



# Mediation News

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Fall 2009

New Jersey Association of  
Professional Mediators  
1 AAA Drive  
Trenton, NJ 08691-1803

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## Upcoming Events

### **NJAPM 16th ANNUAL CONFERENCE**

Somerset DoubleTree, NJ  
(Rt. 287, Exit 10)  
November 14, 2009  
8:15 AM to 4:00 PM

### **NJAPM GENERAL MEETING**

NJ Law Center, New Brunswick,  
Wednesday, December 9, 2009  
6:30 PM– 8:30PM

### **40 HOUR BASIC DIVORCE MEDIATION TRAINING**

Crowne Plaza, Exit 8A, NJ Turnpike  
March 6, 7, 13, 20 & 21, 2010

### **VIEW NJAPM CALENDAR**

See Page 16 for More Listings

## **Mediation's Turning Point: An Alternative Becomes Mainstream, NJAPM's 16th Annual Conference on November 14, by David P. Leta**

**W**e are pleased to announce New Jersey Association of Professional Mediators' 16<sup>th</sup> Annual Conference, "Mediation's Turning Point: An Alternative Becomes Mainstream" on Saturday, November 14, 2009, 8:15 AM— 4 PM at the DoubleTree Hotel, 200 Atrium Drive Somerset, NJ 08873.

Conference Committee, Anju D. Jessani, Risa Kleiner and Gale Wachs, have been putting their best efforts and time since late last year to come up with a remarkable program that focuses on how mediation is becoming a mainstream dispute resolution process, as illustrated by the implementation of the Foreclosure Mediation Program in New Jersey in the past year.

Registration begins at 8:15 AM, followed by a social networking continental breakfast. At 8:50 AM, we open the conference, with the president's welcome followed by the state of the organization, induction of new board, update on NJAPM programs, and the inspirational words of the NJAPM President, Robert J. McDonnell, MS, APM. He will share his thoughts on moving our organization forward.

### **Keynote Speaker, Douglas N.**

**Frenkel:** We are especially excited about our keynote speaker, author and professor, Douglas N. Frenkel who will speak on "Effective Mediator Persuasion: What the Re-

search Tells Us." Mr. Frenkel is the co-author of *The Practice of Mediation: A Video Integrated Text* that NJAPM utilizes as its text and video instruction resource for its 28-hour basic civil mediation class. He is the Morris Shuster Practice Professor of Law at Penn Law, and serves as a mediator in employment, commercial and institutional matters.

**Featured Speaker, Jerry Lewis:** We welcome our featured speaker Retired NJ State Police Lt. Jerry Lewis. He will talk about "What it Takes For a Client to Move from a Position or Belief." Lieutenant Lewis for 25 years served the New Jersey State Police and had supervised the Violent Crime Analysis and Polygraph Unit. He has conducted more than 2000 criminal specific examinations. His keen insight on human belief systems led him to develop interviewing techniques that have significantly improved confession rates.

**An Update on the NJ Court Mediation Programs:** Michelle Perone, Esq., Chief, Civil Courts Programs for the Administrative Office of the Courts (AOC), Caroline Petrilla, JD, APM, Assistant Director of the State Office of Dispute Settlement (ODS), and Bonnie Blume Goldsamt, JD, APM Law

*(Continued on Page 5)*



## Mediation News

A Publication of the  
New Jersey  
Association of  
Professional  
Mediators

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## Editor's Column by Chris Kane, PE, JD

**H**ello from your new NJAPM Newsletter editor. This is a time in my career to expand my practice of conflict resolution and NJAPM is a network of professionals that can help me do it. I am excited that my new role gives me a good way to give back to this dedicated organization.

Thank you to Bob Karlin for your excellent work in the role of editor these past few years. I am also very happy to have the continuing help of Judi Shemming as Associate Editor and to the various board members such as Anju and Carl who help this effort, and have helped me get started.

This edition of *Mediation News* comes out in time for our annual conference and Dave Leta has provided a good overview of this year's program. Thank you to our president Bob McDonnell for providing an enthusiastic president's report. Anju Jessani has provided some tips to help new

mediators leave the starting gate. Carl Cangelosi has put together the current cases in family law hot off the press. Anna Delio has added an informative membership report. Bob Karlin has continued his thought provoking Psych101 series. Also included is an article of mine on construction mediation. We had just enough contributions to fit into what we planned to be a somewhat shorter newsletter compared to recent editions.

I look forward to working with all of you practitioners who have something to say and want to get your ideas in print in the coming year. My e-mail address is [ccrmediator@aol.com](mailto:ccrmediator@aol.com). We will have at least two additional editions of the newsletter in the coming year and I will give you plenty of notice to get me your articles. In the meantime, enjoy the annual meeting and another successful NJAPM year!

## Don't Go Naked! Professional Liability Insurance Is Available For All NJAPM Members

Policies are available to all general and accredited members.

NJAPM has been able to negotiate favorable group rates for arbitrator and mediator liability insurance.

For further information or to obtain forms, visit our website at

[www.njapm.org](http://www.njapm.org)

or contact Armand Bucci at

[armandbucci@alum.drexel.edu](mailto:armandbucci@alum.drexel.edu) or 856-663-2237

## ***President's Message*** by Robert J. McDonnell, MS, APM

**I** know you will all agree with me when I say that the past year has been very productive for NJAPM, and we should all be very proud of the contributions made by the Association, and its members, to the practice and advancement of mediation in New Jersey.

As the largest statewide organization dedicated entirely to mediation, we continue to grow professionally, as well as in numbers of members. We offer outstanding top quality training courses for new mediators, in both civil mediation and in divorce mediation. Led by Program Director Pat Westerkamp, the civil course has been expanded from 18 to 28 hours, and is offered jointly by NJAPM and FDU. Carl Cangelosi is program director for the 40-hour divorce course. In addition to these introductory courses, NJAPM offers advanced one-day skills training conferences for civil mediation, led by Nick Stevens, and divorce mediation, led by Carl Cangelosi and Joan Geiger. We also recently introduced a one-day mediation skills course.

