

AFCC Massachusetts Chapter of Association of Family and Conciliation Courts



MA PRESIDENT'S MESSAGE



Kelly Zawistowski, Esq.

Greetings to All,

I hope that you all had a great start to 2023 and are doing well. We are excited for our annual conference at the end of the month. I am honored to serve as your President and am grateful for all of you.

As I reflect on the past year, I am reminded that no one can do it alone. I am pleased to be part of AFCC, and its multi-disciplinary team of professionals including judges, lawyers, mental health professionals, probation officers, guardians ad litem, parent coordinators, probation officers, and court staff.

Together, we have never been more relevant in helping families navigate life's challenges in an ever-changing social, economic, and technological landscape. We serve, guide, mentor, advocate, mediate and resolve.

As professionals working with families in conflict, we need to keep our knowledge current, our strategies fresh and our network robust. The Massachusetts Chapter of AFCC is among industry leaders in offering learning opportunities on topics relevant to its multi-disciplinary professionals having an impact on children and families.

This year, our conference examines neurodiversity. We are eager to welcome Keynote Speaker, Dr. Daniel B. Pickar, and other distinguished panelists for a full day of in-person learning.

I am excited to think of the good work that can be accomplished if we all adopt one new

approach that helps us connect with parents and children who have neurodivergent communication styles, apply one new idea to our next interaction to communicate better or overcome a challenge, and meet a colleague to create a new professional resource. I look forward to seeing you at the annual conference on March 31st at Regis College.

I also encourage you to join the AFCC Community at the 60th Annual National AFCC Conference which will occur in person in Los Angeles, California from May 31 to June 3.

The National President's Message (also a MA Chapter member and former MA President) has included her message in this Newsletter.

Our board meetings are open to all members and are held monthly at 5:00pm by Zoom, which makes participation even easier!! Members who are not appointed to the Board of Directors can join Committees and assist with the planning of events, writing the newsletter, and the operation of the Chapter.

Our meetings for the 2022/2023 term are scheduled on the first Tuesday of the month, with no meeting in July and August.

If you cannot attend the annual meeting in-person, or join in the monthly Zoom meetings, please feel free to forward questions, suggestions and topics of importance by email to the Chapter Administrator: admin@maafcc.org

Sincerely,

Kelly Zawistowski, Esq.
MA Chapter President

2023 Officers & Board Members

Officers

Kelly A. Flynn Zawistowski, President
 Mira Levitt, President-Elect
 Jennifer Clapp, Immediate Past President
 Katherine Potter, Treasurer
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Alexandra Flanders	Mary Klaes
Alica Doherty	Richard Novitch
Ashton Pouliot	Joanne Romanow
David Sacks	Russell J. Smith
Evey Diaz	

Sub committees, Chairs/Co-Chairs, and members within parenthesis:

Alternative Dispute Resolution Liaison to “Sister” Organizations (MAGAL / MCFM / MCLC): Joanne Romanow
 Chapter Liaison: Joanne Romanow, Mira Levitt, Kelly Zawistowski, Co-chairs
 Conference: Mira Levitt
 Continuing Education: Alicia Doherty and Kate Potter
 Legislative: Jenny Clapp
 Membership: Joanne Romanow (Ann Rascati, Ashton Pouliot, Evey Diaz)
 Newsletter: Mary Klaes (Alexa Flanders)
 Nominating: Kelly Flynn, Jennifer Clapp, Mira Levitt, Co-chairs
 Scholarship: Kelly Flynn, Jennifer Clapp, Judge David Sacks, Co-chairs
 Directory, List-serve, Website: Vacancy. Volunteer today!
 Liaison with Chief's Office: Jennifer Clapp

Members, if you are interested in joining one of these committees, please email the chair or admin@maafcc.org to let us know. All are welcome!

IN CASE YOU MISSED IT

Demystifying Motion Practice in the Probate and Family Court: A Webinar for GAL's
 Webinar Held on February 16, 2023



As a guardian *ad litem*, do you have questions about how to file motions in the probate court? Do you know when a motion should be filed and how to go about doing so? Do you know how to format them and how to ensure that they are heard expeditiously?

