

Fall Institute
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MCFM Family Law Year in Review

*A Review of Recent Case Law
Affecting Family Mediators*

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WHAT IF?

...a beneficiary designation changes just prior to the filing of a Complaint for Divorce?



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Waxman v. Waxman, *84 Mass.App.Ct. 314* *(Sep 30, 2013)*

Beneficiary Designations – Be Aware!

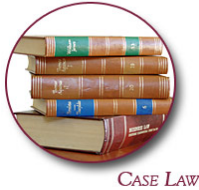
- During the pendency of divorce, the husband dies
- Three days prior to filing the Complaint for Divorce, husband changed the beneficiary designation on his IRA from his wife to the children from his previous marriage
- The wife filed suit against the children in Superior Court asking the court to void the IRA designation change
- The Superior Court judge held that the IRA designation would stand



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Barnes v. Devlin, 84 Mass.App.Ct.159

(Aug 13, 2013)



EMANCIPATION:

Interplay Between Statute and Judgment

- The parties entered into a modification agreement at the time the 19 year old son went to college and moved in with his uncle
- Shortly after, father failed to abide by their stipulation, was found in contempt, and appealed arguing the modification judgment was void because it violated the emancipation language in G.L. c.208, s,28
- Finding of contempt was affirmed. The stipulation father entered into was enforceable. In this case it was the stipulation – not the statute – that was the relevant text



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Casey v. Casey, 84 Mass.App.Ct. 1122

(Dec 2, 2013)

Survived Health Insurance Provision

- The Separation Agreement contained a provision relating to health insurance that survived the judgment
- Husband retired and brought a modification.
- Because the provision survived, the husband had a nearly impossible burden in undoing the obligation; he had to prove “countervailing equities,” which he was unable to do.



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EXPLICIT LANGUAGE FOR BONUSES?

*Why would you want to start
including language in agreements
explicitly including
compensation based on
company-wide compensation?*



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Greeley v Greeley, 85 Mass.App.Ct. 1116

(April 25, 2014)



CASE LAW

BONUS: Based on Company-Wide Performance Not “Earned Bonus”

AGREEMENT STATES:

- Husband’s agreement was to pay Wife 30% of “any gross bonuses or commissions earned by him through his employment”

APPEALS COURT AFFIRMED PFC FINDING:

- Husband’s obligation “should be measured only on the bonuses over which **his performance is implicated**... and did not include various incentive payments that were tied to the overall performance of the company”



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Bower v Bournay-Bower, SJC-11478

(Sept 15, 2014)

Whether a judge may grant binding decision-making authority to the PC, without the consent of both parties, to resolve conflicts that arise between the parents regarding custody or visitation?



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COUNTING PILLOWS?

Can a town refuse to enroll the son of a divorced resident in its public schools solely on the ground that on most school nights the child slept at his mother's home in another community?



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Ames v Town of Wayland

See Lawyers Weekly No 12-087-14



- MGL c.76 s. 5: “Every person shall have a right to attend the public schools of the town ***where he actually resides.*** . . .”
- Shared Custody Agreement
- Father in Wayland and Mother in Framingham
- Son slept 7 of 10 school nights in Framingham
- Wayland: Child must spend 3 of 5 school nights in Wayland



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Ames v Town of Wayland

See Lawyers Weekly No 12-087-14

The statute requires:

“a more searching inquiry into a number of factors, including both the frequency of actual presence in one town or the other (e.g. a pillow count) and the principal location of the child’s domestic, social and [civic] life.”



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Ames v Town of Wayland

See Lawyers Weekly No 12-087-14



“The Town’s Pillow Counting Policy”

Three key factors: Was Wayland the center of the child’s domestic, social and civic life?

1. The child went to Wayland schools through the 4th grade
2. The child actually resided with his father in Wayland pursuant to an adjudicated joint custody arrangement
3. Evidence was on record that Wayland was the focal point of the child’s social and civic life



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K.A. v T.R.

*86 Mass. App. Ct. 554
(October 31, 2014)*

Father Engaged in a Pattern of Abuse Towards Mother But Retained Physical Custody

1. Rebuttable presumption that abuser not have custody – GL c208 s31A
2. Here, husband/abuser rebutted presumption. Best interests of children that physical custody be with the father with substantial parenting time for the mother.
3. Evidence considered was the GAL's testimony regarding her concern that if the children were placed primarily with the mother, the parties' daughter could physically attack the mother or run away from home, and the parties' son, who was in an emotionally vulnerable state, could commit suicide.



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Kelso v Kelso

*86 Mass. App. Ct. 226
(September 3, 2014)*



WHAT IF?

...there is no sign-off on binding waivers for liability on all acts and omissions of each other, up to the date of the agreement?



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