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Council News

The Newsletter of the NYSCDM

VOLUME 2016, ISSUE 1

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Letter from the Publications Committee

We all look forward to spring. Warm breezes, tulips and daffodils, longer days. Spring is renewal and spring is taxes. In this issue we provide content to help you embrace both.

The first order of business is the upcoming NYSCDM Annual Conference, to be held May 5th-7th (Thurs-Sat.) in a new location, Excelsior Springs at the Courtyard Marriott, in beautiful downtown Saratoga Springs. The lineup of speakers and topics promises to provide one of the best conferences yet. See the conference information enclosed, and be sure to sign up for the conference and "refresh" your mediation practice.

April is membership-drive month. Refer a new member to NYSCDM and enter a chance in the conference draw for a \$200 Visa card (you don't have to be at the conference to win). We all know someone who has been hesitant about joining NYSCDM, but with a little coaxing could be convinced to enjoy the full benefits of membership; and there are many! Go ahead, start coaxing!

A thought-provoking article entitled "Mediators As Neutral: Who Are We Kidding?" written by our own NYSCDM member, Trish Blake-Jones, compels us to consider an issue that affects the very essence of our work as mediators: neutrality. Can we be neutral third parties for our clients? Is there such a thing as neutrality?

New York State Council on Divorce Mediation

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In the December 2015 issue we reported on the annual NYSCDM Downstate Symposium, which featured Lt. Jack Cambria, retired NYPD hostage negotiator. In this issue, Steven Stieglitz, Deborah Hope Wayne's student intern, provides an in-depth summary of Lt. Cambria's talk.

Tax Tidbits, by Mark Josephson, NYSCDM President, provides an always-useful review of tax information relevant to divorce mediation. In this issue, he reviews IRS rules which apply to child tax credits, exemptions and deductions.

Susan Ingram, chair of the Public Awareness Committee ("PAC"), reminds us in her column that there are many opportunities to "spring-clean" our practice. Public Information Consultant, Patty Murray, will present a marketing seminar at the Annual Conference, and again, PAC will host a fierce contest to Tweet or post to Facebook the most comments/photos with **#NYSCDM** and **#DivorceMediation**. Winners win wine.

As always, the Publications Committee welcomes your ideas for content *and* your written submissions to this newsletter. Contact Trish Blake-Jones at tbj@trishmediates.com.

Thank you,

The Publications Committee, NYSCDM



President's Letter



Mark A. Josephson,
President, NYSCDM
(2015-2017)

Welcome to spring, and to the first 2016 issue of NYSCDM's *Council News*.

We're in the sweet spot, between the very successful Downstate Symposium held in Manhattan this past December, and the upcoming Annual Conference and Pre-Conference to be held in Saratoga Springs on May 5th through 7th. Co-Chairs Dan Burns and LJ Freitag, with the rest of the Conference Committee, have put together a very informative program featuring specific mediation and divorce training, with a strong emphasis on the Transformative model of mediation. Plus, there will be ample opportunity for fun and connection with both new and long-time colleagues and friends. I am, myself, excited to see the new venue: the Excelsior Springs.

You can read more about the conference at <http://nyscdm.org/conferences/>, and about the hotel at <http://www.excelsiorspringssaratoga.com/>.

The Council has been busy on a number of fronts. You will read about some of them in this issue, but there are even more. One example is the Membership Committee's initiative in creating new ways to encourage mediators and allied professionals to join the Council. One such initiative is the new-member drive you will read about in this issue. We are also expanding our outreach to related organizations and their members. Additionally, the Board is putting a lot of thought and energy into improving not only our website, but all of our technology-related supports and initiatives.

Among the most important purposes of the Council is to be of service to our members, and to provide them the opportunity to serve their profession and their colleagues. Getting your feet wet with involvement in the work of the Council is easy; just join a Committee. They are listed at <http://nyscdm.org/about-nyscdm/committees/>. We would love to hear from you. Thoughts, comments, suggestions, criticisms and kudos are all welcome. Feel free to contact any Board members you know, or would like to know, or who are in your part of the State. They are listed on the cover of *Council News*, and their contact info is at <http://nyscdm.org/about-nyscdm/nyscdm-board-of-directors/>. Or, feel free to contact me at mark@murrayjosephson.com.

Enjoy the burgeoning spring, enjoy this issue of *Council News*. I look forward to seeing all of you in just a few weeks in Saratoga Springs!

NYSCDM Spring Membership Drive



March 15th-April 30th, 2016

Bring in a NEW Member, Get a Chance to Win!



