



NY State Council on
Divorce Mediation

Council News

Member Newsletter

Volume 2017 ~ Issue 3 ~ Winter

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Mediators Gather in NYC to Discuss Complex Assets & Complex Behaviors

Report from the Downstate Symposium by Lara Traum, Esq.

On a brisk December morning, New York City's first snowfall of the season failed to deter the 100 people who gathered for the annual NYSCDM Downstate Symposium, cosponsored by the CUNY Dispute Resolution Center at John Jay College. Due to the tireless efforts of NYSCDM Board members, Symposium Chairs, Maria Volpe, and Patty Murray, the day did not disappoint.

NYSCDM Board members from near and far, and Symposium Co-Chairs Mark Josephson and Lara Traum, welcomed a room full of attendees with cheerful smiles and warm remarks, reminding everyone

that NYSCDM is not merely an organization, but rather, a family of friends.

The theme of this year's Downstate Symposium, *Complex Assets and Complex Behaviors: Divorce Mediation for New York Families*, launched a day full of diverse topics and intriguing debates. After a bagel breakfast and some warm cups of coffee, the day commenced with a commitment by all attendees to learn, brainstorm, and grow together.

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Dan Berstein, MH Mediates starts symposium with session on Making Mediation Accessible to all.

Welcome New Members!

Please join us in welcoming our newest members of the New York State Council on Divorce Mediation. The members below completed the membership process during the second half of 2017. Many have already become active in the Council by volunteering on committees and registering to participate in our events.

Faith Altman
Mary Calabrese
Robert Kirkman Collins
Dawn Cook
Tamara Hirsch
Kimberly Larsen-Krugman
Jaime Price
Jenny Psaki
Diana Deyo-Ryan
Sabra Sasson

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President's Podium

By Renée O. LaPoint, M.S.



Moving Forward in 2018

As we enjoy the Holidays and family, it's also time to think about the New Year and resolutions for 2018.

Our membership has grown over the last few months through the efforts of our many members who dedicate their time and energy to the NYSCDM. Our organization depends on its members to volunteer not only their time, but their wisdom and expertise. Please consider joining and serving on a committee for 2018. Working together, we will keep the NYSCDM growing and thriving through new efforts with marketing and programming.

Volunteerism as a "thing" has waned in the recent past. Not just with our organization, but also with organizations nationwide; there is an epidemic of people pulling back from giving back. I know we often feel like we are doing too much, and are pulled in too many directions. But, increasing our NYSCDM volunteer base will empower us to move beyond sharing events and ideas amongst ourselves. We can create a larger and wonderful statewide mediation community; spreading a wider net for marketing to referral sources and the public and making mediation the first choice for people seeking to resolve family conflict such as separation and divorce.

There is a full list of committees on the NYSCDM website as well as contact information for the chair people of each committee. Also, please feel free to reach out to me with questions and/or ideas at renee@mediationctr.com. I look forward to working with you to make the Council *"The Voice of Divorce and Family Mediation in New York State"*.

I wish everyone a wonderful Holiday season, a prosperous New Year, and hope to see you at the Annual Conference to be held May 3-5, 2018, in Albany.

Renée LaPoint
President, NYSCDM

**We Hope
You Plan
to Attend**

**2018 Annual Conference
& 35th Anniversary**
May 3rd - 5th, 2018
Albany Hilton

SAVE THE DATES! May 3-5, 2018

NYSCDM Annual Conference & 35th Anniversary Celebration!

The Annual Conference Committee is excited to announce that the May 3rd Pre-Conference will feature:

David A. Hoffman, Esq

Mediator, Arbitrator, Collaborative Lawyer

Boston Law Collaborative, LLC

John H. Watson, Jr. Lecturer on Law

Harvard Law School

TEDx Talk on “Lawyers as Peacemakers”



David A. Hoffman, Esq.

The annual conference on May 4th and 5th will feature:

Diversity & Implicit Bias

Maria R. Volpe, Ph.D.

Professor, Department of Sociology; Director, Dispute Resolution Program; Director, CUNY Dispute Resolution Center, John Jay College of Criminal Justice - CUNY

Spousal Support: A View from the Bench

The Honorable Richard A. Dollinger

Monroe County Acting Supreme Court Justice

Essential and Advanced Concepts in QDROs

will be explained by Carolyn A. D'Agastino, Esq.