Over the past year, we have had an excellent selection of monthly general meetings, including joint meetings with the Dispute Resolution Section of the State Bar and the Garibaldi Inn of Courts. Pat Westerkamp and his committee continue to deliver informative and entertaining meetings. As someone who attends as many county peer group meetings as I can reasonably attend, I can also report that we have an outstanding selection of monthly local area meetings. For those of us in private practice, these meetings provide a terrific networking opportunity. I have found that attendees bring to these session examples of real mediation issues and dilemmas and take away the experiences and knowledge shared at the meetings. A discussion of major accomplish-

ments over the past year would not be complete without acknowledging the upgrading of the NJAPM website. Webmaster Marv Shuldiner has provided the Association and his fellow members with an attractive and user friendly site, where the public can find out about mediation and the tremendous resources of NJAPM, including Accredited Professional Mediators (APMs) in their areas. Members benefit from self-management of their NJAPM membership account information, as well as on-line payment processing and event registration. Marv also tells us that there are further enhancement modules in the works. Special thanks go to Marv, as well as to Membership Chair, Anna Delio, for converting all members over to the new site and for all the help provided to members during the conversion process.

As the leading voice for mediation here in New Jersey, we also provided input to the Judiciary on several occasions during the past year:

- In October, when the foreclosure mediation program was introduced, NJAPM was one of the first organizations to step forward and speak up for the program and its potential benefits. Today, over half of our members serve on the foreclosure mediation roster.

- In January, we provided comments to the Family Subcommittee of the Supreme Court Committee on Complementary Dispute Resolution (CDR). We also met with the Subcommittee to personally deliver our comments.

- In April, we provided comments to the Supreme Court Committee on Complementary Dispute Resolution on their proposed 2007-2009 Rules Cycle revisions for all dispute reso-

lution programs. I also testified to our comments before the Court at their hearing on the proposed rules revisions.

- In June, NJAPM gave input to the Supreme Court Committee on Attorney Advertising (CAA), regarding recommended changes to the Rules of Professional Conduct. We were fortunate to have our position articulated in comments prepared by Hanan Isaacs.

Clearly, we have a voice with the judiciary on issues relating to mediation in New Jersey, as we celebrate our 16<sup>th</sup> Annual Conference. We find ourselves well positioned to spread the word about mediation, not only to the judiciary, but to the public, families in need, businesses facing litigation, and the hordes of others who can benefit from a mediated solution to their conflicts.

The upcoming year is going to be even busier than the past. We have many "irons in the fire" and "projects on the drawing board," all of which require resources and time for our as an all-volunteer association. We need people to step forward who have the time, resources and the passion to help with these projects. I know your contributions will not only benefit NJAPM and the practice of mediation, but will also benefit your own mediation practice.

As you can see from this newsletter, Chris Kane has stepped forward and assumed the role of editor. We thank Chris and associate editor, Judy Shemming, for their fine work in pulling together our quarterly publication.

I look forward to an exciting and productive year in the field of mediation. NJAPM, as your professional association, is committed to supporting you in any way it can. I welcome your comments; please email me at [rmcdonnell@alliance-mediation.com](mailto:rmcdonnell@alliance-mediation.com).



**NJAPM 16TH ANNUAL CONFERENCE: Saturday, November 14, 2009**  
**Mediation's Turning Point: An Alternative Becomes Mainstream**  
 Registration Fee: Includes continental breakfast, lunch and conference materials  
 DoubleTree Hotel, Somerset, New Jersey, 8:15 AM – 4PM  
 Registration Form

**NEW: You can register and pay online at [www.njapm.org](http://www.njapm.org) — or you can complete and mail back this form with your payment.**

YOUR NAME: \_\_\_\_\_ PHONE: \_\_\_\_\_

FIRM NAME: \_\_\_\_\_

EMAIL ADDRESS: \_\_\_\_\_

Make checks payable to: NJAPM

Mail to: NJAPM, 1 AAA Drive, Suite 102, Trenton, NJ 08691-1803

Please send application for membership: [ ] **General Membership \$90**

**Cancellation Policy:** Registrants cancelling by 10/31/09, will be refunded the entire conference fee; from 11/1/09-11/13/09 they will receive a full refund minus a \$50 administrative fee. Registrants who do not attend will not receive a refund, but will receive Conference Materials.

Before 10/31/09	Member \$145	Non-Member \$165*	Student/Gov't \$105**
After 10/31/09	Member \$155	Non-Member \$175*	Student/Gov't \$115**
At the Door	Member \$175	Non-Member \$195*	Student/Gov't \$135**

\* \$20 will be applied to your membership dues if you join NJAPM within 45 days of the conference.

\*\* Proof of identification required; other circumstances will be considered.

**DoubleTree Hotel**  
**200 Atrium Drive, Somerset, NJ**  
**08873**

Discount Weekend Rates  
 are available for conference  
 attendees.

Contact DoubleTree directly for  
 reservations at:

**1-800-222-TREE**

**Direct Dial: 1-732-469-2600**

**REGISTER  
 AND PAY  
 ONLINE AT  
[www.njapm.org](http://www.njapm.org)**

**Continuing Education Credits**

This conference satisfies 6 hours of continuing education (CE) for NJAPM's Accredited and ACR's Advanced Practitioner members. It should also fulfill the 4 hour annual CE requirement for mediators approved by the Administrative Office of the Courts.

**Reminder:** All NJAPM accredited members are required to have 10 hours of continuing education every year to maintain their accreditation status.

# NJAPM Annual Conference, Continued from Page 1

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and Mediation Services in Verona and Hackensack, NJ will provide this update. Bonnie will focus on the Family Economic Mediation Program.

