



NY State Council on Divorce Mediation

Council News

Your Quarterly Newsletter

Volume 2016 ~ Issue 3 ~ November

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Upstate Symposium: Hot Topics & Hot Glass

By Connie Fraser

Approximately thirty-five professionals from around the state traveled to Corning to attend NYSCDM's Upstate Symposium, "Mediating the Financial Challenges of Divorce." Located in Steuben County, the picturesque Southern Tier portion of New York State, Corning is a great little city with the feel and charm of a quaint village.

The Symposium was held on September 10th, at The Corning Museum of Glass, in the state-of-the-art Auditorium/Conference facility. The facility was comfortable; the staff friendly and accommodating; and the food was plentiful and appealing.

Andrea Colline and Mike Arnold offered the first presentation of the morning, "When Finances Are In the Red." Andrea is the Outreach Coordinator of Consumer Credit Counseling Service of Rochester, and Mike is Chapter 7 Bankruptcy Trustee for the Western District of New York, a bankruptcy attorney with Hiscock & Barclay LLP in Rochester, and Town Justice of Perinton.

Andrea provided sound alternatives for our clients who may be drowning in debt and thinking that filing bankruptcy is their only alternative. Consumer Credit Counseling Services (CCCS) is a national organization that

offers to its clients' financial education, debt management programs, and counseling services. Mike provided insights and a wealth of information (no pun intended) regarding the complexities associated with bankruptcy. He explained the differences between filing Chapter 7 versus filing Chapter 13; the advantages and disadvantages for couples thinking of bankruptcy; and the importance of deciding whether spouses should file before or after a judgment of divorce. Mike reminded the group, "Mediated and Court Ordered agreements have no validity when it comes to debt."

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News & Notes



Hello from the Publications Committee

We're discontinuing the recurring "Letter from the Publications Committee" you used to see in each issue of Council News. But we'll give the occasional shout-out, and we have two this time.

One is to call your attention to our new layout. We'd love to get your feedback on it; just email trish@tbjmediates.com. Thanks so much to Patty Murray, NYSCDM's acting director, for working on the design and for taking over production.

But by far more important is our thank-you to Melissa Burns, who was our Production Manager for *NYSCDM Council News*, and for several years had the same role for its predecessor journal, *The Report*. These connections to you, the Council's members and the many others who receive our publications by email or online, would not have been possible without Melissa. As you will read in Mark's President's Letter, Melissa has re-focused her career. The Publications Committee salutes Melissa for her excellent work with us; for her putting up with us and our deadline bashing; for her good humor while pulling it all together in spite of us; and for her friendship. Thanks, Melissa.

Trish

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President's Podium

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



A Season of Changes & Accomplishments

It was great to see many of you at the Upstate Symposium on the second weekend of September. I want to thank Trish Blake-Jones, Renée LaPoint and their volunteers for putting together a very informative program, largely focused on financial matters. It was held at the Corning Museum of Glass, and even the breaks were productive: a talk at lunch on the role of glass in Corning's history, plus a "hot glass" demo during the afternoon break. More details about the Symposium are inside this issue of *Council News*.

Not resting on laurels, work progresses on the Downstate Symposium, to be held on Saturday, December 10th.

POWER, MONEY and RAGE: NEGOTIATING TOUGH ISSUES IN MEDIATION, will be held at and co-sponsored by the CUNY Dispute Resolution Center at John Jay College. You should have received one of our newly formatted emails with the event details. You can also find detailed information on page 4 of this newsletter.

We hope you are enjoying the new format of our email notices and the new functionality of our new website. This is all part of our initiative to improve our communications with you and enhance your member experience. Stay tuned for more improvements, and always feel free to reach out to me to make any suggestions.

So much is new, even this newsletter is new! You may have already noticed the change of layout, and as you read through it and future quarterly issues, I think you'll see a developing look and character to *Council News* that builds on the wonderful history of innovative journals we offer our members.

Finally, and importantly, you may have heard that our intrepid administrative consultant, Melissa Burns, has moved on to other things. Many of you know she has become a mediator in her own right. Her practice is expanding and without her responsibilities for us, she has more time to devote to both the practice and her family. Melissa has been indispensable since she stepped in several years ago to handle NYSCDM administration. She took over the old functions and added new ones. She was always ready to help in any way she could, and there were many.

For the Board, for committees, and for many, many NYSCDM members, Melissa was so much more than an outside consultant. She was a steady hand, a problem-solver, a support, a colleague and a friend. We will miss her as an outside administrator, but look forward to being with her as a valued and active member of the Council. Thank you, Melissa.

A search process is on for a new outside Director/ Administrative consultant. On an interim basis, this role is being filled by Patricia Murray. Many of you already know Patty, as she has been the Council's public relations consultant for several years and is frequently at our events. Patty has been very busy on a lot of things, including being Action Central for the technology improvements you'll read about inside. It's a Herculean task, undertaken with remarkable skill, energy and grace, and many thanks to Patty for tackling the thankless job so well. If you know of people who might be interested in the independent contractor position of Director/ Administrator, please contact, or have them contact, Renée LaPoint at renee@divorceandfamilymediate.com.

