



# Mediation News

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Spring 2010

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

## Inside this issue:

<i>President's Message.....</i>	<i>Page 1</i>
<i>Editor's Column.....</i>	<i>Page 2</i>
<b>Officers and Directors</b>	
<b>2010-2011.....</b>	<b>Page 2</b>
<b>Five Things Divorcing....</b>	<b>Page 3</b>
<b>NJAPM Posters.....</b>	<b>Page 5</b>
<b>Divorce, Taxable Alimony</b>	<b>Page 6</b>
<b>Psychology 101.....</b>	<b>Page 7</b>
<b>Reviewing Tax Returns..</b>	<b>Page 8</b>
<b>Richard H. Steen.....</b>	<b>Page 10</b>
<b>Mediation's Magic.....</b>	<b>Page 10</b>
<b>Membership Committee</b>	<b>Page 11</b>
<b>Family Case Law.....</b>	<b>Page 12</b>
<b>AOC Civil Program.....</b>	<b>Page 14</b>
<b>Committee Chairs.....</b>	<b>Page 15</b>
<b>New NJAPM Ad.....</b>	<b>Page 16</b>

## Upcoming Events

### NJAPM 17th ANNUAL CONFERENCE

Imperia Hotel, Somerset, NJ  
Saturday, November 13, 2010  
8:15 AM to 4:00 PM

### NJAPM GENERAL MEETING

NJ Law Center, New Brunswick,  
Wednesday, September 15, 2010  
6:30 PM– 8:30PM

### NJAPM MEDIATION TRAINING

Visit our website for schedule for:  
40-Hour Divorce  
8-Hour Basic Skills  
28-Hour Civil

[www.njapm.org](http://www.njapm.org)  
800-981-4800

## President's Message

by Robert J. McDonnell, MS, APM

With our fiscal year starting on October 1, we have much to reflect back upon as well as look forward to in the coming months. Our recent and upcoming programs, activities and events are clearly noteworthy.

Traditionally held in the spring, the NJAPM one-day advanced training sessions for civil and divorce mediation have been great training and networking events. Nick Stevens put together an outstanding program for civil mediators on March 27, and Carl Cangelosi and Joan Geiger did the same for family/divorce mediators on April 17. In addition, the spring 40-hour Divorce Mediation Training and the spring Basic Civil Mediation Training courses are the featured training programs of our Association and demonstrate the highest standards of such mediation training in the state.

Speaking of excellence in the area of training, I would like to acknowledge the incredible work that is being done in the area of "quality" training for mediators. This is becoming an even more important issue, especially for civil mediation. NJAPM is in the forefront of this issue as it evolves. Because not all roster members are NJAPM members, we realize that quality can become an issue for the court civil mediation program with over 700

mediators on the rosters. We have been communicating with the court, and we are committed to working with them to assist in improving mediation quality for the court's programs.

As part of our commitment to excellence in mediation, we are expending the money, time, and resources towards that goal. In February 2010, we hosted a statewide foreclosure mediation training session that was open to all mediators on the state's foreclosure mediation program roster. This event was a resounding success, attracting more than 180 mediators from around the state to hear an outstanding panel of experts in the field. Judge Grant recognized the importance of this event and provided the keynote address to the group. As an organization, we demonstrated to the Court, and to the New Jersey mediation community, that NJAPM is committed to ensuring that the New Jersey foreclosure mediation program is successful. Our Program chair, Pat Westerkamp, and Quality Committee chair, Marv Schuldiner, are to be commended for doing an outstanding job in producing this important program.

It is important to point out that we will continue to demonstrate to mediators, both NJAPM members

*(Continued on Page 5)*



## Mediation News

A Publication of the  
New Jersey  
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Professional  
Mediators

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

**T**his edition of the NJAPM newsletter has a number of different subjects that range from magic and mediation to taxes.

Our President Bob McDonnell again gives us his always positive message to the members. He also welcomes NJAPM accredited member, Rick Steen, as President of the New Jersey State Bar Association.

Rachel Williams gives us her personal reflections on what divorcing parties need to know.

Marv Schuldiner has provided us with some useful information regarding the NJAPM website, and has also summarized the status of the civil mediation program.

Don't miss Bob Karlin's Psychology 101, Lead Us Not Into Temptation: Empirical Work on Impulse Control.

Anju D. Jessani addresses some

considerations in reviewing clients' tax returns from a mediator's perspective.

From a CPA's point of view, Marshall Morris tells us something about divorce and taxable alimony.

Pat Westerkamp talks about mediation and magic, and poses the question—how will mediation's ebbs and flows be recognized and addressed by our profession?

Anna Delio and the NJAPM Membership Committee have clearly been busy recruiting new members judging from the size of her committee report.

We include our regularly featured family law update by Carl Cangelosi.

A special thank you to everyone who contributed to this issue.

**Chris Kane** P.E. J.D. is a professional mediator and a Principal in Collaborative-Conflict-Resolution LLC, based in Princeton. He can be reached at [www.ccrmediator.com](http://www.ccrmediator.com).

### NJAPM Officers for 2010 – 2011

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(2009-2012)

Hon. Elaine Goldsmith (Ret.) & Donald D. Vanarelli, Esq., APM  
(2010-2013)

## **Five Things Divorcing Couples Need to Know – Lessons Learned First Hand** by Rachel Alexander Williams, Esq.

I have the greatest empathy for people facing divorce. I know first hand the courage one must gather in order to proceed. Divorce tests the limits of the sturdiest individuals. All at once it can challenge our self-view, life-view and bearing.

What follows are a few things I learned through my own divorce and from with mediating couples going through their divorces.

**1. Get help early and often.** Contrary to the image of the lone hero, most strong people know the importance of getting support. Emotional support isn't a luxury, it is critical for your physical and emotional well-being and consequently, for your children's. If you aren't getting encouragement from the expected places (i.e., family members or friends), look elsewhere (therapists, support groups, etc.).

What is support? Genuine support generates feelings of feeling valued and accepted. It is the nourishment you need to take care of yourself. Emotional support should provide a safe place to feel your feelings. People who provide emotional support accept you as you are while you move through uncomfortable and undesirable thoughts.

