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Council News

The Newsletter of the NYSCDM

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Letter from the Publications Committee

Summer is finally upon us. A time to relax, renew, reflect, and, sometimes, to reinvent one's self. Take this issue to the beach, the mountains or wherever you may be spending your free moments. A great deal of information is provided by our colleagues in this issue that will stimulate you to use the summer productively and return more the wiser! And, don't let the summer pass by without planning to attend the upcoming NYSCDM Annual Upstate Symposium to be held in Corning, NY on September 10, 2016. Keep an eye out for the e-mails.

The 33rd Annual Conference held in Saratoga Springs was fun, informative and a great success. Mediation skills and the knowledge necessary to implement agreements were definitely honed in Saratoga. Speakers covered a multitude of issues including child support, maintenance, pensions, use of the Transformative Method, and the "how to" of mediating with the narcissist. At the conference the Membership Committee had the pleasure of informing everyone in attendance that the April membership drive brought twelve new members to the NYSCDM. Let's work on doubling that number in 2017.

In the "old days", summer meant finding a great book to curl up with; the kind made out of paper! Deborah Hope Wayne provides an insightful review of the book entitled "Daring Greatly: How the Courage to be Vulnerable Transforms the Way we Live, Love, Parent and Lead, by Brene Brown, Ph. D., MSLW. It looks to be a terrific summer read for all mediators interested in expanding their self-knowledge and mediation skills.

Understanding ourselves, learning to deal with different personalities, and expanding our repertoire for successful facilitation of the process is always an important part of mediation. As important is the financial information we bring to our clients so they can make well-informed decisions. In this issue Donna LaScala, member of the Education Committee, provides financial information regarding social security benefits in her article entitled "How HR1314 Changed Social Security". We don't need to be experts on social security, but as mediators we do need to know enough to point our clients in the right direction to obtain expert advice.

The effect of the tax code on maintenance (alimony) is another area mediators need to have their client's consider. Our own esteemed NYSCDM President, Mark Josephson, provides essential information and advice in "Tax Tidbits" relevant to tax issues to be considered when making decisions about maintenance.

So, members, go forth, enjoy summer and use the time to relax, renew and reflect. We hope to see you all at the NYSCDM Annual Upstate Symposium on Saturday, September 10, 2016 where we can share our summer experiences and continue on our journeys to becoming even better mediators.

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

New York State Council on Divorce Mediation Publications Committee:

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Lauren Abramson

Chuck Newman

Melissa Burns, Production Manager



President's Letter



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

As we approach the summer months, I want to welcome you to this current issue of the Council News, NYSCDM's newsletter.

This issue is filled with some of the highlights of the Annual Conference, which was, as always, enjoyable and educational. Seeing long-time friends, meeting new colleagues, sharing thoughts, ideas, and experiences with each other, made the trip all the more worthwhile.

This issue also includes other interesting information including articles on Social Security, Tax Tips, a Book Review, Membership Update, and more. I always look forward to reading the articles, which shed light on various topics and keep me informed about Council activities.

As the Council continues to grow, I encourage both new and long-time members to start and/or continue to share their thoughts and ideas. The Council thrives on the interaction we have with each other. So, to make the most of your membership, reach out to one another from time to time via telephone or e-mail, and maybe meet for the occasional cup of coffee. And of course, make time to visit with each other at the Annual Conference, Upstate Symposium, and Downstate Symposium. To contribute your knowledge and experiences by writing articles in the Council News, reach out to Trish Blake-Jones, Publication Chair, tbj@trishmediates.com. To write a blog on our website, reach out to Patty Murray, Patty@murraypublicrelations.com. Also, it is fun and easy to get to know one another when working together on a project for the Council via one of our many committees, <http://nyscdm.org/about-nyscdm/committees/>. We look forward to being inspired by your involvement with the Council.

Remember, the more members we have, the more opportunities we create for ourselves. So, please reach out to your mediator friends and colleagues who are not members, and encourage them to join our wonderful organization. They may contact John Piper, Membership Committee Chair john@jrpiper.com to join.

I also want to share my excitement that we are moving ahead over the summer with updating our website. The new website will be more robust, easier to use, and offer more resources and opportunities to help you grow your practice. I look forward to sharing new and exciting things about the website and Council as the year progresses!

Finally, I want to offer my sincere appreciation to everyone who has volunteered their time, and committed their talent, to making the Council a valued organization where members learn together, sometimes work together, often form lasting friendships, and always elevate the status of our profession.

I am eager to see everyone in Corning, New York for a very special Upstate Symposium on September 10th, 2016. Until then, enjoy the summer!

