emphasizing their desire to understand the thinking of this challenging individual.

When it is encountered, and it will be, resist the impulse to contradict their emotional logic. Empathize with their fears, worries and emotional pain. Endeavor to identify means for reducing their fears. Throughout the mediation process reassure these individuals that you will not sacrifice their concerns. Difficult persons are difficult because they are experiencing their own psychological issues in legal terms. For example, you may hear, "I have a right to see my children." What they are really saying is, "I am terrified that I will lose my relationship with my child." Fears are often expressed as rights and demands. When these assertions are announced it is time for the mediator to focus on reflecting the core emotion underlying these expressions. Even though mediation may not be the appropriate medium to address unresolved emotional issues, these do contaminate the mediation process. Thus, like it or not, the mediator is duty-bound at a minimum to recognize emotional distress and, at the least, minimize its negative effects, or contain its impact. Moreover, the mediator's obligation is to not make the situation worse than it already is.

Emotional distress makes it hard to think clearly and clouds judgment. Difficult clients, however, can be helped to shift from an emotionally based focus, to a problem-solving focus. To accomplish this feat structure is needed. Acknowledge intense feelings, while redirecting the focus to: "Given that... what can we do?" Gather pertinent information while inquiring: "How can we address this issue?" Problems can be reframed as problem-solving tasks. By so doing, the mediator is modeling an internal locus of control, potentially promoting a transformational process for their clients. If mediation is successful the difficult client becomes a partner in constructive problem solving, and perhaps for the first time in their lives, feeling some power and ownership of a life that frequently feels as if it is spinning out of control.
Engaging beneficially with difficult

Good people do act badly when unduly stressed, such as at the time of divorce.

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people often is best accomplished through the use of indirect confrontations and appeals to consider the ill effects to themselves if they ultimately must encounter detached authority. For example, a challenging individual may believe they are so "in the right" that everyone else should share what is, in fact, their unique perspective. The mediator can offer valuable service by tapping into their wealth of professional experience with the adversarial court system. Anecdotal experiences can be quite instructive for the client. For example, the mediator might Socratically lead the thought process by acknowledging: "You could do... but the Judge might conclude... instead."

No matter how skilled, able or sensitive the mediator, there will always be difficult persons who exhaust the energies, abilities and creativity of the best mediator. Where agreement may not have resulted, mediators can take some solace in knowing that they recognized the inherent difficulties involved in the personalities, did not trigger even more defensiveness, and did not further inflame the situation. Unique prospects for creative problem solving are presented to the mediator, particularly when functioning as part of the family law team responding in a coordinated and sensitive fashion. Better outcomes for families are more reliably achieved by creating a positive psychological scaffold upon which to understand the challenging persons who present. Good people *do* act badly when unduly stressed, such as at the time of divorce. Utilization of neutral nomenclature, persistently offering the benefit of the doubt, appreciating the significance of this time of turmoil and accepting the parent's negative response as natural under these circumstances, all diminish the prospect for negativity to be introduced into the mediation process by the professionals. While the adverse impact of the personalities described previously is typically the focus, it is essential to recognize the capacities and strength unique to those individuals. Difficult people reliably provoke a negative response in others that reinforces their core beliefs. By understanding this and applying the ideas presented, these challenging individuals can be inspired to become less difficult and, thus, more amenable to mediation.

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STOCK OPTIONS AND DIVORCE IN MASSACHUSETTS

By Marion Lee Wasserman

Assume you are mediating a divorce for a couple that has been married for twenty years. The husband has stock options accumulated during the last ten years, and he wants to keep them out of the property division. For one thing, his stock option plan indicates that the options are non-transferable. For another, his options are not worth very much today, but he anticipates them growing significantly in value after the divorce. Furthermore, one third of the options have not vested yet. This is a man who has worked hard at his job, and he feels that his options are a reward for his hard work. He associates his options with everything he loves about his work and his long-term employer. His wife, however, wants his stock options to be treated as marital property subject to division, along with the house and the investment accounts. She believes that even those options that would not vest until after divorce should be treated as marital property. Should they be?

Under Massachusetts divorce law, stock options are, generally speaking, treated as marital property, whether vested or not prior to the divorce. In the key case on this subject, the Massachusetts Supreme Judicial Court stated that although the Massachusetts statute governing property division upon divorce (General Laws c. 208, § 34) "does not expressly mention stock options, the language in the statute that a party's 'estate' includes 'all vested and nonvested benefits, rights and funds' clearly indicates that both vested and unvested stock options may be treated as marital assets." *Baccanti v. Morton*, 434 Mass. 787, 794-795 (2001). Regarding unvested options, the *Baccanti* opinion points out that just as unvested retirement benefits are assets that may be treated as part of the marital estate, so unvested stock options are assets that may be treated as part of the marital estate.

The *Baccanti* opinion recognizes the special nature of stock options — in particular, the uncertain value of unvested options. The vesting of the options may be contingent on continued employment. Also, the value of the stock when the options vest may be less than the price at which the options can be exercised. But *Baccanti* makes clear that any uncertainty in value is not an impediment to dividing the options incident to a divorce. In lieu of determining a present value for the options, it is possible for the options to be apportioned between the parties as part of the property division. Then, as the options vest and are exercised, the parties will share the proceeds of a sale of the options, according to the pre-determined apportionment (either 50-50 or according to another specified ratio). This "if and when received" approach is deemed acceptable by the Court in *Baccanti*. To

Baccanti provides essential guidance for reaching a fair and reasonable resolution of the stock option problem.

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provide for the possibility that the employee-spouse may choose not to exercise the options when they vest, or may choose not to sell the shares when the non-employee spouse would prefer to do so, the non-employee spouse can be given the power to exercise the options apportioned to him or her by acting through the employee spouse; similarly, the non-employee spouse can be given the power to sell his or her shares through the employee spouse. (If the stock option plan permits the options to be signed over to the non-employee spouse at the time of the divorce, the non-employee spouse can act directly rather than through the employee spouse.) Each party can be given responsibility for the tax consequences resulting from the sale of his or her shares.

Baccanti makes clear that any uncertainty in value is not an impediment to dividing the options incident to a divorce.