A common error people make is waiting too long to get help. There are no points for seeing how long you can go it alone. In fact, if you wait until you are in desperate need, you will likely require more intensive help for a longer period. Just as you would not refuse to refuel your car, and spend weeks pushing it around rather than conceding to pull into a gas station, check your emotional tank regularly.

Support can take different forms. When Ken Feinberg, Special Master

of US Government's September 11<sup>th</sup> Victim Compensation Fund, was meeting daily with families of victims from 9/11, he spent his evenings attending concerts and symphonies. Feinberg supported his well-being by consistently partaking in a life-affirming activity he loves. Whether you divorce, separate or remain together, your children need to be children. Find out what nourishes your mind and heart and seek it out regularly to regenerate the strength to face the challenges of divorce.

**2. Supervise your thinking.** Stay away from negative projections and globalizations which run you down emotionally. If you were physically rundown you would conscientiously nourish your body. When you are emotionally fatigued it makes sense to take the same precautions and actions. Pay attention to what thoughts you allow to dwell in your brain. Be vigilant about your thoughts. Nourish your well-being by replacing critical, habitual negative thoughts with encouraging, gentle affirmation.

A paradox of our minds is that we are most compelled to ruminate on our major problems when we are least able to access our analytic thinking. While going through a divorce, keep your thinking in the present, and keep it simple. It is not a good time to review each of your character flaws and every personal and professional disappointment. This is an exercise you can start after the immediate demands of divorce have passed.

In addition to getting support, and watching what you think, there are two kinds of subtle forms of abuse that will affect your children:

**3. Parentification.** Parentification occurs when children are treated like and expected to behave like adults in relation to their parents and/or other siblings. It is one of the most common forms of dysfunction that occurs when families reorganize due to divorce. Roles once filled by adults are now vacant, and children may instinctively slip in to fill the gap. It is beyond the scope of this article to detail the damage this sort of boundary violation and inappropriate role assignment may cause. So, parents anticipate that you will have needs, longings and empty spaces. Trust that you will fill them over time, with appropriate adults and activities. Seeking emotional support for yourself from appropriate resources will help protect against using children to fill adult emotional roles. Whether you divorce, separate or remain together, your children need to be children.

**4. Don't give your children all the details.** An offshoot of parentification is a subtle form of verbal abuse and boundary violation: exposing your children to too much information about your divorce. Depending upon their ages, children have often not fully distinguished their identities from that of their parents. Therefore, the child's own value may feel assaulted when a parent is verbally attacked. Whenever you argue in front of your children and/or speak pejoratively about the other parent to or in front of your children, it is important to understand this as abusing your children's boundaries. Not only are you burdening them with information that will evoke strong, conflicted feelings, you are setting them up in an inappropriate role as your confi-

*(Continued on page 4)*

## Five Things Divorcing Couples Need to Know, Continued

*(Continued from page 3)*

dant or equal. Again, however, while your role with your spouse changes, your children's roles need to remain very stable.

Be careful with your speech not because this will protect your spouse, but because it protects your children. Children often endow messages from their parents with far more heft than the parents intended – so use special care and deliberation when speaking to and around children.

**5. Reclaim your power by clarifying what is and is not in your control.** Determining what we have self-respect. Be aware that your choices affect the people you love and loved. You need not consider taking care of anything but this legacy in order to act according to your principles and highest self. This may be the most effective way to replace regret with peace and dignity, for you and yours. It is possible to embrace the unwelcome experience of divorce in such a way that it cultivates and improves both the person and parent that you want to become.

**Rachel Alexander Williams, Esq.** provides mediation to couples throughout New Jersey and New York. She is admitted to practice law in NY, NJ and MD and is dedicated to mediation as the most effective way to resolve conflict and create futures of integrity.

## NJAPM Website Update Did You Know?

by Marv Schuldiner

**N**JAPM's revamped website, [www.njapm.org](http://www.njapm.org), is now one-year old.

Did you know that...

- You can be notified about new items on the NJAPM website through an RSS reader? Most major browsers such as Microsoft Internet Explorer and Firefox have RSS readers built into them. Look for the RSS symbol in the address bar when an RSS feed is available.
- If you log into the website before signing up for a course, you can avoid having to re-type in all of your contact information. And, you can now pay by credit card online, securely through our PayPal account. You can even pay your annual dues online!
- The NJAPM website has some items of interest in the Member's Only area. We have member instructional videos so you can see how some of the leading mediators in NJ handle various topics of interest.
- On the Member's Only area, there are links to sign up for professional liability insurance and discounted automotive insurance, a searchable member directory, various presentations and articles and more. Keep checking the Member's Only area as we continue to add more content.
- The website attracts about 40 unique visitors on an average day. Each visitor looks at 5.5 pages on average and spends nearly 5 minutes on average on the website. Over half our visitors have not been on our website before.
- After the home page, the most visited page on our website is the search for our Accredited Professional Mediators.
- Nearly half of our visitors are sent over from Google and about one-third directly type our domain name into their browsers.
- We recently enacted a new listserver policy to streamline communications on our listservers. Our largest listserver has over 350 subscribers. These new policies will help keep the listservers valuable for all of our members.

So, if you haven't visited our website lately, take a look! We are continuing to improve the website to make it more valuable to members and potential clients. If you have any suggestions, please let me know.

**Marvin Schuldiner** has a solo mediation practice focusing on three main areas: divorce, elder (family) and commercial mediations. He is a member of the roster of mediators for Superior Court in New Jersey. His website is [www.sannsmmediation.com](http://www.sannsmmediation.com).

## President's Message, Continued

(Continued from page 1)

and non-members, that we are committed to making mediation programs work effectively. We will continue to sponsor programs that will be offered to all mediators in the state. Be on the lookout for more programs targeted to civil mediation and to mediators participating on the court's civil mediation program rosters.

An important activity for NJAPM at this time of the year is the planning involved for the next year. This is the time where NJAPM officers and board members are selected, and complete the organization structure by filling committee vacancies. We got a head start on this process by naming Anna-Maria Pittella to a vacant board position, and have just appointed Don Vanarelli to the board. I would like to thank the many members who submitted their names as candidates for this position. I encourage you to stay involved in NJAPM and to work towards earning accreditation. I would also like to commend those members stepping forward to assist on both the Marketing Committee and the Foundation Study Committee. Joe Dillon will be

leading the effort for the Marketing Committee, and Marshall Morris will do likewise for the Foundation Study Committee. These are very important efforts for our organization and I am sure we will all see the results of their efforts in the very near future.

