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Moss & Barnett Advocate

Can Parents Handle The Truth? A Primer On Child-Inclusive Mediation

By Debra M. Bulluck



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Moss & Barnett

Can Parents Handle The Truth? A Primer On Child-Inclusive Mediation



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Debra is a member of Moss & Barnett's Family Law team. She helps clients develop creative and effective solutions to complex family law issues.

A common misconception in family law cases is that children are equipped to make custody and parenting time decisions. All too often parents and their lawyers involve children in litigation, claiming the "child's voice" must be heard. Whether it is asking children to testify in court or filing unsolicited "letters from the child," these attempts often backfire and ultimately are a disservice to the child. If parents truly desire to have the child's voice inform the process, an effective tool is child-inclusive mediation ("CIM").

What is Child Inclusive Mediation?

CIM is a form of alternative dispute resolution ("ADR") where the child's experience takes center stage. CIM requires the help of two professionals — a mediator and a child consultant — who work in tandem.

For parents considering CIM, a word of caution. Parents must be prepared to hear the truth about their child's experience, which may be uncomfortable and differ from their own.

Mediator-Extraordinaire

CIM mediators are highly trained and familiar with family law processes. It is the mediator's role to receive preliminary information about the family, synthesize the issues to center the child's experience, guide the discussion, and empower parents to reach agreements.

"The Child Whisperer"

Child consultants are typically experienced child therapists or have similar credentials to effectively interview children. They use age-appropriate communication tools to elicit candid responses from children on various topics, including stressors in their life and how they perceive their parents' relationship and conflict. The child consultant meets with each child separately from the parents and mediator.

The Mediation Process

At mediation, the child consultant voices each child's experience to the parents and mediator. In most cases, children do not participate in mediation. The parents are then given time to digest the information from the child consultant before mediating issues.

Parents who expected different feedback must be prepared to acknowledge a difficult truth — that their positions in mediation or litigation may not align with the children's perspectives. It is up to the parents to prioritize the children's needs and find solutions in their best interests.

Assessing Family Readiness

Parents should consider the following factors before utilizing CIM:

- **The "Why."** CIM is not a process for parents with self-serving or vindictive motivations. Instead, CIM is for parents who want honest feedback about their children's experiences and have the ability to use that information in a productive, solution-focused manner.
- **Age of child.** There is no bright-line rule on how old is "old enough" for a child to participate in CIM. Pairing a child with the right child consultant (e.g., a play therapist for a younger child) is equally important when assessing a child's age and readiness for CIM.
- **Costs.** Many CIM providers charge flat fees, hourly rates, or both. Unlike traditional mediation with one mediator, parents are paying for two professionals.
- **Other factors.** Some cases may not be a good fit for CIM, including cases where a child is resisting or refusing to see one parent and cases with a history of family violence, unless certain safety precautions are taken.

Conclusion

For parents who believe "ignorance is bliss," CIM may not be the best option. CIM is not about reinforcing parents' firmly held beliefs about their children. Instead, CIM is an opportunity to give children a voice in a safe, therapeutic environment and empower parents to create child-centered solutions.

To Buy or Rent in an Inflationary Market? That Is the Question



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Aaron practices in the areas of Real Estate Finance, Real Estate, and Business Law. He has experience with general real estate and commercial real estate finance transactions.

For many, the decision to buy or rent can be challenging in ordinary times, let alone in the current inflationary market. Potential buyers are now faced with rising real estate prices, interest rate hikes, and increased costs of lending. These economic factors complicate the age-old “buy versus rent” analysis.

Recent Trends

As of December 2022, existing home sales dropped for the ninth straight month. For the year 2023, Fannie Mae predicts new home sales to fall 5.4 percent and existing home sales to fall 19.2 percent.

In the commercial market, transaction volume in the third quarter of 2022 was down 21 percent as compared to the same period for 2021. However, according to a recent JP Morgan survey, approximately 65 percent of real estate lenders are optimistic about the real estate industry’s performance in 2023.

Keeping Perspective

Although the U.S. has seen record inflation and interest rate hikes, historical perspective is important. As of February 2023, the average 30-year fixed rate mortgage was hovering around 6 percent. Comparatively, between 1971 and January 2023, 30-year fixed rate mortgages have averaged 7.75 percent. Thus, while current mortgage rates are above what has come to be expected over the past decade, the U.S. is still notably below historical averages.

