NJAPM

Mediation News

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

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New Brunswick, NJ
Wednesday, September 10, 2008; 7PM-9PM

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Saturday, November 15, 2008

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President's Message: NJAPM & You: Working Together

by Anthony P. Limitone, Jr., Esq., APM

In organizations like NJAPM, membership is a two-way street. NJAPM must serve the needs of its members. If it fails in that mission, it has no right to continue to exist. However, NJAPM can act only through its members. It is only through the dedication and hard work of members who volunteer their services that NJAPM can create the various programs, activities and benefits for our members. We do not have a professional staff to do it for us.

Over the years NJAPM's programs and member benefits have grown and improved. This growth has not been accidental. Each new program was the result of some member seeing a need that was not being met and recognizing that NJAPM could meet the need. The member and the organization then worked together to put together the new program or service.

We welcome new ideas for expanding NJAPM's programs. If you believe NJAPM should be offering a new course or other service, please talk to me about it, and I will work with you to develop a proposal for board consideration. We would expect to work with you to implement the program.

For example, if you think NJAPM should provide training on a new subject, you would be expected to create the syllabus for the training and find the trainers. NJAPM would pay for the facility and the speakers, if necessary, and arrange for advertising. As I said at the beginning, every program NJAPM offers is the result of a cooperative effort between the organization and our members.

You don't have to develop a new program to participate in NJAPM. We have many committees that need help. These include to the Program, Membership, Accreditation and Annual Conference Committees. If you are interested in serving on any of our committees, please let the committee chair know. You will be welcomed with open arms.

There is a cliché that says the more you contribute, the more you benefit. That is true for NJAPM. The more active you become, the more you will benefit professionally and personally. On the professional side, you will gain recognition as a leader in the mediation profession. This recognition will not be limited to the ADR community, but will extend to the public at large. On the personal side, you will make friends who will give you great satisfaction over the years.

Our members are busy, successful professionals who are subject to many pressures from family and business. Each one of us has to strike our own individual balance among these competing interests. As a result, not all of us can participate as actively as we might like. You have to decide, based on your particular situation, what your level of participation will be. But no matter what level you choose, remember that in your own way you are contributing .significantly to the growth of NJAPM and the profession in New Jersey.

On behalf of NJAPM, I thank you for your past participation, and hope that you will continue to contribute for many years to come. And you can be assured that the Association will continue its efforts to meet your professional needs

Mediation News

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Editor's Column

by Robert Karlin, PhD, APM

On the first page of this issue, NJAPM President, Tony Limitone, asks you to get more involved in our organization. It is truly your organization and it needs your help. It is still the case that the vast majority of civil mediation cases are court referred. It is still the case that the majority of divorcing couples have never heard of divorce mediation. However, there has never been a time when ADR in general and mediation in particular was in a stronger position to make real advances. Legislators know about and listen to us. We have the Uniform Mediation Act to protect us and ensure privacy. When people learn what a revolutionary change in conflict resolution that mediation represents, they become interested and impressed.

As Tony says, this is a volunteer run organization. We are as good as you make us. Please give us a little of your already overcommitted energy and time. The enormous potential of mediation is becoming recognized. We have a far better mousetrap. Work with us so that at some point in the foreseeable future, the public will know what mediators do.

In terms of this newsletter, this is an invitation to join our Editorial Board and become a regular contributor. Members of the Editorial Board are asked to write or solicit three articles each year. We hope the "free advertising" incentive will get more new voices speaking through our newsletter.

There are some new voices and some usual contributors in this issue. In the new voice category, Mike Krieger tells us about mediation all along the course of business relations. Mike spent decades managing business relationships and development projects for the Port Authority. Alex Cocoziello tells us about The Mediator and Parley, software that can help us in the actual practice of mediation. There are links to the software websites in his article. Ed Bergman discusses how to optimize opening statements in civil mediation. Much of what he says applies to divorce mediation as well.

Among the more familiar voices, Carl Cangelosi gives us a great update on family law cases. He has also contributed a more controversial piece on collaborative law. Like Carl, I am not afraid of the competition from collaborative lawyers. Rather, I think all boats will rise as ADR in its various forms becomes better known as a way to get divorced. However, remember that all opinions expressed in this journal are those of their authors, not of NJAPM. We encourage the expression of a diversity of opinions to keep you interested.