So, as we move forward, we can be excited about what is ahead for the remainder of the year. Our organization is powered entirely by the energy of member volunteers, and it is the combined efforts of these dedicated members that make NJAPM the outstanding organization it is. Thank you for your contributions and your continuing support. Please let me know your comments and feedback; you can email me at [r.mcdonnell@alliance-mediation.com](mailto:r.mcdonnell@alliance-mediation.com).

**Robert McDonnell** is the President of NJAPM. Bob specializes in civil mediation. His practice is located in Lincoln Park, NJ.

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

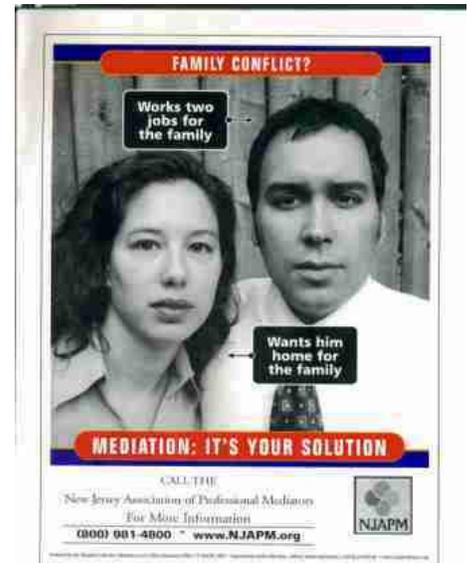
Policies are available to all  
general and accredited members.

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

## What's on Your Wall?

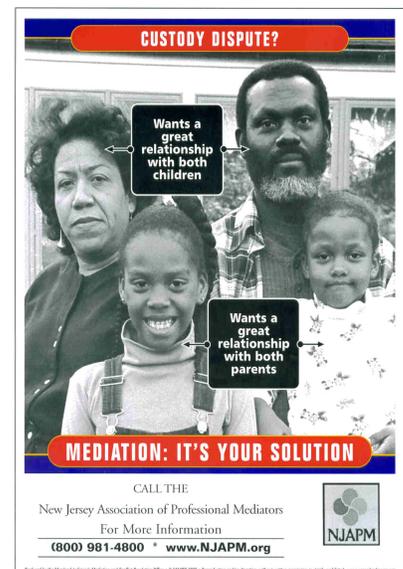


## NJAPM Poster Campaign

Suitable for Framing!

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.



## Divorce, Taxable Alimony

by Marshall A. Morris, CPA, ABV/CFF, Maggio & Company, Inc.

**W**hen settling financial issues between divorcing couples, one should consider maximizing tax benefits. But in order to maximize tax benefits, family mediators need two things without question: a good CPA and an understanding of divorce tax basics. This article will outline the most basic aspect of federal divorce taxation, taxable alimony.

Taxable or deductible alimony, depending on whether it's the payer or recipient spouse, rests on several criteria. For a payment to be considered as income to the recipient and deductible to the payer, the alimony must be paid in accordance with a written divorce decree or separation agreement. The alimony must generally be paid in cash to the recipient ex-spouse, but can be paid to a third party, such as a doctor, on behalf of the recipient ex-spouse.

It may be obvious, but in discussing alimony, it must be said, the divorcing couple cannot file a joint tax return, and after the agreement has been entered the divorcing or divorced couple can no longer be members of the same household. The written document must not state: that support, in whole or in part, is not included as income of [taxable to] the recipient, and not deductible by the payer. Finally, there can be no liability to continue to pay support after the recipient dies.

In connection with alimony, there is "alimony recapture". Recapture is an Internal Revenue Code provision that prevents the "frontloading" of large alimony payments in the early years, and thus prevents disguising property settlements as support payments.

Enacted as part of the Tax Reform Act of 1986, recapture rules require the payer to include as taxable income amounts of alimony deducted in earlier years, if the amounts are deemed recaptured. The recipient, who has already paid tax on the recaptured amount(s), gets a corresponding deduction from income, and maybe able to offset a tax liability or get a tax refund. The 1986 Act also included a provision requiring alimony to end at the recipient spouse's death, eliminating the transfer of property to heirs through the estate of the deceased recipient spouse.

Alimony that is considered recaptured is not includible in the income of the payer spouse, nor deductible by the recipient spouse, until the third post divorce calendar tax year. Essentially recapture occurs if the alimony paid in any of the first three calendar years, after a judgment of divorce or separation agreement are entered, decreases by more than \$15,000.

The first step is to determine whether or not there is any alimony recapture between the second and third years. This is done by subtracting the third year alimony payments, plus \$15,000, from the second year's payments. Assuming a remaining balance, the first recaptured amount has been determined. The next step adds together the second and third years' payments, subtracts the amount already deemed recaptured, and divides the result in half. This amount [sum of 2<sup>nd</sup> & 3<sup>rd</sup> years' payments – less already deemed recaptured alimony - divided by 2] is added to the \$15,000 allowance, and the new amount is subtracted from the payments made in the first post divorce calendar year. Any

"total" must be added to the income of the payer spouse in the third post divorce calendar year, and subtracted by the recipient spouse in the same tax year. Hence, a good CPA is an important resource.

A final thought about alimony recapture. It is not required when alimony is based upon a fixed percentage, rather than a fixed amount. As long as the percentage remains the same, the amounts can differ annually and all is still good with IRS. Payments made under temporary orders of support are not subject to recapture, and neither are payments that cease due to the death or remarriage of the recipient spouse.

**Marshall A. Morris**, CPA/ABV/CFF is with Maggio & Company, Inc., of Eatontown, New Jersey, a forensic accounting and ADR services firm. Marshall is an experienced forensic accountant providing business valuation and investigative accounting services, and ADR solutions in civil and family matters. Marshall is a member of the New Jersey Society of Certified Public Accountants where he is leader of the Valuation Services Interest Group and a member of the Professional Conduct Committee; a member of the American Institute of Certified Public Accountants where he is a member of the Forensic and Valuation Section. Marshall is a New Jersey R.1:40 qualified civil mediator, a qualified member of the Mid-Jersey Collaborative Law Alliance, and a member of the New Jersey Association of Professional Mediators.

