

CHAPTER 19

MEDIATION*

CYNTHIA L. BAUMAN, ESQ.
Sagamore Beach

JACQUELYNNE J. BOWMAN, ESQ.
Greater Boston Legal Services, Boston

Overview 478

Reasons for Choosing Mediation 478

Choosing a Mediator 478

Definition of Mediation 479

 Private Mediation 480

 Court-Ordered Mediation 480

The Role of the Mediator 480

 Confidentiality 480

 Impartiality 481

 Skills of a Family Mediator 481

Court-Mandated Dispute Intervention 481

Steps You Can Take to Prepare 482

 Preparing for the Court Dispute Intervention Process 483

 The Role of the Probation Officer in Dispute Intervention 483

Elements of a Good Agreement 484

 Final Agreements Versus Agreements That Can Be Modified 484

 Enforceability of Agreements 485

Conclusion 485

EXHIBIT 19A—List of Local Dispute Resolution Coordinators 487

* Updated for the 2008 Edition by Jacquelynne J. Bowman, Esq.

OVERVIEW

At its best, mediation promotes self-determination, builds cooperation, reduces the hostility that harms children and partners, and increases the possibility for agreements practical for—and particular to—the people who make them and have to live with them. Those most satisfied with mediation are informed consumers who choose it over other options. This chapter will help you answer the following questions:

1. **Should you mediate?** Whether you hire a mediator, or are required to participate in Probation Department dispute intervention as currently provided within Massachusetts Probate and Family Courts, you can decide whether negotiation will help with your goals.
2. **How should you choose mediation or use it wisely?** It may be expensive, but as a consumer of a private service, you have choices. If you are required to participate in mediation by a court, you can use these same steps to prepare for it, although mediation services that the court requires are usually free.
3. **What can you expect when the process works well?** One measure is how well the process improves communication with your partner, and another is whether you reach an agreement that satisfies you. You should know the elements of a good agreement, and how agreements are enforced.

REASONS FOR CHOOSING MEDIATION

People whose relationships are ending often experience financial, emotional, or physical crisis. People involved in domestic disputes may use a mediator for the following reasons:

- for the chance to decide personal issues outside a courtroom, and to participate as fully and equally as possible in major life decisions;
- to help work out custody and visitation schedules for children while gaining an understanding of their effects on children; and
- to help decide how to divide property, such as home, cars, furniture, bank accounts, pension, etc., with an awareness of what courts consider fair.

There are good reasons to choose mediation over litigation. Research suggests that people are more satisfied with agreements they make themselves, and are more likely to keep them, as opposed to judgments made and enforced by courts. Second, data increasingly supports the common sense notion that children suffer when parents fight. Children are likely to make a happier, healthier adjustment to the change when partners settle things peacefully. Third, as a result of mediation, couples often develop better communication skills and build a structure for working out future problems. Fourth, the process can last several weeks or months, but the costs tend to be far less (both financially and emotionally) than if parties hire attorneys or litigate.

However, not all cases are appropriate for mediation or dispute intervention. If you have an abuse prevention order or fear abuse, be sure to tell any mediator or probation officer (also called a family services officer in the Probate and Family Court) prior to meeting. In Massachusetts, you are not required to meet in the same room with someone who has abused you or who you are afraid will abuse you. G.L. c. 208, § 34B; G.L. c. 209A, § 3; G.L. c. 209C, § 15. Legislative policy supports refusal to mediate even in the absence of a restraining order when you have been abused in the past or you are afraid of your partner. You may have to assert this right persistently in court settings (bring a friend for support). You can be required, or may wish to, meet in separate rooms or at separate times with a probation officer. Be sure the mediation process does not violate the terms of an existing restraining order.

