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MCFM Family Law Year in Review

A Review of Recent Case Law Affecting Family Mediators

***Including: Alimony Reform Act Two Years Later --- Where Are We Today
and
What Are The Courts Doing?***

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ALIMONY REFORM ACT

- Pre-ARA Agreements with merged alimony provisions
 - On the issue of the presumptive retirement age and cohabitation, ARA is prospective
 - Standard is material change in circumstances

Chin v. Merriot,
470 Mass. 527
(January 30, 2015)

Rodman v. Rodman,
470 Mass. 539
(January 30, 2015)

Doktor v. Doktor,
470 Mass. 547
(January 30, 2015)



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PRE-ALIMONY REFORM ACT AGREEMENTS WITH SURVIVED PROVISIONS

- ARA cannot be used to modify survived alimony provisions
- Husband brings a Modification because he reached retirement age
- Survived alimony provision provided that Husband pays Wife until either one dies or Wife re-marries

Lalchandanni v. Roddy,
86 Mass.App.Ct. 819
(Jan 5, 2015)



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PRE-ALIMONY REFORM ACT JUDGMENT COHABITATION ISSUE

- Material change in circumstances standard
- Modification appropriate only if economic circumstances have changed
- Where boyfriend is not contributing materially to ex-wife's economic circumstances, no modification is appropriate

Poirier v. Woodward,
87 Mass. App. Ct. 1132
(2015) (Unpublished)



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ALIMONY PAYMENTS AND CHILD-RELATED CONTINGENCY

Joshua Henry Wish Petitioner v. Commissioner of Internal Revenue
T.C. Summary Opinion 2015-25 United States Tax Court



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ALIMONY PAYMENTS AND IN-KIND TRANSFER

CHRISTINA M. MEHRIARY v. COMMISSIONER OF INTERNAL REVENUE,
T.C. Memo. 2015-126



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PARENTING COORDINATOR PROPOSED STANDING ORDER

(“PC” Proposed Standing Order)



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BILL S.834

An Act relative to Child-Centered Family Law

<https://malegislature.gov/Bills/189/Senate/S834>

Unless the parents agree or the court determines otherwise, a child shall reside one-third of the time or more with each parent.

B. Definitions:

2. “Residential Responsibility”

a. Shared. A child shall have periods of residing with and being under the care and responsibility of each parent, provided, however, that such periods shall be shared by the parents in such a way as to assure a child’s frequent, continued and developmentally appropriate contact with both parents and in accordance with the best interest of the child. Time with each parent shall not necessarily be equal.



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INCOME FROM SECOND JOB

Vedensky v. Vedensky,
86 Mass.App.Ct. 768
(Dec 30, 2014)



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EXCLUDING CAPITAL GAIN FROM INCOME FOR CHILD SUPPORT

- Agreement – recalculation pursuant to Child Support Guidelines
- Mother sought to include capital gains from the sale of Father's home
- Trial Court did not include
- Appellate Court upheld

Brunelle v. Clough
2015 Mass. App. Unpub. LEXIS 1041
(November 6, 2015)



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GIFTS – CHILD SUPPORT

Are gifts considered income for purposes of Child Support?

- Father received certain gifts from his own mother, and no apparent earned income
- \$3,500 monthly stipend --- included
- Various past gifts such as cars, boats, loans to his businesses and luxury travel expenses --- not included
- Although gifts could have been included under CSG, they were not cash, and irregular, and the amounts and frequency varied substantially [unlike the \$3,500 stipend]
- The Court found that this was not abuse of discretion

Blalock v. Clews, 87 Mass.App.Ct. 1118 (May 5, 2015)



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ANOTHER REASON TO SETTLE TRUST CASES

Pfannenstiehl v. Pfannenstiehl,
88 Mass. App. Ct. 121 (2015)



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Commonwealth v. Dorvil (2015)

*“balances whether the force is reasonable
and whether the force is reasonably related to
legitimate punishment for promoting the
welfare of the child”*

Suffolk University Law School Professor D. Christopher
Dearborn



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KACE v. LIANG

472 Mass. 630

(September 10, 2015)

“..the pages taken from two Internet Web sites and used during plaintiff’s examination of defendant did not qualify under the learned treatise exception to the hearsay rule under Mass. G. Evid. §803 (18)(B)...”



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