# ***Psychology 101: Lead Us Not Into Temptation: Empirical Work on Impulse Control***

by Robert Karlin, PhD, APM

A few years ago, a middle aged patient came in to tell me that he was being eaten alive with guilt. He had a one-afternoon stand with an old flame he had met at a business meeting. He believed, probably correctly, that he could not tell his wife without giving up the marriage (and he never did tell her). Now he had come back to his (really) loving wife and a very satisfying marriage. Why had he done it and how could he know that he would never do it again?

In our subsequent work together, along with becoming "well and truly sorry," he became aware of the vulnerabilities that had contributed to the infidelity. We also worked out simple strategies to avoid temptation. He learned to use feelings of sexual attraction to other women as a warning signal and to immediately begin talking about things "We" (he and his wife) thought, felt and did. He also cut down on his drinking. The combination worked well and he was never, to my knowledge, caught in the heat of the moment again.

Divorce mediators see the aftermath of this situation all the time, though few of the marriages we see were as good as this one had been. But, if someone in a marriage this strong was vulnerable to temptation, how about those in the majority of marriages that are less wonderful. What is it about temptation and the way we respond to it that makes us vulnerable to destructive impulses?

Obviously, there are lots of causes. Perhaps my patient's marriage was far less good than we had thought. Perhaps there were other frustrations. We knew that alcohol, adrenalin and opportunity had been part of the

picture. But what else was going on?

There has been some recent work, here and in Holland, that sheds another light on the issue.

Most temptation comes from visceral impulses, like hunger, fatigue, and sexual arousal that provide information about internal states and motivate behavior that satisfies bodily needs. However, satisfying such needs can interfere with long term goals. How good are we at resisting temptation, at controlling our impulses? Can dieters meet continue to meet their friends for lunch at that marvelous bakery? Can recovering substance abusers stop in at their favorite night spot? Can one have a drink with an old flame without fear of infidelity? Nordgren, van Harreveld and van der Pligt (2010) studied response to cravings involving hunger and fatigue with randomly selected young people and ability to refrain from smoking among heavy smokers and those trying to quit in an attempt to answer these questions.

Across all groups and impulses, participants systematically overestimated their ability to resist temptation. Then, not avoiding tempting situations, they often gave in. So, the belief that one can handle temptation allowed people to put themselves in its way and consequently to destructive, impulsive behavior.

How can people avoid this pattern. One answer to this problem emerged years ago in the self-control literature. From pigeons to people, we all are more tempted by small, short term reinforcers than long term goals. The way to avoid

this is a "commitment strategy," making up your mind about a response well ahead of time and never letting it become a question.

Divorce is a time when impulsive, destructive impulses are often given free rein. Anger, fear and greed are major destructive temptations as their expression leads to retaliation. The desire for social support can lead to trying to get the kids on your side, a sure way to ruin everyone's life for years to come. And so on.

As mediators, we can help our clients avoid these traps by helping them make commitments to avoid these behaviors. When destructive impulses arise, clients can tell a friend, a therapist or us, but not act out with a spouse or child. They can forego the security of grabbing \$10,000 from a joint bank account. They don't have to bring the children to meet their new lover during the first year or so of separation. They can commit themselves to acting sensibly and do it. In the process, they can lay a firm foundation for a family that is different than it was and that works better as a result.

**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.

# Divorce Mediation: Reviewing Your Clients' Personal Tax Returns

by Anju D. Jessani, MBA, APM

**H**aving taught in NJAPM's 40-hour class for the past five years, I have noticed a common pattern when the issue of clients' personal tax returns comes up — one of fear and loathing. However, if you had some clues on what to look for, that reaction could change. Just like the home inspector, the divorce mediator can benefit from a check list. While this article is not intended to take the place of tax advice of a CPA, I hope it will give a new mediator a little more confidence when reviewing returns. It helps to read and understand your own tax return so take the time to do that and reviewing your clients' returns will seem a little less daunting.

It would be helpful to have hard-copy of Form 1040 and Schedules A, B, C, D and E to cross-reference as you read this article. You can access and print these forms from the IRS website: [www.irs.gov](http://www.irs.gov).

## **Form 1040, Page 1**

**Filing Status:** Most of your divorcing clients will have filed married filing jointly. However, if they have lived apart for six months and filed separate returns, the custodial parent is entitled to file as head of household. The other parent can file as married filing separately while married, and single after the divorce. Refer them to an accountant immediately if they have been filing as single during the marriage.

**Exemptions:** If you see a name other than the children or dependants the clients have spoken about, be sure to ask about that relationship. As an example, there may be children from another marriage that the clients have not mentioned to you.

**Line 7, Wages, Salaries, etc.:** Does the information match what the clients told you about their compensation? You should know that if the clients are contributing to a retire-

ment savings plan, Line 7 will be net of those employee contributions. You would need to look at Medicare Wages on their W-2 statements for the income number for child support calculations. Also, as line 7 reflects the combined income of the parties, you also need the W-2 statements to verify individual incomes.

If your client has a W-2 statement and is the owner of his/her own business, review the business tax return to see if profits are being retained in the business.

**Line 8a and Line 9a, Taxable Interest & Ordinary Dividends:** Both lines indicate that assets exist that produce this income. If either category is greater than \$1,500, you are required to complete a Schedule B; make sure you get a copy if income thresholds are exceeded.

**Line 13, Capital Gain or Loss:** If you see either a positive or negative number, make sure you receive Schedule D. If the negative number is \$3,000, which is the maximum loss you can take in one year, there are probably more losses that can be carried into future years on Schedule D.

**Line 15a and Line 16a, IRA Distributions.** Are clients rolling over plans, liquidating plans or receiving pension income?

**Adjusted Gross Income:** Review adjustments to total income. As an example, a self-employed person may be contributing substantial amounts to a SEP IRA or a previously married party may be paying alimony.