Renting Versus Buying

- **Personal finances.** Deciding to rent or buy largely depends on an individual’s specific financial situation. It might make sense to wait on purchasing a home if there is insufficient money saved for a down payment or the estimated mortgage payment



exceeds a reasonable budget. Some experts recommend that mortgage expenses not exceed 25 percent of a household’s net monthly income.

- **Short-term versus long-term benefits.** Renting can provide a perfect short-term, flexible solution for someone starting a new business, or experiencing a temporary job relocation, who does not want all of the responsibility and maintenance associated with owning a property. However, buying is generally the better long-term investment given the autonomy and tax advantages associated with property ownership and the potential to increase wealth if the property appreciates in value.
- **Rent increases versus mortgage rate hikes.** While mortgage rates have increased, buyers can decide to refinance for a lower monthly payment if rates decrease in the future. Renters do not have the same option. In fact, according to the U.S. Bureau of Labor Statistics, rental prices sharply increased by 8.3 percent in 2022.

Conclusion

Renting has its benefits in some circumstances, but buying real estate is generally the better commitment, even in an inflationary market. Purchasing typically provides greater stability and more predictable expenses. As author Mark Twain famously said, “buy land, they’re not making it anymore.”

Team News

Moss & Barnett Announces New Shareholders: Michael T. Etmund, Chelsy M. Jantsch, Mary Frances Price, and Jeffrey A. Wieland



Michael T. Etmund



Chelsy M. Jantsch



Mary Frances Price



Jeffrey A. Wieland

Moss & Barnett is pleased to announce that **Michael T. Etmund**, **Chelsy M. Jantsch**, **Mary Frances Price**, and **Jeffrey A. Wieland** have become shareholders in the firm effective January 1, 2023.

Michael T. Etmund regularly represents clients in the financial services and collection industries – including corporations and other general business entities – in matters involving defense of consumer protection statutes, compliance and regulatory analyses, and commercial collection. He advises clients with regard to federal and state data privacy laws, accessibility, and data security laws and regulations. Mike also practices in the area of commercial litigation and in defense of the Fair Debt Collection Practices Act (FDCPA), the Fair Credit Reporting Act (FCRA), the Telephone Consumer Protection Act (TCPA), and other consumer protection statutes.

Chelsy M. Jantsch focuses her practice on negotiating, structuring, and closing complex real estate transactions, including multifamily and commercial properties. She represents institutional, bridge lenders, and life insurance lenders in all aspects of commercial real estate financing on a national scale, and also advises on the financing of multifamily housing projects and the sale of loans to secondary market investors such as Fannie Mae and Freddie Mac.

Mary Frances Price is an experienced VA Accredited Elder Law attorney who focuses her practice on serving individuals and families who are establishing an estate plan, revising an existing estate plan, or dealing with the legal, medical, and financial impacts of aging, chronic illness, and disability. Her practice includes advising on Medicare, Medicaid, Veterans Benefits, long-term care insurance, estate and tax planning, as well as asset protection for families and individuals with disability and long-term care expenses. She has counseled and advised hundreds of clients on their estate, elder care, and disability plans and provides effective and ethical legal guidance, helping clients make difficult decisions and navigate the complicated issues that arise when dealing with chronic health challenges, disability, and aging.

Jeffrey A. Wieland practices in construction, commercial, and public procurement litigation. He advocates for and advises clients in all phases of a dispute, from pre-litigation claim and risk analysis through resolution of the case at trial, arbitration, mediation, or appeal. He also advises clients on how to avoid litigation, which often involves drafting and reviewing contracts and negotiating agreements and settlements. Jeff's engineering and project management background gives him a perspective unusual among construction lawyers.

Congratulations to these new firm leaders.

Alerts

1 Employers: Good Reason to Review Your Separation Agreement Forms

On February 21, 2023, the National Labor Relations Board issued a significant decision that overruled the Board's own prior decisions and held that an employer violated the National Labor Relations Act by offering discharged employees severance agreements that included commonly-used confidentiality and non-disparagement provisions. *McLaren Macomb and Local 40 RN Staff Council, Office and Professional Employees, International Union (OPEIU), AFL-CIO*, 23 WL 2158775 (Feb. 21, 2023).

While this ruling has been widely criticized by employers and business groups and could be overturned, it represents a stark change in the law. Based on this development, it is now prudent for employers to review their separation or severance agreement forms with counsel. Language changes to the agreement forms may help to avoid a negative ruling as experienced by the employer in *McLaren Macomb*. Moss & Barnett employment law attorneys are available to advise employers on these and other issues.

If you would like assistance assuring best practices in this area, please contact your attorney at Moss & Barnett.

