



NY State Council on
Divorce Mediation

Council News

Your Quarterly Newsletter

Volume 2017 ~ Issue 2 ~ August

NYSCDM: *The Voice of Divorce and Family Mediation in New York State*

Continuing to Move the Council Forward

Read *President's Podium* for more info on how we can be the **Voice of Divorce and Family Mediation** in New York State.

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Raise Your Mediation IQ

Attend the Sept. 9 Upstate Symposium to learn more about Pensions & QDROs, Clients' Incomes, Insurance Options, and Durable Agreements.

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New Feature: News Briefs

Enjoy news about your colleagues. Send us your news for future issues of **Council News**.

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Annual Conference Photos and More

Find yourself and your colleagues in photos from the Annual Conference along with Cynthia Knight's recap of the event sessions. (Article starts below.)

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Tax Tidbits: Retirement Issues

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Ask the Ethicist

Remember to always protect the confidentiality of client information.

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Listen, Understand & Walk In Clients' Shoes

Lessons from the 34th Annual Conference

By Cynthia Knight

This year's NYSCDM Annual Conference was held May 4-6 at the DoubleTree by Hilton Hotel in Tarrytown, New York. In keeping with the past, the sessions were both informative and thought provoking, the exchange between presenters and participants lively, the networking widespread, and a good time had by all who attended.

As keynote speaker for the Pre-Conference, Robert E. Emery, PhD, Professor of Psychology and

Director of the Center for Children, Families, and the Law at the University of Virginia and author of *Two Homes, One Childhood: A Parenting Plan to Last a Lifetime*, spoke about the importance of joint custody and mediating developmentally appropriate parenting plans that would grow and change with the growth of the child and the changes in a family's circumstances.

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Robert Emery receives award at conference from Mark Josephson, outgoing Council President.

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 quarter of 2017. Many have already become active in the Council by volunteering on committees and registering to participate in our events.

Kenneth Eiges
Robert Elfenbein
Frank Fountain
Russell Glick
Nancy Goldfarb
Amelie Kraus
Katherine Leff-Castillo
Joni Linker
Lynn Maier
Tamara Roff
Monica Roquitte
Joy Rosenthal
Sheldon Rothbell
Melissa Rutkoske

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Eli Uncyk, Chair Emeritus

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President's Podium

By Renée O. LaPoint, M.S.



Continuing to Move the Council Forward

I hope you are all enjoying a wonderful summer.

The Board and Executive Committee have been working on changes we believe will move our organization forward to be responsive to the evolving needs of our membership, who come from all over New York State and a variety of backgrounds and primary professions.

The Board's January 2017 Strategic Plan Retreat yielded a plan which we believe carries the momentum of new synergy, goals and objectives. The Strategic Objectives for 2017-2019 are focused on four areas: Leadership, Professional Development/Education, Organizational Development and Communications/Public Relations. These objectives will guide our efforts in the next two years.

We have seen positive growth in our membership, and have added member benefits that include: free webinars, supplemental insurance, and a discounted rate for WB Mason office supplies. We are also working to make Accreditation for our members more accessible, without lowering standards. We owe these and other initiatives to our hard working colleagues who serve on various committees within the organization.

The NYSCDM is steeped in a history of collegial, supportive friendships. The Council is a special organization; one that welcomes both new and returning members with open arms and open hearts. It is my goal to honor this, while attending to the changing demographics and needs of our members. I consider myself a "newer" member and I feel honored to serve the Council as its President.

I encourage all members, new and old to be involved. New perspectives are what make this organization thrive. Together, we can be *"The Voice of Divorce and Family Mediation in New York State"*.

Renée LaPoint
President, NYSCDM

**Save
These
Dates**

2017 Upstate Symposium
Saturday, September 9th

2017 Downstate Symposium
Saturday, December 9th

2018 Annual Conference
May 3rd - 5th

Register Early for Discounts:
2017 Upstate Symposium

Raise Your Mediation IQ: Know When to Ask an Expert

Saturday, September 9, 2017
8:30 a.m. - 4:00 p.m.