## **From 1040, Page 2**

**Taxes and Credits:** If the clients are taking the standardized deduction, you are probably dealing with a pretty "standard" return. However, if they itemize, make sure you get a copy of their Schedule A.

If there are any educational credits, see if they apply to either of the parties.

**Other Taxes:** Self-employed tax should be reported here. If one party is a W-2 wage earner who over withholds, the self-employed party may not be aware of this tax—and may be in for a rude surprise after the divorce, when they need to make quarterly payments. Suggest that going forward, they should consult with their accountant regarding how to do this, if this has not been their practice. If the clients had penalties on early liquidation of IRAs and pensions, the tax will also be reported here.

**Line 71, Total (Tax) Payments:** Does the client over withhold or under withhold? If they consistently receive a refund, then their cash flow from the paycheck does not reflect their annual refund (and vice versa). This can be helpful information when assisting the clients with their budgets.

**Line 72 — Line 74, Refunds:** If the refund went to a bank account, whose account is this? If the refund was mailed, did both parties sign the check that was received? If the parties were eligible for a refund, they may have applied the credit towards next year's estimated tax. It doesn't happen often, but be sure to look for it, as that prepaid tax is a marital asset subject to distribution.

**Preparer's Name and Phone Number:** Take note of this information, and if there is something on the tax return that your clients can't answer, ask permission to speak to the accountant.

## **Schedule A, Itemized Deductions**

**Medical Expenses:** If the clients report significant medical expenses, ask why? It might be that one or both parties have a medical condition

*(Continued on page 9)*

## Reviewing Your Clients' Personal Tax Returns, Continued

(Continued from page 8)

that could be a factor in the divorce, or that there a child with special needs.

**Taxes You Paid:** If the clients are renters and you see real estate taxes paid or another inconsistency, ask questions.

**Gifts to Charity:** There are people who tithe. If these gifts seem higher than you might expect, ask questions about lifestyle.

**Other:** Are there any unusual deductions that raise questions? Don't be afraid to ask?

### Schedule B, Interest and Dividends

**Interest:** \$10,000 invested at 3% interest annually would yield \$300. If you see \$9,000 in interest income, one could start with the assumption that there might \$300,000 in assets producing this income. As payers of interest are listed (e.g., Bank of America), make sure you receive an account statement for every payer and continue to ask questions.

**Ordinary Dividends:** Some stocks and mutual funds pay dividends and others do not. As with interest income, make sure you receive a statement for every source of dividend income. Even, if you don't see dividend income, don't assume there isn't a portfolio of stocks.

### Schedule C, Profit or Loss from Business

**Income:** If your clients are contractors, musicians, realtors, performing artists, or other specialist, they may have 1099 forms documenting their income. On the other hand, if they say they were a private mediator, their primary documentation might include client invoices. Ask for the 1099s.

**Part II, Expenses:** In calculating child support, be aware that some expenses that are allowed by the IRS, are not allowable expenses for the purpose of income for child support

calculations in New Jersey. As related to Schedule C, these include various components of depreciation expenses, home office expenses, entertainment, and car and truck expenses.

Take note of the caveat in the child support guidelines: "In general, income and expenses from self-employment or the operation of a business should be carefully reviewed to determine an appropriate level of gross income that is available to the parent to pay a child support obligation. In most cases, this amount will differ from the determination of business income for tax purposes.

### Schedule D, Capital Gains and Losses

**Part I, Short-Term Capital Gains and Losses:** With market volatility, I grow concerned when I see a large volume of trades, especially if one of the parties is unaware of trade activity. Ask questions, and consider asking the clients to confer with their attorneys about how to manage their assets as they go through their divorce so as to preserve principal, especially if the parties have different risk profiles.

**Part II, Long-Term Capital Gains and Losses.** If you see a large long-term sales price amounts, ask where that money is now invested. These are sales of assets held for more than one year, so as a starting point, I would be looking for a stock and or bond portfolio of at least this value.

**Part III, Summary:** If the parties have more losses than gains, including losses from prior years, they will be able to use these losses to either offset future gains, or take a loss of \$3,000 a year against other income. Look

at line 16, subtract the \$3,000 they took on their taxes in the past year, and you are left with their tax loss carry forwards. These can be divided by the parties in a divorce, and have real value. Don't overlook them.

### Schedule E: Supplemental Income and Loss

**Part I, Income or Loss from Rental Real Estate and Royalties:** What you usually see on this schedule is rental real estate property. This part of the schedule provides the address for each property, which can be helpful. Be aware that a property may have positive cash flow yet show a loss because of depreciation. If you see royalties.... then future royalties for the referenced work may be subject to distribution. There may also be work that was created during the marriage that may not currently produce royalties, but might in the future. Ask questions.

**Part II, Income or Loss from Partnerships and S Corporations:** You might also see income from real estate held in an LLC or partnership. Ask for the tax return for each entity listed on this section if you see significant income. Note that some investments that you can buy from any stock broker operate as limited partnerships such as the United States Oil Fund. So, don't let your imagination get away from you when you review this section.

### Conclusions

If you have a hot tip regarding reading tax returns, please let me know. ICLE sponsors a four-hour continuing education class on reading a personal tax return that I recommend.

**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).

## ***Congratulations NJ Bar President, Richard H. Steen, Esq., APM***

**by Robert J. McDonnell,  
MS, APM**

**O**n behalf of the membership of NJAPM, I would like to acknowledge the outstanding achievements by NJAPM member Richard H. Steen, Esq., APM, as he is installed as President of the New Jersey State Bar Association (NJSBA) at their Annual Meeting and Convention held on May 19-21, 2010.



Rick is an Accredited Professional Mediator (APM®) and has been a member of NJAPM since 2002. Rick will be the first NJSBA President with a predominately ADR practice

This is a wonderful and prestigious accomplishment, and we all join in congratulating Rick and wish him the best in this important position. Along with other New Jersey ADR organizations, NJAPM sponsored a reception in Rick's honor at the NJSBA Convention on the afternoon of May 20, 2010 in Atlantic City.

