

The Professional FAMILY MEDIATOR

SUMMER 2012



Editor's Notes

Welcoming You to Our New Professional World

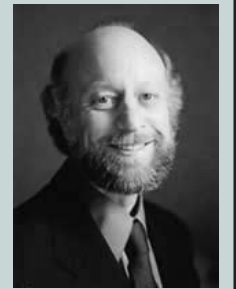
By Don Saposnek

Welcome to the first, launching issue of *The Professional Family Mediator*, the newsletter of the Academy of Professional Family Mediators. And so, we begin again—a brand, spankin' new organization for just family mediators.

As you'll read in the articles within this issue, our experiment of the merger into ACR just didn't seem to cut it for many of us. When talk of the merger was just beginning in the late 1990s, I remember a very prominent figure in the mediation field (who shall remain nameless) said, in strong support of the merger, "We absolutely need to join with a larger group of conflict resolvers across many fields because, within 5 years or so, divorce will be a thing of the past, so we'll need a more diverse client population to sustain our practices." I, for one, disagreed and was not in favor of the merger. However, rather than uttering out loud "I told you so!" I have more humbly and quietly worked along with our other prominent Founding Board Members to steward the inauguration of our own Academy of Professional Family Mediators and serve as Editor of our new organization's publication. Through our upcoming articles, I hope to promote the next fresh iteration of the family mediation field. Indeed, family split-ups and family conflicts continue to exist, in spite of the prophecies of prominent but false prophets of yesteryear. We have much work ahead before the cessation of divorce leaves us clientless.

The band of columnists with whom we are starting this time includes some old, some new, some borrowed, and probably some who are taking SSRIs (blue). I am very thrilled that my arm-twisting paid off

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handsomely in re-recruiting your well-loved columnist of yore, Chip Rose. His "Creative Solution" column had been a hit for several decades, across several family mediation organizations' newsletters, and hopefully, we'll have a score more of those ahead for APFM. Chip is now certified as even wiser yet...his glial cells have really taken off.

I am also pleased to present our new columnist for issues ethical, Bill Eddy. His column is aptly titled "The Ethical Edge: Where Would You Land?" Many of you know Bill from his seminal books and workshops in the area of high conflict divorces and personality disorders. We borrowed him from his "High Conflict" institute to shepherd us through the process of thinking out the many ethical dilemmas we face. We hope to make this a very interactive column, with reader input welcomed and needed.

A relatively new face on the mediation scene, with vibrant energy, is our new marketing columnist, Ada Hasloeher. Her column, "Mojo Marketing and Management" will present ideas for enhancing your mediation practice, which will make you very, very wealthy (well, maybe, at least make a decent living). She invites you to share your own marketing ideas with our readership, in an interactive way.

Speaking of interactive, with our internet format fully into the digital age, our newsletter will be an active and interactive forum for readers and writers to engage with one another. Such a process will stimulate a collaborative process of shared ideas and innovations for practicing mediators. Hopefully, it will reciprocally stimulate readers to become writers and vice versa, fomenting shared ideas from all of us.

Our elder statespersons, Steve Erickson and Marilyn McKnight will be regularly contributing articles regarding our on-going process towards Mediator Certification. They will keep you posted along the way as to progress towards this goal that embraces true and accountable professionalism within our field of family mediation. In this Issue, Marilyn gives her version of the journey towards the creation of APFM, with history that some may not know about. Steve's article elaborates on the importance of the notion of self-determination for the family mediation field. He eschews evaluative processes and insists on our field promoting family self-determination, as we move forward. For those of you that have other opinions about this, we welcome your responses, as well.

CONT. ON P. 9



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The Professional Family Mediator

The Professional Family Mediator is the newsletter of the Academy of Professional Family Mediators, a professional organization dedicated entirely to the practice of Family Mediation as a profession. The newsletter is published quarterly as a member service.

Editorial Policy

In efforts to present a wide range of perspectives on the many issues facing family mediators, the views expressed by each contributing author are intended to encourage consideration and debate but do not necessarily represent the views of the Academy of Professional Family Mediators or its editorial staff.

Legal Disclaimer

The content of this publication is intended to provide its readers with accurate and helpful information for practicing professional family mediators. By publishing it, the Academy of Professional Family Mediators is expressly not engaged in or intending to provide legal, financial, or other professional services. If legal advice or other expert assistance is required, the reader should seek the services of an appropriate competent professional.

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TABLE OF CONTENTS | SUMMER 2012

Editor’s Notes

“Welcoming You to Our New Professional World”.....1
-Don Saposnek

Table of Contents.....2

To our Membership from the APFM Board..... 3

Mojo Marketing & Management4
“The Business of Your Practice”
-Ada L. Hasloeher

Guest Contributors

“Why Do So Many Family Litigants Not Have Lawyers?”5
-Rachel Birnbaum and Nicholas Bala

The Ethical Edge: Where Would You Land?.....6
“The In-Your-Face Deed”
-Bill Eddy

The Creative Solution7
“Beginnings”
-Chip Rose

Guest Contributor

“Standards—Self-Determination”8
-Steve Erickson

Calendar of Teleseminars.....10

Conference Program.....11

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To our Membership from the APFM Board

Welcome to the first issue of *The Professional Family Mediator*. In designing APFM, a great newsletter was but one of our numerous goals in the brainstorming sessions that took place in October of 2011. In true mediator fashion, the walls were covered with paper and the excitement was exceeded only by awe, as we sat back and surveyed the magnitude of the good ideas and great projects. Once all laid out, it was truly compelling and, still, we could only proceed with faith that our desires and goals were shared by a critical mass of other mediators around the country and around the world. Our faith was well founded.