CHOOSING A MEDIATOR

If you are seeking mediation to help resolve a family dispute, there are many private mediators and organizations with different fees, services, and philosophies. The Probate and Family Court has compiled a list of local dispute resolution coordinators. See **Exhibit 19A**. You can also check the phone book, your local court or library, or resources such as the Boston Bar Association directory or the directory of the Massachusetts Council on Family

Mediation, which is free. You can also contact the Massachusetts Bar Association (MBA), the Academy of Family Mediators (AFM), the Massachusetts Lesbian and Gay Bar Association (MLGBA), the American Bar Association (ABA), the Society of Professionals in Dispute Resolution (SPIDR), and the Association of Family and Conciliation Courts (AFCC). Cambridge Dispute Settlement Center and various other agencies also provides low-cost services. A list of other available services is included in the Resources section at the end of this book. Choose well and wisely; if you have to litigate after mediating, you could double your cost rather than save money. When choosing a mediator, be sure to ask the following questions:

- What issues do you usually mediate? How many cases have you mediated? How often do you mediate cases like mine?
- What training have you had, and when was the last time you received any training? Do you receive supervision?
- Are you certified? How? What organization(s) are you either a member of or affiliated with?
- How much do you charge? Is the first session free?
- Do you have written materials you can send me?
- What confidentiality do you offer?
- Do you use a contract? What is covered by it?
- What is the average number of sessions?
- Do you draft (separation/divorce/other) agreements? What do you charge for drafting documents and for phone calls?
- Do you suggest that we consult attorneys, accountants, or other professionals during this process, or allow us to do so? How much information can you provide about:
 - divorce, paternity, and nontraditional family issues;
 - parenting plans, custody, and child support;
 - the psychological stages of divorce and their effects on adults;
 - the effects of divorce on children;
 - the effects of abuse (including substance abuse, physical and psychological abuse, cycles of violence, treatment, and prevention) on the abuser and his or her family members;
 - tax consequences, businesses, pensions, stock options, investments, and inheritances;
 - spousal support or alimony and property division;
 - qualified domestic relations orders and qualified medical child support orders;
 - health and life insurance, trusts, etc.; and
 - the legal process (such as how to get a divorce in court).

DEFINITION OF MEDIATION

Modern mediation was designed as a voluntary and confidential process conducted by a neutral third party. Cf. Phyllis E. Federico & Peter F. Zupcofska et al., eds., *Massachusetts Divorce Law Practice Manual*, Chapter 3 (MCLE, Inc. 2d ed. 2008); Jay Folberg & Alison Taylor, *Mediation: A Comprehensive Guide to Resolving Conflict Without Litigation* (Jossey-Bass 1984); ABA Task Force on Mediation, *Divorce and Family Mediation: Standards of Practice for Family Mediators* (American Bar Association 1986). The elements once considered crucial to good mediation are changing, and new definitions are emerging. Cf. Fiske, Neumann & Woodbury, *Divorce Mediation Training Associates, 1998 Training Manual* (“A confidential, usually voluntary form of structured negotiation designed to help clients reach agreement with the assistance of one impartial mediator.”). For further information, see Daniel Bowling and David Hoffman, *Bringing Peace Into The Room: How the Personal Qualities of the Mediator Impact the Process of Dispute Resolution* (Jossey-Bass 2003), various issues of *Mediation Quarterly*, published by Jossey-Bass, and <http://www.mediate.com>, an ongoing source of comments, analysis, and conferences about mediation in all fields. Many books and articles available on mediation or the alternative dispute resolution process are available from your local library or law library.

Private Mediation

Private or traditional mediation differs from the processes emerging within courts in some fundamental ways. In this type of mediation, each party agrees to participate and may leave if he or she is not satisfied. The mediator often has the parties sign a contract that specifies their consent to participate, their right not to agree, and other terms and limitations of the process.

Practice Note

You have the right to read any contract privately, and to have it reviewed by anyone you like before you sign it; take your time, study it carefully, and feel free to ask any questions before signing it. For a sample contract, see Phyllis E. Federico & Peter F. Zupcofska et al., eds., *Massachusetts Divorce Law Practice Forms 4.1* (MCLE, Inc. 2000 & Supp. 2007).

Court-Ordered Mediation

Public, court-centered, or court-ordered are all terms used to describe services that parties may be ordered to use on the day of the hearing or at any point before it. Court-connected mediation usually is shaped by impending legal process, may be mandatory (or at least may feel that way), may take as little as forty-five minutes, and may be held in a court hallway or cubicle; parties often report feeling pressured to reach compromise or to sign “agreements.” However, this process may still be preferable to a court hearing. The process and quality of services vary significantly, as is discussed below.

