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NEWS FOR IMMEDIATE RELEASE:

**MEDIATION GROUP (NJAPM) INVITED TO BRIEF APPELLATE COURT ON
PROPRIETY OF A COURT ENFORCING AN INCOMPLTE MEMORANDUM OF
UNDERSTANDING FROM COURT'S DIVORCE MEDATION PROGRAM**

Cranbury, NJ (November 25, 2003). The New Jersey Appellate Division has granted the New Jersey Association of Professional Mediators' (NJAPM) application to provide an amicus brief on the issues raised by the defendant's appeal regarding the propriety in the case of Lehr versus Afflito. The case concerns the propriety of a court enforcing an incomplete memorandum of understanding as a property settlement agreement. NJAPM is the only New Jersey dispute resolution group invited to appear as amicus curiae ("friend of the court") for this case.

According to NJAPM's President, Gale Wachs, "The Lehr v. Afflito raises issues is of significant public importance, given the ever-increasing emphasis of mediation as a preferred alternative to address family matters. The public interest in the continued viability of mediation practice in this State is important and continues to grow with time." She adds, "We further believe that the Appellate Division will benefit greatly from NJAPM's specialized body of information, knowledge, and experience in divorce mediation matters, which information, knowledge, and experience will have a direct and specific bearing on the issues before the Court."

Karen Lehr, and John Afflito were ordered to enter mediation through the Morris County Economic Mediation Pilot Program. On June 19, 2003, following what is characterized in a letter as a brief meeting with the clients on June 17th, Morristown-based mediator, Sanford M. Kahan, Esq., an Accredited Professional Mediator by NJAPM, prepared an outline summarizing his meeting, noting that while the vast majority of the case was resolved, there were several remaining items. On July 15, 2003, the court was advised by Plaintiff's counsel "... the Defendant no longer accepts the terms he previously agreed to in mediation and accordingly, this matter is contested". Nevertheless, the court entered a judgment of divorce which incorporated "...the Memorandum of Understanding as the property settlement agreement" on July 17, 2003. Lehr is appealing this decision.

According to NJAPM, the transcript of the hearing makes it evident that the Court made substantial mistakes in its determination. Specifically, the Court was under the misimpression that there was an agreement of the parties and that agreement was incorporated into a Memorandum of Understanding. It is clear form the mediator's letter that the parties had not come to agreement on all the issues. The document he prepared, and was attached to the Judgment of Divorce, is not a Memorandum of Understanding as there were still outstanding issues to resolve. Additionally, according to court rules, all mediation proceedings shall be confidential and non-evidential. The improper use of this document that was created in mediation, and intended to be kept confidential, undermines the entire mediation process. The

usual procedure is for the mediator to prepare the Memorandum of Understanding after the parties have come to agreement on all the issues, and for their attorneys to incorporate the information from the Memorandum of Understanding into the property settlement agreement that they both parties then sign.

Lehr is represented by attorney William F. Laufer, Esq., of the firm of Laufer, Knapp, Torzewski & Delena of Morristown. Afflito is represented Rebeeca M. Grather, Esq., of the firm of Smith & Doran, also of Morristown. A team of NJAPM attorney-mediators led by Ocean, New Jersey based sole-practitioner, Judith M. Knopf, and including Bonnie Blume Goldsamt, Robert Margulies, and Gale Wachs, will submit the amicus brief on behalf of NJAPM.

This case come on the heels of Lerner v. Laufer case where NJAPM was also granted amica curiae status. In that case, client Lynn Lerner filed a malpractice suit, against the attorney William F. Laufer (attorney for plaintiff in Lehr v. Afflito), alleging that Laufer violated rules of professional conduct requiring diligence. In November of 2001, the New Jersey Superior Court, Law Division, Morris County, entered summary judgment dismissing Lerner's claim and stating that a lawyer has no duty to launch full-blown adversarial proceedings after a client has agreed the work should be restricted to a review of the mediated settlement. This decision was affirmed by the Appellate court earlier in 2003.

With nearly 300 members, NJAPM is the largest statewide mediation organization, and the only New Jersey mediation organization with a structured accreditation process. Members come from a variety of licensed professional backgrounds including law, psychology, social work, engineering, architecture, business, and accounting. Its membership currently consists of 60% lawyers. For more information regarding NJAPM, please call 800-981-4800, or visit the NJAPM web site at <http://www.njapm.org>.

Glossary: An amicus brief is usually provided by someone who is not a party to the litigation, but who believes that the court's decision may affect its interest. They are considered to have expertise on the subject matter that may assist the court in their decision.