With respect to unvested stock options, the above picture is complicated by an additional element discussed in the *Baccanti* opinion. If the employee spouse can prove that the options were awarded for future service (that is, service to be performed after the marriage ends), and if the employee spouse can further prove that the non-employee spouse "did not contribute to the employee spouse's ability to acquire the unvested options," then a judge may decide, in light of all factors under General Laws c. 208, § 34, that a portion of the unvested options should not be included in the marital estate. The burden of proof is on the employee spouse. If the burden is met, the judge has discretion in determining what portion of the unvested options should be omitted from the property division and what portion should be included in the marital estate; and, with respect to the latter portion, what the appropriate division is. The *Baccanti* opinion sets out a so-called "time rule" as an "effective and straightforward means" of determining what portion of the unvested options to omit from the marital estate in these cases. Judges have the discretion to modify the *Baccanti* time rule or to use another approach that achieves an equitable division.

The *Baccanti* time rule works this way: "The number of unvested shares of stock options is multiplied by a fraction whose numerator represents the length of time that the employee owned the options prior to dissolution of the marriage (i.e., the length of time that the employee owned the options prior to and during the marriage), and whose denominator represents the time between the date the options were issued and the date on which they are scheduled to vest. The resulting product is the number of shares subject to division." This sounds confusing, but when the formula is applied to a set of facts in a particular case, it actually is quite straightforward.

Although the part of the above discussion regarding burden of proof applies only to litigated divorces, consideration of the underlying questions — namely, why were the unvested options awarded, and

what did the non-employee spouse contribute to the acquisition of the options — may be important in uncontested divorces as well. Mediators and collaborative lawyers should not overlook this part of the *Baccanti* opinion.

The entire *Baccanti* analysis, including the time rule, establishes the context for dealing with stock options and divorce in Massachusetts, whether or not the divorce is contested. In cases where the parties are able to cooperate, including mediated divorces, *Baccanti* provides essential guidance for reaching a fair and reasonable resolution of the stock option problem.

The Baccanti opinion, in footnote number 10, provides the following example of how to apply the time rule: "... we hypothesize that an employee was given one hundred shares of unvested stock options; that they were issued three years before dissolution of the employee's marriage; and that they will vest two years after dissolution of the marriage. The time that the employee owned the options prior to dissolution of the marriage would be three years, and the time between the date the options were issued and the date that they vest would be five years (three years before dissolution plus two years after). The portion of the options that could be included in the marital estate would be three-fifths. The one hundred shares are then multiplied by three-fifths, which equals sixty. Therefore, sixty of the one hundred shares of unvested stock options may be subject to division between the spouses. The judge would then make an assignment of those sixty shares of stock options in accordance with G. L. c. 208, § 34. The remaining forty shares would not be included in the marital estate and thus would belong solely to the employee spouse."

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"I can't understand how executives can make tens of millions of dollars on options the same year the company goes bankrupt."

Paul Volcker, former Federal Reserve Chairman

CAN A MEDIATOR ALSO BE A LAWYER?

By Kathleen A. Townsend and Lynda J. Robbins

For years, when asked by former mediation clients or by other mediators, if a mediator could perform legal work for a mediation client after the mediation was complete, I would respond in the negative. I was concerned that it might appear to compromise my neutrality, even after the fact. However, recently I reviewed all my old files in preparation for some major housekeeping and discovered that I had performed legal work for 2 different mediation clients after the mediation concluded. In both instances, the work was totally unrelated to the mediation but, I had not realized at the time that these were mediation clients—either they weren't that memorable or I really am getting old! Was it ok to perform the subsequent legal work for these clients?

The rules say YES for those working within a court-connected dispute resolution program. The Ethical Standards (Rule 9 of SJC Rule 1:18) are clear. Past personal and professional relationships must be disclosed. Any financial interest (not likely in family law) must be disclosed. Consent must be obtained from the clients.

The mediator also has an independent responsibility under the Ethical Standards to assess the significance of the conflict of interest and to protect the integrity of the dispute resolution process. To satisfy this responsibility, there may be times the mediator chooses to withdraw despite the consent of the parties.

But, what about subsequent legal work for former mediation clients?

In a future professional relationship with a former mediation client, a neutral cannot ever represent one against the other in matter related to the issues raised in mediation. However, if more than one year has passed, it is permissible for the mediator to represent a former mediation client in matters unrelated to the issues raised in mediation (or in less than one year if the other client consents).

Simple examples after the passage of a year might include estate planning, real estate closings, or personal injury cases. It may not be that you are looking for the work, but that the client would really like to use your services. You are free to choose to do that work.

More complex would be the client who wants to come back to mediate a prenuptial agreement, or resolve disputes with a new spouse, or mediate a workplace issue. Then you are back to the disclosure of past relationships to all parties and obtaining consent, along with your own analysis of significance of the conflict of interest.

The logistics become more complicated as you consider an infinite array of "what ifs". Having an easily accessible conflicts check for new clients, and depending on where you choose to draw the line for returning clients, will inform the parameters in which you run your practice.

Upon reflection, I still believe it is not good practice to do subsequent work for a party to a prior mediation. I think that the "appearance" of impropriety is of concern. Once one party discovers that you have done work for the other party, s/he may wonder how long you were aligned with that party. One possibility is to obtain the permission of the other party before proceeding with the new matter but, I still am not comfortable with that. Again, it raises the question and, possibly, creates conflicts between the two former clients. However, I know that some mediators believe differently and would be very comfortable taking on a former mediation client in a new, unrelated matter, especially if the other party consents. And, the rules allow it.

Caveat: For those who say, my practice is small; all of my client names are familiar to me; I don't need a system now – I say – so when will you start a system, after how many cases, how far will you have to backtrack to enter names into your system? If you haven't already, start now with a simple conflicts system and then think about the parameters that are comfortable for you and your practice.

These are the thoughts of two mediators — we welcome your comments.

Kathleen A. Townsend
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is the president of MCFM.

Lynda J. Robbins
<ljrobbinsesq@verizon.net> is the immediate past president of MCFM.