Featuring Sessions on the Challenging Topics You Want Covered:

Pensions & QDROs: Always More to Learn
Vincent Ferrero, Esq. (CLE Credit)

Panel: Getting to the Bottom of Clients' Incomes
Ben Dobrynski (CPA), Mark Bezinque, Esq., Renee LaPoint (Mediator) (CLE Credit)

All Things Insurance: What's New in Life, Disability, Longterm Health and the Affordable Care Act
Cathy Benjamin and Jane Ahrens

How's Your Agreement? Elements of a Durable Agreement
Julie Mersereau, Esq. (CLE Credit)

Luncheon Speaker: Michael Keene, historian and author will talk about the history of the Erie Canal.

[Register Today!](#)

Early Bird Pricing (through August 31): \$105 NYSCDM Members; \$125 Non-members

Regular Pricing (From September 1-7): \$115 NYSCDM Members; \$135 Non-members

**** Includes all sessions, materials, hot/cold breakfast, hot lunch, all-day refreshments, free parking and more!***

Questions

If you have questions about the symposium content, please contact the co-chairs:

[Trish Blake-Jones](#) or [Renee LaPoint](#)

For technical questions about your registration, please contact NYSCDM Executive Director:

[Patty Murray](#)

Important Details

CONTINUING LEGAL EDUCATION: "New York State Council on Divorce Mediation has been certified by the New York State Continuing Legal Education Board as an Accredited Provider of continuing legal education in the State of New York from July 25, 2015 – July 24, 2018." CLE credits will be earned depending on sessions attended.

FINANCIAL HARDSHIP: NYSCDM's financial hardship policy is available upon written request. To apply, write Kathy Jaffe at Kathy Jaffe Mediation Services, LLC, 7 Dakota Court, Suffern, N.Y. 10901

REFUNDS: For requests received via email by August 30, refunds will be granted as follows: amount paid, less a \$25 administrative fee. Thereafter, no refunds will be granted.

SPECIAL NEEDS: If you need dietary or ADA accommodations or have other special needs, please indicate them on the online registration form or email director@nysmediate.org

News Briefs

Deborah Hope Wayne, Esq. Publishes *Prenups and the Elephant in the Room: A Handbook for the Prenup Process*

A practical, informative guide to negotiating a prenup, Deborah's new book provides a user-friendly framework for the prenup process – from the beginning considerations and conversations to the final product.



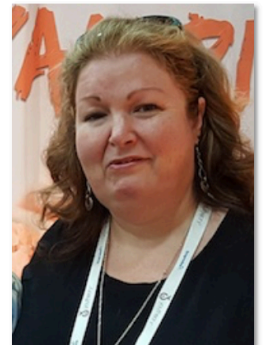
Deborah signing books at launch party.

The book provides guidance on determining whether a prenup is a wise choice, reasons to have a prenup, and how to have productive negotiations. It also addresses common misconceptions. The underlying premise of the book is that the negotiations for a prenuptial agreement present a unique opportunity to begin marriage with a clear sense of each other's values and priorities.

The book can be ordered on Amazon.com or www.DeborahWayneLaw.com.

Marketing Your Mediation Practice Online: Webinar Archive Now Available

We want to offer special thanks to our two speakers: Jennifer Safian and BJ Mann, who shared their proven strategies and tactics for building and expanding their divorce mediation practices, during a roundtable discussion moderated by Patty Murray, NYSCDM Executive Director. Held on June 29, this was the second webinar presented by the Education Committee.



Jennifer Safian, BJ Mann and Patty Murray offer proven ways to grow your business.

To learn more, [here's the link to the archived recording](#). This is a benefit exclusively for members. Please do NOT share with anyone who is NOT a member. If you know a non-member who wants to have access to the archive, please have them [contact Patty Murray](#). Here's a [link to the slides](#).

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

News Briefs

Eli Uncyk Honored for Contributions to Field of Divorce Mediation

During its annual meeting, the Family and Divorce Council of New York (FDMCNY) honored Eli Uncyk, member of NYSCDM, for his contributions to the field of mediation. Eli has been the group's longest serving board member with a tenure of more than 20 years.