**Networking Lunch and Afternoon Workshops:** Following a networking luncheon, there will be two sessions of workshops, each offering a choice of three workshops. Attendees are asked to select one workshop per session:

## Session I: Workshops

**A. Ethical Issues in Foreclosure Mediation** — Michelle Perone, Esq. and Caroline Petrilla, JD, APM

**B. Mediating Parenting Disputes**— Risa A. Kleiner, Esq., APM, moderator has a collaborative law and mediation practice in Princeton and serves as NJAPM Vice President. Eileen A. Kohutis, Ph.D., is a licensed psychologist, who has a private practice in Livingston and Liberty Corner, NJ. Eric Johnson, Ph.D., LCSW, has a private practice of child, couple and family therapy in Lawrenceville, NJ and is also an Assistant Professor with Drexel University. Kenneth Neumann, Ph.D., APM,

is a divorce mediator and trainer specializing in “Team Mediation” in NYC.

**C. Social Media Marketing for Mediators** — Lisa Kanda, President of Elkay Corporate Advisors in Long Branch has assisted some of New Jersey’s most prestigious law firms in achieving their business goals.

## Session II: Workshops D, E & F:

**D. Becoming a More Effective Court Appointed Civil Mediator** — Nicholas Stevens, Esq., is a partner with Starr, Gern, Davison, Rubin, P.C. in Roseland specializing in civil mediation and litigation.

**E. Elder Mediation: The Benefits and Risks** — Speakers are with Philadelphia Mediation Group, providers of mediation, training and consultation in health care and aging: Kathryn Mariani, MAR, Barbara Foxman, LCSW, and Michele Mathes, JD.

**F. What Mediators Should Know About Business Evaluations and Forensic Accounting** — Larry Thoma, JD, CFE, CPA/ABV/CFP, DABFA is director of Litigation/

Valuation/Forensic Accounting Services for Withum Smith + Brown, Red Bank.

**How to Register:** The registration fee is \$155 for members and \$115 for students. The fee for non-members is \$175; \$20 will be applied to a new membership if you join within 45 days of this conference. The fee includes breakfast, lunch and conference materials. There is a \$10 discount for fees paid before 10/31/09, and a surcharge of \$20, if you choose to pay at the door.

Please mail your conference fees made payable to NJAPM, to NJAPM, 1 AAA Drive, Suite 102, Trenton, NJ 08691-1803

For more information or questions, visit our website at [www.njapm.org](http://www.njapm.org), or contact Committee Chair, Anju D. Jessani 201-217-1090.

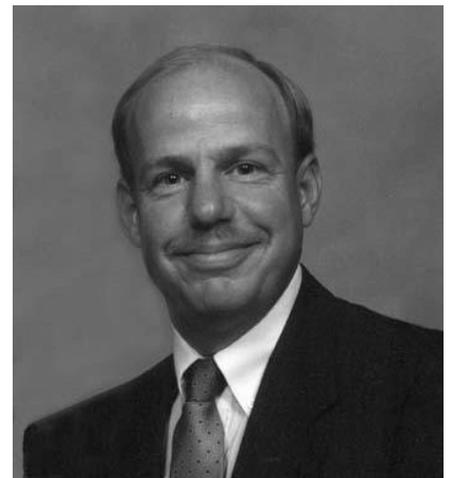
**David P. Leta** is a member of the NJAPM Conference Volunteers and is the lead mediator for Divorce and Your Home LLC in Brick, NJ.



Douglas Frenkel,  
U Penn Law School,  
Keynote Speaker



Michelle Perone, NJ AOC  
Court Update and Foreclosure  
Workshop



Jerry Lewis  
Retired NJ State Police  
Featured Speaker

# Getting Started: Eight Tips for New Mediators

by Anju D. Jessani, MBA, APM

**H**aving taught new mediators in both NJAPM and ICLE's mediation programs, I see the concept of "failure to launch" among so many new mediators. They take basic training and then nothing. This article is written for recent graduates of the basic divorce civil classes, with the hope that it may help you get this party started!

**1. Make a conscious decision to proceed with mediation.** If you are like me, you took the class because there was some personal experience that showed you the value of mediation. It is possible that after taking the class, you conclude that mediation might not be for you at this point. If you still feel that you might still want to pursue mediation, make a conscious decision to proceed. Write it in your journal or tell a friend. Make a commitment to yourself to move forward. Say the words, I am going proceed. So, now for some baby steps...

**2. Look for opportunities to volunteer immediately.** Mediators report they feel a natural high during the mediation process. You need to start experiencing that — and you need to get some cases under you belt. Go to NJAPM peer meetings and ask where other mediators are volunteering (see summer 2009 issue of *Mediation News* for schedule and details). Atlantic County has an excellent community mediation program, while Union County has an extensive municipal mediation program. When I started my practice, I volunteered in the custody and parenting time mediation program in Hudson County. Check the New Jersey judiciary site for other volunteer opportunities.

**3. Research what other mediators are doing.** Before you start investing time and money in your

practice, research what other mediators are doing. How many mediators in your area are full-time? Spend a day on the Internet and Google business mediation, divorce mediation, elder mediation, etc. Are you going to be the first to market? That is a tough proposition. Who is advertising in your local Yellow Pages? How large is the mediation section? Any one running local print, radio or television advertising?

**4. Start networking with other mediators, listen and learn.** Again, before you start investing time and money in your practice, network with other mediators to find out whether your perception of product offerings and market demand is realistic. How many hours a week, on average, are they billing to their mediation practice. How long did it take them to get there? What kind of marketing budget do they have? The NJAPM community is very generous in sharing information. NJAPM County Peer Group meetings and General meetings provide excellent networking opportunities.

**5. Take another mediator to lunch once a week, and you pay.** In the same vein, start establishing one-to-one relationships once you meet colleagues at peer group meetings. Sometimes, a mediator in your county is going to be less open with you, so do not be afraid to travel a little. Expect to pay for their lunch, at least the first time. Offer to bring lunch to their office if they say they really do not have much time to meet.

**6. Before you proceed any further, talk to your spouse/family.** By now, you have gotten some volunteer cases under your belt, have a feeling of the lay of the

land, and either have made the decision that this is or is not for you. If you decide you want to proceed, is your family prepared for you not to be home some evenings, if that is when you plan to see clients? If you are thinking of quitting your day job (which I do not recommend — even if you have two years of savings in the bank), do an honest evaluation of your family budget. Do not surprise your spouse with your business plan; talk about it first.

