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MCFM

Family Mediation Journal

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

EDITOR'S MESSAGE

Dear Mediators,

We are excited to release another edition of the FMJ (Family Mediation Journal) for you all during an exciting time for MCFM and mediation.

We have been overwhelmed and invigorated by the quality submissions the FMJ has received since our last publication. The substance and quality of content of submissions has been excellent and we appreciate our contributors' efforts in making this a great edition.

What has become so clear to us as we have put together this edition is what a wonderful community of mediators and professionals we have as a readership. As mediators we all have our toolboxes of ways to handle the different scenarios we face as couples and families come to us to help them resolve conflict. But a primary way we each become better and more effective in our practice is to support and educate each other; both those who have been doing mediation for years and those who are starting out. The authors of the articles in this edition are doing just that – giving us all different tools and resources to make us better mediators and professionals.

As a mediation community we are all coming together for our MCFM Annual Institute which is part of the APFM and ADFP's conferences in Boston this year. Our president, Vicki Shemin, was integral in this choice for MCFM to partner with APFM and ADFP for this event titled - The Next Generation of Innovation - Divorce Professionals Partnering for Excellence and has done a great job implementing her vision MCFM to come together with these groups for a conference. The list of speakers and workshops is comprehensive, and it is sure to be a great event. We encourage you as readers to use this event to inspire you to connect with other mediators and share your knowledge with us!

We want to continue to use the FMJ as a means to embrace our community of mediators through education and want you all to be a part of that! Moving forward, we are always open to new content and any feedback you may have so we invite you to send any and all blog or FMJ articles to us for publication at jhawthorne@skylarklaw.com and erin@ewpennocklaw.com.

Thank you!

Your Editors,

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CONTENTS

A MESSAGE FROM THE PRESIDENT

Vicki L. Shemin, J.D., LICSW, ACSW

When my term as President of MCFM began, I could not help but be struck by the fact that the term would span from 2018-2020.

2020!

Although my mother always worried how my college major in Classical and Renaissance studies would ever be relevant in my life's work, I was reminded that, in ancient Roman religion and myth, the god Janus was typically depicted as having two faces as he simultaneously looks forward to the future as well as reflectively to the past.

Hindsight alone, I reasoned, need not be 2020; foresight could be 2020 as well!

Much of 2018-2019 was devoted to getting down to brass tacks and reexamining for the first time in decades our essential mission and purpose as an organization. More specifically, the challenge was how to first identify and then operationalize our goals with an aim towards making MCFM the pre-eminent mediation organization in Massachusetts.

After many meetings and even more deliberations, here is the final result as crafted by the Board:

Mission: *Advancing mediation to transform the way families resolve conflict*

- Increasing public awareness of family mediation
- Providing mediation resources to the public
- Promoting high standards of professional practice
- Delivering premier professional development
- Advocating for the use of family mediation
- Forging alliances in the dispute resolution community

MCFM sets standards to guide the professional practice of family mediation in Massachusetts, and offers a certification program for qualified members. Our goal is to provide the citizens of the Commonwealth of Massachusetts with information and resources about divorce and family mediation. We

also maintain a referral directory so that people seeking services can find family mediators when issues arise.

These goals shall be implemented by providing excellent advanced trainings; mentorship/peer mediation; broadening our diversity outreach and focus; serving the professional community and public; increasing integration and outreach throughout the Commonwealth; and increasing membership benefits and encouraging membership certification.

An exciting and unprecedented opportunity arose when we realized that APFM/ADFP were planning to have their next national conference in Boston in November, 2019. We reached out to those two national organizations to partner for the makings of a **BLOCKBUSTER** event! https://mcfm.org/blog/content/twenty-mcfm-members-presenting-national-mediation-conference-boston-nov-7-9-2019 Proudly, we announce that 20 of our MCFM members will be presenting at this national conference entitled *The Next Generation of Innovation: Divorce Professionals Partnering for Excellence.* MCFM is a natural fit with these like-minded organizations: the synergy that will be generated will launch us and leave us well-positioned to meet our lofty, but attainable, goals as we close out 2019 and enter into the 2020s.

Prognostically, I think in May, 2020, as we head into Board and Executive Committee elections, Janus will be very pleased with where our wonderful organization has been - - and where we are headed.

Vicki L. Shemin

Vicki L. Shemin, J.D., LICSW, ACSW (family law attorney and clinical social worker) is a partner at Fields and Dennis, LLP, in Wellesley, Massachusetts. She specializes in all areas of alternative dispute resolution - including mediation, collaborative law and parenting coordination. Vicki is also President of MCFM.

A PARTNERSHIP FOR PARENTING

By: Honorable John D. Casey. Chief Justice.
Probate and Family Court

The mission of the Probate and Family Court in Massachusetts is to "deliver timely justice to the public by providing equal access to a fair, equitable and efficient forum to resolve family and probate legal matters and to assist and protect all individuals, families and children in an impartial and respectful manner." Since the economic downturn of 2008-2009, the ability of the Court to accomplish this mission has been severely strained and the workload of the judges of the Probate and Family Court in Massachusetts has outpaced accompanying resources.

Domestic relations litigation and probate litigation are unique in that each case involves a family situation or dynamic and has the potential to span years. In most cases, the parties must continue to interact with each other during and after difficult litigation. For example, child support cases involving parenting plans are often highly contested and time-consuming to resolve.The traditional adversarial process can escalate conflict, thereby impeding effective co-parenting. The Probate and Family Court has worked to achieve not only the expeditious resolution of cases, but also the diminishment of conflict between litigants, such as divorcing parents, who will have continuing relationships.

In Massachusetts, the Department of Revenue (DOR) is the single state agency responsible for the administration of the child support enforcement program pursuant to G. L. c. 119A and Title IV, Part D of the Social Security Act. The Child Support Enforcement Division of DOR provides services to individuals and families, whether or not they receive public assistance, to establish paternity and to establish, enforce, and modify child support orders including orders for medical support. For many years, the Probate and Family Court has scheduled "Block Days" which are reserved for cases scheduled and processed by DOR to facilitate large numbers of cases being heard within the federally-mandated time standards for child support case processing. Block Day cases filed by DOR exclusively focus on paternity and child support issues; because of federal parameters pertaining to DOR's case processing requirements, these cases do not address visitation, parenting plans, or custody issues. Historically, litigants have been told they would need to file a separate action and return for a hearing on the parenting plan on a "non-Block" day.

In an effort to increase expeditious resolution and the diminishment of conflict, we established an Onsite Block Day Mediation Pilot program at the Essex and Middlesex Divisions of the Probate and Family Court in March 2019. A primary goal of this pilot is to expedite the disposition of cases by helping parties resolve parenting and child-related matters on Block Days in addition to child support, thereby eliminating the need to file a separate action and the attendant number of necessary court appearances. Onsite mediation services are now available to resolve child access, visitation, and parenting issues for parties present in court on Block Days and referred by DOR attorneys or court personnel.

Participation in the mediation is voluntary; even if both parties agree to try mediation, either party can elect to opt out at any

point during the discussions with the mediator.

The pilot is designed to have cases referred from DOR attorneys on Block Days and potentially by judges from pretrial sessions. Typically, DOR attorneys conference cases on Block Days. During this pilot, DOR attorneys have introduced mediation to parties to help resolve non-child support, parenting and child-related issues as a free, voluntary, and confidential option. Parties may learn of the opportunity to mediate from DOR attorneys during case conferencing, during Block Day check-ins with DOR staff or through judicial referrals of both Block and "non-Block" Day cases.

The services are provided without fee to the parties.The types of cases which have been referred to the onsite mediators included Paternity Establishment, Child Support Establishment, Child Support Modification, Child Support Enforcement/ Contempt, Divorce, and Custody.

This pilot is administered by the state office known as the Massachusetts Office of Public Collaboration (MOPC) in partnership with three approved court-connected providers: Community Dispute Settlement Center; MetroWest Mediation Services; and North Shore Community Mediation Center. MOPC is part of the University of Massachusetts Boston and has provided administration and evaluation of services including orientation, monitoring, data collection, and reporting.The direct delivery of onsite dispute resolution services, including screening and mediation, has been provided by mediators affiliated with the approved court-connected providers which are subcontracting with MOPC.

In this pilot, these mediators perform onsite screening and assess cases referred to mediation on DOR Block Days to ensure appropriateness for mediation. The screening includes consideration of whether the parties are willing and able to participate and commit to carrying out any provisions they voluntarily agree upon.

If the onsite mediation results in a mediated agreement, the mediators draft the agreement and assist the parties in returning to the courtroom so that the judge may conference the case and approve the mediated agreement for incorporation into a court order. Even if the parties do not consent to mediation, or participate in mediation without reaching agreement, the parties involved are now more knowledgeable about their dispute resolution options should they find themselves needing services in the future.

The traditional adversarial process can escalate conflict, thereby impeding effective co-parenting.

When litigants choose to mediate, they hear a mediator's opening, explaining the neutrality, voluntariness, and confidentiality of the process prior to starting the mediation.The mediators take care to ensure that the parties understand that they are free to leave at any time after the screening, regardless of whether the referral came from the DOR attorney or even the judge hearing their case.

Because this is a pilot program, there were many stated goals when the program began in March 2019, from understanding the logistics to reducing the need for future court involvement in family matters. The stated goal of case reduction pertains not only to the number of filed cases requesting parenting time but also to the need for ongoing DOR involvement.

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It has been recognized that a non-custodial parent who spends time with his/her child pursuant to a parenting plan is more likely to comply with the child support order. Therefore, one goal of this program is to reduce parenting conflict and increase communication between co-parents thereby also reducing the need for DOR to bring Contempt actions against child support payors.

It has been recognized that a non-custodial parent who spends time with his/her child pursuant to a parenting plan is more likely to comply with the child support order.

Initial Findings

After the first few months of the program, it is clear that the goals of establishing the program infrastructure, testing onsite logistics, managing mediation referrals and enhancing the awareness and understanding of available services have been achieved. Although some of the other stated goals are more difficult to measure, the participants in this program provide feedback at the end of the mediation sessions via evaluation forms, which offer some insight into whether or not the program is achieving its larger goals of helping to strengthen parent-child relationships and increase communication between co-parents.

After reviewing the data from the first three months of the program, MOPC reported that screening rates, mediation rates and settlement rates were all found to be at levels expected for successful court-connected ADR programming. During this period, onsite mediation was available on twenty-four (24) Block Days and seventy-five (75) cases were referred. Of those, fifty-one (51) cases were screened resulting in a *68% screening rate*. A total of forty-one (41) cases were mediated *(80% mediation rate)* and thirty-six (36) mediated agreements were achieved *(88% settlement rate)*.The average duration of mediation sessions, including screening, was 1.2 hours.

During this period, sixty-nine (69) parties, representing thirty-eight (38) cases, completed written evaluation forms; a large majority (84%) reported that they had received clear information about what to expect in mediation and the mediation process. Almost all of the parties *(97%)* indicated satisfaction with the mediation services. The parties reported that the mediators helped them in the following ways: "listened well to my needs and concerns" (73%); "allowed me to make my own choices" (70%); "helped identify and clarify relevant issues" (58%); "helped write up the agreement" (67%); and "helped us generate and consider options" (59%). Parties reported that mediation helped them achieve the following: better communication with other party (54%); improved understanding of the issues (52%); reduced conflict with the other party (43%); improved skills in resolving conflict (26%) and reduced court involvement (36%).