Just writing this note reminds me how busy and active your Council is on your behalf. There's plenty to do, there's always plenty more, and we always need help. We urge you to consider volunteering your thoughts and ideas, your skills, your talent, your time and your interest. It's a great way to meet and work with wonderful people all over New York State on projects that interest you. Reach out to the chairperson of any of our committees (you can find them on the new and improved website, www.nysmediate.org!), or send an email to our Membership Committee chair, John Piper, at membership@nysmediate.org. Or, I'd love to hear from you — about volunteering or anything else about NYSCDM — at president@nysmediate.org.

Please enjoy this latest issue of *Council News*! If you'd like to contribute an article or join the Publications Committee, please email chairperson Trish Blake-Jones at tbj@trishmediates.com.

See you on December 10th!

Mark

Downstate Symposium: Saturday, Dec. 10th

POWER, MONEY and RAGE

NEGOTIATING TOUGH ISSUES IN MEDIATION

Co-sponsored by the
CUNY Dispute Resolution Center at John Jay College

John Jay College at 524 West 59th Street
9th Floor Conference Room, New York, NY [See map](#)

This is in the new building closest to 11th Avenue. Enter at 524 West 59th Street between 10th and 11th Avenues. After security, turn right and walk to the bank of elevators near Jay Express, take the elevators up to the 9th Floor.

Members: \$110, Non-Members: \$130

REGISTER TODAY!

No Walk-ins: All registrations must be received by close of business Dec. 8th

Continental breakfast and lunch are included. Presentation materials will be available electronically.

Non-members who join NYSJCDM are eligible for member rates.

Questions: director@nysmediate.org

Sessions & Speakers

[More Details](#)

Money Styles: How the Personal Psychology of Money Influences Divorce Finances

Abby Rosmarin, Esq., LMHC 2.0 CLE Credits: Skills

Behavior Styles: Unlocking How People Think to Improve Negotiations and Conflict Resolution in Divorce Mediation

Dr. Andrew Sirlin

Negotiation Styles: A New Model Divorce Mediators can use to Help Couples Reach Consensus

Philip Wild, Esq. 1 CLE Credits: Skills

Domestic Abuse and Divorce Mediation: Considerations & Questions

2.0 CLE Credits: Ethics and Professionalism

Helen Atkinson-Barnes, Education Program Manager, The Retreat Domestic Violence Services,
Sheryl-Anne Sastow, Esq., Joy Rosenthal, Esq., Steve Abel, Esq.

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Upstate Symposium: Hot Topics & Hot Glass

Nicole Vanderwall, an attorney in the Rochester area, led session two, “Re-Opening Divorce Agreements.” Nicole addressed some of the top mistakes she has seen in settlement agreements. These include the failure to provide full financial disclosure; the failure to properly value assets or income, including retirement assets; and the failure to fully cover how assets, including retirement assets are to be divided. She discussed, the consequences of drafting an unbalanced agreement without adequately substantiating the couple’s decisions. A lively discussion evolved as opinions and experiences were shared.

While we enjoyed a scrumptious lunch, we had the opportunity to hear from James Galbraith, the Chief Librarian of Corning Museum of Glass. Jim gave a history of the library, including details of the remarkable restoration of many precious documents that were nearly destroyed by Hurricane Agnes in 1972. What made this narrative all the more noteworthy was that the Museum was able to re-open within six weeks after the historic destruction wrought by Agnes. The Juliette K. and Leonard S. Rakow Research Library of The Corning Museum of Glass is the world’s most comprehensive library of glass.

Next, Deborah Mourey, Strategic Digital Marketing Consultant and Educator, presented, “What Does Your Website (Brand) Say About You?” Her emphasis was on building trust in a “social” world. As we look to promote our business, we need to identify our goals, know our target audience and differentiate ourselves from our colleagues. “Being social” on the web is about engagement, not promoting,” Deborah clarified. She explained that building online trust is multifaceted and complex, and shared valuable information regarding the look



Some attendees at Upstate Symposium enjoying hot-glass demo.

and feel of an effective website — what works and what doesn’t. You couldn’t help but walk away from her presentation with a better understanding that “white space really does matter.”

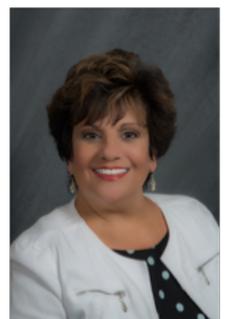
Our afternoon break included a live glass-blowing demonstration. For some strange reason, Conference Co-Chair Trish Blake-Jones was the winner of a lovely glass vase.

Our last session was led by Kitty Bressington, CDFA, CFP, of Linden Financial Consultants, LLC in Pittsford. It was titled, “Talking Social Security with Divorcing Couples.” Kitty discussed the growing segment of couples commonly referred to as the ‘Gray Divorce’. She addressed the challenges associated with understanding Social Security benefits, the ramifications of not looking at our clients’ earnings histories, including the implications if one spouse has no earnings history or earned very little.