HOW? HAVE SOMEONE WHO IS A NON-MEMBER JOIN THE COUNCIL BETWEEN MARCH 15TH AND APRIL 30TH.

WHY? BECAUSE NYSCDM IS THE FIRST STOP FOR SUCCESSFUL NEW YORK DIVORCE MEDIATORS. AND BY JOINING NOW, NEW MEMBERS WILL BE ELIGIBLE FOR THE REDUCED MEMBERSHIP RATES FOR THE ANNUAL CONFERENCE, MAY 5TH THROUGH 7TH.

WHAT'S IN IT FOR ME? *For each individual you refer who joins, you receive an entry in the drawing for one \$200 gift card, to be held at the 2016 Annual Conference.*

IMPORTANT: Ensure that your name is noted when the individual joins; you can confirm with Melissa Burns, nyscdmdirector@gmail.com. New members must join before April 30th, 2016.

YOU CAN START ANY TIME NOW – GOOD LUCK!

Mediators as Neutral: Who Are We Kidding?



By Trish Blake-Jones

“Neutrality is physically impossible to attain as a personal attribute for a mediator. The same applies to the concepts of ‘just outcomes’ and ‘balanced power’. They are all theoretical constructs which do not exist outside of theory.”

So begins Greg Rooney’s 23-page paper that deals with the heart of our client work: neutrality, balancing of power, and fair agreements. The article is, “Rebooting Mediation by Detaching from the Illusions of Neutrality, Just Outcomes and Balanced Power,” Feb. 12, 2015 (the “Rooney Article”). It is available here: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2564035. Mr. Rooney has been a practicing mediator in Australia for 24 years. Trained as a lawyer, he specializes in mediating disputes in the early stages of the litigation cycle.

I read the Rooney article the same week I attended not one, but two, seminars in the Rochester area concerning mediator neutrality. In this article I attempt to capture key ideas from these workshops combined with a short review of Rooney’s lengthy contemplation of neutrality.

It is commonplace in our field to use the adjective “neutral” to refer to mediation, mediators, and process. “Neutral” is a catchall phrase that can mean balanced, impartial, non-opinionated, and non-judgmental. In practice it can represent a mediator’s conscious attempt to hold space for parties and to support, without bias, the work they are doing to resolve their dispute. (For a superb blog posting on holding space, see: <http://www.heatherplett.com/2015/03/hold-space>)

Increasingly, however, the literature and thinking on mediation suggests that we are *not* neutral and should not use the word as a description of our work. Rooney writes that early on, the attachment to neutrality was a boomerang concept, to differentiate mediators from the advocacy roles held by attorneys and other professionals in the conflict resolution field. In reality, he says, the term does mediation a disservice because it undervalues the role and contributions mediators provide, and it suggests “that mediators bring nothing of themselves to the process.” Rooney Article pp. 4-5.

Mediation is a moment-to-moment exercise, built on partnership with the parties, and is uncertain and unpredictable. Mediators play a leading role in managing the uncertainty, are full participants with the parties in the dynamics of the session, and should not be considered as sideline participants. If we detach neutrality from the concept of mediator, we can begin to consider a mediator’s use of self. Rooney Article p. 8.

Rooney references quantum physics, which considers the “observer as a co-creator of [the observed] world” and hence, “you cannot eliminate the observer from that which is being observed.” Additionally, in psychoanalytic psychotherapy literature, the concept of “the analytic third” is understood as the shared space between the parties and the professional (*mediator*) when they are together in the moment. Rooney Article p. 3. A mediator’s experience, knowledge, and biases all come into the room with him or her, and this can’t but help influence the outcome of mediation. That outcome may be efficient, it may be fair, it may be supportive, but it’s not neutral.



Image source: www.bartechgroup.com 1

Mediators as Neutral: Who Are We Kidding?, continued

In the training session held on January 11th, 2016, at The Center for Dispute Settlement in Canandaigua, mediators began by discussing what moves us “off” neutral when we are working with clients. It can happen when we are reacting to a party: we may feel frustrated with or irritated by the party, or we can be impatient with the pace of progress. Our reaction may lead us to an intervention in the mediation, which objectively could be viewed as non-neutral, even if the parties do not notice it.

It is important in these instances to be aware of how things have shifted for us internally, how we are feeling, what it means for our behavior in the mediation process and, more important, how we are holding space for the parties. We should avoid trying to “fix” the problem or problems as we see them, and dismiss feelings that we have to solve something with each mediation. It is human and normal to want to produce a result when there is an effort. But forcing a result may be at the risk of our impartiality.