**7. Start preparing a business plan.** This does not mean you have to go ahead and establish a practice. Put pen to paper; this plan cannot just be in your head. Be brutally honest about your income projections, and then halve them. Make sure you don't miss expenses such as malpractice insurance, website design, NJAPM membership dues, continuing education, transportation, office rental and so forth. Then look at your family budget and savings, and see whether the plan is realistic, and if not, what adjustments you need to make. For most graduates, adding mediation to your current practice will make more sense than quitting your day job.

**8. Summon courage and make a commitment.** You have made the decision to proceed with family buy-in, and with eyes wide open about what it will take, including projected income and expenses. Now dive in — the water isn't so cold! You can do it! Make a commitment to making your practice successful — reviewing your plan, and making adjustments as necessary.

Anju D. Jessani, MBA, APM, has offices in Clinton and Hoboken. Anju served as NJAPM President from October 2005 – September 2007. You can reach her at [www.dwdmediation.org](http://www.dwdmediation.org).

# Psychology 101: The Effect of an Unfair Offer

## by Robert Karlin, Ph.D, APM

A number of years ago I witnessed a instant total loss of affection from a patient in my psychology practice. The husband of many years had fallen for a much younger and professionally accomplished woman, and had filed for divorce from his lovely, but dependent wife. The wife had centered her life around him for over 35 years and had been hoping that he would change his mind, and that they could go back to planning a happy retirement together. The sudden total loss of affection was not from finding out about the affair or even the filing of the divorce by the husband. The total loss of affection by the wife began when she received the first offer of terms from his divorce attorney.

The offer was something I knew to be the opening move in a standard, positional bargaining approach to divorce. However, she did not know that a “first offer” only defines one’s bargaining position. All she knew was that her husband had not considered her needs and she saw him as being entirely unfair. Despite my explanations, from that moment on, she never wanted to see her husband again.

Two aspects of this experience are of interest. One aspect is the negative effect of positional bargaining. The second aspect is that recent research indicates that moral judgments and resistance to unfair treatment are more universal than we have been led to believe. In divorce, perceived unfairness and resistance to it go hand in hand. While this technique has its uses in some negotiations such as in labor negotiations, it can be quite destructive in the area of domestic relations.

In thinking about this, remember that what people perceive as “fair” differs in different contexts. In

economic situations, we believe that the person who contributes most should get the most. The CFO makes more than the junior accountant because she contributes more to the firm’s bottom line. In the context of friendship, we also usually share the benefits and costs equally. Two couples out for dinner do not compare paychecks before settling the bill. Friends will usually split equally the benefits and costs, i.e., the good dinner and the bill. Now think about a family. If a two-year old child needs surgery, no one will ask how much the young child has contributed to the family’s coffers. In a family, need determines fairness. Only if there are resources left over do other considerations matter. Thus, in order to determine what is fair, you have to know what the context is: economic, friendship or family.

Recent research has shown that, across cultures, people reject perceived unfairness. For example, in a social psychology paradigm known as the “final ultimatum” game, one participant makes a “take it or leave it” offer after a short bargaining session about an available resource (usually money). If the “take it or leave it” offer is rejected, neither bargainer gets anything. In responding to the ultimatum, most people will accept 50% in 50/50 offer. In fact, most people will even accept 40% in a 60/40 split. From Argentina to Sweden, from China to America, an 80/20 split will be rejected. This is despite the fact that simple economic self-interest dictates acceptance of such a proposal. 20% percent of something is more than nothing. Even so, across cultures, when people think a deal is patently unfair, they will not agree to it.

Now back to my patient. She had

expected her husband would continue to treat her as family and care about her needs. However, he did not — and the relationship never recovered. In their case, it was not the tragedy it could have been, in part, because their kids were long grownup.

Unfortunately, unfair offers are often made in divorce when children are involved. Why is that important? We know that continuing parental conflict is the most powerful contributor to children’s deterioration after divorce. Unfortunately, from the first unfair offer, positional bargaining sets people up for continuing conflict. When attorneys actually settle the case and tell clients “it may be unfair, but it was the best we could do,” ongoing conflict is encouraged. Clients should be urged to rethink the concept of the initial low-ball offer in divorce negotiations.

Remember, something like 40% of positional bargaining divorces are back in court with more litigation within four years. This is not good for the kids. With couples who settle in mediation, the proportion is an order of magnitude different, between 3% and 4% (granted, self-selection plays a role here). A focus on “needs” in the negotiation process in divorce can lead to better outcome of post-divorce parental relationships, better child adjustment, and reduce the risk of returning to court following the divorce.

In my next column, I will look at some danger signals during divorce including when children line up on one parent’s side.

**Bob Karlin** practices psychotherapy, marital therapy, and divorce mediation in Princeton. He is on sabbatical this year from teaching at Rutgers. He usually teaches therapy to graduate students and tortures undergrad psychology majors with his statistics course.

# Mediate, Don't Litigate, Your Construction Contract Dispute

by Chris Kane, PE, JD

*“Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often the real loser—in fees, and expenses, and waste of time.”*

Abraham Lincoln, 1850

Many lawyers are familiar with Abraham Lincoln's *Notes on the Practice of Law* written in 1850 (fn1). As a mediator and strong proponent of collaborative methods of resolving disputes, this is my favorite section of his observations on practicing law.

Mediation is a collaborative process where the parties select a neutral mediator to assist them in resolving their dispute, not to decide it. As an alternative to litigation, mediation is an effective forum in which to “persuade your neighbors to compromise.” Few areas of disputes are more litigious than the area of construction — yet, few areas of disputes have better reasons to use mediation.

**Construction Disputes.** Most civil litigation lawyers have probably had at least one, if not more, construction related cases in their career. In fact, there are many law firms, or practice groups of firms, that specialize in litigating these cases. The reason for this is demonstrated by the following examples of disputes which frequently occur in construction projects:

- **The owner** who wanted to change things as the project was being built, but then doesn't want

to pay the price charged after the changes are done;

- **The contractor** who met all the standards of the industry, but the owner is demanding perfection and produces a never ending list of imperfections;
- **The subcontractor** who is delayed by others on a project increasing his costs, but ends up with back charges of one sort or another that cancel out its payments due;
- **The designer** who designs a project which gets changed by others during construction, but is still blamed for the problems when the project doesn't perform as planned.