We, the members of the APFM Board, extend our deep gratitude to our growing community of Family Mediators. From the time we launched the APFM website in mid-March just five short months ago, almost 250 members have signed on to those desires and goals. More than a hundred of you are “Founding Members,” with each making a thousand dollar commitment. Projecting this trend line, our membership should approach 1,000 by the end of next year.

Over the past five months, the Founding Board members and a number of other members have been working diligently at creating APFM as a professional organization dedicated to Family Mediation. From our perspective, the time is ripe for Family Mediation to claim its rightful place as a distinct profession. To that end, we must establish a certification program and support comprehensive educational programs that will provide the broad base of knowledge, practice skills and competencies developed by our field over the past 35 years, in order to meet recognized standards for certification.

We have enumerated our goals within the seven reasons for incorporating APFM, listed in our Articles of Incorporation: 1) to support and conduct non-partisan education, and informational activities that increase public awareness of Family Mediation; 2) to develop ethical and practice standards for Family Mediators; 3) to

initiate and implement a certification program for Family Mediators; 4) to provide Family Mediators a resource for their professional development; 5) to offer the public a referral resource for Professional Family Mediators; 6) to support children and their parents by promoting mediation as a healthy response to conflict; and 7) to mitigate the negative impact of divorce on children, their parents, and extended families through the promotion of the mediation process.

One of our educational goals was to have an annual conference. Early in 2012, we struggled with the decision of whether to take on a Founding Conference in 2012, or wait until 2013. After much debate, we decided that the time was now, this year, and you, our members, have rewarded our faith and efforts. We thank all of the new mediators, the founding members and each of the over 250 Founding Conference registrants (at the time of this writing) for your support and confidence. It promises to be an awesome conference!

All this was not done without trepidation. We could liken the past seven months to NASA's recent seven minutes of high anxiety in putting Curiosity safely down on the Martian surface. We have accomplished much in these past seven months. This has included setting up the website, connecting with mediators around the world, offering our members mediator liability insurance via Complete Equity Markets, presenting monthly teleconferences, setting up the book club, and developing and publishing our newsletter—*The Professional Family Mediator*. Yet, similar to having landed Curiosity on Mars, there is much more to do now that we've landed on our feet. As we continue to put much time and money into the Founding Conference, we soon will be presenting to you our own APFM Standards of Practice, a dedicated APFM LISTSERV on which to share your practice queries, a professional journal published through a collaboration between several academic institutions in partnership with APFM, a digital resource section of the website, and the formation of the APFM “Board of

Standards” (a separate entity that will certify mediators based on the accreditation standards for credentialing organizations, as required by the Institute of Credentialing Excellence). This certification will serve to assure both the public and governmental oversight agencies that a certified member mediator of the APFM is competent to provide Professional Family Mediation Services.

As we go forward, other challenges and opportunities will arise. While this Issue goes to press, The APFM Board is engaged, on behalf of the field of Family Mediation, in the formal process of objecting to an attempt in California to have the State Bar of California assume legislated jurisdiction over mediators. Long before this era of consumer protection, of licensure, and of regulation, our professional community has been sensitive to practice standards and ethical behavior. It is essential that we project a collective voice to champion the distinction and benefits of Family Mediation as separate and apart from other professions. It is our intention to advocate that our organization is best prepared to set the practice and ethical standards of practice for Family Mediators.

Please know that we will be requesting from some of you a commitment of your sacred time. Our success in reaching these ambitious goals ahead will depend on many hours from volunteer members, with their rich and diverse knowledge and skills to offer. The spark of creativity often comes from the synergy of diverse disciplines and varied domains of knowledge. Given the diversity and generosity of our membership, our capacity to create a thriving professional organization knows no bounds. Please let us know what special skills and knowledge you have. When we request your input for the certification standards, please respond thoughtfully. *Build It and They Will Come* is much more than the title of our Founding Conference—it is the aspiration for our emerging profession.

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Mojo Marketing & Management

“The Business of Your Practice”

By Ada L. Hasloecher

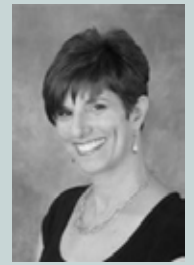
Welcome to the inaugural issue of the APFM Newsletter! As a founding board member, I am thrilled to be part of the launch of our new organization. I believe it could not have come at a more prescient time for our culture and community. As mediators, we know that it does indeed “take a village” and as such, we are truly a motivating force towards that ideal. We are heartened by your response to our new organization and glad that you are joining us as we re-cast that wide net across the world and gather our forces for the greater good.

This column will be dedicated to the “business of your practice” and I am delighted that I have been tapped to be your guide. It was only nine years ago this Spring that I walked into the 40-hour basic training for family and divorce mediation and realized that everything in my life had led me to that exact moment. I threw myself mind, body and soul into becoming the best family mediator I could ever hope to be—a path I continue to walk with humbleness and gratitude for having been given the opportunity to carry out this important and extremely satisfying work. I started my practice with zeal and zero clients! However, I soon figured out, through trial and error, what works and what doesn’t work to build and maintain a thriving practice.