Timothy L. Gustin and Christopher D. Stall Elected to Moss & Barnett Board of Directors

Moss & Barnett is pleased to announce that **Timothy L. Gustin** and **Christopher D. Stall** were elected to three-year terms as members of the firm's Board of Directors, effective January 1, 2023.

Timothy L. Gustin serves as Chair of the Board of Directors and as Chair of the firm's Real Estate Finance and Real Estate Practice Groups. He represents lenders who finance office, industrial, hospitality, retail, self-storage, and multifamily projects. Many of the multifamily loans are sold to Fannie Mae and Freddie Mac and pooled into securitization trusts. Tim also works with buyers and sellers in all phases of the purchase and sale of residential and commercial real estate and represents landlords and tenants in negotiating and drafting commercial leases.



Timothy L. Gustin

Christopher D. Stall serves as a director and as Chair the firm's Commercial Department and Business Law Practice Group. He focuses on advising businesses regarding management, governance, and transactions, including mergers and acquisitions and joint ventures. Chris works with clients in a spectrum of industries, including insurance, investment advisors, health care, manufacturing, distribution, transportation, and professional service firms.



Christopher D. Stall

Tim and Chris will each continue practicing law on a full-time basis in addition to handling their management responsibilities. They are joined on the board by co-directors, **John P. Boyle**, **Jana Aune Deach**, **Brian T. Grogan**, and **James J. Vedder**.

Team News

Two New Lawyers Join Our Team

Debra M. Bulluck is a member of Moss & Barnett's Family Law team. She is committed to compassionate advocacy and assists and strategizes with clients to develop creative and effective solutions to complex family matters, including dissolution proceedings, paternity, custody, parenting time, child support, spousal maintenance, orders for protection, distribution of marital assets and debts, and the many other issues today's families face. Prior to joining Moss & Barnett, Debra clerked for the Honorable Mary Madden in the Fourth Judicial District, Hennepin County Family Court, and she served as the Legal Assistance for Victims Project Attorney at Standpoint, providing holistic legal services to survivors of domestic and sexual violence. Debra received her J.D. from the University of Wyoming College of Law and her B.A. from Berea College.

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Family Law



Madeline E. Davis is a member of Moss & Barnett's Litigation and Construction Law teams. She has experience in all phases of construction litigation, including drafting and negotiating construction contracts, pre-litigation risk assessment, construction defect claims, jobsite accidents, delay and acceleration claims, mechanics' liens, insurance coverage disputes, and procurement issues. Madeline also has significant mediation, arbitration, and trial experience. Madeline received her J.D., *cum laude*, from Mitchell Hamline School of Law and her B.A. from the University of Minnesota-Twin Cities.

Madeline E. Davis

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Litigation

Construction law



Midwest Real Estate News Lists Moss & Barnett Among Top Law Firms for 2022

Moss & Barnett is pleased to announce that, for the fifth consecutive year, *Midwest Real Estate News* named the firm among the top regional law firms for real estate in 2022.

Each year, *Midwest Real Estate News* issues its "Best of the Best" edition, which ranks the industry's top law firms from 14 Midwestern states. Selection is based on the number of real estate transactions that occurred in the previous years within those states.

"We are honored to be recognized by *Midwest Real Estate News* as one of the leading real estate law firms in the Midwest. We are grateful for the many relationships that provide us with the opportunity to work on challenging and exciting transactions throughout the region."

- Tim Gustin, Chair, Moss & Barnett Real Estate Group

Making the Season Bright for Families of the Nonprofit "Breaking Free"

This holiday season – and for the past ten years – the women lawyers of Moss & Barnett "adopted" families who are in the Women's Program at the nonprofit Breaking Free. Breaking Free helps hundreds of women escape systems of prostitution and sexual exploitation through advocacy, direct services, housing, and education. Our lawyers purchase and wrap gifts and gift cards to fulfill each family's wish list, ensuring these families have a joyful holiday season. Moss & Barnett employees donate their time and various personal care items to Breaking Free throughout the year. To learn more about Breaking Free, visit breakingfree.net.

"Breaking Free provides a comprehensive response to the complex problem of sex trafficking by providing services and housing to the victims, educating law enforcement and the judicial system, and raising public awareness. Supporting Breaking Free aids in the prevention of trafficking and implementing long-term social change."

- Jana Aune Deach, Moss & Barnett Director



Pictured from left to right: Moss & Barnett attorneys Maddie Brase, April Will, Sara Filo, Jill Strodthoff, and Leah DeGrazia

Retirement and Spousal Maintenance As Baby Boomers Reach Their Golden Years



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April is a member of Moss & Barnett's Family Law team. She assists clients in all family law matters, including divorce and custody proceedings.