"Contradiction is not a sign of falsity, nor the lack of contradiction a sign of truth."

Blaise Pascal

CONSUMER HEALTH LAW NEWS: SPRING 2009 SYNOPSIS

By Clare D. McGorrian

These days there is no shortage of news about health law. However, most of the information is geared toward health care providers, insurers and employers. Consumer Health Law News covers select health law developments as they impact patients and their families.

FEDERAL DEVELOPMENTS

COBRA Help for Laid-Off Workers Under the American Recovery and Reinvestment Act of 2009, employees with annual adjusted gross income below $125,000 ($250,000 for joint filers) who lose their jobs involuntarily between September 1, 2008 and December 31, 2009 may receive a nine-month subsidy of 65 percent of their COBRA premium.

A COBRA election opportunity must be offered to laid-off employees (and eligible dependents) who became eligible on or after September 11, 2008, but who did not elect (or who elected and later terminated) COBRA coverage. Employers must provide "second chance" notices and election forms by April 18, 2009. This special election period ends 60 days after the employer notifies the individual. Further information is available from the Department of Labor and the Internal Revenue Service.

New Special Enrollment Rights The Health Insurance Portability and Accountability Act (HIPAA) provides special enrollment rights upon the loss of eligibility for prior health coverage and upon the addition of a new dependent. Pursuant to the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA), group health plans must also permit eligible employees and dependents to enroll outside of open enrollment where: (1) Medicaid or Children's Health Insurance Program (CHIP) coverage is terminated due to loss of eligibility and (2) the employee or dependent becomes eligible for premium assistance toward the group plan through Medicaid or CHIP. To qualify, the eligible employee or dependent must request enrollment within 60 days after the special enrollment event. These protections became effective April 1, 2009.

Federal Mental Health Parity Expanded The Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008, substantially expands mental health parity requirements for health plans. The law applies to group plans offered by employers with more than 50 employees for plan years after October 3, 2009 (later for union plans). Plans that include mental health and/or substance use disorder benefits must cover such benefits on a non-discriminatory basis as compared to medical/surgical benefits.

New Health Insurance Rights for Students on Medical Leave Michelle's Law, Public Law 110-381, requires group health plans to continue coverage for a child who would otherwise lose eligibility due to a medical leave from college or graduate school. Michelle's Law is effective for plan years that begin on or after October 9, 2009. Plans may not terminate coverage for one year after a

"medically necessary" leave of absence begins unless coverage ends under the plan for all dependents.

Genetic Information Nondiscrimination Act The Genetic Information Nondiscrimination Act of 2008 (GINA), prohibits discrimination on the basis of genetic information in health insurance and employment. "Genetic information" is information about an individual's or family member's genetic tests, and information about the manifestation of a disease or disorder in a family member. GINA applies to group and individual health plans.

MASSACHUSETTS DEVELOPMENTS

Mental Health Parity Coverage Expanded Since 2000, Massachusetts has required insurance policies subject to state law to cover nine biologically-based mental disorders on a par with physical illnesses. Insurers doing business in Massachusetts must now provide parity coverage for four additional conditions: eating disorders, post-traumatic stress disorder, substance and/or alcohol abuse, and autism. The new requirements take effect July 1, 2009.

Coverage Standards Set for Individual Mandate As of January 1, 2009, adult residents of Massachusetts must have health insurance that provides minimum creditable coverage (MCC). Plans that satisfy MCC must cover defined "core services" and "medical benefits," and limit cost-sharing, such as co-payments and deductibles. Health insurers must disclose on the face of a policy whether it offers MCC.

Eligibility of Adult Children for Parent's Coverage As of January 1, 2008, insurers in Massachusetts had to make dependent coverage available to persons "under 26 years of age or for 2 years after the end of the calendar year in which such persons last qualified as dependents [of the subscriber] under 26 U.S.C. 106, whichever occurs first." Insurers must consider a child a dependent under the parent's health policy (up to a maximum age of 26), as long as he receives half of his support from the parent. The child need not be claimed on the parent's tax return to be eligible for coverage.

MassHealth for Same-Sex Spouses Massachusetts has recognized the right of same-sex couples to marry since 2004. As of October 29, 2008, no person who is recognized as a spouse under Massachusetts law shall be denied MassHealth benefits for which they are otherwise eligible, due to unavailability of federal funds based on the Defense of Marriage Act (DOMA) or other federal non-recognition of spouses of the same sex.

Clare D. McGorrian is an attorney in Cambridge who specializes in helping people with health insurance problems. If you (or your clients) have been denied health insurance for which you believe you are eligible, or if your health plan refuses to cover medical treatment that your doctor recommends contact Clare at (617) 871-2139. Anyone interested in viewing the full edition of the Spring 2009 Consumer Health Law News is welcome to visit Clare's website: www.cdmhealthcounsel.com. To subscribe to future editions, please email Clare at info@ cdmhealthcounsel.com.

"MENDING WALLS"

By Chip Rose

Although he was not contemplating the state of anyone's marriage when he wrote, "Something there is that doesn't love a wall," Robert Frost was referring to relationships. That his subject was the relationship between New England neighbors is an appropriate point of departure for a column about the uniqueness of working with intimate, interpersonal relationship conflict. With neighbors, the boundaries between one party and another consists of an arc that is wide and well-defined. There is a similar arc of respect for the boundaries of another when future intimate partners are first meeting and getting to know one another. As I sit in the middle of relationship conflict, I see intimacy as the metaphoric boulder that emerges out of the frozen ground described by Frost, which undermines the carefully constructed walls that were the boundaries when the relationship began.

In a past column, I have explored the need to individuate the process so that each client has his or her needs, perspectives, and concerns respected and addressed. The primary tool for doing this is to identify process boundaries. In developing this notion for clients, I will sometimes frame it this way. When a person first meets another person and there is a sense of mutual attraction, the relationship is typically all about boundaries, respect and curiosity. It would seem entirely inappropriate to make assumptions for the other, impute motives, project characteristics or to characterize the other-behaviors in which each party is almost universally engaged at the end of the relationship. This is clearly the dark side of intimacy — the negative yang to the positive and precious yin of intimacy.