THE ROLE OF THE MEDIATOR

Mediation is a process characterized by consensuality, confidentiality, and impartiality. The role of the mediator is to help parties negotiate, disclose, and discuss freely, fully, fairly, and with a final outcome acceptable to both parties, the mediator, and the court.

Confidentiality

Most mediators consider confidentiality essential in successful negotiations, and consider themselves ethically bound not to discuss the contents or results of mediation. General Laws c. 233, § 23C protects this confidentiality. The statute provides a privilege to the mediator, like a doctor or an attorney, which means that their conversations and documents may not be deposed, subpoenaed, or made public. This privilege applies to the mediator’s case files and work product. Any communication made by either of the parties in the presence of the mediator in the course of mediation is also privileged. G.L. c. 233, § 23C. In Massachusetts, a person must have completed a certain amount of training before he or she can qualify as a mediator. To do so, a person

- must have entered into a written agreement with the parties to mediate;
- must have completed at least thirty hours of training in mediation, and must
 - have at least four years of experience; and
 - be accountable to a dispute-resolution organization that has existed for at least three years; or
 - have been appointed to mediate by a judicial or governmental body.

G.L. c. 233, § 23C.

Many of the organizations discussed in “Choosing a Mediator,” above, suggest or require more training, experience, and/or supervision.

Practice Note

Some mediators may also be mandated reporters, such as social workers or psychologists. Many private mediators voluntarily exclude child abuse from the privilege (some also exclude current or future criminal behavior); some may exclude partner abuse. Mediators should tell you before the mediation begins what they will report. If you have questions, you should ask them before you disclose anything. See Phyllis E.

Federico & Peter F. Zupcofska et al., eds., *Massachusetts Divorce Law Practice Manual*, Chapter 3 (MCLE, Inc. 2d ed. 2008).

Impartiality

Neutrality has been understood to mean that the mediator does not take sides or put his or her party's interests above the other's. In the divorce context, at least, neutrality has been replaced by the concept of impartiality for a variety of reasons having to do with fairness. (Neutrality implies a noninvolved and nondirective role, without authority to impose results, while impartiality suggests a nonbiased role, but with the ability to promote fairness and agreement through process. Judges and couples therapists, for example, are not neutral, but are expected to remain impartial.) For example, a divorce mediator should require full disclosure of assets and liabilities. He or she may ask the parties to consult an attorney, accountant, psychotherapist, or other professional if their lack of information about the law, finances, needs of their children, or each other would result in an unfair agreement. Many mediators provide such information, and take the necessary steps to create a level playing field to prevent abuse of process by one party. However, mediators continue to debate what is advisable or required, and how to address power imbalance in mediation.

Skills of a Family Mediator

A mediator can help clients separate and resolve the emotional division issues, such as who moves out and how, and can help design interim and long-range parenting plans particular to the parties and their children. A mediator can help the parties list and evaluate their property, and can provide or help the parties obtain information about tax consequences of separation. He or she can also explore options and methods of dividing property and help the parties inform themselves about what the court might do during litigation. A mediator also can help the parties develop a mutually acceptable form of relationship after their separation.

A skilled mediator is well trained, experienced, and capable of complex and balanced intervention that enables the parties to reach fair and enforceable agreements. Do not assume that all mediators have these abilities; interview carefully, ask about the process, and insist on the right to terminate a process that you do not feel good about. See "Choosing a Mediator," above, for a list of questions you might ask a prospective mediator and for agencies and organizations you can contact for referrals and information.

COURT-MANDATED DISPUTE INTERVENTION

Over the last decade, courts all over the country have established programs to intervene in disputes prior to trial, either in the court building itself or elsewhere. In the area of family law in particular, judges feel that intervention by court personnel may help parents and former partners choose solutions that neither may like, but that both can accept. This avoids imposition of judicial win-or-lose verdicts, as well as the lengthy, painful, and expensive trial process. It also allows judges to find, through the court personnel, which cases can be resolved quickly and which need more complex processes, such as major discovery or appointment of experts.