The Symposium was a huge success in every way and provided attendees a

comprehensive volume of information. Co-Chairs Trish Blake-Jones and Renee LaPoint along with the Upstate Symposium Committee did a masterful job, for which we were all grateful. I think this quote from writer Brian Herbert sums up nicely why we are willing to give up a Saturday to attend this type of event; “The capacity to learn is a gift; the ability to learn is a skill; the willingness to learn is a choice.” Plus, some fun in a lovely setting with kind-hearted and gracious people doesn’t hurt.

Connie Fraser is a Mediator in Rochester; she and her husband Peter have seven children and thirteen grandchildren. Prior to establishing Connie Fraser Mediation Services, LLC, Connie was a Manager and Trainer for Eastman Kodak Company and has held numerous leadership positions as a volunteer in the Rochester Community.



A ROAD TRIP: *Reflecting on Mediator Self-Reflection*

By Charles M. Newman, Esq.



I knew I would be in Corning for the NYSCDM Board meeting (productive and convivial) and Upstate Symposium (great!) in early September. I live and work in Manhattan, so I decided to extend my Upstate time, driving through the Finger Lakes region and Adirondack State Park for a long week after the Symposium. It would give me time to enjoy nature and think about things there is often not enough time or space to think about. In a word, I was going to reflect. Right choice.

The first morning after Corning, in a small town south of Keuka Lake, I went to a restaurant recommended as the most popular among the locals. There were plenty of empty tables but I sat at the counter, hoping to chat with the waitress to learn more about the town and its people. Someone came in out of my line-of-sight. The waitress and the handful of diners at tables all greeted her by name. There were a half dozen empty counter

stools, but she chose the one right next to mine. Peripherally, I realized she was leaning in to me. When I turned my head to her, her face was less than a foot away from mine. Her first words were, “You a preacher-man?”

I don’t know what the opposite of a clergyman is, but that might be me. “No, ma’am, I’m not. My name is Chuck.” Her name was, let’s say, Dorothy. It flashed through my head to ask if she wanted to pray together right then. I stopped myself because if she took up such an offer, I could pretend to pray with her, but I would know it was inauthentic, and perhaps patronizing or condescending. Dorothy and I had breakfast together. I learned a little about her, her family and a tiny bit about her current life. My whole visit to the restaurant had the desired effect: I discovered a bit about the town and its people.

You probably know that the Finger Lakes (there are eleven) are artifacts of glaciers. Sometimes I took the north-south roads that are hard on the shores of the lakes; sometimes the farm roads a couple of miles inland from the lakes. I stopped in towns near the north and south ends of the larger lakes and elsewhere in the region. “Downtown” in each of these places was a couple of streets, usually a couple of blocks long, comprising buildings from the mid- or late-nineteenth century. Amidst the quaint and beautiful architecture, I found electronic parking meters (if you had to pay to park at all) and public Wi-Fi. They had everything you could want, purveyed from a by-gone era, and with a friendliness and helpfulness we sometimes don’t see in big cities and big box stores.

I passed countless wineries and vineyards, stopping at one. I spent time walking, and not walking, in the gorges of Watkins Glen and Ithaca.

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The gorges are *not* glacial. They were formed over thousands of years as creeks and rivers cut hundreds of feet through the sedimentary layers of what had been the floor of an ocean, now known as Upstate New York.

Further north, in the Adirondacks, I arrived at Saranac Lake on a late afternoon. In a small park, I met a group of exuberant people who gave me good ideas for things to see before sundown and some places for dinner. I asked whether it was likely to be cheaper to find a hotel in Saranac Lake or Lake Placid, a few miles along the way. One guy, let's say Mike, was concerned for me: there was a big conference in Lake Placid, and I might not be able to find a room in either town. Minutes after meeting him and his friends, Mike insisted I take his cell number, because if I couldn't find a place, I could sleep in his guest room. (No worries. I found a motel in Lake Placid. Remember metal room keys on plastic kite-shaped tags?)

At Lake Placid, you can visit the Olympic Nordic ski venues, including the 120-meter ski jump ramp. (That's a tower 36 stories tall stuck onto the top of an otherwise empty hill.) When the ramps come into view from the road, you think they're the advances of a Martian expeditionary force, massive unnatural structures sticking out in the middle of a vast landscape. You can also drive up one side of Whiteface Mountain, home of the Olympic Alpine events. The road takes you to a high ridge. With cliffs on either side, you can navigate the ridge along a footpath of broken rock to the summit. From the top, I may have seen fifty miles or more in all directions. And *all* that you see is: trees and lakes, dotted with a few tiny hamlets. Think about what "awe" actually means. It was awe-some.