Then there is the development of what I refer to as the separation dynamic. As each person retreats from the intimacy of the other, and they separate emotionally, psychologically, and physically, a vacuum is created. We know from science that nature abhors a vacuum. What fills this abandoned space is a sense of alienation or estrangement. This environment produces serious concerns, which turn into an expanding sense of anxiety. Left unchecked, this growing anxiety can morph into a profound fear of the unknown future. Now we have a vacuum that is filling with a growing tension. All that is missing is a spark for there to be an explosion. That spark often comes in the form of some unilateral action taken by one party in response to a perceived need (e.g. canceling credit cards, withdrawing money from accounts, changing the locks, etc.). The predictable reaction of the other party is to embrace the advice of family and friends to "get a good lawyer." Anticipating this type of relationship explosion is a critical juncture for the initiation a constructive process that will address all of these circumstances, as well as the problems that lie ahead for the parties.

An initial key to developing a successful collaboration between the parties is to address the issue of loss of trust. To that end, a distinction can be drawn between relationship trust and "process trust." Telling clients that I have no power to repair the fractured trust in their relationship, I will add (when humor is appropriate) that if I could, they probably couldn't afford me. What I can do, however, is help them create "process trust." Recognizing that trust is the product of promises made and promises kept, they have an opportunity to wipe their trust slate clean with an understanding that if they keep the promises that they make in the mediation process, then they begin to create a new and critical form of trust. Process trust then becomes a significant brick in the path of success.

I can think of no more important characteristic for a successful process for resolving relationship disputes than "safety." Everything about the design and implementation of a process, and everything about how all parties to it conduct themselves, can be measured through the lens of safety. On a macro level, safety manifests itself in the need to protect each client's autonomy in the process, on the need for full disclosure and exchange of information, on the need to allow for respectful discourse, and on the need to be sure that all agreements are entered into voluntarily and with capacity.

On a micro level, safety manifests itself as an important reason to forbear from interrupting the other party and to refrain from making critical and judgmental comments about the perspectives of the other.

I can think of no more important characteristic for a successful process for resolving relationship disputes than "safety."

Recognizing the limits of this space, these are but a few boundary tools that respond to the unique dynamics of interpersonal relationship negotiation. What a good facilitator does is to educate the parties about the need to have them walk a metaphoric wall as in Frost's elegant poem, Mending Wall, replacing the boulders of respect for the autonomy of the other, thereby rebuilding a necessary boundary that intimacy so casually subverted. When considering our work as family mediators, we are reminded of the deeper truth in the line, "Good fences make good neighbors."

Chip Rose, J.D., has a private mediation practice in Santa Cruz, CA, and is currently providing training throughout the United States and Canada on the emerging practice of collaborative family law. "Mending Wall" was published in the spring, 2009 edition of Family Mediation News, the quarterly newsletter of the Family Section of ACR.

MASSACHUSETTS FAMILY LAW
A Periodic Review

By Jonathan E. Fields

College Expenses Must be "Reasonable" A merged provision in a separation agreement purportedly required each parent to pay one-half of college education expenses. Under the agreement, mother had physical custody and the parties had shared legal custody of their daughter. Years later, the daughter, without input from the father, enrolled at a private university where the cost of her first year, after grants, was $34,000. Mother looked to father for $17,000, father refused to pay, and mother brought a contempt action. The Probate Court held the father responsible for $7,800 — finding that the school was financially "out of reach" for the father. On mother's appeal, the appellate court construed the agreement to require each party to pay half of the "reasonable" college expenses, implying a limiting condition not explicit in the agreement. Further, in remanding the case to the Probate Court for a determination of "reasonable college expenses," the Appeals Court set forth several factors for the court to consider; among them, financial resources, cost, programs at the school, and the child's scholastic aptitude. Also relevant, according to the Court, is "the extent to which [a party] . . . may have been excluded from the college decision-making process." The court would also consider the extent to which a parent has "sat on his or her right to intervene . . . until the college selection process has been completed." Perhaps most interesting in this case was the road *not* taken. The Appeals Court could have held college expenses at the level of a public university to be presumptively reasonable. The court, however, did not. *Mandel v. Mandel*, 74 Mass.App.Ct. 348 (June 3, 2009).

Self-Employment Income for Child Support Purposes A self-employed father brought a modification action seeking a reduction in child support. In calculating support, the Probate Court deducted from his gross income amounts for pension, profit sharing, and taxes. The Appeals Court vacated the support award. Gross income for child-support purposes, the Court noted, is not necessarily equivalent to a parent's taxable income. In determining self-employment income, "a judge must determine whether claimed business deductions are reasonable and necessary to the production of income, without regard to whether those deductions" are appropriate for income-tax purposes. Although the current Guidelines did not apply in this case, the Court observed that these Guidelines now explicitly address self-employment, where the prior Guidelines did not. Specifically, the current Guidelines urge self-employment income to be "carefully reviewed [in order] to determine the appropriate level of gross income . . . [which] in many cases . . . will differ from a determination of business income for tax purposes." Guidelines I-C (2009). *Whelan v. Whelan*, 74 Mass.App.Ct. 616 (July 6, 2009).

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INFORMATION SECURITY: A BUSINESS NECESSITY FOR MEDIATORS

By William M. Driscoll

Perhaps the greatest myth of 2009 is the date by which businesses must protect personal information of residents of the Commonwealth. The “Standards” released by the Office of Consumer Affairs and Business Regulation carry an effective date of January 1, 2010. However, the enabling law, Massachusetts General Laws chapter 94H, went into effect in 2007. Why the confusion?

History For years the media has publicized instances of identity theft — primarily focusing upon large corporations failing to comply with federal law. Forty-four States and the District of Columbia have now enacted Security Breach laws for the protection of “personal information.” In Massachusetts and elsewhere, the law related to information security, data protection, and privacy has instilled stronger duties upon business owners and boards of directors.

The first of these duties is that of data governance — the ongoing management of risk regarding the safeguarding of information within the purview of the business, from inception to destruction. Data governance charges the business or organization with the responsibility for physical, procedural, and technical measures to safeguard personal information. The risks associated include those related to the collection, use, disclosure, transfer, modification, and destruction of sensitive information.

