



The Earth Just Shifted: Did you feel it?

The week of October 18, 2010 should get red letter status on all Tennessee mediators' calendars. It was international Mediation Week world wide and our Governor signed a proclamation to that effect. Mediation trainings took place across the state. The Coalition for Mediation Awareness in Tennessee (CMAT) hosted a reception at which many mediators, jurists and lawyers attended. The International Academy of Mediation (IAM) held its first meeting in the great state of Tennessee. All Tennessee mediators had ample reason to feel like the proverbial hog in the mud. We had lots of room to wallow.

While IAM member Lee Jay Berman taught the Memphis Bar Association cle/cme session for mediators in Memphis on Tuesday, Marnie Huff was hosting the CMAT reception in Nashville. Special guest Tennessee Supreme Court Chief Justice Cornelia Clark provided a strong endorsement of all things mediation.

The next day IAM members Lee Jay Berman, Jeff Kichaven, Tracy Allen and Eric Galton provided world class training to over 200 Rule 31 mediators at the annual Alternative Dispute Resolution Commission (ADRC) advanced skills workshop held at Lipscomb University. This was the largest number of participants to ever attend ADRC training in Tennessee. ADRC Chair Hayden Lait introduced Justice Sharon Lee the new Supreme Court liaison to the Rule 31 community and the ADRC. As a Rule 31 Mediator herself, Justice Lee endorsed mediation as a much needed tool which was not always as welcome in state jurisprudence as it has become.

The IAM is comprised of the leading commercial mediators from around the world. They convened in Nashville for the first time and enjoyed Nashville and Tennessee's many delights. They were impressed with all that is going on here. Several noted unofficially, the "epicenter of the future of mediation" is in Tennessee.

That's all pretty heady stuff. However, listen carefully. We are at a moment in time other states have come to and taken less than desirable turns. Jeff Kichaven spoke to the ADRC participants passionately about the false allure of mandatory mediation initiatives. Jeff referred to the state of mediation in California where it all seemed so

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Dec 9 2010

Save the Date 10
Feb 24 2011
TAPM Annual Mtg featuring Erica Foxx

Meet the Mediator - [Theresa Webb Oglesby](#)

High School- Marion County, 1976; College- MTSU, 1980; Law School- Nashville School of Law, 1992

What is in your mediator tool kit? What is your favorite or most used tool?

I use a Marital Dissolution Agreement and Parenting Plan outline. I also request attorneys e-mail any proposed settlements for use if an agreement is reached.

If you were a superhero/mediator what would be your name and slogan?

"T- the Talented Magician "

What is your pet peeve?

Litigants and/or their attorneys who come to mediation unprepared or with unrealistic expectations.

Are you married/do you have kids/pets etc?

I am married, and have one step-daughter, four grandchildren and a dog.

What are your hobbies?

Reading, boating and traveling

Why did you become a mediator?

It is more rewarding to assist people in resolving their issues versus going to trial and facing the unknown.

What is your phobia?

Putting up with Phillip Robinson when he's having a bad day.

What is your favorite vacation spot?

Any place warm.

Where are you from and how did you end up in Nashville?

Jasper, Tennessee. I went to college at MTSU and after graduation, I moved to Nashville to work.

Please complete these sentences:

"I have a burning desire to ask you why you are making me answer these silly questions."

"People tell me I look like Meg Ryan."

"If I could have a 30 minute conversation with anyone (alive or otherwise, famous or not), I would want to speak with God."

What is your favorite TV show?

Survivor

What is your favorite food/restaurant?

Cheeseburger from Five Guys

What is your favorite flavor of ice cream?

Moose Tracks

Knowing what you now know about life etc., would you choose the same career path? If not, what would you like to do?