Wait, you say. This is supposed to be about self-reflection. OK. My initial mediation training was in the *Understanding-Based Model*, with Jack Himmelstein and Gary Friedman of the Center for Understanding in Conflict and the now-merged Center for Mediation in Law. Mediator self-reflection and mindfulness are a big part of that training, and practicing in model. One point of this road trip was to get quiet and in touch with nature and myself. What did I touch?

I've always been reasonably open to meeting new people and having new experiences. I've never been immune to the majesty in nature and reverential of natural processes and their results. But since I've studied and practiced mediation, I experience these feelings and relationships in a much more heightened way.

Before I was a mediator, I'm sure I would have enjoyed breakfast with Dorothy. But I would never have had that internal conversation about how she might react to an offer to pray with her. I never would have asked myself, "Why am I thinking of offering this? What would that offer do for Dorothy? For me?" Being a mediator taught me to ask this.

Before I was a mediator, I would have noticed the differences in the farm and shore roads in the Finger Lakes. I would have noticed the picturesque cottages and boats, the pretty vineyards and productive farms. But I'm not sure I would have stopped quite as often to speak to people, to come to understand how much the people on the shore and the people "inland" were in synch with the water and the land. Being a mediator taught me to notice this.



At Lake Placid, you can visit the Olympic Nordic ski venues, including the 120-meter ski jump ramp.

I've always loved seeing Victorian small towns, always noticed the quaint and cute, and been fascinated by the detailed architecture. But on this trip, I had a heightened sense of the friendliness of small towns. It's not just that they're small and the people all know each other; maybe it's also their history and their shared sense of commonality and preference for simplicity and directness. Experiencing this through the lens of a mediator opened me to this.

I've always known that enough water over enough time can carve great, even Grand Canyons. On this trip, the sense was palpable. Those gorges are formed by the water just doing what water does — and what all things in the universe do. Things fall down. Things fall because of gravity. Newton taught us that “falling” is really only being drawn to other things. No one and nothing had to do anything to make the gorges; water just relentlessly fell downhill, over time creating a 400-foot deep gorge. Things happen when we allow ourselves simply to be drawn to others. Sometimes very big things. Being a mediator allowed me to understand this.

It never would have been odd for me to strike up conversations with strangers. I just got lucky with the ones I stumbled upon in Saranac Lake. But in the past, I probably wouldn't have thought about what those other folks took from our conversation. Mike's offer of his guest room wasn't just a gesture to a stranger. It was an expression of himself and of how he sees himself. Of course I would have been effusively appreciative at any time, but it was only being a mediator that let me see that extra part of Mike.

Normally, I would simply have looked down from the top of the 120-meter Martian contraption and asked myself, “How the hell does anyone make his/her *first* ski jump?” (I've never asked this Chuck, so what other question/observation could go here?) But when I looked *out* from there, the vast beautiful natural expanse from the top of a concrete and steel tower gave me a strong feeling of the connection between man and nature. How do we approach nature, negotiate with it, try to work with it and work around and against it? Being a mediator allowed me to stand at the top of a ski jump and consider, in a much deeper way, the beauty of nature and the human strengths and ingenuity we have employed at living in nature and with it.

If my math is right, I saw almost 8,000 square miles from the top of Whiteface, which is more than five million acres.² You would be stunned at what five million acres of trees and lakes looks like. Yet there are hamlets in there, too; people living with and within nature. How different are those peoples' lives from my life in the man-made canyons and caverns of Manhattan? How similar?

With that massive expanse laid before me, I couldn't help but think of how small I am compared to the mountain; how small the mountain is compared to the Park; how small the Park is compared to the state; how small the state is compared to the country, how ... well, how small we all are. I've always been sensitive to that. But to see it so dramatically laid out before me gave an entirely different perspective on the size and importance of our personal and interpersonal conflicts and disputes.

Of course I know that for our clients, their problems are real and present and need resolution. But to assist people in understanding the place of those disputes in the scheme of their lives — to say nothing of the scheme of *things*? I try to remember to do that. Because I'm a mediator.



Chuck Newman is a business, divorce, labor/employment and general mediator and lawyer practicing in New York City. He is a member of the Board of NYSCDM and of the Association for Conflict Resolution of Greater NY. He serves on several court mediation panels; on bar association and mediation organization committees; and he is a community mediator with the New York Center for Interpersonal Development. He can be reached at (212) 332-3321 or cnewman@newmanlawmediation.com. His website is www.newmanlawmediation.com.

Nerdy factoid: Adirondack State Park, created in 1892, is 6.1 million acres. Yosemite, Yellowstone, Glacier, Grand Canyon and the Great Smokies National Parks could fit in it with room to spare. I'm sure I was seeing parts of Vermont and Quebec, but not the whole park.

Photos courtesy of Chuck Newman.