Mediation Law Update

This must-see session will feature Steve Abel, Esq.

Debate: the Role of Attorneys in Mediation

This lively exchange will be moderated by Dan Burns, Esq.

Many more Divorce Mediation Professionals will be highlighted in the Annual Conference brochure to be distributed in January. If you have questions, please feel free to contact: [Mark Josephson](#), Annual Conference Chairperson, or [Patty Murray](#), NYSCDM Executive Director.

Who I Met at Harvard

By Trish Blake-Jones

This past June, I attended Harvard University's weeklong workshop, *Advanced Mediation: Mediating Complex Disputes*. There were 48 attendees from around the globe, and only thirteen of us were from North America. The intensive program took our mediation skills beyond the two-party arena. The first half focused on mediating multi-party disputes, involving multiple lawyers and clients, while the second half focused on training us on how to navigate a unified vision (sometimes called a single "text") in larger public disputes, involving dozens to hundreds of constituents.

The key reason I attended this program was because two of my favorite mediation authors, David A. Hoffman, Esq., and Larry Susskind, Ph.D., were "headlining"; and they didn't disappoint. Their classroom discussions were mind-bendingly instructive, and the resultant synergy of the group was palpable.

I was particularly inspired and awed by David Hoffman — a brilliant mind, with a career now focused solely on mediation and collaborative law. I learned that in addition to the many complex legal disputes in which he is involved, he is also a divorce mediator. Humble, humorous, and deeply compassionate, in him I saw the kind of mediator I can only hope to be.

From the outset, it was clear to me that David would be a wonderful keynote speaker for our NYSCDM 2018 annual conference. The committee agreed and David agreed to be our keynote speaker. I am excited about David's presentations, and invite you to read his bio below.

David A. Hoffman, Esq. – Headliner for 2018 Annual Conference, Albany, NY

The annual conference committee is delighted to announce that Harvard professor, mediator and collaborative attorney David A. Hoffman will be the keynote speaker May 3-5, 2018, in Albany, NY. David will run Thursday's pre-conference training event, then give Thursday's dinner speech. On Friday morning, he will provide additional training during a special breakout session. We are finalizing the themes of his offerings, but expect that David's vast experience, plus many years of teaching and writing in the mediation arena, will expand our understanding of the mediation process and sharpen our skills.

David is the founding member of Boston Law Collaborative, LLC (B.L.C.), where he serves as a mediator, arbitrator, and Collaborative Law attorney. Before founding B.L.C., David was a litigation partner at Hill & Barlow where he practiced for seventeen years. In addition to his work with B.L.C., David also teaches three courses at Harvard Law School, where he is the John H. Watson, Jr. Lecturer on Law: Mediation; Diversity and Dispute Resolution, and Legal Profession: Collaborative Law.

David's practice is focused on resolving conflict in business, family, and employment cases. He has served as mediator and/or arbitrator in more

than two thousand commercial, family, employment, construction, personal injury, insurance, and other business cases.

David was named Boston's "Lawyer of the Year" for 2016, in the field of Mediation, in the book "Best Lawyers in America" and U.S. News & World Report, and one of Boston's "Best Lawyers" in ADR, Family Collaborative Law, Family Law Mediation, and Civil Collaborative Law. 2016 marked the tenth year that David has been named a Best Lawyer in at least one field. In 2014, the American College of Civil Trial Mediators presented David its Lifetime Achievement Award, and in 2015, the American Bar Association Section of Dispute Resolution bestowed its highest honor upon David, the D'Almeida-Raven award.

David has published three books on the subject of dispute resolution: *Mediation: A Practice Guide for Mediators, Lawyers, and Other Professionals* (Massachusetts Continuing Legal Education, 2013); *Bringing Peace into the Room: How the Personal Qualities of the Mediator Impact the Process of Conflict Resolution* (with Daniel Bowling) (Jossey-Bass 2003); and *Massachusetts Alternative Dispute Resolution* (with Prof. David Matz) (Butterworth Legal Publishers 1994, 2d ed. 1996).

More information about the NYSCDM Annual Conference will be forthcoming in early 2018.