I have devoted myself to getting the word out about mediation and have helped many of my colleagues grow and develop their own practices. Along the way, my associates have shared with me the “blocks” that prevent them from growing their practices, their fears about networking, their best laid plans of mice and men, and their dashed intentions. What they have revealed has fascinated me, and I’ve been developing ideas about and implications of these for our practices, which I will share in this column.

I’ll also share my own success and disaster stories, as we together shed light on the business issues that stymie us, confound us,

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or just plain terrify us and prevent us from really “getting out there.”

I titled this column *Mojo* Marketing and Management because “mojo” has such an interesting connotation. Traditionally, it was known as a magical charm bag—a bag of tricks, if you will. Its modern definition and interpretation has come to mean “self-confidence, self-assuredness, as in the basis for belief in one’s self in a situation.” We all need that little bag of tricks from time to time.

Don’t we dip into it when we are working with a rather challenging client? The same is true when we find ourselves confronted with the challenges of managing ourselves in the ebb and flow of our own businesses. There are two aspects to the work we do: First, there is the process of the mediation itself. And, second, there is the business of marketing and managing our practices. This column will concentrate on the latter and the very practical application of what this means and how to actually realize it. The process of mediating and the process of tending to the business of our practice require different and perhaps even conflicting parts of ourselves. Given that we all are in the “conflict” game—we really shouldn’t have too much trouble dealing with our own conflict, right? Uh-huh.

For example: How many of us know that we need to lose a few pounds? And, how many of us know a good diet, exercise regime, etc., to help us achieve that goal? And yet despite knowing all of that, how many of us actually are losing the weight and keeping it off? Yep, that’s what I thought! Unfortunately, we all know that this doesn’t necessarily translate into taking effective action on what we know. As part of this series, I’m interested in exploring that mysterious space between “knowing” and

“doing”, and teasing out that little rascal!

Whether an introvert or an extrovert, the person that you are while you are the third party neutral in the room with your clients may feel like a different “you” than the person who is faced with an impending networking event, speaking engagement, or request to write an article for the local newspaper. Even an extrovert may find him or herself backtracking from a commitment, due to some unknowable, inexplicable reason. Getting to the core of that enigma is what I plan to investigate, dissect and ultimately reveal, because I believe it is in THAT revelation in which the possibility of change in perspective, action, and results can occur.

So, no matter where you are on the introvert/extrovert spectrum, what you are trying to accomplish with your practice, or what your business goals may be, I invite you to take this ride with me.

We’ll get there together, as I share our stories and your feedback. We will explore ideas, search for insights, and share a few good laughs along the way. So, buckle your seatbelts and join me as I tackle the roadblocks, fast tracks and everything in between. All are welcome—even the backseat drivers!

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Guest Contributors

“Why Do So Many Family Litigants Not Have Lawyers?”

By Rachel Birnbaum and Nicholas Bala

Across North America there is an increasing number of family litigants without a lawyer, but little research on why these litigants decide to have, or not to have a lawyer. We report on the first study about the decisions of Ontario family litigants as to whether or not to have a lawyer. This study was undertaken over the past year at six court sites in four Ontario cities, with law students from Pro Bono Students Canada surveying 275 litigants. About 60% of the litigants did not have lawyers and 40% did have lawyers, with roughly an equal number of men and women in the study.

Deciding Whether to Have a Lawyer

Not surprisingly, those with higher incomes were significantly more likely to have lawyers than those with lower incomes, though there were no differences in rates of legal representation between men and women at each income level. The vast majority of those with lawyers stated that they planned to continue with their lawyer and reported that their lawyer was very helpful (62%) or moderately helpful (19%); only 2% said their lawyer was not helpful. Most of those with lawyers

if the other party would have a lawyer, suggesting that the lack of representation by one party may influence the other party to be unrepresented. A further 8%

expressed a concern that having a lawyer would increase the delay, cost or conflict involved in resolving the case. There were 5% who gave as their primary reason for not having a lawyer the desire to “directly confront a former partner”; these are individuals who are likely prone to high conflict proceedings, and were more likely to be men than women.

Consequences of Not Having a Lawyer

About two thirds of those without lawyers reported that it is difficult or very difficult to navigate through the family court system as a self-represented litigant, and almost half felt that not having a lawyer slowed down the process.

A significant portion of those without lawyers, however, reported that they had access to sufficient information about family law to represent themselves; in particular, information gleaned from the internet.

About half of those without lawyers believe that judges listen more to those with lawyers, and they expressed concerns such as feeling “like second class citizens” because they were unrepresented.

However, roughly three quarters of those without lawyers reported at least moderately good treatment from court staff and judges. Significantly, a majority of unrepresented men did not expect a worse outcome regarding economic issues because they were unrepresented, but a majority of represented men would expect a worse outcome if they were without counsel. Somewhat surprisingly, almost



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10% of self-represented men believe that they would experience worse outcomes if they had a lawyer. By way of contrast, perceptions among women regarding the value of having a lawyer for dealing with economic issues are very similar to those with and without a lawyer, with most women expecting better outcomes for those with lawyers. This suggests that, for many, especially for men, being self-represented reflects the belief that having a lawyer will not result in a better outcome, and hence is not worth the expense.