## **A Few Questions About Mediation's Magic** by Patrick R. Westerkamp, Esq., APM

**A**n ADR Folktale: Once upon a time, a village relied on magic to promote harmony. Villagers with quarrels would seek relief from one of the few highly qualified magicians. This select group formed the Council of Arbiters. In time, their magic was so renowned that everyone wanted to become an Arbiter. Some used their craft in a wizardly way, others caused more problems than they solved. People started complaining, but the Arbiters were deaf to the growing outrage. Soon the villagers took their conflicts to upstart magicians called Mead-E-8-ors.

In time, the Mead-E-8-ors' magic was so popular that many tried to learn their craft. Some practiced in a wizardly way, others caused more problems than they solved. Some Mead-E-8-ors were deaf to complaints. Soon the villagers became disgruntled. They started depending on an upstart class of magicians called...

Folktales teach lessons. Our modern ADR folktale points to the dangers that may accompany popular acceptance. As our mediation profession becomes increasingly successful, it does not hurt to ask about challenges that are arising in our fast-changing culture. Are lessons to be learned from recent inroads on arbitration's past magic?

### **Mediation's Magic in Our Fast-Changing Culture**

The dispute resolution community owes much to Frances Perkins and other visionaries who, in the years following World War I, planted the seeds from which arbitration grew. Arbitration's success created the fertile field in which mediation, facilitation, and hybrid ADR processes now are blossoming. Yet, over the past decade, arbitration has lost its bloom.

Even labor arbitration, once an informal speedy procedure, is slowing down with some grievants waiting more than a year to have their discharge cases heard.

Some now perceive arbitration as a litigation clone, which they assert is too often bereft of due process. A so-called Arbitration Fairness Act is pending in Congress. If enacted it would amend the Federal Arbitration Act in the name of protecting consumers and employees from being maneuvered into arbitration.

Meanwhile, mediation is entering a golden age. This is wonderful, for now. In the longer term, however, can the ADR community keep mediation responsive to the needs, concerns, and criticisms of our clients? Are we sufficiently responsive to warning signs of future problems? What of the increase in lawsuits challenging mediated settlements? Are new entrants to the field qualified to mediate at high levels of procedural, emotional, and ethical competence? Are efforts by mediators to achieve appropriate compensation viewed as whining? Can the same person be an advocate one day, and maintain the serenity to function as a neutral mediator a few days later? Would mediators benefit from more stringent continuing education requirements? Should the profession do more to encourage clients to voice their complaints, about real or imagined, lapses by mediators? Is it now time to create, and administer comprehensive mentoring and apprenticeship programs? If so, how would they be funded? Has the time for licensing arrived? Can we minimize the chance that Congress, or state legislatures, one day will propose bills to "fix" what we may have ignored?

The question for discussion is how will mediation's ebbs and flows be recognized and addressed by our profession.

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

**G**reetings from the NJAPM membership committee. 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:

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Membership Committee Chair  
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A hearty welcome to all new NJAPM members! Here is a list of new members who have recently joined us. 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!***



**Stephen Abel**  
**Kathleen H. Andrews**  
**Gregory S. Botvinik**  
**Melanie E. Brown**  
**Ken Chin**  
**Tova Cohen**  
**Robert F. Colquhoun II**  
**Jennifer Cory**  
**Christine M. Dalena**  
**Linda Diaz**  
**John F. Donahue**  
**Michelle L. Dushkin**  
**Cynthia Salvatore Earl**  
**Michael Eisner**  
**Prof. Dr. Peter S. Geissler,**  
**MD, PHD**  
**Daniel G. Gianquinto, Esq.**  
**Donald Goldman**  
**Jerry D. Goldstein**  
**Robin Greene**  
**Joseph G. Harraka, Jr.**  
**Michael Heine**  
**Mark Timothy Karinja**  
**Rebecca S. Kaufman**  
**Janet Kazenel**  
**Stephen R. Knox**  
**William M. Laufer**  
**Jonathan J. Lerner**  
**Mark D. Lurie**

**Pamela Lutz**  
**Louis Mattielli**  
**Mark J. Melis**  
**Neely Moked**  
**Stephen M. Durnin-Moore**  
**James A. Morris**  
**Janet C. Walsh-Navarro**  
**Paul E. Newell**  
**Peter C. Maloff**  
**Michael V. Monahan**  
**Bathabile Mthombeni**  
**Barry Keith Odell**  
**Carl E. Peterson**  
**Jeffrey Posta**  
**Ronald E. Prusek**  
**Jenny Psaki**  
**Michael Rehill**  
**George M. Richvalsky**  
**Martin Rosenfeld, Esq.**  
**Rahmaan Simpkins**  
**Karen Valentine Slawson**  
**Richard J. Slawson**  
**Leslie A. Smith**  
**Ralph W. Soukis**  
**Thomas A. Szymanski**  
**Olorunmo Tillman**  
**Christine F. Tomalin**  
**Kenneth A. Wallach**  
**Bruce Waltuck**  
**Andrea Gail Segal-Wehman**  
**Michael Winkelstein**  
**Melissa S. Zarin**  
**Pamela Zivari**

**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

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

**Kmetz v. Fusaro, App. Div.**—The trial court correctly required defendant-father to make further contribution to his daughter's college education for the last semester of her junior year and her entire senior year. However, based on *Gac v. Gac*, he should not have been required to make any further contribution to her freshman, sophomore, and first semester junior years because plaintiff had not requested that he do so until those semesters had ended and under the circumstances it would be inequitable to require him to do so retroactively. October 9, 2009

**Qian v. Wang, App. Div.**—Defendant appeals from a final judgment of divorce insofar as it orders him to pay child support. Plaintiff cross-appeals from another portion of the same judgment, awarding her \$75,000 "off the top" from the sale of the marital home instead of from defendant's share of the sale price. The appellate panel affirms the award of child support. Despite having some doubts about paternity of the child, defendant did not pursue DNA testing until April 2006, after the parties and their child had been living as a family for over a decade. The panel modifies the \$75,000 judgment to provide that it shall be deducted from defendant's share of the sale proceeds where defendant admitted that after he knew the parties would be divorcing, he took out a \$150,000 home equity line of credit on the marital residence without plaintiff's knowledge and used the loan proceeds for his own purposes. October 19, 2009