The 33rd Annual Conference of the New York State Council on Divorce Mediation

Submitted by: Annual Conference Committee

Members attending the recent NYSCDM Annual Conference in Saratoga Springs enjoyed a unique experience when Pre-Conference presenter, Louise Phipps Senft, Esq., discussed how she uses the Transformative method when working with couples seeking a divorce. In fact, she stated that one out of every eight of her clients do not get divorced! Part of the reason for this, in her opinion, is that the Transformative method allows couples to gain a greater understanding of their relationship, which often leads to reconciliation. Many attendees mentioned that this was perhaps the first time they had heard someone explain how the Transformative approach works in divorce mediation.

Perhaps the highlight of the first day was when Christine Hickey, Esq., was announced during dinner as the winner of the Abel Award for her years of service to the Council. Jill Sanders-DeMott, JD, introduced Christine with a summary of the many contributions Christine had made to our organization for over 25 years. It would be hard to find anyone more deserving of this award.

Friday brought a number of outstanding breakout sessions with topics ranging from child support modifications to the marketing of our mediation practices. In addition, Members learned about pensions, ethics and core competencies. The day ended with an Update on the Law plenary that included a memorable power point presentation by Dan Burns, Esq., who managed to deftly integrate humor with salient case law.

Saturday came early for many of the Members who attended a “reception”, hosted by a couple of our Past Presidents, that continued into the wee hours of the morning. Fortunately, Wendy Behary, author of “Disarming the Narcissist... Surviving and Thriving with the Self-Absorbed”, was up to the task and kept us awake with fascinating stories about her specialized area of therapy. Wendy’s clear message was that we are capable of working with and around narcissists, even when we think we can’t.



Louise Phipps Senft, Esq., Presenting on Transformative Mediation



Jill Sanders-DeMott (left), and Abel Award Recipient, Christine Hickey



Left to Right: Deborah Hope Wayne, Philip Wild, Kate Hogan, Louise Phipps Senft, Daniel Burns, and Rod Wells

The 33rd Annual Conference, continued

The morning’s final breakout sessions included one by Wendy on “Narcissism GPS”, as well as a session on Trade Union Pensions and a lively discussion on what makes a great Mediator.

The Conference ended with a clearly presented and enlightening overview of the new “Spousal Maintenance Guidelines”, by Eric Tepper, Esq.. Eric is one of the authors of the new statute and was able to provide us “behind the scenes” information about how the law was created by representatives from various interest groups throughout the State.

One attendee of this year’s Conference, Bill Hoefler, Esq., eloquently summarized his thoughts in an email, which included, *“I’ve only missed one Conference in 13 years. Why? Because by going, I affirm my commitment to become the best professional divorce mediator I can be. I always learn new ideas, techniques and skills not only from the presenters, but also from my colleagues who ask questions, challenge the presenters, and talk about how they do things.”*

Editor’s Note: On behalf of NYSCDM membership, we would like to acknowledge the unflagging work of the organizing committee in presenting a first-class Annual Conference. Thank you to Dan Burns, LJ Freitag, Melissa Burns, Ada Hasloeher, Kathy Jaffe, and Susan Ingram, Rita Medaglio-Barrera and Mark Josephson.



Louise Phipps Senft, Esq., Presenting on Transformative Mediation



Left to Right: NYSCDM Members, Chuck Newman, Renee LaPoint, Connie Fraser, and Susan Burton



NYSCDM Members engage in group discussions during a presentation at the 33rd Annual Conference



How HR1314 Changed Social Security

Submitted by Donna LaScala, Investment Advisor Representative with American Portfolios Advisors

Member of the Education Committee of the NYS Council of Divorce Mediators



Donna LaScala

What you need to know about how HR1314 changed Social Security and how to effectively mediate the income discussion.

The Bipartisan Budget Act of 2015 has impacted the options an individual has when it comes time to file for and receive social security benefits. Everything stays the same if your clients were **born before 1954**.

If an individual was born before 1954 and reaches full retirement age they can file for retirement benefits but “suspend” their application in order to accrue delayed credits and claim an increase at a later date, up to age 70. The individual would not receive his worker benefits, however, the IRS allows a spouse or dependent child to file for and receive spousal or dependent benefits while the worker’s benefits are suspended. The spouse can collect up to 50% of the workers benefit. **THIS ALSO APPLIES TO EX-SPOUSES** as long as s/he has reached age 62 and has not remarried. **HOWEVER**, if your clients were **born in or after**

1954, you need to pay close attention to the changes that went into effect as of May 1, 2016 regarding the options to file and receive social security benefits.