Indeed, we have an emotional reaction to everything we experience: positive, negative, or neither. What we need to pay attention to is when we are veering too far one way or another in a mediation, that is, when we are having a reaction, too positively or too negatively, to one of the parties. Liking a party too much is as non-neutral as disliking a party too much. All the while, we should be careful not to give the parties any reason to think we are “siding” with one or the other.

The more the group discussed the neutrality concept, the more evident it was that it is a construct, not a reality. Rooney suggests that the first step for practicing mediators is to be conscious of what we are thinking, because how we think defines how we act. He believes the optimum state is to be openly receptive to the unknown, or as described in Zen, “the don’t know mind” or “no mind.” Rooney Article p. 11.

In a presentation, January 12th, 2016, to the Rochester Association of Family Mediators (RAFM), Bobbie Dillon, long-time mediator and trainer (and past-President of NYSCDM), said she suggests to mediators-in-training that neutrality is a fallacy. She explains that we are human beings and simply by virtue of our life experiences and knowledge accumulation, we cannot be neutral. But, she says, mediators are called upon to behave in an impartial way.

Mediators and authors Michael Lang and Alison Taylor have written about a Constellation of Theories, a comprehensive belief/value system that every mediator has, even if we don’t recognize it. “Mapping Your Constellation of Theories,” in *The Making of a Mediator*. San Francisco: Jossey-Bass, 2000, pp. 93-118. This system affects our decisions and choices as we work with parties. The authors suggest that each of us has a large and expanding constellation, building upon our core beliefs with new information and experiences, such as the education we obtain by attending NYSCDM conferences. We cannot be the same mediators we were last year, or even yesterday.

It is commonplace for mediators to use “neutral” as a descriptor of our actions and ourselves: in our websites, in everyday conversation, in describing mediation. In truth, we are tasked with the important role of supporting and leading parties through mediation in a safe space. We bring unique skills, knowledge and experience. As Rooney says, we have effect; we create a new reality just by the fact of being in the room. Mediators have much to offer, and increasingly, we may acknowledge that neutrality is a construct of theory, yet in practice, only a pursuit.

Trish Blake-Jones is a mediator in Rochester, NY. She has a B.Comm. (U. of Alberta) and a Graduate Diploma in Conflict Resolution (Carleton University, Ottawa). She provides mediation services for business conflicts, family disputes, and separating/divorcing couples. Trish is the Chair of NYSCDM's Publications Committee. She can be reached at Blake-Jones Mediation LLC, www.trishmediates.com, or tbj@trishmediates.com.

Public Awareness Committee

Win Wine via the Social Media Challenge May 5th-7th, 2016

The Public Awareness Committee is looking forward to seeing everyone at this year's Annual Conference **May 5th-7th, 2016** at the **Excelsior Springs at the Courtyard Marriott** in Saratoga Springs. Building on the success of last year's exciting and fun Social Media Challenge, we will be encouraging even more of you to tweet and post about conference activities. So, if you have not done so already, add your Twitter and Facebook accounts to your smart phones or other devices. Also, be sure to follow the Council on Twitter@NYSMediate and like the Council at [facebook.com/NYSMediate](https://www.facebook.com/NYSMediate). We will follow and like you in return!

Officially, the three conference attendees who post on Facebook and/or Tweet the most times during this year's Annual Conference will each earn **a choice bottle of wine as a reward**. (Full guidelines will be handed out at the conference.) Unofficially, we gave out more than three bottles of wine last year to a few honorable mentions, so the more you raise awareness on social media using the hashtags **#NYSCDM** and **#DivorceMediation**, the better your chances are for a libation.

Grow Your Practice!

During the conference, PAC's marketing and public relations consultant, Patty Murray of Murray Public Relations, will be leading an interactive session entitled "**Practical and Effective Ways to Market and Grow Your Divorce Mediation Practice.**" Patty will address simple, practical and cost-effective marketing strategies to help you market and grow your divorce mediation practice, and suggest tactics to help you attract new clients. In addition, we will review free marketing tools available to you on NYSmediate.org. If you have questions in advance, or topics you would like to see covered, please email Patty@MurrayPublicRelations.com by March 31, 2016.

We Need Your Blog Articles!

As always, PAC encourages you to send us your new or repurposed blog articles for the Council's blog. If you promote your blog to an email list, please add Patty@MurrayPublicRelations.com to your distribution list.

Join Us!