The very nature of these disputes, especially on larger commercial and industrial projects, makes them very expensive and time consuming to litigate. The disputes are often factually complicated, document intense, loaded with technical issues (such as design errors, delay analysis, environmental harm), and emotionally charged.

When the parties to a contract litigate these disputes, they are likely to spend as much or more money during the complicated discovery process than they do in the actual hearings. Even when binding arbitration is utilized, similar problems occur. All the delays and expense of the discovery process are even more troubling when you consider there is greater than a 95% chance that the case will settle before trial.

Mediation is of course not new

to the construction industry, and is slowly becoming more widely used. Many of the standard industry form agreements, now require that the parties agree to start with mediation, before they undertake the next step whether that step be binding arbitration or litigation. It is also helpful in New Jersey, that there is a court mandated Complementary Dispute Resolution (CDR) program which requires mediation for many cases within a short time after civil pleadings are filed.

**Benefits of Mediation.** If you have been through a mediation, you are aware of some of the benefits. Here are a few of the major benefits:

- **The Parties' control the outcome.** One benefit of mediation is that the parties remain in control of the resolution. Unlike litigation or arbitration, in mediation parties don't relinquish control of the decision to a third party, who must be extensively educated. Rather, they seek assistance from a skilled neutral.
- **Pressure relief.** A good mediator can help in dispelling negative emotions which are often the propellant for litigation. This is often done by allowing “venting” by the parties in a controlled environment at the outset of the mediation process thus releasing some steam and giving the parties the opportunity to be heard.
- **No expensive learning curve.** A mediator experienced in construction and the law can

*(Continued on page 9)*

## Mediating Construction Contract Disputes, Continued

(Continued from page 8)

provide assistance, without all the anguish involved in completing the discovery process. A knowledgeable mediator can facilitate a settlement without the need of an extensive education. He can also provide confidential insights, as to the nature of each party's individual case strengths and weaknesses.

- **Savings in time and money.** Instead of taking years to complete a law suit, the entire mediation process can be over in weeks. The mediation itself is often no more than a day or two. The cost of the mediation process is also a fraction of the cost of litigation. This is true even taking into account that most litigation ultimately settles before trial.
- **Preserving relationships.** The mediation process also allows for creativity in coming up with differing solutions to effectuate a settlement. Interest based principles of negotiation can help expand the pie for all the participants. In this way, mediation allows the parties an opportunity to preserve their relationships, as opposed to the damage caused from litigation.
- **Confidentiality.** The mediation process can remain completely confidential as any settlement agreement might be and is also subject to certain additional protections by laws that govern the mediation process.

For those lawyers and mediators committed to collaborative methods

of dispute resolution, Lincoln had some further encouraging advice from the same writings (Fn1):

*“As a peace-maker the lawyer has a superior opportunity of being a good person. There will still be business enough.”*

Abraham Lincoln, 1850

The American Arbitration Association reported a 12% increase in cases filed for mediation last year over the prior year, which shows an encouraging growth in the mediation business. Hopefully, this trend will make room for many more peacemakers in the world of construction disputes.

Fn1. Abraham Lincoln, Speeches and Writings 1832-1858, 1989, The Library of America, pages 245-246.

**Chris Kane, PE, JD** is a professional mediator and a principal in his conflict resolution business ([www.ccrmediator.com](http://www.ccrmediator.com)) and has his own consulting practice ([www.p3collaborative.com](http://www.p3collaborative.com)) based in Princeton, New Jersey and Washington D.C. He has over 30 years of experience in the construction industry and 15 years as a neutral participating in all methods of dispute resolution. He is on the NJ Courts CDR Panel of Mediators and has been a mediator and arbitrator for the American Arbitration Association since 1994.

## NJAPM Introduces Divorce Mediation Video

**N**JAPM recently introduced a video on its website, [www.njapm.org](http://www.njapm.org), that we believe is a first of its kind for a mediation organization. Viewers learn what the court is really like and the effects that an adversarial divorce can have on themselves and their children. They also see two demonstrations of mediation sessions. While the video is approximately 14 minutes in total, it broken down into four segments for ease of viewing.

In the first segment, which runs three minutes, a retired judge (Judge Harper) gives a realistic view of the court system. He discusses both the economic and social costs that attend litigation.

In the second segment, which runs two minutes, a child psychologist (Marcy Pasternak) talks about the effects of an adversarial divorce on children. She psychologist states that there is a better post divorce relationship among parents who mediate.

In the third segment, which runs five minutes, there is a demonstration of a mediation session dealing with frequently asked questions and their answers. The clients talk about how angry they are with each other.

In the fourth segment, which runs four minutes, there is a demonstration of a mediation session dealing with parenting, equitable distribution, child support and alimony issues. The mediator reframes the client statements to show that they have common concerns.

Carl Cangelosi, NJAPM director of divorce training and NJAPM president-elect, spearheaded this project. He welcomes your feedback on the video. He can be reached at [ccangelosi@njmediation.org](mailto:ccangelosi@njmediation.org).

## Highlights Summer 2009 Newsletter

**D**id you know that you can access back issues of *Mediation News* at the NJAPM website?

Our Summer 2009 issue was especially jam packed with member articles including:

- *Toward a More Efficient and Considerate Mortgage Foreclosure Mediation Experience* by Thomas V. Cullen, Esq.
- *Ask the Expert - a Legal View of Child Support Arrearages* by Catherine Ross, Esq., APM
- *Psychology 101: American Psychological Association Child Custody Guidelines* by Robert Karlin, PhD, APM
- *Marketing Your Practice Using "The Fine Art of Small Talk"* by Patrick R. Westerkamp, JD, APM
- *The New NJAPM Website... A New On-line Home for the Association at the Same Address — [www.njapm.org](http://www.njapm.org)* by Marvin Schuldiner, MBA
- *Letter to the Courts, Addressed to Honorable Glenn Grant, JAD, Acting Admin. Director of the Courts* by Robert J. McDonnell, MS, APM
- *Social Media Marketing* by Armand Bucci, APM
- *NJAPM Peer Consultation Groups Including Schedule and Locations* by Katherine G. Newcomer, JD

Please take a look at the website, including past issues of *Mediation News* at [www.njapm.org](http://www.njapm.org). NJAPM, - giving you the tools you need to succeed.