Under the new rules, effective April 30, 2016, **no** benefits can be paid while the worker’s benefits are suspended. Therefore, a spouse, ex-spouse or dependent child can no longer receive benefits if the worker is not receiving his/her own benefit payments.

Note: Suspension of benefits can only be done if no one is receiving payments from the workers benefit.

The same applies for the “restricted application” filing option.

Under the old rules, a married person who had reached full retirement age could file a “restricted application” for spousal benefits after the other spouse had filed for their worker benefits and suspended their application. This allowed the individual to collect spousal benefits while accruing delayed credits under their own benefit. In combination with the “file and suspend” strategy this allowed a couple to each earn delayed credits while still receiving “spousal” payments from Social Security. Again, this applies to an ex-spouse as long as they are aged 62 and have not remarried.

Under the new rules, anyone born in 1954 or later will be deemed filing for any and all benefits they are entitled to under their own worker benefits and will not be able to change the payment amount at a later date.

How HR1314 Changed Social Security, continued

As mediators, it is important to be aware of these changes. You may want to consider suggesting language for an agreement requiring a worker spouse to notify an ex-spouse when the worker spouse files for social security benefits and whether the worker spouse has “suspended” the benefits. Upon notification, the ex-spouse will then have the option to file for his/her own benefits or spousal benefits depending upon whether born prior to 1954 or thereafter..

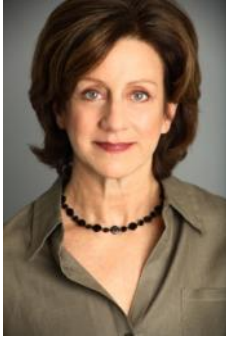
While as mediators we are not acting as financial advisors, informing couples about the existence of changed Social Security legislation allows them to investigate, and discuss if desired, the implications for future expected cash flows.

Donna LaScala, a Registered Investment Advisor Representative, has been in the financial services industry for over 25 years. Her training as a Mediator and her various experiences as an independent financial advisor are tools she brings to the table when acting as a financial neutral during divorce mediations. Donna is fully insurance licensed and securities registered through American Portfolios Financial Services Inc. member FINRA.

Editors Note: There will be a presentation at the NYSCDM Annual Upstate Symposium regarding social security, including several useful case studies.



Book Review



Deborah Hope Wayne, Esq.

Daring Greatly: How the Courage to be Vulnerable Transforms the Way We Live, Love, Parent and Lead, by Brene Brown, Ph. D., MSLW

Book Review by Deborah Hope Wayne, Esq.

I have reached a point in my career and my life where I enjoy pushing myself beyond my self-imposed limits. In Daring Greatly, sociologist Brene Brown provides insight into how we connect with others and how we each wrestle with vulnerability, courage, worthiness and shame. This book inspired me to try new ways of working with conflict and opening myself up to new experiences. According to Brown, having the courage to engage when we feel vulnerable can transform how we live and work.¹

One of the reasons I enjoy mediating is that I enjoy working with the puzzle that each case brings. I am always hopeful that we will achieve the goals we set in our mediation sessions. Hope is a way of thinking or a cognitive process rather than an emotion, according to Brown. It means staying flexible in the way we work with our clients with the goal of reaching a good result. We sometimes have to work at staying flexible by ceding some amount of control.

Ms. Brown's work in this area is relevant to mediation because a mediator has to be able to manage uncertainty. To do this well, we need to know how to take calculated risks in a mediation session and cultivate trust. We must understand our own vulnerability and that of others. Ms. Brown teaches us that disengagement is the issue underlying the majority of family and other problems. According to her, we disengage to protect ourselves from feeling vulnerable, feeling shame and feeling lost without purpose. We cultivate change when we close the gap on disengagement.

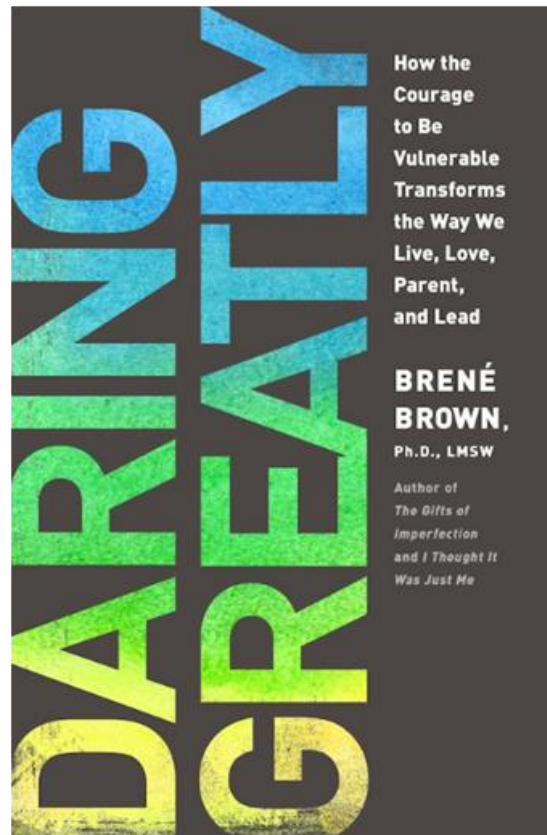
¹ Brene Brown is a research professor at the University of Houston Graduate College of Social Work. She is the author of three previous New York Times bestselling books: *Rising Strong* (2015), *The Gifts of Imperfection* (2010), *I thought It Was Just Me (but it isn't)* (2007).

