NEW YORK STATE COUNCIL ON DIVORCE MEDIATION

THE REPORT

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The editors of THE REPORT, Eli Uncyk and Chuck Newman, would like the journal to be a two-way conversation. We encourage healthy debate. In addition to classic "Letters to the Editor," we welcome your comments, feedback, criticisms, compliments and other thoughts about anything that appears in these pages. We also seek your suggestions for improvement and areas of coverage. If you would like to publish an article or any other kind of paper in THE REPORT, please send us a one-paragraph proposal. The best way to reach us is by email to nyscdmpubs@yahoogroups.com. We look forward to hearing from you.

THE REPORT is published quarterly by the New York State Council on Divorce Mediation.

Eli Uncyk, Esq. and Charles (Chuck) M. Newman, Esq., Editors

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TABLE OF CONTENTS

EDITORS' PAGE

If you're like us, the first thing you've asked yourself when you got to your desk in the past few weeks is, "Where's THE REPORT." (And yes, we get hoarse on those "small caps", too.) We hope you find the issue was worth waiting for. Clare Piro's maiden "President's Page," p. 4, looks back and forward, encouraging us to take advantage of the Council's resources. Gary Shaffer responds in some depth, p. 5, to articles that recently appeared in THE REPORT about high-conflict clients and how we can better prepare ourselves to work with them.

Prof. Maria Volpe of John Jay College — who is well-known to so many of us, particularly downstate — was gracious enough to spend some time talking with me about the modern origins and growth of our field. We see in The Interview, p. 7, that mediation and allied fields are reflected in many ways in Maria's own career, and of course, the field has profited greatly by her work.

Many readers will of course be aware of the 2010 New York State temporary maintenance legislation and, frankly, some of the many confusions it has caused. When passing the several important 2010 divorce amendments, the Legislature directed the New York State Law Revision Commission to review the effect of the changes and to suggest further amendments, if needed. The LRC's report is now out. On page 18, you'll find co-editor Eli Uncyk's analysis not only of the report, but of the legislative responses that have already been introduced to deal with some of the issues raised in the report.

Co-Chairs Dan Burns and David Louis fill us in, p. 24, on some of the excitement and engagement at the 30th Annual Conference at Saratoga in May. Right after that, p. 27, Sydell Sloan writes about the founding of the organization lo those three decades ago. Dolly Hinckley shares some stories of following up to see how clients fare after mediation, p. 30, and Eli returns with a speaking checklist of everything that should go into a Memorandum of Understanding, p. 32.

We have a great twist on the standard book review. Justine Borer dives back into great modern American literature to wonder, p. 37, whether Atticus Finch, the lawyer/dad protagonist in *To Kill A Mockingbird*, had the skills and temperament of a good mediator. Think about it yourself for a while and then see if you agree with Justine. Then, from the sublime to the mechanical, your editors offer, p. 40, an installment of "T4, the Mediators' Toolbox: Tips, Tricks and Techniques." Please, if you have your own practice ideas to recommend, send them to us. Info about sharing all sorts of stuff with your colleagues and friends via THE REPORT and NYSCDM online venues is available at p. 49.

In this issue's "Ask the Ethicist," p. 43, Joan Moo Young writes not just about the mechanics of ethics rules, but the deep values that underlie them. And in our "Inside Scoop" section, read the highlights of the most recent NYSCDM Board meeting, p. 46, and some of the exciting news from the Public Awareness and Education Committee, p. 48.

Eagle-eyed readers may notice that our system for naming issues has changed with this one. (If this is you, consider seeking help for this condition.) So that you can be sure you have a complete set, this issue is Volume 2013, Number 2. The issue immediately before this one was Winter 2013, Volume 9, Number 1.

Please enjoy this issue; contact us about anything having to do with THE REPORT, the Council or mediation; and be well during the long days of summer.

July 2013

— Chuck Newman

Back To Contents

PRESIDENT'S PAGE

By Clare A. Piro

As I begin my term as the sixteenth President of the Council, I can't help but think about the changes to both the NYSCDM and the practice of divorce mediation in the thirty years since the Council was founded.

An ever increasing number of couples who are divorcing are making mediation their first choice, which means that we are at long last getting close to the day when mediation is fully accepted as the norm and no longer considered an "alternative". Pilot programs in some courts across the State are sending contested cases to experienced mediators, demonstrating the benefits of mediation to litigants, their attorneys and judges, further raising the standing of divorce mediation in the eyes of the public.

The Council, too, has grown since 1983. It's hard to imagine the obstacles that practicing mediators faced then, from claims of the unauthorized practice of law against mediators who were not attorneys; to complaints against attorneys practicing divorce mediation that they were betraying their fellow attorneys. We all owe the founders and early members of the Council a tremendous amount of gratitude and respect for their perseverance.

Undoubtedly, members in the early years of the Council shared a special bond, and the support they gave to each other was vital to their building successful divorce mediation practices. While we thankfully no longer face the same obstacles today, we still share the love of mediation and the same dedication to elevating the practice and profession of divorce mediation. We all would like each and every member to have a thriving and successful practice, because the more clients who have positive experiences with mediation, the more they will talk positively about mediation, causing others to consider the process.

For our clients to have positive experiences in mediation, we each need to practice the highest professional standards of mediation. Therefore, I will continue Bobbie Dillon's mission to increase the number of accredited members.

I also encourage everyone to take advantage of the educational programs that the Council provides to meet our Continuing Education requirements of ten hours per year. With our one day conferences upstate and downstate, along with our Annual Conference, there is ample opportunity to obtain the required CE credits, increase our skills and insure that we are practicing mediation as professionally and competently as possible. Continuing education can also include taking advanced mediation trainings or a training in a mediation model that may be different from how we originally learned to practice mediation. There are countless opportunities out there for us to become better mediators, and as we do, the profession of mediation will grow and prosper.

Back To Contents

RESPONSE TO PREVIOUS ARTICLES

HEAL THYSELF

By Gary Shaffer

High conflict clients figured prominently in the last issue of THE REPORT. Eli Uncyk forthrightly described two unsuccessful divorce mediations involving high conflict clients and suggested a "closing session" as one means to gain an understanding of what prevented success. Eli also reviewed a book entitled *Cain's Legacy*, by Jeanne Safer. As the title suggests, the book addresses sibling rivalry, another potential area of high conflict. In anticipation of this past May's Annual Conference, note was made of the pre-Conference Institute, where attorney Bill Eddy was presenting a workshop on high conflict clients. Bill commented that "[h]igh conflict clients are often stuck in unmanageable emotions and all or nothing thinking".

All mediations, of course, involve conflict of one kind or another. However, many couples choose divorce mediation precisely because they share a common desire to preserve resources and some measure of ongoing harmony, despite the differences that have led to the pending dissolution of their marriage. Emotions may run high at times, but they are seeking peace and resolution more than blood. Mediating with such couples will have bumps and tensions, but with some time and help from a skilled mediator, the process can be successfully completed. Emotions do not overwhelm the couple to the point where they are unable to proceed.

Mediators will become more adept at assisting others, especially high conflict clients, if they work to bridge their own personal gaps between emotions and the intellect.

Also in the last issue was a "Response to a Previous Article," by attorney Diane Cohen, who noted the tension that can exist between "logical thought and intuitive thought". Diane observed that "[i]ntuitive thought is just as important to good decision-making as is rational thought. They must both be tested against one another to maximize good decision-making. Emotions can reflect intuitive thought or something less reliable." She then smartly suggests that time is a key ingredient to help clients work through impediments to resolution. Time to reflect and explore emotions and gut reactions, which may reflect real needs that require addressing. Time to assess such emotions with some rational input that can be difficult or almost impossible during the stress of a mediation session.

Go back to Cain. He was jealous — perhaps even justifiably so. God rejected his sacrifice but accepted Abel's, and the reasons are not clear. Before the killing, God gives Cain a moment to reflect on what he is about to do and gives him the time to reconsider. He even lets Cain know that the failure to reconsider will have dire consequences. But Cain does not respond. His emotions overwhelm him and he acts before he can think.

Bridging the gap between emotions and intellect is often part of the "magic" of mediation. People who may be understandably hurt, disappointed, sad, angry, and afraid, manage to express and work through those emotions, so they can resolve matters they have often been unable to resolve during the marriage. Mediation techniques — reflecting, summarizing, validating — and time may all help the mediator assist clients in reaching a jointly workable solution.

RESPONSE TO PREVIOUS ARTICLES, CONTINUED

But I would suggest something else in addition: that mediators will become more adept at assisting others, especially high conflict clients, if they work to bridge their own personal gaps between emotions and the intellect. Cain and Abel's sibling rivalry is one of the earliest literary renditions of the struggle between emotions and intellect. An old Jewish spiritual practice called "musar" explicitly seeks to bridge the gap, seeking to make the heart understand what the mind knows. By focusing on traits and behaviors like patience, generosity, humility, gratitude, anger, compassion, and joy, a practitioner begins to develop an understanding where fault lines lie and how they can be modified. These fault lines are the ones we often see with high conflict clients who are unable to untangle the emotional jungle that prevents them from doing what may be best for them and their families. We equip ourselves better to assist others if we, too, have grappled with the contours of emotional hindrances.

There is no one true method. Eli's suggestion of a post mediation debriefing may help reveal where one might have brought some additional insight, or might have handled the process differently for a more successful outcome. Similarly, personal ongoing "debriefings" may better equip mediators to assist clients in grappling with the emotional mazes that must be navigated to achieve a successful mediation outcome.

Gary Shaffer is an attorney practicing mediation in Brooklyn and Manhattan. He also teaches "musar" classes and is currently President of The Mussar Institute. He can be reached at Shaffermediation@gmail.com and his website can be found at www.shaffermediation.com.

NY State Council on Divorce Mediation

Back To Contents

THE INTERVIEW: PROFESSOR MARIA VOLPE

By Charles M. Newman

Maria R. Volpe, Ph.D. is Professor of Sociology, Director of the Dispute Resolution Program at John Jay College of Criminal Justice - City University of New York, and Director of the CUNY Dispute Resolution Center, a university-wide center focusing on dispute resolution research and innovative program development.

An internationally known scholar, Dr. Volpe has lectured, researched, and written extensively about dispute resolution processes, particularly mediation, and has been widely recognized for her distinguished career in the field of dispute resolution, including the 2008 Lawrence Cooke Peace Innovator Award, Network for Peace Recognition 2008, the 2010 Association for Conflict Resolution of Greater New York Achievement Award, 2011 Frontline Champion Award of the NYS Unified Court System, FamilyKind Recognition 2013, among others. In addition to teaching and research, she mediates conflicts in educational settings, conducts dispute resolution skills training, administers grant-funded projects, and facilitates for a wide range of groups. At John Jay College, she has created and facilitated town meetings, cops and kids dialogues, Muslim/Non-Muslim student dialogues, Black Jewish Dialogues, intergenerational dialogues, and Asian American student discussions. Since 9/11 she initiated the NYC-DR listserv, the monthly NYC-DR Roundtable Breakfast, and a variety of dispute resolution public awareness initiatives.

Dr. Volpe is an Editorial Board Member of Conflict Resolution Quarterly, Negotiation Journal, and Practical Dispute Resolution; Past-President of the Society of Professionals in Dispute Resolution [now the Association for Conflict Resolution]; Founder and former President of the New York City Chapter of SPIDR [now ACR-GNY]; Member of the Dispute Resolution Advisory Committee of the NYS Unified Court System; Former Board Member of the National Conference on Peacemaking and Conflict Resolution [NCPCR]; former Board Member of the Association for Conflict Resolution of Greater New York; Member of Association for Conflict Resolution Diversity and Equity Network; Member, Global Advisory Board, Human Dignity and Humiliation Studies; Advisory Board Member New York Peace Institute; American Bar Association Dispute Resolution Section Diversity Committee; Board Member, New York Peace Institute, American Bar Association Dispute Resolution Section Ombuds Task Force, among others.

Dr. Volpe's current research focuses on police use of mediation, conflict resolution in higher education, dispute resolution responses to disasters since 9/11, informal responses to conflict used by immigrants, roots of diversity in the dispute resolution field, and barriers to minority participation in dispute resolution. She received her Ph.D. from New York University where she was an NIMH Fellow.

That's the official bio. Unofficially, with a handful of others, Maria Volpe constitutes the center of the swirl of ADR activity in the New York City area. The first two times you meet her, you call her Professor Volpe out of respect for her position and her reputation and history in the field. After that, you join everyone else in calling her Maria, because she brings you into the swirl of ADR activity. NYSCDM and THE REPORT are delighted that she agreed to speak with Co-Editor Chuck Newman about the history, present and future of dispute resolution.

THE INTERVIEW, continued

How did you get started in dispute resolution?

While my interest in problem-solving goes back as far as I can remember, how I got started more formally in dispute resolution involved the intersection of two important aspects of my academic career circa 1980. The first involved my doctoral research, the second my early teaching years at John Jay College.