News Briefs

Kathy Jaffe Retires from the NYSCDM Board of Directors

It was with understandable sadness that the Board of Directors reluctantly accepted the resignation of Kathy Jaffe, LMSW, from the board. Kathy served for many years as the Board Secretary, as Chair of the CLE/CE program and as a member of the Annual Conference Committee. In addition, Kathy always helped the Council in many other ways whenever asked.

During 2018, Kathy will continue to help out the Council with plans for the 2018 Annual Conference and 35th Anniversary Celebration. She is also working closely with Connie Fraser, who will be heading up the CLE/CE program. Wish Kathy well when you see her.

Where is she off to after this? Retirement? For anyone who knows Kathy, she'll probably be busier than ever with her family, charity work, travels and more. While she will no longer be taking new cases, she is helping other mediators with case reviews, management and mentoring. The Council thanks Kathy for her invaluable contributions to our profession and organization. We extend our heartfelt wishes for much happiness always!



Kathy Jaffe, LMSW, says she always will be ready to help the Council if asked.

Connie Fraser to Become New CLE/CE Chair in 2018

Connie Fraser has over thirty-five years of experience dealing with human relationships and conflicts in both work environments and personal situations. Connie has held numerous positions as a leader, a manager and a trainer, in the Rochester Community both as a volunteer and a paid employee. She received her training as a Professional Mediator through the Mediation Center and Center for Dispute Settlement. Connie is a member of the New York State Council on Divorce Mediation, the Rochester Association of Family Mediators, and Academy of Professional Family Mediators.



Connie Fraser to manage CLEs and CE's for the Council's educational programs.

Please send us your announcements to be included in
News Briefs by emailing [Patty Murray](#).

News Briefs

Amy Reinstein-Augenstein Appointed to NYSCDM Board

With a vacant seat on the NYSCDM Board of Directors due to the retirement of Kathy Jaffe, the Board appointed Amy Reinstein-Augenstein, Esq., LCSW, to its ranks. Amy also will serve as Secretary and continue as an active member of the Council's Membership Committee.

Amy is both an experienced Long Island attorney and psychotherapist who brings her legal knowledge, and her sensitivity, to the dynamics of interpersonal relationships in her work as a mediator.

Amy is a graduate of Wesleyan University, Boston University School of Law and New York University School of Social Work. She received divorce mediation training at the Ackerman Institute for the Family. Amy is a member of the New York State Bar, the Nassau and Suffolk County Bar Associations, the National Association of Social Workers, the New York State Council on Divorce Mediation and the Family and Divorce Mediation Council of Greater New York.

The Council extends its gratitude to Amy for accepting this new role and wishes her much success.



Amy Reinstein-Augenstein, Esq., LCSW, will serve as secretary to the NYSCDM Board of Directors.

NYSCDM Seeks Speakers for Events and Webinars

*Would you like to speak at an upcoming webinar or event?
Have you recently heard a speaker who would provide important and valuable information for our members?*

Just let us know. We are currently seeking speakers for the:

- 2018 Upstate Symposium (September)
- 2018 Downstate Symposium (December, NYC)
- Webinars throughout 2018

[Please click on this link](#) and fill out the form giving us as much information as possible. Feel free to share this link with other potential speakers. The respective committees will review the submissions and contact potential speakers directly.

**[Register to speak](#)
at an upcoming
NYSCDM event or webinar**

Becoming Ready for Challenging Behaviors and Making Mediation Accessible to All: Best Practice Tools, by Dan Bernstein, MHS of MH Mediate, was the first presentation of the morning. As a mediator with bipolar disorder, Dan gave a thoughtful presentation about his experiences and professional approaches while making a passionate plea for mediators to be sensitive to those with diverse experiences and needs, without profiling or patronizing them. In an effort to help mediators empower people with mental health conditions and engage people exhibiting challenging behaviors, Dan challenged attendees to take a personal accounting, become aware of their internal biases, and develop appropriate tools and vocabulary with which to distinguish between people with mental health conditions and those exhibiting challenging behaviors.