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## NJAPM Apprentice Program

**N**JAPM will be sponsoring a civil mediation apprenticeship program commencing in November 2009. The apprenticeship will be 10 weeks of mentored actual cases in small claims, special civil or municipal court.

The apprentice will initially co-mediate with the mentor, quickly move on to co-mediating with a classmate then mediating solo, all while being observed by an experienced mediator mentor.

Students will receive direct feedback immediately thereafter from the mentor. This course is designed for new or inexperienced mediators looking to gain mediation experience and skill enhancement. Unlike the television version of "The Apprentice" - no one will be fired each week.

### Details:

**Where:** Court locations in Union and Burlington counties

**When:** Commencing in November 2009, running for 10 weeks, one day per week

**Times:** To be determined, but you must commit to attend each scheduled session

**Pre-requisite:** 18/24/28-hour basic civil mediation training or equivalent

**Tuition:** \$900 per student

**For more information,** please contact Marvin Schuldiner at [marvs@earthlink.net](mailto:marvs@earthlink.net) or 732-963-2299.



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## **NJAPM Membership Report** by Anna M. Delio, Esq., APM

**G**reetings from the NJAPM membership committee. As we begin our new membership year on October 1st, we look forward to another year of growth for our organization, exciting planned events and the addition of new benefits to our members. This year for the first time ever, we conducted a web-based annual renewal process. The new process allows members to easily renew their membership on the NJAPM website via credit card. For those who prefer to renew by mail, the website also provides all the applicable forms, in a fillable PDF format, for downloading and printing. This year's renewal response has been overwhelmingly positive and many members took advantage of the new process.

This year, we plan to bring some exciting projects to our members, which we believe will raise the visibility of mediation and our mediators to the general public. We just recently placed marketing booths at the conventions and conferences of organizations, such as the Everything Jersey Business Conference and Expo (sponsored by the NJ Chamber of Commerce), the New Jersey Psychological Association's Fall Conference, and the New Jersey Corporate Counsel Association's Annual Conference. We have our Annual Conference scheduled for November 14<sup>th</sup> at the DoubleTree Inn in Somerset, New Jersey. The Conference theme focuses on bringing mediation into the mainstream for the resolution of disputes. We also to placed marketing booths

Next, we plan to implement in the coming year, video podcasts of our General Meetings, and possibly live video streaming. Furthermore, we will be starting a mediator-apprenticeship pilot program in conjunction with the Administrative Office of the Courts. In the pilot pro-

gram, we will give our APM members the opportunity to provide hands-on instruction and mentoring to new mediators using actual cases in the Special Civil Division of the New Jersey Superior Court.

In addition, posted on our website is the list of all the upcoming general meetings. In the member section, there is a list of expanded peer group meetings throughout the state. Like many related professions, mediation practices can be helped substantially by networking and expanding our lists of contacts, and these meetings offer the opportunity to do exactly that.

If you are a new member, please take a few minutes to review the new member orientation section of the website. It is a useful and informative reference about NJAPM for new members. You can find the New Member Orientation presentation at – <http://www.njapm.org/content/new-member-orientation-presentation>

Any members, especially those who have joined recently, having questions about NJAPM can contact any of their fellow mediators on the Membership Committee:

**Anna M. Delio, Esq., APM**  
Membership Committee Chair  
201-709-3493  
amdesq1@verizon.net

**Joseph F. Dillon, MBA, APM**  
908-864-2177  
jdillon@equitablemediation.org

**Robert McDonnell, MS, APM**  
973-709-0188  
rmdonnell@alliance-mediation.com

**Michele Walter, Esq.**  
732-739-4444  
michele@mwalterlaw.com

**Patrick Westerkamp, Esq., APM**  
732-866-7919  
mediatorpat@verizon.net

On a personal note, we congratulate committee member, Joe Dillon, for earning his NJAPM accreditation in family and divorce mediation.

Finally, a hearty welcome to all new NJAPM members! Here is a list of new members who have joined since June 1st. If your name is missing, just let us know and we will include your name in the next issue of *Mediation News*.

### **Welcome New Members!**

**Anna Thompson Alexander**  
**Walter Gilbert Alexander**  
**Cedric Ashley**  
**Arthur Blake**  
**Eric Brophy**  
**Sandra Bugg**  
**Joseph Cipolla**  
**Bina Dagar**  
**Jim DeSantis**  
**Geraldine Duswalt**  
**Ernest Ehling**  
**Paul Garjian**  
**Margaret Higgins**  
**Lucille Jengo**  
**Scott Johansen**  
**Chen Li**  
**H. Gerald Nanos**  
**Ann Ordway**  
**Michelle Ross**  
**Sharyn Taylor**  
**Ellen Unger**  
**Michael Ware**

**Anna M. Delio, Esq., APM** practices law, and mediates civil and family/divorce disputes in Kenilworth, NJ. She is on the New Jersey Court's roster as a civil and foreclosure mediator, serves as a volunteer mediator and coordinator for the special civil part mediation program in Passaic County, and serves as secretary for NJAPM.