Armand Bucci gives us two articles. The first is the next episode in his attempt to help us run our mediation practices in a business like way. In this article he gives us the outline of a marketing plan for mediators. Want more clients? – read his article carefully and implement his suggestions. Armand also obtained permission for us to reprint an article on Drexel's successful mediation program. They mediate healthcare disputes involving members of their medical school's physician practice group.

There is also a report from Bob McDonnell on the Membership Committee, including a list of new members. Finally, there is my Psychology 101 article about factors than can enhance marital satisfaction.

We look forward to adding your views to our next issue, which will be a print issue of the publication, and therefore will be disseminated at all our events.

Until then, have a great summer! Bob Karlin and Judy Shemming

Mediator Opening Statements: An Underutilized Tool

by Edward J. Bergman, Esq., APM

Mediators rarely hear opening statements by their peers. As a result, Tony Limitone, Julie Denny and I were struck by the differences in our respective sample openings delivered during the recent NJAPM Basic Civil Mediation Course. However, all of us agreed on one point: openings can be used as a crucial introduction to the mediator's role as educator.

As in all aspects of mediation practice, openings should be tailored to the specific dispute, parties, and context. Further, the complexity and length of the opening must comport with the sophistication and attention span of the disputants. So, at times, material that might otherwise be contained in the opening can be deployed with greater effectiveness at a later stage of the process. With the foregoing provisos, here are some potential topics for inclusion in your opening that may facilitate receptivity to mediation.

1. Paradoxically, mediation is the disputants' "day in court." Veterans of prolonged litigation/adjudication rarely report being permitted to tell their "story" within the traditional system. Rules of evidence and procedure, combined with an adversarial mindset, conspire to prevent parties from feeling that they have ever been "heard."

2. Most cases settle. Since 95+% of civil cases filed in the state of New Jersey settle prior to adjudication on the merits. Failure to use mediation well often results, not in trial, but in settlements reached under less than optimal conditions following the expenditure of substantial time and money in discovery. A cost-benefit analysis of full-throttle discovery in relation to the stakes of the dispute is rarely conducted in sufficient, contextual detail.

3. Litigation costs beyond attorney's fees and disbursements are seldom accorded appropriate weight in a disputant's settlement calculus. The relative benefits of not using work or family time to attend depositions, answer interrogatories or testify in court can be as meaningful, if not more so, than dollars disbursed to third parties. Still more elusive is the quantification of stress and the emotional impact associated with prolonged litigation and lack of closure.

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4. A consensual settlement reached by the parties is final and binding. Since the parties themselves generate the terms of settlement, there is, for most practical purposes, no threat of appeal. Further, the likelihood of compliance with party-generated settlements is greater than when outcomes are dictated by third parties -- judge or jury.

5. In civil cases the existence of factual disputes does not inherently signify that one party is a truth teller and that the other is a liar. Parties view identical facts through different prisms comprised of their interests, understandings (and misunderstandings), hopes, fears, and simple mistakes. Even parties who are mistaken often sincerely believe their versions of the facts. Sometimes there is no single "correct" version of the facts or, when one exists, it may not be definitively ascertainable. These uncertainties contribute to the risks inherent in any trial on the merits.

6. The ubiquitousness of lawyers and courts in our society suggests that even an intelligent, experienced, and well-advised disputant will outsource garden-variety disputes for determination by third parties. Disputes are an inevitable part of life. Self-determination through creative problem-solving by those who understand the dispute and its genesis best -- the parties -- promises dividends in the form of self-esteem, efficiency and an enhanced possibility, in some cases, of restoring the *status quo ante*. Since a best efforts attempt at consensual dispute resolution does not prejudice the parties in the event the process is unfruitful, the costs, risks, and delays associated with litigation militate in favor of making your best effort to achieve a mediated resolution.

Each of the above points, and others not referenced here, have proven useful, sometimes pivotal, when effectively incorporated in my own opening statements. Educating the parties with an opening statement can transform party perception of mediation in important ways. Hopefully, the parties may reevaluate the inducements for their wholehearted engagement in mediation as a dispute resolution mechanism of choice, even in a court-mandated context.

Edward J. Bergman, J.D. has been mediating complex disputes since 1992. In addition to his law practice, Ed teaches *Negotiation and Dispute Resolution* at The Wharton School of Business, University of PA and *Mediation of Healthcare Disputes* at the The Center for Bioethics, University of PA, where he also serves as Director of Mediation Services.

Using Software Tools to Help Settle Disputes

by Alex Cocoziello

Any mediator who has been confronted with a multitude of issues and priorities between two parties knows how challenging it can sometimes be to help them identify settlement options that best serve both sides' interests. What if it were possible to create a model of a dispute that takes into account all of the decision-making factors and suggests the fairest potential agreements? Wouldn't having such analytical rigor immediately available be valuable to mediators?