Further, a large majority (73%) of parties reported that they fully resolved or made substantial progress in resolving the child-related issues discussed during mediation, including custody of a child, financial issues, parenting time, assignment of parental responsibilities and development of parenting plans.

The effectiveness of the design and the collaborative effort among the partnering organizations enabled us to make notable progress toward desired outcomes. A

total of 150 parties with cases pending in the Probate and Family Court became aware of the availability of free mediation services.Thirty-six (36) parenting disputes were resolved in a non-adversarial manner and cases moved off the court docket expeditiously.

Administrative innovations were achieved also. Systems for tracking referrals from DOR attorneys and judges and for collecting evaluation data were established.The program design for future replication and expansion of onsite Block Day mediation to other court divisions was developed and refined.

Next steps

We have sought and obtained additional funding in order to continue providing services in the Essex and Middlesex Divisions in FY20 and expanded the Onsite Block Day Mediation Pilot to include the Suffolk Division in FY20. Additional locations are being considered for further expansion.

Providing additional ADR services in the Probate and Family Court has a far-reaching effect for the Court and the litigants. Having the ability to refer cases involving parenting plans to ADR frees up judges' time for complex domestic relations matters. ADR also decreases the number of days a litigant needs to appear in court to deal with support and parenting time issues. With additional ADR services in place, court staff will continue to become better acquainted with ADR options and gain better understanding about the ways ADR will align with our case management initiatives. And perhaps most importantly, children will continue to benefit from decreased exposure to conflict because their parents have reached agreements about parenting plans with the assistance of the onsite mediators.

The individuals we serve in the Probate and Family Court often face difficult circumstances which could limit their access to justice. They may encounter challenges involving transportation, child care, language barriers or employment issues. Allowing parties to resolve all issues in a single court visit is a significant change from established practice. We look forward to continuing to address the important issues that face the Probate and Family Court through partnerships with organizations whose goals align with reducing conflict through ADR.

On July 16, 2018, **Hon. John D. Casey** was appointed as the Chief Justice of the Probate and Family Court Department. Previously, he was an Associate Justice and then First Justice of the Norfolk Probate and Family Court and was also an Associate Justice of the Essex Probate and Family Court.

He served as a member of the Commission on Judicial Conduct, 2025 Transition Leadership Committee, mentored new judges and served as a panelist on numerous events for the MBA, BBA, MCLE and local bar associations.

For 23 years, he was a partner in the Attleboro Law Firm of Casey and Thompson, P.C. where he specialized in family law and criminal defense. He received his undergraduate degree from Bates College and his J.D. from Suffolk University Law School in 1982.

KNOWING WHY WE DO WHAT WE DO: THE PATH TO EXCELLENCE IN PRACTICE

By: Michael Lang, Ellen Waldorf, Kristyn Carmichael, Mark B. Baer and Lori Lustberg

To act is hard. But the hardest thing ...is to act in accordance with your thinking. Goethe

In this article, we examine a situation common to family mediation from four perspectives in order to apply the notion of acting "in accordance with your thinking" to our work as mediators.

An essential element of our initial training as mediators—and subsequently at professional conferences and other educational programs—is learning and becoming competent at using intervention techniques and strategies such as managing communications through asking questions or summarizing or reframing; utilizing brainstorming, interest-based bargaining and other problem-solving approaches; employing strategies to address impasses—to name only a few. The toolbox of an experienced mediator brims over with an array of such techniques and strategies.

Applying these methods—no matter how capably and efficiently—is not enough. Competence requires knowing why we are doing what we do—acting in accordance with our thinking. Competence requires knowing what technique or strategy to employ, for what purpose and at what moment. What guides our decisions and influences our actions? We believe theory—what we believe—is that factor.

He who loves practice without theory is like the sailor who boards a ship without a rudder and compass and never knows where he may cast. Leonardo da Vinci

Theory explains phenomena and gives meaning to events, words, patterns and behaviors. For us, theory refers to the beliefs, principles, biases, models, philosophies and standards, that concentrates perceptions, helps explain experiences and influences decision-making. In the four examples presented, we describe the impact of theory on practice decisions—it's not merely what we would do, but why we would act. We want to make the case that good practice relies on good thinking, that knowing why we do what we do is as critical to our success as the skillful application of mediator techniques.

Some may be skeptical about the significance of the connection between theory and practice and dubious of its utility. Uncertainty about the link between theory and practice is understandable because our profession is based on accomplishing practical goals and because much of our focus is on the acquisition and mastery of essential skills.

Like many practitioners when we are confronted with a proposition such as theory shapes practice, we want to know, so what? Why is theory important to my practice of mediation? How will the notion about the link between belief and action affect the quality of our practices? How will this make a difference to our clients?

To answer these questions, we begin with a story, familiar to family mediators who almost certainly have addressed the issues, in a variety of forms, with varying dynamics and complications. We are using this situation to tell our own stories, to describe how we think about our work and the beliefs that shape our decisions, and to explain how those beliefs influence our practice decisions.

> Alex and Dana built a business together during the course of their marriage. Alex engaged in infidelity during the course of their marriage and even hired this most recent "friend" to do work for the business. That business is their most significant asset and decisions about the business is their principal financial issue. They are considering whether to continue the business as co-owners or whether Alex will buy out Dana's interest. Dana is not interested in purchasing Alex's share and it is unlikely they could find a ready buyer for the company.
>
> Dana and Alex agreed to focus on this topic at their next mediation session. Knowing this, Alex asked their longtime accountant to provide a business valuation. Without commenting on the valuation report, Dana says she "is on the fence."
>
> "We put so much into the company, struggled to find success, and now I'm not sure I can let it go. Besides, what will I do? I haven't thought about that."
>
> Impatient and frustrated, Alex snaps, "How can you possibly imagine us running a business together after the divorce. It's obvious one of us needs to buy out the other. The only issues for us are: who buys and on what terms."

Ellen Waldorf:

The tension between Alex and Dana is palpable by the end of their brief interchange. Alex has arrived at the session prepared to proceed with Alex's purchase of Dana's interest in the business, and Dana's fear about the future, which manifests as rethinking the buyout, has frustrated Alex.

The heightened emotion is the focus of my first mediation intervention. Our innate fight/flight/freeze response when confronted by danger clouds our ability to make thoughtful reasoned decisions. Though Alex and Dana are likely not so distressed that they are gripped by this basic survival instinct, they each are agitated, and that agitation regardless of the intensity has its effect on their minds and bodies. Unless Alex and Dana can re-center themselves, that agitation can preclude them from effectively participating in the mediation session. So,

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my first task as a mediator is to calm Alex and Dana so they can discuss the issues at hand.

I also need to attend to my own reaction to the tension in the room. Betsy Ross, a Massachusetts divorce mediator whose profession of origin is psychotherapy, talks about the contagiousness of intense emotion. When clients like Alex and Dana express their profound fears or unexpected frustrations or reveal hidden vulnerabilities, their emotions can throw me off my game. As flight attendants instruct us at the beginning of each flight, we need to attach our own oxygen mask before helping others. I cannot help clients re-center if I am captive to my own intense emotions.

When I become infected with clients' intense emotions, I feel a tightening in my stomach and my upper body. This is the alarm that signals the need for action. I resort to the basic mindfulness techniques of deep breaths and relaxing tense muscles to calm and re-orient myself. Then I turn my attention to the clients.

Intense emotion is not a surprise in divorce mediation. However, when that emotion pops up can be a surprise. Having a set of tools at the ready allows me to ride the waves of emotion as they come and mediate effectively.

Mirroring, which causes Alex's and Dana's stress to affect me, can also cause my emotion to affect Alex and Dana. So, I steady myself and connect first with body language. I may lean in alternatively to each client, look back and forth between Alex and Dana to catch their eyes, gently lay an outstretched hand on the table in the direction of each client, and through my facial expressions reflect my empathy to each of them. When I have their attention (or if I still need to do that), I will talk in a slow, soft, and steady voice.

I want to uncover the interests that drive Alex and Dana rather than react to my assumptions about their interests. In my experience, questioning clients about their interests has the beneficial side effects of redirecting clients and lessening the emotion in the room. So, in my first comments, I will acknowledge the charged atmosphere in the room and ask Alex and Dana for permission to explore with each client sequentially (and in any order) what interests underlie Dana's worry and Alex's frustration. While I am looking back and forth between Alex and Dana, I might say something like, "There is a lot to unpack here. I would like to ask each of you some questions to understand what is going on for each of you. Who would like to go first?" Assuming Alex and Dana accept my suggestion, i.e., one or both do not protest (in which case I need to pay attention to the balking spouse), I would check in visually or verbally with both spouses to see if it is okay to begin with the person who volunteers to begin. Then I would start my open-ended questions.

My questioning would start on a broad level, for example, "What are your thoughts

about the business?" As I listen, I will continue to ask open-ended questions to uncover that client's interests and the topic(s) that client wants to explore in the session while continually checking in with the other spouse visually (and, if necessary, a quick, "I want to hear from you, too. Is it okay if I finish my questions with Alex/Dana?"). I will ask the same broad question with the second spouse and continue with the open-ended questions to reveal that spouse's interests and agenda items. Alex's and Dana's answers will guide the direction of the remainder of the session.

Intense emotion is not a surprise in divorce mediation. However, when that emotion pops up can be a surprise. Having a set of tools at the ready allows me to ride the waves of emotion as they come and mediate effectively.

Kristyn Carmichael:

As a mediator, I want to learn about them and their dispute, then generate a working hypothesis that helps set a course for our conversation by providing a framework for developing an initial strategy. As we proceed, I test my assumptions in order to find a path most helpful to them.

In doing this, my role is to help them find their own way and not to point them in a certain direction.

I don't move quickly into a discussion of the business. Instead, I begin by wondering about the nature of their relationship, the source and history of their differences, and how they interact. For example, I am curious about the possible influence of blame; the need for acknowledgement and perhaps an apology; lack of trust; grief for the loss of their marriage and the business they created; or resentment at needing to decide the future of their business (including the "other person").

Questions help me chart a course for the mediation:

- What are your concerns about the conversation and the choices ahead?
- Where do you each think your biggest differences lie?
- Are there issues on which you are in agreement?

Once I have a clearer sense of them, including their readiness to proceed and their style of speaking with one another, it's possible to address their business itself. I would ask questions such as:

- What has the business meant to you?
- What are the options for your business?
- Is it important to establish a value for your business; if so, what method would you propose?
- Do you believe you have the information you need to discuss the future of the business and its value?

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I can't assume they will want to divide the business; they may prefer to continue as co-owners—even though this might be troublesome -- or sell to a third party. Choosing a path—sell, divide or continue—is the first decision they will face. Once they indicate a direction, then they can address possible differences in establishing the value.

Although my past experiences may be a guide in deciding where to plant our feet, I cannot be so confident in my assumptions that I simply jump, leading them into a chasm. Instead, I reach out a toe and feel for the next piece of solid ground. I initiate this "toe tap" by asking:

- From each of your perspectives, what are your thoughts about running the business after the divorce?
- Could you see moving forward as co-owners? How would that work? What are the advantages? Are there any pitfalls?
- What information would you each need to make the most informed decision about your business?