Raising Awareness

Susan Ingram, Esq., Chair, Public Awareness Committee



Winners of the 2016 Social Media Challenge



PAC Chair Susan Ingram congratulates the winners of the Social Media Challenge. Taking home the coveted bottles of wine for the highest number of Twitter tweets and Facebook posts were (L-R) Deborah Singer, Donna LaScala, Trish Blake-Jones and Kate Bar-Tur. One of our winners was able to connect with a former colleague and new client because of her social media activities at the conference. So, remember to tweet and post throughout the year for your own business development as well as to raise awareness. Be sure to use these hashtags: **#DivorceMediation** and **#NYSMediate** to reach more people and develop new contacts.

Mark Josephson Makes TV Debut for NYSCDM



NYSCDM President Mark Josephson made his TV debut when he appeared on LookTV with Jessie Jackson III. Mark was a natural discussing the Annual Conference, the benefits of divorce mediation and how finances can be negotiated in a way that is more equitable for couples. To see the full clip, visit the front page of www.NYSMediate.org.

PAC's marketing and PR consultant, Patty Murray, conducted an interactive session entitled Practical and Effective Ways to Market and Grow Your Divorce Mediation Practice. In addition to getting one-on-one advice and piles of candy, attendees began proactively marketing their practices by sending new blogs for Patty to use on the Council's blog. Please look for them and send in your blogs by emailing director@nysmediate.org

Marital Residence: Avoiding Taxation on Gain from Sale

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

In many divorces, the marital home is the most significant asset the family owns. Property settlement agreements relating to the home are extremely important to divorcing couples, to ensure that monetary and tax considerations are properly evaluated. The transfer of an interest in the home from one spouse to another, the immediate sale of the home, or the postponement of the sale of the residence to a future date, all pose special tax considerations which should be addressed when drafting agreements.

Ownership Transfers Incident to a Divorce

In most situations, property settlements, including the transfer of ownership of the principal residence from one spouse to the other during marriage or pursuant to a divorce settlement, will not subject either spouse to income or related capital gains tax. The transfer must be made under an original, or modified, divorce or separation agreement and occur within six years after the date the marriage ends. (There are exceptions to the six-year rule, when it can be established that certain business or legal factors prevented the transfer from occurring within the six-year period.) The recipient of the home will receive the transferring spouse's share of the home cost basis, which is typically defined as the purchase price, plus improvements, closing costs and other related expenses.

Sale of Principal Residence: General Rules for Exclusion of Gain

Since Aug. 5, 1997, Internal Revenue Code Section 121 allows individuals to exclude up to \$250,000 of gain from income tax (\$500,000 if married and file joint return) on the sale of their main home if all of the following are true:

1. The ownership test is met
2. The use test is met
3. During the two-year period ending on the date of sale, the taxpayer did not exclude gain from the sale of another home.

In order to meet the ownership and use test, one must have owned the home for at least two years and lived in the home as their main home for at least two of the five years ending on the date of the sale.



If the requirements for the ownership and use test are not met, or the \$250,000/\$500,000 exclusion was utilized within two years of selling the current home, a reduced exclusion may be available if the sale of the home was due to one of the following:

1. A change in place of employment
2. Health
3. Unforeseen circumstances (such circumstances may include divorce and legal separation when under a decree of divorce or separate maintenance)

Special rules for divorced and separated spouses

An individual who receives a principal residence from their spouse or former spouse in a transfer incident to divorce is treated as owning that residence during the period the spouse or former spouse owned the residence. Also, a spouse or former spouse that is granted, under a divorce or separation agreement, the use of a home in which the spouse has an ownership interest is treated as using the home as their principal residence during any period in which the spouse or former spouse uses it as a principal residence.

For married persons filing a joint return, to claim the full \$500,000 exclusion limit, either spouse may meet the ownership test, but both must meet the use test unless a divorce or separation agreement grants only one spouse the use of the home. When married filing separate returns, both parties must satisfy the ownership and use test to claim their respective \$250,000 exclusion.

Tax Tidbits: Marital Residence

Common Scenarios Related to Divorce

a.) Ownership Transferred Incident to Divorce

M and J were married for 15 years and lived in a home owned in its entirety by M. As part of the divorce settlement, M transferred the home to J. One year later J sells the home for a gain of \$300,000. J will be able to exclude \$250,000 of the gain since J lived in the home for two out of the five years prior to the sale date. The ownership test will also be met since J can include M's ownership period as her own.

Assume J remarries K and the same home becomes J and K's marital residence. J does not transfer ownership in the home to K. Two years after they are married the home is sold for a \$300,000 gain. J & K file a joint return for the year of sale. All of the gain is excluded because both met the two-year use requirement, and J meets the two-year ownership requirement. If J and K filed separate tax returns only, J would qualify for the \$250,000 exclusion, as K will not meet the ownership test.

b.) Residence Sold Immediately Upon Divorce

A and B are married for 10 years and jointly own and live in the same marital residence for all years. They divorce in January and pursuant to the divorce agreement they sell the home in May of the same year for a gain of \$500,000. Since A and B both meet the two of the five year ownership and use test, each can claim a \$250,000 exclusion on their respective tax returns. The fact they are no longer married and file their own tax returns, for example as single persons, does not affect their eligibility for the \$250,000 exclusion.

c.) Home Sold at a Future Date after Divorce

X and Y jointly owned and lived in their home for 25 years. In year 25, pursuant to the divorce agreement X moves out and allows Y to stay in the home until it is sold. Five years later the home is sold for a \$400,000 gain. Both X and Y can exclude their \$200,000 share of the gain since they both meet the ownership and use test. Although X has not lived in the home for the previous five years, the use test will be met since X is considered to be using the home for the period Y has been granted the use of the home under the divorce agreement.