One software program, dubbed *The Mediator*, purports to offer this capability. According to its creator, Ron Surratt, *The Mediator* enables a user to "enter the areas of conflict, assign preferences for both parties, and automatically calculate the fair, equitable, and envy-free maximization of those preferences." The table below illustrates how the program computes one potential agreement for a simple divorce case:

	A	B	C	D
ISSUE	Wife Value	Husband Value	Wife Gets	Husband Gets
Long Island Mansion	432,968	313,401	432,698	-
Vacation Cottage	284,670	237,425	17,080	223,180
1983 Rolls Royce	124,255	104,467	-	104,467
LA Condo	79,708	66,479	79,708	-
Cash	113,868	94,970	-	94,970
Stocks and Bonds	45,647	37,988	45,547	-
IRA	22,774	18,994	22,774	-
Life Inurance Policy	34,160	75,976	-	75,976
TOTAL	1,138,050	949,700	597,807	498,593

The Mediator Software

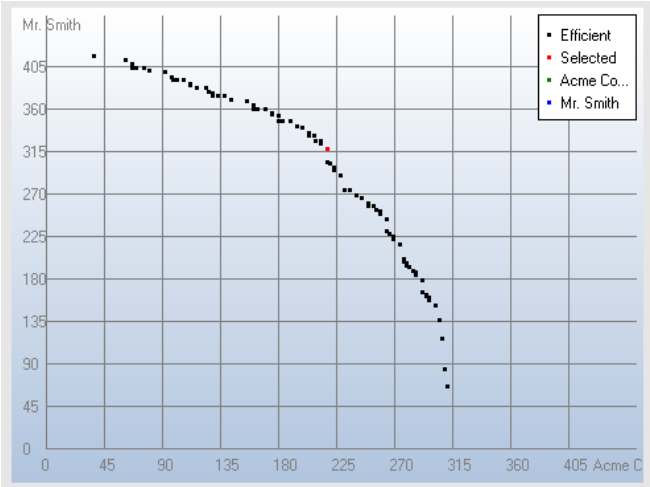
In this case, both the husband and wife privately disclose the honest value they place on each item under dispute (columns A and B). It is vital that neither party know the value that the other placed on each item. *The Mediator* then computes alternate equitable settlements that take into account the different values place on the items by the parties. Note that in this proposed settlement, the program suggests that they split the value of the vacation cottage. Also note that the totals of what each party gets (bottoms of columns C and D) sum to more than 50% of the total value each of them placed on the issues. Thus the parties can feel that they each have maximized their gain under this proposed settlement scenario. *The Mediator* also has the ability to factor in third-party appraisals as needed.

Another program, *Parley*, also provides a simple and powerful method to model all of the issues in a dispute along with their relative importance to the parties. The program graphically displays a range of the most efficient potential agreements after some data is entered to characterize the issues. A mediator can use these suggestions as starting points to facilitate productive negotiations between the parties. The graph below, taken from *Parley*'s website, shows a range of potential agreements for a hypothetical employment contract negotiation between Mr. Smith and Acme Co.:

(Continued on page 5)

Using Software Tools to Help Settle Disputes, Continued

(Continued from page 4)



Parley Sofware

Each square represents a different possible agreement. In this case, the encircled square, which lies slightly in favor of Mr. Smith (~315 pts vs. ~220 pts), has been selected. This agreement comprises the following details, which can be used as a possible starting point for negotiations between the parties:

Issue	Resolution	Acme Corp.	Mr. Smith
Salary	$75,000	72	69
Signing bonus	$5,000	23	74
Vacation	3 weeks	62	5
Title	Grand Poobah of Marketing	1	38
Office	Cubicle #4223	23	26
Car	1968 VW Bug	25	16
Training	Free books & conferences	8	70

Parley Sofware

More information about *The Mediator* and *Parley* can be found on their respective websites: http://www.mcn.org/c/rsurratt/conflict.html and http://parleyit.com/. While these types of software programs are of course no substitute for the experience and judgment of a seasoned mediator, they can help ensure that obscure yet viable settlement options are not overlooked. They may also have value in deal mediation cases where, rather than helping the parties settle a dispute, the mediator is helping the parties identify the best ways to collaborate, such as when forming a strategic alliance or considering a merger.

