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# THE DIVORCE MEDIATOR

CENTER FOR DIVORCE MEDIATION & ALTERNATIVE DISPUTE RESOLUTION, INC.

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## **STANDARDS OF PRACTICE FOR MEDIATION**

In response to several recent cases alleging unauthorized practice of law by non-lawyer mediators (see article on reverse page), and at the request of the former Chief Administrative Judge of the Connecticut Superior Court Family Division, the Connecticut Council for Divorce Mediation established a Standards of Practice Committee, chaired by Wally Marcus. Defining the unauthorized practice of law in the mediation context has been the subject of vigorous debate by mediation practitioners, regulators and scholars in a number of states. The Connecticut Council for Divorce Mediation believes that both the public interest and the practice of family mediation in Connecticut would benefit from greater clarity regarding this important public policy issue.

In drafting ethical standards and proposing best practices for its members, the Committee's primary goals are: 1) To protect the public, by insuring that divorcing couples have access to the legal information and advice they need to make fully informed decisions, and that divorce mediators practice properly within the limits of their expertise and competence. 2) To help judges, lawyers, and others who may be called upon to evaluate the fairness of divorce settlements better understand the processes by which mediated agreements are reached. 3) To preserve and enhance the right of all couples facing divorce to choose a process for dissolving their marriage that best meets their individual needs.

The Connecticut Council for Divorce Mediation believes that mediation's strength lies in its flexibility, that mediators from differing professional disciplines and backgrounds can provide clients highly competent service, and that standards and regulations in this area must be interpreted in a manner that ensures that consumers will be able to make informed choices about the credentials and competencies of their mediator.

The committee has almost completed its work and

## **RELOCATION**

One of the hotter issues in divorce cases is when one of the parents wishes to relocate with the children to another state. This can be the most emotional issue the parents face. The psychological and financial cost can be enormous. The 1998 Ireland case has become the basis of recent court arguments. The case is significant in that it holds that the initial burden of proof is placed on the custodial parent to show that the relocation is for a legitimate purpose and that the proposed location is reasonable in light of that purpose. The burden of proof then shifts to the non-custodial parent to prove that relocation is not in the child's best interest. This reversed what was the prior law which required the custodial parent to prove the relocation was in the best interest of the child. The Ireland case also articulates the many factors the court uses in determining what is in the best interest of the child.

In mediating case we try to make the clients aware of these issues and encourage them to include language in the agreement as to their intent concerning relocation.

hopes to present the standards this Spring.

February, 2001

**Dear Colleagues:**

**The CENTER FOR DIVORCE MEDIATION & ALTERNATIVE DISPUTE RESOLUTION, INC. is pleased to send you this ninth issue of THE DIVORCE MEDIATOR.**

**The CENTER FOR DIVORCE MEDIATION & ALTERNATIVE DISPUTE RESOLUTION, INC. has developed this newsletter to share information and ideas related to Divorce Mediation. We want to share what we know as well as invite your questions, thoughts and comments. This exchange of ideas will allow us to continue to grow and learn from each other and better serve couples who have made the difficult decision to end their marriage.**

**Wally Marcus and Mary Marcus**

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## **DIVORCE ATTORNEYS AGREE TO INNOVATIVE APPROACH**

Wally Marcus and 10 other attorneys have created the Connecticut Collaborative Law Group. Their goal is to assist divorcing clients when mediation is unsuitable to reach a negotiated settlement using cooperative rather than adversarial strategies. Each member of the group is an experienced family law attorney with an independent law practice. The guiding principle of the Connecticut Collaborative Law Group is the commitment by each member to avoid interim court motions and the threat of litigation to reach settlement of their cases. A key factor that distinguishes a Collaborative Divorce is that the parties and the attorneys agree that the attorneys will withdraw from the case if it becomes adversarial. Collaborative lawyers believe that as much effort should be exerted toward settlement as is traditionally spent in preparing and conducting a trial. The goal of attorneys in the Collaborative Law Group is to minimize the negative economic, social, and emotional consequences of protracted litigation on the participants and their families. Clients who use Collaborative Law can rely on their attorneys and counselors for guidance, but they also rely on their own creativity and integrity to reach an agreement that will provide a strong foundation for the future well-

being of their post-divorce family. Each party is represented by an independent attorney who, together with the client, works with the other spouse and his or her attorney in four-way conferences to achieve an equitable settlement. All professional advisors including accountants, therapists, appraisers, and financial planners, are hired jointly by the divorcing couple and provide expert advice to support the achievement of a fair settlement. While this approach cannot alter the underlying differences that have led the couple to consider divorce, an honest exchange of information and a commitment to consider the needs and concerns of all parties involved in the divorce, including the children, leads most couples to a satisfying agreement without resorting to a courtroom battle. Please contact us if you are interested in obtaining more information about Collaborative Divorce.

### **STATEWIDE GRIEVANCE COMMITTEE RULES ON MEDIATION**

The Statewide Grievance Committee has ruled on three cases brought before it where there were allegations that non-attorney mediators had engaged in the unauthorized practice of law. The cases involved a mediator preparing a document describing the decisions reached by the couple which was later presented to the court. All of the cases were dismissed. It is significant to note that the committee concluded that divorce mediation does not, per se, constitute the unauthorized practice of law.

### **THE DIVORCE MEDIATORS**

Wally Marcus is an attorney who has practiced Family Law for 29 years. He is an Approved Consultant and Practitioner Member of the Academy of Family Mediators, former President of the Connecticut Council for Divorce Mediation, former Chair of the Connecticut Bar Association Divorce Mediation Committee, a member of the Executive Committee of the Family Law Section, and a member of the Alternative Dispute Section of the Connecticut Bar Association.

Mary G. Marcus, Ph.D. is a Clinical Psychologist who has had a private practice of individual, couples and family therapy for 21 years. Dr. Marcus is a Practitioner Member of the Academy of Family Mediators, Treasurer of the Connecticut Council for Divorce Mediation, and a member of the American Psychological Association and the Connecticut Psychological Association.

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**FREE ONE-HALF HOUR CONSULTATION**

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