I am curious to learn from them. The first option—Dana selling her interest to Alex—may be the best approach. By asking questions, I encourage them to explore all options, even if they return to the original proposal. Perhaps Dana will realize she does not want the pressure of the business as a sole or co-owner. Or, she may come to see that she is holding on to the business because she is mourning the loss of her relationship with Alex. Alex might recognize that Dana's confidence in the business valuation is crucial and offer to use a mutually-acceptable business evaluator.

A mediator once told me that mediation is a path the parties travel, with obstacles dispersed throughout, and in which they are often in complete darkness. The couple determines the destination and the objective of their journey. My task is to help light their path, helping navigate the obstacles to find a lane allowing them to reach their destination. My approach and my actions are designed with this notion in mind.

Each response allows me to determine if the process is on solid footing, placing a toe at the edge of a cliff, or headed toward a hazard. I am learning how to help them take the next steps.

Toe-step by toe-step, question by question, I proceed. I test the path ahead in the continuing effort to help them along their journey, avoiding hazards, and hopefully reaching their preferred destination. And providing a little light and hope along the way.

Mark Baer:

The approach I tend to take is to deal with people's emotions before delving into the content. Lessons from neuroscience suggest that people are not as logical and rational as we like to believe and decisions tend to be based upon feelings

and emotions. Yet, people make smarter decisions when their emotions do not get the best of them. That being said, it is well recognized in psychological circles that the stress of divorce itself is monumental, often reaching 9 out of 10 magnitude on the Subjective Units of Distress Scale. Only stress resulting from the death of a child or spouse to whom they were happily married rate higher on the scale. Meanwhile, for decades, studies have found that IQ performance levels can decrease by 20 percent or as much as 30 points during a heightened state of emotion, which can significantly impair decision-making abilities until approximately 1 ½ years after the divorce has been finalized.

Affect labeling involves listening for and focusing on the person's emotions while ignoring the content of their words and guessing at and reflecting back their emotions in "You-Statements.

Because I want my clients to make voluntary and informed decisions with the least amount of cognitive impairment possible, I regularly work with them to reduce their stress by employing emotional attunement, validation, and empathy. In this regard, empathy means understanding a person's perspective and the underlying reasons behind it, including their feelings and emotions. Through that understanding, I am able also able to validate their perspective, rationale, and the underlying emotions and feelings. Among other things, this is inherently calming, which is why Dan Siegel, clinical professor of psychiatry at the UCLA School of Medicine and Executive Director of the Mindsight Institute coined the phrase "Name it to tame it." In addition, by assisting people to recognize the feelings and emotions that are driving their decisions, I help them make smarter decisions. After all, while IQ is related to people's ability to think critically, emotional intelligence helps to reduce or eliminate any impairment in that regard. Examples of when the clients' emotions may require attention are expressions of anger, an apparent fight, flight or freeze response, internally driven uncertainty, and binary thinking,

One technique I regularly use to reactivate the frontal cortex of my clients' brains where rational thought occurs is known as affect labeling. Affect labeling involves listening for and focusing on the person's emotions while ignoring the content of their words and guessing at and reflecting back their emotions in "You-Statements." Even if I am incorrect in whole or in part, the fact that I am listening to understand and trying to assess how they feel makes people feel more connected and less worried. That being said, my thoughts on the hypothetical are as follows:

Businesses that spouses establish and build together during marriage have been compared to having a child because both result from a labor of love and common effort.

I am also aware they both may be grieving the loss of their marriage; and it's

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possible each is at a different stage of the grieving process. Each expresses emotional reasons for their positions: Dana "is on the fence" as to whether she wants Alex to buy out her interest in the business or continue co-owing it; Alex has demonstrated binary thinking with his statement regarding what he perceives as an obvious either/or choice;Alex expressed anger, and emotionally invalidated Dana by ignoring her feelings and emotions, judging her and essentially saying she is stupid for imagining that they could co-own the business after the divorce.

My point of view—my theories and approach to helping others resolve conflict—has been informed by years of training and experience as both a mediator and a financial professional. Perhaps more importantly, however, it has been informed by my personal experience of marriage, divorce and life beyond as a co-parent.

I would ask the parties if they would allow me to translate what I heard and understood from their most recent exchange.

If they agreed, I would say to Dana:
"You are uncertain, anxious, grieved, devastated, heartbroken, and experiencing a sense of unfairness and injustice at the thought of letting go of the company into which you put so much time and effort establishing and building. You are confused, anxious, frightened, and feel vulnerable about what you will do if you sell your interest in the company to Alex and how you will support yourself. You think it is feasible for you and Alex to continue to co-own the business together after your divorce and you feel judged, disrespected, unheard, unsupported, abandoned and attacked by Alex because he is not hearing and understanding what you are saying."

I would then say to Alex:
"You feel helpless, hopeless and paralyzed at the thought of the two of you running a business together after the divorce. It does not seem feasible to you and you are angry, frustrated, impatient, and confused that Dana is "on the fence" over something that seems so obvious to you. You are therefore critical and mistrustful of Dana's motives."

To both, I would say:
"That is what I heard and understood from your exchange," and I would leave it for the two of them to respond.

Lori Lustberg:

My point of view—my theories and approach to helping others resolve conflict—has been informed by years of training and experience as both a

mediator and a financial professional. Perhaps more importantly, however, it has been informed by my personal experience of marriage, divorce and life beyond as a co-parent. Nearly a decade ago, I had been a stay-at-home mom for ten years when my then-husband told me he wanted a divorce.

I am also inclined to question their assumptions, particularly whether the seemingly black-and-white issue they have come to discuss has some gray areas.

For me, the process was, and at times still is, fertile ground for bringing to the fore all of the "negative" feelings I had been conditioned to avoid, namely fear, anger and pain. As long-buried wounds emerged, long-cultivated coping mechanisms no longer helped. At the same time, I was being called upon to make decisions that would have a life-long impact on me and my son. Looking back, I realize that the most important decision I made was the simplest and yet the most difficult to execute. The turning point came one day as I was complaining to my therapist about something my husband had done. My therapist stopped me mid-complaint and asked how I had responded. I told him that I had lashed out in retaliation. His response resonated so deeply with me, I doubt I will ever forget his words: "Lori, he may be acting like an %*$*#!%, but that doesn't excuse you from being a *$!#%!." From that point on, I started becoming aware of—and taking responsibility for—my reactions. I began to view the situation as an opportunity for growth and learning.

At times it was so difficult, it felt like I was moving against the pull of gravity. I followed the tenet of taking responsibility for my actions as though it were a lantern lighting each step that eventually led me out of a dark cave. The learnings that have resulted have helped shape the beliefs that underlie my theoretical approach to mediation:

- Whatever situation you find yourself in, someone has gone through, or is going through, something similar.
- However unique the facts of each case, the themes that underlie interpersonal conflict are universal.
- Everyone who wishes to can come through the cave and emerge on the other side. How quickly and elegantly we do so depends upon our willingness to take responsibility for our own life, lay down the sword of blame, and let go of the tug-of-war rope.
- We each have the power to shape our own destiny.

When I first learn the facts of Dana and Alex's situation, my mind immediately tries to make sense of it by relating it to my personal experience, making assumptions, jumping to conclusions, forming judgments, and devising solutions. If I am not clear and honest with myself, if I am not aware of and in control of this part of my consciousness, my presence in the mediation room

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could end up being more harmful than helpful; the mediation becoming more about the mediator than about the parties. Therefore, my work begins before they walk into my office, as I examine the narrative my mind has created:

- Alex initiated the divorce and has moved on
- Alex knows what he wants, is moving quickly to get it and sees Dana's hesitation as an impediment to be overcome
- Alex needs to give Dana time to adjust
- Dana feels betrayed (possibly victimized) by Alex and does not trust Alex
- Dana is being pressured into making a decision prematurely
- Dana needs more information before making a decision

Stepping back and examining my narrative, I notice that I am sympathizing/identifying with Dana. It becomes imperative for me to check my assumptions against what Alex and Dana are saying, how they are responding to each other and to me during the mediation. I need to remain as mindful and impartial as possible.

I am also inclined to question their assumptions, particularly whether the seemingly black-and-white issue they have come to discuss has some gray areas. For example, is there really a need to make a final decision about the business before they are divorced? Where is that urgency coming from? What might happen if they resolved their other issues and left this one undecided for now? Is it possible that the issue is symptomatic of a deeper problem, like a rash that points to an underlying allergy? If they continue co-ownership of the business, simply making that decision won't necessarily mean a successful relationship as co-owners.

Other goals include:

- Facilitate a face-to-face conversation (if possible) between the parties.
- Practice and model reflective listening.
- Help them notice their reactivity and their communication patterns.
- Explore areas of commonality that may be overshadowed by the conflict.

Then again, my approach, my goals, may not be in alignment with theirs. Reflection will only get me so far. The only way to test my theories is by putting them into practice and mindfully observing what happens, prepared to adjust as needed.

CONCLUSION

To be clear, these examples are offered to illustrate how what we think influences what we do—the essential link between theory and practice. None of the pieces is intended to depict an ideal mediation intervention. None is presented as a prescription for helping parties address this type of conflict. Each of the four interventions is unique because each author's thinking is unique.

Competent practice requires the skillful use of a mediator's tools. Yet, skill alone is not sufficient. To be truly excellent, practitioners must be aware of their beliefs then act in "accordance with their thinking."

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USING NEUROSCIENCE TO UNDERSTAND STRESS AND IMPROVE MEDIATION

By Jill S. Tanz

People involved in conflict generally, and in mediation specifically, encounter many events that initiate the physiologic stress response. What is this response and what triggers it? How does the stress response impact judgment, decision-making, and memory? What can mediators do to minimize the deleterious effects of the stress response? Learning the answers to these questions can help to make a more effective mediator.

What is the physiologic stress response?

The physiologic stress response is a complex and nuanced response that affects all parts of the body and brain and is driven by various hormones.[1] Two stress hormones triggered by conflict are adrenaline and cortisol. We are aware of the adrenaline response because we can feel the increase in our heart rate and the sweaty palms that accompany the response. Cortisol is subtler, and we are usually unaware of it and its impact on our judgment.

Adrenaline ramps up very quickly and diminishes quickly, but cortisol uses a different, slower pathway in the body – through the blood stream rather than through the nervous system. That means that even when cortisol begins to drop after a stress trigger, it can linger for two hours or more. When individuals are subject to multiple stress triggers in a short time, the cortisol level builds on itself, getting higher and higher.

The stress response evolved 600 million years ago in fish to help organisms deal with threats. It prepares the body to fight, take flight, or freeze. Moderate levels of cortisol help people focus and sharpen physical and mental abilities. But when the cortisol level builds up beyond this positive (eustress) stage, and begins to have negative impacts on mind and body (distress), problems arise.

What are stress triggers in conflict situations?

The stress response is triggered by threats of physical danger, from seeing the proverbial saber-toothed tiger, to seeing a fast-moving car approaching as you cross the street. In addition, social threats trigger the response, such as feeling insecure in an unfamiliar setting, feeling subordinate to more experienced opponents, fearing a loss of status, and feeling disrespected. High emotions also trigger the stress response.

Mediation creates many stress triggers. Participants may feel unprepared or less competent than their opponent, and this will trigger stress. Just seeing a person with whom there is a history of conflict can be a trigger. Thinking about a previous dispute, confrontation, or compromise is also a trigger. Simply being in an unfamiliar setting can trigger stress, as does uncertainty about an unfamiliar process such as mediation.

How do high levels of cortisol interfere with mediation?