**Ianneillo v. Ianneillo, App. Div.**—Plaintiff appeals from an order enforcing his permanent alimony obligation to defendant and denying his cross-motion for a reduction of alimony. Plaintiff's request for a reduction of alimony was based upon a lay-off promptly followed by his reemployment at a lower salary. Focusing on the magnitude of the mortgage obligation plaintiff undertook to purchase a new marital residence and the relative insignificance of his alimony obligation in comparison the judge concluded that plaintiff's claimed inability to pay alimony was attributable to a financial obligation he voluntarily incurred without regard for his preexisting obligation to pay alimony. Because plaintiff failed to establish a prima facie case of changed circumstances, the appellate panel affirms. October 19, 2009

**R.P. v. Somerset, App. Div.**—The Family Part order granting plaintiff's request for a final restraining order pursuant to the Prevention of Domestic Violence Act is reversed since there was no evidence that, in dragging plaintiff's new girlfriend from plaintiff's car and assaulting her, defendant had a purposeful, conscious objective to alarm or seriously annoy plaintiff and no evidence that she engaged in a course of alarming conduct or repeated acts with the intent to alarm or seriously annoy plaintiff sufficient to constitute harassment. October 21, 2009

**Pipitone v. Pipitone, App. Div.**—Finding that the Family Part judge erred in concluding that N.J.S.A. 2A:34-6 mandates that an award of alimony entered upon conversion to

an absolute divorce, entered years after a bed and board divorce, must be deemed retroactive to the date of the bed and board divorce order, and that the arbitrator intended the alimony award to be prospective, the panel reverses the order making the alimony award retroactive and remands for the limited purpose of entering an order awarding prospective alimony. October 28, 2009

**Rosengarten v. Rosengarten, App. Div.**—Defendant filed an application for an increase in alimony. In support of her contention of changed circumstances, defendant offered evidence documenting the disparity in the parties' lifestyles, a rise in the cost of living since the divorce and the alleged depletion of her assets. The appellate panel affirms the judge's denial of defendant's application. Contrary to defendant's argument, there is no per se rule regarding inflation. Inflation is a change in circumstances only if it "substantially affects [the] supported spouse's ability to maintain a lifestyle comparable to the marital standard of living." Furthermore, only after the dependent spouse has made the requisite prima facie showing of changed circumstances should the supporting spouse's "ability to pay become a factor." October 28, 2009

**Miele v. Miele, App. Div.**—Plaintiff appeals the denial of his motion for a reduction in alimony. The panel reverses, finding that the judge did not consider the facts of the case in the light of the language of the parties' property settlement agreement and the events that gave rise to its terms. It remands for reconsideration of plaintiff's motion in the context of a plenary hearing at

(Continued on page 13)

## Family Law Case Update, Continued

(Continued from page 12)

which the judge must consider the language of the PSA regarding alimony and plaintiff's anticipated gross income, the particular facts that gave rise to the numbers used on the PSA, plaintiff's actual income, his prospects for the future, and the parties' then current financial information. November 4, 2009

**Gonzalez-Posse v. Ricciardulli, App. Div.**—The Family Part order, modifying spousal support by extending the term of limited-duration alimony from five years (at \$500 weekly), which the parties agreed to in a property-settlement agreement, to 17 years (at \$100 weekly), failed to meet the heightened statutory standard of "unusual circumstances," N.J.S.A. 2A:34-23(c); or to adhere to the presumption that the durational feature of the support obligation be preserved; or to otherwise give effect to the need for, and purpose of, the original agreed-on arrangement. November 9, 2009

**Kelly v. Arato, App. Div.**—Where the language of the parties' property settlement agreement neither conclusively establishes nor conclusively negates plaintiff's remarriage as an event that would terminate alimony, the judge erred in holding that, as a matter of law, the PSA required a continuation of alimony after plaintiff's remarriage. Since the dispute cannot be resolved by a resort to the PSA, the panel remands for an evidentiary hearing to establish the parties' actual intentions. November 18, 2009

**Dell'Osa v. Dell'Osa, App. Div.**—Plaintiff's motion claims that the trial court overlooked the fact that plaintiff's retirement accounts were

comprised of pretax funds while the wife's were comprised of after-tax funds and the court was mistaken in not tax-adjusting the funds subject to equitable distribution. In denying plaintiff's motion, the trial court concluded that it appropriately followed the terms of the PSA. Plaintiff argues that the party's marital retirement accounts must be distributed by separate QDRO's, not by any offset of other assets. The appellate panel affirms, finding that the plain language of the PSA does not require separate QDRO's for the equitable distribution of the retirement accounts or that any sums on distribution be tax-adjusted. December 2, 2009

**Kay v. Kay, Sup. Ct.**—A trial court may not refuse to consider the equitable claims raised by the estate of a deceased spouse who, during the divorce litigation, was attempting to pursue a claim that the surviving spouse had diverted marital assets. January 7, 2010

**Schottel v. Kutyba, App. Div.**—Plaintiff appeals from the order that allowed her to take her daughter on a four week vacation to Poland in July 2009, on condition that she pay \$2500 toward the child support that she owes to defendant. The order further provided that she would be responsible for all of the child's medical expenses on the trip because the child's medical insurance provided no medical coverage for such a trip. Although the appeal is now moot, because the issue is likely to arise anew, the appellate panel addresses the question presented, and concludes that the trial court may not condition the trip upon a child support payment because New Jersey law treats child support and

parenting rights independently. However, the fact that the child would be without medical coverage while on the trip would be a sufficient basis to deny the trip. January 14, 2010

**Walden v. Payne, App. Div.**—Plaintiff appeals from the denial of her motion to modify defendant's parenting time with their daughter. Plaintiff does not "approve of" defendant's exposing their daughter to his girlfriend and her son while he is still married to another woman. She believes supervised visitation is appropriate because the circumstances under which defendant is exercising his parenting time are "not acceptable" to her and defendant will not alter his conduct to honor her views. Because the evidence was inadequate to permit modification of the order in effect, the appellate panel affirms. Plaintiff did not establish a prima facie case of change in the circumstances warranting the judge's further consideration of her request to limit the child's contact with her father to supervised visitations. February 1, 2010

**Rudnitsky v. Rudnitsky, App. Div.**—The plaintiff argues that the judge erred in concluding that defendant's future retirement would constitute a changed circumstance that would terminate alimony. The panel finds the judge was premature as to what ought to occur when defendant, who was forty-six years old at the time of trial, retires. That part of the opinion, along with the determination of the allocation of college expenses, was purely advisory. March 6, 2010

**Carl Cangelosi, JD, APM** is NJAPM President-Elect. He practices divorce and civil mediation in Princeton and Plainsboro, and also serves as NJAPM's Director of Divorce Mediation Training.