While many of those without lawyers reported reasonable satisfaction with the family justice process, there were also many who expressed profound stress and depression with their situation and concern about the effect of not having a lawyer for themselves and their children. A recurring theme found in the comments of men was a perception that the family court system is biased against men, reflected in statements such as, “You need a lawyer to have any chance of getting a favorable decision. This especially applies to males, since family court judges favor women.” Women, on the other hand, tended to raise financial and safety concerns for themselves and their children, as well as about access to justice.

Need for a Range of Responses

While our survey confirms the views of many mediators, family lawyers and judges that the most important reason for the lack of representation is lack of financial resources and ineligibility for legal aid, many are choosing to not have a lawyer because they believe that their money is

CONT. ON P. 9



Nicholas Bala, J.D. LL.M. is a Professor of Law at Queen's University.

Their research is supported by a grant from the Social Sciences and Humanities Research Council, Canada.

expected that they would “obtain a better outcome as a result of having a lawyer” (73%), and more than a third expected that the process “would take less time by having a lawyer”. The most common primary reason that litigants gave for having a lawyer was the “expectation of a better outcome” (41%), while 26% gave “lack of knowledge of the legal process or the law”, and 5% reported “not wanting to deal directly with the other party” as their primary reason. Almost half of the respondents without representation reported that their primary reason for not having a lawyer was that they did not have enough money and were not eligible for legal aid (49%). Another 8% were waiting to see

The Ethical Edge: Where Would You Land?

"The In-Your-Face Deed"

By Bill Eddy

Many ethical issues for professional family mediators occur on the edge—the ethical edge. They're not clear cut, and family mediators may disagree with one another, landing on one side of the issue or the other. In this column, I welcome your opinions—long or short—on a variety of ethical edge issues, such as:

- What ethical responsibilities do we have regarding domestic violence? How actively and thoroughly should we inquire at the start of every case about the possibility that it is present? Or, should we deal with the issue only if one of the parties raises it? Or, if we observe the presence of some red flags during the mediation?
- Should family mediators draft marital settlement agreements? Is this an issue of particular mediation cultures – with some groups of mediators saying it is routine to write these and others saying it is forbidden? Are there geographic differences on this subject?
- What should you do if the parties agree to a very unbalanced financial agreement? And does it make a difference if the disadvantaged party to such an agreement is a woman or a man? standards, and even malpractice insurance. My goal is to have us learn from each other, so that we can refine our own skills and critical thinking when new (and old) ethical edge issues arise.

I'd like to get questions and scenarios from both new and experienced family mediators on issues like these. Having taught mediation and ethics to lawyers, therapists, and mediators, I know that many people are afraid to admit their ethical edge issues. They think everyone else knows the "right" answer and they don't want to be seen as ignorant. What I have found is that no one knows the "right" answer on many ethical edge issues in mediation—even those experienced mediators that have been around for years. We are still a relatively new profession, but a profession covered increasingly by laws, standards, and even malpractice insurance. My goal is to have

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us learn from each other, so that we can refine our own skills and critical thinking when new (and old) ethical edge issues arise.

So don't be shy. You can even submit a question anonymously (as long as you identify yourself to us). Are you on the edge? Let us hear from you. You are not alone.

The In-Your-Face Deed*

The following is based on a case of mine which was recently discussed in the book *Mediation Ethics*, edited by Ellen Waldman (Jossey-Bass, 2011).

Mary, a social worker, and Tom, an executive, are divorcing. They have two children, a boy, age 6, and a girl, age 8. Mary is willing to be flexible about sharing the children but believes Tom's demand for half of the parenting time is unrealistic. She prefers a schedule for Tom of alternate weekends, with one weekday evening, while Mary has the intervening weekend and all of the weekday overnights. Mary has been quieter during the mediation, as Tom can be very verbal and appear inflexible in his views on the children and their best interests. It is unclear whether Mary is going to oppose Tom's firm "position."

Tom and Mary own the family residence and a rental home. They both would prefer to stay in the family residence, although the rental could be a decent home for one of them and the children. Tom is the higher income earner, with a history of managing most of the family finances. However, his company is cutting back and he is worried about the security of his position.

At the start of the third session, Tom announces that he is really stressed by the financial pressures of paying for the family residence, dealing with the rental, and supporting Mary and the children. He states that he has a generous global settlement

package to propose, as follows:

- He wants the family residence and will give Mary the rental property.
- He will defer to Mary's requested parenting schedule and not fight over the children.
- He will pay her child support and alimony in an amount he considers generous.
- She must accept his proposal at this mediation session; otherwise he will withdraw it, go to court and fight her on all issues.
- He informs her that he has brought two Quit Claim deeds with him, one for Mary to sign the residence over to him and one for him to sign the rental over to her. He states that he has hired a "Notary on Wheels" who will arrive at the mediation office in one hour, and he insists that she sign the deeds today.

Tom then tells the mediator to meet alone with Mary to explain his proposal to her, to explain how generous it is and the wisdom of accepting it today, rather than going to court. He gets ready to leave the room so the mediator and Mary can caucus. He appears very stressed and says he just wants to get this over with, in order to get the finances under control.

Neither party has a lawyer. At intake, both parties denied any allegations regarding domestic violence, although the mediator is now concerned that Tom may solve problems through intimidation and wonders how far that has gone. On the other hand, the mediator thinks that the deal may actually be a generous one for Mary and might help her get out of this relationship faster.

What would you do?