The second presentation of the day, *How Mediators Help Families Survive the Real Estate Quagmire in Separation and Divorce*, featured Alla Roytberg, Esq. of the Law Firm and Mediation Practice of Alla Roytberg, P.C., and Mark Josephson, Esq., CPA, CFP, CFE, CGMA of Murray and Josephson, CPAs, as they discussed the intricate real estate concerns that can arise as part of the equitable distribution conversation, as well as important legal and tax ramifications. Alla provided a thorough explanation of differing processes when parties own houses, condominiums, and cooperative apartments, noting the legal requirements and unique considerations that are often overlooked, such as ownership technicalities, loan and lien impact, board approval implications, and logistics of the closing process that divorcing parties may need to consider. Mark presented a thorough overview of related tax implications and used helpful hypotheticals to explain the tax benefits and exemptions that divorcing and divorced spouses alike may be able to claim. While it was premature for Mark to opine on the impact of the upcoming Federal tax bill, he did assuage some concerns by reminding attendees that “what will be, will be, and we will figure it out”.

During lunch, attendees mingled, debated the substance of the preceding two presentations, and celebrated the formal accreditation of numerous NYSCDM members. The day continued with a panel



Mark Josephson, Esq., Renee LaPoint, Maria Volpe and Lara Traum, Esq., welcome attendees.



Alla Roytberg, Esq., and Mark Josephson, Esq., discuss real estate.

on *Practical, Legal and Financial Issues You Need to Know for Children with Special Needs*. Balancing softer sensitivities with education and financial considerations, Susan Ingram, Esq., Sandra Gumerove, Esq. and James Traylor, CLU, ChFC, ChSNC of Upstate Special Needs Planning, addressed the unique topics that arise when divorcing or separating couples are parenting children with special needs. From flagging that the needs exist, to creating unique parenting plans and financial plans, the panelists addressed guardianship concerns, trust creation, and the benefits and pitfalls of government benefits. In addition to highlighting important intricacies that all mediators should keep in mind, panelists reminded attendees that estate planning and money management conversations are an integral part of the special needs mediation conversation.

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The Symposium concluded with a heated ethics panel, *Ethics in Practice: Drafting Agreements and Client Maintenance*, featuring Robert K. Collins, Esq., Rachel Green, Esq., William Hoefer, Esq. and moderator Lara Traum, Esq. The panel addressed the age-old question of who should draft agreements at the conclusion of a successful mediation, landing on the controversial suggestion that mediators who are not practicing attorneys *should* be empowered to prepare actual agreements with a minimal amount of attorney oversight. A raucous debate among attendees raised questions about attorney ethics, the unauthorized practice of law, and the absence of consistent legal drafting training for mediators, leading to a general consensus that all mediators, regardless of their ancillary field, should be encouraged to learn certain legal drafting techniques. The conversation did not end there. As the panel proceeded to address whether or not it is appropriate for mediators to offer their ancillary services to former mediation clients, the attorney-mediators in the room exhibited varying levels of comfort; some finding it appropriate to assist a returning party with drafting a prenuptial agreement or a Will, while others were concerned with being conflicted out of mediating future modifications for the parties after providing such services. The mental health professional mediators unequivocally shared that it would be unethical to counsel a single individual who had been a party to their mediation under any circumstances, shedding light on the different professional responsibilities carried by mediators with ancillary ethical obligations.

While the Symposium released its many participants back into the New York City snow by 4:30 p.m., the conversations and debates did not end there. Ethical questions and legal check-ins are ongoing, and many members noticed a related uptick in their listserv communications as panelists



Downstate Symposium attendees, December 9, 2017.



Bill Hoefer, Esq., Bob Collins, Esq., Rachel Green, Esq., and Lara Traum, Esq., discuss ethics.



Saundra Gumerove Esq., James Traylor and Susan Ingram, Esq., discuss special needs.

and participants alike continued their debates in that virtual forum. Referring to the Symposium, Board Member Chuck Newman commented, "I think it was widely seen as a big success."

Sunny Skies for NYSCDM Upstate Symposium

By Trish Blake-Jones

On a warm Saturday this past September, about 35 mediators and affiliated professionals gathered for the annual educational forum. Held in the sun-filled ballroom of Locust Hill Country Club of Pittsford, NY, a suburb of Rochester, the day included four sessions, plus a colorful luncheon speaker.



Upstate Symposium attendees, September 9, 2017.

Opening the symposium with “QDROs: Always More to Learn” was Vincent (Vince) Ferrero, Esq., partner at the Rochester firm of Davidson Fink. Vince, drove home the importance of properly documenting retirement-sharing details in MOUs and subsequent settlement agreements. Simply stating that the pension should be divided as per the Majauskis formula is not enough.

