The Professional
FAMILY MEDIATOR

Feature Article

SPRING 2013

APFM
ACADEMY OF PROFESSIONAL FAMILY MEDIATORS

The Mystery of Mediation

By Steve Abel

Steven Abel is a founding member of the new Academy of Professional Family Mediators and is a divorce mediator and family law attorney with more than 40 years' experience. He is the editor of Federal Family Law and one of the co-authors of The Friendly Divorce Guidebook for New York, and author of articles on divorce law (including "Social Security Retirement Benefits"), and several Blumberg law forms for divorce, including Child Support Worksheets. Steve is a past President of the New York State Council on Divorce Mediation. He is a founder of the New York State Chapter of AFCC.

If self-determination is one of the secrets behind the mystery of why mediation works so well, I think we need to fully embrace it. The recent articles by Stephen K. Erickson, Carol Berz and Larry Gaughan highlight a hidden tension in our field—when does our belief in self-determination fall in favor of other considerations.

The tension involves the conflict of two great ideas: The first is that we believe that our clients are entitled to determine their destiny, no matter how unusual their decision looks to us; the second is that mediation is a distinct profession and we should not allow coercive legal practices or psychotherapy to "seep into" the mediation room.

My background is 40 years of legal practice with 25 years of mediating. Those 25 years include hundreds of hours of talk with my partners and good friends, Ken Neumann, and the late Howard Yahm, two incredible mediators and psychotherapists. This personal history has made me see that there is nothing pure about any process to end a marriage.

Elsewhere, judges don't just judge—they often facilitate resolution. Psychotherapists don't just listen and interpret, sometimes they judge. Lawyers don't just argue for their client, they often urge their client to see their ex's point of view. And mediators do it all.

I have also seen enormous change in how courts handle divorce cases, as I hear more and more judges voicing clear understanding and direction of how to avoid the worst results for children. Voluntary and mandatory mediation programs are now fairly common adjuncts in the courts.

At the same time, the growth of Collaborative Divorce is primarily the result of divorce lawyers working for a better process than litigation.

As a divorce lawyer, collaborative lawyer, and divorce mediator, I come down in favor of only one "pure" point: self-determination should approach 100% to the degree as humanly possible. That means it is up to each couple to decide what they want from me as a mediator. Some people just need a good listener while they work out the details, and my role for them is primarily to provide an organized agenda.

Some people repeatedly ask for options: "What do other people do?" or "What would happen in court?" I can usually come up with three options from previous cases. Mostly, that's enough to avoid being too suggestive.

In developing Standards of Practice, the question about predicting court results seems to be a bit controversial. In their response to Gaughn's article, Erickson and Berz clearly state that mediators should refrain from advising about the current state of the law. For them, there must be a clear "line in the sand, no more co-mingling of roles." To their credit, they honestly state that the reason for this hardline position is the "colonization" of mediation by lawyers.

I see this as a somewhat odd notion when presented by mediators who know that a big part of our work is identifying our clients' fears and dealing with those fears openly and honestly. My problem is that I just don't understand what this fear of colonization is all about. At present, very few divorce mediators start their professional careers as mediators. The vast majority of us come from either legal or mental health practices, with a smattering of accountants, financial planners and others. While it seems that attorneys dominate divorce mediation in two states, I'm not sure who is colonizing whom, and who is infusing what.

I don't think the answer is all that important, because I believe that professional mediators need a vast array of knowledge to effectively help divorcing couples. It is not enough to understand mediation process techniques. The average couple also wants information about incredibly varied subjects such as budgeting, parenting, mortgage refinancing, grounds for divorce, and on and on. The result is that we use everything in our personal goodie bag, including all of our years of experience as a human being, along with the wisdom that a few gray hairs have wrought, the acumen we bring from our current and past professions and on-going training and education in the realms of divorce and family mediation.

So, that's the next point: I am willing to offer what the clients ask for. If they do not ask about the best way to tell their children about divorce, I don't offer the brilliant structure of handling that the way Ken Neumann framed it (Visit divorcemediation.com). If they don't ask about the law dealing with property division or child support, I don't offer that information.

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APFM
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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.

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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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The Professional
FAMILY MEDIATOR

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Editor's Notes

"So Many Issues, So Little Time"

By Don Saposnek

Donald T. Saposnek, Ph.D., is a clinical-child psychologist and family therapist since 1971, a child custody mediator and trainer since 1977, and is a Founding Board Member of APFM. He is the author of *Mediating Child Custody Disputes: A Strategic Approach,* and co-author of *Splitting America.* He is past Editor of AFM's *Mediation News*, ACR's *Family Mediation News* and is the Editor of APFM's *The Professional Family Mediator*. He has been teaching on the Psychology Faculty at the University of California, Santa Cruz since 1977.

We've got a great show for you in this Issue; clear, compelling, controversial ideas from the minds of experience. Part of my joy in being Editor is that I get to be the first to read all this great stuff and pick the best articles to share with you. After 42 years of doing professional work, I still get excited and intellectually stimulated by new, fresh, and controversial ideas.

Our feature article is by Steve Abel. Following up on the controversy generated by Larry Gaughan, Steve Erickson and Carol Berz in our last Issue of The Professional Family Mediator, Steve Abel writes a probing article that questions and explores the implications of the notion of client "Self-Determination" that is currently within the Working Draft of the Standards of Practice. He challenges some seemingly well-established assumptions of our work as mediators and makes a plea for you readers to write in with your input on this most crucial issue of how the Standards of Practice should reflect this matter.

APFM's President, Rod Wells, has continued to make things happen! In his President's Column, he lists an abundance of important organization-growing activities being done by our Board and our members. We have reached a critical mass of sustained growth as an organization and continue now to flesh out our various and diversifying functions. A great informative and inspirational article he gives us.

In her Column, "Mojo Marketing and Management," Ada Hasloecher continues to educate us about business cards and, this time, highlights the misuses of business cards to contrast with how to use them properly and effectively. While she makes excellent and useful points about this, we're not sure whether she really is done with writing about business cards or not—stay tuned for next Issue's Column from her.

Chip's Column, "The Creative Solution," is about "Stuck in Neutral," and addresses the important distinctions between neutrality and impartiality—an issue that harkens with meaning back to our origins as a field, and a lesson for us all to ponder, regularly.

And, Bill Eddy's column, "The Ethical Edge," received three reader responses to the question of whether mediators should write up mediation agreements. The controversy about this issue continues boldly.

Our colleague from New York, Lenard Marlow, offers us the first of a two-part article titled "Divorce Mediation: A House Divided." In this article, he challenges the notion that divorce mediation is an integrated field, suggesting rather that it largely is still a "house divided" between lawyers and mental health professionals, and he explores the implications of this for our growing field.

We also include a charming article by Bruce D. Clarkin, titled "Go in Peace." After presenting some reflections on the pain for couples going through divorce, he ends it with a poignant case example that may bring tears to your collective professional eyes.

This Issue brings another insightful contribution by Larry Gaughan. In his article, "Mediation and Our Spiritual Journeys in a Material World," he asks us to consider how, as mediators, we integrate and embrace the spiritual aspects of divorce (changes in meaning, values, beliefs, social/spiritual support systems, etc.) with the material aspects of divorce (money, property, etc.). A thoughtful piece, indeed.

Steve Erickson adds to this Issue another very provocative article, "Why Divorce Does Not Belong in the Court System." His article promotes the removal of divorce from the court system. He believes that for the field of family mediation to reach its ideal goal, we need to stop enabling an adversarial model of divorce. I will be especially interested in your thoughts on this highly controversial idea.

To those who were unable to attend the First APFM Advanced Training that took place in Atlanta, Georgia in April, Bill Eddy presents a summary of the training's focus—the topic of Power Imbalances. It was a very successful event, with the group promising to offer more of these advanced trainings, if our membership expresses interest in them.