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The Creative Solution

"Beginnings"

By Chip Rose

In past columns for AFM and ACR, I have written two columns with the title, *"Beginnings and Endings."* The first column was substantive, and the second, ceremonial, acknowledging the final column in the series. Now, it seems altogether appropriate to inaugurate the new APFM Newsletter with a first column that embraces both the ceremonial and substantive aspects of that dyad. The ceremonial aspect salutes the launch of our new professional organization which has already begun rekindling the energy that so characterized the family mediation community of the last three decades. At the same time, as one who makes his living mediating family matters, I am inexorably drawn to—and in constant search of—the theories and practices that will lead to the greatest client success as a process design for consensual dispute resolution. And even at the risk of hearing some distant voices singing the refrain of Dan Hicks melancholic hit *"How Can I Miss You If You Won't Go Away"*, I embrace the opportunity of reprising **The Creative Solution.**

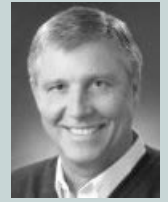
The first question that Bernie Mayer posed so succinctly in the pre-conference institute named "Beginnings and Endings" that he and I presented in San Francisco in 1998 was "What are the critical characteristics of the beginning of the process that inform the outcome at the end? As a practitioner of the art, I find myself forever in pursuit of the perfect process for mediation. As a trainer, I have had to become even more of a student of the art. Once I was exposed to Don Saposnek's *Aikido* metaphor as a description of the movements of a mediator, I have been in pursuit of the perfection that would, by inference, come with achieving black belt status. I find a parallel in my daughter's last 11 years of preparation for a career in ballet. Her art form requires an unrelenting pursuit of perfection while accepting the reality that, like the mirage of an oasis in the desert, it is always just beyond one's reach. With those humbling thoughts in mind, this column is dedicated to remaining obsessively curious and

relentlessly inquisitive about what our clients need and how the skills we bring to bear and the process frameworks we design can better serve them. It is committed, as well, to the kind of mindfulness necessary to seize the opportunities for discovery that unfold before us every day in our work.

At the beginning of a mediation, there are numerous critical factors to identify. Emotion and capacity are two obvious factors, and each is worthy of its own columns. Of equal importance, in my opinion, is the need to identify another imperative characteristic, which is the establishment of shared goals. More often than not, clients come into the process acutely measuring their differences while comforting themselves with their own solipsistic perspectives. In so doing, they have lost sight of their most important goals and have become blinded to the fact that these are goals that they share with one another. Identifying these goals and establishing the fact that they both share them can become a foundation for all the work that will follow. The goals can be identified by strategic questions. In recognition of the patience each client may or may not have for "process" development, the questions may well be framed in a style that would be considered quite directive. I label these specific inquiries "macro questions", because they go to the biggest and most important concerns that the clients have. They are the meta-categories of their concerns under which most of their outcome-specific (or micro) concerns can be catalogued. I also describe them as "big, round river rock" questions, because the goal of this strategic intervention is to frame questions to which each client will give an affirmative answer, and, therefore, the questions must be as smooth and free from rough edges as a granite rock that rests in the bottom of a mountain river.

Asking such questions can seem manipulative, however, there are no tricks to the questions and there is no objective other than the discovery of goals that the parties share in the broadest and most open sense. For

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example, the mediator may ask: *"Would you like to go through this process in a manner that is as beneficial to your children as possible?"* In thirty-two years of mediating, I have had only one client answer that question in the negative, and in that case the answer revealed very important and unexpected information. In 99.9% of the cases over those three decades, however, the answer from each of the clients has been an unconditional "Yes." Although it may be a self-fulfilling observation, I do believe that, in the aftermath of asking these "macro questions", I have seen the clients start to relax and begin to release some of the tension that they carried with them into the session. The simple fact of their nodding affirmatively in unison regarding such an important value that each was aware of having individually and now are experiencing together in concert changes their experience of what is happening, as the process begins to unfold for them.

This first macro-question can immediately be followed up with another strategic question: *"Will you give me permission to tell you when you are moving away from that goal?"* Not only has the consistent response to this second question been an unconditional "Yes", the clients frequently reinforce the idea with comments like, "By all means", or "Absolutely, I would want you to". There are some very important dynamics taking place in this very simple sort of interchange. First, the clients are being reminded of a most important goal that they share, and they are being reminded at a time when they are more preoccupied with their differences. Second, implicit in the question the mediator asks and the answer that each client gives is the notion that each of them bears responsibility to work with the other in a manner that is consistent with that most important goal to which they have just expressly committed themselves. Third, the role of the mediator is being described as a supporter of their efforts to achieve success, while reminding them that each client is

CONT. ON P.9

Guest Contributor

"Standards - Self Determination"

By Steve Erickson

The Standards of Practice for our new Academy of Professional Family Mediators begin by stating: "A Professional Mediator shall recognize that mediation is based upon the principle of self-determination."

I attended the 1982 gathering of mediators in Denver where this principle was debated, adopted and written down as a core concept for mediators to follow. It was the one item that everyone agreed upon at the time. Although many changes in the mediation field have occurred since then, that one principle has remained primary, at least in its wording, if not always in understanding or practice.

I believe self-determination to be the single most important defining principle that shapes our profession, as well as being the least understood and least applied mediation concept, not only by the public, but by practitioners in this field, as well.