With respect to my doctoral research, I had been studying the transformation of localism as an organizing principle for lower criminal courts. The trend had been for courts at the local level, which were often administered by part time and non-legally trained personnel, to be uprooted and consolidated to create more formal, professional entities staffed by full-time legal personnel. In short, the court structures that were viewed as those closest to the people were being replaced by structures where the key personnel were legally trained and more removed from the local community. As I neared the end of my doctoral work, the early community mediation programs using local citizens as volunteer mediators trained to address minor criminal and civil matters began to emerge. This development was of particular interest to me since it seemed to counter the court reform efforts aimed at staffing court operations by full-time, legally trained personnel in more centralized, bureaucratic structures that I had been examining. It was in this context of trying to understand the concept of justice close to the people that I became interested in dispute resolution. As I studied the changes in the courts and the emergence of the local community mediation programs, a similar fiscal theme emerged. While it was and continues to be clear that proponents of community mediation programs argued that mediation is a better process for managing conflicts, the use of volunteer mediators for matters that might otherwise be handled by the courts, was sold to legislators, judicial officials and funders as a less expensive way to process cases. In sum, the same fiscal concerns that convinced the courts to centralize and become more bureaucratic have *also* been driving the argument for supporting the community mediation programs as well as mediation in virtually all other contexts. While the best argument in the world can be made that mediation is better, if the process is not cost-effective, in most contexts it is just not going to be adopted, utilized, funded or, most importantly, re-funded.

The second important aspect that was key to my formative years in getting started centered on my early teaching at John Jay College. I began by teaching as a sociologist specializing in law and crime at a time when very little academic attention was given to what is now more widely known as conflict and dispute resolution studies. The then-Dean of Students at John Jay was very interested in offering dispute resolution coursework in the early 1980's to our students. He had heard about the Institute for Mediation and Conflict Resolution through his friend who was on the Board of the IMCR, then located in Harlem, and he was eager to explore ways of partnering. Early on, we received a grant to expose our students to mediation as part of a collaborative venture with IMCR. We began developing a Dispute Resolution Certificate for undergraduate students. At the same time, the Community Dispute Resolution Centers Program legislation was being introduced in New York State. This legislation was particularly meaningful since it included the mediation of minor criminal matters, an item that was of interest at a college of criminal justice.

THE INTERVIEW, continued

Please tell us about your early career.

In retrospect, my early career was part of a dispute resolution landscape that was like a vast new frontier, where all was new, experimental, exciting, but also very uncertain. In higher education, there were very few scholars and courses beyond peace studies and courses offered by specific disciplines disconnected from a larger interdisciplinary context. There were virtually no role models or luminaries anywhere. ADR legislation was almost non-existent. Those who were doing mediation were mostly all involved in labor mediation. Everyone else was usually referred to as 'the others.' There was no attention paid to matters involving diversity. Without the internet, it was very challenging to know what people were doing unless you knew them or were a part of certain networks. Mostly, it was awesome to see the emergence of new professional organizations, journals, newsletters, and all kinds of programs. By the mid-eighties the Hewlett Foundation began funding conflict resolution initiatives and became a major player in shaping the field. Overall, it was common to hear the phrase, "Let a thousand flowers bloom."

Overall, it was common to hear the phrase, "Let a thousand flowers bloom."

Did the government's and the courts' efforts to set up community mediation contribute to the use of mediation generally in the State?

The short answer is "Yes, but." The work of the New York State legislators and Chief Judge Lawrence Cooke in the early 1980's was incredibly important in creating a network of community mediation programs that was in the forefront of furthering mediation work not only in New York State, but around the country. The early legislation, from 1981, that paved new ground with its confidentiality provisions for community mediators, was widely cited.

What is important to note is that mediation evolved differently around the country. In retrospect, if court-annexed mediation in New York State had other features, such as mandatory mediation of child custody cases as in California or Florida, mediation's presence might be very different here. There is evidence that if mediation is completely voluntary, parties are less likely to try it. When parties have to opt into a process, they are much less likely to end up participating than if they have to opt out of a mandatory process after attempting it. The fact that New York State had such a strong presence of volunteer community mediators was both the beauty and the challenge of how mediation developed in the state.

What other disciplines besides sociology would have been a good breeding ground for mediation?

Analyzing and resolving conflicts is very interdisciplinary. Despite the fact that the legal field seems to be dominating mediation, many disciplines have contributed to our understanding of how to make talk work as a mediator. Sociology, my discipline of origin, has some deep roots in understanding the theory and dynamics of conflict. But, that is equally true of the other social sciences like anthropology and psychology. Since many conflicts processed by mediators require or are helped by an understanding of substantive issues, a vast array of other disciplines can be very important

THE INTERVIEW, continued

depending on the issues. The interdisciplinary nature of the mediation field in general contributes to the challenges of furthering mediation with celerity and cohesion.

As the field has evolved, there has been a large body of theory, research and practice drawing from many disciplines. It would not be surprising if conflict resolution does not develop the way other disciplines have. For example, way down the road, we may even see a College of Conflict Resolution, just as we now have law schools and schools of social work. The future may include more schools of conflict analysis and resolution, as was recently established at George Mason University. So, while in the past, scholars and practitioners came from specific disciplines, people are now getting degrees in conflict resolution, including doctorates. And, whereas professional schools did not formerly include courses, clinics, practicums or internships in conflict resolution, negotiation, and mediation, it is now almost unheard of for those things *not* to be part of the academic landscape. There is much cross-fertilization among different disciplines.

"There are interesting discussions about which techniques work and under what conditions, and a growing body of knowledge that has addressed ethical concerns, standards of conduct, how to develop a career and other issues."

Where have you seen the most changes in the ADR field?

While lots of work remains to be done and ADR processes are still not household words, many changes come to mind. Among the most pronounced are the following: [1] Institutionalization of ADR processes in a wide range of settings. ADR processes are embedded in policies and procedures, and individuals know that if a conflict arises, they will have to try mediation to manage their differences. Among the many contexts where individuals are likely to be required or strongly urged to try mediation are the courts, workplaces, educational institutions, businesses, and government agencies. For some employees, clients or students, mediation now may be the norm. For the public, when confronted with mediation and other ADR options, there is still less recognition and they may face a steep learning curve to familiarize themselves with the concepts. [2] The number of individuals trained in ADR processes around the world has increased dramatically. From elementary schools to law schools, in workplaces, communities, and elsewhere, conflict resolution-related training is pervasive and recognizable. Additionally, on a daily basis, there are countless conferences, courses, training programs, workshops, webinars and other online forums from which to choose to further one's knowledge and skills. [3] The crowded resource landscape: there is a wealth of information available about ADR processes, techniques, skills, organizations, etc. A quick search of the internet reveals countless resources from websites, listervs, blogs, YouTube videos, books, journals, newsletters, etc. [4] Fine tuning and professionalization of ADR processes, particularly mediation, have increased markedly. For instance, among mediation experts, the distinctions among the different types of mediation — like facilitative, transformative and evaluative mediation — are now part of the basic knowledge. There are interesting discussions about which techniques work and under what conditions, along with a growing body of knowledge

THE INTERVIEW, continued

that has addressed ethical concerns, standards of conduct, how to develop a career, among other important matters.

Despite all of the changes, there are several areas where a lot of work remains to be done. First is the continued lack of public awareness about ADR processes. ADR processes are still not household words and are often misunderstood or confused. The second is related to the aforementioned, namely the lack of funding of mediation, particularly in the legal context. Third is the dearth of paid employment. There is still a much greater supply of individuals eager to practice as conflict resolvers than there is demand for their services. Fourth, how to make mediation responsive and relevant to a diverse society. Fifth is the lack of clarity about how one proceeds to become a mediator. Sixth, there are still important contexts where mediation can add value, but much work remains to be done. When I say that, I am thinking, for example, of policing and how valuable it would be for every police officer to have mediation training so that their toolbox would include knowledge and skills that would be useful in many of their interactions and interventions. The same could be said for virtually all individuals who have to interact with others.

Has the definition of mediation changed since the early days?

That is not a simple question to answer. Central to mediation since the early days has been the notion that mediators are third parties who help individuals to have a difficult conversation. And to do so, mediators use a wide range of techniques and personal qualities to encourage people to share their concerns, consider options, and perhaps reach mutually agreed-upon outcomes. Generally speaking, this understanding of mediation is widely recognizable and has remained intact over the years. What has changed is how the different styles of mediation have evolved and given rise to nuanced definitions of what mediators do. While mediator styles and approaches have always been varied, the distant past did not distinguish among the different styles. At present, it is not unusual for mediators to identify what type of mediation they utilize, *e.g.*, facilitative, transformative and/or evaluative. And it is common to hear that mediators use some aspects of more than one type. For sure, all of these approaches to mediation are part of the lexicon and have been the subject of a growing body of literature.

Was it always true that mediation was an attempt to help parties come to their own resolutions?

Yes, for the most part, most mediation experts would acknowledge that mediation is a process that helps parties to come to their own resolutions. However, that is not to say that there is consensus about how mediation is conducted. Mediators have robust discussions about what works when, how and why. There is a more serious issue when it comes to the public, since there is no universal understanding about what mediation is and how it is differs from other processes like arbitration and even meditation. Just last year, a robust discussion

THE INTERVIEW, continued

was stimulated on the NYC-DR listserv when the *New York Times* and subsequently the *Boston Globe* confused mediation and arbitration. There is still much work to be done when it comes to public awareness. Perhaps there is a need for a 30-second elevator speech on what mediation is to make it recognizable to everyone.

Has there been a change over time about whether fairness is central to the mediation process?

For sure, fairness has been part of the larger discussion about the mediation process for years. There has always been uneasiness concerning what is fair about a process that is characterized by informality, confidentiality, private sessions held behind closed doors, and determination of outcome residing with the parties. While these features are widely trumpeted as mediation's cornerstones, they are also at the heart of creating some of the most pronounced challenges when it comes to fairness. The public is familiar with resolution forums that are characterized by due process: representation by experts, precedence, openness, and to some extent the measurability of fairness. On the other hand, mediation as a concept is much less accessible and perceived to be much more subjective. This is a long way of saying that there have been many questions raised about how fair the process is.

"Features like informality, confidentiality and self-determination are widely trumpeted as mediation's cornerstones, but they are also at the heart of creating some of the most pronounced challenges when it comes to fairness."

More importantly, the question about whether the parties are ever really equal is crucial when it comes to the fairness discussion. While we have heard that if parties aren't equal, they should not be in mediation, evidence shows that unequal parties participate in mediation all of the time: landlord/tenant, parents/children, spouses where only one works outside the home, supervisor/employee, among others. Is a win-win outcome really possible? Sometimes parties recognize that mediation does not result in the oft-repeated win-win outcome. However, for some, it is better than other alternatives and the costs associated with them. And, with mediation, if parties don't feel that it is suitable for them, they can opt out, something which is not the case with adjudicatory processes. Due to the sensitivity around fairness, it is so important for mediators to understand how important their role is in managing this process behind closed doors where the parties have to trust them.

What has changed considerably over the years is the awareness about fairness in specific contexts, particularly when domestic violence is involved. In fact, depending on the jurisdiction, domestic violence cases are typically screened out of the process.

As mediation continues to evolve, there will be much more refinement around how to address fairness of process and outcomes.

Think about the whole community of ADR practitioners, academics, court personnel. What could we be doing better to increase public understanding and use of ADR?

THE INTERVIEW, continued

I have given public awareness about ADR a lot of thought, particularly since 9/11. In fact, we launched a number of projects around our *Make Talk Work* initiative, including bookmarks, videos, a large exhibit, among others. However, the field still lacks a strong voice and visible presence in the United States. Unless something is institutionalized and becomes part of the fabric of society, it does not carry the same weight. While we shy away from mandating individuals into processes that embrace voluntary participation, unless we have a way to steer people into these processes, left to their own devices, it is much more difficult to convince individuals that the processes might be worthwhile for them to try.

Public awareness initiatives are extremely expensive. To date, there have been lots of low-budget local efforts, but there have not been national or global initiatives that have gained widespread traction. For example, the Association for Conflict Resolution has attempted with Conflict Resolution Day, but it needs a much higher profile to reach the public. In New York City, Mediation Settlement Day does not reach much beyond the ADR community. Collectively, all those interested in conflict resolution, peacebuilding, and peacemaking initiatives can come up with ways to share their tools with others.

Is greater awareness and use of ADR more likely to come from the energy of ADR people, or the energy of people outside of ADR?

That's an interesting question. Since 9/11, I have been examining how to expand public awareness about ADR. For starters, gaining public awareness for anything can be daunting. On a daily basis, ADR competes with thousands of other causes. There is no magical formula or easy solution on how to proceed. Immediately after 9/11, we learned how expensive and time-consuming any public awareness initiative can be. We also learned that the vast majority of causes seem to benefit from the energy and star-power of celebrity types who believe in or are affected by a particular cause. In short, most causes have champions. ADR still doesn't have a nationally recognized champion to help it elevate its profile.