Last, we are offering a "Marketing Contest" with prizes for the best ideas—please read the details within.

Please send your responses to any and all of these articles, as well as your ideas for new features to our newsletter to me 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:

"We don't see things as they are, we see them as we are."

---Anais Nin

APFM's First President's Message

"While the Bears were Hibernating"

By Rod Wells

Rod Wells has been a steadfast advocate of mediation throughout his career. He is Past-President of the New York State Council on Divorce Mediation, Past-President (and founding member) of the New York Chapter of the Association of Family and Conciliation Courts. He is a Founding Board Member of APFM and Advanced Mediator, a Certified Financial Planner® Certificant, and a Financial Neutral in collaborative divorce cases. When he is not mediating, he teaches courses on couples and family relations with his wife, Sandy.

While the bears were hibernating over these past winter months, APFM has been "foraging" ahead. There is much to do and the APFM committees have been working hard. It's very rewarding to see so much happening so fast. Here are some highlights about what is happening.

The Ethics and Standards Committee continues to work diligently on revisions, with many of you having offered constructive comments. Some of the proposed standards have inspired a healthy debate and dialogue. There is another viewpoint offered by Steve Abel in this issue. This dialogue of our peers can only serve to refine and improve the Standards. We are truly fortunate to have so many seasoned and experienced mediators in our membership to offer their wisdom. This is not to dismiss the fresh and insightful observations that have been contributed by our newer mediators. To review the proposed Standards, simply login to the member section of the APFM website.

Speaking of the Member Section, it is now active. It took a little extra programming, but thanks to the folks at Mediate.com, you can login to the secure side of our site and find member-only resources. Please be patient as we build the appearance, content and navigation capabilities. If you have resources to offer, please send them along. We will be creating a digital library to share with each other. This will include items like: forms and check lists developed by our members, research reports you have found valuable, information about mediating parenting plans, tips about pensions and taxes, DV screening tools, and many more. But, of course, we're putting our faith in this community's generous nature to build this section, so your offerings are needed. Watch your emails for news of postings of recorded tele-seminars, webinars, portions of advanced trainings and excerpts from our annual conferences. So much more, but stay tuned, because this alone will be worth the price of membership.

The Marketing and Public Relations Committee has proposed several initiatives to raise awareness of mediation. Many things we would like to do are high budget items that are way beyond our means. Very few non-profit organizations have the resources to conduct major media campaigns. Still, there are effective things we can do economically in this digital age to get the word out. In search of those ideas, the Marketing and Public Relations committee is also relying on your generosity by asking that you submit your most successful marketing efforts to prime the pump. This request has a big incentive bonus—the person offering the best submission will receive a free registration to this year's annual conference in Denver, and the person offering the second best will receive a 50% discount on registration. See the promo in this issue for details of the contest.

As part of our low budget public relations efforts, we are providing support (both financial and advisory) to the producer of SPLIT, a documentary film featuring interviews with children of divorce. You will have an opportunity to view parts of it, along with a mediation viewer's guide, at the Denver conference in October. If you can't wait, you can go to youtube.com and type in "SPLIT divorce," and it will come up on top. You will then be able to watch a teaser clip. The final version won't be ready for release until August or September. It may not be a super bowl ad but it really addresses our target market at the peak moment of interest. This is one sample of things with which we want to associate the name of APFM.

The Training Committee formed shortly after the Founding Conference and is charging ahead. Within six months, it organized and delivered its first advanced training, "Power Imbalance in Family Mediation," in Atlanta, Georgia on April 13-14. This was an ambitious endeavor and shows APFM's commitment to support mediator competence, education and professional development.

That is the beginning of APFM's plan to elevate Family Mediators to a distinct profession. While competence, education and professional development are the foundations of establishing public faith and respect, and our membership has demonstrated a commitment to them, this is not enough. Our community has been struggling for decades to be acknowledged for a commitment to professionally serve families in stressful conflict only to be dismissed as a marginal alternative. Despite recent gains in public awareness and appreciation for our services, mediation is still seen as a fringe practice. To transform that perception we are committed to attaining the National Commission for Certifying Agencies' accreditation for our program to certify mediators. In the coming weeks we will be recruiting candidates to serve on the task force in creating that certification. This will be no small task. It will require a substantial amount of volunteer time and effort. Still, the rewards are great. The NCCA was created by the US Congress and is respected amongst policy makers and legislators for its standards and rigorous application process. Once APFM has attained the NCCA accreditation, we can begin promoting APFM certified members as the only certified mediators in the world accredited by an organization with the criteria set by NCCA. Our goal is to have the first candidates tested before the 2014 Annual Conference. No doubt many of you will have concerns about how this will affect you. Please be assured that we will be sharing information and updates as the program is developed. By the end of May, we will have a secure LISTSERV on the member section of the website and it will support a robust dialogue of the certification developments. Your input is essential and will be valued.

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Mojo Marketing and Management

"My Next to Final Thoughts on Business Cards"

By Ada Hasloecher

Ada L. Hasloecher is the founder of the Divorce & Family Mediation Center on Long Island, New York, a board member of the New York State Council on Divorce Mediation and is a Founding Board Member of the Academy of Professional Family Mediators. She is also a trainer at the Center for Mediation and Training in New York City. Ada is frequently asked to present workshops and seminars on divorce mediation as well as professional practice development, marketing, building, and practice management.

You wouldn't think there was so much to this subject. We're talking business cards here, right? Not the world's banking institutions! But I think there is much to say about every subject if you keep drilling down.

I give a great deal of thought to what I can say in these articles about business marketing ideas and techniques. My goal is to share things that, hopefully, will make a significant difference for you in your professional life. Toward that end, I'm going to delve deeply, as promised, into the minutia of each one of the practices in order to get to the motivation that will result in more business for you. Although the subject of business cards may not seem to be a topic worthy of such delving, I suggest that it may be the very one that shifts the tide of your thinking about how you present yourself out there in the business world.

In my last article, I wrote about how business cards are probably the first piece of written material we hand to someone, and, as such, it's important to make sure these cards represent you in all the ways you want to be represented. Now, I'd like to focus on the dispensing of business cards and the etiquette thereof.

Call me crazy, but lately I've been feeling a dearth of common courtesy in the world at large—business-wise, personal-wise. For example, people often think nothing of texting while someone is else is speaking (I could go on and on, but I won't—you know what I'm talking about). So, when you are at a networking event, meeting people for the first time, and it feels like the time to pull out those business cards, what do you do?

Your impulse may be to succumb to the "That's what we're here for, so why not?" way of thinking, but being divorce and family mediators, we don't want to come across as pushy about our work, or as advocates for divorce and separation. There is a subtle nuance to be sure, but how we conduct ourselves when handing out our business cards may be the beginning of the impression we give to a potentially valuable business relationship.

Most people, at the first obvious moment, hand them over. Although, handing out cards that way may be effective to some degree, it's more like the old adage about throwing "you know what" against the wall and hoping something sticks! Doesn't it make more sense to have someone take your card because they truly have an interest in what you do and may know someone who can benefit from your services? That's what I'm after.

I've learned a few things through years of networking and of watching people dispense business cards a hundred different ways. I've seen it done elegantly, and I've seen it done not so elegantly. In fact, one time, I was invited to a breakfast meeting for members of a like-minded profession and, as with most of these events, there was at least a half-hour before the breakfast was served and the meeting began, time set aside for general meet and greet networking. I watched horrified as one regular attendee, an affable enough fellow, worked his way through the room, just handing out scores of his business cards, helter-skelter. He spent zero time even introducing his services, except to say that he was "the best in the business" before he moved on. He certainly didn't take the time to get to know anyone to whom he was handing out his cards. Nor did anyone have an opportunity to get to know anything about him.