The second of these duties is the fiduciary duty of care to safeguard the integrity and confidentiality of sensitive information. Guidance for the safeguarding of information is rapidly emerging from legal compliance requirements. One requirement of the fiduciary duty is that of mandatory employee training so as to ensure that the actual business operating procedures are commensurate with the written security policies and procedures. Training is crucial as the business owner and board of directors, if any, is ultimately responsible!

The marketing message that mediators should convey to their clients is, “We care about your privacy and we work hard to protect it.”

Massachusetts Law (effective 2007) The Commonwealth of Massachusetts legally obligates businesses holding personal information about a resident of the Commonwealth to protect that information. The guiding law is Massachusetts General Laws chapters 93H and 93I — both effective in 2007. To meet the minimum requirements of the law and to avoid negligent release of personal information each business must draft a substantial and substantive written document outlining its

Information Security Program; its information protection policies and procedures; training and disciplinary procedures. The business of mediation is not exempt!

The marketing message that mediators should convey to their clients is, “We care about your privacy and we work hard to protect it.”

Massachusetts General Laws, chapter 93H (Security Breaches) was enacted in 2007. The law requires businesses to protect all “personal information” of residents of the Commonwealth in whatever forms — whether paper, digital, or other. Violations of the law may result in substantial monetary fines and lawsuits. The Standards for protection (201 CMR 17.00) have an effective date of January 1, 2010. However, the law is currently enforceable as the standards do exist. In addition there are federal, state, and local laws; industry standards; professional standards; and common sense.

Massachusetts General Laws, chapter 93I (Dispositions and Destruction of Records) was also enacted in 2007. It requires the protection of “personal information” of all residents of the Commonwealth through standards of destruction for such records.
Data destruction is media dependent. Paper documents containing personal information: redacting, burning, pulverizing, or shredding so that personal data cannot practicably be read or reconstructed. Non-Paper documents and electronic media containing personal information: destruction or erasure so that personal data cannot practicably be read or reconstructed. The “Standards” for the disposition and destruction of records are embedded within the law and therefore, clearly stated as of 2007.

How is “Personal Information” defined?
Personal Information is defined by statute in M.G.L. c. 93H: A resident’s first name and last name or first initial and last name in combination with any one or more of the following data elements that relate to such resident:

(a) Social Security number;
(b) Driver’s license number or state-issued identification card number; or
(c) Financial account number, or credit or debit card number, with or without any required security code, access code, personal identification number or password, that would permit access to a resident’s financial account; provided, however, that “Personal information’’ shall not include information that is lawfully obtained from publicly available information, or from federal, state or local government records lawfully made available to the general public.

However, within M.G.L. c. 93I, the definition of "Personal Information" modifies paragraph (c) and adds paragraph (d), as follows:

(c) Financial account number, or credit or debit card number, with or without any required security code, access code, personal identification number or password that would permit access to a resident's financial account; or
(d) A biometric indicator.

Why is this important? Because the "Standards" authorized under M.G.L. c. 93H include requirements for the destruction of personal information. However, those "Standards" do not comply with M.G.L. c. 93I. To be compliant under the law, the sum of the laws must be dealt with together!

Does this end the definition of personal information? No. In fact, each state with a law protecting personal information of its residents may define "Personal Information" differently and may apply its law to businesses interacting with its residents — even if they do not have a physical location within that State's borders. As a result, businesses within the commonwealth may desire to extend the definition of "Personal Information" to include information protected under other jurisdictions, or for other business reasons. After all, the law is only a minimum standard of care upon which to comply.

The Duty to Report Massachusetts General Laws chapter 93H, sections 3-5 place upon the business the burden of reporting known security breaches and unauthorized use of personal information. Notice shall be provided as soon as practicable and without unreasonable delay when the business:

(1) Knows or has reason to know of a breach of security, or,
(2) When the business knows of or has reason to know that the personal information of such resident was acquired or used by an unauthorized persona or used for an unauthorized purpose.

In fact, the business is charged with the duty of identifying breaches in security and unauthorized use of personal information. The business is legally obligated to bring such events to the attention of the State! The content of the notice must contain:

(1) A detailed description of the nature and circumstances of the breach, release, or use;
(2) The number of Massachusetts residents affected;

Investing in preventative measures now will pay-off later.

(3) The steps already taken relative to the incident;
(4) Subsequent steps intended to be taken; and,
(5) Status regarding law enforcement investigation, if any.

What is Required of a Written Information Security Program? The requirements of a Written Information Security Program (the "WISP") are described within M.G.L. c. 93H, § 2:

(1) To safeguard the personal information of residents of the Commonwealth; and,
(2) To remain consistent with the safeguards for protection or personal information set forth in federal regulations by which the business is regulated.
To achieve the requisite level of safeguards, each business — regardless of size — is charged with the responsibility to:
(1) Insure the security and confidentiality of customer information in a manner fully consistent with industry standards;
(2) Protect against anticipated threats or hazards to the security or integrity of such information; and,
(3) Protect against unauthorized access to or use of such information that may result in substantial harm or inconvenience to any customer.

To accomplish these goals, certain policies and procedures regarding administrative, technical, and physical methods must be incorporated into the "WISP." It is critical to ensure that the actual business practices of the business are commensurate with the business' WISP! Because each business operates based upon the unique "personality" of its owner(s), it is critical to recognize that there is not one "WISP" that will cover multiple businesses! Businesses trying to adopt another business' WISP as their own will likely encounter problems. The result may not reflect the actual business practices and a deceptive business practice may result.

Conclusion The time to act is now! The law regarding the safeguarding and disposal of personal information has been enforceable since 2007. Do not be lulled into a feeling of complacency until January 1, 2010 — the effective date of the Commonwealth's "Standards" guideline. Infractions of the law are subject to existing standards.

Prepare a Written Information Security Program ("WISP") and ensure your business practices comply with the written plan. Enlist the assistance of an information security and data protection professional to assist you in your efforts, for review, or for auditing your Program. Investing in preventative measures now will pay-off later. Remember, the cost of non-compliance is high!