## Family Law Case Update, Compiled by Carl Cangelosi, JD, APM

**B**elow are some recent family law case summaries which should be of interest to practitioners in family mediation:

**Ramos v. Rolon, App. Div.**—Plaintiff's appeal of the denial of her motion to remove and relocate the parties' children to Florida is granted on the bases that plaintiff established a prima facie case under *Baures v. Lewis* justifying the move, that defendant did not present any evidence that her reason for moving was not made in good faith or that the move would be inimical to the children's interest, and that the trial court erred in placing an obligation on plaintiff to prove that the children would receive greater benefits from relocating than staying in New Jersey. June 11, 2009

**Agarwal v. Agarwal, App. Div.**—Decision awarding 50 percent of a medical practice to the other spouse is affirmed. The court said that the husband did not refer to any legal authority for his position other than to state that “[a]s a general rule, a small business owned by one spouse is rarely divided equally” and that the “non-owing spouse is generally awarded a percentage in the range of one-third.” The decision of the lower court valuing the medical practice, which is an active asset, as of the trial date rather than the date of the divorce complaint, was reversed for further explanation. June 15, 2009

**Quesada v Gonzales, App. Div.**—The trial court properly assessed credibility and found that plaintiff failed to show the elements of harassment where it was not alleged that the offending telephone call was made at inconvenient hours or in offensively coarse language or in a manner likely to cause

annoyance or alarm, and that even if defendant had threatened to beat her, that in itself does not constitute an act of domestic violence. The court was justified in considering the context and backdrop of the parties' relationship, including any ulterior motive of the victim whose safety is allegedly threatened. June 17, 2009

**Jain v. Jain, App. Div.**—The court found that by executing the PSA defendant agreed in clear and unambiguous terms to an automatic reduction of alimony in the event of a reduction of the payor's income. The defendant bargained away her right to assert any of the statutory factors. The court reverses and remands for a hearing at which the judge shall consider the parties' updated case information statements and any other information relevant to a determination of the amount of reduction to which plaintiff is entitled. June 19, 2009

**Fawzy v. Fawzy, Sup. Ct.**—The constitutionally protected right of parental autonomy includes the right of parents to choose the forum in which to resolve their disputes over child custody and parenting time, including arbitration. An agreement to arbitrate must be in writing or recorded and must establish that the parties are aware of and have knowingly and voluntarily waived their rights to a judicial determination. A record of documentary evidence adduced during the proceedings must be kept, testimony must be recorded, and the arbitrator must issue findings of fact and conclusions of law in respect of the award. The arbitrator's award is subject to review under the Arbitration Act,

N.J.S.A. 2A:23-B-1 to -32, except that judicial review is also available if a party establishes that the award threatens harm to the child. July 1, 2009

**Pek v. Prots, Ch. Div.**—The parties' New Jersey judgment of divorce and property settlement agreement provided that Ohio should exercise all future jurisdiction over all the parties' post-judgment matrimonial matters. Nevertheless, the court holds that under the principle of the Uniform Interstate Family Support Act (UIFSA), N.J.S.A. 2A:4-30.72(f) confers continuing exclusive jurisdiction to the court issuing the initial spousal support order such that the parties may not choose or contract an alternate forum for purposes of future spousal support modifications. July 27, 2009

**Christopher v. Christopher, App. Div.**—A court is permitted to add periods of cohabitation when determining the duration of the marital relationship if one spouse was economically dependent upon the other during the period of cohabitation. In this matter, the period of cohabitation and marriage was about nine years. There is no evidence that defendant gave up any career opportunities during her marriage. The record shows that, while the parties were married, defendant continued her career as a personal trainer. The court said it was convinced that, under the circumstances, an award of permanent alimony was not appropriate and the court should have instead awarded defendant limited duration alimony. July 7, 2009

(Continued on page 13)

## Family Law Case Update, continued

(Continued from page 12)

**Martin v. Martin, Ch. Div.**—This trial court opinion establishes that a party is not entitled to an automatic judicial modification of a child-support order based merely on the passage of three years since the time of the entry of the existing support order. Parties remain eligible for automatic administrative cost-of-living adjustments every two years under Rule 5:6B. Otherwise, a party must establish that there has been a substantial change of circumstances since the time of the last order before a modification of support can be considered. July 31, 2009

**Meyer v. Meyer, App. Div.**—Defendant appeals from a post-judgment order allocating responsibility for child support and college costs entered on plaintiff's motion. Judge Hansbury had two reasons for concluding that a reduction in child support was appropriate: (1) because of the decline in plaintiff's income; and (2) because of the eldest son's departure for college and the fact that his expenses would be covered by payments made to the college. Recognizing plaintiff's diminished

earnings and his obligations to pay college expenses and alimony, Judge Hansbury concluded child support should be reduced from \$5750 monthly to \$4250 and increased to \$4750 after plaintiff's obligation to pay alimony terminated. July 26, 2009

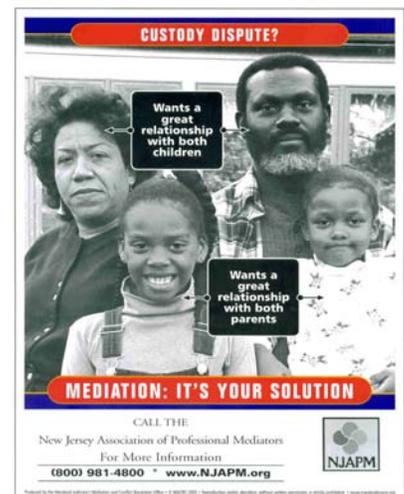
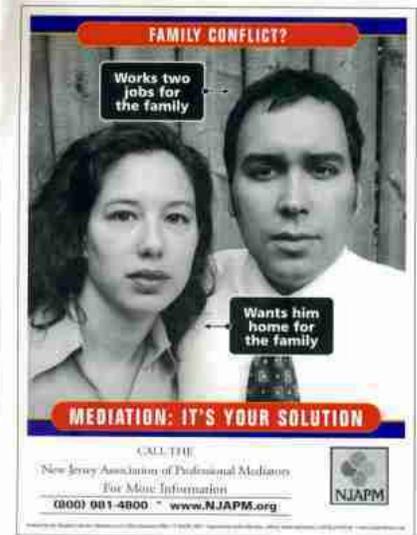
**Goolsarran v. Rushefsky, App. Div.**—Defendant appeals the order granting plaintiffs, the maternal grandparents of his daughter and the parents of his deceased wife, visitation with his daughter over his objection. The panel affirms, finding that the trial judge's conclusion that, based on the role the grandmother played in the child's life during her mother's illness and death, severance of the child's ties with her grandmother, other members of her mother's family, and their traditions, would leave a void in the child's life, was supported by adequate credible evidence in the records. Although the judge's factual findings might have been articulated with greater clarity, they are sufficient to support the requisite finding of harm to the child if visitation were denied. September 29, 2009