His key message was that couples need to understand, and mediators need to make clear in the MOU and settlement agreement, exactly how pension assets will be divided. As he stressed, “A general rule is that if you don’t include it in the agreement, the alternate payee won’t get it. If you get this right, a lot works”.

Vince provided sample QDROs and DROs for various kinds of pension and retirement plans, useful documents to have since mediators may not commonly see the spectrum of pensions and the various orders required to divide the retirement benefits.

Following a brief coffee break, “Getting to the Bottom of Client Incomes”, was the topic of a panel made up of Renee LaPoint, NYSCDM President and Accredited Mediator; Tom DeMott, CPA , and Marc Bezinque, Esq. Marc opened the discussion by explaining how to apply the NYS legal definition of “earned income” in order to correctly calculate child support and spousal maintenance. Tom followed by sharing how easily the many schedules that make up a complex tax return can obfuscate true income. What is listed on the first page of a tax return may very well not be a person’s true “earned income”.

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Trish Blake-Jones welcomes attendees.



Julie Mersereau, Esq., discusses durable agreements.

Sunny Skies

"The Psychic Highway: The History of the Erie Canal" was the topic of our luncheon speaker, Mike Keene, a local author and historian. Both knowledgeable and humorous, Mike taught each of us something new about the Erie Canal, which in 2017 celebrated its 200th anniversary. For example, did you know that the canal was started from the center and built out toward the Hudson River and Buffalo?

The third session of the day, titled "How's Your Agreement? Elements of a Durable Agreement", was presented by Julie Mersereau, Esq., of Rochester. Julie began her program with small group breakouts to discuss whose job it is to ensure durability: the mediator or the drafting attorney? Julie went on to review provisions that should always be included in marital settlement agreements in order to reduce the chance of post-judgment issues and litigation.

The final session in our fact-filled day was "All Things Insurance" where local insurance specialists, Jane Ahrens and Cathy Benjamin, presented details about long-term care, life, and disability insurance, and of course, private and NYS health insurance plans.

As usual, the day's pace was fast, and the material extremely useful for our mediation practices.



Marc Bezinque, Esq. and panel on client incomes.

Please Update Your Find-A-Mediator Profile on the Council Website

One of the most visited pages on the Council's website is the Find-A-Mediator Directory. As a member, a profile is included in your membership and is a valuable marketing tool working 24/7 on your behalf promoting your divorce mediation practice. Recently, I noticed that many members have not yet updated their profiles with their profile photo, address, phone number, link to website, bio, credentials and more.

To optimize your chances to attract new clients, I strongly encourage you to take five or ten minutes to update your Find-A-Mediator profile. Just log into the member portion of the website using the link below. Your username is your email address and your password is whatever you designated it to be. If you forgot, you can reset the password at any time using the link below. (To set up your password, [click here](#). To log in, [click here](#).)

While you are logged in, take some time to learn about the Member Portion of the website by taking the virtual tour I created for you. Click on [Part 1](#) then [Part 2](#).

As always, feel free to contact me with your comments, suggestions and questions.

Patty Murray, Executive Director
director@nysmediate.org

Mediation Settlement Day 2017

By Candi Fulop, Esq.

Each October, Mediation Settlement Day raises awareness about mediation and the resources available to people in conflict. Numerous organizations from New York gather to educate attorneys and potential parties about the mediation process with the goal of promoting it as a beneficial alternative to litigation. Mediation Settlement Day is sponsored by: FINRA Dispute Resolution and the NYC Bar Association, ADR Committee in conjunction with the New York State Unified Court System and over one hundred national and regional alternative dispute resolution programs, bar associations, community-based programs, public service and non-profit organizations, and schools. A Kick-off Event is held the night before each Mediation Settlement Day at New York Law School in lower Manhattan.

As Chair of the Membership Committee, I saw Mediation Settlement Day as a good opportunity to meet people who might be interested in joining our organization. Although this was my first year attending the kick-off event, NYSCDM had been represented at the event in prior years by the Public Awareness Committee.

I had no idea what to expect and was intrigued by the number of people who attended. Friendly people from different countries and all different ages were wandering the halls with smiling faces, ready to say hello and introduce themselves. Colorful tables were lined up with different types of mediation organizations ready to share information. Some were family law organizations such as the FDMC and some were commercial organizations that mediate business disputes.