This may be a hyperbolic example (true though it may be), but we've all seen this sort of behavior before. Would I, for any reason, ever do business with someone like this? I promptly threw away his card, as soon as I left the event. The next time that I was invited to this event, I watched him do the very same thing. He just didn't get it.

My rule about handing out my cards is simple: I don't do it unless someone asks me for it. I spend whatever time I have trying to get to know the other person and asking a lot of questions about what THEY do. Then it's my turn to introduce myself and my services. People are always fascinated by divorce mediation and invariably ask me for my card(s) or suggest that we schedule a date to meet for coffee or lunch to get to know each other better.

When it comes to dispensing business cards, let them come to you. Whether it's a networking event or any other place you meet people, thrusting your cards into people's hands is a No-No. And, because of the nature of what we do, I'm always very careful. Again, I don't want to give the idea that I'm advocating for anyone's separation or divorce, and I certainly don't want to give the impression that I'm chasing anyone for their business. I see myself as an educator and service provider for anyone who has the need or knows someone who has the need of my expertise.

I know when someone asks me for my card, they want it, they have a need for it, and they will likely refer business to me. And that is what a business card is for.

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THE CREATIVE SOLUTION

"Stuck in Neutral"

By Chip Rose

Chip Rose, J.D, has a private mediation practice in Santa Cruz, CA, and is currently providing training throughout the United States and Canada on the emerging practice of Collaborative Family Law. He is a Founding Board Member of the Academy of Professional Family Mediators.

Experience is the most invaluable teacher. When I sat down to do my first mediation three plus decades ago, I was clueless about the art of mediation other than thinking that anything was better than trying to settle things in the shadow of the courthouse. I clearly remember thinking of sitting down with both clients as an exercise in "friendly law." "Friendly" because we were going to sit down and have civil, thoughtful conversations about the issues, and "law" because divorce was a legal process. It is a true blessing that none of those early mediation sessions were filmed. Our artful editor, Don Saposnek, had a room with a two-way mirror and during the early 1980s was filming parenting mediations as a training tool for his students. I think I am now rather grateful that I never followed through with my consideration of using it to record one of my mediations.

I knew enough to be aware that a mediator had to be "neutral" and "impartial." I think that I interpreted neutral as meaning that I would be vigilant in not taking sides. I don't know if I gave it any more thought than that. It is daunting to think back to the beginning of our practices and consider all the complex skill sets that are necessary to engage in the most fundamental job of facilitation. In 1980, without any internet, I was left to basically figure it out on the job, with education being the school of hard knocks that teaches so much more from the failures than from the successes—humbling though that may be. Thirty-four years into this profession, I can honestly say that I have no idea what being "neutral" means in the context of facilitating relationship negotiation. I have no problem with the word "impartial," or with the concept of "impartially" facilitating the clients' negotiation process. I can also say without reservation or equivocation that I am "neutral" to the content of the settlement that the clients create based on the assumption that the clients are fully informed, that they have considered all options, that they have assessed all consequences, and that they capably exchanged value in the negotiation with one another. Assuming that those objectives have been accomplished, the content of their settlement is the product of their choices and my "opinion" bears no relevance to those choices.

For our professional purposes, the term "neutral" is ambiguous at best and misleading at worst. The ambiguity flows out of the subjective nature of the term in the context of relationship negotiation in the same way that the term "fair" is completely subjective. The greater concern is the extent to which either party would be misled regarding the role the term plays in the process. While we think of words such as "fair" and "neutral" as being self-evident in their definitions, we most likely are making assumptions that are not supported by the realities. The solution is simple enough, and that is to have a conversation with the clients as to their expectations about these terms and a consensus agreement on the application of those terms for that particular process.

As background to this perspective, I should note that since I began offering mediation to clients beginning with my first case in 1980, the overwhelming number of couples that have engaged my services have been clients who are not using lawyers that participate in the process. Although clients are not always fully disclosing of how much support they get, and from whom they get it, the services for the vast majority are limited to having some legal professional review the settlement agreement once it is reached and reduced to writing. I have been very fortunate that the State of California has chosen not to regulate the profession in ways that have limited my ability to create and design the process structure in which I have worked these many years. In that context, the challenge has been how to develop a process structure that responds to collective and individual client need without losing the presumption or benefit of neutrality.

One solution is to focus on the purposes served by being neutral. The most obvious role of neutrality is the avoidance of unbalancing the clients' process. However, the assumption of that last sentence requires greater scrutiny. Is it the "clients'" process or is it the "client's" process? The former presumes that the clients have comparable needs for the process to address, whereas the latter recognizes that each client has very individual process needs. The presumption of mediator neutrality and the reality of individual client need create an excellent opportunity for the mediator to bring this issue to the forefront and engage the clients in a dialogue that shapes the assumptions and protocols of the process while at the same time educating the clients about their differing needs. Generally speaking, the clients are well aware of how different each of them sees things. It is a short step from having them acknowledge this reality to educating them about the need for each of them to get their differing process needs met if they are to achieve a maximized outcome in the resolution of their issues.

I describe it this way in an initial consultation: "To succeed in this process with a settlement that provides the maximum benefits to each of you that your limited circumstances allow, it is necessary that each of you gets to engage in this process the way you feel you need to—so long as it does not limit or negatively impact the process needs of the other. In other words, you are each saying: 'I'll do my thing in front of you, if you do your thing in front of me.' This is an extraordinary privilege you each get from the other. The price you pay for this privilege is to watch, listen, and engage with the other person's process. Do not try to manipulate or control it."

(Cont. on Pg. 14)

The Ethical Edge:
New Spring 2013 Question

"Should Mediators Write Divorce Agreements?"

By Bill Eddy

Bill Eddy, L.C.S.W., J.D., has been mediating family disputes since 1979. He is a therapist, a lawyer and the Senior Family Mediator at the National Conflict Resolution Center in San Diego, and he is a Founding Board Member of the Academy of Professional Family Mediators. As President of the High Conflict Institute, he provides training in managing and mediating high conflict disputes. He is the author of several books, including *High Conflict People in Legal Disputes*. His website is: www.HighConflictInstitute.com.

At the risk of being pushed over the edge by other professions, I think this issue, of writing up divorce agreements, is one that family mediators should confront head-on. I received 3 responses from readers, so I will give you some of their thoughts and then share my own. There were four questions to which each person responded:

Dan Burns, APFM member in New York, answered:

1. CAN a lawyer-mediator ethically draft the divorce agreement to be filed with the court?
"I believe a mediator can ethically draft the divorce agreement. In fact I secured Ethics Opinion 736 from the NYS Bar Association Committee on Professional Standards that specifically addressed this issue."

2. SHOULD a lawyer-mediator ethically draft the divorce agreement, as a best practice?
"I also believe the mediator should draft those documents since he/she has the information needed to do so and can do so in a neutral fashion."

3. CAN a non-lawyer-mediator ethically draft the divorce agreement to be filed with the court?
"I'm not opposed to a non-lawyer mediator drafting the legal documents as long as he/she can do so competently. Realtors do it all the time with home purchases."

4. SHOULD a non-lawyer-mediator draft the divorce agreement, as a best practice?
"If they are competent, they should draft the documents, for the same reasons as above."

Virginia Colin, APFM member in Virginia, wrote:

Question 3: Taking care to act as the parties' impartial and careful scrivener, not as a legal advisor, a non-lawyer mediator can ethically write the divorce agreement. The parties can then confer with attorneys before signing it if they wish to do so. If they sign it, they can file it in court along with their complaint or petition for divorce.

Question 4: Yes, in some cases. Consider what we heard at our inaugural conference last September. In many jurisdictions, a huge percentage of people who are divorcing do it without an attorney. If they work with a trained, certified family mediator, at least they have a competent professional helping them do things well. They are likely to do better planning and likely to develop a better divorce agreement than they would write in the absence of professional support.