One's sensitivity to subtly angry faces and their perceived threat increases when the stress response is triggered repeatedly, causing cortisol levels to rise. People with elevated cortisol evaluate their opponents as being angrier and more threatening than they appear to a less stressed individual. Men with high cortisol levels often become more fixed in their positions and less likely to be able to see things from someone else's perspective. These changes occur basically without awareness that they are happening.

In mediation, a stressed party or attorney will be more likely to misinterpret the intentions of the other party and perceive more hostility than is actually present. They may find it difficult to clearly see the interests of the other party. A more stressed party may overreact to an offer that she perceives is too low (or a demand perceived as too high) and this will interfere with effective negotiation.

Stressed parties may have biased memories about events that started the conflict. High cortisol levels at the start of a mediation may alter the memories of information, emotions, and attitudes experienced during the mediation when they are recalled later in the day.

What can mediators do to decrease the impact of the stress response?[2]

1. *Start mediations with a short caucus session with each party immediately before joint session.* Starting with "Early Caucus" helps minimize stress on the parties and maximize understanding by the mediator of the parties' current emotional states. Short 10 to 15- minute meetings with each party and their counsel immediately before joint sessiongives the mediator an opportunity to assess the emotional state of the parties and start to deal with or prepare for strong emotional outbursts. Early Caucus also gives parties the opportunity to become familiar with their surroundings and the mediator. Parties can ask questions about the mediation process giving them a stronger sense of control. It also gives the mediator an opportunity to start to build trust and rapport with the parties and establish an atmosphere of security and calm. Each of these measures can reduce the stress experienced by parties.

Mediators have traditionally been taught to acknowledge emotions, but it is equally important to acknowledge stress.

2. *Acknowledge and normalize stress as well as emotions.* Mediators have traditionally been taught to acknowledge emotions, but it is equally important to acknowledge stress. Mediation parties are in a situation where many stress triggers will be present, from coming to an unfamiliar location, to meeting the mediator for the first time, to anticipating an encounter with their adversary. Mediators can suggest methods to cope with stress like taking a few deep breaths, calling for a break, or journaling during caucuses with the other party.

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3. *Encourage parties to name their own emotions rather than labeling them.* Mediation training often suggests mediators acknowledge emotions as a way to reduce high emotions. Studies show that strong emotions are most effectively diminished when the party names the emotion rather than when a third party labels them. Instead of saying, "it sounds like this is making you angry," ask, "What emotion are you feeling right now?"

4. *Make sure parties have sufficient time to recover from strong emotions before engaging in decision-making activities.* When parties have been subject to repeated stressors, they will need time for stress hormones to diminish before they can effectively make decisions. Moderate stress levels help parties focus their attention, but too much stress makes it difficult to effectively hear various viewpoints, reassess options, and make decisions. Mediators should use time in caucus and breaks to make sure stressed parties have at least 30 minutes to recover before moving into decision-making activities.

5. *Minimize venting as it serves to increase stress.* Some mediation literature suggests that allowing parties to vent can release pent up emotion and allow parties to focus on solutions. This is not true. Venting strong emotions is a powerful trigger of the stress response and can lead to high cortisol levels, making settlement less likely. Although venting can sometimes reveal underlying interests, it is more likely to provoke a defensive response in the opposing side and lead to higher stress levels for all parties involved. Mediators should not encourage venting, but when a party displays strong emotions and is determined to speak their mind it is best that it be done in a caucus with the mediator before joint session. This will give the mediator insight into the emotional level of the party, provide an opportunity for the mediator to counteract the emotion, and give the party time to recover from high stress hormone levels before getting to the decision-making portion of the process.

6. *Summarize to help improve the accuracy of memories.* Mediator instructions, as well as statements made by other parties or attorneys in early stages of mediation, may be recalled inaccurately later in the process by parties with high stress levels. Mediators should be prepared to summarize what was said earlier in the day to help stressed parties understand where the opposing party stands and to make sure parties have accurate information when weighing alternatives in the decision-making phase of the mediation.

Jill S. Tanz is a graduate of the University of Chicago Law School (JD in 1977) with years of experience as a mediator, law professor and trainer. She has lectured extensively on mediation and neuroscience and incorporates best practices developed from this expertise into her mediation practice. She has mediated more than 500 cases in real estate, condominium, partnership, probate, family, and contract disputes. Contact Jill at jtanz@chicagomediation.com.

1 *See* Jill S. Tanz and Martha K. McClintock, *The Physiologic Stress Response During Mediation*, 32 OHIO ST. J. DISP. RESOL. 29 (2017).2 *See further discussion in* Jill S. Tanz, (2018) *Mediation Myth Busters*. Available at https://chicagomediationservices.com/blog/[Accessed 21 Sept. 2018]

MEDIATING A GREY DIVORCE AND SOCIAL SECURITY

Renee W. Senes, CDFA

Mediating a grey divorce presents a number of unique challenges. As with younger couples there may be a wide range of financial acumen and employment history: he is the higher wage earner, she is the higher wage earner, she has not worked for many years, both earn relatively equal amounts. However, more often than not, my grey divorce clients are the more gender stereotypical – he is the higher wage earner while she has either not worked since the children were born or, once the children graduated, went back to work in a lower paying job.

The impact of this on their retirement is significant. While retirement accounts can be equalized in a divorce, social security is not an asset that the divorce court can divide. Mediation opens the opportunity to take this discrepancy into consideration and work with your clients on some possible solutions.

SOCIAL SECURITY CLAIMING RULES:

The rules about benefits are relevant to post-divorce life with older clients since social security often forms the foundation of a retirement plan.

Per the Social Security Administration, if you are divorced, and your marriage lasted 10 years or longer, you can receive benefits on your ex-spouse's record (even if he or she has remarried) if:

- You are unmarried;
- You are age 62 or older;
- Your ex-spouse is entitled to Social Security and
- The benefit you are entitled to receive based on your own work is less than the benefit you would receive based on your ex-spouse's work

Let's assume the following hypotheti cal scenario for your clients:

1. Husband is entitled to receive 34,332 at age 66 - that by the way is the maximum social security benefit for 2019;
2. At age 70 his benefit will be 45,318 (increase of 8% a year)
3. At age 66 Wife is entitled to receive 15,000 on her own earning record

How much social security can the Wife receive? She is entitled to all of her own (15,000) or ½ of his (17,166), whichever is greater. Therefore, the Wife's social security benefit is 17,166 compared to 34,332 for the husband. Even if he chooses, or has chosen, to wait until age 70 to collect, she is still only entitled to 17,166.

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DISCUSSION:

Continuing with our hypothetical example, let's look at a simple division of assets. The couple has:

- A jointly owned house in Massachusetts worth $850,000
- $500,000 in cash
- Husband has $2,000,000 in his IRA

Example 1 – The House is Sold

In this example, each party uses the house sale proceeds to buy a condo. All retirement assets and cash are divided equally. Let's fast forward to age 70 when each party has to take the required minimum distribution (RMD) from their respective IRA's

	HUSBAND	WIFE
IRA – AGE 70 RMD	40,085	40,085
SOCIAL SECURITY	46,406	17,578
GROSS INCOME	86,491	57,663
FED TAX	7,942	4,763
STATE TAX	1,325	1,325
TOTAL TAX	9,267	6,088
NET	77,224	51,575

Notice difference in income based on SS alone. With a 50/50 division of assets the couple has a $25,000 difference in their retirement income

Example 2 - Wife Keeps the House
In this example, the Wife has chosen to keep the house as part of the asset division. Because of this, she receives less IRA money. Again, let's fast forward to age 70 when each party has to take the required minimum distribution (RMD) from their respective IRA's

	HUSBAND	WIFE
IRA – AGE 70 RMD	57,122	23,049
SOCIAL SECURITY	46,406	17,578
GROSS INCOME	103,528	40,627
FED TAX	13,904	1,286
STATE TAX	2,194	456
TOTAL TAX	16,098	1,742
NET	87,430	38,885

Now look at the difference based on RMD and SS. With a 50/50 division of assets the couple has a $50,000 difference in their retirement income

CONCLUSION:

It becomes apparent that even if assets are divided equally one spouse may have significantly more retirement income based on social security alone. Pointing out this discrepancy in mediation may enable you to raise some options that would be acceptable to both parties.

- Depending on the ages of the parties, the Husband might be amenable to paying several years of spousal support
- The possibility of equalizing social security income only through a lump sum or annual payments may be another alternative
- An unequal division of assets to give the Wife income potential from the additional assets may be preferable

As a Practice Note:

- Please consider having your clients bring in their social security statements. They can create an account at www.ssa.gov and print the full statement not just the estimate. This is a good resource for you and for the parties to look at earnings historically.

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- Revisions to the social security law have eliminated all of the file and suspend strategies that were previously available.
- This is the last year for restricted applications allowing the lower wage earner to claim on the higher wage earner and let benefits grow to age 70.

Renee W. Senes, CDFA is Financial Advisor and partner with Senes & Chwalek Financial Advisors in Concord. As a Certified Divorce Financial Analyst (CDFA) she specializes in working with clients, their attorneys or mediators through all phases of the divorce process to help them gather and compile financial information, compare and contrast scenarios of possible settlements and analyze tax implications. Renee is trained in mediation and is also collaboratively trained. She serves on the Board of The Divorce Center. She is the co-author of Money & Divorce: Costly Mistakes You Don't Want to Make available on Amazon

"Peace is not the absence of conflict but the ability to cope with it."

– Dorothy Thomas

THE PATCH ACT AND MEDIATION: NEW PRIVACY PROTECTIONS

By Lisa J. Smith and Melinda Milberg

Last year the PATCH Act was passed to require health insurance carriers to provide additional privacy protections for insureds. The PATCH Act (Protect Access to Confidential Healthcare) is currently being rolled out, and as of April 1, 2019, there will be another option for privacy. (M.G.L.c.176O, §27) Some PATCH Act protections are automatic, while others require the insured to initiate action.These changes ameliorate some of the difficult medical insurance decisions faced by mediation clients. The PATCH Act allows a non-employee insured former spouse ("non-employee insured"), who stays on the family plan, to have significantly more privacy.

In a divorce mediation session, clients make an important decision about medical insurance following the divorce. The question is: If available, should both spouses remain on their family plan? Divorcing clients have one chance to take advantage of the Massachusetts laws that allows for continuation of coverage if they are so eligible. This decision requires balancing financial and privacy interests. Clients often consider the financial cost first. Families may choose to have the non-employee spouse remain on the family medical insurance plan for several reasons. For example, they may elect to stay on the same plan to save money because the total cost of the premiums would be less than the premiums of two separate policies. Another advantage may be that the current family plan offers better benefits than another plan available to the non-employee insured. Until recently clients engaged in a serious discussion about privacy concerns when the clients decided both should remain on the same medical insurance plan for financial reasons. The PATCH Act does not affect the financial aspect of this decision; it does, however, affect the privacy concerns of the non-employee insured.

Before the PATCH Act. Before the roll out of the PATCH Act, the non-employee insured needed to carefully consider whether the cost savings of a family plan were worth the loss of privacy. Here was the problem - after the divorce, the insurance carrier would continue to send statements directly to the employee policy holder, even when the medical service was for the non-employee insured. Such statements are referred to in the statute as Common Summary of Payments (SOP) and some insurance carriers name these statements Explanation of Benefits (EOB). For example, if the non-employee insured had a medical or mental health visit and a series of tests, after the visit the insurance carrier would send an SOP to the employee policy holder concerning this visit. The envelope and the SOP were both addressed to the employee policy

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holder. However, the SOP contained medical information about the non-employee insured, including the type of visit and the type of testing done. HIPAA permitted the non-employee insured to request the insurance carrier stop sending this information to the employee policy holder. However, the medical insurance carrier was not required to comply with the request. Usually no changes were made, and sensitive medical information continued to be delivered to his or her former spouse that was the policy holder.