The U.S. is in the midst of a profound demographic shift — nearly 77 million baby boomers will reach average retirement age by 2030. Retirement is an exciting milestone, but it also signals a change in financial circumstances. For baby boomers approaching retirement age and still paying spousal maintenance, now is the time to seek legal guidance. Generally, leaving the workforce does not automatically terminate a spousal maintenance obligation.

The Standard to Modify Spousal Maintenance

In Minnesota, a party seeking to modify or terminate spousal maintenance must satisfy a two-prong test. The moving party must demonstrate that: (1) a substantial change in financial circumstances has occurred; and (2) the substantial change in circumstances renders the original spousal maintenance award both unreasonable and unfair.

For most, there will be no greater change to one's financial circumstances than retirement. But is that change sufficient to modify or terminate spousal maintenance? The short answer is — it depends.

"Good Faith" Versus "Bad Faith" Retirement

An obligor who experiences a substantial reduction in income after retirement may be able to satisfy the two-prong test above. However, Minnesota law requires additional analysis when a party *voluntarily* creates a change in financial circumstances, including when an obligor voluntarily retires.

Specifically, the court will examine the motivation underlying the obligor's decision to retire by analyzing the following factors:

- the age and health of the retiring party;
- the employment history of the retiring party;

- the employer's retirement policies and benefits;
- the prevailing economic conditions at the time of the party's retirement; and;
- the expectations of both parties regarding retirement at the time of the divorce, particularly in cases involving an early retirement.

If the obligor's decision to retire was motivated by a desire to reduce or end spousal maintenance, the court may conclude the obligor is retiring in bad faith and decline to modify spousal maintenance. However, if the obligor is retiring at a normal or customary retirement age, the court may conclude the obligor is retiring in good faith and reduce or terminate spousal maintenance accordingly.

Balancing Act

In all spousal maintenance cases, the court must balance the needs of the spouse receiving spousal maintenance against the financial condition of the spouse required to pay spousal maintenance.

When an obligor retires, the court considers all sources of income available to the obligor after retirement, which may include Social Security payments, investment income from assets awarded in the divorce, and even investment income derived from assets acquired after the divorce.

Likewise, the party receiving spousal maintenance must demonstrate an ongoing need for spousal maintenance. In assessing an obligee's need, the court considers the obligee's financial resources, whether or not investments were prudently invested, and the obligee's reasonable living expenses.

Conclusion

Whether modification or termination of spousal maintenance is warranted depends on the unique facts of each case. Judicial officers in family court have broad discretion, and the law governing this topic continues to evolve. If you have questions about your spousal maintenance obligation upon retirement, please contact your family law attorney and Moss & Barnett.

*As we begin a New Year, all of us at
Moss & Barnett
gratefully pause and join together to say*

Thank You

and to wish you a happy and healthy New Year. May 2023 be an extraordinary one.

This past holiday season, in lieu of traditional cards and gifts, we made donations to the following organizations:

Al-Maa'uun Food Shelf at Masjid An-Nur Mosque

Providing food to families and individuals in need
(masjidannur.org/partners-affiliation/al-maaun/food-program/)

Bridging

Empowering people to thrive in their homes by providing quality furniture
and household goods for those pursuing housing stability (bridging.org)

Catholic Charities Meals for the Homeless – Dorothy Day Center

Serving those most in need and advocating for justice in the community (cctwincities.org)

Community Emergency Services

Transforming lives by serving neighbors, sharing resources, and becoming community (cesmn.org)

Feeding Area Children Together (FACT)

Providing meals free of charge to K-8 students who are in need of
food on weekends and over school break (stcloudfact.org)

Good in the 'Hood

Influencing, inspiring, and impacting individuals, families,
and entire communities for good (goodinthehood.org)

Groveland Emergency Food Shelf

Providing emergency groceries for those in need (grovelandfoodshelf.org)

herARTS in Action

Creating an equitable world through increased access and social justice with art (herartsinaction.org)

Pathways for Youth (St. Cloud)

Creating a world in which all youth feel safe, valued, and supported
while reaching their full potential (pathways4youthmn.org)

Timber Bay

Helping youth create deep, healthy connections with peers and mentors through
community programs, camp, and adventure trips (timberbay.org)

Tubman

Providing safety, hope, and healing to the Twin Cities (tubman.org)



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