William M. Driscoll, M.S., J.D. is a collaborative attorney, mediator, and litigator engaged in the practice of Information Security, Data Protection, and Privacy Law as well as Divorce and Family Law. Bill's practice is located in Chelmsford, and he invites you to visit his web site (www.DriscollEsq.com) or to email questions to wmd@DriscollEsq.com.

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

NY Governor Introduces Same-Sex Marriage Bill Gov. David A Paterson introduced legislation to legalize same-sex marriage in New York, vowing to personally involve himself in the debate. The governor invoked the abolitionist movement of the 1800s, the writings of Harriet Beecher Stowe and the US Supreme Court's Dred Scott decision to argue that New York had neglected civil rights for gays and lesbians for too long. "We have a duty to make sure equality exists for everyone." (Jeremy W. Peters, New York Times, 4/17/2009)

Same-Sex Ruling Belies Iowa's Staid Image The unanimous Iowa Supreme Court decision that legalized same-sex marriage was written by Justice Mark S. Cady, appointed to the court by a Republican. Justice Cady cited instances when his predecessors made precedent-setting rulings involving civil liberties. In 1839, the Supreme Court for what was then the territory of Iowa, refused to recognize a slave as a possession, years before the US Supreme Court ruled the opposite in its Dred Scott decision. In 1868 and 1873 the Iowa Supreme Court ruled in favor of desegregating schools and public accommodations, almost a century before the US Supreme Court. In 1869 Iowa was the first state to permit women to practice law. (Monica Davey, New York Times, 4/26/2009)

Who's the First Lady When the President's a Polygamist? When Jacob Zuma becomes the president of South Africa, an avowed polygamist will occupy the presidential palace in Pretoria for the first time. Mr. Zuma has been married four times and currently has two wives and one fiancée waiting in the wings. (Michael Allen, Wall Street Journal, 4/30/2009)

Greek Same-Sex Marriage Void A Greek court annulled the country's first pair of same-sex marriages, calling them illegal and invalid. The two couples — one male and one female — were married last June by the mayor of Tilos, a Greek island. The ceremonies drew the anger of the country's powerful Greek Orthodox Church. (Anthee Carassava, New York Times, 5/6/2009)

German High Court Bans Some Names In a split decision, the German Constitutional Court upheld a ban on married people combining already-hyphenated names, forbidding last names of three parts or more. Germany takes a highly regimented approach to naming. In 2004 the Constitutional Court limited the number of names a child could have to five. A University of Leipzig professor that provides certificates of approval for names that have not yet made the official list said "the state has a responsibility to protect people from idiotic forenames."

Continued on next page

(Nicholas Kulish, New York Times, 5/6/2009)

Maine Legalizes Same-Sex Marriage as Opponents Plan a 'Veto' The governor of Maine signed a same-sex marriage bill into law. In Maine laws go into effect 90 days after the Legislature adjourns, which is usually in late June, but opponents have vowed to pursue a "people's veto." They would need to collect 55,000 signatures within 90 days of adjournment to get a referendum question on the ballot. If they succeed the law would be suspended until a vote could be held, either in November 2009 or June, 2010. As of now, Maine is the 5th state to legalize same-sex marriage. (Abby Goodnough, N.Y. Times 5/7/2009)

GPS Helps Track Abusers and Stalkers In Massachusetts about one-quarter of restraining orders are violated each year. Domestic violence related homicides increased 300 percent in Massachusetts from 2005 to 2007 according to Jane Doe, Inc., a Massachusetts Coalition Against Sexual Assault and Domestic Violence. A Harvard researcher found that about one-quarter of women who were killed by their domestic abusers already had restraining orders. In Massachusetts about 100 people accused of domestic abuse are now monitored by a Global Positioning System that alerts law enforcement if the accused is too close to the victim's home, work, or the children's school. The accused are charged $8 a day for the GPS, a cell phone-like device that clips to a belt that monitors their movements. (Ariana Green, New York Times, 5/9/2009)

Same-Sex Partners of US Diplomats to Get Benefits According to a memorandum from Secretary of State Hillary Clinton, the State Department will offer equal benefits and protections to same-sex partners of American diplomats. When the new policy takes effect benefits will include diplomatic passports, use of medical facilities at overseas posts, medical and other emergency evacuation, transportation between posts and training in security and languages. (Mark Landler, New York Times, 5/24/2009)

California Upholds Ban on Same-Sex Marriage The California Supreme Court upheld a ban on same-sex marriage, ratifying a decision made by the voters after the court ruled that same-sex marriage was constitutionally protected. The court's 6-1 decision upholds the right of the people to amend the constitution by ballot while preserving the 18,000 same-sex marriages performed in California while it was legal. Advocates are now organizing a ballot initiative to legalize same-sex marriage. (John Schwartz, New York Times, 5/27/2009)

New Hampshire Legalizes Same-Sex Marriage The governor of New Hampshire signed a same-sex marriage bill into law that will take effect on January 1, 2010. The law went through several permutations to satisfy opponents who lobbied for "conscience protections" that exempt religious organizations that oppose same-sex marriage from being compelled to sanction or celebrate it. As of now, New

Hampshire is the 6th state to legalize same-sex marriage. (Abby Goodnough, N.Y. Times 6/4/2009)

Same-Sex Couples May Use Married Names on Passports Same-sex couples traveling overseas can now obtain passports under their names as recognized by the state of their marriages or civil unions. The addition to the State Department's Foreign Affairs Manual that took effect May 27th does not mean that the State Department is recognizing the validity of same-sex marriages or civil unions. (New York Times, Associated Press, 6/20/2009)

US Census to Recognize Same-Sex Marriages in 2010 Reversing a decision of the Bush administration, married same-sex couples will be counted as such in the 2010 census. Same-sex couples could not be married in the last decennial count. The White House announced that its interpretation of the federal Defense of Marriage Act did not prohibit gathering the information. (New York Times, Associated Press, 6/21/2009)