Assume in year 25, when X moves out and the couple divorces, X is removed from the title and the ownership of the home is transferred 100% to Y. One year after the divorce the home is sold. X satisfies the use test, however since X was removed from the title prior to the sale, the ownership test will not be met. Therefore, only Y will be entitled to the \$250,000 gain exclusion. X's \$250,000 exclusion is lost.

Summary

The circumstances of how and when the marital residence is transferred or sold deserve careful consideration during mediation and in the drafting of property settlement agreements. Tax planning should be done accordingly to ensure that, when possible, each spouse is able to take advantage of the full \$250,000 gain exclusion. Additionally, any resulting tax consequences related to the disposition of the home should be reviewed when valuing the home for the division of assets.

*For more information regarding the Internal Revenue rules governing alimony, see IRC Sec. 121. Also, refer to the Internal Revenue Service's Publication 523 (2015), *Selling Your Home* available at <https://www.irs.gov/pub/irs-pdf/p523.pdf> and 504 (2015), *Divorced or Separated Individuals* available at <https://www.irs.gov/pub/irs-pdf/p504.pdf>.*

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Ask the Ethicist

By Rachel Fishman Green, Esq., Chair, Ethics Committee

Dear Ethicist,

Recently I received a telephone call from Molly, claiming to be working as a mediator on my behalf. [All names are changed.] I have never met this person, I do not know this person and I did not hire this person as a mediator. I was finally advised that this person had been hired by my former husband, Fred, to act as “our” mediator and that the “mediator” wanted to speak with me about Fred’s schedule for spending time with our children. I told Molly that Fred was not paying child support and had been badgering and harassing me by calling multiple times each day. Additionally, I told Molly that this type of badgering and harassment had been a conflict between Fred and me in the past, which is why our settlement agreement specifically limits Fred to one call to me per day. During our conversation, Molly said, “You’re going to end up in court and you’re the one who is wrong, so you’ll lose big — you should give in now.” I was shocked and taken aback by this statement. After this initial call, Molly left me a couple of voicemail messages, which I found to be threatening, and at the very least, coercive. After searching online, I discovered that Molly is a member of NYSCDM. Do I have to accept Molly as “our” mediator because Fred hired her? Is she right about what would happen in court?

Regards, Alice

Dear Alice,

Molly cannot act as the mediator between you and Fred unless you both agree to hire her for that purpose. It may be that Fred had hired Molly with the hope that she would be able to work with you both as a mediator. However, Molly’s behavior and communication with you now prevents her from working with you as a neutral, especially after she embraced and adopted Fred’s position (*i.e.*, concluding that you are not letting him see the children), and predicted that you would lose in court, thereby causing you to feel threatened. Molly gave you reason to doubt her neutrality and objectivity by attempting to coerce you into doing what Fred desired.

Molly appears to have violated several of the Model Standards for Family and Divorce Mediation, as adopted by the NYSCDM. Standard I requires that participation in mediation be voluntary, and “relies upon the ability of participants to make their own voluntary and informed decisions,” not decisions based upon threats or predictions such as a statement that if you don’t agree to this you will lose later, and have to pay a lot of legal fees on top of that.

Additionally, Molly seems to have been acting as an advocate for Fred, which is inappropriate for someone representing herself as being the neutral (mediator), but even more so if Molly is not an attorney. Attorneys can get into trouble predicting what would happen in court, but mediators have to tread even more lightly here. (If attorneys could agree on what the result would be in court, no one would ever have to go to court.)

Standard II of the Model Standards states that a mediator should have knowledge of family law. Certainly, one of the tricky challenges for a mediator is how to communicate that information without becoming an advocate for one side or the other, even if the mediator has a law degree. But that challenge always has to be met, and in this case, the mediator clearly was advocating for Fred.

Additionally, Standard IV of the Model Standards states that “a family mediator shall conduct the mediation process in an impartial manner,” which Molly did not do when she “decided” (as a judge might) that you would “lose big in court.” In summary, Alice, you should feel comfortable with and trust the person you choose as a mediator. The NYSCDM strives to educate all our member mediators regarding the law and best mediation practices through conferences and regular newsletters. Thank you for bringing your concerns to our attention, and please feel free to contact our organization in the future should you have questions or concerns.

Sincerely, The Ethicist

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Ask the Ethicist

By Rachel Fishman Green, Esq.