However, if mediation is defined as voluntary, confidential, and impartial, then court-ordered services as they currently exist may be helpful, but are not mediation. Massachusetts courts recognize the difference and call the services within the courts "family service" or "dispute intervention." See 2005 Supreme Judicial Court Rule 1:18, The Uniform Rules on Dispute Resolution, available on the Web site of the Supreme Judicial Court at <http://www.massreports.com/courtrules/sjcrules.htm#1:18>. The court has also published *A Guide to Court-Connected Alternative Dispute Resolution Services*, available at <http://www.mass.gov/courts/formsandguidelines/ccadr0601large.pdf>, which provides detailed commentary on Rule 1:18. Parties are required to meet with a probation officer to organize the dispute so that it conforms to legal questions (e.g., who has custody, how much support is warranted, etc.), and to narrow issues the parties cannot resolve for themselves. Although not required to do so, the parties may make a partial or a full agreement (called a "stipulation") about their dispute, which is written and submitted to the court for approval. Judges then approve these agreements, generally, without a full hearing. See Chapter 2, Overview of the Probate and Family Court.

□ CHAPTER 19: MEDIATION

Court services are not voluntary, because the litigants are required to participate, at least in an initial interview. If you have an abuse prevention order, or you have been abused or fear abuse, you cannot be required to meet in the same room with your partner. G.L. c. 208, § 34B; G.L. c. 209A, § 3; G.L. c. 209C, § 15. In court settings, probation officers may attempt to resolve issues without referring extensively to the past; a common statement is: “What’s past is past, let’s talk about the future.” Meetings may last anywhere from fifteen minutes to two hours, and are usually conducted in small spaces.

Probation officer interventions are not confidential. “The purpose of dispute intervention is to provide an opportunity to the litigants to resolve their own differences; and to provide the court with information and/or recommendations as requested and/or ordered by the court.” See *A Guide to Court-Connected Alternative Dispute Resolution Services*, available at <http://www.mass.gov/courts/formsandguidelines/ccadr0601large.pdf>. In some courts, probation officers report to the judge and make a recommendation. See Supreme Judicial Court Rule 1:18, The Uniform Rules on Dispute Resolution.

Eighty-two percent of probation officers surveyed indicated that they share information with the judge. This may include background on pro se litigants that will give a judge a quick grasp of the facts. It may also include a recommendation. *Mediation in the Probate and Family Court: A Survey of Family Service Officers*, at n.30. Most judges will listen to reports from probation officers, and in some cases, will consider their recommendations. *The Probate and Family Court Speaks* (MCLE, Inc. 2002). This is an important fact to think about: after meeting with you for a limited time in a semipublic setting, someone you have never met before, who generally is not a lawyer, a judge, or even a social worker, may recommend whether you should have custody of your children; this person may also decide or recommend what support and visitation is appropriate. You should prepare for this interview very carefully. Know your own needs, and what you might and will not compromise on (and, therefore, will let the judge decide). Make a short list of what is most important and be prepared to back it up. If it comes down to your word against your ex-partner’s, bring in documents that support your side, like letters from doctors, affidavits from witnesses, or a log of missed visits or problems. If your child’s therapist or someone from the Department of Social Services (DSS) can help you, invite or subpoena that person, or have him or her available by phone.

Probation officers are neither neutral nor impartial because they work for the court. The Probate and Family Court has a responsibility to protect the best interest of children and to help them avoid harm. Court personnel are mandated reporters, which means they have obligations to report child abuse, and may have to report other matters as well. G.L. c. 119, § 51A; see also Phyllis E. Federico & Peter F. Zupcofska et al., eds., *Massachusetts Divorce Law Practice Manual*, Chapter 3 (MCLE, Inc. 2d ed. 2008). Arguably, these responsibilities are not so different from mediation, but in practice the process tends to be very different. Probation officers often do not have the time or authority to insist on full disclosure of income, assets, and liabilities. What matters are addressed and how deeply they are probed depends on the court and the personnel, the complexity of the case, and how far along in the process the case is. The Uniform Rules of Dispute Resolution encourage that parties be apprised of dispute resolution services early in divorce proceedings. Supreme Judicial Court Rule 1:18—Dispute Resolution, Rule 5.