Our table, which fellow membership committee member Joelle Perez and I hosted, stood out as the



Candi Fulop, Esq. and Joelle Perez, Esq. at Mediation Settlement Day.

NYSCDM banner was big, beautiful and noticeable, which encouraged people to stop by and ask questions so they could better understand the function of our organization. Someone asked if we were a training organization, while another was surprised to learn the concept of mediators coming together to share information and support. One individual was in the middle of training to become a mediator and another had just completed training; both were excited to learn that NYSCDM was available as a resource to help them figure out what to do next. Another was attracted to my table because of her Hungarian descent and knew my last name was Hungarian! It was a great evening of networking and free-flowing conversation.

The Kick-off Event for Mediation Settlement Day was a fascinating experience. Members of the mediation community, as well as the public, really seek the connection and the knowledge provided by this event. If you meet one person, make one connection, obtain or provide one item of useful information, it makes attending this event worthwhile.

Divorcing Couples: Tax Considerations when Filing Jointly versus Separately

Tax Tidbits By Mark A. Josephson, Esq., CPA, CFP, CFE, CGMA

Prior to the finalization of a divorce, clients have the option to file jointly with the soon to be ex-spouse, or to file a separate return as married filing separately. This decision can have a significant impact on the couple's tax liability as well as the legal responsibility for the other spouses' tax debt. This article will highlight some of the advantages and disadvantages of filing married joint versus married separate.

Filing Status

The Internal Revenue Service provides for five filing statuses. They are 1.) married filing jointly, 2.) married filing separately, 3.) single, 4.) head of household, and 5.) Qualifying Widow(er) with Dependent child. The choice of filing status will depend on whether a couple is deemed to be married or divorced ("unmarried"). Married couples have two filing options: married filing jointly or married filing separately. Under certain circumstances a married person can be "considered unmarried" and file as head of household. This circumstance is not addressed in this article. The filing status for those who are not married on December 31st must be either single or head of household.

When am I Married Under the Law?

Marital status is determined as of the last day of the year. Couples that are not divorced on December 31st are considered married for the entire year.

State law governs whether two people are married or divorced. In New York, a couple living under a separation agreement, but without a judgment of divorce, is considered married. Even if the couple lived separately for the whole year, but without a written agreement, they are married for income tax filing status purposes unless there is a divorce by December 31st. A divorce decree that is in the process of being appealed, and a divorce decree against which there is a motion to vacate pending at the close of the tax year, have been held sufficient to terminate married status for tax purposes.



Filing Jointly Versus Separate

Typically, a **joint filing status** will produce a lower tax liability. However, depending on the couples' income and available deductions and credits, this may not always be the case. A couple with one income producer will definitely benefit financially from filing a joint return until the divorce becomes final. In this scenario the couple will benefit from being able to take advantage of the lower tax bracket built into the tax tables for joint filers versus married separate filers. For example, in 2017 the 25% tax bracket will apply to joint returns when taxable income reaches \$75,900, while the 25% rate would apply to married separate returns when taxable income reaches \$50,800. Additionally, many tax credits are only available to joint filers (and not Married Filing Separate) such as the earned income credit, educational credits and child and dependent care credits.

There are some scenarios where **married filing separate** will be more advantageous. This often comes about when a taxpayer has high medical expenses or other miscellaneous itemized deductions. These types of itemized deductions are dependent upon certain income thresholds and filing separately will most likely produce a lower income threshold. Therefore, if one spouse has incurred high medical bills and/or miscellaneous itemized deductions, filing separately will afford that spouse a higher deduction.

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Tax Tidbits: Filing Jointly vs. Separately

To receive a tax benefit, medical deductions must exceed 10% of adjusted gross income ("AGI") and miscellaneous itemized deductions must exceed 2% of AGI. If the spouse with the lower AGI has a high amount of medical and miscellaneous deductions they will receive a larger tax benefit when filing separately as opposed to jointly.