Circumstances permitting, the very best practice for many people would be at least to get some advice from attorneys. For those with limited financial resources, which is a large percentage of the population, having a non-lawyer mediator draft the divorce agreement would still be best, because the negotiation process and the drafting and re-drafting will be handled professionally, competently, and affordably. Paying an attorney to advise you is simply less expensive than paying an attorney to represent you. The combination of paying an attorney for advice and paying a non-lawyer mediator to draft your agreement may be best for many people who are divorcing. However, in some cases, the best practice would be to have a lawyer-mediator draft the divorce agreement.

Jon Paul Bautel, a mediator in Michigan, answered:

I have been mediating since 2007. I have mediated over 190 cases within several arenas. The majority of my cases are divorce. In response to the question on mediators drafting agreements, I found in practice that we assist the clients in drafting the agreement as a form of dictation with revisions. All of the agreements are drafted with the clients present in the room. Two things unfold: One, they continue to engage in a collaborative and constructive environment when creating a document that they themselves have made resolute; two, it is written and revised in language that both parties can comprehend and execute. We are merely a vessel through which their decisions come to fruition with concrete directives. This process may be more time intensive than having the parties sign a binding contract drafted by impartial parties expressing their wishes. However, I find this process more instructive and binding within the true intentions of both parties.

Bill Eddy's thoughts, after over 30 years as a mediator, overlapping with 12 years as a therapist and 20 years as a family law attorney (a Certified Family Law Specialist in California):

1. Lawyer-mediators routinely draft Marital Settlement Agreements throughout California. Many clients have no lawyers at any time, while many others consult with or are represented by attorneys. I believe this is ethical and highly appropriate. Many clients say they prefer the document to be drafted by the neutral mediator, rather than an advocate for just one of the parties. I always encourage them to obtain legal consultation and, in some circumstances, I require it, but not routinely. For cost-savings purposes and for client-centered self-determination, I respect their desire to proceed with or without attorneys.

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Divorce Mediation:

"A House Divided (Part I)"

By Lenard Marlow

Lenard Marlow, a graduate of Columbia University School of Law, has been a practicing attorney for over fifty years. A fellow of the American Academy of Matrimonial Lawyers, he has worked exclusively in the field of family law for over forty-five years. As a pioneer in the field of divorce mediation, he is the founder of Divorce Mediation Professionals, one of the oldest and largest divorce mediation facilities in the United States. Past president of the New York State Council on Divorce Mediation, and a respected leader in the field, he has lectured extensively on the subject, both in the United States and Canada, as well as in Europe and South America, where he has conducted numerous trainings and workshops.

The early settlers who founded divorce mediation came from many backgrounds. Many came from the mental health field. That was understandable. It was mental health professionals, charged with the responsibility of picking up the pieces of families after lawyers got through with them, who had seen the damage caused by adversarial divorce proceedings, first hand. Then, too, there were lawyers, slowly in the early years, but increasingly so as time went by. That was understandable as well. After all, there was a significant legal piece in divorce mediation. The subject matter that would make up the bulk of the mediation (decisions relating to child support, maintenance, the division of property, etc.) were necessarily affected by the law. Then too, the parties' ultimate agreement had to be reduced to a written legal document. Finally, the parties' divorce necessarily involved the law and the courts.

But they came from other backgrounds as well. There were clergymen, accountants, financial planners, retired businessmen, former real estate brokers. There were even some who could not be identified that precisely. They were just the interested others. They made up a somewhat mis-matched army. To be sure, over time, there were two groups that clearly came to be identified with the field, mental health professionals and lawyers. But though they were unified in purpose, they were unified in little else. Their previous experience gave them little in common. They certainly had not had the same training. They did not even think in the same way or speak the same language. In fact, they were somewhat strange bedfellows.

This was not a problem in the early days of divorce mediation. To be more accurate, it was, but no one chose to see it as such. Thus, their answer was to try to keep their lines clean. This was much harder for mental health professionals to do. Since mediation was not a form of therapy, but was what lawyers had done all along, just in a different form, lawyers could perform both the mediation component and the legal component. Mental health professionals, on the other hand, could not.

Their answer to this was either to team up with a lawyer or, if they did not do that, to refer the couple to a lawyer to prepare their agreement or have them go out and get their own lawyers.

Nevertheless, there were problems with this solution. To begin with, it was not possible to separate the mediation and legal aspects of the process that simply. After all, legal questions inevitably came up in the course of the mediation. But there was also the danger that the mediator would lose control of the mediation; that the lawyers who now became involved would undermine the mediator's efforts and the agreement that he or she had so carefully helped the two of them put together. Mediators' answer to this was to send the parties off to "mediator friendly" lawyers. To be sure, that only solved one problem by creating another. The two of them were supposedly being sent off to assure that they had independent representation, but the lawyers they were being sent to, being beholden to the mediator who had referred the couple to him, was not really independent. He or she certainly wouldn't be thanked for criticizing their agreement; nor was he likely to get any more referrals. Mediators tended not to see this problem, even when it was called to their attention.

Be that as it may, this somewhat unholy alliance of mental health professionals and lawyers has hobbled along for many decades now without major incident and, if problems arose, as they could not help but do, all concerned just looked the other way. In fact, the unholy alliance might have continued in much the same way indefinitely had not something come along. That something was "certification."

For reasons that are not very clear, "certification" has recently become the call to arms in the field of divorce mediation, and it is being pushed with great fervor and intensity on both the national and local level. Divorce mediators are tired of being the step-child to the rightful heir. They want to take what they consider to be their rightful place in the pantheon of accepted practice rather than being referred to as just a "halfway" house on the road to this or that.

The problem, of course, is that the practitioners of those other processes have a degree and a license (as a lawyer or as a mental health professional) or a certification (as a financial planner). That is what permits them to call themselves a "profession," and the public to view them as such.

Perhaps, if divorce mediation had one of those honorific titles as well, the general public would view it in a different light; would view it, like the practice of law and social work, as a profession. Perhaps, that is what divorce mediation needs to finally get it off the ground (to get divorce mediators more business).

There is no such thing as a license to practice divorce mediation (Since a license involves the state, and since the laws that a state enacts are greatly influenced by the financial interests of lawyers, that is not something that divorce mediators should be advocating for). Though there are degrees in dispute resolution generally, there are no degrees in divorce mediation, specifically. All that leaves is certification, and that has become the rallying cry of all of the various associations of divorce mediators.

(Cont. on Pg. 15)

Go in Peace

By Bruce D. Clarkin

Bruce D. Clarkin, is a principal in *Divorce Mediation Group* in Springfield and Northampton, MA. He has mediated approximately 1800 divorces since 1990. Bruce is an attorney and has a Master's Degree in Marriage and Family Therapy. He can be reached at bruce@divmedgroup.com

In 1962, Neil Sedaka crooned, "Breaking Up is Hard to Do." It has not become any easier. Surely, Sedaka was alluding to the angst that accompanies the breakup of a relationship. Divorce is, of course, the ultimate breakup. The pain, fear and anger that accompany divorce are the grist for our mediation process and, as we start the process, we often do now know how the process will be informed by those emotions.

It is unlikely that Sedaka was singing about how difficult it is to break up the marital homeostasis. After all, we are now told that, while about 40% of first marriages end in divorce, some 60% of marriages are not resulting in divorce. The factors that bind a couple in marriage are powerful and, whether they are emotional, cultural, historical or financial binding factors, they are hard to unlock.

When a relationship does unexpectedly (at least for one spouse) swerve into the marital breakdown lane, I always wonder "Why?" My curiosity is not statistically driven—I simply want to know their stories. However, I just don't ask. One reason I do not ask "why" is because I do not think the question is likely to elicit information that will contribute to the resolution. More importantly, it is recognition of the boundary that guards and respects clients' privacy. Divorce is a dis-empowering experience and trusting clients to determine what parts of their stories to share in mediation restores to them an important power. If mediation is a process that belongs to the parties, sharing with me the reasons for divorce ought to be their decision.