Yes



AVOID FINANCIAL BLUNDERS DURING DIVORCE MEDIATION

By

[Sandy Arons](#)

When clients leave our mediations with a signed MDA settlement, we feel proud that we have helped them settle their differences in a dignified manner rather than dragging their spouses/families through the horrors of the courtroom. However, if we are not diligent when we address the financial issues of divorce, our clients could face serious consequences that far outweigh the benefits of supposed reduced divorce expenses. As mediators, we have an ethical responsibility to inform our clients about the financial issues of divorce so they can make informed choices. What are those consequences, how bad can they really be? These statistics tell the story:

- Divorced women who are single parents comprise the group most likely to file for bankruptcy (Price Waterhouse Cooper)
- 37% of divorced female retirees live in poverty versus 18% of widows and 20% of those never married (eons.com)

Did these facts surprise you? Let's look at these statistics to understand why they occur.

DIVORCED WOMEN WHO ARE SINGLE PARENTS COMPRISE THE GROUP MOST LIKELY TO FILE FOR BANKRUPTCY

Mothers frequently want to keep the house and forego retirement money and other assets. Yes, ladies are nesting creatures. When scared, their instincts are to keep the family together and minimize the disruption in their children's lives. Most women have not completed a detailed list of living expenses and therefore believe they can afford the house. They forget that ovens stop working, that trees fall over in the yard, that health insurance deductibles need to be met and cars need new timing belts. Women frequently keep a house they cannot afford and then plunge into debt -- and many times bankruptcy -- trying to keep a dream alive.

In my practice, I've created a complete list of living expenses -- with household, medical, transportation, child and personal expenses -- which contains 125 items. The courts in Williamson and Davidson Counties list approximately 25 items under living expenses. Is it really a surprise that clients (both men and women) underestimate their expenses? Personal financial gurus Dave Ramsey and Susie Roman have built their careers discussing the mundane topics of creating a monthly budget and living within one's means. Is it realistic to expect an emotionally rattled client to think clearly enough to assemble a realistic budget without guidance from a financial counselor?

If your clients underestimate their routine monthly expenses by \$300, their annual expenses will be over budget by \$3,600. That equals \$18,000 (\$3,600 x 5) over a five-year period. Most cli-

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ent budgets do not include the unexpected dental work (crown/root canal) (\$1,250), fender bender auto insurance deduction (\$500) or the death of their HVAC unit (\$3,500) and, as a result, their monthly budgets deficit can grow exponentially.

While calculating correct living expenses seems trivial, that calculation is the foundation of your clients' financial house. If monthly expenses are not correct, it is similar to a crack in the foundation of the marital home.

Another common error during divorce is ignoring the impact of inflation and increased expenses as children get older. For example, if your client's monthly expenses are \$4,000 and 5% cost-of-living increase is assumed annually, in five years monthly expenses will increase to \$5,105 and \$61,262 annually. That is a difference of \$38,492 over five years.

Year	Monthly Expenses	Annual Expenses	Increase From 2010
2010	\$ 4,000	\$ 48,000	
2011	\$ 4,200	\$ 50,400	\$ 2,400
2012	\$ 4,410	\$ 52,920	\$ 4,920
2013	\$ 4,631	\$ 55,566	\$ 7,566
2014	\$ 4,862	\$ 58,344	\$ 10,344
2015	\$ 5,105	\$ 61,262	\$ 13,262
Total Difference in Expenses From 2010			\$ 38,492

The wife may be able to afford the house today but can she afford it tomorrow? She needs financial counseling so she understands this issue and makes a plan to address how she can increase her revenue to meet her future needs.

Additional financial blunders occur if women do not know that they will pay taxes on alimony and don't include those taxes in their monthly expenses. Mediators are not accountants, and it is not our job to give tax advice or ensure client budgets are accurate. Mediators do have an ethical responsibility to inform female clients that they will owe taxes on alimony received and to encourage our male and female clients to work with a financial counselor to create realistic budgets.