My first exposure to the concept of self-determination was in 1977, when I started working with O.J. "Jim" Coogler (as you may know, he is considered by many to have been the creator of divorce and family mediation). Jim passed away in 1981, having written one book, *Structured Mediation in Divorce Settlement: A Handbook for Marital Mediators*. Jim had conducted approximately 20 or so divorce mediations before I first met him, and he often stated that the reason mediation is so important is that people in conflict do better when they are encouraged to find their own answers, rather than being told or forced to do something by the court or their lawyers, or, for that matter, by their mediators.

In working with Jim, I quickly realized that the skills of a mediator were quite different than the skills I obtained in law school. As I struggled to learn this new craft called mediation, I began to realize that whenever I predicted in the mediation room what would happen if the case went to court, or whenever I got too intense trying to force a solution, I always lost ground with the couple.

Stephen K. Erickson, J.D.,

is one of the founders of the original Academy of Family Mediators, started in 1980, and is a Founding Board Member of the Academy of Professional Family Mediators. He has practiced exclusively as a family mediator since 1980. He also helped create the first 40-hour divorce mediation training that took place in 1981, and he continues to write, teach and mediate.



Likewise, as we began to conduct those early 40-hour divorce mediation trainings, the concept of self-determination was also the most difficult for the new mediator to embrace and understand. The question frequently asked in mediation trainings goes something like this: "If you can't tell them what to do, how do you get them off of their fixed positions?" Such a question is precisely why self-determination is important.

I believe that self-determination, like cooperation, occurs when the mediator creates an environment where it can take hold and grow in the room. Therefore, it is necessary for the mediator to refrain from creating an adjudicative environment of any kind where the parties look to the mediator for decision making and rather till the soil in a way that creates an atmosphere of self determination. This means paying attention to even the smallest details.

In the late 1970's when I worked with Jim Coogler, he was so conscious about the need for decision making to reside with the parties that he turned down an offer to locate the mediation offices of the court pilot project in the court house and instead rented space in a building 6 blocks away. He said he did not want the public to think that we were practicing law, giving legal advice, or making rulings on their case.

The following represents some of the elements necessary to create a self-determined conflict resolution process:

- a) Clients, rather than attorneys or the court, choose the mediator.
- b) The mediator, rather than attorneys, manages the process.
- c) Clients meet face-to-face, rather than in separate rooms.
- d) Focus is interest-based, rather than positional bargaining.
- e) The mediator does not evaluate who is most likely to prevail in court.
- f) The mediator helps clients work on a parenting plan and does not use words like custody and visitation.
- g) Clients are allowed to deviate from the law.
- h) Clients are not coerced or bullied by the mediator.
- i) The mediator offers options and choices.
- j) The mediator controls the process; clients control the outcome.
- k) The past is not rehashed in detail, but just enough to understand the problem.
- l) A discovery process is not necessary; information is exchanged in the room.
- m) There is a future focus (rather than a past focus).
- n) Blame and fault are not as important as resolution.
- o) Clients understand that impasse is an option.

As we go forward in the new Academy of Professional Family Mediators, it will be necessary to be vigilant about protecting and defining self-determination as a core principle of the mediation process.

“Welcoming You to Our New Professional World” cont. from p.1

But wait, Chip, there is more. Plans are in the works for a rich array of fascinating articles on topics related to our practices and designed to expand our knowledge. One such article that we include herewith is the recent research by Rachel Birnbaum and Nicolas Bala that gives an inside look at the views and motives of Self-Representeds, with interesting commentary on the structure and process of contemporary family law cases. And, along the way, to boot, we may acquire additional exciting columnists, who

will feature Book Reviews, Tele-seminar Summaries, and more.

Please send your responses to any and all of these articles, as well as your ideas for new features to our newsletter, to the editor at: dsaposnek@mediate.com, and be sure to include your name and location. We intend to publish your responses and get a dialogue going on these and other matters of concern to our readership of family mediators.

I leave you with this thought:

“When tempted to fight fire with fire, remember that the Fire Department usually uses water.” --Anonymous

Enjoy the read within, and stay tuned, folks. There is more to come in the Issues ahead.

Don Saposnek

Editor

The Professional Family Mediator

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“Why Do So Many Family Litigants Not Have Lawyers?” cont. from p.5

better spent in other ways. Many of the self-represented are being helped by increased access to information and feel reasonably comfortable dealing with the family justice process. Given the high cost of legal representation and the availability of “free” government services and information, it may well be a sound decision for some individuals to decide not to retain counsel (though these litigants are imposing costs on the justice system and government, and often on the other party). However, for a very significant portion of family litigants who are unrepresented for

financial reasons, there are serious concerns about outcomes for them and their children. Clearly, more needs to be done for the vulnerable unrepresented litigant. We need more legal aid services (in spite of shrinking budgets), and an expansion of mediation and collaborative family law services, since these services may reduce the costs of resolving disputes. There are also many “Do-it-Your-Selfers” who might be able to afford a lawyer but choose to represent themselves. Some of them, especially men, believe that they will actually have better outcomes if they

represent themselves, or they may relish the prospect of personally confronting their former partners. While individuals have the right to represent themselves and take their disputes to court, there must be greater efforts to educate litigants about the value of obtaining sound legal advice. Further, in appropriate cases, those who choose to represent themselves and thereby impose costs on the other party due to procedural errors, prolongation of trials or rejection of reasonable settlement offers, should be ordered to pay the costs imposed on the other party.