Dear Members,

One of the responsibilities of the Ethics Committee is to receive and act on complaints made against mediators who are members of NYSCDM. Under the Ethics Protocol, the Committee assigns three of its members to each complaint. Our role is educative, as we do not have power to censure members, other than by revoking membership in extreme cases. The Committee functions confidentially, and the focus is on whether, *if true*, the behavior complained about would be a violation of the Model Standards for Family and Divorce Mediation, as adopted by the NYSCDM.

How could Molly have been handled herself so as to conform to ethical practice as outlined in the Model Standards?

The initial phone call is challenging. From a marketing perspective, Molly may have felt intense desire to procure a mediation case and to show Fred that she could help him to achieve his goals. However, the better practice is to speak as little as possible about the facts and range of possible outcomes in first phone calls, not least because at least at that stage, you want both parties to hear one another, and to hear you together during the initial mediation session.

Molly should have started the conversation by introducing herself as a mediator, asking Alice if she was familiar with mediation, telling Alice that she had been approached by Fred to act as the mediator for both of them, and spending some time describing the process. Molly should then have inquired whether Alice was interested in mediating with Fred. If she said 'yes,' then Molly could inquire if Alice might be interested in mediating *with her*. If so, they could have worked out logistics for scheduling a first joint exploratory/introductory meeting or actual first mediation session.

One recommended practice tip is to tell the participants that if at any point they feel the mediator is not being neutral, they should bring that to the mediator's attention. If Molly had established her role as a neutral, Alice would not have felt pressured. Molly might have inquired if Alice wished to discuss Fred's schedule for spending time with the children, and might have asked Alice if she had any issues that she would like to bring up in a mediation with Fred. Molly should have asked Alice what is going on from her perspective, rather than concluding that Fred was "right," and that Alice would "lose big in court."

Rachel Fishman Green, Esq. is an attorney who runs [ReSolutions Mediation Services](#), based in Park Slope, Brooklyn, since 1995. Rachel is the Chair of the Joint Ethics Committee of the New York State Council on Divorce Mediation and the Family & Divorce Mediation Council of Greater New York, which accepts and (hopefully) resolves complaints about member mediators, and provides education on ethical conundrums for members.

Report from the Membership Committee

By John Piper, Chair

The membership committee continues their work to grow the membership and enhance member benefits. In addition, the committee is working with active Peer Groups in the state to assist in Peer Group growth and expansion. The committee has revised the New Member letter, sent to those who have recently joined, reminding them of the benefit package of NYSCDM. Also, small changes are being made to the membership application. In addition, the committee is contacting those mediators whose membership has lapsed, in an effort to encourage them to rejoin or find out why they have left our association.

Working in conjunction with Patty Murray, the committee has discussed the opportunity to utilize the revised website to connect with all members regarding the benefits of membership. With this in mind, the committee is investigating adding new member benefits, that will provide members with product discounts, and contacting vendors who can provide other benefits useful to the practice of mediation.

Sydell S. Sloan

To the great sadness of everyone who knew her, the field of divorce mediation and the New York State Council on Divorce Mediation recently lost a stalwart, talented and thoroughly enjoyable friend with the untimely death of Sydell Sloan. Some of our members learned of Sydell's passing through a September 22nd posting by Glenn Dornfeld on NYSCDM's Yahoo Group. Anyone who attended an NYSCDM/FDMCGNY Downstate Mini-Conference over the last two decades could instantly see the bond of friendship and professionalism between Glenn and Sydell. With Glenn's approval, the Publications Committee here cribs from his posting, so that the information gets a wider audience and more permanent place in the history of NYSCDM and divorce mediation.

Dear Colleagues,

Some of you have already heard this by now, but we are very sad to inform you of the passing of our dear friend, Sydell Sloan, on Friday, September 2.

Sydell became a mediator before most of us had even heard of divorce mediation. Coming from a background as an English teacher, she initially trained as a family / divorce mediator with our esteemed colleague, Len Marlow. She attended the "first Bear Mountain conference" in the early 80's.

Sydell, whose office was in Queens, was very dedicated (as are we all) to minimizing conflict between divorcing couples, and she was especially attuned to the importance of making sure divorce mediators continue to maintain the highest standards of education in matrimonial law, family dynamics, and the processes of mediation.

Sydell had served with distinction on the Boards of Directors of both NYSCDM and the Family and Divorce Mediation Council of Greater New York. She was a fervent advocate for mediation ethics, serving for many years on the Joint Ethics Committee of NYSCDM and FDMC. She was also an invaluable member of NYSCDM's Education Committee.



Sydell Sloan (right) receiving the Abel Award on May 3, 2014 at the NYSCDM Annual Conference. Also pictured, Glenn Dornfeld (left) and Steve Abel (center).

I had the great fortune of planning and staging NYSCDM's Fall Mini-Conference with Sydell for 17 consecutive years. I was always disappointed when an annual Mini-Conference was over, because it meant I wouldn't be speaking with Sydell several times a day for weeks on end — at least not until the following year!