37% OF FEMALE RETIREES LIVE AT OR BELOW THE POVERTY LEVEL

Compare this statistic to the fact that only 18% of widows live below the poverty line. Deductive reasoning tells me that women keep their homes in lieu of retirement funds, choose low paying jobs that allow them the flexibility to care for their children and just get by. Because women do not have the opportunity to contribute much to retirement accounts, they enter their retirement years relying on Social Security. Lower earnings result in lower Social Security benefits. During retirement women can always sell the house; that will give them some funds. But those funds did not have the chance to grow tax-free over time. At 7.5% interest, money will double in about

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10 years. While their ex-spouse's IRA was probably doubling, the equity in the house did not. And the IRA did not need to be painted or repaired. If mediators had explained this issue, perhaps the female client would have made a different choice

Retirement benefits generally form a substantial part of a couple's total marital estate. It is imperative that mediators understand the basic issues of retirement plans and the tax implications of dividing these assets. It is also important that we understand the rules for plan distribution. I have 10 questions that I ask clients concerning retirement accounts and pensions. A few of the questions are below:

What is the vesting schedule? How much is vested?

Are there restrictions on distribution of the account to a spouse?

Will benefits be payable to the alternate payee (the former spouse) if the employee predeceases the alternate payee prior to retirement?

What are the implications if the alternate payee (the former spouse) predeceases the employee prior to or after the employee's retirement?

I've seen too many cases in which the MDA divides the retirement benefits, but the spouse never receives the money because the funds were not fully vested or the plan had restrictions on how the funds could be divided. The client is then left holding an empty bag. It is the attorney's responsibility to submit this information to the mediator prior to mediation. I include the above questions on my **Statement of Issues, Income, Property and Expenses** worksheet and request this information to be returned to me at least a week before the mediation. Dividing a qualified or a non-qualified retirement/pension plan is tricky. By doing our research before mediation we are able to understand the financial implications of potential settlement options and ensure our clients can make informed choices.

Men make plenty of their own financial mistakes during divorce. However, men typically earn more than their wives so the negative impact of their decisions is blunted. With male clients it is equally important that they have a complete list of living expenses and understand tax issues (including, but not limited to, capital gains taxes on investments sold and penalties for early withdrawal from retirement accounts.) Otherwise, good intentions or a guilty conscience could cause the client to agree to a settlement that he can't afford. Then, he'll be back in mediation or court within two years and the drama of divorce continues.

The cumulative effect of common financial gaffs like those mentioned in this article can be devastating. For example, if:

- monthly expenses are underestimated by as little as \$300
- unexpected monthly expenses average \$167
- cost-of-living increases average \$200 (5% on monthly expenses of \$4,000)

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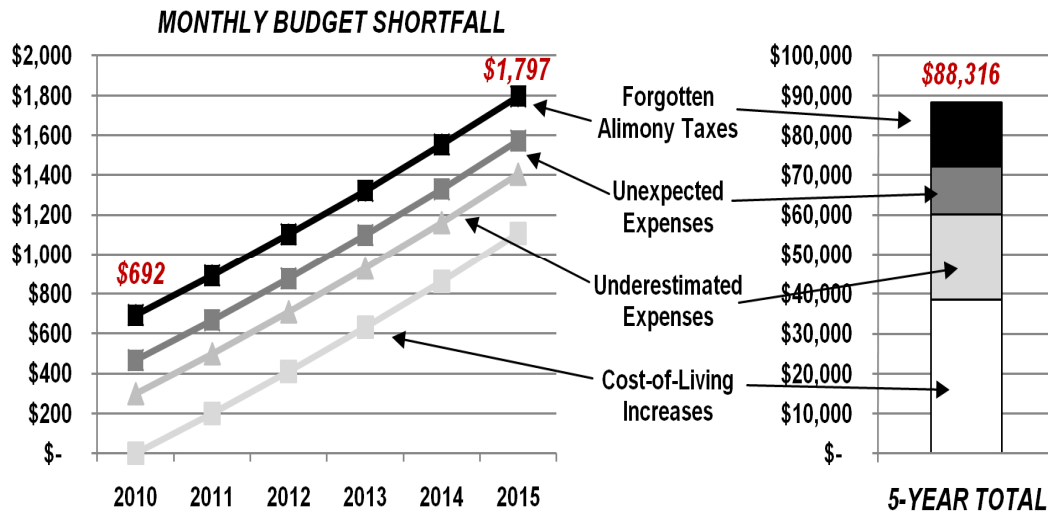
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- and alimony taxes of \$225 are not included in the monthly budget

... the immediate impact will be monthly expenses that are \$692 more than planned and \$8,304 (\$692 x 12) of added expenses in the first year.