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“Beginnings” cont. from p.7

responsible for that success. It is fundamental to the eventual success of the process that these responsibilities are made clear at the very outset of the process.

I have applied these types of shared macro goal questions to three basic categories of issues on which the process will be focused: 1) The topic of children, when there are children of the marriage, including grown children when parenting is no longer an issue; 2) The topic of “finances” in the most general sense; macro questions regarding “finances” can be asked and are effective regardless of whether the parties are on the threshold of bankruptcy or have a multi-million dollar estate. A sample question for this category might be: *“Would it be a goal of yours to resolve the financial issues of your marriage in a manner that maximized the outcome and benefit you achieved?”* Clients may very well assume that this means getting more than the other person—a flawed

strategy of the zero-sum game that is litigation. They may be surprised to hear the mediator say that the only way for either of them to achieve maximization of their financial outcome is, if both parties succeed in that result. I first heard Jim Melamed framing an outcome goal with the term “*maximization*” when we co-presented a course at the Strauss Institute at Pepperdine Law School a number of years ago, and it fit so perfectly to the strategies I was employing in my practice that I embraced the term and have used it ever since; 3) The “process” itself. A sample process macro goal question might be: “Would it be a goal of yours to go through this divorce process in a manner in which you felt safe and were assured that your interests were protected all the way to a signed agreement and subsequent judgment?” While I sometimes get quizzical looks from husbands to this question, the vast majority of clients do not hesitate to give an affirmative response.

Safety can then be elucidated in macro forms—a commitment to full disclosure and a commitment to engage with one another respectfully—and also in micro forms—refraining from interrupting one another, and avoiding critical characterizations of one another during the work being done in the sessions. Re-affirming the permissions that the clients give the mediator to remind them when they begin deviating from these objectives allows the mediator to create a compact with the clients based on their commitment to constructive and strategic behavior aimed at fulfilling their own expressed self-interests. In the context of negotiating collaboratively in mediation, clients need to be reminded that the other side of the coin of “self-interest” is “mutuality”. It is a Newtonian Law of relationship negotiation that neither party will successfully maximize his or her own self-interest unless their negotiating partner does so as well. Successful beginnings depend on successful strategies.

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2012 CALENDAR

SEPTEMBER

8

New York State Council on Divorce Mediation
Mini Conference: Stretching Our Skills
10:00AM - 4:15PM
101 East Green Street, Ithaca, NY
One day divorce mediation conference
covering the topics of money and emotions,
children with special needs, and cultural issues
in divorce.

For more information please go to this link:
<http://www.nyscdm.org/content/save-date-upstate-new-york-mini-conference>

OCTOBER

18

New York State Dispute Resolution
Association's Annual Conference
Albany, NY

For more details, see: <http://nysdra.org/>

Upcoming APFM Teleseminars

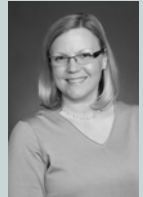
August 7, 2012

Innovations in Parenting: Mediating Parenting Conflicts Using Information, Research and Creativity

Presented by Solveig Erickson Mayer, MSW and Marilyn McKnight, M.A.

This Teleseminar will discuss how mediators tap into the inner resilience of parents trapped in toxic separate co-parenting relationships, and will provide some research, ideas and mediator interventions to improve parenting and take the children out of the middle.

Solveig Erickson Mayer, MSW, mediator, COO, CFO at Erickson Mediation Institute since 1994, co-authored the article "Mandatory Divorce Education Classes: What do the Parents Say," published in the William Mitchell Law Review and has taught as adjunct professor at William Mitchell College of Law.



Marilyn S. McKnight, M.A. is a mediator, trainer and author who has practiced exclusively in the field of mediation since 1977 after an extensive career in public social work. She is a past Board Member and President of both the Academy of Family Mediators and the Association for Conflict Resolution, and is a Founding Board Member of the Academy of Professional Family Mediators. She has received numerous awards over the years for her work.

September 11, 2012

Standards of Practice: Discussion of APFM Standards of Practice for Divorce Mediation, as the Foundation for Professional Development, Training and Certification

Presented by Stephen K. Erickson, J.D.

APFM is committed to "raising the bar" of the practice of divorce mediation. The Standards of Practice for Divorce Mediators have been revised and are ready for discussion. Once they are accepted, they become a hallmark of professional divorce mediation practice, and the basis for development of the APFM process to certify divorce mediators. Your comments and ideas will be appreciated in this important teleseminar.



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The Academy Of Professional Family Mediators
Build It and They Will Come!
A Visionary Gathering &
Reunion of Family Mediators

The Seacrest Resort
in Falmouth, Cape Cod, Massachusetts
September 27-30, 2012

The Academy Of Professional Family Mediators

Build It and They Will Come!

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We're excited to return to the Sea Crest for this inspirational, informative gathering! Located in beautiful Cape Cod, this event will let you refresh your spirit, pick up new techniques, and network with your colleagues. Expect nostalgic interludes recalling our history and time with old friends. But also expect to make new friends as we look to our exciting future. Walk with us on Old Silver Beach to explore what's ahead for Family Mediation. We can't wait to see you there!