## ***NJAPM and the New Jersey Superior Court Civil Presumptive Mediation Program*** by Marv Schuldiner

If you are a member of the court's rule 1:40 Presumptive Civil Mediation roster, you probably noticed you have not received many new cases over the past few months. You probably also have heard many rumors about the court's mediation program. While the situation may have changed, here was what was happening as of the first week of May:

1. The Conference of Presiding Judges (PJs) voted to recommend ending the civil presumptive mediation program. Why? A number of reasons:

- They feel overburdened with requests for mediation referral order extensions, show cause hearings for non-payment or non-participation and other requests for involvement which most mediators should largely handle without court involvement.
- CDR point persons and staff are overburdened between the reporting requirements of the presumptive program, processing orders to show cause requests, simplistic questions from mediators and the added demands of the foreclosure mediation program.
- There is a cause for concern about the quality of the mediators on the presumptive mediation roster.
  - Attorneys complain about the quality of the mediators they are assigned, which reflects poorly on the program and profession.
  - The standards to join the roster are relatively low.
  - The foreclosure mediation program added a large number of new, inexperienced mediators to the presumptive mediation roster.
- Mediators are not trained in "case management" leading to overburdening the CDR staff with ques-

tions and requests which should be second nature to a presumptive roster mediator. The program was "sold" to the court in part with the reasoning that the mediators could help manage the cases for the court.

- Mediators are not filing final mediation reports thereby underreporting the effectiveness of the mediation program.
2. The court has reprogrammed the system so that the mediation referral orders are issued 90 days after the first answer is received, as opposed to the previous system where the order was issued the week after the first answer is filed. The 90-day delay allows for additional parties to be served and answer, allows for third party complaints to be filed and lets the case mature a little more than the previous practice. This delay created a 90 day "hole" in case assignments which just recently ended.
  3. Some PJs have also opted to send certain case types to non-binding arbitration instead of mediation.

Do these changes mean the end of the civil mediation program? Not necessarily. Other court committees would need to recommend that the program be changed or abolished, notably, the CDR Committee. Further, the Supreme Court would also need to approve these changes, which would seem unlikely given their historic support of the existing programs, presumptive and foreclosure. NJAPM is to have representation on the CDR Committee in the person of retired Judge Harper once the committee is reappointed. Mediation has many friends within the court system.

NJAPM is certainly not sitting

on the sidelines while all of this is happening. We are being proactive in not only trying to help fix the existing issues with the program but trying to strengthen the overall quality of civil mediation. Many of these are being done in conjunction with other NJ mediation groups. Some of NJAPM's initiatives include:

1. Developing a list of frequently experienced scenarios along with suggested ways on how to handle them is being developed using the experience and knowledge of leading mediators, a CDR point person, a presiding judge and Michelle Perone. The outcome of this group's work will be a publication on NJAPM's website and on other websites and outlets.

2. Establishing a panel of experienced rule 1:40 mediators who can be of help to less experienced mediators who are having trouble moving their assigned cases forward and with collecting on invoices. Any roster mediator can seek the assistance of the volunteer panel members. The court can suggest to mediators who request court assistance on items they should be handling themselves that they contact the panel first.

3. Offering, at a nominal cost, civil mediation case management training at 3 locations around New Jersey. MCLEs will be applied for, including an ethics component.

4. Making efforts to get better statistics on the program and the impact it has on the court's resources.

5. Working to change the rules regarding the civil presumptive mediation program to improve processes and strengthen mediator quality once the CDR committee is reappointed..

*(Continued on page 16)*

## **Committee Chairpersons**

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Website	Marv Schuldiner	732-963-2299	marvs@earthlink.net

**PLEASE CONTACT COMMITTEE CHAIRS TO LEARN  
ABOUT THE MUTUAL BENEFITS OF JOINING AN  
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## ***Civil Presumptive Mediation Program, Continued***

*(Continued from page 14)*

You can play a role -- right now -- in helping to improve the program and reduce our burden on court resources. What can you do to help?

1. Submit your final mediation reports, regardless of the outcome. 1/3rd of referred cases have no final mediation report sent back to the court and the court has no idea if these settle or not as a result of mediation.
2. Take the NJAPM civil mediation case management training. There will be three sections, one in north, central and south Jersey.
3. Avail yourself of NJAPM's civil mediation listserves, frequently experienced scenarios guide and the mentoring panel to manage your cases, help the parties and avoid calling the court.
4. Improve your mediation skills and be a better mediator. NJAPM and other organizations offer cost effective training and conference in me-

diation skills.

5. Do not burden the court with problems you can or should resolve on your own. There are resources to call upon and the only silly question is the one asked of the court and not one of your willing and able colleagues. Calling the court should be a last resort for every roster mediator.
6. Do not cherry pick cases and return the ones you do not like or do not think you will make money on. The court refers cases to mediation so that they get resolved and off the court's docket. Bluntly, if you are not helping to resolve cases, the court does not need you.
7. Be realistic about what the mediation program can do for you. The presumptive program is not designed to be a full time job for mediators, the court is not supposed to be your collection agency and this is not the place to gain initial experience as a mediator. Roster

mediators provide a service to the court, not the other way around.

8. Recognize that the court mediation program uses a facilitative mediation model. Unless the parties request otherwise, you should avoid evaluating cases for parties, making decisions for the parties, taking sides or dictating anything.
9. Be professional at all times, with attorneys, litigants and court personnel – even if some parties can be trying at times.
10. Volunteer to help other mediators improve their skills. A poor quality mediator reflects poorly on all of us and a rising tide lifts all ships.
11. Remove yourself from the roster if you are unwilling to do all of the above suggestions.

If we all work together, we can not only save the presumptive program but also expand and improve the program and return it to the model mediation program it should be..