Monthly Expenses	
Budget Shortfall	\$ 300
Unexpected Expenses	\$ 167
Cost-of-Living Increase	\$ 200
Forgotten Alimony Taxes	\$ 225
Monthly Shortfall	\$ 692
Annual Shortfall (\$692 x 12)	\$ 8,304

In five years with a 5% cost-of-living increase each year, the monthly budget shortfall will increase to \$1,797 and the five-year total shortfall will be \$88,316. These calculations provide a concrete example of how small, short-term mistakes can have big, long-term consequences and validate the statistics mentioned earlier.



Keep in mind that the deficit of \$88,316 during a five-year period has not included the costs of keeping the house, foregoing the doubling of tax-free retirement funds, pension funds lost as a result of unknown restrictions on division of assets or lost funds due to unknown capital gains taxes. Clearly, the financial issues of divorce, such as those dealing with retirement funds and tax treatment, are complex. A complete discussion of these issues will be the subject of Part II of this article.

Clients should be educated prior to mediation. The time to address these financial issues is when mediation is being scheduled. Introducing these topics *during* mediation decreases the likelihood of success. If appropriate, refer clients to a financial counselor who can educate them concerning

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the financial impact of their choices/options before mediation begins. Then clients and their attorneys can come to mediation prepared to make informed choices and avoid common financial blunders of divorce.

Sandy Arons

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Rule 31-Listed Mediator

Certified Financial Divorce Analyst

Certified Financial Divorce Practitioner

Financial Counselor & MBA

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Associates*

DIVORCE PLANNING

*Understand the numbers.
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Taming the Tiger at ICM

Mark your calendars for February 25, 2011 the day after TAPM's annual meeting featuring Erica Fox (see page 10). In a day for the many people who are interested in learning how to manage conflict but are not mediators, ICM will be hosting **Taming the Tiger: Turning Conflict Into Triumph** at Lipscomb University. The day will feature great trainers and topic which will help educate the public on the tools mediators.

Topics and presenters include:

Negotiating Individual Education Plans: Lorig Chakaudian and Joshua Davis (for educators, administrators and parents responsible for special education student planning)

Neurophysiology of Conflict: Lee Jay Berman and Doug Noll (for individuals interested in learning what science is teaching us about the human brain in conflict situations)

Circles for Business and Commerce: Leigh Ann and Tracy Roberts (for those interested in knowing more about the use of circle process in organizational settings)

Managing Faith Based Conflict: Steve Joiner (for leaders in faith communities dealing with the conflict unique to religious organizations)

Public Policy Consensus Building: Roger Conner (for people interested in developing public policy initiatives collaboratively rather than competitively)

Interpersonal Conflict: Tammy Lenski (for those who would like to improve their skills dealing with "difficult people" and conflict situations)

Facilitating Dynamic Groups: Donna Silverberg (for those who want to maximize team building and group effectiveness)

Managing Workplace Conflicts: Larry Bridgesmith (for those who would like to improve the employment setting and its potential for productivity and profitability with less risk)

This day-long event will be held on the Lipscomb campus in the Ezell Center. Registration for students and government employees will cost \$95, \$125 for early bird registration (before January 25, 2011) and \$175 for registration after 1/25/11.. Make plans to attend today.



ALL ABOUT ETHICS

MEDIATORS ROLE/DUTY
IN INSURING FAIRNESS AND INTEGRITY IN NEGOTIATIONS
IN THE MEDIATION PROCESS

Presented by

[Matt Sweeney](#) and [Richard Murrell](#)

This seminar will center on Rule 2.4 Lawyer as a Dispute Resolution Neutral and Rule 4.1 Truthfulness and Candor in Statements to others.