If you would like to join the Public Awareness Committee, we encourage you to do so by contacting PAC Chairperson Susan Ingram at susan.ingram.esq@gmail.com.

Lieutenant Jack Cambria: Turning Hostility To Understanding

By Steven Stieglitz



Steven Stieglitz

Editors' note: Lt. Jack Cambria (Ret.) was a featured speaker at the December 2015 NYSCDM Downstate Symposium, held at John Jay College of Criminal Justice in New York City.

Lt. Jack Cambria, recently retired, is a decorated lieutenant, commanding officer, and was chief hostage negotiator of the New York City Police Department. For many years, he was called upon, in life threatening situations, to deal with some of the most difficult personalities. From such circumstances, he has gained valuable insight into dealing with hostile and high-conflict situations. He spoke of being able to look past the first impression gained through first sight, and to ask instead how one can best deal with each individual to learn how to make the next encounter that much easier.

One of Lt. Cambria's important pieces of advice was to learn the difference between listening and waiting to speak. Often in everyday situations, we find ourselves involved in conversations waiting to counter the next point with our own input. The lieutenant stressed that instead of waiting, we should listen to each detail of what the other person is saying, and truly recognize the impact that each thought has on the topic at hand. Only after that attention and processing should one respond. The best way to understand someone is to listen to what they have to say. Although one could never truly know another individual's life experiences, attempting to connect emotionally with their thoughts and feelings can go a long way in resolving unnecessary tension and confusion between people.

Most people would assume that there is a defined timeframe to become a hostage negotiator, after a set course of training. Lt. Cambria explained that there is no such thing as a completely trained negotiator, for each day one encounters, and learns from, new experiences. Professional and personal difficulties can even have a role in the development of a successful negotiator, and the only way to stop improving is to believe that there is nothing left to learn.

If hostility combined with an unwillingness to negotiate is the disease, Lt. Cambria spoke of the "CURE". Compassion, Understanding, Respect, and Empathy are essential components of a hostage negotiation.

A negotiator must understand that if a person is focusing on a seemingly unimportant demand, it could be incredibly important to the individual. In basic terms, importance is subjective, and if it is important to the individual, then it is important. Rather than attempting to explain why the topic is unimportant, the negotiator must understand that this is an important point, and that it will be addressed further in the discussion. Through respect and understanding, a good negotiator conveys the proper message and tone, and promotes a problem-solving atmosphere. After all, the quickest way for someone to remain angry with you is for you to remain angry with him or her.

Lastly, Lt. Cambria stressed how important it is to have faith in the process. One shouldn't push too hard for a quick result, but rather let the process work itself out and understand that speedy isn't always efficient. A poor job done in ten minutes is not nearly as effective as a proper job done in an hour, and it is important to remember that we are reaching for quality over quantity every time.

Lt. Cambria has served this country for decades, seeing every walk of life, dealing with almost every situation imaginable. If such a widely-experienced man believes that he is still learning every day, there is no reason to think that anyone has amassed enough knowledge to ever stop learning.

Steven Stieglitz is a legal intern at Deborah Hope Wayne, P.C. Collaborative Law and Mediation Offices in Purchase, New York. Steven is a third year student at Pace Law School with an expected graduation date of May 2016. After graduation, he hopes to pursue a career in the alternative dispute resolution field.

Tax Tips: Children and Divorce: Exemptions, Credits and Deductions

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

Parents who divorce or separate are faced with the important question of who is entitled to claim the dependency exemption for their children. The right to claim a child as a dependent on your income tax return can make a substantial difference in your final tax bill. Claiming the dependency exemption opens the door for a host of tax incentives that will lower your tax liability.

Claiming a Child as Your Dependent

The general dependency rule for parents who are divorced, legally separated, or who lived apart for the last six months of the year, is that the parent with “custody” of the child for the greater portion of the year is entitled to claim the child as long as the child is under age 19, or a full-time student under age 24.

Custody for purposes of the dependency exemption is determined by the written separation agreement, judgment of divorce or separation judgment, regardless of who has physical custody. If legal custody is not specified, or if there is joint custody, the parent who has physical custody for the greater part of the year will be deemed the custodial parent. If the child resides with each parent for an equal number of nights throughout the year, there is a tie-breaker rule which treats the parent with the higher adjusted gross income as the custodial parent. The dependency exemption for 2016 is \$4,050 per child and is phased-out when income exceeds certain thresholds.