Book Review, continued

Getting people to engage and take ownership is about letting them come into an idea in a purpose-led way. Our job is to create space for others. The vulnerability of our clients, and of ourselves, can sometimes make us feel powerless. Understanding vulnerability can help us to engage with our clients in a more productive and creative way. Suspending certainty and control can stimulate positive change if we allow ourselves that option. In trying to control a situation we may try to back out of it, pretend it's not happening or maybe even pretend that we don't care. Ms. Brown refers to this as "serpentining" (or zigzagging) and poses the following questions:

When are you most likely to "serpentine" to avoid vulnerability? Is it when you are preparing for difficult conversations? Or when you feel like you might disappoint someone or make him or her angry? Do you serpentine when you don't know the right answer?

In our work as mediators, we are constantly taking risks or daring greatly. Ms. Brown explains the upside of taking those risks and how we can best go about challenging ourselves in our work and in our lives. What does it mean to dare greatly in your work as a mediator?



Tax Tips: Maintenance/Alimony: Critical Tax-Related Considerations

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

Separate maintenance payments, or alimony, have important tax implications which must be considered by those making and receiving such payments. The intentions of the couple, or the intended language of the divorce or separation agreements, will not control the taxation of alimony payments. Early on in the mediation process it is important to assess if alimony will be an issue in the divorce negotiations. In order for a payment to qualify as alimony for tax purposes the language of the divorce or separation agreement must adhere to specific criteria. Mediators need to ensure clients are aware of the criteria and to structure agreements to meet these conditions, if so desired. (Editors' note: The IRS refers to spousal maintenance as alimony).

Alimony - Criteria Required

As part of the divorce or separation agreement the higher earning spouse will typically make payments to the lower earning spouse. Payments may represent alimony, child support or property distribution. Payments representing child support and property distributions are not tax deductible, nor includable, in the recipient's taxable income. In order for a payment to be considered alimony for tax purposes certain conditions as prescribed by IRC Sec 71(b) and Reg. 1.71-1 must be met. Payments meeting these terms are tax deductible to the payer and includable as income to the recipient. The following rules apply to qualifying alimony payments for all post -1984 agreements:

1. Separate tax returns must be filed for each spouse or former spouse;
2. Payment must be made in cash (including checks or money orders);
3. The payment must be received by (or on behalf of) the spouse or former spouse;
4. The divorce or separate maintenance decree or written separation agreement doesn't indicate the payment is not alimony;
5. If legally separated under a decree of divorce or separate maintenance, the two individuals are not members of the same household when payment is made;
6. The payer has no liability to make the payment (in cash or property) after the death of the spouse or former spouse; and
7. The payment is not treated as child support or a property distribution.

Assuming all of the requirements as stated above are met, cash payments to third parties for the benefit of the spouse or former spouse, made under the terms of the divorce or separation agreement, will qualify as alimony even though they are not paid directly to the spouse. Additionally, payments made to third parties at the written request of a spouse or former spouse will qualify as alimony if the following criteria are met:

1. The payments are in lieu of alimony paid directly to the spouse;
2. The written requests states this is the intention of both parties; and
3. The written request is received by the payer spouse prior to filing his/her tax return for the year the payments were made.

Maintenance/Alimony: Critical Tax-Related Considerations, continued

Divorce or separation agreements must be updated for any changes to the amount of alimony payments. Any additional amounts paid pursuant to an oral agreement will not qualify as alimony.

Other Tax Related Considerations

The IRS requires that a taxpayer deducting alimony include the payee's Social Security Number (SSN) on his or her tax return. The IRS will attempt to match the SSN's listed on the payer and recipients returns. If the numbers do not match, tax correspondence will be generated.