Since the PATCH Act. Many aspects of this law went into effect on July 1, 2018, and other sections have effective dates this year. The PATCH Act provides privacy protections for the non-employee insured in three important ways. First is delivery of the SOP. The non-employee insured has a right to elect an "alternative method" of receiving an SOP concerning his or her care. M.G.L.c176O, §27(b). This is referred to as the insured's "preferred method of receipt". A non-employee insured may choose to have the information sent to his or her residence or another mailing address. Beginning April 1, 2019, the non-employee insured has an additional delivery option. She or he may request to receive this information electronically. The non-employee insured must submit a written request for a preferred method of receipt. Without an election of a preferred method of receipt, the SOP will be delivered to the employee policy holder's address.

The second important change affects SOP content. The SOP will no longer describe sensitive health care services. The definition of "sensitive health care services" was created by the Division of Insurance in consultation with experts in fields of infectious disease, reproductive and sexual health, domestic violence and sexual assault, and mental health and substance use disorders. The list is available in the Division of Insurance Bulletin 2017-07 and specifies eighteen sensitive health care services which include the following: mental health services, pregnancy testing, substance abuse disorder services, gender transition-related services, and abortion services. Instead of the detailed descriptions of the sensitive health care services, the current SOP references either "office visit" or "medical care." Clients should be aware that the SOP still includes the name of the provider. So, if that creates a concern, the non-employee insured should request an alternative method of delivery of the SOP.

Finally, there is an opt out option. If the non-employee insured receives medical care for which there will not be any cost-sharing, he or she may request "suppression" of the SOP for such specific service or procedure. The non-employee insured must affirmatively make this request either orally or in writing. Be aware that the insurance carrier has the right to require that an insured follow up an oral request with a written one. The law clearly states that the insurance carrier is prohibited from asking the reason why an insured is opting out. M.G.L.c176O, §27(f).

This opt out request is for a specific procedure or visit, and must be made each time any such procedure or visit occurs.

Efforts such as the PATCH Act are designed to give more privacy protections to a non-employee insured while balancing a consumer's right to be informed about costs affecting medical care. Although the PATCH Act has other protections for other citizens in the Commonwealth, this article focuses on the applicability to divorcing non-employee insureds. For them, this is good news. No longer will the need to save money so substantially sacrifice a client's privacy.

Melinda Milberg is an attorney, mediator, arbitrator and trainer with over 40 years' experience and a solo practice in Natick, Massachusetts. Appointed by the Governor as a Public Member of the Board of Medicine, and served as a hearing officer for physician discipline cases. Currently serves as a Hearing Officer for the Commonwealth Connector, and as arbitrator for FINRA. Mediator with MWMS, CDSC, MWI and private practice. Past President of NEACR, and member of MBA, WBA, NEACR and MCFM. Past President of Women's Bar Association and Past Co-Chair of Boston Bar Association ADR Committee. Currently serving as Board member of MetroWest Mediation Services.

Lisa Smith is a divorce mediator and collaborative attorney. With experience and compassion, Lisa helps clients effectively problem solve and envision their futures following divorce. As a mother and grandmother, Lisa approaches her cases focused on her clients and aware of the many others touched by the mediation process.

Resources:
Health Care For All article. https://www.hcfama.org/privacy-protections-frequently-asked-questions-patients##16.

Massachusetts Laws regarding continuation of coverage for divorced spouses: G.L. c. 175, s.110I; G.L. c. 176A, s. 8F and G.L. c. 176B, s.6B; G.L. c. 176G, s. 5A ; G.L. c. 176I, s. 9; and G.L. c. 32A, s.11A; G.L. c. 32B, s. 9H

"Some of us think holding on makes us strong, but sometimes it is letting go."

– Hermann Hesse

AN OPEN LETTER TO MY DIVORCED PARENTS

By Anonymous Mediator

Editor's Note: This letter was submitted to the FMJ anonymously. It is a first person account of the lingering effects of divorce written by a mediator.

An Open Letter To My Divorced Parents:

Dear Mom and Dad,

While we never talk about your divorce, it has never really gone away. Over the years, you have treated it as a blip in time, memorialized as an event with a date etched in history more than 30 years ago. I want you to know that your divorce was not just a quiet date in the calendar, an instant when our family unit darkly transformed into a collection of scattered individuals, with your names erased from each other's vocabulary and when your conversations with me began with, "Your mother is being unreasonable," or "Your father won't agree to pay for it."

If your divorce was just a date in the calendar, it was the day the meteorite plunged into my mental lake, rocketing the tidal elements with such force that the waves still crash around me decades later, even if lessened by time and my own self-created hardiness.

I mistakenly thought that once I turned 18, the struggles with the parenting plan would magically cease upon my attaining adulthood. I was unprepared for the emotional weight suddenly thrust upon me of having to choose where I would spend college vacations or Christmas or Thanksgiving. I ended up making choices out of perceived fairness and to avoid emotional backlash rather than doing what I would have actually wanted. It was often less stressful to just stay on campus than navigate your hurt feelings, of which there was seemingly no labyrinthian shortage.

Then once I was engaged and married, I felt I was finally emerging from the ashes of your marital fallout, that by establishing the basis for my own relationship and future family, I would somehow be insulated from your tug of war. Enter my husband's family, and the challenge of figuring out how to share holidays with yet another set of relatives. If only you could have tolerated each other's presence or had any interest in spending time with my in-laws, we would have been able to spend more than one Thanksgiving every three years together, i.e., you would not have spent so many Thanksgivings alone.

I was so excited when I was finally pregnant, until my girlfriends asked me for the guest list to the baby shower they wanted to throw for me. I agonized over asking them for two smaller showers because I envisioned you, mom, getting into a cat fight with dad's new wife, and me standing there, waddling helplessly with my enormous belly, waving the knife around trying to cut the tension instead of the cutesy shower

cake. I took so long deliberating over whether or how to proceed that my girlfriends had already sent out the invitations. Gulp. Mom, you and my stepmother both came, and didn't speak to each other but also didn't fight. Baby steps, literally. When the shower was over, I let my breath out and swept up all the eggshells, mixed with my tears of relief, from the floor.

Fast forward one year. I didn't sleep for a week, but not because of the baby. What to do about the baby's first birthday? There's no way a party could happen without inviting both of you. And everyone knows that the first birthday is more about the family than the baby, who is still clueless about gifts. In the end, after much stress, tears, feelings of failure as a parent, and more stress, I decided I could not deal with your issues. So your grandchild had no first birthday party. Period. No cuddling and cooing, presents or decorations. Instead, we took pictures of the baby excitedly discovering refined sugar for the first time in the form of a chocolate cupcake with vanilla icing, more covering the face, clothes, and the floor than eaten, and sent you copies of the photos. The messy chocolate crumbs, while plentiful, never did fill the hole you dug in my memory with your reciprocal spite.

I regret that I did not feel emotionally strong enough to start adulting right then and there, setting an expectation for you both going forward about your attendance and behavior at the countless events involving your grandchild that will take place for the rest of your lives. You have managed to not come to the same birthday celebrations, school and extra-curricular events, sporting events, and play performances as each other. The energy, juggling, and jockeying mustered to systematically and covertly avoid each other's presence to such a degree should waive you both into spydom with your skills rivaling those of James Bond.

I feel sorry for you both, that even though you have not spoken a word to each other in more than thirty years, you seem to still hate each other more than you love me or your grandchild. That you cannot put aside your differences, supposedly severed on that blip of a date so long ago, to forego the tug of war and be a communal part of our lives. You have missed so much already. Is it worth it? How does it feel when your grandchild asks, "Why do Nana and Grampy never BOTH come to my birthday party?" or "Why can we never have Thanksgiving with ALL of the relatives? Why do we have three Christmases?" (This last one more inquisitiveness than complaint.)

Perhaps you struggle with all of these contemplations as well. Perhaps you feel guilt or regret. Perhaps you do not realize that your divorce was not a single blip in time, that it both was and is a process, that is it FOREVER. Perhaps you are just not aware that I am still struggling, waist-deep in the waters from the meteorite crash. But by now I am an expert at treading water, and have even taught myself to swim. I hope someday, at least for your grandchild's sake, you will learn how to swim too.

Always,

Your Daughter

PARENTING COACHING: A BETTER WAY FORWARD

By Tanya Gurevich

If you ask any parent who is going through a divorce to list their major concerns, "how it will impact my children" is probably top on that list. As an instructor for the court mandated "Parents Apart" class, I see parents who are genuinely concerned about their children and want to understand how to help them through the divorce process. Even parents who are resistant and angry often soften when they watch a movie where children talk about their experiences of living through their parents' divorces.

No parent starts the divorce process with the goal of hurting his or her children. And yet, we all have seen outcomes where this is exactly what happens – drawn out custody fights, endless legal battles, virtually no communication between parents, children painfully stuck in the middle. Parents that chose mediation over litigation often escape this toxic path, but all too often do not co-parent effectively and, essentially, parent on "separate tracks" to avoid communicating with the ex and the anxiety and conflict that such communication often generates. For many families it often feels like there is "no exit" and no path to a better outcome.

Parenting coaching is not therapy.

We know that divorce only ends the relationship between the spouses, it does not end the relationship between them as parents. While there is a clear process for getting divorced – whether it is through the court system, lawyer negotiation or mediation – there is no clear process or guidance for co-parenting after the divorce. The parents sign a divorce agreement which, at best, has a dispute resolution paragraph for several mediation sessions in case of a disagreement. After that, the parents are generally on their own to figure things out. For some this is not a challenge because they have a demonstrated ability to co-parent collaboratively and have a solid level of communication that will carry them forward. For others, the co-parenting road ahead can be quite rocky.

A mediator working with a couple gets to know their communication and conflict resolution style and can often glimpse the challenges that they will face going forward in co-parenting their children. As mediators, we are particularly well equipped to introduce ideas that address each family's individual needs and one such need may be additional support from a parenting coach to help guide the couple in their roles as co-parents, both during and after the divorce.

Parenting coaching is not therapy. It is not designed to explore the past, figure out "whys" or work through the pain and anger of the divorce. It is not a place to assign blame. The focus is forward looking. It can be a few sessions to address a specific issue or a regular process to utilize as the families discover their way

after divorce. The goals may include learning effective communication skills to avoid repetition of past arguments, establishing regular "parental check-ins", supporting children with the logistical and emotional challenges of two homes, implementing parenting techniques, managing children's resistance to contact with a parent, dealing with blended families, etc.

It is not designed to explore the past, figure out "whys" or work through the pain and anger of the divorce.

As a co-parenting coach, I have worked with couples in all stages of the conflict spectrum. The common denominator is typically the breakdown of communication between the parents. Whether it is through the polarization of the legal process or the anxiety, anger or sadness that invariably interferes with positive communication, the result is the same – you have parents that do not talk to each other. I have worked with many divorced parents who physically cringe at the thought of having regular conversations with the other parent about their children. When I suggest a weekly telephone call they look at me as if I had suggested they jump out of an airplane. And yet, if they are brave enough to try, to make the first move, the results are almost always worthwhile. They are surprised to find out that they can, in fact, talk to each other about their kids if there are clear rules about how to go about it.