> *"ADR still doesn't have a nationally recognized champion to help it elevate its profile."*

There are a number of ways to acquire champions. I will mention three. The first is to find one or more celebrities who can get excited about mediation and can get the media to pay some attention to what they are saying. Their message would be even more powerful if they had, for example, been a party to a divorce mediation process and could give an authentic testimonial about the process.

A second way would be the conversion of a high profile litigator who changes his/her mind about mediation. We hear from a lot of "reformed" or "recovering" litigators at mediation gatherings. It would be interesting for those who can get the media's attention to be sharing that message with the public.

THE INTERVIEW, continued

A third way to get visibility for the field is by growing champions from within the field. After 9/11, Ken Feinberg[1] was an example of a good spokesperson for mediation. Whenever he showed up, the media would show up.

While few 9/11 matters were in fact mediated, Ken was knowledgeable about the process and used his mediation skills to process many of the complicated interpersonal matters that emerged during the distribution of the 9/11 Victim Compensation Fund.

Finally, the future of the ADR landscape includes young people who will be growing up having learned about collaborative problem-solving and peer mediation since their formative years. In educational institutions at all levels, collaborative learning, peer mediation, conflict resolution and restorative justice programs are changing the culture of teaching and managing conflicts involving young people. It has been truly exciting having a new generation of freshmen at John Jay come and ask me about our dispute resolution coursework because they were peer mediators in high school.

> *"Young people are beginning to hear about countless jobs asking for mediation and conflict resolution-related skills."*

Moreover, young people are recognizing that their ADR skills are good for their future careers. Conflict resolution and mediation skills add value to their resumes. While they will probably not find jobs as mediators *per se*, they are beginning to hear about countless jobs asking for mediation and conflict resolution-related skills. A quick search of indeed.com, an online website for jobs, illustrates how broad the reach is for mediation and conflict resolution in very diverse settings like finance, real estate, retail, human resources, education, law enforcement, security, customer relations and other fields. Employers in these contexts are not looking to hire individuals as mediators. They are looking for people with conflict resolution and mediation skills. That is a promising future for these young people who bring these extras to the workplace.

Are courts using ADR well now in New York, the United States, worldwide? If not, how could they use it better?

Some are. A lot of what happens in the courts depends on existing rules and/or judicial personnel. New York State has shied away from mandatory mediation in the courts. Like everything else, if there is someone who is a champion for these processes, they will try to figure out a way to use them. There are great variations in court-related mediation and arbitration initiatives around the country. New York has been in the forefront of promoting a statewide network of community mediation programs; other states have developed extensive court-connected initiatives to resolve disputes without judicial intervention. We have come a long way, but we still have a long way to go.

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[1]Kenneth Feinberg is a lawyer whose career has long been focused on distributing relief funds to victims, survivors and families of many of our largest disasters, including the September 11th attacks, Hurricane Katrina, the BP Gulf oil spill and the Boston Marathon bombing.

THE INTERVIEW, continued

Are we missing data and statistics that could increase the use and efficiency of mediation?

Yes, there has been a dearth of data and research to help everyone understand what works, what does not, and under what conditions things work. A lot of the literature reflects the tremendous enthusiasm for and anecdotal information about ADR processes. The existing research has deepened our understanding of mediation in some contexts, such as the community setting where access and volume have been prevalent. However, when it comes to other contexts, we still do not have reliable basic data about how many cases go to mediation or who the practitioners are. For example, as part of my research on diversity of the field, we are often asked about demographics regarding mediation practitioners. Systematic examinations of this kind of information, the nuances of the processes, and countless other issues have yet to come.

"There has been a dearth of data and research about what works, what does not, and under what conditions, but the literature reflects the tremendous enthusiasm for and anecdotal information about ADR processes."

Would the 10 year-old Maria Volpe be surprised at what you now do?

No. When I think of some of the things that I did then and as I grew up, many of the activities I engaged in put me in "go to" or "get in the middle" type roles in which problem solving was important. I always liked getting involved in extracurricular activities throughout high school and college. In some instances, I even received training that I would now recognize as conflict resolution-related. And, in fact, currently, many of those involved in some of the roles I assumed receive mediation training. For example, many of the exercises I did to get ready for my Resident Assistant role in college were comparable to what I have done in recent years in mediation-related workshops. However, when I was doing those exercises in college, it was not referred to as mediation.

Do you find yourself applying what you learn at work to situations in your life outside of work?

Yes, everyday. I have learned the value of patience, persistence, good listening and resourcefulness! And, I have learned how important it is to stay focused on the issues and to give people an opportunity to save face.

What are some of your greatest satisfactions as a teacher?

One of the greatest satisfactions is when students grasp the importance of analyzing and understanding the dynamics of conflict and its management. Of all of my student experiences, among the most memorable was one with a student a number of years ago. Early in the semester he asked me if I really believed what I was teaching. He told me that, "Where I come from, we punch lights out," and he literally illustrated it by pushing his fist in his palm. At the end of the semester, he came up to me and said, "Dr. Volpe, if anyone asks you for help with conflicts where I come from, just call me. I can tell them how important it is to use the conflict resolution skills we have learned."

THE INTERVIEW, continued

The other immense satisfaction is when I show up at events and find a former student who is in a presenter, facilitator or other role such as representing an ADR agency s/he is working for.

It's those moments you experience with your students as they come to understand and apply the theory and concepts that are hugely satisfying. Take for example, those who are applying what they learned to their own life decisions. So, going through a divorce means seeking mediation first. When they experience a conflict at work, with their families, neighbors, or with merchants, they think about how they are going to work it out. And, when there are opportunities for sharing new skills at work or elsewhere, they suggest mediation and conflict resolution. There is no way any of this would have happened so naturally without their exposure to this field through their undergraduate coursework that became part of their worldview.

> *"The NYC-DR listserv has totally revolutionized the way we communicate."*

Can you talk about the New York City Dispute Resolution listserv?[2]

The NYC-DR listserv was established immediately after 9/11 to strengthen communication among dispute resolvers in the New York City area. Before 9/11, we had very limited ways of communicating quickly and with large numbers of colleagues. While the CUNY Dispute Resolution Center has always been a hub for whatever was going on in the dispute resolution field in New York City, and there were always ways of connecting, it was delayed and costly. One's reach was often only as far as one's own personal connections.

The listserv has totally revolutionized the way we communicate. Anyone from anywhere may join and participate with New Yorkers. Those who are planning visits to New York City or thinking of moving here can get a fast, comprehensive sense of the ADR scene in New York City just by subscribing. Those who have had to relocate elsewhere can stay connected with New Yorkers. Mostly, as a New York City-centric listserv, New Yorkers can stay up-to-date on a large variety of dispute resolution developments, events and trainings with just one email subscription.

Has the mission or purpose of the listserv changed over time?

No, the purpose of the listserv has always been to strengthen communication among conflict resolvers. It serves as a forum to share information, ask for assistance, conduct surveys, seek resources, discuss issues, post employment opportunities, provide updates, etc.

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[2]As noted in the bio at the head of this article, Dr. Volpe created and moderates the NYC-DR listserv, probably one of the world's largest online ADR forums. To subscribe: http://listserver.jjay.cuny.edu/cgi-bin/wa.exe?SUBED1=NYC-DR&A=1

THE INTERVIEW, continued

It provides a means of enhancing our work, our scholarship, and our practices. The listserv has served as a springboard for interesting articles, blogs, and events.

One of most significant consequences of the listserv has been the removal of all barriers to access to information. As we know, knowledge is powerful and many contexts require special access or resources to acquire it. In New York City, through the listserv, we are able to share valuable information with everyone free of charge, 24 hours a day. We frequently get asked by those moving to another part of the country if some other geographic region has a listserv like ours. For those who are new to New York City, we often hear how easy it was for them to learn about the local dispute resolution landscape.

In sum, the NYC-DR listserv is the silver lining from 9/11 for conflict resolvers in New York City.

Chuck Newman, co-editor of THE REPORT, is a divorce and commercial mediator and litigator in Manhattan. He is a member of the Board of Directors of NYSCDM and of the Association for Conflict Resolution, Greater New York Chapter, and he serves on several other ADR and Bar organizations. He can be reached at cnewman@newmanlawmediation.com or (212) 332-3321.

Web: http://newmanlawmediation.com.

NY State Council on Divorce Mediation

Back To Contents

THE NEW YORK STATE LAW REVISION COMMISSION AND LEGISLATURE DEAL WITH ISSUES OF TEMPORARY AND PERMANENT MAINTENANCE

By Eli Uncyk

The New York State Legislature enacted three major statutory changes to the Domestic Relations Law ("DRL") which were effective in October 2010. The first allowed "no-fault divorce" (DRL §170(7)). The second created a formula for the calculation of a "presumptive" amount of temporary maintenance (*pendente lite* spousal support) to be paid while a divorce action was pending, including factors to be used in calculating both *pendente lite* and post-divorce maintenance (DRL §236B (5-a)). The formula does not apply to post-divorce maintenance.

The third major change created a rebuttable presumption that the "monied spouse" would be required to pay attorneys' fees *pendente lite*, for the other spouse, with the "unmonied spouse" having the right to ask for additional fees during and/or at the end of the litigation (DRL §237). There were several other changes to the statutes. However, they are beyond the scope of this article.

"The 2010 amendments to the divorce statutes directed the Law Revision Commission to evaluate and report on the effects of the major changes and to suggest further amendments."

The 2010 amendments also directed the New York State Law Revision Commission ("LRC") to evaluate and report on the effects of the major changes and to suggest further amendments, if appropriate.

Although many members of the public, the mediation community and the bar generally approved the "no fault" provisions, general criticism of the temporary support provisions started almost immediately. The temporary support provisions seemed circular, inconsistent and not always appropriate to the factors important in calculating temporary support.

The long-awaited "New York State Law Revision Commission Final Report on Maintenance Awards in Divorce Proceedings" was issued on May 15, 2013 (the "Final Report"). The LRC also issued preliminary and interim reports on June 11, 2010, and May 11, 2011. The Final Report can be found at:

http://www.lawrevision.state.ny.us/Final%20May%2015%202013%20Report%20on%20Maintenance%20Awards.pdf.

The Final Report did not limit its analysis to the 2010 amendments. It also examined the impact of already-existing statutory provisions and, very significantly, specific judicial interpretations of the DRL. In particular, it addressed the case law, starting with *O'Brien v. O'Brien*, 66

TEMPORARY AND PERMANENT MAINTENANCE, continued

N.Y.2d 576 (1985), http://www.COURTS.STATE.NY.US/reporter/archives/O_BRIEN.htm which created a distributable "asset", generically titled "enhanced earnings capacity" or "career enhancement". Dealing with that kind of "asset" has created much anguish and litigation, and inflated the costs of litigation.. The LRC also went beyond the 2010 legislative changes by addressing post-judgment maintenance in a more detailed manner.

In the Executive Summary section of the Final Report (p. 5), the LRC wrote:

> New York's current maintenance statutes mirror two approaches to maintenance awards. The temporary maintenance statute requires the application of a formula designed to create consistent and predictable results. The final maintenance statute, based on the application of a series of statutory factors, is designed to promote nuanced treatment of the parties' individualized circumstances.

"The Final Report also examined the impact of already-existing statutory provisions and, very significantly, specific judicial interpretations of the DRL."

The Final Report recommended a two-tier approach for courts to use to analyze cases, based on the income of the family. In the first lower income tier, the Final Report assumed the formula would generally be sufficient to guide the parties and the courts to consistent and appropriate results, with lower legal expenses to the families. Even in that lower tier, the results of applying the formula could be varied based on individual circumstances. The Final Report stated that the income demarcation line should be the same as the current Child Support Standards Act (CSSA) lodestar amount for combined parental income, to be adjusted in the future in the same manner as the CSSA figure. The Final Report concluded, at pp. 5-6:

> …the starting point for all parties should be a formula for combined income at or below $136,000, a level that reflects the income of a majority of New Yorkers and which allows individuals with income at or below that level to determine their financial obligations to each other and their children upon divorcing in a reasonably inexpensive and expeditious manner.

Parties with income in excess of that amount would need and could afford far more individualized tailoring of maintenance, based on their income in excess of $136,000.

> Where the parties' combined income exceeds $136,000, the court maintains its discretion by applying a set of statutory factors to that excess income. The court also retains discretion when the application of the formula would be unjust or inappropriate given the parties' situation.

See Final Report, at p. 5.

TEMPORARY AND PERMANENT MAINTENANCE, continued

The Final Report suggests that the results of any calculation under the prescribed formulas be subject to modification based on a series of statutory factors, and modified "when application of the formula would be unjust or inappropriate, given the parties' situation." Final Report p. 6.