Of course, parties will occasionally invite me to cross the boundary by disclosing information about "why" they are breaking up. It is my experience that the parties find a way to tell us what we need to know to complete the tasks of mediation. Often the "Let's tell the mediator" version is a sanitized reprise of their own history. One of the gifts of mediation is the provision of a place and a context for the parties to share their more authentic and meaningful stories with us and with each other.

Ted and Sally presented as a fairly congenial couple living together in their home, which was for sale, and Sally was leading the charge to divorce. Sally was the designated historian and choreographer. They had prepared their presentation carefully. "Of course," they assured me, "We chose mediation because of our children." Tim was 12 and Sara was 7. I listened attentively. I respected the efforts that went into their presentation and my responsibility to be a good audience.

Once Sally had run out of words, I started asking my usual questions: "What are your thoughts about when Tim and Sara will be with Mom and when they will be with Dad?" Neither responded. Sally stared at Ted during the long silence.

Sally turned to me and said, "Look, I think I need to tell you that Ted is an alcoholic and he is still drinking." Ted mildly protested that he had not had a beer in almost two weeks. Sally gave Ted another hard stare and continued to explain that she did not trust the children to be in a vehicle with Ted and, generally, was concerned about the children being alone with him.

While Ted and Sally lived together, Sally compensated for Ted's lack of sobriety by transporting the children and carefully watching out for them. But the parties' separation would require Ted to deal with these issues himself.

It has been my experience that many of those who stand in Ted's shoes, with their future relationship with their children at significant risk, find their way to detox programs and AA. Sobriety is, in the context of the divorce resolution, often a shared goal. Ted's sobriety was certainly Sally's goal, but Ted was defiantly indifferent. Ted explained very quietly that he had no plans to detox or attend AA. Sally did not say a word.

The parties negotiated the terms of Ted's parenting access: no transporting of children, visits would be with both children and Tim would have his phone, and Sally would have the right to cancel a visit if she believed in good faith that Ted was using alcohol. The financial issues resolved in a fairly straightforward manner.

As we approached the end of the process, Ted's cooperation waned. Anger leaked out as Ted pushed back against "the restrictive parenting deal." Sally became the subject of his ire. I listened passively believing that they were experiencing the typical "end of mediation is near" thunderstorm.

We agreed that we would have a final meeting. I expected that Ted would have cooled down and that we would concentrate on the administrative steps necessary to complete the divorce. As the session began, I sensed a huge cloud over the parties' heads. My cheery "How are you doing?" went ignored. Ted said very quietly that he was not signing the Separation Agreement. Sally's distress matched Ted's calmness.
"What do you mean?" she exploded.
"You know what I mean. We have been talking about it for 13 years."
Sally looked at me and said, "No Ted."
"I told you before, Sally, and I'm telling you again that we do not have a deal and I am not doing this divorce until their ashes are buried."

As I heard the word "buried", I wondered if I had fallen asleep in a prior session. Buried? When in doubt, simply listen. And listen I did, as I watched tears slide down their cheeks.

Ted must have sensed my confusion. Between sobs, he explained to me that in their first year of marriage their twins were stillborn. After a long and tearful pause, he told me that he and Sally could never agree to bury the ashes of their cremated children.

(Cont. on Pg. 15)

Mediation and Our Spiritual Journeys in a Material World

By Larry Gaughan

Perhaps the best way to describe our path through life is that we are each on a spiritual journey. The thing that makes the journey "spiritual" is our constant search for ways to give meaning to our lives, using that word in its transcendent sense. We keep asking ourselves, "Why am I here?" "What is the purpose of my life?" We do this because we want our lives to be in harmony with some greater goal.

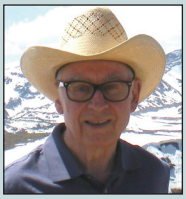
But we live in a world, in a society, where there is far more focus on the material than on the spiritual. Almost none of us could carry on our lives without constant reference to the material world—even if we tried—and very few of us want to try. But, many of us still yearn to live a more spiritual life.

Marital separation and divorce are major life events that can (and should) bring the spiritual and material sides of our lives into sharp focus. These roads take us on a path away from our working life plan. We may have chosen that fork in the road, or it may have been chosen for us, or we may just have found ourselves wandering there. No matter which, both our spiritual path and our focus on the material environment are now open to changes, often major changes.

And then, a mediator gets involved. But the immediate task of the mediation is not to help two people deal with potential new directions in their spiritual journeys, but rather to help them sort out the existing and coming changes within their material world. Where does the money come from? How do the bills get paid? Where will I live? The main focus is usually on the immediate financial decisions, and then, later, on the longer-term planning for future security.

The spiritual journey thus gets sidelined. When we are going through a marital separation leading to divorce, it isn't easy to focus on harmony with our life goals. There are emotional goblins to deal with—frustration, fear, confusion, mistrust, anger, and at times even obsession, hate and revenge. These are the enemies of our spirituality. All of these are heavy burdens, when we carry them with us on our journeys. For example, anger can be even more of a burden when it is justified, because it's harder then to move beyond it, even though we know it does us no good to hold on to it.

Larry Gaughan is a Virginia attorney who has been practicing mediation since 1980. He was one of the founders of the Academy of Family Mediators. Some of his other interests include the Italian Renaissance circa 1450-1550 and the 17th century Dutch.



The spiritual task of the mediator is to help people get back in touch with their better selves. One possible key to that goal is to help the clients reconnect with their most basic sources of strength. Everyone has sources of strength, although they differ from person to person and can be material as well as spiritual. The list of possibilities goes on and on—children, parents, siblings, extended family, close friends, co-workers, teachers, role models, counselors, ministers, work, one's profession, one's home, a denominational church, a sacred text, an AA group, a reading group, a prayer circle, music, art, a hobby, reading, poetry, yoga, family history, travel, humor, bicycling, walking or jogging, cooking, drama, writing, even pets, and even, at times, the separated spouse.

Everyone's list is different. And some of these sources of strength can also be sources of "bad vibes," as well (such as frustration or even obsession). The sorting out is for the clients to do on their own time, both as to the priorities in their sources of strength and in focusing on the "good vibes," not the bad ones.

The problem when spouses separate is that their material situations are more likely to seem worse, not better, at least in regard to matters of income and expenses. Options for the present may have more problems, and the future may appear to be less bright. It's hard to pick up on one's spiritual journey when one is worried about finances.

So, some reframing may be needed. Remember the lyrics of the old depression era song by the Carter Family, "There's a dark and a weary side of life. There's a bright and a sunny side, too." That doesn't mean to always invite clients into the world of Pollyanna, where there is always a bright side to every disappointment. But, it does mean using the transitions of divorce as an opportunity to take advantage of both one's fortunate and unfortunate past experiences in making wiser and more practical choices for the future.

The mediator's job, of course, is to help the clients find the fairest and most practical ways to preserve and extend their material surroundings for both the present and the future. This is best accomplished when it can be done in a manner that is consistent with the clients' own self-determination. Such a goal is an important touchstone, even though it can't always be achieved.

Beyond that, the refocused spiritual journey still takes place post-divorce in the context of the material world. At core, it has to be a spiritual journey, not a material journey. And yet, it's not just the search for a vision of an all-encompassing celestial light, such as Dante tried to describe at the end of Paradiso, or a mystical union with God, such as the Sufi dervishes seek to experience.

Our lives are full of stories that transcend abstractions. So, maybe our spiritual journey can, in part, be a search for stories that teach us and have a spiritual point. We can find these in the four Gospels and the Midrashim, and in the humor of Zen Buddhism, and the poetry of Mevlana Jelalu'd-din Rumi, and even in anecdotes about Albert Einstein. Or elsewhere, depending upon the particular religious or secular background each of us possesses.