The program was geared primarily toward Category E guardians *ad litem* who may be less familiar with the legal process. The program provided valuable insights, practical advice, and sample motions for use in most common situations. Our Distinguished Panel included:

- The Honorable Jennifer Melia, Associate Justice of the Worcester Probate and Family Court
- Alicia Doherty, Esq., Assistant Judicial Case Manager, Worcester Probate and Family Court
- Linda Medeiros, Esq., Attorney and Category F Guardian ad Litem
- Premela Deck, JD, Ph. D, LICSW, Attorney and Category E Guardian ad Litem

If you registered but were unable to attend, a replay of the 2-hour session will be available shortly along with the materials provided by the presenters. Send an email to admin@maafcc.org for details

2023 ANNUAL CONFERENCE

MARCH 31, 2023 | REGIS COLLEGE, WESTON MA

Register Today - **Early Discount Ends March 15!**



Keynote Speaker:
Dr. Daniel B. Pickar

Neurodiversity: Understanding what it means and interpreting its implications for families in Juvenile and Probate Court

See more details here:
<https://maafcc.org/product/march-31-annual-conference/>

The MA AFCC annual conference will be held in-person at Regis College. The topic of the conference is neurodiversity, which refers to a variety of conditions in which cognitive processing is atypical, such as attention deficit disorder, autism spectrum disorders, and learning disabilities, as well as psychiatric conditions that reflect differences in brain functioning.

As the term has increasingly entered the vernacular with regard to the functioning of parents and children involved in the court process, it is critical for both forensic practitioners and attorneys to understand exactly what it means and its implications for assessment, advocacy, parenting plans, and intervention.

The conference will address how a strengths-based approach to neurodiversity, as opposed to a pathology orientation, helps to reduce bias in both the family and juvenile court systems.

Our keynote speaker is Dr. Dan Pickar, who has published on the topic of neurodiversity in Family Court Review. His presentation will be supplemented by panels comprised of distinguished practitioners, including psychologists, attorneys, judges, and a neurodiversity educator.

The panels will address the ways in which neurodiversity poses unique challenges to forensic practice and the ways in which we are obliged to expand our approaches to working with these families.

REGISTER ONLINE - WWW.MAAFCC.ORG

CONFERENCE SCHOLARSHIPS

There are **McGovern scholarships** available for probation officers to attend the MA-AFCC annual conference. Apply here online <https://maafcc.org/ma-afcc-mcgovern-scholarship-application/>



Annual Conference Scholarship Available

This year the Chapter of AFCC offers 2 full scholarships to attend the **Annual Chapter Conference on March 31, 2023 at Regis College in Weston.**

The scholarship includes registration for the full conference and lunch.

[Click here to learn more and to apply.](#)

Submit your application as soon as possible!

MESSAGE FROM THE NATIONAL AFCC PRESIDENT - JUSTICE LINDA S. FIDNICK



*First Justice **Linda S. Fidnick** of the Hampshire Division of the Massachusetts Probate and Family Court was appointed to the bench in 2008.*

Linda S. Fidnick She previously practiced family law for 30 years in Amherst, Massachusetts, and her practice including litigation, mediation and collaborative law cases.

During her tenure as a judge, she has served on the Massachusetts Supreme Judicial Court's Committee to Study the Code of Judicial Conduct, and currently serves as Chair of the Committee on Judicial Ethics.

She is vice chair of the Education Committee of the Probate and Family Court, and serves as a judicial mentor.

She is a trustee of the Flaschner Judicial Institute. She is a past President of the Massachusetts Chapter of AFCC. She previously served on this Board, and with Matt Sullivan co-chaired the task force that developed the AFCC Guidelines for Court-Involved Therapists.

In 2016, Judge Fidnick obtained the approval of the Administrative Office of the Massachusetts Trial Court for the launch in her Division of the Family Resolutions Specialty Court, a problem-solving court created to provide a low conflict alternative court process for divorcing and separating parents.

She is a graduate of Smith College and the University of Connecticut School of Law.

Hello Massachusetts AFCCers!

As your past chapter president and as current president of AFCC I want to extend a special invitation for you to attend the AFCC 60th Anniversary Conference in Los Angeles from May 31-June 3, 2023.

See details at <https://www.afccnet.org/60thannualconference>

This will be an extraordinary event for many reasons.

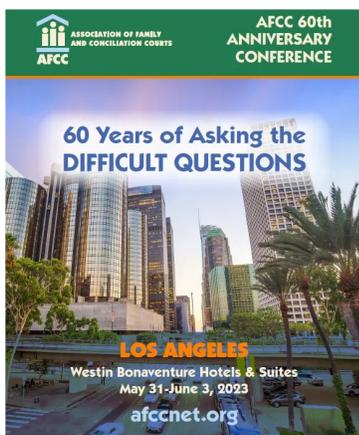
The theme is 60 years of asking the difficult questions. These are the issues that bedevil us all, from children refusing to see a parent, to how much children should be involved in family law proceedings, to assessing and creating parenting plans for families affected by domestic violence, and more.