During the award presentation, Adam Berner, another NYSCDM member, said "Eli has been an essential enabler to the growth and development of the mediation field, in a very quiet, unassuming, yet powerful way." Berner described Eli as the backbone for multiple generations of mediators, giving them the strength, confidence and backup to become professional mediators.

"Eli has been the encourager and the empowerer of a younger generation of mediators who were testing the waters, assessing whether this was a field that could make it in the big city," said Berner. "Eli has been, and still is, always available to help answer questions about the law, offering the statutory citations, cases, documents and language needed to help countless practitioners like myself handle situations. Even when we thought we were over our heads, Eli was always assuring us that we were on the right path while guiding us in the right direction."

According to Berner, it was an honor to recognize a very humble giant in our field, who has helped hundreds of mediators and, through them, thousands of families.



Eli Uncyk receives FDMC award from Adam Berner.

NYSCDM Seeks Speakers for Events and Webinars

*Would you like to speak at an upcoming webinar or event?
Have you recently seen a speaker that would be good for NYSCDM?*

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

- The 2017 Downstate Symposium (December 9, NYC)
- The 2018 Annual Conference (May 3-5, Albany or Saratoga Springs)
- Webinars for the remainder of this year and 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**

Before Pre-conference: Dinner with Past Presidents



Fun with past presidents and board members!



Jack Heister, Dan Burns and Clare Piro.



Mark Josphson, Chuck Newman and Steve Abel.



Beatrice takes center stage.



Jack Heister recalls the beginnings of NYSCDM and looks to future.

Annual Conference



Pre-conference workshop with Robert Emery, Ph.D.

Emery maintained further, that when children are involved in a divorce or separation, it is critical that parents leave their issues at the doorstep and focus on their new role as partners in the business of parenting. Children have a right to be children and not the product of their parent's break-up.

Various research studies were cited by Emery throughout the afternoon, studies conducted by both himself and others, that dealt primarily with family relationships and children's mental health within the context of divorce, child custody, and the like. At one point he discussed the issue of attachment theory in infants and young children and its implications when determining how best to structure co-parenting arrangements for this age group. While Emery believes in a conservative approach and limited back and forth between parents during this early time period, he acknowledges that studies in this area are very limited and results are as yet inconclusive. This topic provoked much spirited discussion among conference attendees.

The remainder of the conference covered topics ranging from better understanding and improving communication between individuals to navigating the financial issues inherent in divorce.

Frank Wood, PhD, Founder and CEO of *Thriving With Stress*, spoke about how stress - built-up energy that needs to be discharged - impacts an individual's ability to communicate effectively and usually results in "freeze", "fight" or "fright" responses which, while sometimes helpful, is often destructive. Since the correlation between stress and the mind-body connection is now widely recognized, Wood reminded the audience of the importance of staying tuned into one's self and the other - to never stop asking, "Is what you thought you heard, what I thought I said?"

Robert Emery led a breakout session entitled, *Hiding Behind the Anger: The Complex Emotions that Drive Conflict*, in which he provided participants with a primer on emotional theory and suggested that anger is a mask for hidden emotions, and thus, it is the job of the professional to unmask the emotions and to determine the needs and interests powering those emotions. While the practitioner need not "fix" the negative emotions, it is important that he or she reflect, or empathize, legitimize, give permission and acknowledge the feelings all the while focusing on the issues and moving to resolution in a future oriented direction.

Pre-conference, Reception & Dinner



Jill Sanders-DeMott checks in Don Sinkov.



Mark Josephson welcomes pre-conference attendees.



Sponsor, Gil Ruidant, engages with attendees.



Attendees, speakers and sponsors networking in exhibit area.



Carol Tota, Ginny Kellogg, Jack Kellogg and LJ Freitag having fun at cocktail reception.

Pre-conference, Reception & Dinner



Lara Traum, Nicole Gill, Ada Hasloecheer and Tamara Roff.