Massachusetts Challenges the US Defense of Marriage Act The state's attorney general sued the federal government to overturn a section of DOMA denying federal benefits to spouses in same-sex marriages, making Massachusetts the first state to challenge the Defense of Marriage Act. Martha Coakley said DOMA interferes with states' rights to define and regulate marriage. (Abby Goodnough, N.Y. Times 7/9/2009)

Surrogate Birth Statistics While there are no widely agreed upon number for surrogate births, the American Society for Reproductive Medicine estimates 400 to 600 births a year in which a surrogate was implanted with a fertilized egg — although advocacy groups put the count much higher, despite the substantial cost of at least $30,000. (Sara Rimer, N.Y. Times 7/12/2009)

Recession Lowers the Divorce Rate A May survey by the Institute for Divorce Financial Analysts found the recession was delaying divorces and inspiring "creative divorce solutions" in living arrangements. Although it's still unclear how the recession is affecting divorce rates overall, respondents in a poll of the 1,600 members of the American Academy of Matrimonial Lawyers estimated that divorce cases in the six months through March were off 40% from 'normal' levels. (Jennifer Levitz, Wall Street Journal, 7/13/2009)

Les Wallerstein is a family mediator and collaborative lawyer in Lexington. He can be contacted at (781) 862-1099, or at wallerstein@socialaw.com

"A lie can travel half way around the world while the truth is putting on its shoes."

Mark Twain

MCFM NEWS

MCFM 2009-2010 ELECTION RESULTS

WE ARE PLEASED TO ANNOUNCE THAT THE FOLLOWING PEOPLE WERE ELECTED TO MCFM'S BOARD OF DIRECTORS

Lynn K. Cooper
Rebecca J. Gagne
Laurie Israel
Steven Nisenbaum
Mary A. Samberg
Diane W. Spears

WE WELCOME LAURIE ISRAEL TO THE BOARD AND THANK HARRY MANASEWICH FOR HIS FOURTEEN YEARS OF SERVICE

Continuing MCFM Officers:

President: Kathleen A. Townsend
Vice President: Laurie S. Udell
Vice President: Mary A. Socha
Clerk: Jonathan E. Fields
Treasurer: Mark I. Zarrow
Past President: Lynda J. Robbins

Continuing MCFM Directors:

S. Tracy Fisher
Mary T. Johnston
Patricia A. Shea
Debra L. Smith
Les Wallerstein
Marion Lee Wasserman

MCFM PRESENTS ITS 8th ANNUAL

FAMILY MEDIATION INSTITUTE

AND ITS 5TH ANNUAL PRESENTATION OF THE

JOHN A. FISKE AWARD FOR EXCELLENCE IN MEDIATION

NOVEMBER 13, 2009
8:30 AM - 5:00 PM
Wellesley Community Center

SAVE THE DATE • REGISTER EARLY

MEDIATION PEER GROUP MEETINGS

Merrimack Valley Mediators Group: We are a group of family law mediators who have been meeting (almost) monthly since before the turn of the century! The criterion for membership is a desire to learn and share. Meetings are held at 8:15 AM on the last Tuesday of the month from January to June, and from September to November, at the office of Lynda Robbins, 11 Summer Street, Chelmsford. Please call Lynda at (978) 256-8178 or Karen Levitt at (978) 458-5550 for information and directions. All MCFM members are welcome.

Pioneer-Valley Mediators Group: This Western Mass group is newly organized and 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 information 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 <Kathleen@divmedgroup.com> who will coordinate this outreach, and put mediators in touch with like-minded mediators.

MCFM BROCHURES AVAILABLE!

Copies of MCFM's brochure are available for members. Brochure costs are as follows: Two for $1; 25 for $10; 60 for 20; 100 for $30; and 150 for $40. **A blank area on the back is provided for members to personalize their brochures, or to address for mailing.**

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

ANNOUNCEMENTS

* *

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

* *

MAKE YOUR VOICE HEARD & *WATCH SAUSAGE BEING MADE!*

The Boston Bar Association bill to change the divorce chapter 208 by allowing couples to agree to use the words "parenting plan" and "parental rights and responsibilities" in lieu of the more inflammatory terms "custody and visitation" is House #1599 and Senate #1662. Five years in the making, this short and simple bill has been endorsed by the MCFM. **The Judiciary Committee of the legislature has scheduled a hearing on the bill at 1:00 p.m. on Thursday, September 17 in the State House.** If any of you, dearly beloved, feel strongly about this improvement in the law, please come and show your support by your presence. Since a lot of bills will be heard that day, it is unlikely we will have much time to testify but the whole experience is interesting, and even enlightening for those who have never seen sausage being made.

BASIC MEDIATION 2009
PRESENTED BY THE MEDIATION & TRAINING COLLABORATIVE (TMTC)

Greenfield, MA – September 12, 17, 24 & October 1, 8, 17 – 34-hour training

This highly interactive, practice-based training is open to anyone who wishes to increase skills in helping others deal with conflict, whether through formal mediation or informal third-party intervention processes in other professional settings. TMTC is a court-approved mediation program, and these trainings meet SJC Rule 8 and Guidelines training requirements for those who wish to become court-qualified mediators. **For more details or brochure, contact Susan Hackney at mediation@communityaction.us or 413-774-7469 x16.**

ELDER DECISIONS / AGREEMENT RESOURCES, LLC PRESENTS CONFLICT RESOLUTION SKILLS TRAINING FOR ELDERCARE PROFESSIONALS, NURSES & SOCIAL WORKERS

Tuesday September 22nd & Saturday November 7th
9:00 AM - 3:00 PM

Learn: to facilitate multi-party decision-making, to work with clients, patients and families with strong emotions, and to build Conflict Resolution skills. Qualifies Attendees for: 5 hours of CCM continuing education credits 5 Social Work CEUs, 4.75 hours of Nursing Continuing Education Credits

Elder Decisions Training Team: Arline Kardasis, Rikk Larsen, Crystal Thorpe & Blair Trippe

Register for Conflict Resolution Skills Training
Cost: $195 six weeks in advance ($225 thereafter)
Includes lunch, snacks, and course materials.