## NJAPM Poster Campaign

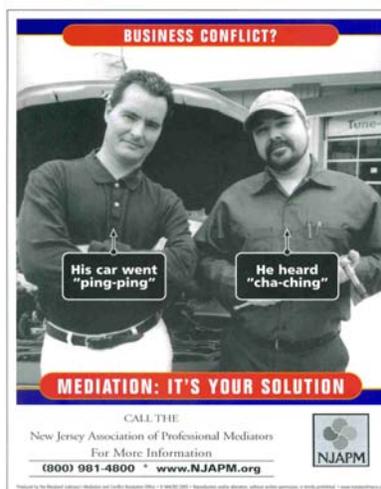
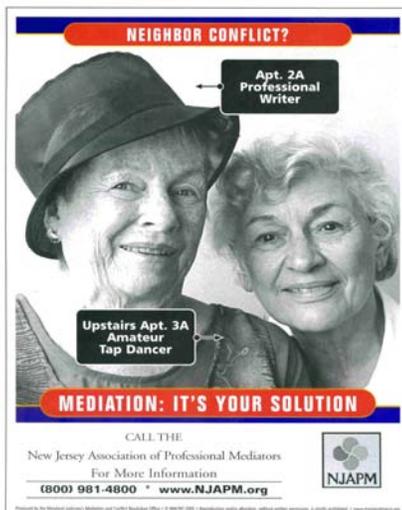
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A good supply of posters is still available. Please visit our website at [www.njapm.org](http://www.njapm.org) to view all 10 posters and email your order.

Posters are free to NJAPM members and the general public.



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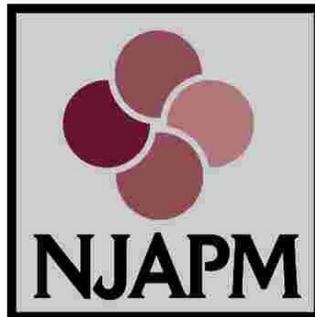


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## **Committee Chairpersons**

<b>Committee</b>	<b>Chairperson(s)</b>	<b>Telephone</b>	<b>E-mail Address</b>
Accreditation	Gale Wachs	908-256-6505	mediatornj@aol.com
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Civil, Basic Mediation Training	Patrick Westerkamp	732-672-3222	mediatorpat@verizon.net
Civil, Advanced Mediation Seminar	Nick Stevens	973-403-9200	nstevens@starrgern.com
Divorce, Basic Mediation Training	Carl Cangelosi	609-275-1352	ccangelosi@njmediation.org
Divorce, Annual Mediation Seminar	Carl Cangelosi Joan Geiger	609-275-1352 908-526-4300	ccangelosi@njmediation.org joangg@aol.com
Judiciary & Organizations	Ed Bergman	609-921-1502	ejb@gear3.net
Legislative Relations	Ed Peloquin	732-940-0520	ejfp@aol.com
Long Range Planning	Robert McDonnell	973-709-0188	rmcdonnell@alliance-mediation.com
Mediator Ethics Review Board	Gene Rosner	732-382-6070	gene@finkrosner.com
Membership	Anna Delio	201-709-3493	amdesq1@verizon.net
Newsletter	Chris Kane	609-688-3443	ccrmediator@aol.com
NJAPM Foundation	Position Open	NA	NA
Nominating	Anju D. Jessani	908-303-0396	ajessani@dwdmediation.org
Peer Consultation /Mentoring	Katherine Newcomer	908-439-9140	katherinenecomer@comcast.net
Programs	Patrick Westerkamp	732-672-3222	mediatorpat@verizon.net
Organization/Marketing	Anju D. Jessani Carole Gold	908-303-0396 856-524-3464	ajessani@dwdmediation.org clgold@comcast.net
Technology	Marv Schuldiner	732-963-2299	marvs@earthlink.net
Website	Marv Schuldiner	732-963-2299	marvs@earthlink.net

**PLEASE CONTACT COMMITTEE CHAIRS TO LEARN  
ABOUT THE MUTUAL BENEFITS OF JOINING AN  
NJAPM COMMITTEE**

## ***Mark Your Calendar***

### **NJAPM Seminars and Conferences**

Annual Conference, Saturday, November 14, 2009, Somerset DoubleTree Hotel  
Annual Divorce and Annual Advanced Civil Seminars: See [www.njapm.org](http://www.njapm.org) for details

### **NJAPM Committee Meetings/General Membership Meetings**

All Committee Meetings and General Membership Meetings are held at the  
New Jersey Law Center, 1 Constitution Square, New Brunswick, NJ 08901—Unless Otherwise Noted  
Committee meeting from 5:30 to 6:30 PM

An optional dinner is from 6:00 PM to 6:30 PM; reservations must be made in advance

General Membership Meetings follow from 6:30:PM to 8:30 PM

W 12/09/09, W 01/13/10, W 03/10/10, W 04/14/10, W 05/12/10, W 9/15/10

### **NJAPM Board of Directors Meetings**

8:30 AM — Noon: W 11/19/09, TH 01/07/10, TH 02/11/10, TH 04/08/10, TH 06/10/10, TH 7/15/10, W 9/8/10  
4:30 PM — 6 PM, W 12/09/09, W 03/10/10, W 05/12/10

### **NJAPM Training**

Spring 40-Hour Divorce Mediation Training: March 6, 7, 13, 20 & 21, 2010

8-Hour Basic Mediation Skills Training: February 9 & May 11, 2010

Spring Basic 28-Hour Civil Mediation Training: See [www.njapm.org](http://www.njapm.org) for details



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