Susan Ingram, Deb Wayne, Adam Berner and Andrea Vacca.



Rita Medaglio-Barrera, Ada Hasloecheer and Al Frankel.



Susan Freedman, Loretta Miraglia, Patty Murray, Rachel Green, Kate Bar-Tur and Sarah Samuels.



Pamela Pollack, Amy Reinstein-Augenstein, Robert Elfenbein, Ken Neumann and Ronald Heilmann.

Pre-conference, Reception & Dinner



Trish Blake-Jones, Laura Bonarrigo, Mark Josephson, Bob and Barbara Badolato.



Clare Piro and Abby Rosmarin.



Loretta Miraglia, Jennifer Safian and Susan Clelland.



Bill Hoefer, Jeff Wilson and Frank Wood.



Doris Friedman, Steve Abel, Paula Davis, Jill Sanders-DeMott and Rod Wells.

Pre-conference, Reception & Dinner



Joelle Perez and Richard Lutringer.



Glenn Dornfeld and Will Wiesner.



Dan Burns welcomes Michele Kern-Rappy



JoAnn Shartrand, Melissa Goodstein, Kathy Jaffe, Charles Newman, Lauren Spector Morrissey and Margaret Nicholson.



Barbara Badolato (second from right) receives The Abel Award accompanied by (left to right) Ken Neumann, Dan Burns, Steve Abel, Bob Badolato and Jill Sanders-DeMott.

Annual Conference



Interactive kick-off session with Frank Wood.

Wendy Behary, Clinical Social Worker/Therapist, LCSW, author and expert in the treatment of narcissistic behavior, returned for the second straight year speaking in Saturday's breakout session about *Overriding Our Instincts: The Art of Effective Confrontation with Challenging Clients*, and during the closing plenary about *Let's Face It! The Art of Empathic Confrontation with Challenging Clients*.

In both discussions, Behary provided an overview of different personality types frequently encountered in a conflict situation and detailed strategies on how to communicate effectively with such types. In each case the message remained the same. Diffuse and look beyond the anger; if present, command respect by setting limits, engage in reflective listening and most important, EMPATHIZE, EMPATHIZE, EMPATHIZE.

Laura Bonarrigo, a former daytime television celebrity turned Certified Divorce Coach, took the audience, during her lunchtime production, *Owning the Room During Mediation*, on a behind the scenes look at life through the eyes of an actress. She offered a unique perspective when she likened the role of an actor/actress to that of a mediator. A truly gifted actor/actress will live and breathe his or her character much like an accomplished mediator will "get inside the head" of his or her client.

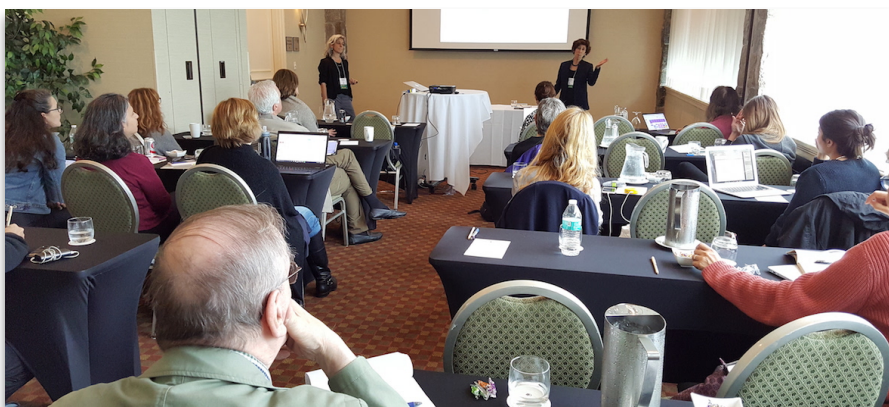
Be it Emery, Wood, Behary or Bonarrigo, the resounding message from each of these presentations was the same: **LISTEN, UNDERSTAND and WALK with the client in his or her own shoes.**

The mother-daughter team of

Jessica and Barbara Rothberg spoke on working with LGBTQ clients in a presentation entitled, *When the Rainbow Breaks: The Legal and Psychological Implications of Gay Divorce*. They explained that while there are many similarities between same-sex and straight divorces, there are also key differences that make same-sex divorces unique and oftentimes more complicated.