Despite potential drawbacks, court-based family service intervention at early stages provides a fast, inexpensive, and often highly skilled response to family crisis that should not be underestimated. At the very least, it is free discovery and a chance to hear the other side’s case. At its best, it may create an opportunity for a breakthrough in your dispute, and provides the setting for court personnel to explain the legal process and to apply well-established legal principles. Probation officers are increasingly well trained and well supervised. See Supreme Judicial Court Rule 1:18, The Uniform Rules on Dispute Resolution; Supreme Judicial Court Report, *Achieving Equity*. Although the quality of the services varies widely among courts, the same may be also said of judges and other court personnel.

STEPS YOU CAN TAKE TO PREPARE

Court-based or court-mandated intervention in family disputes is often better than the alternative of a trial. But when parties are required to participate, without understanding the purpose, the process, or the potential of the intervention, they may see neither intervention as desirable, like a choice between a train crash and a car wreck. You should remember that family service exists in part to help you work out problems.

Preparing for the Court Dispute Intervention Process

When you are referred to a court-based service, you can take steps to avoid problems and maximize success. As the quality of court-connected services continues to improve, these steps may become unnecessary.

- Make a list of the issues you want discussed. Talk matters over ahead of time with a friend or attorney to help clarify what you want and why it is important to you. Talk over the worst that may be said about you or your case and practice answering calmly.
- Understand the legal terms and papers. Speak for your needs and your children's needs; do not argue against your ex-partner. "He or she drinks" is less useful than "I worry about the kids in the car if he or she is drinking." Know where you can compromise, because no matter how perfect your case may be, you will not get everything you want in a negotiation.
- Require an accurate financial statement from your partner; give and get full disclosure of income, assets, and liabilities. You have a right to discover or subpoena witnesses and records (like wage records) that will help your case.
- Refuse to negotiate face-to-face with an abuser unless you want to. Be willing to negotiate with or through a third party who helps you feel safe.
- Make sure you have an opportunity to speak and be heard. If a report or recommendation to a judge is not by law confidential, ask that it be stated in open court and on the record.
- Especially if intervention is not confidential, all documents should be admissible and follow the rules of evidence. If you are in doubt, ask. There is no obligation for court personnel to educate you, but you can object to unfair evidence and therefore preserve your right to appeal a decision that you do not agree with.
- You have a right to end the intervention if you feel unsafe or if the process is not helpful. Do not let yourself be pressured into anything. Politely but firmly express your feelings. Do not just say "No"; say "Sorry, I wish I could, but I cannot because . . ."
- Do not under any circumstances sign an "agreement" that you feel coerced into signing. You will be held to anything that you sign.

The Role of the Probation Officer in Dispute Intervention

Probation officers take pride in helping people agree instead of fight. However, they are under tremendous pressure because of the high number of cases that are assigned to them. If you are concerned about the person assigned to intervene in your case, politely request an opportunity to speak with his or her supervisor. These are services, and you have a right as a consumer to be satisfied that the person to whom you will tell the intimate details of your separation is respectful, listens, and tries to help. Do not forget that emotions may be perceived as a sign of dysfunction; maintain a very polite but firm approach.

The most serious questions arise in jurisdictions that allow or require a report or recommendation from the probation officer to the judge. *See* Supreme Judicial Court Report, *Achieving Equity*. Probation officers are not supposed to communicate with the judge except in open court and on the record, in part because that allows the parties the right to hear and rebut such testimony. ("We hold that, as a matter of statutory interpretation, reports of the Probate Court probation officers made to a probate judge pursuant to G.L. c. 276, § 85B, inserted by St. 1969, c. 771, § 3, must be in writing. . . ." *Duro v. Duro*, 392 Mass. 574, 575 (1984).)

Once approved by the judge, any stipulation or agreement becomes an order of the court, subject to legal enforcement mechanisms. You can be held in contempt for failing to comply with any of the terms, so read the agreement carefully before you sign it. An agreement reached in court-based dispute intervention is submitted to a judge, either while the parties are present or after they leave, depending on each judge's practice. Be sure you receive an official copy.