(Cont. on Pg. 16)

Why Divorce Does Not Belong in the Court System

By Steve Erickson

Most critics of our present adversarial family law system focus on the overly aggressive family law attorney who uses sharp tactics and hostile methods of representation, thereby aggravating an already difficult situation. They suggest that we should somehow find a way to reign in these few rogue family law gladiators (they exist in every community) and perhaps use more ADR procedures, or other early intervention steps to avoid trial, such as early case conferences with the judge or more involvement of parenting consultants, guardian ad litems, and a host of others in an effort to humanize and streamline the legal system as it serves families in crisis.

Over the years, many failed attempts have been made to lessen the sting of the adversarial system for those who must use the court for custody, support and property division issues. When I represented my first divorce client in 1973 as a young student attorney, we had a fault-based system, my client was the plaintiff, and we had to bring in two witnesses to testify that the other spouse had engaged in a course of cruel and inhuman treatment. In those early years, before I met Jim Coogler and heard the words "divorce mediation," I participated in an 18-day custody trial. Today, we call them co-petitioners and, although all states purport to have adopted no-fault divorce laws, go down to any courthouse in any county and you can still witness intense fault-finding battles. We call it a custody proceeding.

We all have had couples who wander in to our mediation practices and relate a story of starting out trying to stay cooperative, but then falling into the hands of lawyers who encourage extreme positional stances and take other steps to chip away at their fragile trust and create fears and contested battles. I used to think that these were couples who just could not ever get their act together. But as soon as I gave them a different environment and encouraged them to attack problems rather than each other, they began to recover and do fine.

Try as we might, we have come to the point where we must now admit that we can no longer tweak, adjust, use more ADR, try to get more sensitive judges, or work to train lawyers to be less adversarial. We must now recognize the contaminating and toxic nature of the entire adversarial court-supervised divorce and custody process and begin to move divorce completely outside of the court's grasp. We must move divorce and other family problems outside of the courts.

We must do this because the adversarial system is just that—an adversarial system that creates a contest between the two parents. It is good at one thing and one thing only—finding right and wrong! Our friends in the behavioral science professions teach us that finding right and wrong is the death knell of building healthy relationships, and building healthy relationships has to be the backbone for effective co-parenting of children in separate homes.

Our colleague, Bill Eddy, points out so aptly that Court's are not in the business of teaching cooperation, nor are they equipped to do so. And yet, families in the crisis of divorce or parenting disputes need help in learning how to be cooperative.

We are now at the point in our accumulated knowledge where we need to admit that the adversarial process creates a toxic river that drowns every mother, father, husband, wife and child who wades into it.

Extreme, you say? Anti-attorney, you say? Hostile, you say, to the hard and honorable work of sensitive, capable, and honest judges, attorneys, and others? Certainly, all who work in the current adversarial system of divorce are trying to do the best they can, because they want do what is right. They, in fact, are honorable and decent people who are not out to harm families. But, all important social movements in history have needed a bold initiative that harnessed the public's discontent and moved society to embrace a better path. It is time to make our public statement that such an initiative is not only needed, but long overdue. Mediators will be attacked and vilified for what will be called self-serving and misguided efforts. But mediators, along with frustrated judges, attorneys, therapists, clergy and consumers of the system, must band together to create the change.

I am convinced that we will never make family-centered mediation a mainstream choice until we initiate this discussion and then work towards making it a reality for the estimated 100,000 children a year who are directly brought into the court system, and for the 1.2 million couples each year who divorce, and for the millions of other never-married parents and post-decree couples who are forced to needlessly enter the court system and fight against each other.

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Power Imbalance in Family Mediation

(Summary of First APFM Advanced Training)

By Bill Eddy

This past month, I was one of the four trainers presenting the APFM (Academy of Professional Family Mediators) advanced training on Power Imbalance in Family Mediation, which was held in Atlanta. It was a great learning experience for me, especially hearing Hilary Linton and Claudette Reimer, from Toronto, speaking on screening for domestic violence before the mediation process. This has always been a controversial area. Some professionals say you can't mediate cases in which there has been an incident of domestic violence. Other professionals say it is offensive to the parties to quiz them on their relationship history and to ask detailed questions about possible domestic violence, when it only occurs in a small number of cases.

I thought that Hilary and Claudette found a good balance in emphasizing research that shows that domestic violence may be present in a significant number of cases—possibly even half; but also sharing research that shows that mediation is a better process than court for reducing the future risk of domestic violence. Mediation calms the parties, and when both parties are respected and supported in the process, they do better in mediation than they do in court, where the vulnerable person is at higher risk of violent retaliation by a desperate partner who may over-react to being criticized and experiencing legal losses without being eased into them. I've always said that the adversarial process brings out the worst in high conflict people, as they can't restrain themselves and they interpret everything extremely personally with "all-or-nothing" viewpoints about decisions which they interpret as all-or-nothing about them. So, a well-managed mediation may be the best opportunity to serve clients with these issues, as long as sufficient precautions are taken. And, of course, there will still be some cases that are not appropriate for mediation.

In terms of the pre-mediation screening process, I became convinced that we need to do more than most of us have been doing – especially because I believe that high conflict personalities and behavior are increasing in society and will therefore increase in mediation. However, I am thinking of integrating screening into "Pre-Mediation Coaching," which I am already recommending in some high conflict cases. This avoids alienating fee-for-service clients who don't want to spend an extra dollar, but may see the value in Pre-Mediation Coaching. I also appreciated hearing new ideas for how to structure the mediation process to build in more protections for clients who have restraining orders or vague concerns.

We also addressed financial and parenting power imbalances. I appreciated learning from Rod Wells (APFM President) about "money personalities" and how different ones have different issues that can create power imbalances, along with some strategies for dealing with them. I gave a short presentation and demonstration (with Rod as a financial neutral) of managing high conflict personalities in mediation – essentially learning to "dance" with their resistance, by calming them, focusing them on manageable tasks, educating them about consequences of various choices, and keeping the responsibility for decision-making clearly on their shoulders.

Overall, our training was very successful, and we look forward to offering it again in the future.

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Bill Eddy, L.C.S.W., J.D., has been mediating family disputes since 1979. He is a therapist, a lawyer and the Senior Family Mediator at the National Conflict Resolution Center in San Diego, and he is a Founding Board Member of the Academy of Professional Family Mediators. As President of the High Conflict Institute, he provides training in managing and mediating high conflict disputes. He is the author of several books, including *High Conflict People in Legal Disputes*. His website is: www.HighConflictInstitute.com.

"The Mystery of Mediation" Cont. from Pg. 1

But, just as clearly, mediators must be free to answer these questions with their honest and accurate understanding of the legal landscape (Of course, it is just as important to be able to say "I don't know."). A prohibition against predicting outcomes in court would stop me from telling my clients simple truths, such as that a court would divide marital property or grant a divorce without any fault. I can see no value in forcing our clients to consult with others to get simple answers to simple questions.

The nuance of the problem and the reason for real tension between competing principles is that predicting the outcome of more complex issues can impinge on self-determination. For example, how much a small business is worth and how much the other spouse would receive are not simple and can never be accurately predicted. When the questions are about something that difficult, it is easy to explain why I can't answer.

In the middle are questions requiring substantive knowledge of the law and the mediation process. Who would get to stay in the present home is one of those middling questions. I believe that good mediation practice sometimes involves ducking the question and instead turning it back on the clients. But, some clients are much more insistent, and again, sending them elsewhere would serve no good purpose.

My second concern is whether self-determination should override the concerns that "adjudicatory procedures" (such as predicting court outcomes) are infecting the mediation process, or that lawyers are colonizing mediation. If we truly accept self-determination, we will trust our clients (and ourselves as professional mediators) to answer all the questions about legal issues without losing our balance1 and heartfelt concern for both parties.