Since such marriages only recently became legal in all fifty states, couples often marry after longterm relationships. Many may have previously entered into civil unions or domestic partnerships, resulting in more complex legal issues to resolve. Some family members may not have sanctioned the relationship and thus one or both partners may lack the support needed to cope with the challenges inherent in a divorce. With homophobic attitudes still prevalent in mainstream America, couples may be reluctant to "come out" to professionals, fearful that they will not be accepted or respected unconditionally by the very individuals they look to for help and guidance in resolving their differences.

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Jessica Rothberg, Esq. and Barbara Rothberg discuss same-sex divorce.

Annual Lunch Meeting & Conference Sessions



Renée LaPoint is crowned the next NYSCDM President by Julie Mersereau, Connie Fraser, Trish Blake-Jones and Kris Jenks.



Outgoing NYSCDM President Mark Josephson wishes Renée LaPoint much success.

Renée LaPoint would like to thank outgoing directors:

**Clare Piro
Kate Bar-Tur
LJ Freitag**

for their valuable service to the board.

She welcomes new board members:

**Trish Blake-Jones
Joelle Perez
Kris Jenks.**



Incoming and outgoing board members with executive director after annual meeting.

Annual Conference Sessions



Deborah Wayne explains how to negotiate prenups.



Steve Abel gives his annual review of the law.



Steve Linker discusses business valuations.



Chuck Newman (left) and Mark Josephson (right) present an award to Maria Volpe of John Jay/CUNY in appreciation of her contributions to the field of mediation and support of NYSCDM.

Annual Conference Sessions

Dan Burns explains how to mediate modification of child support.



Laura Bonarrigo looks at how to own the room from an actor's point of view.

Wendy Behary closes the conference offering advice on the art of confrontation when dealing with challenging clients.



Congratulations to Bud Baker and his wife Lyn, who celebrated their 39th anniversary at the annual conference.

Auction & Dance Party



DJ Al Frankel and friends lead attendees in their annual zumba dance party.



Mark Josephson presents gift card to new member drive winner Linda Markowitz.



Annual auction raises funds for NYSCDM.



Annual Conference Committee says thanks for coming. We look forward to seeing you in 2018!

Annual Conference



Donna LaScala provides great insights into Social Security regulations.

Finally, despite the fact that there is a legal presumption of parentage for married couples, when deciding custody arrangements and crafting parenting plans, considerations for the same-sex couple often include issues such as which partner, if either, is the biological parent, who was the primary caregiver during the marriage, donor interest and involvement, one parent and second parent adoptions, and the like.

On a more practical note, the Rothbergs reminded the audience of the importance of using gender neutral language when speaking with clients and drafting agreements.

Deborah Hope Wayne, Esq. provided valuable information on the topic of pre- and post-nuptial agreements, *Defining Marriage by Default and Choice: Can the Explicit Promises of Prenups and Postnups Improve the Marital Relationship?* By exploring common misconceptions surrounding such agreements and defining expectations, couples can address the issues inherent in a marriage before tying the knot. This helps them pave the way for improved communication and develop a better understanding of the rights and obligations of that marriage leading to an overall improved relationship during the marriage, according to Wayne, who has published a new book on the topic.

Susan Ingram, Esq. shared her expertise on the challenges divorcing couples face when parenting a special needs child. In *Divorcing Parents and Their Special*

Needs Children, offered advice on how to create parenting plans and child support agreements that adequately address the needs of the child over time. In addition, Ingram provided information on government entitlements, guardianships and special needs trusts as they relate to the special needs individual.