Practice Note

Be sure to distinguish between a "dispute intervention" and an "investigation" by the family service office. The latter is a far more serious category—one that signals serious problems. Investigations include

□ CHAPTER 19: MEDIATION

home visits, contacts with agencies or individuals, and written reports to the court. The same is true if a guardian ad litem is appointed for your children. See Chapter 2, Overview of the Probate and Family Court.

ELEMENTS OF A GOOD AGREEMENT

In the court system, stipulation agreements usually are for temporary orders. They may be handwritten and can be anywhere from one to several pages in length. The probation officer may write the agreement, and should sign as a witness any agreement he or she has negotiated. A final separation agreement is expected to be more polished and complete, and to be produced by attorneys or by the parties themselves. Particularly if you are writing your own final agreement, you are strongly advised to show the agreement to an attorney before signing it.

Some mediators are attorneys and some are not. Some prepare agreements for court hearings and some do not. If you are considering hiring someone, check his or her fees regarding phone calls and preparation of documents, and ask what is included in a standard agreement. Standard divorce and dissolution documents can range from ten to sixty pages. Whatever the length and cost, a final agreement will include the following:

- procedural items, such as the parties' names and a docket number;
- a statement of facts relating to divorce, including the names and addresses of the parties, the date of marriage and separation, the names and ages of children, and the basis for the agreement;
- a parenting plan if there are children, including custody (physical and legal, joint, shared, or sole), holiday, birthday, and regular visitation, child support, educational issues, and emancipation;
- a division of all real estate (real property) and all other property (personal property), including vehicles, accounts, investments, pension and retirement plans, businesses, and all other items owned by either or both parties;
- no-contact or abuse-prevention orders, if any, or a plan for adherence and/or provisions for the division of the relationship or conflict resolution;
- a provision dealing with alimony or spousal maintenance;
- a division of debts and liabilities, as well as language about all items owed by or to either spouse or both spouses;
- a provision for the payment of medical and other insurance that divides the responsibility for expenses;
- a provision for where and how problems with enforcement will be resolved;
- language about the effect of the agreement (i.e., if it will survive as an independent contract or if it will be incorporated into a Probate and Family Court order); and
- language and procedural protections against coercion (e.g., that the agreement is signed freely and voluntarily, and is notarized by an independent official).

The agreement should be notarized and dated.

Final Agreements Versus Agreements That Can Be Modified

Final agreements fall into two general categories in terms of their effect. An agreement either *survives* as an independent contract subject to contract law, or it *merges* into the Probate and Family Court judge's order and does not survive. Matters concerning children never survive—that is, they are always open to interpretation and change by a Probate and Family Court judge. On the other hand, after the final agreement, divided property will not be subject to redivision. Obviously, this is a complicated area of the law that deserves careful thought, and each party should have advice from an attorney. *See* Edward M. Ginsburg, "The Place of Mediation in the Scheme of Divorce," 8 *Mass. Fam. L.J.* at 2–25 (July, 1990).

The basic choice is whether you want a final agreement or an agreement that can be modified when your circumstances change—for example, if one of you wins the lottery, becomes disabled, or gets a much better job. Child support and custody will always be open to change, but do you want alimony left open? There are many

factors that affect this choice, but courts and parties seem to favor survival (final) agreements, except in cases of long-term marriages where one spouse has spent a long time caring for the children and the other spouse has earned a significant amount of money, and except where one party may require public assistance. A final agreement may specify survival, merger, or a combination. Even if the agreement does not mention a choice, there are consequences. You must understand the implications of your choice, and be able to answer the judge's questions.

Enforceability of Agreements

Although mediation is characterized as “nonbinding,” an agreement reached in mediation is as binding and enforceable as any other agreement, as long as it is in writing, conforms to the doctrines of contract (including being free from fraud or coercion), and does not oppose public policy. Agreements are subject to interpretation and must be drafted carefully to express the intentions of the parties. An agreement entered in Probate and Family Court in Massachusetts will be reviewed by a judge who may or may not accept it. Agreements must conform to procedural requirements and must be found to be voluntary, fair, and reasonable, must protect the rights of minor children, and must be based on full financial disclosure. The degree of review varies, but the majority of agreements are accepted and any changes are usually minor.