December 9, 2010
11:30 a.m.
Harper's Restaurant

**PENDING: One Hour CLE DUAL CREDIT;
APPROVED: One Hour CME MEDIATION ETHICS CREDIT**

**PLACE: HARPER'S RESTAURANT
2610 JEFFERSON ST.
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promising for mediators just a few years ago. However, mandatory mediation in Los Angeles Superior Courts went from an experiment to a permanent fixture in a few short years. Now although every case must be mediated and hundreds of mediators are involved in the court system, the first three hours of every mediated case under the system is pro bono. Jeff said, "Be careful what you ask for". When the courts or legislature place a value on mediation, that's the value the public relates to, the price they are willing to pay. A few years at the annual TAPM training, Andy Little sounded a similar warning from his experience in North Carolina where the legislature mandated mediation and also mandated its price. As I recall, Andy said, "Be careful what you ask for."

Make no mistake about it, access to justice must be affordable and in many cases should be provided at no cost to those who can't afford it. That's our ethical duty under the Rule 31 Standards of Conduct. However, how voluntary is mandatory mediation? It's the mediator's job to turn a mandate into an act of self-determination. Should we "professional" mediators be quite so willing to turn the primary task of convening the parties in a volitional pursuit of informed decision making over to the courts and the legislature? That may make it easier, but isn't that our job? Be careful what you ask for.

The ADRC training last week by Lee Jay, Jeff, Tracy and Eric (each a world leading highly successful mediator) reminded us that mediation is hard work. Extremely gratifying, but difficult. Short cuts, predictable approaches and a mediator's lack of preparation and persistence do not serve the market very well. Ultimately, we all lose influence and opportunity when we turn the art and science of mediation into a mere commodity.

Let's be careful what we ask for. Let's commit to turn this incredible moment of opportunity we have been given in Tennessee into a different outcome than other states have experienced. Our craft, our clients and our future in this great work demand no less.

Larry

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TAPM MISSION STATEMENT:

The Tennessee Association of Professional Mediators exists to promote mediation as a valuable and effective process empowering people in resolving disputes.

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SAVE THE DATE TAPM'S ANNUAL MEETING FEBRUARY 24, 2011 Erica Ariel Fox—Guest Presenter



Erica Ariel Fox is an attorney and management consultant who specializes in conflict intervention, leadership development and organizational change. She is a Lecturer on Law at Harvard Law School where she teaches negotiation to law and other graduate students. Ms. Fox is perceived by many in the domain to be among the new generation of global leaders in the negotiation/mediation field.

For over a decade Ms. Fox has been working with the internationally acclaimed Program on Negotiation at Harvard Law School (PON), working with executives, diplomats and lawyers. During that time she focused much of her efforts on improving senior leaders' abilities to tackle challenging interactions, culminating in the publication of the business best-seller *Difficult Conversations* that was authored by her close colleagues.

Currently Erica's work focuses on leading the Global Negotiation Insight Institute (GNII). GNII explores modern applications of ancient wisdom to high-level negotiations and disputes and the writing of "Beyond Yes: Negotiation Mastery from the Inside Out".

In addition to ten years as a mediator, Ms. Fox has coached hundreds of executives on challenging management situations with a focus on how they can communicate more effectively. Ms. Fox consults to a wide range of clients, from organizational leaders at an international insurance firm to leaders at the World Bank.

Ms. Fox has a B.A. with honors from Princeton University and a J.D. with honors from Harvard Law School. She has trained extensively with world leaders in the fields of negotiation, mediation, and conflict systems intervention, and is a partner at Mobius Executive Leadership

TAPM Mediation News will be published on the following dates:

January 15, 2011

If you would like to submit an article or be featured as the Mediator of the Month, please let TAPM know by emailing tapm@tennmediators.org.