There are now two bills before the state Assembly and Senate, although as of the writing of this article, they have not yet cleared their committees. The Assembly bill can be found at: http://assembly.state.ny.us/leg/?default_fld=&bn=A06728&term=2013&Summary=Y&Memo=Y&Text=bill.

The Senate bill can be found at: http://open.nysenate.gov/legislation/bill/S5168-2013.

Neither bill accepts the recommendation that the court use a combined parental income cap of $136,000. Rather, both bills start with a determination of the income of the monied spouse, as does the current temporary maintenance calculation. However, as of this writing both bills propose a $500,000 income cap for the monied spouse; and uses this amount in its proposed formula for calculating a "Guideline Amount" of temporary and final maintenance (changing the phrase from "presumptive amount"). (Many readers may not recall that the current $500,000 cap was preceded by strong support for a $1 million initial calculation for the monied spouse's income, and an earlier Assembly bill had proposed $300,000.)

The factors and bases for deviation from the results of applying the formula are broad and comprehensive. Many mediators have often referred to these factors in helping couples mediate an equitable settlement. Both bills contain them, but neither the Final Report nor the bills give any guidance regarding how much weight should be given to any one of them. The New York State Bar Association's Family Law Section has already submitted a Memorandum in opposition to these bills. It can be found at: http://www.nysba.org/Content/ContentFolders/Legislation/LegislativeMemoranda20132014/FLS3.pdf.

The mediation community has generally given the parties the opportunity to explore the factors more thoroughly, and at far less expense, than could have been done in litigation. The "set of statutory factors" in both bills, is, for the most part, not new. However, mediators will have a more complete agenda with which to work after reading the Final Report and the proposed legislation, including the introductions by the sponsors and committees in both houses of the Legislature.

The most recent versions of the bills may change. The proposed formula for calculating the Guideline Amount of temporary support is set forth below:

> ...Where the payor's income is lower than or equal to the income cap, the court shall determine the guideline amount of temporary maintenance as follows:

TEMPORARY AND PERMANENT MAINTENANCE, continued

(1) the court shall subtract twenty percent of the payee's income from thirty percent of the payor's income.

(2) the court shall then multiply the sum of the payor's income and the payee's income by forty percent.

(3) the court shall subtract the payee's income from the amount derived from subparagraph two of this paragraph.

(4) the court shall determine the lower of amounts derived by subparagraphs one and three of this paragraph.

(5) the guideline amount of temporary maintenance shall be the amount determined by subparagraph four of this paragraph except that, if the amount determined by subparagraph four of this paragraph is less than or equal to zero, the guideline amount of temporary maintenance shall be zero dollars.

D. Where the payor's income exceeds the income cap, the court shall determine the guideline amount of temporary maintenance as follows:

(1) the court shall perform the calculations set forth in subparagraphs one through four of paragraph c of this subdivision for the total incomes of payor and payee.

(2) the court shall perform the calculations set forth in subparagraphs one through four of paragraph c of this subdivision for the income of payor up to and including the income cap and for the income of payee.

(3) the guideline amount of temporary maintenance shall be either:

(a) the calculation derived from subparagraph one of this paragraph; or

(b) the amount derived from subparagraph two of this paragraph plus an amount that the court shall determine by consideration of the factors set forth in subparagraph one of paragraph h of this subdivision.

(4) In any decision made pursuant to clause (b) of subparagraph three of this paragraph, the court shall set forth the factors it considered and the reasons for its decision in writing. Such written [order] decision may not be waived by either party or counsel….

F. The court shall determine the duration of temporary maintenance by considering the length of the marriage.

G. Temporary maintenance shall terminate upon the issuance of the determination of post-divorce maintenance or the death of either party, whichever occurs first.

The Court can vary from the "Guideline Amount" based on the factors enumerated in the balance of the bills. These factors are, for the most part, substantially the same as in existing law, but are not identical. The text of the bills (or the statute which may result from the bills) needs careful reading.

The proposed formula for calculating the Guideline Amount for post-divorce maintenance is identical to the temporary support calculation, except that, presumably, equitable distribution will be factored into calculating the income of the parties. Also, the termination of post-divorce maintenance is addressed in a "Guideline Duration" schedule, which is the same in the Assembly and Senate bills, as are the conditions under which the court may vary from it. The method of calculating a "guideline time" for "post-divorce maintenance" in both bills, is:

TEMPORARY AND PERMANENT MAINTENANCE, continued

"Post-divorce maintenance guideline obligation" shall mean the guideline amount of post-divorce maintenance and the guideline duration of post-divorce maintenance.

(8) "post-divorce maintenance" shall mean a sum to be paid pursuant to a final court order or decree dissolving or annulling a marriage, declaring the nullity of a marriage, or a valid agreement, between the parties, by one party to the other.

(9) length of marriage shall mean the period from the date of marriage until the date of commencement of action.

E. The guideline duration of post-divorce maintenance shall be determined as follows:

(1) the court shall determine the guideline duration of post-divorce maintenance in accordance with the following schedule:

Length of the marriage	% of the length of the marriage for which maintenance will be payable
0 up to and including 5 years	30%
More than 5, up to and including 7.5 years	40%
More than 7.5, up to and including 10 years	50%
More than 10, up to and including 12.5 years	60%
More than 12.5, up to and including 15 years	70%
More than 15, up to and including 17.5 years	80%
More than 17.5, up to and including 20 years	90%
More than 20, up to and including 25 years	100%
More than 25 years	Nondurational

Another major change from prior law, as interpreted by the courts, is the consideration of the (judicially imposed) definition of a particular asset. The LRC wrote:

> Moreover, of great significance, the LRC further recommends that a party's increased earning capacity no longer be considered a marital asset subject to equitable distribution, a recommendation that, if adopted, would effectively overrule the controversial New York Court of Appeals case of *O'Brien v. O'Brien*, 66 N.Y.2d 576 (1985).

Although the bills before both houses do not reflect many of the suggestions of the Final Report, both bills have included a version of this change. The exact language of both bills is:

> The court shall not consider as marital property subject to distribution the value of a spouse's enhanced earning capacity arising from a license, degree, celebrity goodwill, or career enhancement. However, in arriving at an equitable division of marital property, the court shall consider the direct or indirect contributions to the development during the marriage of the enhanced earning capacity of the other spouse….

This is an invitation for further judicial construction because it is still unclear how "the court shall consider the direct or indirect contributions to the development during the marriage of the enhanced earning capacity of the other spouse…," *i.e.*, the last sentence of the provision, quoted above.

TEMPORARY AND PERMANENT MAINTENANCE, continued

Does this mean that other marital property will be divided in a different proportion, or that maintenance will be affected in amount or duration?

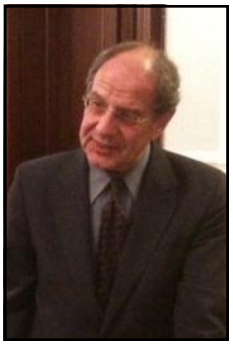
There are additional changes of note. One is that the "Guideline Obligations" for maintenance would, if enacted, apply to the Family Court Act. Presently, there are no guidelines for determining maintenance in the Family Court Act similar to the DRL guidelines. If enacted, both the "Guideline Obligations" and the factors for varying from them would apply to the Family Court.

Other interesting changes in the proposed legislation would not automatically require that maintenance terminate on the remarriage of the payee former spouse; and would allow as a factor the pre-marital status and contributions of the parties. The literature which discusses these proposed changes are more detailed than is appropriate to discuss here, except to mention that they relate to the changes in the definition of "marital property" and treatment of "enhanced earnings capacity".

CONCLUSIONS

Among the suggestions in the Law Revision Commission's Final Report on maintenance, the following seem very likely to be adopted.

1. The standards for determining temporary and final maintenance would apply to proceedings under both the Family Court Act and the Domestic Relations Law.
2. The *O'Brien* case and its progeny would be overruled by statute, and the concepts surrounding "enhanced earnings capacity" would require some interpretation and reconciliation.
3. The new statute is likely to choose a base income of the "monied spouse" of $500,000, or lower.
4. The opportunity for divorce mediation to fill the gaps in the interpretation and application of any new law will grow, if practitioners focus on the large uncertainty in the application of the factors to the individual circumstances of each case, a process which would be extremely expensive and time-consuming in litigation.



Eli Uncyk, a lawyer and mediator, is a founding member of Uncyk, Borenkind & Nadler, L.L.P. in Manhattan. He has a varied practice both within and outside family law. A sought-after speaker, Eli is an active and/or founding member of NYSCDM and many other mediation and Bar groups. He is co-editor of THE REPORT. *Email: euncyk@ubnlaw.com. Web: www.ubnlaw.com.*

Back To Contents

NYSCDM's 30th Annual Conference

By Daniel Burns and David Louis

Jill Sanders DeMott and Steve Abel

"Steve Abel presented Jill Sanders DeMott with the "Abel Award," which is presented to one of our own for dedicated service to our organization"

Conference Co-Chair, David Louis and Pre-Conference Presenter, Bill Eddy

The 30th Annual Conference of the New York State Council on Divorce Mediation was held from May 2nd to May 4th, 2013 at the Gideon Putnam Resort in Saratoga Springs. By all accounts, it was an outstanding array of speakers and presentations.

The Conference opened with a pre-conference institute presentation by Bill Eddy of San Diego, who spoke on mediating with high conflict individuals. Most who attended felt that the skills and techniques Bill outlined could be used with most of our clients, even those who would not be considered "high conflict".

The dinner on Thursday night featured a presentation by Chip Rose, who came in from California to talk about how he got started in the "mediation business" some 30 years ago, around the time our organization was being formed. We presented Chip with our Lifetime Service Award for his years of dedicated effort to the field of mediation.

Prior to introducing Chip, Steve Abel presented Jill Sanders DeMott with the "Abel Award," which is presented to one of our own for dedicated service to our organization. When she accepted the award there were few dry eyes in the dining room as she recalled her beginnings with our organization and how it has been a major part of her professional life. She was also most pleased to realize that her husband was listening in on the award on an open phone line!

On Friday morning we heard Chip Rose offer the Opening Plenary on how to "Mediate Between a Rock and a Hard Place." During his discussion, Chip offered thoughts on how he engages with a couple and helps them realize the "Best Possible Outcome under the Circumstances."

After the plenary, Chip also offered a breakout session with more detailed information on how he works with couples to help them reach a resolution that provides a maximum benefit for each of them.

ANNUAL CONFERENCE, continued

"The Conference provided a wealth of information, and much to think about in developing new ideas and skills for mediation practices."

Conference Co-Chair, Dan Burns and Keynote Speaker, Chip Rose

"Chip Rose offered thoughts on how he helps couples realize the "Best Possible Outcome under the Circumstances."

In addition to Chip's breakout, we also heard Steve Linker talk about "Financial Issues in Divorce," Carolyn D'Agostino point out some "Pitfalls in Drafting Pension Agreements," and Patricia Shevy talk about "Estate Planning Issues in Divorce." Dan Kos then led us on a "Poetic Exploration of Looking at Neutrality" and Rachel Green spoke about the "Ethics of Med/Arb."

The Council held its Annual Meeting after the morning sessions, where new officers were elected. They included Clare Piro as President, Bill Hoefer as Vice-President and Kathy Jaffe as Secretary. David Louis agreed to continue as Treasurer and Bobbie Dillon began a two-year term as Immediate Past President.

In her closing remarks Bobbie commented on her two years of service and how much had been accomplished and also thanked retiring board members Daniel Burns and Ada Hasloecher for their years of service to the organization.

After the breakout sessions of the afternoon, we were all treated to another "Update on the Law" by Steve Abel, who was joined this year by Bill Hoefer.

Dinner included a lively presentation by Judges Robert J. Muller and Richard A. Dollinger, who spoke on the issue of the availability of a trial on status in a No-Fault Divorce case (*i.e.*, whether a divorce should be granted on the new ground of irretrievable breakdown without the right to a jury trial). Judge Muller had authored an opinion that held a trial was required if demanded by a defendant, while Judge Dollinger authored a contrary opinion, and a very respectful "debate" ensued.

After the presentation by the two guest judges, Steve Abel put on his auctioneer hat and helped us raise over $4,500 for the organization. Following the auction, we had a gift basket raffle which pushed the total to nearly $5,000 in donations for the night.

ANNUAL CONFERENCE, continued

NYSCDM Members attend a presentation at the 30th Annual Conference

The Conference ended with nine breakout sessions on Saturday on a variety of topics that included Judge Dollinger speaking on The History of Marriage in New York, Jody Miller talking about Domestic Violence, and Dr. Paul Marcus on Parental Alienation as Soul Murder. BJ Mann then presented on Divorce Coaching, Joanne White presented on Modification of Child Support, Steve Ciantro spoke on Debt Management, Lenard Marlow talked about Top Down/ Bottom Up Divorce Mediation, and Cliff Rohde discussed Social Media and Online Advertising. Finally there was a wonderful Panel Discussion moderated by David Louis that featured Suzanne Brunsting, Beth Danehy and Ron Heilmann on the interplay between Divorce Mediation and Collaborative Law practitioners.