Can co-parenting coaching solve problems for all families? Of course not. But it is often worth considering as a tool for families to move forward past their divorce. The parents may not see eye to eye on child-related issues, such as activities, discipline, etc. They may have questions about how to manage the children's lingering emotional reactions to the divorce and its aftermath. They may want to develop a better method for managing the logistics of their children's lives. They may be thinking of introducing new "significant others" and want to approach it in a positive, child-focused way. There are a myriad of reasons why parents benefit from an opportunity to meet in a neutral setting with a skilled professional to have a conversation about how to co-parent their children. Because, at the end of the day, all parents – yes, even the most high-conflict parents, want the best for their children. In my experience, no one has ever said – "yes, I want my children to be miserable as a result of my actions as a parent." As professionals, we can give them a simple tool for getting closer to achieving this outcome.

Tanya Gurevich JD, LICSW is a therapist, family mediator and parenting coach with extensive experience of working with families going through the divorce process. She is a certified instructor for the Divorce Center/Parents Apart parent education program and has served as a guardian ad litem and parent coordinator. She practices in Needham, MA.

DIVORCE MEDIATION 101: MUSINGS AND MEDITATIONS

By Cynthia Runge

I have learned that, no matter what thorny issues come up in the middle of a divorce mediation, if the parties are talking, then my best course of action is generally to sit back, listen, and stay focused on guiding the parties through the issues. Although no one divorce is exactly like another, there are certain situations and quandaries that the divorce mediator may eventually encounter or reflect on. Below are some common examples:

"Can't you just tell us what to do?"

A mediator can help parties brainstorm options when they get stuck, or can provide them with legal information or outside resources to help them decide what to do. What gets tricky is when the parties "want" the mediator to weigh in on what they should do. It can be very seductive to think that you, the mediator, know the answer! In truth, the reality is that the mediator doesn't know the whole story of what is going on with either party, which is one of the reasons it is so important to keep our opinions out of the mix, not to mention that giving legal advice is not the mediator's role anyway. Nonetheless, the distinction between legal information and legal advice can sometimes seem indistinct.

Exploring options

When people decide to mediate their divorce, they are expecting their mediator to lead them through the process. They need to know a variety of things about their divorce process, e.g., what needs to be in the Agreement, what color paper the forms have to be on, how long it will take, and so on. These are, of course, all things about which mediators can inform the parties. However, even if you are clear with the parties about what you can and cannot do as their mediator, there are still some areas that are "gray" instead of black or white.

As noted above, when some parties get stuck, they may ask the mediator to give them advice or tell them what to do. In such a case, a mediator might try to help the parties move forward by saying, "I've seen some people in your situation do X, whereas some people have opted for Y or Z," without letting on which choice the mediator thinks is best. This type of

brainstorming is sometimes used in an attempt to help the parties generate options. However, if not carefully executed, this type of brainstorming could leave the parties feeling as though the mediator has given them legal advice, especially if one option appears to be emphasized over another. In such

situations, it is important to stay mindful of how you present factual and legal information to the parties so that you clearly remain neutral. At that point, the parties can obtain legal advice about the options they are considering from their respective counsel.

What type of case is appropriate for mediation?

Many experienced divorce mediators draw on their legal knowledge and trial experience (if they have this experience) to help inform their mediation practice. Of course, we also rely on our intuition and gut responses. For example, if I were to receive a call from someone inquiring about mediation and the caller told me that he or she wanted to pursue mediation because he or she did not want to "rock the boat" or "cause the other party to get mad," I would likely wonder if this case would be appropriate for mediation, depending on what else was said and/or the overall context of the conversation. For this reason, I think it is always important to screen for domestic violence when doing any mediation intake. It is amazing what you can learn if you simply ask. I am not going to say that that mediation is absolutely out of the question if a relationship involves domestic violence, but there are many advocates who would strongly disagree with using it as a dispute resolution process, due to the inherent power imbalance between the parties. In the event you decide to go forward with a mediation in such a case, you will need to think through how you will do so in a way that will protect everyone's safety.

"It is much harder to settle a case than it is to litigate." I couldn't agree more. It takes an abundance of empathy and patience to help parties deal with their emotions and sort through their finances and fears so that you can help them resolve their divorce.

Is mediation appropriate only for low-conflict divorces?

I've heard some divorce colleagues joke that mediation involves people sitting around singing "Kumbaya." When I hear this I think back to what an experienced North Andover litigator, collaborative attorney, and mediator, Sean O'Leary, said at a recent peer mediation meeting. "It is much harder to settle a case than it is to litigate." I couldn't agree more. It takes an abundance of empathy and patience to help parties deal with their emotions and sort through their finances and fears so that you can help them resolve their divorce. I realize that sometimes a party has no other option but to litigate and that some cases must be resolved by a Judge. However, for those parties that have the choice, I frequently remind them "litigation is a form of dispute resolution, it is just the least effective."

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In sum, mediation can accommodate high-conflict cases, parties who are hurt and angry or who have endured trauma or betrayal. Many divorce mediators know of the amazing work of Bill Eddy to attest to the effectiveness of mediation in high-conflict cases. Mediation works best with participants who want to retain control over the process and who want to resolve their dispute in a way that makes sense for the parties and their family.

What if one of the parties is not being transparent?

In some ways, this scenario is similar to the person who wants to try mediation because she or he doesn't want to "rock the boat." For example, over the years, I have occasionally heard some folks say that they don't need to exchange financial information, because they "trust each other" and/or they "want to stay friends."While this is certainly heartwarming, the parties still need to exchange financial information. But how can mediation help these parties? As part of the mediation process, the mediator explains that the Court is going to require the parties to submit financial statements to the Court and to each other. If the parties have respective counsel, the attorneys are going to want to see this information as well. Exchanging financial information in a mediation context is probably the least stressful way to do so. Lastly, the parties need to have complete financial transparency in order to make sure that the Court will approve their Agreement.

Final Thoughts

As divorce mediators, we try to balance our roles as neutrals while guiding people through the emotional and often financial turmoil of divorce. By sharing our thoughts and experiences with fellow colleagues, we all learn and grow. For me, coming back to the basics, whether in mediation or in life generally, is always grounding. I hope that some of these vignettes resonate with you or cause you to consider your own experiences with divorce mediation in a useful way.

Cynthia T. Runge focuses on divorce mediation, family and collaborative law. She is admitted to the bar in both Massachusetts and New York. She is a member of the Massachusetts Council for Family Mediation, a member of the Massachusetts Collaborative Law Practice Council, a member of the Dispute Resolution Section of the Massachusetts Bar Association and a member of the New England Association of Conflict Resolution.

CO-PARENTING FOR DUMMIES ....AND SMARTIES, TOO! A GUIDE TO CO-PARENT COMMUNICATIONS

By Betsy Ross, LICSW, CGP

While it isn't rocket science, it can be surprisingly difficult to communicate with the person you used to be married to. Old habits die hard and if you and s/he had a hard time listening to, not criticizing, or understanding each other before, chances are good that after divorce communications will also be a challenge. Add to this the residual feelings you might have about your marriage and what went wrong, coupled with the intensity of dealing with child related issues through and after divorce, managing all of the scheduling back and forth….well, you get the point—it just isn't easy!!

As a family and divorce mediator and collaborative divorce coach (and psychotherapist, too), I have been 'in the trenches' with hundreds of families, trying to sort this all out and help them with the transition from married spouses to co-parenting 'business partners' (in the enterprise of raising healthy children). Along the way, I have observed that communications-wise, there are some basic principles that seem to work well (and others that absolutely don't) in building a productive and helpful co-parenting relationship. Here are five 'Don'ts' and five 'Do's' to consider when it comes to co-parent communications:

Co-parenting "Don'ts"

1). Resist the urge to CRITICIZE. There may have been a significant amount of that in your marriage (either said out loud or just thought about privately) and framing issues in a critical tone will not serve either of you now. "Stop being so selfish" or "You never dress them right", just won't fly if you are trying to negotiate with or strengthen your co-parenting relationship. Keep the negative reactions to yourself.

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2). Avoid COMMENTARY, please. We can all get stuck in telling an ex why we think they did what they did, but this is only destructive. "You are always late and it is so rude!" Or "You never do a good job of helping them with their homework" or, "Why are you such a bad parent" are tempting little nuggets to toss at your ex, but these come with a guarantee to make things worse!

Think about how YOU would feel hearing these types of comments--would it make you want to cooperate and work together? Nope! If it won't help to advance your co-parenting relationship, don't say it.

3). Do not CATASTROPHIZE. Yes, it can be extremely annoying when your ex is late for pick up, sends the kids home without their favorite sweater, with yesterday's lunch in their lunchbox, or worse. BUT, as irritating as this all is, it is not the end of the world, right? So, do not respond to these as if they are. Better to stay calm and focused and, when the moment is right, address these and any other issues in a mature conversation or clear email.

4). No jumping to CONCLUSIONS. By now you are probably highly skilled at coming up with negative reasons to explain your ex's behavior, "You don't give a hoot about the kids, just yourself, or else you would have kept your word" or "You are always taking the easy road, Deana, while trying to look like a good mom". If you can hold off on creating a negative story about everything your ex does wrong and instead get curious as to what or why things happened this way, this time, you just might get somewhere. Think: "Tom, what happened today?" Instead of "For crying out loud, you didn't bathe them after soccer practice… again?" Guess which approach might just get you an honest and open response?

5). The time for true CONFESSIONS has passed. Do not spend time romantically reminiscing with your ex, share with them your true and undying love despite all that has happened, or talk with them about other emotional aspects of your past relationship. The time for 'deep and real' discussions is officially over and although that ship has sailed, the present and future are about focusing on working together to raise healthy and happy children. If you are feeling nostalgic or melancholy for some of your best married moments or the more pleasant aspects of your ex, be sure to tell them to your best friend, your therapist, or your cat. Just leave your co-parenting partner out of it!

Co-parenting "Do's"

1). Stick to the FACTS. The best communications are brief, factual, and focused. No meandering prose, please, just get to the point. "I need to change Wednesday's pick up time to 5 instead of 6".

2). Try your best to include the 'WHY' in your initial communication, not just the 'WHAT' and 'WHERE', as in,"….so that Emma can go to her volleyball clinic first". When you leave out the 'why', you are actually creating the need for further, longer interaction--why do that??? Just add it in at the top and be done with it!

3). Be COURTEOUS and BUSINESS-LIKE. A great way to resist and avoid stepping into the old patterns of (dysfunctional?) interaction you and your ex engaged in, is to radically change your approach. Act like business partners (after all, you are both involved in the same great work project-- raising healthy and happy children) and communicate/respond as such, to maintain a more productive framework for interacting. Be patient, respectful, be fair and ask questions for clarification purposes….Try it and you just might be surprised by how effective it can be. (Note: even if your ex does not respond back in a business-like fashion, maintain your efforts and, in time, when they see that the old ways no longer work, they most likely will!)