However, the law regarding the review and enforceability of agreements is changing. Phyllis E. Federico & Peter F. Zupcofska et al., eds., *Massachusetts Divorce Law Practice Manual*, Chapter 3 (MCLE, Inc. 2d ed. 2008). We can expect Probate and Family Courts to take an active role in monitoring mediated agreements, whether they are drafted within the courthouse or outside of it. Standards for intervention, for agreements, and for mediators will continue to emerge over the next decade. Parties can assume, however, that courts prefer that parents and partners resolve their own disputes without a hearing.

CONCLUSION

In May 1998, the Massachusetts Supreme Judicial Court issued rules requiring that court-connected dispute intervention, including mediation, be made available to parties in all cases in the trial courts. See Supreme Judicial Court Rule 1:18, The Uniform Rules on Dispute Resolution. The long-term impact of these rules, has dramatically changed the practice of family law. Courts now provide or refer to a range of resolution services as an adjunct or alternative to trials. Mediation—whether mandated by the court or chosen by the parties—is intended to increase access and participation, ensure quality and fairness, and to foster innovative approaches to resolving family and other disputes. Because litigation is rarely fun and never free, mediation continues to offer an alternative to parents and partners who are dissolving their relationships; but mediation is more than an alternative to court—it is also a method of developing better forms of conflict resolution and skills for resolving disputes. The mediation movement deserves credit for getting our court system to develop and institutionalize better conflict resolution mechanisms. However, if parties are pushed to negotiate and pressured to agree because of the high caseload of the mediators, the public may lose faith in mediation in general.

The oversight and rules of the court make it easier to manage the quality of the increasing number of mediators. The Standing Committee on Dispute Resolution has prepared a booklet, *A Guide to Court-Connected Alternative Dispute Resolution Services*. It is also available online at <http://www.mass.gov/courts/formsandguidelines/ccadr0601large.pdf>. This booklet will help self-represented litigants and others to understand the differences in the various mediation and alternative dispute services available.

The major danger of mediation on a large scale is that privatization of family disputes could reduce or eliminate the civil rights and other gains of the past decades. Trina Grillo, “The Mediation Alternative: Process Dangers for Women,” 100 *Yale L.J.* 1545 (1991); Maggie Vincent, “Mandatory Mediation of Custody Disputes: Criticism, Legislation, and Support,” 20 *Vt. L. Rev.* 255 (1995); Andree G. Gagnon, “Ending Mandatory Divorce Mediation for Battered Women,” 15 *Harv. Women’s L.J.* 272 (1992). Women in particular, but increasingly children as well, are being treated as equal partners under law, entitled to the protection of the law from both physical abuse and inequitable financial trauma. We must continue to develop intervention policies that support equity for families of all kinds and that discourage violent means of resolving conflict.

□ CHAPTER 19: MEDIATION

Mediation has both been praised by some as a cure-all and maligned by others as destroying the legal process; in spite of the extreme praises or criticisms it receives, we should keep in mind that it is a useful tool for resolving conflict. Mediation can accomplish miracles when the parties in disagreement cannot communicate well or negotiate equally but would like to do so. Parties who are willing, or can be persuaded, to negotiate rather than fight toward solutions are essential to success, but the mediator is just as important; a skilled and experienced mediator is more likely to be successful at resolving conflicts. Whether you litigate or mediate, whether you choose a private mediator or use court services, proceed cautiously, using the tool that works and feels best.

EXHIBIT 19A—List of Local Dispute Resolution Coordinators

ALTERNATIVE DISPUTE RESOLUTION Probate and Family Court Department

Alternative Dispute Resolution, or “ADR”, is the general term for ways of settling disputes other than by the traditional trial. In Massachusetts, court-connected dispute resolution services involve a neutral third party (a “neutral”) helping the people in the case (the “parties”) to settle their dispute without a trial. In some types of ADR, such as mediation, conciliation and dispute intervention, the neutral helps the parties create their own resolution. In other forms of ADR, such as arbitration, the neutral makes a decision for the parties. You may want to speak with an attorney to help you decide which process would be appropriate in your particular situation.