Alex Cocoziello is the founder and principal of A.A. Cocoziello Associates, a management consultancy offering strategic partnering, commercial dispute resolution and deal mediation services to small businesses and large corporations. Alex holds a B.S. in civil engineering from NJIT.

Psychology 101: Marital Satisfaction: Unhappy Findings and Encouraging Directions! by Robert Karlin, PhD, APM

Research findings on marital satisfaction are pretty discouraging. For example, you can classify young couples, engaged or newly married, and predict their fate based on all the demographic predictor variables you like, such as parents' socioeconomic status, their education, similarity in ethnic and religious background and so on. You then divide the couples you have studied into quintiles, and look at the highest quintile, the couples whose predicted marital satisfaction is in the top 20% of the population. Of the top 20%, after 5 years about half the couples report being satisfied or very satisfied with their marriages. The other half report being dissatisfied or are no longer together. When you look below the top 20%, reported marital satisfaction five years after marriage looks truly awful.

Marital satisfaction decreases gradually over time, with the steepest drop off occurring immediately after the birth of the first child. Researchers used to think the downward trend leveled off or reversed direction after the last child left home, but that turned out to be a statistical artifact. You can rate your marital satisfaction only if you are still married. Enough unhappy couples got divorced soon after the last child left home to create what looked like a small trend toward more satisfaction. If you take those couples into account, the increase in marital satisfaction when the last child leaves disappears into a statistical cloud of dust. One can look at what helps and what makes things worse from a number of points of view. First, good health, enough money and not terribly dissimilar backgrounds are somewhat protective. As to the last, it is an old marital therapy aphorism that people find partners who are exciting, in part, because they are different. Then the differences drive both crazy. Second, having good babies (happy babies who sleep well) who grow into good toddlers (those who engage with you and have bearable temper tantrums) do better as couples. Two self-help books by a pediatrician have appeared in the last few years: Harvey Karp's *The happiest baby on the block* and *The happiest toddler on the block*, both in paperback by Bantam Books. They are truly wonderful books and can make a real difference for new parents.

Of course, psychology and sociology researchers have given us some solid hints about what to do. Here I refer to the work of Les Greenberg and Susan Johnson, Dick Stuart, Pepper Schwartz, Neil Jacobson, John Gottman, Morton Deutsch and their many students and colleagues. I will touch on the work of John Gottman in this issue and discuss Mort Deutsch's work next time.

John Gottman did what I wanted to do when I entered grad school: he programmatically studied good as well as bad marriages to see how they differed. This is a strategy that works. Over the last century or so, with the possible exception of smallpox, no disorder has ever been cured by studying the disorder. Disorders are understood and then dealt with when we see how the healthy organism works and then are able to view the disorder as a lack, breakdown or overreaction of normal processes. So, to understand what goes wrong with marriages and how to fix them, study good marriages and see how they work.

Gottman studied how couples in an apartment building built to monitor couples 12 hours/day. He learned, among other things, how couples built up an emotional bank account with each other. It is not by engaging in deep soul searching conversations about the meaning of life, love and the universe. Rather it is by paying attention to and responding to each other in regard to the minutia of everyday life. When one partner makes a bid for attention ("Isn't that tree really pretty.") the other partner can respond in one of three ways: responding nicely ("It really is lovely."), ignoring what was said ("What did John say about that party next week?"), or attacking (Are you into your tree thing again?"). Gottman calls these responses "turning toward, turning away, and turning against." Turning toward the other person builds up an emotional bank account that gets you to believe your partner is well intentioned and deserves the benefit of the doubt when tensions arise.

Then there is Gottman's finding about the ratio of praise and criticism. In couples who are in trouble, the ratio is about one to one, as much praise as criticism. In couples who are doing well, the ratio is about five instances of praise to one of criticism. Among couples who Gottman calls the "Masters of Marriage" the ratio is about thirty-five to one.

Finally, let me mention Gottman's four horses of the apocalypse: criticism, defensiveness, contempt and stonewalling. One person criticizes, "You are being thoughtless, as usual." The other defends "No, I'm not. I'm just being efficient." The first partner contemptuously dismisses the defense, saying, while rolling his or her eyes "Where did you learn your efficiency, from your beloved mother?" This is met with something resembling silent fury. It turns out that couples with satisfying marriages are (almost) never contemptuous of each other. Gottman refers to such contempt as the sulfuric acid of marriage. If you notice it in a marriage, get them to me or any other good marital therapist before they need your services as a divorce mediator. (The period from when a marriage first needs help to when it gets help is usually estimated as five to seven years.)