There will be presenters from all disciplines (lawyers, mental health professionals, mediators, judges, court staffers), from all over the United States, and of note is the number of international family law professionals who will be there.

As we strive for civility in our work, in our lives, and in our country, I think you will enjoy listening to William Doherty, PhD, the keynote speaker, who is one of the co-founders of Braver Angels, a non-profit organization that works to depolarize communications between individuals and groups with vastly differing viewpoints by bringing them together for respectful conversation.

But the best part of any AFCC conference, in my view, is the chance to meet people who, like you, are committed to best practices for families experiencing divorce and separation. Not only is there a remarkable opportunity to learn about techniques and programs new to you, but even more importantly you will be able to enjoy the support and camaraderie of sharing a meal or a coffee with someone who understands and appreciates the challenges of this work.

I hope to see you there!
-Linda S. Fidnick



THE MAGIC OF DANCING WITH CONFLICT: LET'S TALK ABOUT THE WEATHER



Gabrielle Hartley, Esq

Sometimes I am hired by clients who are in the middle of a divorce which has morphed into an all-out war in court.

They are mentally exhausted and running out of cash. They (and often their lawyers!) believe that there is just no way their case can be resolved.

A short time ago I had one of these cases. After reading the motions and documents, even I was having my misgivings about whether this conflict could be swiftly and peacefully resolved.

They were blaming each other for all kinds of shenanigans. To read either of their documents would have you thinking that there was no way to come to resolution. They had a fairly standard scenario; two kids, a house, a pension, some debt and some assets. But the fighting was bad. Really bad. She was a *LIAR* and he was *ABUSIVE*. Nearly an inch of affidavits between them. It was a mess.

I really was not sure what was going to happen. I opened the Zoom rooms. We all said our hellos. The lawyers were cordial but the parties hardly acknowledged each other (it was a court ordered meeting). I gave my little introductory comments about being respectful. I summarized what I had read in both of their affidavits so that everyone knew I had heard their points of view. And then, I set some ground rules for the conflict navigation journey. And then we were off.

In the first hour, in I was not sure it would all come together. He would say up, she would say down. They were totally polarized to start. But the deeper we got, the more we talked about what was going on. We also spoke about other things, real things. We talked about Florida. About Italian food. Everyone connected and relaxed a little.

In that calm space between the facts of the case and the easy conversation, solutions began to unfold. It was a dance. And through it, everyone started to see that big picture. There were **way** more points of agreement than disagreement.

The more we peeled back the layers, and released the strong emotions driving the fights, the more the difficult conversations and issues simplified. In this case, having lawyers present was necessary to keep the power balance even. But once both parties felt heard, the clients were surprisingly flexible and very solution oriented.

By the second hour, a light switch turned on. It was incredible. There was a palpable shift where the parties had a little breathing room to expect something other than the worst from each other.

By the end of the third hour, the entire case was resolved. Yes, some damage had already been done in those affidavits, but by and large by taking a step back they were able to avoid making things worse.

The moment of resolution feels nothing short of magical. And yet, all too often it is so easy for a case to go off the rails. By initiating the pause and creating a container for the parties to shelve a heated conversation we can help change our client's lives for the better.

As mediators and peacemakers, we must remember that while the parties' make the decisions, we play a unique and invaluable role as choreographers of this important dance.

Gabrielle Hartley, Esq is an Online Divorce Mediator and a Co-Chair of the American Bar Association mediation committee.

Her new book, [The Secret to Getting Along and Why It's Easier Than You Think](#) (Sourcebooks) will be released this May and her [TEDx](#) on this topic has been viewed over 60,000 times. In 2019 she released [Better Apart: The Radically Positive Way to Separate](#) (HarperWave).

She clerked for a New York State Supreme Court Matrimonial part where she assisted in bringing hundreds of trial ready cases to resolution and is a frequent guest on WWLP [Mass Appeal](#) discussing conflict resolution and divorce related matters. Learn more at [GabrielleHartley.com](#)

MA Trial Court Resources

Did you know that you can find a lot of helpful legal information, research and sample materials at the Massachusetts Trial Court Law libraries?