Although some neutrals are attorneys who also practice law, ethical rules prohibit neutrals serving in court-connected ADR programs from providing legal advice in connection with the dispute resolution process. Because any agreement that you make will have long-lasting effects, you should consult with an attorney during the ADR process and a lawyer should review any agreement before you sign it. If you reach an agreement in a case which is in the Probate and Family Court, the agreement is subject to review by a judge. If the judge approves the agreement, it will become part of a court order or judgment which either party can ask the court to enforce in the future.

The Probate and Family Court has approved court-connected programs to receive referrals for ADR services from judges and other court staff. While individuals may seek ADR services from programs which are not court-connected, a primary benefit of obtaining services from the approved programs is that they have met a recognized threshold of quality. The programs monitor quality and compliance with ethical rules established for court-connected dispute resolution services.

There are fourteen “Divisions” of the Probate and Family Court, one for each county. A list of the individuals who are serving as Local Dispute Resolution Coordinators appears below. These individuals can provide information about ADR programs approved for use in their Division and may refer you to one or more programs which may help you resolve your dispute.

LOCAL DISPUTE RESOLUTION COORDINATORS	
Revised: November 2007	
<p><u>Barnstable Division</u> Michael Stevens Barnstable Probate and Family Court Main Street - P.O. Box 346 Barnstable, MA 02630 (508) 375-6718 FAX: (508)-362-3662</p>	<p><u>Berkshire Division</u> Clement Ferris Berkshire Probate and Family Court 44 Bank Row Pittsfield, MA 01201 (413) 442-6941 ext. 7209 FAX: (413) 443-3430</p>
<p><u>Bristol Division</u> Tricia Poole Bristol Probate and Family Court 505 Pleasant Street New Bedford, MA 02740 (508) 999-5249 ext. 225 FAX: (508) 822-9837</p>	<p><u>Essex Division</u> Julie Stiles Matuschak Essex Probate and Family Court 36 Federal Street Salem, MA 01970 (978) 744-1020 ext. 324 FAX: (978) 741-2957</p>
<p><u>Franklin Division</u> Jodie Nolan Franklin Probate and Family Court P.O. Box 590 Greenfield, MA 01302 (413) 774-7011 FAX: (413) 774-3829</p>	<p><u>Hampden Division</u> Elizabeth Sickelco Hampden Probate and Family Court 50 State Street Springfield, MA 01103 (413) 735-6054 FAX: (413) 781-5605</p>
<p><u>Hampshire Division</u> Beth Crawford Hampshire Probate and Family Court 33 King Street; Northampton, MA 01060 (413) 586-8500 ext. 259 FAX: (413) 584-1132</p>	<p><u>Middlesex Division</u> Alison McCrone & Krishna Butaney Middlesex Probate and Family Court 208 Cambridge Street; P.O. Box 410-480 E. Cambridge, MA 02141 (617) 768-5843 (Alison McCrone) (617) 768-5853 (Krishna Butaney) FAX: (617) 494-6710</p>
<p><u>Norfolk Division</u> Edmund Harrington Norfolk Probate and Family Court 35 Shawmut Road Canton, MA 02021 (781) 830-4356 FAX: (781) 830-4310</p>	<p><u>Plymouth Division</u> Kathleen Nagle Plymouth Probate and Family Court 215 Main Street - P.O. Box 7277 Brockton, MA 02303-7277 (508) 897-5487 FAX: (508) 897-5435</p>
<p><u>Suffolk Division</u> Daniel Gibson Suffolk Probate and Family Court 24 New Chardon Street Boston, MA 02114 (617) 788-8359 FAX: (617) 788-8962</p>	<p><u>Worcester Division</u> Kathleen Brown Worcester Probate and Family Court 225 Main Street Worcester, MA 01608 (508) 831-2200 ext.2208 Fax (508) 720-0820</p>