Example: Jay has AGI of \$50,000 and his spouse has AGI of \$100,000. Jay has qualifying unreimbursed business expenses of \$2,500. If Jay files as **married separate**, he will be eligible for a tax deduction of \$1,500 for his business expenses ($\$50,000 \times 2\% = \$1,000$; $\$2,500 - \$1,000 = \$1,500$). If Jay filed **jointly** with his spouse, there would be no tax deduction for his business expenses since the expenses would need to be more than \$3,000 to obtain a tax benefit ($\$150,000 \times 2\% = \$3,000$).

Keep in mind when filing separately; if one spouse itemizes the other spouse must itemize their deductions as well. This can be a disadvantage if one spouse has a significant amount of deductions and the other spouse has none, as the spouse with no itemized deductions won't benefit from the standard deduction available if not itemizing deductions.

Refunds on Joint Returns

When a joint return is filed, and a refund is expected, a check will be issued in the name of both spouses. If direct deposit is selected, you can indicate to the IRS to refund the overpayment to more than one bank account. This can be done by filing Form 8888 with your federal income tax return. The Form 8888 allows direct deposits of refunds into two or three different accounts. Therefore, it is important to determine beforehand the amount of the refund to be deposited into each spouses' separate bank account, so the IRS can deposit the overpayments in accordance with the agreement.

Amending Returns to Change Filing Status

A separate return can be amended to a joint return within the three-year statute of limitations period. However, a joint return cannot be amended to separate returns after the due date. The statute of limitations is generally three years (including extensions) after the date the original return was filed.

How to Select the Best Filing Status

The best way to determine if you should file joint versus separate is good old-fashioned number crunching. Before filing, draft returns should be prepared both ways to see which yields the biggest tax savings. However, proceed with caution as sometimes a bigger refund may not be the best choice since each spouse is potentially fully liable for the tax, interest and penalties of the other spouse when filing jointly. Even if there is a provision in a settlement agreement to have one spouse assume the sole responsibility for taxes, this will not protect against claims from the IRS. Accordingly, each client's circumstances must be reviewed carefully before choosing a joint or married filing separate status.

For more information regarding the filing status on tax returns in divorce situations, please refer to the Internal Revenue Service's Publication 501 (2016), Exemptions, Standard Deduction available at <http://www.irs.gov/pub/irs-pdf/p501.pdf> and "Filing Information" in Publication 504 (2016), Divorced or Separated Individuals (available at <http://www.irs.gov/pub/irs-pdf/p504.pdf>). All IRS publications are available at <http://www.irs.gov/publications/>. K.T. Sullivan v Commr. 29 TC 71, Dec. 22,625 (1957), aff'd, CA-4, 256 F2d 664. Est. of J.E. Walsh v Commr, 28 TC 1274, Dec. 22,591 (1957).



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Ask the Ethicist

By Rachel Green, Esq.



Dear Ethicist,

Last week, a couple came into my office for their first mediation session. I had been contacted by the wife several months earlier; she'd called me with questions about the mediation process. It appeared, at that point, that her husband was not willing to come in to mediate, and I had given her the names of a couple of attorneys.

As we began our session, the husband expressed he was not sure he wanted to divorce. The wife replied, "Well, I am quite sure I do want a divorce, and in fact I have papers to serve you with now." She reached into her bag, pulled out some papers, and asked me to hand them to her husband. (A plaintiff can't validly serve the defendant).

I was completely taken by surprise, and did not know what to do. I reflexively took the papers from her, and handed them to the husband. She then asked me to sign an affidavit, stating that I had served the husband. I signed it, since I had in fact handed the papers to the husband. (There is a notary in my office.) In hindsight, I wish I had said 'No.' to serving the papers on the husband. I felt manipulated and used.

Was my behavior in any way unethical?

Signed, Thrust into Service

Dear Thrust into Service,

We mediators tend to be conciliators, who want to please people, and I can identify with how this happened. Both attorney, and non-attorney, mediators could find themselves in this situation. But, sorry to say - you were used and manipulated by your client, and that's why you feel the way you do.

When the wife asked you to act as a process server, your ethical obligation, under Standard III of the Model Standards of Practice for Family and Divorce Mediation, was to explain your role as a neutral and to "facilitate the participants' understanding of what mediation is". Instead, you took the bait, and missed that opportunity.

Additionally, Model Standard IV states:

A family mediator shall conduct the mediation process in an impartial manner.

A. Impartiality means freedom from favoritism or bias in word, action or appearance, and includes a commitment to assist all participants as opposed to any one individual.