The draft rules also would prohibit mediators from taking on the role of arbitrator or any other dispute resolution role with the same couple. In essence, this means that we do not trust self-determination to include a choice of allowing a mediator to decide a particular point that the couple can't resolve on their own. As Larry Gaughan aptly pointed out, a key goal for many couples is "just getting the case settled." If they have come to trust one of us enough to decide the point, why do we think someone in black robes will do the job any better? And why would we force them to spend the time and money to get the answer from a system that is already overwhelmed and under budgeted?

Even worse is that some questions simply have no legal answer at all. In mediation, couples often trade-off pre-tax and post-tax assets. They usually want to take into account future tax consequences. No judge will attempt to decide that issue because it is much too speculative. But, some clients have authorized their mediator to make this decision—just because an exact answer is less important than getting finished.

To further the end of keeping the mediation process pure, the draft standards would prohibit mediators from advertising that he/she is also an attorney or a therapist. The actual result would be that the couple might not know about my other expertise until they get to my office. Then, they will see my law school degree and bar admission certificate and perhaps figure out that I do something besides mediate.

But, aside from the obvious futility of this rule, I dislike the roadblock it places against self-determination. I get lots of inquiring phone calls that do not turn into clients. Often enough, I learn that they chose to mediate with a different local mediator who is also a therapist. Clients often perceive a particular benefit from working with a mediator who is also an attorney or a mediator who is also a therapist or a financial planner or an accountant or a retired judge, and sometimes just a mediator. I don't think we have the knowledge to say they are wrong in making their decisions on those bases.

APFM's work in establishing standards of practice is an important facet of creating a real profession of family mediation. The Board of Directors of APFM is unanimous in the belief that real certification is a key step in the road to creating a real profession. We have all seen how tough certification procedures have made respected professions out of accountants and financial planners. Standards of Practice must precede the certification process.

To get the Standards to be strong, clear and generally accepted ,we need to hear more from you, our members. Please keep the dialogue going.

[1.] See "Becoming an Excellent Mediator – When Facing Opposite Choices, It's all a Question of Balance" by Heather Allen at http://www.mediate.com/articles/AllenH1.cfm

"While the Bears were Hibernating" Cont. from Pg. 4

If you are a trainer, this is an important time to be involved in APFM. Not only is it anticipated that the basic training will be impacted by the certification requirements but there will be a demand for supplemental trainings to prepare for the certification exam. This year's conference will include the first annual Trainers' Forum and a lunch dialogue. It will give trainers a forum to share ideas, innovations and concerns. It will also be an important venue to brainstorm how trainers can help candidates prepare for the new mediator certification test. Member trainers can list their trainings in this newsletter and will soon be able to list them on a trainers' referral page on the APFM website.

And one more thing, you should have received the notice about the Annual Conference by now. Please register early to assure yourself the early bird special rates. This is without any doubt the best valued conference you will find anywhere.

Besides the extraordinary content of nine preconference institutes, three exceptional plenaries, lunch dialogues, and twenty-four 90-minute sessions, we're offering a scheduling innovation. Have you ever thought a session just skimmed the surface of a topic? Well, this conference will include two sets of extended-duration sessions, one set of 135 minutes and a second set of 165 minute sessions to allow for greater depth and breadth of coverage of selected topics. But wait, there's more—many conferences have become a little chincy in the food and break department. You can come to Denver and the only meal scheduled as "on-your-own" is the Friday Dine Around and we still have our Ice Cream Social, so you can cheat on your diet when your away from home. We deliberately priced the conferences as a benefit rather than a revenue source. Take full advantage of it. And, there's just one more thing—but Don limits my rambling, so you'll have to watch for emails and the LISTSERV in May.

Thanks for your support and, if you want to join the action, see the Board listings on the website to contact the Board member in charge of the committee you're interested in. Their committee is listed by their names.

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"Stuck in Neutral" Cont. from Pg. 6

With this frame in place, it is timely to ask each of the participants if they will give the mediator permission to assist each of them in getting through the process in the way each needs to do it. Since the clients' needs are so individualized, it is timely to observe that the word "neutral" does not really apply to how the mediator facilitates each of them, while the word "impartial" is still very relevant and applicable. Other assumptions that have been previously discussed in framing the process also come into play as part of this dialogue: i.e. clients will not get their best results if either party lacks all requisite information; it is in the self-interest of each client to contribute to creating a safe environment; neither client will be able to maximize his/her outcome unless each party achieves a maximized outcome; the mediator will impartially facilitate the process for each party and will be neutral as to their negotiated outcome. In this context, neutral speaks to the result while impartial describes the process.

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"Should Mediators Write Divorce Agreements" Cont. from Pg. 7

2. I believe this is also a best practice. As the other mediators above suggested, the mediator is in better position to express the clients' desires than is an advocate who was not present in the room throughout the negotiations that led to the agreements. If the mediator is a knowledgeable and experienced lawyer, then it's hard to say that an outside lawyer could do the job any better. The idea that an advocate for one of the parties would be more ethical in writing up the agreement than the mediator seems to be based on the idea that an advocate would be more committed to one party's interests and rights. However, a mediator who is experienced in the subject matter of the issues and after having spent hours of discussions with them would be more likely to want each client's needs to be met, than would an outside advocate who has not spent that amount of time with the clients. This raises a fundamental question: Is advocacy more ethical than neutrality in resolving relationship disputes? From my experience as both a lawyer and a mediator, I would say no. There's a role for each, but advocacy is not more ethical or more important than neutrality (or concern for both parties) in family cases.

3. In my opinion, a non-lawyer-mediator who is experienced in the subject matter of the particular agreement can ethically draft the divorce agreement to be filed with the court. I didn't use to think this way.

(Cont. on Pg. 15)

"Should Mediators Write Divorce Agreements" Cont. from Pg. 14

However, as professional family mediators have gotten more training and subject matter knowledge, I have seen many become more competent in their areas than many attorneys. For example, take parenting plans; many mental health professionals serving as mediators can do an excellent job of writing parenting plans for the court—in fact, that is what occurs in California with the court-connected Family Court Services, where mediators (who are mostly mental health professionals) write up agreements (or recommendations in some counties) which are then ordered by the court. Another example is with financial issues, in which some divorce-focused financial analysts are more experienced than I am. If they have sufficient knowledge in the subject matter of the agreement and they have directly mediated the agreement with the parties, I believe they could ethically write up the agreement. With all of this said, if a non-lawyer-mediator drafted the agreement, I would still strongly encourage the parties to consult with separate attorneys. But I would not require this, if the mediator was certified by a mediation organization that has high standards.

4. For all the reasons above, I believe having a non-lawyer-mediator draft the agreement would be a best practice, if the mediator was certified and the parties were strongly encouraged to have the agreement reviewed by separate professionals (lawyers, mental health professionals and financial analysts) relevant to the issues in the case. Divorcing families need the calm and balanced involvement of a skilled mediator as much as or more than adversarial professionals focused on fighting for individual rights. There are fewer individuals whose rights will be harmed by non-lawyer-mediators writing agreements than there are families that have been harmed by over-zealous advocates.

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"Go in Peace" Cont. from Pg. 9

Ted shared their names with me.

Their ashes had been placed on a shelf in a closet along with various items of clothing for the children that were never worn. Sally could never bear to bury the ashes. "I need to be able to take them out of the closet and feel that they are with me" explained Sally.

"But Sally," Ted whispered, "I need to say goodbye, and you do, too. We could never move on and we will never be able to unless we bury the ashes." We proceeded to negotiate where and how the ashes would be buried. The cloud lifted.

I wondered if the sadness of divorce had evoked the grief that had held their marriage hostage for so long. I thought about the irony of how they had achieved closeness, even intimacy, in divorce. I didn't say a word. They had their own truths and emotions resonating through their hearts and heads. I had no confidence that my words would add anything.

The only thing I could think to say was "Go in Peace." I said it and that's how it ended.