4). SAY WHAT YOU MEAN and MEAN WHAT YOU SAY. Try your best to be forthright and honest, but in a productive manner. If your ex is continually slow to respond or late for pickups, and tosses a quick "Sorry" your way, don't just say, "Oh, that's ok", if it isn't. While tempting to say whatever we have to in order to avoid conflict or any further interaction, in truth, doing so never helps, it just reinforces and perpetuates the bad behavior. Speak up, but do so respectfully and mindfully. "I appreciate your apology and hope you understand that lateness really complicates getting the kids where they need to be on time."

5). CHOOSE YOUR BATTLES wisely. Not only should you think before speaking and addressing difficulties, but you should work to make good choices about when, where, and how to do so. Not every infraction deserves

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a conversation, but the most important ones certainly do. Talking about issues at pick up or drop off is never a good idea, since little ears and eyes will most certainly be taking this all in.

Ask to reserve a moment or two for a check in on how things are going. Pick a time and a place that will be comfortable and conducive to listening, talking and problem solving rather than just using any old spot to list out problems and issues. And, when checking in, remember to start with what is working well and what you are pleased about (just like you would do to be effective with an employee, customer, or a friend!).

Like any good relationship, a healthy co-parenting partnership doesn't just happen. It takes time, some effort, and a willingness to stretch a bit and to do things differently. Follow the above guidelines and you will be off to a very good start! More helpful hints to follow!

Wishing you great success in all of your relationships,

Betsy Ross

Betsy Ross, LICSW works with couples, families, and individuals as a divorce transition andrelationship coach, and a licensed psychotherapist. For the past 25 years, Betsy has helped individuals, couples and family members to talk to each other more, fight less, and improve their ability to address issues and problem solve together. Betsy's training in three different specialties: psychotherapy, coaching, and mediation has provided her with a large repertoire of tools to choose from when working with clients to improve their relationships (personal as well as professional) and transition successfully through the "lumps and bumps' of major life shifts (such as ending a marriage or making a career change) toward a more satisfying and successful future.

"The best security blanket a child can have is parents who respect each other."

–Jane Blaustone

SWEAT THE SMALL STUFF

By Meegan Reis and Howard Goldstein

You have got to sweat the small stuff

Ten Tips for lawyers representing clients in mediation

1. Prepare your client for mediation. Explain what will happen, discuss possible settlement scenarios and get some authority before you walk in the door. Find out ahead of time what your client considers "fair." This conversation can tell you tons about what will actually settle the case. If clients are unrealistic, or too accommodating, it will be an opportunity to educate your client. A mediation session is no place to be making proposals or responding on the fly. Our clients usually need time to "sleep on it." Talking about settlement early in the process will make it easier for the client to compromise at the mediation

2. Prepare your self: You need to have all the necessary information to settle the case or you are wasting your time and your client's money. Appraisals, inspections, evaluation of different kinds of deferred compensation plans or exotic assets. Current statements on all financial assets. In this age of volatility you might want to have your client check values on line to the day of the mediation. Although you don't have to have completed all formal discovery, there is probably a minimum you need ,to be able to settle. Have a pre-mediation meeting or phone call with opposing counsel to try to agree on all of the basic facts and figures. It makes no sense to consume mediation time arguing about what the financial assets are.

3.Take the process seriously. If there is an opportunity to file a mediation memo, make sure its good. It will have an impact on the adverse party and their counsel and educate your mediator. It is an opportunity for your client to see the quality of your preparation. Give some thought to an opening statement and what you will say. Good openings, just as in a trial, can determine outcomes. Ask the mediator if you will be permitted to give an opening. You have four members of the audience: the mediator, the other party and your own client. One way that mediations fail is if the clients loses confidence in their own lawyer. Because this is not a trial, I have seen lots of lawyers "wing it." It shows.

4. Think about the process you are comfortable with and schedule a pre mediation session conference call with the mediator and opposing counsel. Find out if the mediator prefers caucusing or not, for example. If you think caucusing is important make sure the mediator will cooperate. It will give you a chance to give the mediator a heads up on your client's quirks. It will give you a chance to ask the mediator questions about how he/she works, so you are not surprised either.

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5. Let your client talk. In order for mediation to work, clients need to feel heard. If lawyers are doing all the talking the client will not be as willing to settle. This isn't a negotiation between the lawyers, this is a process that should be client directed.

6. Come with your laptop and a specimen or draft agreement or Memo of Understanding. Circulate it to the opposing party before the mediation. Unfortunately many mediations unravel after the parties leave the mediation session. Make sure there is a good memorialization of what was agreed to, and if you have time reduce it to a formal agreement. The parties should initial or sign.

7. You should know what the tax issues are and have the answers. If you are not comfortable with dealing with potential tax issues have a conversation with their accountant. Make sure you provide any tax material to the opposing party well in advance of the mediation, so he/she can be prepared too.

8. Reach out to opposing counsel to see if you can narrow the issues for mediation, and resolve parts of the case before you arrive.

9. Think about your client's comfort. Find out about lunch, parking, any limitations the client has. For example, lawyers often like to schedule long, all day mediations but your client may not be able to tolerate any more than a few hours at a time. It is often necessary for client to sleep on proposals—If they are pressured to make decisions on the spot, the deal may unravel afterwards. A few shorter meetings might be preferable to one long meeting. On the other hand there are situations where getting everyone in the same room, with a commitment not to leave until there is a deal, is the only way a case might can settle.

10. Educate your client a little bit about negotiation strategy and have one. Some clients want to get things done quickly and will want to make their bottom line offer right out of the box. You need to explain to the client, if that is not your strategy and why it is not. Remember, you are a professional negotiator, your client is not.

Meegan Reis has been a lawyer for 21 years. She practices in Portsmouth New Hampshire as a partner in the firm of Dwyer Donovan and Reis. She has been a trial lawyer in all of the trial courts of New Hampshire for her entire career, and a mediator and Collaborative attorney, for the last eight years.

Howard Goldstein has been a lawyer for 46 years, and now practices law in Newton, Massachusetts as a shareholder in the firm of Goldstein and Bilodeau, PC. He has been a trial lawyer in the courts of Massachusetts, and a mediator and collaborative lawyer for 15 years.

5 REASONS TO MEDIATE PROBATE OR ESTATE SITUATIONS

By Melinda Milberg

Imagine the following scenario - You are the son of an aging mother, who has begun to experience signs of dementia. You and your brother both believe it is time for your mother to give up control over her own finances and want to talk with your sister about obtaining a conservatorship for your mother. Your sister is reticent to pursue that course. You believe that is because your mother has been very generous with your sister, giving your sister many cash gifts. Your sister believes your mother is still able to manage herself, and also believes that you and your brother are trying to control your mother. You are concerned about your mother becoming the victim of con artists and overzealous sales people. You and your brother decide to go ahead and hire an attorney to file a petition to appoint you as the conservator for your mother, to handle her finances. This creates conflict between you and your brother on the one hand, and your sister on the other hand. Your mother is very upset when she sees the three of you arguing over these issues.

Was there an alternative course of action? Could you have handled the situation in a way that would have been less contentious with your siblings? Yes – you could have considered having a neutral third party (mediator or other professional) help the three of you and your mother through this very difficult circumstance.

This situation, and many other examples in our families, occur frequently, despite the best intentions of families to avoid conflict. With an aging population, and complicated legal and medical issues, we are faced with important decisions that seem beyond our capacity to resolve.

The alternative of a dispute resolution process that avoids fighting it out publicly in court seems an attractive one. This article describes five advantages of using mediation to decide these important family issues.

1. Privacy – Mediation takes place in a private setting. The parties sign an Agreement to Participate in the process that includes an agreement that what is discussed will remain private.

2. Relationships – Mediation presents the opportunity to maintain positive relationships between all parties. It provides a safe space to discuss interests and concerns as it relates to the issues in dispute, and to generate options to resolve the dispute that are geared to the specific people involved.

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3. Creative solutions – The parties can develop unique and creative solutions to the issues based on a more intimate familiarity with the people and situations.

4. Reduced Cost – Alternative dispute resolution is almost always much less expensive for the parties than litigation, by a significant amount. This allows more resources to be available to help the family.

5. Quicker resolution – Often court proceedings can take several months, or even years. Mediation is scheduled at the parties' convenience and can be completed within weeks.

If you or a family member would like to find out more about how mediation can help you with your family's decisions about aging parents, estate planning, family business, or other similar matters, please contact Massachusetts Council on Family Mediation, www.mcfm.org, or the Massachusetts Collaborative Law Council, www.massclc.org.

Melinda Milberg is an attorney, mediator, arbitrator and trainer with over 40 years' experience and a solo practice in Natick, Massachusetts. Appointed by the Governor as a Public Member of the Board of Medicine, and served as a hearing officer for physician discipline cases. Currently serves as a Hearing Officer for the Commonwealth Connector, and as arbitrator for FINRA. Mediator with MWMS, CDSC, MWI and private practice. Past President of NEACR, and member of MBA, WBA, NEACR and MCFM. Past President of Women's Bar Association and Past Co-Chair of Boston Bar Association ADR Committee. Currently serving as Board member of MetroWest Mediation Services.

"People tell you things. And they tell you what they believe. And they tell you what they want for themselves, for you, they tell you their stories."

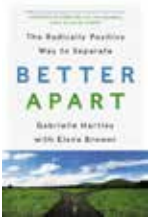
– Alexandria Ocasio-Cortez

MCFM – READING CORNER

Some suggested reading....

A conversation with MCFM member Gabrielle Hartley about her book Better Apart: A Radically Positive Way to Separate

By Erin Whelan Pennock



I had the opportunity to speak with attorney, mediator, speaker and author Gabrielle Hartley about her book which came out earlier this year titled, Better Apart: A Radically Positive Way to Separate. Gabrielle is a practicing attorney and mediator based in Northampton and is also a fellow MCFM member. Gabrielle wrote the book with assistance of friend and yoga/mediation teacher Elena Brower to help couples navigating the divorce process whether the separation is amicable or combative. The book combines legal concepts with mindfulness and spirituality to serve as a guide assisting couples to compassionately separate from one another through a five-step process (patience, respect, clarity, peace, and forgiveness). Better Apart was mentioned in *People* magazine as a "conscious uncoupling how-to" and has received many positive reviews about its ability to assist those moving forward with divorce in a productive way. Gabrielle took some time to discuss the book with me and ways it can assist us in our own practices.

This interview has been edited for clarity and length.

Can you give me some insight into your thought process developing the title of the book?

Absolutely. I'm going to back up and tell you a little bit of my story. When I was nine and my brother was six my parents divorced and we had an out-of-court shared parenting plan where I changed houses every single day in Brooklyn with my brother for my entire childhood during a time where nobody did that. My parents were pretty proud about how amazing their divorce was and I never really thought it was that unbelievably great until I clerked for Judge Jeffrey Sunshine in Staten Island, New York. I realized couple of things during my time with him.

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Number one: my parents had really done something right and had a really good divorce. Number two: so many of these people going through the court, similar to my parents, truly were better apart because when they had some space and separated. They took the heat out of the big interactions and were better able to communicate in more effective ways.

I wanted to book title to be really inspiring and uplifting. If you noticed when you read the book there are almost no negative words. I was incredibly mindful about keeping the tone of the entire project positive. Even if people are involved in a really combative situation, the goal here is to spread the message that no matter how bad a party's divorce, they have the internal power from within to reframe their narrative, to lift themselves up in a way that can set the stage for everyone around them.

Can you tell me like how you have dealt with that in your own practice where parties or a client come in very negative?