Location: The Walker Center, 171 Grove Street, Newton, MA
Contacts: 617-621-7009, training@ElderDecisions.com , www.ElderDecisions.com

ELDER DECISIONS / AGREEMENT RESOURCES, LLC PRESENTS ELDER (ADULT FAMILY) MEDIATION TRAININGS FOR MEDIATORS

Tuesday and Wednesday: October 6 – 7, 8:30 AM - 4:30 PM
Optional Day 3: October 8, 9:00 AM -3:00 PM

Days 1 & 2: Elder mediation helps seniors and their adult children resolve conflicts around issues such as living arrangements, caregiving, financial planning, inheritance/estate disputes, medical decisions, family communication, driving, and guardianship.

Optional Advanced Seminar: An Expanded Seminar on Marketing Your Elder Mediation Practice and an Extended Multi-Party Role Play

Elder Decisions Training Team: Arline Kardasis, Rikk Larsen, Crystal Thorpe & Blair Trippe

Presentations by: Hon. John Maher (ret.) Former Admin. Judge NH Probate Courts; Elder Attorneys: Jeffrey Bloom & Harry Margolis; Emily B. Saltz, LICSW; Kate Granigan LICSW & Jennifer Decker

Register for Elder Mediation Training
Two Day Training: $525 six weeks in advance ($595 thereafter).
Post-Training Advanced Seminar: $200 six weeks in advance ($230 thereafter).
Includes lunches on all 3 days, snacks and course materials.

Location: The Walker Center, 171 Grove Street, Newton, MA
Contacts: 617-621-7009, training@ElderDecisions.com
www.ElderDecisions.com

DIVORCE MEDIATION TRAINING ASSOCIATES ("DMTA") PRESENTS A BASIC DIVORCE MEDIATION COURSE

October 14, 15, 16, 23 and 24, 2009

Divorce Mediation Training Associates, John A. Fiske and Diane Neumann, offer this forty hour training to equip people with basic knowledge and practice of divorce mediation skills and steps. Their approach is to explain these skills and then offer the trainees numerous opportunities through role play to help Bill and Sally Johnson get divorced. No one has succeeded yet. With now retired Philip D. Woodbury they trained approximately 1,000 people, including six of our currently sitting probate and family court judges, since 1988. They continue to offer a great start for those interested in learning more about divorce mediation.

For more information, or to register for one of our next trainings, go to www.dmtatraining.com or email Diane at dianeneumann@aol.com or John at jadamsfiske@yahoo.com.

BOSTON LAW COLLABORATIVE, LLC ("BLC") PRESENTS FAMILY MEDIATION TRAINING

November 9-13, 2009

BLC was recently picked by the ABA Section of Family Law to offer the Section's first Family Mediation Training, which will include the following trainers: David Hoffman, Esq. (lead trainer), Israela Brill-Cass, Esq., Nicole DiPentima, Susan Miller, CPA, CFP, CDFA, Rita Pollak, Esq., Vicki Shemin, Esq., LICSW, and Dr. Richard Wolman.

If you are interested in this 40-hour training, or know someone who might be; info is available at www.BostonLawCollaborative.com in the "What's New" section under "Calendar" (and also at http://tinyurl.com/dnefsz).

EMPLOYMENT OPPORTUNITY
STAFF MEDIATOR & ADMINISTRATOR

Diane Neumann & Associates; Divorce Mediation Services, Watertown, MA, has an opening for a full-time employment position as a Staff Mediator & Administrator. The hours include two evenings per week (with compensation time). Approximately 75% of time is divorce mediation, while the remaining 25% is administrative. The annual salary is low $40's. The mediator component includes mediation sessions and substantial document drafting involving financial and tax calculations. The 25% administrative component is assistance with office management. We seek a hard-working, diligent individual who is meticulous with drafting; someone able to work on his or her own, and yet is a team player.

Requirements: Licensed Massachusetts attorney, Divorce mediation experience, Divorce mediation training, Knowledge of divorce law, Excellent writing skills, Financial understanding – knowledge of divorce related finances a plus, Tax information - again, knowledge of divorce related taxes a plus, Understanding of interpersonal dynamics & child development.

Computer Requirements: Office Works, Internet & Problem solving.

Please email detailed cover letter and resume to:
dnapplicants@aol.com & please: no phone calls

FMQ CHANGES

For the first time the FMQ was delivered to you in an envelope due to a change in US postal rules that would have required FMQs to be sealed with three, non-perforated wafers. That change would have resulted in covers tearing when opened — making envelopes the preferred delivery format. With the back cover of the FMQ no longer providing a return mail address, it too was redesigned. All comments, compliments and criticisms are welcome at wallerstein@socialaw.com.

COMMUNITY DISPUTE SETTLEMENT CENTER

Building Bridges • People to People • Face to Face

60 Gore Street
Cambridge, MA 02141

Established in 1979, the CDSC is a private, not-for-profit mediation service dedicated to providing an alternative and affordable forum for resolving conflict. CDSC also provides training programs in mediation and conflict management to individuals and organizations. For more information please contact us at (617) 876-5376, or by email: cdscinfo@communitydispute.org, or at our web site: www.communitydispute.org.

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 Les Wallerstein (781) 862-1099
or email wallerstein@socialaw.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.

All members are listed online at MCFM's web site, and all listings are "linked" to a member's email. Annual membership dues are $90, or $50 for full-time students. Please direct all membership inquiries to **Ramona Goutiere at <masscouncil@mcfm.org>**.

REFFERAL DIRECTORY: Every MCFM member 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 Referral Directory is printed and mailed to all Massachusetts judges, and to each listed member. **The most current directory is always available online at www.mcfm.org.** The annual Referral Directory fee is $60. Please direct all referral directory inquiries to **Jerry Weinstein at <JWeinsteinDivorce@comcast.net>**.

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 both the online and the printed 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 $75. For more information contact **Lynn Cooper at <lynnkcooper@aol.com>**. For certification or re-certification applications contact **Ramona Goutiere at <masscouncil@mcfm.org>**.

DIRECTORATE

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EDITOR'S NOTICE

MCFM

Family Mediation Quarterly

Les Wallerstein, Editor
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wallerstein@socialaw.com

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

www.mcfm.org

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MCFM

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