The Conference provided a wealth of information, and much to think about in developing new ideas and skills for mediation practices. The quality of the program was eclipsed only by the outstanding spring weather, which helped to buoy the spirits of everyone who gathered together to celebrate our 30th anniversary.

Daniel Burns

Daniel Burns is an attorney and mediator in the Albany area, is a Past President of the NYS Council on Divorce Mediation, and has either chaired or co-chaired six Annual Conferences.

David Louis is a Divorce and Family Mediator and also works as a Neutral Facilitator in Collaborative Practice in the Capital Region. He is on the Board of Directors and serves as Treasurer for the NYS Council on Divorce Mediation.

Dave and Dan co-chaired the 30th Annual Conference.

David Louis

Back To Contents

THE FOUNDING OF NYSCDM

By Sydell S. Sloan

Prologue

On May 2-4, I attended the New York State Council on Divorce Mediation's 30th Annual Conference in Saratoga Springs. I noticed that there were many young newly trained mediators, who probably were not born or were toddlers at the time of the first conference in September of 1983. While talking with several of the new members, I learned that they didn't have a clue as to the why, how, when, and where of the organization's origin. For their benefit, and for the interest of others, I am going to tell the story of the BIRTH OF THE NEW YORK STATE COUNCIL ON DIVORCE MEDIATION.

IN THE BEGINNING THERE WAS JACK!!!

In the Spring of 1981, Jack Heister, a former pastoral counselor in Rochester, New York, heard about mediation from a counselor friend. After working for his friend as a mediator, later that year, Jack went to a retreat and took the 40 hour training with O.J. Coogler and John Haynes, the well-known early gurus, practitioners and teachers of Divorce Mediation. After 2 years, Jack went out on his own forming the Divorce Mediation Center of Rochester.

Jack consulted John Haynes about starting a state organization. John asked Morna Barsky to call Jack with a list of names of people who were doing mediation in New York State. Jack called these people who gave him other names. He then sent out a letter inviting participation in "the first annual New York State Divorce Mediation Conference". The stated purpose was "to establish a state-wide organization devoted to satisfying our professional needs".

The meeting was to be held at Bear Mountain on September 29 and 30, 1983. Incredibly, the fee for the conference, including food and lodging was $75. I was privileged to have been among the group of approximately 30 who convened for the conference and the formation of the organization.

Some of those who were present at Bear Mountain were: Jack Heister, Lenard Marlow, Barbara Badolato, Morna Barsky, Ken Neumann, Howard Yahm, Mark Kleiman, Richard Mandell, Doris Friedman, Ron Heilmann, Lorraine Marshall, Kathryn Lazar, Manny Plesent, Sydell Sloan, Jim Kestenbaum, Morris Hamburg, Donald Kimmelman, Norman Sugarman, Lawrence Gulino, Judith Weiner, and Robert Abrams. (My apologies if I have omitted the names of any others who were present at Bear Mountain.)

Jack Heister was elected president of the newly formed New York State Council on Divorce Mediation.

Approximately half of those named above, including Jack Heister, are still active members of the council, having served as Presidents, Officers, Board Members, Conference Chairs and Committee Heads.

As part of the council's archives, and for the benefit of those who joined the council after September 1983, we are reprinting the letter of invitation written by Jack and a copy of the agenda for the two day conference.

Sydell S.Sloan M.A.is a family therapist, marriage counselor, and a divorce and custody mediator. She is a founding member of the New York State Council on Divorce Mediation and was a Board Member of the organization for 15 years. She co-chairs the annual downstate mini-conference and has been a presenter at many of the NYSCDM annual conferences. She is a member of ACR, AFCC, and the newly formed APFM. She has spoken and written widely on the subject of mediation, specializing in the needs of children whose parents are divorcing. She can be reached at 718 631-1600 and/or dellsy@aol.com

FOUNDING OF NYSCDM, continued

Dear Colleague,

It is with great enthusiasm that we invite you to the first annual New York State Divorce Mediation Conference. Our purpose is to establish a state-wide organization devoted to satisfying our professional needs.

As you can see from the attached agenda, the conference includes many opportunities for you to share experiences, ideas and plans, learn about current divorce mediation activities and network with other professionals. If you are presently in practice or plan to do so in the near future you will find this experience invaluable.

The conference will be held at the Bear Mountain Inn, Bear Mountain, New York on September 29th and 30th, 1983. The $75 fee includes lodging (if needed)* and five meals. Space is limited, therefore, we urge you to mail the $75 registration fee, upon receipt of this announcement. Registration deadline is July 31, 1983.

We look forward to hearing from you.

Sincerely,

Organizing Committee

Dan and Jean Callahan
Agree-Mediation Center
Albany, New York

Mary Beth Gamba
Center for Family Therapy and Mediation
Endicott, New York

Morris Hamburg
Divorce Mediation Council of Long Island

Mark Kleiman
Divorce Mediation Council of New York

John Heister
Divorce Mediation Center of Rochester

Kathryn S. Lazar
Mid Hudson Divorce and Family Mediation Center

Richard Mandell
Deborah Murnion
Orange County Mediation Center

Jennifer Manocherian
Family Institute of Westchester

* If traveling from up-state and unable to commute.

FOUNDING OF NYSCDM, continued

AGENDA

NEW YORK STATE
DIVORCE MEDIATORS' CONFERENCE

September 29-30, 1983

THURSDAY

9:00-9:30	Registration	
9:30-10:00	Opening Remarks	John W. Heister, Ph.D.
10:00-11:00	**Committee Workshop I	
11:00-11:15	BREAK	
11:15-12:15	*Presentation I "New Techniques in Mediation"	John M. Haynes, Ph.D.
12:15-2:00	Lunch and Relaxation	
2:00-3:30	Committee Workshop II	
3:30-3:34	BREAK	
3:45-4:45	*Presentation II "Divorce Mediation: Practical Implications of a New Way of Viewing Divorce"	Lenard Marlow, J.D.
4:45-6:00	Cocktails and Relaxation	
6:00-7:30	Supper	
7:30-9:00	Informal "Shoptalk" with: Linda Silberman, Lenard Marlowe and John Haynes	

FRIDAY

8:00-9:00	Breakfast	
9:00-10:00	*Presentation III "Models: How Mediators and Attorneys Can Work Together"	Linda Silberman, J.D.
10:00-10:15	BREAK	
10:15-12:00	Committee Workshop III	
12:00-1:30	Lunch and Relaxation	
1:30-4:00	Committee Summaries: Implementation of Preliminary Organizational Proposals	

* Time will be provided for questions and feedback

** The three working committees will do their individual work.

If you have questions, the planning committee includes:

Morris Hamburg
Mark Kleiman
Jennifer Manocherian
Kathryn Lazar
Jill Lundquist
Jack Heister

111 4th Ave.

Back To Contents

FOLLOWING UP WITH CLIENTS

By Dolly Hinckley

Editors' Note. In the Winter 2013 issue of THE REPORT (Vol 9, No 1), Eli Uncyk proposed that if mediation breaks down, we should ask clients to attend what he calls a "closing meeting," so that we can learn what went wrong from their perspectives, and possibly to show them some advantages of sticking with the process. See http://nyscdm.org/nyscdmsite/wp-content/uploads/2012/10/NYSCDM-TheReport-Vol09No01-2013-Winter.pdf, p. 20. Clearly, following up to see how clients are doing after mediation resonates with Dolly Hinckley. Her thinking could have run in this issue as a response to Eli's previous article, but Dolly's engaging report is extensive enough to deserve being its own article, which we happily include. Despite what you read here, there is no statistically valid evidence that Dolly is a Wizard of Fecundity.

In mediations leading to a divorce, I really enjoy working with some couples in their struggle to divorce fairly, honorably, and with concern for their children. Of course, for some other couples, not so much.

At the conclusion of most mediations, though, I do wonder how the parties might fare in the world of "single again". A few years ago, before the New York no-fault divorce law took effect, I tried to find out.

I sent out a "Mediation Questionnaire" to individuals who had completed their divorce mediation and had received a Memorandum of Understanding. During the first year, there was about a 42% (!) response; the second year, there was about a 17% response. The questions covered current marital status, lawyer assessment, the mediation process, mediator assessment, and general comments. My subsequent analysis of the responses (below) is strictly informal and "unscientific".

> *"I saw a hand-holding couple walking toward me. They had reached an informal agreement, and let me know how well the marriage mediation had worked. I could see that in their eyes!"*

Almost all of the respondents had been legally separated; a few had divorced; about 4% had reconciled. Most rated their attorneys "good" or "excellent"; there were a couple of attorneys rated "unacceptable", frequently with the respondents citing high fees. Almost all responded that the mediation process was "positive", with only two "negative", a little more than 3%. The response percentage was the same for those who would recommend mediation versus those who would not. All in all, these were encouraging results, but the open-ended query at the end of the questionnaire gave me some insight as to what had happened in some of my mediation clients' personal lives. (Some descriptive details have been slightly altered for confidentiality or clarity.)

My favorite note was from one client, who, with her husband, had developed a parenting plan for their five children that was included in their Memorandum of Understanding. She wrote that right after their mediation ended, they reconciled. She wrote, "God has healed our marriage and even brought us blessing number six, born just four weeks ago! We are all very happy!" Upon reading that, so was I.

I have learned over the years — with or without the questionnaire — about other mediation clients.

In one case, there had been a bit of a bizarre situation during the mediation. In session,

FOLLOWING UP, continued

the husband came out to the wife about his sexual orientation, revealing that he had been living with his boyfriend ever since leaving home. The wife was visibly and vocally devastated. They let some time lapse between mediation sessions for her to come to grips with this situation, so we did not meet again for a few months. At that next meeting, they brought their two children. (I have a playroom.) They announced that they were expecting their third. They did set up another appointment, but cancelled later because they were reconciling. Ordinarily, I would be delighted, but this result left me somewhat uneasy, and I do wonder where they are now, emotionally.

Every once in a while, I see a couple who opt for marriage mediation, rather than divorce mediation. I do not do that kind of mediation very often, although the few I have done "took", as far as I know. One day, at the public market, I saw a hand-holding couple walking toward me. They looked familiar, and, as they approached, they called out my name. My recollection of them was as a couple who had struggled mightily in their attempt to save their long-term marriage. They did reach an informal agreement, and they did let me know that day at the market how well the mediation had worked. I could see that in their eyes! I was happy for them, too.

I always explain to clients the importance of understanding all the finances, including advising of the importance of forensic financial specialists if there is any suspicion of hidden income or assets. One wife, who had responded negatively on the survey, let me know how upset she was at the child support calculation that I had done with the income information they had given me. She said that I (!) should have consulted with a tax accountant because the husband had been hiding corporate income! I am relieved that her attorney caught that; I have read about the husband and his ultimately successful corporation in the newspaper over the years, and I am glad that she apparently got the child support that she should have. They have each since remarried.

Some years ago, a former client murdered his wife's lover. Wait. The murder victim and his wife had *also* been clients of mine. As you might imagine, I followed the trial quite closely. The wife of the murderer witnessed the crime. She has since moved out of town. The wife of the murdered man called me in great guilty distress at the time, since she did not have a legal separation agreement yet. (They had an MOU.) She was still legally married to a deceased, propertied man. I told her that she deserved his estate!

Occasionally, I will see a divorced former client or read about him or her in the paper. One of them is politically prominent and some stories mention a wife, so I assume he has married again. Other former clients are counselors or therapists and have referred people to me, so I hear about them second-hand.

I see a few former clients where I work out in the morning, and they have initiated conversations where they keep me up to date on their marital situation.

Mostly though, we, as mediators, do not know what has happened to former clients, and we do wonder, don't we?

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Back To Contents

THE ESSENTIALS OF A MEMORANDUM OF UNDERSTANDING

By Eli Uncyk

In the early 1960's and 1970's, divorce mediators mostly came from the mental health field, and were generally not licensed to practice law. Matrimonial law was simpler, and mediators could craft documents which reflected the agreements the parties reached during divorce mediation. John Haynes, Ph.D., one of the universally acknowledged developers and founders of the divorce mediation profession, was the subject of a formal inquiry regarding the "unauthorized practice of law," because he drafted formal agreements which were intended to bind the parties to the results of mediation.

While the "practice of law" is still difficult to define, Dr. Haynes agreed that mediators needed a different model which would avoid the problem of having non-attorneys drafting binding agreements between parties who successfully reached a comprehensive marital settlement agreement through mediation. While there currently is some controversy regarding whether mediators may draft such "agreements", most non-attorney mediators, and some attorney-mediators, draft a "Memorandum of Understanding." An MOU outlines, in varying detail, the agreements the parties reached in mediation. The MOU is then used as the basis for an attorney to draft a formal marital settlement agreement (whether a separation agreement, stipulation of settlement or pre- or post-nuptial agreement). Often, a "neutral drafter" drafts the agreement based on the MOU. Sometimes the parties' attorneys draft the agreement, and review and negotiate the details of the final agreement.