Check out their brochure:

<https://www.mass.gov/doc/trial-court-law-libraries-brochure/download>

Did you know that self-represented individuals can receive legal information and assistance from the Massachusetts Trial Court Service Centers?

Learn about CSCs here:

<https://www.mass.gov/info-details/learn-about-court-service-centers>

Don't forget to check out National and the MA Chapter Websites, too!

<https://www.afccnet.org/>
<https://maafcc.org/>

Mary G. Klaes, Esq., is the Greenfield Court Service Center Manager & Chair of the Chapter Newsletter Committee



Mary G. Klaes, Esq

Chapter Events are posted on the Chapter website at maafcc.org

Please send any ideas or submissions for consideration for the next newsletter, expected to be published January 2024, to admin@maafcc.org



Check out these meetings:

MA-AFCC & MAGAL Parenting Coordination Sessions: 3/10, 3/24, 4/7, 4/21, 5/5, 5/19, 6/2, 6/16, 6/30, 7/14, 7/28, 8/11, 8/25, 9/8, 9/22, 10/6, 10/20, 11/3, 11/17 & 12/1/2023

Court-Involved Therapy Peer Consultation Meetings- 3/17, 3/31, 4/14, 4/28, 5/12, 5/26, 6/9, 6/23, 7/7, 7/21, 8/4, 8/18, 9/1, 9/15, 9/29, 10/13, 10/27, 11/10, & 12/8/23

WHETHER YOU ARE SEASONED MEMBER OR A NEW MEMBER, THE MA CHAPTER AFCC IS HERE TO HELP!

REACH OUT WITH IDEAS FOR TRAININGS, WEBINARS & RESOURCES.

CHECK OUT THE FREE RESOURCES AVAILABLE ON THE WEBSITE:

<https://maafcc.org/resources-for-the-public/>

With a highlight on the free resource provided by our MA Chapter Secretary, Stephanie D. Tabashnick, Psy.D., Esq., Editor (June 2021):

[Book: Substance Use and Parenting: Best Practices for Family Court Practitioners](#)

A Brief Overview of *Cavanagh v. Cavanagh*

BY ALEXA FLANDERS



Alexa Flanders

On August 8, 2022 the Supreme Judicial Court (SJC) decided the matter of *Cavanagh v. Cavanagh*, 490 Mass. 398 (2022), and issued an amended version of the opinion on September 9, 2022. The SJC's holding with respect to the calculation of alimony and child support has received attention because of the impact that this ruling will have on the work of the Probate and Family Court, but there are other significant aspects of the opinion that family law practitioners should be aware of that will be discussed below.

In *Cavanagh*, the father of 3 children filed a complaint for modification in the Probate and Family Court to reduce his child support obligation, and the mother responded with a counterclaim to increase child support, for alimony and legal fees and for a determination about where the youngest child would attend school.

The trial judge found the two eldest children to be emancipated and ordered child support for the youngest child, in a lower amount than in the divorce judgment. The trial judge declined to award the mother alimony, relying on G. L. c. 208, §53 (c)(2), which provides that when issuing an order for alimony the court shall exclude income that has already been "considered" in setting a child support order.

The SJC held that going forward trial judges are required to undertake a three-step process "in cases where child support is contemplated." 490 Mass. at 410.

First, the trial judge must calculate what alimony would be ordered after taking into consideration the factors in G. L. c. 208, §53 (a) and then calculate child support using post-alimony incomes.

Second, the trial judge must calculate child support first, and then calculate alimony "considering, to the extent possible, the statutory factors enumerated in § 53 (a)." *Id.*

Finally, the judge must compare the two "base award and tax consequences" that would result from each set of calculations and "fashion an order which would be most equitable for the family before the court." *Id.*

If the trial judge does not award alimony, the judge must explain why and refer to the alimony factors in G. L. c. 208, §53 (a). Notably, although trial judges will be required to consider tax consequences, the opinion does not address *Fechtor v Fechter*, 26 Mass. App. Ct. 859, 866 (1989) which held that if parties do not introduce evidence of tax consequences, the trial court is not bound to consider tax issues.

Although the child support and alimony implications of the opinion have received a good deal of attention, other aspects of this decision may also have a significant impact in family law cases.

Emancipation

The parties' separation agreement listed a number of events that would constitute the child being emancipated, including entry into military service. The parties disagreed on whether their middle child's attendance at West Point was entry into the military (so that the child would be emancipated) or attendance at an educational program (in which case child support would continue under the terms of the agreement).