Bob Karlin has been teaching and writing about cognitive and behaviorally oriented psychotherapy for over thirty years at Rutgers while practicing individual and marital therapy in Princeton. He has been doing divorce mediation for over a decade and is, for his many sins, the editor of your newsletter and a member of the NJAPM board.

Drexel University Physician's Mediation Program Builds Successful Track Record

Reprinted by permission of the Drexel University School of Medicine

Four years ago, the College of Medicine's physician practice group, Drexel University Physicians®, became the first in Pennsylvania to adopt mediation as its preferred method of resolving healthcare disputes. The program, which includes claims that had already been filed in court, as well as complaints that are subject to voluntary mediation agreements, has been a resounding success. Since its inception in 2004, 42 plaintiffs have chosen to take their cases out of court; of these, 39 have been amicably resolved and just three are pending. Meanwhile, three lawsuits went on to trial, all ending in defense verdicts.

As part of the voluntary mediation program, patients are asked to sign a mediation agreement at the physician's office at the outset of their care (see *www.drexlmed.edu/FindaPhysician/Mediation*). As of December 31, 2007, 91 percent of Drexel Medicine's eligible patients have been willing to do so. So far, most problems have been resolved by quick intervention. One was referred to the mediation program, and that was successfully resolved in mediation.

DUCOM's mediation program has drawn accolades from the Supreme Court of Pennsylvania which issued a certificate of appreciation to the College for this cutting edge initiative; and a wide array of organizations – from Chambers of Commerce to the American Medical Association – have requested presentations on the program.

"Mediation allows doctors and their patients to communicate directly and openly about what has occurred," says attorney Carl (Tobey) Oxholm, executive vice president and chief of staff, Drexel University. "That brings the human element back into the doctor-patient relationship, which has been stressed by the unexpected adverse event. Having the ability to talk without worrying about lawyers or courts can, in itself, be healing to the patient and the doctor."

"Through the mediation program, we have distinguished ourselves as an institution that puts patients first by providing a fair and equitable way to resolve healthcare disputes,"

"I've seen patients who wouldn't even come into the same room with the doctor at the beginning of the mediation process, and by the end, the patient and doctor are shaking hands or even hugging each other," relates the College's director of risk management, Deborah Lorber.

With mediation, both patients and their doctors can come to a resolution at far less personal cost and in far less time – usually 60 days versus the four years that a court case can take. In addition, the College's expenses can be reduced $50,000 to $150,000 for every claim resolved through mediation.

The success of the mediation program is due in part to the adverse event training and consultation provided to physicians by DUCOM's Risk Management.

"Physicians re-learn how to communicate so their patients will hear them," notes Oxholm. "They learn to sit down rather than stand, look the patient in the eye as they are talking, and use conciliatory language. We tell them it's OK to say they are sorry for what happened." This training also benefits the physicians by reducing their annual insurance costs.

The College has also started to include mediation communications skills training for medical students during the second and third years. "It's important for them to learn about effective patient-physician communication from the beginning," says Lorber.

"Through the mediation program, we have distinguished ourselves as an institution that puts patients first by providing a fair and equitable way to resolve healthcare disputes," Lorber emphasizes. "At the same time, we reduce the related stress for our physicians, and that in turn improves the quality of care for our patients."

With its mediation program, the College of Medicine is truly ahead of the curve, says Dean Richard V. Homan, M.D. "I am proud that our College has led the way in developing this equitable and humane process. In addition to Tobey Oxholm and Debbie Lorber, I would like to thank our faculty physicians and their staff for all of their efforts in support of our best practices, risk management, and the voluntary mediation process. It makes a difference!"

In addition to serving as NJAPM's Treasurer, Armand Bucci, is Vice Chair of the Alumni Association's Board of Governors at Drexel University. Armand obtained permission for us to reprint this article.

Not Just for Disputes: *Mediation Techniques in Negotiations and Deal Making* by L. Michael Krieger, JD, MBA

In our society, we think of using mediation and mediation techniques too narrowly—primarily in the context of "conflicts" and "disputes." Mediation techniques, including where possible, formal mediation, can and should be used much more widely in the negotiations and deal making phases of business transactions, well *before* "formal disputes" arise, and in various private and public sector settings.