The most helpful thing is first to introduce the concept of space. There is space in proximity (like "do you live together anymore?"). And then there's temporal space (space and time). And then there is just mental space which is the easiest to create by doing some simple deep breathing. Just by taking three to five deep belly breathes into your nose and breathing slowly out through pursed lips, you really can slow down your mind and start making space to be able to stay in a difficult room. So, for example, if you are in a mediation and the other side is saying something so antagonistic, the other side is emotionally flooded at that time, so what you want to do before you go into that room is talk to your client and step out and take those deep breathes. It can be so medicinal.

I also talk a lot about the idea of forgiveness being the best thing the parties can give themselves. Often, we have client or parties in a mediation who have either been treated not so well, feel that they have not been treated so well or feel guilt about not treating the other spouse so well. I just love the quote "holding on to anger is like drinking poison and expecting the other person to die". Introducing the concept of forgiveness as the emotion portal to freedom for the parties can help in so many ways.

You talk a lot about her of self-care through meditation and breathing and you wrote this with Elena Brower who is a yoga instructor and meditation instructor. Tell me a little bit about how you both came together how you incorporated her experience and expertise into your book.

I have been a yoga practitioner for a long time. And when I clerked for Judge Sunshine I was practicing yoga about four days a week and it became so clear to me that yoga and meditation were a natural fit for emotional trauma. So when I decided to write the book, I reached out to Elena who I had gone to college with and I had seen some of her yoga and meditation. Serendipitously around the time

I reached out to her (though unfortunately) she had just gone through a divorce and her divorce was as elegant as it could be. So when I reached out, she was very excited about the project and she contributed some meditations and personal stories for the book.

How would you want mediators to use this book in their practices?

I would love it if every single lawyer and mediator would give this to parties they are working with in a divorce. It was important to me to structure the book in a way so that parties did not necessarily have to read the whole book from cover to cover to get a benefit from it. It can be opened to the section that relates to what that party needs. My goal was in reading it, they would feel cared for. The entire framework for this book is positive which can help these couples. It is an invitation to reframe your divorce that is transformative for the parties and their families.

I also intended for this book to relate to all of us as practitioners in navigating different relationships with our partners, ourselves, or the parties we work with and rewriting our narrative.There's a way to re-tell yourself the same set of events through a different lens and there's value in recognizing that.

There are more than two perspectives – it's not just what he said and she said – 5 judges will give you 5 different answers and perspectives. *Better Apart* is structured to help every single one of us learn to look at the "truth" in a flexible and open way and help us deal with whichever one of these elements we struggle the most (patience, respect, clarity, peace or forgiveness).

Erin Pennock is a family law attorney and mediator with a practice in Belmont, MA. For more information on Erin and her practice go to www.ewpennocklaw.com. She can be reached at erinewpennocklaw.com or 617-489-2288.

Gabrielle Hartley Esq., divorce attorney and mediator recently published Better Apart;The Radically Positive Way to Separate (Harper Collins) named the "conscious uncoupling how-to" by People Magazine. In addition to her global online mediation practice, Gabrielle maintains a private law, mediation and coaching practice in Northampton, Massachusetts and in New York City. Gabrielle is a television, radio and podcast commentator and has been quoted as an expert in numerous publications including The New York Times, The New York Post, US News & World Report. She is on the faculty of The American Bar Association (ABA) Mediation Institute and is a sub-committee chair at the ABA Dispute Resolution Section. She is also a member of the Association of the Bar of the City of New York, The Hampshire Bar Association and the Massachusetts Council on Family Mediation. Gabrielle is committed to wellness and technological innovation in the divorce space and serves as advisor to FAYR and DComply, co-parenting applications. Find out more about Gabrielle through her website at www.gabriellehartley.com.

MCFM NEWS

Update from the certification committee...

MCFM CERTIFICATION

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

The purpose of our mediation certification program is to promote high standards for the practice of divorce mediation as well as to provide education as needed to mediators as part of our certification process. We pledge to work with mediators applying for certification to help them succeed in obtaining this credential whenever possible.

Go to mcfm.org/pro/become-mcfm-certified-mediator for information on how to become a certified mediator. Questions about the certification process can also be directed to Tracy Fischer at tracy@tracyfischermediation.com

Here is the list of the practicing certified mediators currently certified through MCFM:

Beth Aarons
Halee Burg
Susan DeMatteo
Jonathan Fields
S. Tracy Fischer
John Fiske
Lynne Halem
Carolan Hardy
Elizabeth Harling
David Hoffman
Oran Kaufman
David Kellem
Barbara Kellman
Justin Kelsey
James Landy
Michael Leshin
Karen Levitt
Susan Lillis
Stephen McDonough
Linda Medeiros
Melinda Milberg
Toni Rafanelli
Vicki Shemin
Lisa Smith
Doris Tennant
Laurie Udell
Les Wallerstein
Fran Whyman
Janet Wisemen

UPDATED MCFM MISSION STATEMENT

The MCFM Board has been working on an updated mission statement which accurately reflects the goals of MCFM as an organization. The new mission statement is as follows:

MCFM – The Preeminent Family Mediation Resource in Massachusetts

Advancing mediation to transform the way families resolve conflict

- Increasing public awareness of divorce mediation
- Providing mediation resources to the public
- Promoting high standards of professional practice
- Delivering premier professional development
- Advocating for the use of divorce and family mediation
- Forging alliances in the ADR community

UPCOMING TRAININGS

Some trainings you may be interested in….

Elder Decisions® - Elder & Adult Family Mediation Training

April 28 - 30, 2020
Newton, MA

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

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

Cost: $795 early rate by March 12, 2020 $895 thereafter.
Includes lunches, snacks, and course materials.

Held at The Walker Center in Newton, MA.
Presented by Elder Decisions®, a division of Agreement Resources, LLC.

For more info, visit: www.elderdecisions.com/pg19.cfm,
email training@ElderDecisions.com,
or call: 617-621-7009 x29.

Social Work Continuing Education Credits: *This program has been approved for Continuing Education Credits for relicensure in the period of October 1, 2018 - September 30, 2020, in accordance with 258 CMR, as follows: 21.25 hours for all 3 days. Boston University School of Social Work Authorization Number B-20-053*

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

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

Divorce Mediation Training - March 5, 6, 12, 13 & 14, 2020 in Needham, MA: Divorce Mediation Training Associates is continuing their tradition of high-quality intensive trainings under new leadership, Ellen Waldorf & Justin Kelsey. This is a 5-day (40 hour) course focusing on the skills, tools, & techniques necessary to mediate divorces. This course is offered twice per year by DMTA (Spring and Fall). This course includes ample time for practice, observation, and feedback. Learn more about the Divorce Mediation Training or register by visiting dmtatraining.com

Massachusetts Divorce Law Basics Training, March 4, 2020 in Needham, MA: A new offering from DMTA, this is a 1-day course focusing on the knowledge necessary to work with divorcing couples in Massachusetts hoping to negotiate a Divorce. This course is offered twice per year by DMTA (Spring and Fall) and is great legal overview for mediators who don't have a background in family law and for professionals who want to learn about divorce. This course includes the information required by professionals to help their clients settle divorce cases outside of court. Learn more about the Divorce Law Basics Training or register by visiting dmtatraining.com

Mediation Masters Series - Advanced Mediation Training, May 8 & 9, 2020 in Portsmouth, NH: Mediators straddle many disciplines and skill-sets. Regardless of your profession of origin a great mediator has to have skills and knowledge bases in communication, facilitation, psychology, law, finances, and more. That's why for great mediators, training never ends. Conflict Resolution Training Associates (an affiliate of DMTA) is committed to offering the highest level of trainings to mediators looking to obtain, maintain, and master mediation skills & techniques. To that end, we are launching a Mediation Masters Series of trainings. The first Mediation Masters Training will feature presenters Kate Fanger and Israela Brill-Cass, and take place on Friday May 8 and Saturday May 9, 2020 in Portsmouth, New Hampshire. Learn more or register by visiting dmtatraining.com

PICTURES FROM 2018 INSTITUTE AND JOHN FISKE AWARD

Continued on next page

JOIN US

MEMBERSHIP

MCFM membership is open to all practitioners and friends of family mediation.

Our members include mediators, professors, mental health professionals, attorneys, judges, court employees, financial professionals, social workers, and others interested in furthering the use of family mediation and promoting excellence in mediation.

Annual membership dues are $90 for the Basic Annual Membership and $190 for the Premium Annual Membership.

Basic Annual Membership includes:

- Newly updated website with more info and exclusive "Members Only" section
- Standard online member listing (name/address/phone)
- Access to at least four free professional development events (guests also welcome)
- Annual Family Mediation Institute—attend at member rate
- Certification program for qualified divorce mediators
- Subscription to the "FMJ"
- Access to MCFM's network of mediators and allied professionals
- Welcome to participate in ANY of MCFM's committees

Premium Annual Membership includes:

- All the benefits of Basic Annual Membership
- Enhanced profile in the online "Find a Mediator" Referral List. Market yourself to prospective clients by showcasing your skills, training and experience. Get listed in advanced online searches, including practice area and geographic location. You can even upload a photo!
- If you have completed 30 hours of mediation training and are actively practicing mediation, the Premium Annual Membership with Referral List and Profile offers the best value for your membership dollar.

Did you know that MCFM was the first organization to issue Practice Standards for mediators in Massachusetts? To be listed in the MCFM Referral Directory each member must agree to uphold the MCFM Standards of Practice. Practice Standards are available at www.mcfm.org/pro/about-mcfm.

MCFM was also the first organization to certify mediators in Massachusetts. Certification is reserved for mediators with significant mediation experience, advanced training, and education. Extensive mediation experience may be substituted for an advanced academic degree. MCFM's certification and recertification requirements are available at www.mcfm.org/standards-certification. For more information, contact S. Tracy Fisher at tracy@tracyfischermediation.com.

Please direct all membership inquiries to Ramona Goutiere at masscouncil@mcfm.org.

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EDITOR'S NOTICE

MCFM Family Mediation Journal

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The FMJ intends to be a resource for family mediators, Probate and Family Court Judges and court personnel, and those interested in learning more about conflict resolution for families. The FMJ strives to be a journal of practical use to practitioners.

The FMJ recognizes that all family mediators share common interests and concerns regardless of their clients' family structures, genders, sexual orientations, races or religions. As mediation is designed to resolve conflicts, the FMJ, like it's predecessor, the FMQ, will not shy away from controversy. The FMJ welcomes and aims to publish the broadest spectrum of diverse opinions that affect the practice of family mediation.

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

The FMJ is mailed and emailed to all MCFM members, Family and Probate Court Judges, all local Dispute Resolution Coordinators, all Family Service Officers, and all law school libraries in Massachusetts. Many of the articles can be found on MCFM's blog, The Family Mediation Blog, located at www.mcfm.org/blog. The Family Mediation Blog also publishes articles not published in the FMJ.

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 to the FMJ or The Family Mediation Blog by emailing the Co-Editors at the addresses above. If you are only interested in having your submission considered for either the FMJ or The Family Mediation Blog, please note your preference in your email. If you do not specify your preference, it will be assumed we may use our discretion to determine whether your submission is appropriate for the FMJ, The Family Mediation Blog, or both. Submissions may be edited for clarity and length and must scrupulously safeguard client confidentiality.

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

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1982 MASSACHUSETTS COUNCIL 37th ANNIVERSARY ON FAMILY MEDIATION 2019

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www.mcfm.org

The Family Mediation Journal 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.

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