The SJC held that it was the conditions set forth in G. L. c. 208, §28 that controlled the issue of emancipation, not the parties' separation agreement, ruling that as the child has a statutory right to support that the parties may not bargain away, "the parties may not agree that a child is emancipated under conditions broader than those provided for by statute. . ." *Id.* at 418. However, the SJC noted in a footnote that parties could agree to provide support in more circumstances than those in the statute. See *id.*, n.15.

In this case, the relevant question was whether the child was domiciled in the home of a parent and principally dependent on that parent for maintenance. See *id.* at 418. The SJC ultimately determined that based on the facts

of this case, the trial judge had not erred in finding that the middle child was emancipated, although the SJC stopped short of holding that entry into West Point is per se emancipation. See id. at 420.

Calculation of income

Both parties appealed the manner in which the trial judge calculated the father's income for child support purposes. The trial judge included the father's income from his second job in calculating his child support obligation although the parties had agreed in their separation agreement that this income would not be used for future child support or alimony calculations. The SJC held that as to child support, the provision that the father's second income would not be used was void, again because parents cannot bargain away the child's right to support. See id. at 422-423.

The SJC also held that the income and capital gains on the father's savings and 401K plans should have been included as income for the child support calculation. See id. at 422. In addition, the SJC held that the contributions made by the father's employer to his retirement accounts and health savings accounts were properly considered income for child support calculations. See id. at 424-425.

Spousal disqualification

At trial, the mother had been prevented from testifying about some of the father's statements during the marriage, based on spousal disqualification. The SJC held that the contract exception to G. L. c. 233, § 20 applied to the parties' dispute, even though their separation agreement merged with the judgment of divorce and therefore no breach of contract action could be maintained. See id. at 430. The court ordered that on remand either party should be allowed to testify to private marital communications about the disputed provision. See id.

Contribution to school

The separation agreement provided that the father would contribute to "an agreed upon preparatory school" for the youngest child. Id. at 411. A different provision required the parties to make a good faith effort to reach agreement in the event of a dispute regarding the separation agreement. See id. at 402. The parties disagreed on whether the "preparatory school" language applied to seventh and eighth grades, and whether the father had an obligation to contribute to the tuition of a school that he had not agreed the youngest child should attend.

The evidence at trial was that the mother had made many efforts to discuss the matter with the father and to negotiate with him, but that the father refused to discuss putting the youngest into the preparatory school for seventh and eighth grades. See id. at 412-413. The SJC observed that allowing the father to be relieved of his obligation to pay towards the youngest child's schooling by unilaterally refusing to engage in any negotiation rendered that obligation "merely illusory." Id. at 415. The SJC concluded that a harmonious reading of all of the agreement's provisions meant that the father had an obligation to contribute to an agreed preparatory school where both parties had to try to reach agreement in good faith. See id. The SJC noted that if the parties could not reach agreement, they could file an action in the court and that their inability to reach agreement may constitute a material change in circumstances. See id.

This summary is not an exhaustive review of all facets of the Cavanagh decision; the opinion should be read carefully by all family law practitioners.

ALEXA FLANDERS

Alexa Flanders is the Judicial Case Manager in the Franklin Division of the Probate and Family Court and Member of the Newsletter Committee. The conclusions presented here are the author's own and do not represent the views of the Trial Court.

A FINAL THOUGHT FOR THIS EDITION



"This is my wish for you;
 Comfort on difficult days,
 smiles when sadness intrudes,
 rainbows to follow the clouds,
 laughter to kiss your lips.
 Sunsets to warm your heart,
 hugs when spirits sag,
 beauty for your eyes to see,
 friendships to brighten your being.
 Faith so that you can believe,
 confidence for when you doubt,
 courage to know yourself,
 patience to accept the truth,
 Love to complete your life."

-Ralph Waldo Emerson

We hope you can join us at the annual conference on March 31, 2023!

<https://maafcc.org/ma-afcc-conference-march-31-2023/>

Massachusetts Chapter AFCC

Association of Family & Conciliation Courts

A screenshot of the MA AFCC website banner. At the top, there is a dark blue navigation bar with white text links: Home, Info For Members, Calendar, Resources for the Public, Member Directory, Event Registration, and Contact Us. A search icon is on the right. Below the navigation bar is a large image of a modern brick building with a curved glass entrance. Overlaid on the bottom of the image is the text "REGISTER TODAY | MA AFCC Conference | March 31, 2023" in white. A blue button with the text "READ MORE" is positioned at the bottom left of the image.