A crucial question is how did the husband feel about you acting as process server for the wife? By accepting the summons from the wife, and then handing it to the husband, your action may have communicated to the husband that you were on the wife's side, against him. Your action may have compromised your impartiality, such that it would make it impossible to remain as a neutral third party. The lesson? Think before you acquiesce.

Rachel Fishman Green, Esq. is an attorney who began her practice as a divorce and family mediator in 1995. She graduated cum laude from Boston University School of Law in 1990. Rachel is a frequent presenter on Ethics and Domestic Violence, is an accredited member of NYSCDM and chairs the Council's Ethics Committee. She also mediates disputes about allegations of attorney misconduct, referred to her by the Judicial Grievance Committee, Second Department.

Director's Desk

By Patty Murray, NYSCDM Executive Director

I Know That Voice!

On my way home from Rochester, after our successful Upstate Symposium, I decided to stop for lunch and found myself at the Magee Country Diner in Waterloo, NY. I noticed a road sign showing that I was only a few miles from Seneca Falls, NY, the birthplace of women's rights.

Having studied women's history while at Douglass College – which used to be a degree-granting women's college at Rutgers University, NJ, from 1918 to 2007 – I felt compelled to make a pilgrimage. I had previously visited the home of Susan B. Anthony in Rochester, so this trip was starting to have a secondary mission.

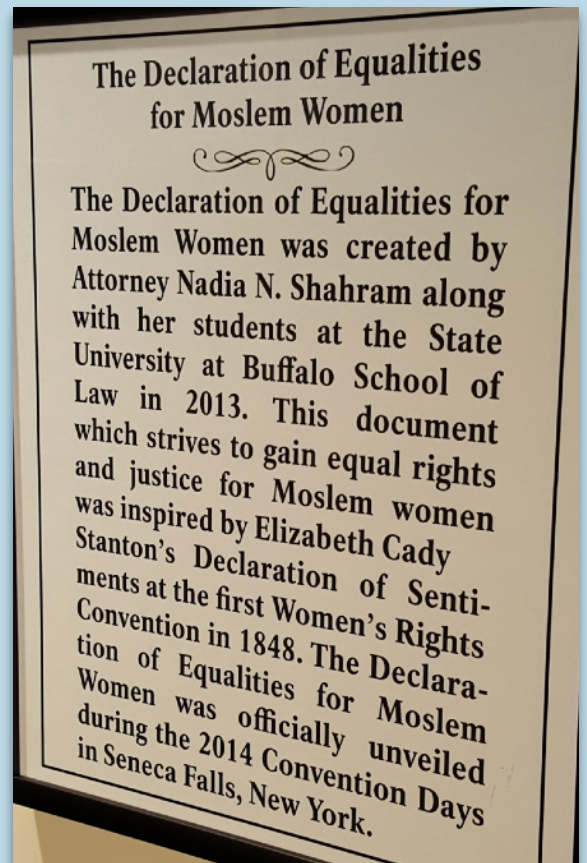
At the Women's Rights National Historic Park, a very knowledgeable and enthusiastic park ranger gave me a great overview of the key women and men who were responsible for the first Women's Rights Convention in 1848. It was held in Wesleyan Chapel, next to the museum.

I then ascended the gallery-like staircase to the museum's main collection. The artwork and educational exhibits reminded me of the many daily struggles children, women and men faced during the past century and a half.

Unexpectedly, I heard a familiar voice on a nearby video loop. I thought to myself: *"I know that voice. Could it be who I think it is?"* As I turned the corner, I learned the answer was "yes", it was one of our Council members who I had just seen at the Upstate Symposium.

The video loop featured Nadia Shahram, who is a mediator, attorney, writer, activist and adjunct faculty at the SUNY Buffalo Law School. As part of the 2014 homage to the 1848 convention, Nadia was reading the Declaration of Equalities for Moslem Women created by her and her students. It was based on the Declaration of Sentiments, originally read by suffragist Elizabeth Cady Stanton.

It was thrilling to see someone I know personally featured in a national museum, especially one of our members. It makes me wonder: *"What wonderful things are other Council members doing that we should know about?"* Please tell us about your newsworthy accomplishments so we can include them in upcoming issues of *Council News*.



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