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"A House Divided (Part I)" Cont. from Pg. 8

As it is argued by some that the right to bear arms guaranteed by the Second Amendment to the United States Constitution will be undermined by any attempt to place limits on the use of guns, so is it argued by its advocates that divorce mediation's very survival is dependent upon its certification, as it is only that certification that will justify divorce mediation to refer to itself as a "profession" and, as such, on a par with the legal profession and the mental health profession.

What does someone have to do to become certified in a particular field of discipline? As a general rule, he or she has to do two things. First, demonstrate the mastery of the body of knowledge which is the subject matter of the field in question. Second, demonstrate mastery of the skills involved in the practice of the field in question. In keeping with that, the proponents of certification have proposed two things. First, there will be a written or oral examination to determine that the applicant has mastered the subject matter in the field. Second, there will be a professional testing service that will be employed to observe the applicant to determine that he or she has mastered the skills involved in the practice.

That is where divorce mediation's divided house comes in. As I said, up until this point divorce mediation has been able to hobble along without paying serious attention to this problem. However, with certification it has been forced to come face-to-face with it.

That is because those behind the move to certification do not want the field made up of practitioners who conduct mediation on the basis of two very different, and in many respects incommensurate, professions of origin. That leaves us with two professions, not one. Worse, it leaves us with the problem that one of them will be viewed as having less status than the other.

(Cont. on Pg. 16)

"A House Divided (Part I)" Cont. from Pg. 15

That will not do. Rather, they want to create one profession, which means to obliterate the distinction that has made us a house divided. Thus, there is not going to be one certification (test) for mental health professionals and another for lawyers. There is going to be one test for both.

Let us take the first of the two tests that will be administered, that to test whether the applicant has mastered the body of knowledge which is the subject of the field. With that in mind, let me give you my dictionary's definition of a profession. It is "a vocation requiring knowledge of some department of learning or science." To be sure, the professions of origin of both lawyers and mental health professionals could boast such knowledge. But on what independent knowledge would the applicants for certification as divorce mediators be tested? (We are certainly not going to test a mental health professional on his or her knowledge of the law, any more than we are going to test a lawyer on his knowledge of the principles and substantive factors that make up mental health practice). Therein lays the problem. When it comes to the substantive knowledge that informs divorce mediation practice itself, you could write it all down on the back of a postage stamp. That is because there is none. The substantive knowledge is that of the separate professions of origin of all of those who have joined together to practice divorce mediation, not divorce mediation itself.

One answer to this would be to send back all mental health professionals to law school, and to send back all lawyers to a clinical graduate school. Now they would both have a common body of knowledge (to be sure, drawn from two professions, not one) upon which they could then be tested. But we are not going to do that. It is too impractical. Thus, there is no examination that can be given that will test for this substantive knowledge.

The same is true when it comes to the second of the two tests. To be sure, though there are some practical (really political) problems here, it is possible to separate the wheat from the chaff when it comes to mediator competence. There are some practitioners who are very good mediators and there are some who are not, and it shouldn't be too difficult for someone with experience to tell the difference. But how do you test whether someone is following the correct procedure when, because the field is made up of practitioners who come from different professions of origin, they do not follow the same procedure? After all, as a lawyer cannot do what a mental health professional does, a mental health professional cannot do what a lawyer does which, in the context here, is to answer legal questions, express legal opinions and draft legal documents.

Ironically, even if all divorce mediators were lawyers, there would still be a problem here. That is because lawyers in the field do not necessarily follow the same procedure. Some will perform all of the legal functions necessary, including processing the parties' divorce papers. Others will go no further than to help the two of them come to an agreement, insisting that they must then go to another lawyer or lawyers to draft the agreement. Even if the mediator is willing to draft the agreement, he or she may still insist that they each consult with their own separate lawyers before the mediator will see to its execution. Even then, some lawyers in the field will not be willing to process their divorce papers. In fact, one might properly characterize divorce mediation as a practice in search of a process.

This, again, is where divorce mediation's divided house comes in. Those behind the move for certification want to create a profession and they see certification as the means to do it. But they want it to be one profession and not, as is currently the case, two professions doing somewhat parallel, but nevertheless different things. Most important, they want to eliminate any special status that one of the current groups of practitioners has based on the fact that they have a license to practice law. In short, they want to eliminate divorce mediation's divided house.

[In Part II (next issue), we will consider how the proponents of certification propose to eliminate divorce mediation's divided house]

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"Mediation and Our Spiritual Journeys in a Material World" Cont. from Pg. 10

The stuff of stories is relationships. Our relationship with God may be what we have learned in a church, synagogue, mosque or temple, or it may be based upon an entity that we otherwise try to conceptualize, such as the force that we believe drives the universe, or even the absence of any of these. Or, we can believe, in addition to or in lieu of these, that our relationship with God during our lifetimes mainly plays out in terms of our relationships with other people.

So, if we believe that our spiritual journey won't necessarily unfold in abstract concepts of God, but rather is more likely to be carried out through human relationships, then our journey can take us to the spiritual as well as the material sides of those relationships. It can help us find a broader definition of "family". It can help us find more things to respect in other people. It can make us more likely to be in touch with our own spirituality and sources of strength as we encounter these in others. And, we can learn more ways to avoid being judgmental.

As we look for the stories in our own lives, we can also appreciate the stories that other people bring to us. And thereby, we can better help them to get refocused on their new spiritual journeys through the material world of present family finances and future security.

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Marketing Contest

One of the themes from APFM's Founding Conference was: What's the best way to develop my market?

Think about how many more families you could help, how much more business you would have, how much more money you could generate in your practice, if you only had a professionally prepared effective tool-kit to make your mediation services a compelling choice!

How much would such a tool-kit be worth to you? What if it was free? What if it didn't cost you a dime? And, what if you could even save 50% off, or even 100% off the price of registration for APFM's 2013 Annual Conference—Mediating in the Landscape of the Changing Family, October 3-6 in Denver, Colorado?

Sound too good to be true? There must be a catch! Nope—read on.

We (the Public Speaking-Presentation Preparation Sub-committee) believe the availability of professionally prepared, well-organized presentation materials are the best means of promoting business for all APFM members. To this end, we are working on the development of a presentation tool-kit that APFM members can use to present a clear, strong, consistent, insightful message about family mediation. This kit, initially, will include:

- A well organized, professional, PowerPoint presentation with notes, handouts, etc., and
- Family mediation messaging statements – thirty second, 3-minute, 10-minute, etc.

The presentation tool-kit, which will be free to all APFM members, will contain a consistent core messages while still allowing you to customize it for your individual practice, with your "look and feel," as well as targeting your specific audiences.

But why re-invent the wheel? APFM is evolving as a generous community and we know there is a wealth of experience, polished presentations, and messaging statements already in use by the APFM membership waiting to be shared. Our goal is to pull from the strengths of all the presentations already developed and tie them together with a unified message.

Any members willing to share their materials will be recognized in the materials themselves, in the APFM newsletter, and at the APFM annual conference.

To top it off, the individual who submits the very best presentations and messaging statements will receive a Free Registration to the 2013 APFM Annual Conference and the second best will receive 50% off the price of registration (As decided by the Public Speaking-Presentations Sub-Committee).

You have nothing to lose and everything to gain. So, scan your hard drive (and dusty files) for presentations and messaging statements that have worked for you, and send your ideas—now, before you forget—and send them to Alan Jacobs (on behalf of APFM's Public Speaking-Presentation Sub-Committee) at **Alan@FalmouthMediation.com.** Thank you in advance for your support.

Save the Date!

For the Second Annual Conference of the

Academy of Professional Family Mediators

Mediating in the Landscape of the Changing Family

October 3 – 6, 2013

Embassy Suites Hotel

Denver, Colorado

To register, go to: http://www.professionalfamilymediators.org/pg24.cfm