The recipient of alimony payments may treat alimony payments as compensation. This allows alimony recipients with no "earned income" or compensation to save for their retirement by making either Traditional or Roth IRA contributions. There is no income tax withholding required to be deducted from alimony payments, therefore the recipient should consider making estimated tax payments.

If alimony payments decrease or end during the first three calendar years, the payer may be subject to recapture rules. If subject to this rule the payer would need to include in his/her income part of the alimony previously deducted, and the recipient would be eligible for a deduction of part of the alimony previously included in his/her income. Under current law the recapture rule will apply if, in the third year, the alimony paid decreases by more than \$15,000 from payments made in the second year. Recapture will also apply if the alimony paid in the second and third year decreases significantly from the alimony paid in the first year.

The determination of how alimony payments will be treated for tax purposes is left to the discretion of the divorcing couple. In some instances, couples may not want payments to be treated as alimony for tax purposes. In these cases, it is important the agreement is clear on the desired tax treatment.

Summary

The mere fact that a divorce or separation agreement calls a payment "alimony" or "spousal support" does not make that payment alimony for tax purposes. It is important to adhere to the guidelines as set forth by the Internal Revenue Service to make sure the required criteria are met. Not everyone will benefit from structuring payments to qualify as alimony. Therefore, equal consideration should be given to ensure that drafted agreements do not unintentionally create alimony and unexpected tax consequences.

For more information regarding the Internal Revenue rules governing alimony see IRC Sec. 71 (b) and Federal Tax Regulations §1.71-1. Also refer to the Internal Revenue Service's Publication 17 (2015), Your Federal Income Tax available at <https://www.irs.gov/pub/irs-pdf/p17.pdf> and Publication 504 (2015), Divorced or Separated Individuals available at <https://www.irs.gov/pub/irs-pdf/p504.pdf>.

Mark A. Josephson, Esq., CPA, CFP, CFE, CGMA, is a mediator, lawyer, accountant and financial advisor practicing in Manhattan. Mark is the President of NYSCDM. He can be reached at mark@murrayjosephson.com or (212) 644-2100; his firm's website is www.murrayjosephson.com.

Membership Committee: Spring Member Drive



The Membership Committee's spring membership drive culminated at the Annual Conference recently held in Saratoga Springs. The March/April drive for new members asked all members of the Council to assist the Committee in the drive through sponsorship of a new member.

As an achievement enhancer, a \$200 gift card would be awarded at the Conference, via a random drawing consisting of the names of the member sponsors. The drive resulted in 12 new members! L.J. Frietag was the winner of the drawing.

Members of the Committee met with all of the new members present at the Conference, enlisting their participation on Council committees and discussing resources available to new members to assist them in their mediation career.

The Membership Committee is developing plans for a fall recruitment effort, among other initiatives, to continue to grow membership in NYSCDM while also working to enhance services for existing members.

Stay tuned!



Save the Date!

UPSTATE NYSCDM SYMPOSIUM

Saturday, September 10th, 2016
8:00 a.m. – 4 p.m.
Corning, NY

Come experience the **Corning Museum of Glass (CMOG)**!

State-of-the-art Conference facility and top-notch **Speakers**

Also included: **Hot Glass** show + Glass lecture

Make it a **Destination** weekend: Conference on Saturday/Outings on Sunday!
(Children admitted FREE to CMOG with an adult.)



**CORNING
MUSEUM
OF GLASS**

Conference price - \$100/Member \$115/Non-Member

- Includes breakfast, lunch, refreshments, and conference materials

- First 50 registrants will receive a special CMOG gift!

Accommodation - Special Pricing:

Radisson Corning hotel block available - \$159/room/night + tax (king bed or two doubles) Rate guaranteed until Aug. 19th. May be cancelled for no charge until Sept. 8th by 6 p.m. Located downtown Corning, ½ mile from CMOG. Make booking here - <http://www.radisson.com/corningny/nyscdm>

Driving distances from:

Manhattan – 250 mi.

Syracuse – 98 mi.

Rochester – 100 mi.

Albany – 212 mi.

Buffalo – 125 mi.

Binghamton – 75 mi.

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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:

September 10, 2016: NYSCDM Annual Upstate Symposium

Join the Council in Ithaca, NY for our Annual Upstate Symposium. This year, we will be holding the event at the [Corning Museum of Glass!](#)

November 3, 2016: Association of Family and Conciliation Courts (AFCC) 24th Annual Symposium on Child Custody Evaluations

“Abuse, Alienation and Gate Keeping: Critical Issues for Family Court Professionals”.
Sheraton Atlanta Hotel, Atlanta, Georgia.

March 30-April 1, 2017: Academy of Professional Family Mediators (APFM) 2017 Family Mediation Conference

Feel Free to Share!

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