> *"Dr. Haynes agreed that mediators needed a different model which would avoid the problem of having non-attorneys drafting binding agreements"*

The legal requirements imposed by the law in New York are often cumbersome, technical and obscure. See this web site for a general description of litigated and uncontested divorce matters: http://www.nycourts.gov/divorce/forms.shtml. Often, attorneys use the court-designed forms and guides, which detail each of the legal requirements for a valid and binding marital settlement agreement. These forms can be found at http://www.nycourts.gov/divorce/pdfs/Divorce-Packet-Instructions.pdf. Even the most difficult mediations are considered "uncontested" when there is a settlement agreement. The courts' instructions and forms lead to the debate about whether non-attorney mediators can help their clients complete these forms without conducting the unauthorized practice of law. My view is that the complexity of the matter determines whether an attorney should draft the documents, especially the settlement agreement.

Of course, there are often settlements which involve issues, sets of facts, payment provisions and divisions of diverse types of assets in equitable distribution, among just a few examples, which are beyond the usual experience of many matrimonial lawyers. In those cases, outside special counsel are often retained to sort out the details and implement the parties' agreements. When reached in mediation, the ideas behind these complicated arrangements must still be described in a MOU, even though the details and implementation problems would also be beyond the skills and experience of the clients, the mediators, and sometimes even non-specialist lawyers. Under all these circumstances, it is still possible to construct an MOU which gives the drafting attorneys enough detail to work with, without beginning to negotiate a new deal for the parties. However, the parties and the mediators need to accept that the actual drafting and implementation of the mediated agreement will

MOU ESSENTIALS, continued

almost certainly require some variances from the original expression or intent, even sometimes substantial differences. For instance, the agreement to transfer stock options, in many instances, simply cannot be implemented; and attorneys must create devices by which the parties can implement the underlying intent (sharing the after-tax benefits of the stock options when they are exercised), without losing the options. Add to that the problem of financing the purchase of shares pursuant to the options, and the immediate resale of the purchased shares by one of the parties, and you have a mechanic's nightmare.

With all these introductory comments as a background, it is important to remember that MOU's must address the issues in a comprehensive way. A good outline for an MOU would include the following basic subjects:

"Construct an MOU which gives the drafting attorneys enough detail to work with, without beginning to negotiate a new deal for the parties."

1. **General factual information**. The names, social security numbers, dates of birth, date of marriage, where and how performed (religious or civil ceremonies, or both, and which religion), prior marriages (including dates of these marriages and how terminated), children (of the current marriage and prior marriages) and their dates of birth. The residences of the parties prior to and on the date of the marriage, all subsequent residences, and educational history.

2. **Parenting arrangements, if there are children of the marriage**. While New York law still uses the words "custody" and "visitation", most mediators use the phrase "parenting arrangements" or "parenting plans" when helping the parties discuss access to the child, vacation periods, holidays and other occasions which the parties will need to address when planning the contacts. (It's the same whether it's one or more children. We'll just say "child" here for simplicity.) It may turn out that the schedules really turn into the traditional schedule of "custody" and "visitation", or it may be a schedule in which the parties try to equalize the time each will spend with the child.

a. The MOU should include a precise schedule for the child, including schooldays, holidays, weekends, special event days (Father's Day, Mother's Day), and school vacations, including summers. The parties should use a calendar which includes these, for the year in which they are mediating, to insure the practicality of the schedules for the first few years after the agreement is made, even if the parties agree they will be flexible and accommodate each other. Details of the pick-up and return of the child should be addressed, especially if there are problems between the parents. You may want to cover where the child will be picked up/returned; who may be present; whether the exchange is before or after the relevant meal; or the clothing that is to be returned. There may be no end to the details in a contentious mediation. You may need to address telephone contact, and whether "Facetime" or "Skype" may be used.

b. While the subject of tax planning will be covered later, one of the factors involved in planning the time when the child will stay overnight in the home with each parent may include which parent will be eligible to claim "head of household" tax filing status, which is a tax characterization more beneficial than "single" or "married filing separately." This requires that the parties agree to adjust the parenting schedule accordingly. This is not related to which parent will take the child as an "exemption," which is a tax benefit the Internal Revenue Code permits the

MOU ESSENTIALS, continued

parties to determine by simple agreement and filing a federal form.

c. The MOU should address relocation issues and adjustment of parenting arrangements that a relocation will require.

3. **Agreements regarding social and "significant other" situations**. The MOU should describe the parties' understandings of what they expect from each other in connection with how and when to introduce their child to significant others.

4. Child Support and Related Expenses. There are statutory requirements that every child support agreement recite the "presumptive" amounts of child support prescribed by the formulas contained in the Domestic Relations Law and Family Court Act, called the "Child Support Standards Act" (CSSA). The full text of the CSSA is part of DRL §240 and is contained at http://public.leginfo.state.ny.us/LAWSSEAF.cgi?QUERYTYPE=LAWS+&QUERYDATA=$$DOM240$$@TXDOM0240+&LIST=LAW+&BROWSER=EXPLORER+&TOKEN=29310812+&TARGET=VIEW. If the parties are "opting out" of the CSSA's presumptive amounts, the MOU should recite the reasons, even if they are conclusory. Whatever the parties agree upon, and no matter what method of adjusting child support they may want to use, it should be described in the MOU. This should include extraordinary and special expenses, such as medical insurance, recreation costs, trips, allowance, etc. It may simply be enough to say that the parties are opting out of the CSSA because one party has a rent-controlled apartment, or generally lower expenses, or exceptionally higher expenses.

The final marital agreement must contain the entire child support analysis mentioned above in order to be enforceable. Many mediators leave this detail to the drafting attorneys, but this can result in a higher cost to the parties. Covering it in the MOU provides the information that might not be known by the drafting lawyers. It will also help to insure that the parties are aware of the CSSA amounts while they are negotiating, and will not use the information to try to renegotiate the agreement when they see the marital settlement agreement. The Unified Court System website has information, including directions and calculators, to help parties and the mediator do the calculations. There are also charts which can be used in simple cases, also available on the court's website at https://childsupport.ny.gov/dcse/pdfs/cssa_2013.pdf. The "combined parental income amount" in this chart is updated annually to reflect the cost of living changes.

The MOU should address the existence of "529" education savings accounts, custodial accounts, a child's obligations or expectations regarding work during college, loans and scholarships, and other methods of financing higher education expenses.

5. **Equitable Distribution**. The DRL provides for the division of "marital property," a defined term. Separate property is not included in the division of assets, but may be a factor in how marital property is divided. The MOU should include schedules of both separate property and marital property, including clear identification of the nature of the property, the value or amount, and the location. Where possible, some documentation should be attached to identify the property in each category.

a. While many couples using mediation expect that the process will not include details of the parties' assets, such details are important to insure that the MOU can be converted to an enforceable martial settlement agreement, based on full disclosure. Both parties will want the final agreement to be upheld in case of a challenge,

MOU ESSENTIALS, continued

and disclosure is an essential element in demonstrating that the settlement was based on full disclosure and not the result of undue influence or duress.

b. Values of many assets would, in an adversarial situation, be determined or approximated by experts. However, there is no requirement that experts be used. If the parties are estimating values, the MOU should state that fact.

c. If retirement accounts of any kind are included in the assets being transferred, in whole or in part, the MOU should describe how the amount being transferred was determined. If the retirement accounts will be divided when being paid out, the mediator may want the parties to contact the retirement plan administrators to obtain instructions, limitations and other details which will need to be addressed when the attorneys draft the Qualified Domestic Relations Order (QDRO) to implement the division and transfer. Death benefits should be addressed, since many retirement plans pay such benefits to designated beneficiaries even if the payouts are addressed by a QDRO. If there are any issues in the retirement plans, such as unvested rights or compensation, or allocation of retirements benefits between separate property and marital property, an appropriate professional should be introduced into the mediation to educate the parties about the different ways of calculating marital property and separate property. The well-known "Majauskas Formula" is, in my opinion, not an appropriate method of determining the portions of payouts which should be considered separate and marital, for a number of reasons. It is not the purpose of this outline to go into the details of valuing the marital portion of mixed retirement plans, or how to divide them. That is generally beyond the skills of most mediators and many lawyers. Alerting the parties to the issues and trying to resolve them during the mediation avoids later conflict and errors in drafting the final agreement.

"The transfer of restricted assets, such as options, unregistered stock, unvested stock options, etc., are difficult issues, even for experienced attorneys."

d. The costs of transferring assets between parties must be addressed in the MOU. While transfers between spouses or former spouses incident to the divorce or marital settlement agreement are not "taxable events" under the Internal Revenue Code, state and local law may impose transfer taxes or fees.

e. The transfer of restricted assets, such as options, unregistered stock, unvested stock options, etc., are difficult issues, even for experienced attorneys. For parties who have these assets, it would be best to include attorneys in the mediation process, to insure that the agreements can be implemented and that the expected value of the assets can be realized.

6. **Spousal Support**. Everyone involved in separation and divorce acknowledges that spousal maintenance is one of the most difficult issues to address. Moreover, if there is to be spousal maintenance, the details must include recognition of the tax consequences of the payments, the duration, and the possibility of changes in the amount based on changes in circumstances. The role of outside sources of income needs to be addressed. This includes Social Security benefits and when they will commence; the possibility or probability of inheritances, remarriage or regular and intimate cohabitation with another person, and whatever the imagination may conjure.

MOU ESSENTIALS, continued

7. **Tax Implications of All the Issues; Methods of Dispute Resolution; Miscellaneous Subjects**. There are many issues which mediated agreements raise, but which may not be fully addressed in the MOU, whether intentionally or inadvertently. These include transfers of assets, payments to or for the benefit of the spouse or former spouse, the "tax basis" of assets being kept or transferred, the implications of a child living with one parent for more time than living with the other.

Mediators should advise their clients that there may be tax implications to what they are deciding, and they must alert their clients that these questions may arise for the first time while the attorneys draft the agreement described in the MOU. Ideally, the issue can be resolved by the parties after it is explained by the drafting or reviewing attorney(s). If they cannot be resolved, the parties should return to mediation to address them, in the context of the entire mediation, and not as if the unresolved issue is a roadblock.

Also, the parties should decide how changes in the agreement should be addressed as they live under the terms of the final judgment. The MOU should cover the circumstances under which there can be changes. Things change, and even intact families must adjust to the changes.

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NY State Council on Divorce Mediation

Back To Contents

BOOK REVIEW: WOULD ATTICUS FINCH HAVE BEEN A GOOD MEDIATOR?

By Justine Borer

Many of us read Harper Lee's classic *To Kill a Mockingbird* in junior high (or for some readers of a certain age, perhaps a little later). Or at least, we were all supposed to read it. For those naughty readers who were too busy worrying about what classmates thought of them to actually read the book when it was assigned, do me a favor: instead of reading this article, go read *To Kill a Mockingbird*, post haste. It is just as beautiful and meaningful a story when you are 73 as when you are 13.

I read *To Kill a Mockingbird* in seventh grade. (There were plenty of other assigned books that I didn't read because I was busy staring at boys, but thankfully I took this particular assignment from Mrs. Miller seriously.) An aspiring lawyer since the age of 8, the story captivated me. Even in seventh grade, I understood what an admirable man Atticus Finch was.

When THE REPORT asked me to write an article about mediation and literature, I jumped at the chance. Inspiration quickly hit me. I decided to revisit the hallowed *To Kill a Mockingbird* to answer this question: would Atticus Finch be a good mediator?

I thought that rereading *To Kill a Mockingbird* almost twenty years later might give me a more balanced perception of this great and admirable figure in American literature. Was Atticus too forceful a lawyer to be a balanced mediator? Did he have flaws that I didn't perceive when I was 13? Selfishly, I hoped he would, so this article would be more interesting!

Since I am a lawyer, I will reveal my conclusion upfront. Atticus Finch would have been an incredible mediator. He did have qualities and practices that conflict with certain mediation practices, and I will draw attention to them in this article. However, at the end of the day, he was the definition of a decent man. Could any quality be more important in a mediator?

> *"He lives his life with integrity without being sanctimonious. This is a difficult feat to pull off. It is also the mark of a great mediator."*

For those of us who do not remember the details of *To Kill a Mockingbird*, allow me to recap. The book is narrated by Scout Finch, Atticus' young and precocious daughter. Scout and her older brother Jem live with Atticus in Maycomb County, Alabama in the 1930's. (Scout's mother is no longer living.) Scout is a hot-headed tomboy, and she is her father's daughter: she frequently gets into scuffles, most of which involve defending someone's honor.