Donna LaScala, Investment Advisor and Mediator, in *Social Security: Show Me the Money*, provided an overview of how the Social Security System works, and educated participants on how the Bipartisan Budget Act of 2015 (HR1314), that went into effect April 30, 2016, changes how individuals born in 1954 or later can file for and receive benefits, and the impact such changes could have on divorcing couples. Specifically, no benefits can be paid while the worker's benefits are suspended, nor can an individual any longer file a "restricted application" enabling them to receive spousal benefits while accruing delayed credits under their own benefit account. Rather, individuals will be deemed filing for any and all benefits they are entitled to under their own worker benefits and will not be able to change the payment amount at a later date.

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Susan Ingram, Esq., offers advice for families with special needs children.

Annual Conference



Dan Burns moderates panel featuring Bill Hoefer, Esq., Trish Blake-Jones and Candi Fulop, Esq.

Dan Burns, Esq. Attorney-Mediator, in a break-out session entitled, *Mediating Modification of Child Support*, reviewed the child support law and its implications for modifying support payments pre- and post-2010. Burns recommends mediators help clients address future circumstances that might warrant a modification of the couple's child support agreement by developing a Child Support Modification Plan as part of the Marital Settlement Agreement. The more detailed the Plan, the less likely the couple will have a problem in the future that will land them in the courtroom.

Stephen Linker, CPA, CVA, CFF, FACFEI and returning presenter, spoke on the topic of *Business Valuations: Making Sure the Deck Isn't Stacked Against One Spouse*, explaining that the purpose of a business valuation is to determine the Fair Market Value (FMV) of a spouse or spouses' business; information essential to the equitable distribution of assets and the payment of maintenance and/or child support during divorce.

Linker's experience has been that as a marriage deteriorates and the prospect of divorce looms in the distance, there is a decline in the profits reported by the business owner spouse. In fact, many business owners will try to conceal income, assets and profits in a divorce, using a variety of tricks of the trade, thereby making it vitally important for the non-owner spouse to seek an accurate valuation. By employing a variety of methods that often exceed the requirements set by the IRS, a competent valuator will be able to determine whether the business owner spouse has hidden money or intentionally undervalued the business.

Last, but certainly not least, Steve Abel, Esq., Attorney-Mediator, delivered the annual Friday afternoon plenary, *Update on the Law*, while Dan Burns moderated the Saturday morning Panel Discussion, *How To Mediate Legal Questions*.

Abel enlightened council members and guests on the latest court decisions affecting divorcing couples, with cases running the gamut from equitable distribution of assets and liabilities to real property, division of retirement accounts, pension rights, marital vs. separate property, child support and maintenance payments, sole versus joint custody and everything in-between.

Council members Bill Hoefer, Esq., Litigation Attorney turned Mediator; Trish Blake-Jones, Non-Attorney Mediator, and Candi Fulop, Esq., Practicing Litigation Attorney and Mediator, each shared their perspective on how to respond when clients seek answers to legal questions in a mediation setting. Not surprisingly, this topic grabbed the attention of the audience resulting in much animated dialogue between panel members and conference attendees.

Cynthia Knight was trained as a Community and Family Court Mediator about 10 years ago and as a Divorce Mediator in 2011. She practices mediation for ACCORD, A Center for Dispute Resolution, Inc., the Alternative Dispute Resolution Center serving Broome and Tioga counties in the Southern Tier of New York.

Top Retirement Issues Related to Divorce

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

Retirement planning is a top priority for most, and when faced with a divorce, the decisions relating to the allocation of retirement assets can have a serious impact on one's short term and long term financial well-being. Pension benefits, profit sharing plans, individual retirement accounts and other deferred compensation plans are the types of retirement benefits that need to be identified and valued when drafting a settlement agreement. This article presents some of the most common and critical tax issues to be aware of when dividing retirement accounts.

Qualified Retirement Plans

A qualified plan is an employer sponsored plan that satisfies the requirements for special tax treatment under Internal Revenue Code 401 (a). There are many types of qualified plans that fall into two main categories, Defined Benefit plans and Defined Contribution plans. Defined Benefit plans are traditional pension plans typically funded solely by the employer and provide for a specified benefit at retirement as determined by actuarial formulas. Defined contribution plans are typically funded by the employer and/or by employee contributions such as profit sharing and 401(k) plans.