Conference Schedule

Thursday, September 27, 2012

11:00AM–7:00PM **Registration open**

1:30–4:45PM

Pre-Conference Institutes

Between a Rock and a Hard Place: Avoiding Impasse and Managing Tough Issues—*Chip Rose*

A Tour of IRS Form 1040, Schedules C, K1 & W-2 —*Susan Miller*

The Art & Science of Mediating with the Mind: Building Strategy and Resolution—*Jennifer Kresge*

7:00PM **Welcome**—*Marilyn McKnight & Hon. James Menno*

Friday, September 28, 2012

7:30AM–5:00PM **Registration open**

7:30–8:30AM **Mentoring and Full Breakfast**

8:30–10:00AM

Opening Plenary 1—Keynote Presentation

Family Mediation Yesterday, Today and Tomorrow—From Carbon Copy to the Cloud—*Jim Melamed*

10:00–10:30AM **Break** Sponsor area open

10:30–12:00PM

Workshop Series #1

Med-Arb; Yes, No or When?—*Arnold Swartz*

The Effects of Divorce on Children—*Joe McGill*

Elder & Adult Family Mediation - Completing the Circle of Family Mediation Practice

—*Arlene Kardasis, Crystal Thorpe & Blair Tripp*

High-Conflict Divorce Mediation—*Bill Eddy*

Mediation and Marriage Reconciliation/Closure

Therapy—*Mark Schaefer & Marilyn McKnight*

The Computer is Your Friend: Better Financial Outcomes

Through Software—*Dan Caine & Barbara A. Stark*

Friday Cont.

12:00–1:30PM

Topic Lunches

Starting a Practice Moderated—*Ada Hasloeber*

Difficult Cases Moderated—*Ken Neumann & Hanan Isaacs*

Managing a Practice Moderated—*Diane Neumann*

Mediator Certification Moderated—*Rod Wells*

1:45–3:00PM **A Gathering of Mediators**

3:00–4:00PM **Ice Cream Social** Sponsor area open

4:00–5:30PM

Workshop Series #2

The Dark Side of Mediation—*Mel Rubin*

Introduction to Parenting Coordination—*Ann Marie Termini*

Complex Financial Issues in Divorce Forensic Accounting

Analyses, Business Valuation Issues and Income Versus

Assets for Highly Compensated Individuals—*Laurie Tunic*

One-Stop Shopping—*Diane Neumann*

High-Conflict Elder Mediation—*Bill Eddy*

Mediation as a Choreography of Communication

—*Jim Melamed*

6:00PM **Dinner** Dine-Around groups on the town

9:00PM–12:00AM **Hospitality Suite**

NOTICE

DEADLINE EXTENSION FOR ACCEPTANCE OF “FOUNDING MEMBERS”

In our efforts to broaden our base of Founding Members, APFM has decided to extend the deadline for acceptance of new Founding Members to the last day of our First Annual Conference, in Cape Cod, September 30, 2012. We eagerly invite you to join us as a Founding Member. You can join now by going to www.apfmnet.org and clicking on the “Membership” tab.

CONT. PAGE 12

Conference Schedule Cont.

Saturday, September 29, 2012

7:00–8:00AM **Yoga**

8:00AM–1:30PM **Registration open**

7:30–8:30AM **Mentoring and full breakfast**

8:30–10:00AM

Plenary 2

Marketing and Branding for Mediators—Do's & Don'ts
—*Mark Bulloc*

10:00–10:30AM **Break** Sponsor area open

10:30–12:00PM

Workshop Series #3

Federal Pension Plans—*Steve Abel*

Marital Mediation Can Help Couples Stay Married
—*John Fiske & Ken Neumann*

Thinking Outside the Box—Expanding Settlement Options Beyond Off-the-Shelf Solutions
—*Ellen Waldorf & Doris Tenant*

Domestic Violence Issues, Mediation Practice and Concerns—*Mary Ann Lawson*

Listening to Children in Mediation—Don Saposnek To Caucus or Not to Caucus . . . That is the Question
—*Susan Deveney*

12:00–1:30PM

Topic Lunches

Managing a Practice Moderated by *Diane Neumann*

LGBTQ Issues Moderated by *David Epply*

Mediating without Lawyers Moderated by *Marilyn McKnight*

APFM Partnering with State and Local Orgs. Moderated by *Ken Neumann & Rod Wells*

1:45–3:15PM

Plenary 3

Panel on Mediators Writing Final Documents
—*Steve Abel, Carol Berz, Steve Erickson, Diane Neumann*

3:15–3:45PM **Break** Sponsor area open

Saturday Cont.

3:45–5:30PM

Workshop Series #4

Beginners' Nuts & Bolts of Mediation Practice

—*Dolly Hinckley*

What do we do? How do we do it? (Questioning the Questions)—*Len Marlow*

Mediating Child Support Plans—*Steve Erickson*

Redefining Power and Control: A Collaborative Parenting Plan—*Carol Berz*

Uncovering Hidden Assets in Mediation

—*Michael Becker & Glenn Dornfeld*

Energizing Your Mediation Practice With Easy-to-Employ Technology Tools—*Larry King & Chris Griffith*

6:00PM

Lobster Clambake at ocean side with cash bar

Entertainment: The Geriatric Divorce Case

Steve, Ken, Rod & Barbara

Sunday, September 30, 2012

7:00–8:00AM **Yoga**

7:30–8:30AM **Mentoring and full breakfast**

8:00AM–1:30PM **Registration open**

8:30–11:30AM

Closing Plenary 4

Mediation Practitioners in the Fishbowl

Moderated by *John Fiske*

11:30AM–12:00PM **Open forum**

Where do we go from here?