Of course, *To Kill a Mockingbird* is not merely a story about a young girl's coming of age. The book is best known for the Tom Robinson case. Atticus, despite his "profound distaste for the practice of criminal law," takes Tom on as a client. Tom is a black man falsely accused of raping and abusing a white woman, Mayella Ewell. Atticus explains to Scout that he is taking Tom Robinson's case because if he didn't, "I could never ask you to mind me again." Atticus wants very much to be able to look at himself in the mirror. He also wants to be a credible model for his children. He succeeds with Scout, who tells her Uncle Jack that "When Jem an' I fuss Atticus doesn't ever just listen to Jem's side of it, he hears mine too …." Jem, too, has the utmost respect for his father. Jem tells Scout, "Atticus ain't ever whipped me since I can remember. I wanta keep it that way."

BOOK REVIEW, continued

A good chunk of the book is devoted to Tom Robinson's trial. Atticus expertly cross-examines several witnesses, including Heck Tate, the town sheriff, Mayella Ewell, and Bob Ewell, Mayella's father. Atticus skillfully and gracefully proves beyond any reasonable doubt (at least in New York in 2013) that, in fact, Bob Ewell, not Tom Robinson, attacked his daughter on the day in question. Tom has been scapegoated by Bob Ewell. Atticus later makes a highly uncharacteristic, but eminently appropriate, cutting remark about Bob Ewell and men of his ilk. Atticus tells Scout that "whenever a white man does that to a black man, no matter who he is, how rich he is, or how fine a family he comes from, that white man is trash."

Unfortunately, what might have inspired reasonable doubt in a jury of New Yorkers in 2013 does not inspire reasonable doubt in a jury of Alabamans in 1935. The jury convicts Tom Robinson and sentences him to death. Before Atticus can appeal, Tom tries to escape from jail. The prison guards shoot Tom seventeen times, killing him.

"He has the contemplative and philosophical temperament that serves mediators well."

Atticus' fitness for mediation is obvious. He has the contemplative and philosophical temperament that serves mediators well. He reads to relax, and takes long walks: "in Maycomb he walked to and from his office four times a day, covering about two miles.… In Maycomb, if one went for a walk with no definite purpose in mind, it was correct to believe one's mind incapable of definite purpose." Atticus does not gossip; he tells Jem "to mind his own business and let [their neighbors] mind theirs." Atticus has remarkable empathy. When Jem complains about a sick old neighbor maligning Atticus for taking Tom Robinson's case, Atticus tells Jem, "She can't help [maligning me]. When people are sick they don't look nice sometimes." Atticus tells Scout, "If you can learn a simple trick, Scout, you'll get along a lot better with all kinds of folks. You never really understand a person until you consider things from his point of view … until you climb into his skin and walk around in it." At one point, he even appears to be training Scout to be a mediator: he defines compromise for her as "an agreement reached by mutual concession."

Atticus is vaunted as a model of integrity. Having reread the book, I am compelled to report that he was. What is most impressive about Atticus, however, is that he lives his life with integrity without being sanctimonious. This is a difficult feat to pull off. It is also the mark of a great mediator.

Atticus is not a pious drone. He is practical. When the verdict comes down, Jem is distraught. He beseeches his father, "You can't just convict a man on evidence like that…" Atticus responds impassively: "You couldn't, but they could and did. The older you get the more of it you'll see." Atticus also has a playful and sneaky side. Over Jem's protestations, Atticus instructs Jem to take his younger sister to her first day of school. One of my favorite moments in the book is when Scout hears coins jingling in Jem's pocket, and shares her suspicion that Atticus bribed her older brother to accompany her. Atticus is fundamentally a decent man; as a neighbor tells Scout, "If Atticus Finch drank until he was drunk he wouldn't be as hard as some men are at their best."

BOOK REVIEW, continued

All that being said, mediating would present certain challenges to Atticus. He is not always neutral; he bravely takes Tom Robinson's side, even daring to accuse a white man of committing the crime for which Tom is being tried in open court. Above all, he is an advocate and a lawyer. He does not tolerate bullying of any kind, and responds harshly to his children when they are unkind to anyone. When Scout sasses her Aunt Alexandra, Atticus orders Scout in a "deadly" voice to apologize. When sufficiently provoked, Atticus gets angry. He feels a duty to advocate for those who can't advocate for themselves. Of course, mediators, too, respect this precept. Most mediators will not mediate in the face of an unremediable power imbalance, on the theory that the weaker party should have an advocate.

Atticus Finch would have been an outstanding mediator. He is practical and unafraid to call a spade a spade. His remarkable empathy has its limits. Some might argue that Atticus' capacity to be judgmental undermines his ability to be a mediator. I disagree. I think it makes him a better one.

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NY State Council on Divorce Mediation

Back To Contents

T4: THE MEDIATOR'S TOOLBOX: TIPS, TRICKS & TECHNIQUES

DOMA Ruling by SCOTUS; Immediate Effects

Although the U.S. Supreme Court ruling striking down the federal Defense of Marriage Act was a great victory for human rights, it still does not recognize any federal constitutional right of marriage between two people of the same sex. The decision simply prohibits the federal government from treating same-sex marriages differently from different-sex marriages. There are many legal consequences, including estate tax benefits, income tax filing status, social security benefits, etc. It is important to note that the ruling only helps residents of those states which recognize same-sex marriage. The decision does not help residents of states which provide only for civil unions or domestic partnerships.

Now that New York same-sex spouses may file joint federal tax returns (generally a tax benefit), they are faced with the same problems as other married couples who may suffer from the higher total taxes paid as a result of the "marriage penalty," which has been somewhat alleviated, but is still a cost in families where both spouses earn income within certain ranges. One good discussion of this is contained in a publication by Berdon, LLP, an accounting firm, at: http://www.berdonllp.com/mobile/evisor0713.asp

Old News in an Old Wrapper

Remember that child support is never deductible by the payor on income taxes, and is not includable as income of the recipient. On the other hand, spousal maintenance is deductible by the payor and taxable to the recipient, unless the parties agree otherwise. Always ask your mediation clients if they or their accountant can do a few hypothetical alternative tax returns to see what balance works. Remember that the parties can opt to continue spousal maintenance even after remarriage of the recipient, which they may want to know when considering the tax benefits of balancing child support and maintenance. However, the maintenance must terminate on the death of either party, and may not change or terminate on an event relating to a child. Otherwise, it will be considered disguised child support, and will not be deductable.

Get more details from an accountant after you and the clients have run the numbers. And remember that the new spouse of the recipient of taxable maintenance may object, because of the effect on the income taxes of the new family.

"Mediation is the perfect place to discuss the non-accounting financial benefits of rent regulation, in a way that could never be done in court."

Rent Control and Stabilization

Rent stabilized and rent controlled residences are not assets subject to equitable distribution. The few New York courts that have addressed it seem to think that the rights that come with rent-regulated apartments can be valued. For practitioners outside big cities, the benefits of rent regulation can include the right to renewal leases without end at below-market rents, and the right to buy the apartment at a steep discount if it is converted to cooperative or condominium ownership. As you can imagine, landlords often make very substantial buy-out offers so that they can rent or sell the apartment to new people who may not enjoy rent stabilization. There are clearly economic benefits for a rent controlled or rent stabilized apartment, but the rights aren't an asset according to accounting principles. The rights of a spouse who will stay in a rent regulated apartment after divorce can be *very* relevant in determining the level of maintenance and child support. Mediation is the perfect place to discuss the non-accounting financial benefits of rent regulation, in a way that could never be done in court.

THE MEDIATOR'S TOOLBOX, continued

Mediator's Differing Styles (the apostrophe isn't in the wrong place)

Mediators develop styles and approaches which often vary only slightly from case to case, unless there are reasons to do something different. If things have been working well, you can improve, but you shouldn't experiment, unless there is no progress or unusual problems explode.

One recent suggestion from a mediator was for the mediator to ask each party to write out the objectives he/she wants to achieve from the mediation. They can include financial terms or not, at each party's option. The parties rate them in order of importance, or give them each a relative weight from 10 to 100. The parties can save them confidentially, and revise them from time to time, or at some point share them to see how each party is doing in achieving their goals. Studies can be conducted on this approach to determine how well the process works. The studies should probably not involve couples in trouble, but rather students, volunteers or other groups given a prepared set of facts. Such an academic study may help create tools for resolving impasse in mediation, or for ratifying success, or for use in helping fine-tune a mediation or other settlement.

> *"If a party has expressed himself early, you can quite naturally show him that his later unproductive behavior or position is not helping him."*

Let the Parties State Their Own Expectations

Segue from the proposal that the parties write down a list of expectations and simplify a little. Most mediators start the first session with clients by discussing the process of mediation itself. We may summarize what mediation is, explain how we tend to practice it, invite questions, etc. We often think of this as part of the "contracting" process. This note proposes one simple idea to incorporate in almost all your contracting conversations.

Because we are the experts on ADR, we tend to explain the process in our own words. Careful mediators, as they do at many stages, may ask the parties to show some understanding, agreement or assent to the concepts and principles. You may find it helpful, in many ways, to go one step further: have each of the parties state, for him- or herself, what their intentions are for mediating, and what their expectations are from the process.

Some reasons to do this may readily present themselves. It shows what the party has learned from your explanation and what he or she may add as part of his or her expectations and hopes. It makes the parties really think about why they're in mediation, and the differences between mediation and other dispute resolution mechanisms. There's at least one more good reason. Because it may bear fruit only later, it might not be obvious.

Another reason to have parties express their expectations and intentions *by themselves, in their own words*, is so that later, you can remind them what *they* said. Suppose in contracting, a party says, "I want to try mediation because I want us to be respectful of each other, and to see if we can find a deal without too much fighting. I just want something that's fair to both of us." After you've described mediation to a couple that has sought you out in the first place, isn't it pretty likely a party would say something very much like that? It makes sense, it's not complicated, it sounds heartfelt. The party didn't just shake his or head Yes when you said those words. The party had to form and express the ideas him- or herself, so it's far more likely to be imprinted in the party somewhere.

THE MEDIATOR'S TOOLBOX, continued

Then what happens later? The party may lose his or her temper, or scream, or threaten to storm out. It's very powerful when you can then say to that party, "I see how upset you are. Don't stop what you are doing for me, but I just wonder. Is this getting you closer to your goal of treating yourself and Jane with respect?" Or suppose a party later says, "Why should I take only 20% or her income as child support just because she has those extra expenses? The Guidelines say I'm entitled to 24%!" How powerful is it for you to be able to say, "I understand that you want to be mindful of what might happen if you go to court. I know you want to be fair to Betty, because you told us that when we started. Is it more important to you now to get the most you might get if you went to court, or to figure out a child support amount that you can both afford and will be fair to both you and Betty?"

If a party has expressed *himself* early, you can quite naturally show him that his later unproductive behavior or position is not helping *him*.

All The Statutes of New York State

You won't need books, even though they are often more comfortable. If you want to read specific sections or topics, you can go right to them or search for them. Often, reading a provision of law helps mediators get past an issue which should not be in dispute, such as contributions to the care of a child in order to permit the primary custodial parent to work. All the statutes are here, the whole kit and caboodle. http://public.leginfo.state.ny.us/MENUGETF.cgi?COMMONQUERY=LAWS+&TARGET=VIEW

— Eli Uncyk and Chuck Newman

NY State Council on Divorce Mediation

Back To Contents

ASK THE ETHICIST: IN SUPPORT OF OUR ETHICS

By Joan A. Moo Young

As mediators, we have the obligation to uphold the highest ethics in our mediation practice. Our ethical obligation springs from not only our commitment, as a condition of membership in the Council, to uphold the Model Standards of Practice for Family and Divorce Mediation, but in a more personal sense, from the obligation we assumed in choosing mediation as a profession, motivated by a deep desire within to help create a better way of resolving disputes, and by extrapolation, to help create a better world.

Ethics in mediation fosters fairness, trust, respect, and confidence in the mediation process to settle competing interests, conflicting concerns, arguments, and hurt feelings. All these factors help in reaching agreements. Ethics show up when one party feels another party has done something wrong or is proposing to do something wrong or unfair, when applying conflicting standards, arguing differing views over what happened, or what is appropriate, or right, and between parties of diverse backgrounds, experiences and personal values. Ethics show up too, when a mediator must choose between conflicting personal interests and professional responsibility.

> *"In divorce mediation, ethical dilemmas can pop up suddenly and unexpectedly in the throes of facilitation"*

In divorce mediation, ethical dilemmas can pop up suddenly and unexpectedly in the throes of facilitating division of assets, financial support or parenting time. The mediator may address the dilemma in the moment or not recognize the ethical problem until after the fact — too late to do anything about it! Whether or not we are aware of the ethical problem, the impact of an ethical breach can be devastating, as it undermines the mediation process, and subjects the process and mediator to risk of complaints from disgruntled parties, allegations of ethical misconduct, and disciplinary action and financial sanctions.