Qualified Domestic Relation Order

If a divorce agreement states that a retirement plan will be divided, a court must issue a qualified domestic relations order, commonly abbreviated as QDRO. A QDRO instructs the plan administrator on how the plan benefits are to be paid to each spouse. Funds from the retirement plan can be used to pay child support, alimony or marital property rights to a spouse, former spouse, child or other dependent of the plan participant.

When all or a portion of a participant's interest in a qualified plan is assigned to a spouse or former spouse, the receiving spouse will be taxed in the same manner as if they were the original owner of the plan. Any distribution from a plan not pursuant to a QDRO will subject the participant, not the recipient, to tax on the distribution.



Typically, a 10% additional tax will apply to a distribution made to a plan participant prior to obtaining age 59 ½. However, a distribution received pursuant to a QDRO allows the funds in a retirement account to be withdrawn without penalty. This exception does not apply to distributions from IRAs, SEP plans or SIMPLE plans.

The QDRO must meet all of the requirements set forth in IRC sec 414(p) to be valid.

The order must contain specific information such as:

- the participant's name,
- each alternate payee's name
- last known mailing address for participant and each alternate payee
- amount or percentage of the participant's benefits to be paid to each alternate payee.
- the number of payments or period to which the order applies
- and each plan to which the order applies

Tax Tidbits: Top Retirement Issues

A spouse or former spouse who receives QDRO benefits from a retirement plan reports the payments received as if he or she were a plan participant. An individual may be able to roll over, tax-free, all or part of a distribution from a qualified retirement plan that he or she received under a QDRO. If a person receiving QDRO payments is either the participant's spouse or former spouse (not as a non-spousal beneficiary), then he or she can roll it over, just as if he or she were the employee receiving a plan distribution and choosing to roll it over.

Another important item to point out is that a QDRO distribution that is paid to a child or other dependent is taxed to the plan participant. Also, QDROs do not apply to "non-qualified" deferred compensations plans since as by definition they only apply to qualified plans.

Individual retirement accounts "IRAs"

A QDRO is not required to divide an Individual Retirement Account (IRA) or a Simplified Employee Plan (SEP). A letter of instruction and copy of the final judgment and/or settlement agreement should be sufficient.

The transfer of one spouse's interest in an IRA to the other spouse's IRA, pursuant to a divorce, is not a taxable event. A withdrawal from the IRA by the receiving spouse is not exempt from the 10% early distribution penalty merely because it is pursuant to a divorce. The QDRO exception to the early distribution penalty as mentioned above does not apply to IRAs.

Many financial institutions that sponsor IRAs have simple forms to fill out that will effectuate the tax-free transfer of funds in connection with a divorce. This is known as a "trustee-to-trustee transfer," and it should not result in tax consequences to either party.

Summary

It is important to have a good understanding of all the types of retirement assets owned by the divorcing couple. It is also critical to specify the types of retirement plans held in the settlement agreement such as defined contribution plan or a defined benefit plan as there are significant differences between these plans. Finally, to avoid an inadvertent tax-triggering event, the settlement

agreement needs to clearly spell out how the assets are to be split and how those funds will be transferred. As always, mediators should refer clients to tax/financial planning experts if questioned about retirement plans and what a client's best course of action should be.

For more information regarding the Internal Revenue rules governing qualified domestic orders see IRC Sec. 414 (p). Also refer to the Internal Revenue Service's Publication 575 (2016), Pension and Annuity Income at <https://www.irs.gov/pub/irs-pdf/p575.pdf> and 504 (2016), Divorced or Separated Individuals available at <https://www.irs.gov/publications/p504/>



Mark A. Josephson, Esq., CPA, CFP, CFE, CGMA is a founder and senior partner of Murray & Josephson, CPAs, LLC. Mark received his bachelor's degree in Accounting and Finance from Boston University and is also a graduate of New York Law School. He is a member of the bar in the states of New York, New Jersey and Florida. He is the President of the New York State Council on Divorce Mediation. Mark assists lawyers, mediators and collaborators with business, tax and accounting advice. www.MurrayJosephson.com

Ask the Ethicist

By Rachel Green, Esq.