The custodial parent also may be eligible to file as head of household status, as long as certain criteria are met. Filing as head of household will give the custodial parent access to more favorable tax rates. To be eligible for this status, the parent cannot be married or is “considered unmarried” (a tax term which is defined in IRS Publication 501, noted below), must maintain a home for a qualifying child for more than half of the year, and must pay more than half the cost for keeping up the home. The custodial parent may still be eligible to file as head of household, even if the custodial parent releases the dependency exemption to the non-custodial parent, as long as all the criteria mentioned previously are met.

Dependency Exemption Released to the Non-Custodial Parent

There are exceptions whereby the “noncustodial” parent may claim the child as a dependent. In order for this exception to apply, the custodial parent must release the claim to the exemption for the child. This is done by completing IRS Form 8332, Release/Revocation of Release of Claim to Exemption for Child by Custodial Parent. This Form must be signed by the custodial parent and attached to the noncustodial parent’s income tax return in any year they are entitled to claim the child. In lieu of Form 8332, an alternate document that is identical in substance to Form 8332 may be attached to the noncustodial parent’s income tax return. This document must be a separate document designed for the sole purpose of releasing the claim for exemption and cannot be a written declaration included in a court order, decree or separation agreement.

Children and Divorce: Exemptions, Credits and Deductions, continued

Tax Credits and Deductions

A parent claiming the dependency exemption may be entitled to certain tax credits and deductions. The child tax credit of \$1,000 per child is available for qualifying children under age 17 as long as the parent's income does not exceed certain thresholds. The child and dependent care credit may be available for a working parent who pays for qualified child care expenses for children under age 13. However, this credit will only be available to the custodial parent, even if the non-custodial parent is entitled to claim the dependency exemption. Various education credits and benefits may also be available to the parent claiming the dependency exemption. Some examples of potential education tax incentives include the American Opportunity Credit, Lifetime Learning Credit and deduction for student loan interest.

Medical expenses will be deductible to the parent who paid for the medical care, regardless whether the parent is entitled to claim the dependency exemption, as long as deduction thresholds are met.

Summary

Mediators should carefully consider, and address with their clients, which spouse will receive the dependency exemption for the children. Various income and deduction limitations may reduce, or even eliminate, the tax benefits associated with the claim for the dependency exemption and the related tax credits and deductions.

However, unless a mediator is also a properly qualified lawyer, accountant or other tax advisor, the mediator should not offer clients tax advice. Rather, armed with the knowledge that there are tax issues to be considered, the mediator can help guide the clients' understanding of these tax issues, and caution them to obtain the necessary advice before making a final decision.

For more information regarding the Internal Revenue rules governing the dependency exemption, see IRC Sec. 152 and Federal Tax Regulations §1.152-1. For more information regarding the Internal Revenue special rules for children of divorced or separated parents or parents who live apart reference, Federal Tax Regulations §1.152-4. Also refer to the Internal Revenue Service's Publication 501 (2015), Exemptions, Standard Deduction, and filing information, available at <https://www.irs.gov/pub/irs-pdf/p501.pdf>. Reference Form 8332 at www.irs.gov/pub/irs-pdf/f8332.pdf. Reference IRS Publication 972 (2015) for more information on the Child Tax Credit at <https://www.irs.gov/pub/irs-pdf/p972.pdf>. Reference IRS Publication 502 (2015) for more information on Child and Dependent Care Credits, <https://www.irs.gov/pub/irs-pdf/p503.pdf>. Reference IRS Publication 970 for Tax Benefits for Education, <https://www.irs.gov/pub/irs-pdf/p970.pdf>.

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NYSCDM's Mission Statement:

- To promote the highest professional standards for divorce mediation.
- To assist and encourage mediator excellence and success.
- To increase public awareness of the financial and emotional benefits of a mediated agreement.
- To promote mediation as the first choice when couples separate, divorce or face family conflicts.

Check out our blog: <http://nyscdm.org/category/blog/>

Upcoming Events:

May 5-7, 2016: NYSCDM 33rd Annual Conference: Transformations in Mediation

Join the Council in Saratoga Springs, NY for our Annual Conference. This year, we will be holding the event at a new location: [Excelsior Springs at Courtyard by Marriott](#), just a short walk from Downtown Saratoga!

Registration is open! Visit <http://nyscdm.org/conferences/> or download the [conference brochure](#).

Thursday March 31, 2016: FDMC Continuing Education Program: "Special Needs in Mediation: What Mediators Need to Know When Working With Parents of Special Needs Children". The program will be held at the Greenburgh Public Library, 300 Tarrytown Road, Elmsford, New York 10523. 1:00 p.m. to 3:00 p.m.

Feel Free to Share!

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