When ethical problems confront us in family and divorce mediation, we may find ourselves short of knowing what to do, even with the Model Standards of Practice for Family and Divorce Mediation guiding us in what we must do, should do, or may do. The confluence of competing interests can easily derail our commitment to the high ethical standards of the profession that is needed to sustain trust, respect, and confidence. Is it any wonder then, that in spite of the many continuing education lectures, seminars, articles and books, competent mediators can find themselves looking for additional guidance to deal with complex ethical concerns in the course of a family and divorce mediation?

Is there *anything else* we might do to improve our ability to spot ethical dilemmas timely and to manage effectively the ethics of others and our own, to act ethically. Our familial background provided the seminal exposure to our first ethical challenge when we asked the question for the first time 'what should I do? Should I act to benefit myself, or the other? Or both? Asking the question, whether consciously or subconsciously required considering a host of factors and cost-benefit analysis to end up with the 'right choice.' Ethics is something we do instinctively and automatically. It sensitizes us to how our mind works and to the developing spectrum of right and wrong values garnered from personal experience and the external hierarchical dictates of culture.

I believe that by developing awareness of our personal ethics, we improve our awareness on

Ask The Ethicist, continued

the inside, and that this in turn secures the efficacy of our mediation. When we are self-aware, we gain greater awareness and control over our actions on the outside.

A mediator exerts a powerful influence on the mediation process, the mediating parties, and the mediation environment in facilitating agreements in mediation. We bring who we are as individuals to the mediation table, just as the parties do. As humans, we embrace or reject aspects of ourselves. We have attitudes and beliefs about ourselves, other people, the world, how things are or should be, about our own recognition and empowerment or lack, and inadequacy, we have our wants, desires, and entitlements, self-interest, and ideas of right and wrong. Mediation works best when the mediator knows this, and affirmatively cultivates mindful awareness of the attributes, qualities, beliefs, preferences and judgments everyone brings to the mediation table, and the recognition that the mediator's own presence can and often influence the mediation outcome — for good or bad. We may believe we know ourselves, and at some level, we do. However, the effectiveness of mediation depends on the mediator's ability to be attuned to personalities, motivations, hidden agendas and the ethics of others and ourselves.

"By developing awareness of our personal ethics, we improve our awareness on the inside, and this in turn secures the efficacy of our mediation."

It is a misnomer that mediators are neutrals when we realize how much of ourselves we bring to the mediation table. Knowing ourselves at a deeper level exposes the control that our personal tendencies have over us. There are unintended consequences that flow from our lack of awareness of the influence our inner qualities have on the mediation process. By developing self-awareness, we can see more of what is happening in the room. Our choices expand. We are able to understand and embrace the dynamics of the tensions, ambiguities, and uncertainties of ethical dilemmas that show up in the course of mediation. Self-awareness empowers us to act ethically and competently, and enables us to do our best under the circumstances, trusting our instincts to be appropriately responsive when we sense that something is wrong — or is not right — and to take appropriate action.

The need to act ethically happens in the moment. To act ethically, we must be present in the moment. When we are present in the moment we become aware that the ethics operating in the moment may include not only the responsibilities imposed by the Model Standards, but our own individual histories, experiences, beliefs, attitudes, judgments and inner knowing of right and wrong.

Self-awareness empowers our inner selves to be our ally. The theory of attention says that wherever we put our attention is where our energy goes. Thus, when we willfully focus our attention on what is happening inside — becoming aware of our tendencies, preferences, beliefs, judgments — we are actively energizing and developing our ability to see more, understand more, and so empower ourselves to be more effective in our role as mediators.

Keeping ethics in the forefront of our mind expands creativity in our thinking, choices, and action. We recognize what to do, to whom, or to where to turn for help when ethical dilemmas beyond our control show up. We recognize and understand what the parties are experiencing and what would be useful and helpful in the moment. We act with a clear intention of doing our best, even when we do not know what is best for the parties, as we can never know ultimately, what is best for another person.

ASK THE ETHICIST, continued

Awareness of what we are experiencing on the inside fosters emotional intelligence on the outside, and enables us to connect to our highest and best selves in making clear and ethical choices. In turn, we foster a mediation environment that supports the best in the parties at the mediation table — a win/win for everyone. Ethical conduct from self-aware choices feels good. Feeling good supports our health and happiness, energizes our self-confidence, relaxes our being, and brings compassion to our hearts and peace to our minds. Imagine yourself bringing such an inner atmosphere to the mediation table!

Joan Moo Young is a family law, collaborative and divorce mediation attorney in White Plains. She is a member of the Joint Ethics Committee of the New York State Council on Divorce Mediation and the Family and Divorce Mediation Council of Greater New York. She can be reached at (914) 761-0241 or jamy@joanmooyoung.com.

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NY State Council on Divorce Mediation

Back To Contents

INSIDE SCOOP/AROUND THE COUNCIL

Board Highlights

The Board of Directors of the New York State Council on Divorce Mediation meets four times per year. In order to keep the membership informed of Board activities, we present you with some of the highlights of the May 2013 meeting.

Treasurer David Louis reported that there was a cash balance as of March 31, 2013, of $85,579 and that the 2013 budget appears to be on course with projections.

Board members Clare Piro and Kathy Jaffe conducted an internal audit of the Treasurer's records and reported that everything was in order and extremely well organized.

President Bobbie Dillon reported that it looks unlikely at this time that the Office of Court Administration will approve proposed rules that would enable judges statewide to recommend mediation. OCA will likely hold information meetings around the state to gather more input.

Bobbie also reported that phase one of the website upgrade is completed and a new membership directory which will allow members to include a photo will be completed by summer.

The Council has agreed to sponsor the Academy of Professional Family Mediators Conference, which will be held in Denver October 3-6, 2013.

Bob Badolato reported that he continues to maintain the Council database, handle all mailings including email mailings for the Council, and bank deposits for membership and events. He also reported that any member who did not respond to multiple requests for the required Mediator Member training information has now been designated an "Affiliate Member" in the database and the membership directory.

Melissa Burns reported that in addition to creating the Conference flier and book and making arrangements for the conference facilities, meals, and Board meeting, she prepared materials for tracking CE and CLE credits at the Conference, typeset and formatted THE REPORT, and worked with the Public Awareness committee to update content on the Council website.

Public Awareness and Education co-chair Susan Ingram reported that Patty Murray, PR consultant, had secured two interviews for the Council — one on a local cable affiliate in the Capital Region and one on an National Public Radio affiliate. Patty is also planning to be available at the Conference to provide members with materials to promote their practices.

Patty Murray submitted a written report outlining the functional and design changes to the website, the new content that has been created geared toward the public, such as the new "Divorce Mediation" section, and the updating of the site on a regular basis with member blogs filled with content for consumers. She also reported that our social media sites are being upgraded to match our website branding and to ensure that new blogs on our website are automatically Tweeted and posted on Facebook. In addition, Patty has created collateral materials, such as pop-up banners, which can be used at events throughout the state, the "divorce mediation quiz" which can be downloaded from the site and used by members in promoting their practice, and the creation of a PowerPoint presentation on divorce mediation which members will be able to use as-is, or augment with their own slides for public presentations. Patty also promoted the Annual Conference throughout the State with professional organizations whose members refer to mediators, and to the media, which resulted in interviews and placements.

INSIDE SCOOP/AROUND THE COUNCIL, continued

Board Highlights, continued

Kathy Jaffe recommended the creation of an Internship Committee which would encourage our Accredited Members to offer internship or apprenticeship opportunities to new mediators so that they can continue their education and gain experience with supervision. The Board asked that an ad hoc committee be formed to explore this idea and develop and propose a plan.

The 2013 Downstate and Upstate Mini-Conference fees will increase by $20 to cover the increased costs to host these events.

The entire Board expressed its gratitude to the Annual Conference Committee and especially Co-chairs Dan Burns and David Louis for once again putting together such an exceptional Conference.

Board meeting minutes, once approved, are posted in the Member's Area of the website for any member who is interested in more detail (www.nyscdm.org).

NY State Council on Divorce Mediation

Back To Contents

INSIDE SCOOP/AROUND THE COUNCIL, continued

Public Awareness & Education Committee

By Helene Bernstein, Esq.

Susan Ingram, a NYSCDM board member, and Helene Bernstein, are co-chairs of the Public Awareness Committee. They have been working closely together for the past year with the goal of spreading the word about the virtues of divorce mediation to the public and the professional community. The Committee invites Council members to join this important committee.

Patty Murray, our public relations consultant, joined our fellow mediators at our Annual Conference in Saratoga Springs in May. Patty showcased our new website and answered questions about how it can assist our members improve the marketing of their practices. Patty got NYSCDM *two* broadcast appearances in the Capital District. Outgoing president Bobbie Dillon was interviewed at length on Northeast Public Radio and was given an in-depth segment on Look TV 8. In both appearances, Bobbie explained divorce mediation and its benefits in her accustomed clear and passionate way. Patty and her handy video camera interviewed various members about their thoughts about mediation. These vignettes are currently being edited and will be placed on the public portion of the website in order to educate the public on the advantages of mediation.

Patty will be working hard on a Power Point presentation on the basics of divorce mediation, which will be available to all Council members. The .PPT can be used as a tool for each member and can be tailored to showcase for the public that member's own talents and services.

Patty is consulting on the editing of a video to be placed on our website which will highlight April's public workshop about divorce mediation given at John Jay College The purpose of the video is to provide the public with an opportunity to view a typical divorce mediation role play and to provide information on the benefits of divorce mediation as a preferred option in resolving family conflict.

More and more members are submitting their blog entries and other writings to us, which are posted on our website and at social media sites. Thanks to the improvements on the website, we recently reached Number 1!

We would like to thank the Board for all the support during the past year, and encourage all members to donate to our Committee when renewing your membership to the NYSCDM. The rising tide of public awareness that we are trying to create will lift all boats, with direct advantages not only to the public, but to our practices. A special thanks to Melissa Burns for her continued support.

Helene Bernstein is a divorce mediator and attorney in Brooklyn. Her practice has been serving adults and children for the past twenty-five years. Helene is also on the Advisory Committee of FamilyKind Ltd., a nonprofit organization assisting families experiencing separation and/or divorce. Helene's email is helene@hbernsteinlawandmediation.com and her website is www.hbernsteinlawandmediation.com/

Back To Contents

INSIDE SCOOP/AROUND THE COUNCIL, continued

Tidbits

GETTING TO KNOW YOU ...

It's not just for *The King and I*.

In future issues of THE REPORT, we'd like to include a new column, "**TidBits**". As a professional organization, most of what we focus on together is our professions and how we practice them. But we're not just professionals. Many of us are also people, and sometimes people first. **TidBits** will be a place to write about general goings-on for NYSCDM members and their families. Certainly, it could include, for instance, members' awards, appointments, publications, promotions, moves, honors, life milestones, etc. But it doesn't have to be limited to that. Did you take an interesting course (mediation or completely unrelated)? Did your child get into college? Hole-in-one? Did you go to a concert or on vacation with a colleague? How was your vacation to an exotic place? What was your most recent Personal Best? Who helped you talk through a knotty problem? Whose kid is your kid playing soccer with? What great insight did you have? What struck you as funny? Read any good books lately? What did you learn from your child today? What can you add to "good & welfare"? You can tell us about yourself or ask friends to tell us.

THE REPORT is one of several ways that the Council keeps in touch with members and encourages members to be in touch with one another. There's also the website, blog, listserv, Facebook, Twitter, LinkedIn, YouTube, ... phew! We're offering this new "olde tyme" channel, which we hope will be fun. Please join in the chatter and encourage your colleagues. **Send your pearls and scoops to nyscdmpubs@yahoogroups.com**. **TidBits** will be as good as you make it. Thanks.

Back To Contents

INSIDE SCOOP/AROUND THE COUNCIL, continued

Upstate Mini-Conference

Register now at www.NYSCDM.org

Conference brochure:

http://nyscdm.org/nyscdmsite/wp-content/uploads/2013/08/NYSCDM-Upstate-Mini-Conference-Flier.pdf

"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, 2012 – July 24. 2015." CLE credits will be earned depending on sessions attended. Financial hardship policy is available upon written request. To apply, write Kathy Jaffe at 978 Route 45, Suite 107, Pomona, NY 10970

Back To Contents

Feel Free to Share!

THE REPORT is created for the benefit of NYSCDM members and selected other interested readers. Members are welcomed to send copies of THE REPORT, or integrally complete sections of it, to clients, professionals, other people interested in alternative dispute resolution and researchers, as long as the NYSCDM is fully credited, copyright is noted, and information about contacting the NYSCDM is provided to the recipient.

DON'T FORGET TO UPDATE YOUR NYSCDM MEMBER PROFILE!

We have a new member database to make it easier for the public to "Find a Mediator" on our website. You can update personal information, add a bio and photo, even links to your website and social media pages!

Questions? Contact Melissa Burns at mburns@nyscdm.org

NY State Council on Divorce Mediation