Dear Ethicist,

I am the mediator for a couple who are divorcing. They have one child, and asked me to do child support calculations. As both of them own and run their own businesses, they did not know what income numbers to provide for the calculations, and requested that I speak with their accountant directly. They gave him permission to speak with me, and to release to me, the information I needed from their tax returns.

It turns out that the accountant is someone I know professionally, and with whom I had a collaborative divorce team case where he was the financial neutral. I called him, and had what I considered to be a brief conversation about the case, during which I told him what I needed, and he provided the information necessary to calculate child support. He hung up from our conversation somewhat abruptly.

The next day, I received an angry email from the husband. He said I had revealed confidential information about the reasons for the divorce to their accountant. He told me that the accountant had called him, after talking to me, quite upset about what he told the husband was my "breach of confidentiality." The accountant, apparently, works for the husband's extended family, and has been a trusted advisor for this family for decades.

I don't remember saying anything about the cause of the divorce (the wife had an affair) to the accountant – but as I said, I do know the accountant professionally, and was probably making conversation as part of the phone call to obtain the financial information. Do you think I breached confidentiality? Am I right to be angry that the accountant ratted me out to the husband?

From, Puzzled In The City

Dear Puzzled,

Ahh, the conundrum of working in the family law field. We hear juicy stories all the time about the failures and challenges of others in their most personal and intimate relationships. No wonder we are all in high demand as cocktail party guests!

Nonetheless, we each have an ethical obligation to maintain confidentiality and to protect the privacy of our clients. We are entrusted with private details about families, relayed to us in a professional context, and we have a professional obligation to guard those details more fiercely than we guard the secrets and challenges of our own lives.

Standard VII of the Model Standards of Practice for Family and Divorce Mediation states: **"A family mediator shall maintain the confidentiality of all information acquired in the mediation process, unless the mediator is permitted or required to reveal the information by law or agreement of the participants."**

Was the information you discussed with the accountant "acquired in the mediation process?" From your account, it sounds like it was. If so, you breached the ethical obligation to maintain confidentiality.

Let's step back a moment; why is confidentiality of mediation important enough to warrant a place as one of the (only thirteen) Model Standards? Because, it creates an environment where there can be full and honest sharing of ideas and full discussion without fear of disclosure to others outside the mediation process. This is the essence of mediation. It is equally as important to define the scope of confidentiality among those participating in the mediation process. As stated in Standard VII, D: **"If the mediator holds private sessions with a participant, the obligations of confidentiality concerning those sessions should be discussed and agreed upon prior to the sessions."**

Editors' summary:

In the course of our work as mediators, we may inadvertently let down our guard with other professionals with whom we confer, such as in this case. We often refer our clients to professionals and those same people refer clients to us. Our duty to our clients, to protect their confidentiality, is a regular ritual we need to remember to observe. This should include even those details we learn about our clients outside of mediation.

Director's Desk

By Patty Murray, NYSCDM Executive Director

Please Help Me Help You!

As many of you know, I am very honored and happy to be your new executive director. What would make me even happier, is for you to let me know what you need from the Council and what we can do to make sure you are having the best membership experience possible.

Maybe you have a simple request, like "How do I log into my member profile on the Council website?" Just give me a call, and I will walk you through it. Or, maybe you want to speak at an upcoming event or webinar. Let's talk to see what might be possible. I really want to hear from you.

If I do not hear from you, do not be surprised if I give you a call. One of my goals for this year is to make sure that everyone updates their member profile (see details below). During our June webinar, we discussed how the Find A Mediator directory on NYSmediate.org is a key way you can promote your business with every little effort. I hope everyone utilizes this important member benefit.



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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. [Part 1](#) (If you advance to the 16-minute mark, you can go straight to the member-only tour.) [Part 2](#)

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

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