In August 2016, Sydell first learned that she had cancer. Initially, it seemed that she might have some time before the inevitable occurred, but as it sadly turned out, the end came more quickly than anticipated.

In one of our last conversations, Sydell told me that she hoped to set up a charitable fund under NYSCDM. In coming months, expect to hear more from NYSCDM about this initiative.

As anyone who had the good fortune to interact with Sydell knows, she was a bright, charming, funny woman, a dedicated professional, a caring human being, and a true, loyal friend. Since her passing, many have accurately described Sydell as a force of nature, and truly one of a kind.

That she was — and so much more. Sydell, we love you, and you will be sorely, deeply, truly missed.

Glenn Dornfeld, Past President of NYSCDM, with Mark Josephson, President, NYSCDM



Glenn E. Dornfeld, Esq., is a mediator, trainer/mentor, collaborative attorney and non-adversarial family/divorce attorney with a solo mediation and legal practice in Manhattan. Glenn is a Past President of both NYSCDM and FDMCGNY. He has co-chaired many annual conferences and downstate conferences — the latter always with his dear, late friend Sydell. Glenn can be reached at 212-740- 4004, or dornfeldesq@earthlink.net.

Update on Our Move to MemberClicks:

- *New Public Website*
- *New Members-Only Section*
- *New Find-A-Mediator*

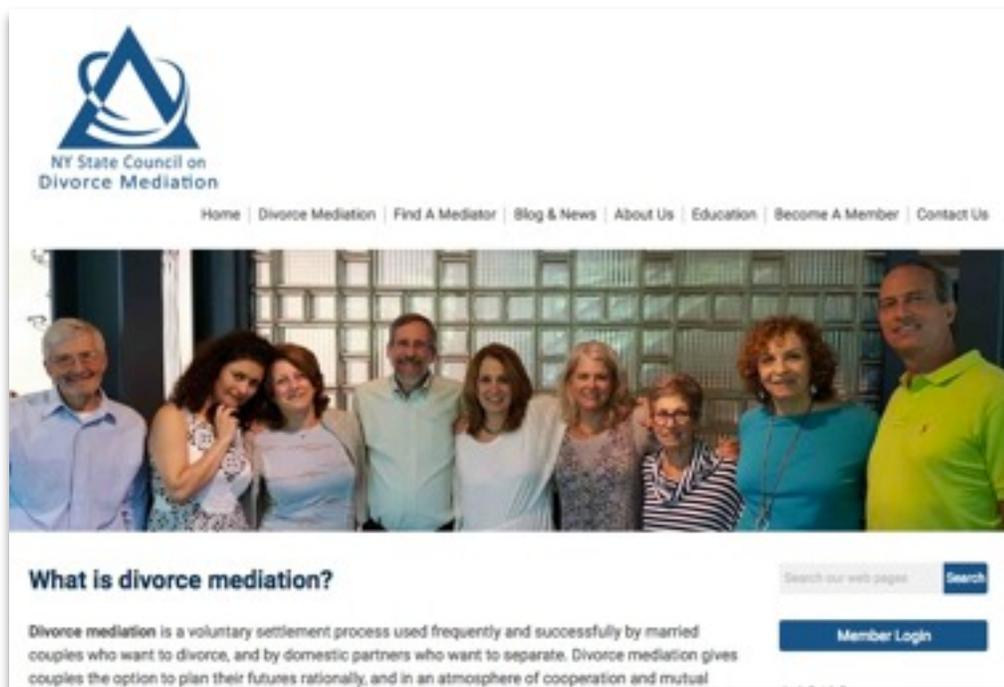
*Have you renewed yet?
Have you taken the tour?*

Thank you to everyone who has made the move to our new all-in-one membership platform a success. So many of you have already renewed your memberships, updated your Find-A-Mediator profile, signed up for our Downstate Conference and more.

Members of the Membership Committee and I have been making calls to those of you who are still in the process of renewing. If you need any assistance, please contact me at director@nysmediate.org. Please be sure to renew soon!

Just a quick reminder: Your username is your email address. When you log in the first time, you will set up your own unique password, which you can change at any time. In fact, it's a good practice to change your passwords periodically.

To set up your password, [click here](#). To log in, [click here](#).



If you have not already done so, please:

- 1) Add your photo to your profile. This will attract more potential clients.
- 2) Make sure your contact information is accurate. We used what we had on file as your **Business Contact** information, which is what is listed in the Find-A-Mediator Directory. If you want different contact information listed in the public directory, please update the Business Contact information fields in your profile.
- 3) Update other information in your profile, including your Bio/Narrative.

The best way to learn about the new features is to log in and simply begin exploring, connecting with members, setting up "circles" and more. To help you, we created a virtual tour of the public and private portions of the website. Please see the links that follow.

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

During the next several months we will be helping you use other features of the Members-Only section of the platform. Our goal is to enhance your membership experience and provide greater value with easier access to supportive information and better engagement with the Council and other members.

I hope you will contact me with your comments, suggestions and questions.

Patty Murray
Acting Director
director@nysmediate.org