For 32 years, I worked for The Port Authority of New York and New Jersey with a large part of my later career there involving complex, multifaceted negotiations, usually involving multiple public and private entities. My position, General Manager, Regional and Economic Development, required an intense, long term focus on deals that would lead to "self supporting" regional and economic development "projects" or groups of projects comprising "developments." These "deals" often comprised multiple agreements and associated arrangements that would have to "survive" over decades and meet a myriad of competing interests, even within The Port Authority itself. (Sometimes, meeting the agency's requirements posed the most challenging tasks!)

In my early negotiating training, I was taught to expect that "a deal will not close until each party leaves the room **unhappy** in **not achieving** all their negotiating objectives." Further, you would "win some and lose some," and "should *never* negotiate against yourself." Each party in the negotiations usually held similar views, and gestures of accommodation were constrained since they were perceived as conveying weakness. Thus, arriving at solutions that met all the parties' legitimate interests to consummate deals was often a protracted process. In such situations, a "mediator" or "deal counselor" would have been quite helpful, facilitating gestures of accommodation without having a party appear "weak."

Some readers may recall The Port Authority's work in the redevelopment of the region's underdeveloped assets, particularly "on the waterfront" in Hoboken and Queens, NY. It took 25 years for these developments to move from concept to significant actual development. Individuals and entities involved worked together over decade-long timeframes through changing business cycles and political leaderships. Thus, persistence, patience and sensitivity to "negotiating" a myriad of issues so as to maintain and nurture long term relationships were a prerequisite to agreements and actual project development.

While my role was not as a "formal mediator," I came to understand the value of utilizing mediation techniques to gain the trust of other parties in negotiations to reach agreements. My negotiating style over time increasingly relied heavily on a "mediation mindset." I usually was looked to by other parties as someone who would understand each party's interests, including The Port Authority's, but could be counted on to suggest creative alternatives to meet each party's respective interests in a way that was fair to all concerned in the spirit of "accomplishing the deal." At the root of one's ability and credibility to function this way is to be trustworthy in statements, actions and reactions, ***to act like a mediator.***

Identified below are ten stages of "negotiations and deal making" by two or more private (and/or pubic) parties that can benefit from wider use of mediation techniques.

1. Establishing initial business contacts and relationships among two or more parties.

2. These contacts and relationships may generate, or evolve, to include, initial understandings, which may or may not be codified in "Statements of Intent", "Memorandums of Understanding" or "Principles of Agreement." None are necessarily legally binding. However, any of them would help frame and focus anticipated discussions/ negotiations to follow. (Of note, to foster early a "team spirit" among the parties, I sometimes would suggest adding the word "Joint" in the title of these documents—thus, for example, "Joint Statement of Intent").

3. The discussions/negotiations following these "Joint Understandings" may then lead to formal legal arrangements. These arrangements should include provisions and mechanisms to address the interests of participating parties, under changing conditions. As conditions change, differences occur between the parties. As we all know, such differences are likely to arise in implementing most formal legal arrangements. If not dealt with effectively, such differences may lead to litigation with all its costs and perils to long term, mutually beneficial relationships.

4. The discussions/negotiations that occur aimed at resolving "differences" and maintaining legal arrangements responsive to the interests of the affected parties may include amendments to these

(Continued on page 9)

Not Just for Disputes: Mediation Techniques in Negotiations and Deal Making, continued

(Continued from page 8)
arrangements.

5. An "impasse stage" may arise when the discussions/negotiations of Stage 4 do not result in a mutually agreeable resolution of one or more issues. Such "impasses" may well ripen into one or more "formal disputes";

6. Utilization of "dispute resolution" methods that formal legal arrangements may ***(should!)*** provide for. For example, the original legal arrangements might establish a procedure for the parties to consult with a mutually trusted third party, or parties, as "Deal Counselor(s)," or as formal mediators. Note that while "arbitration" is often specified for dispute resolution in legal arrangements, I do not think it is as well suited to fostering party participation in resolving disputes as is mediation. With the increasing pressure by companies to make arbitration more like litigation, I believe it is an increasingly less desirable form of "alternative dispute resolution" (ADR). Further, since arbitration lacks the protections of the litigation process, it is less favored by some than litigation. Finally, using mediation techniques engenders the greatest likelihood of fostering improved long term relationships following resolution of a conflict or dispute.

7. Despite all attempts above, disputes remain unresolved and litigation ensues, including possibly litigation over whether litigation is even "allowed," depending upon provisions in the formal legal arrangements.

8. Litigation proceeds and perhaps there is a court ordered form of "ADR" and/or there may be a settlement arrived at short of trial determination of the dispute.

9. All alternatives to litigation fail; trials, potential appeals proceed, and possibly years go by before the dispute(s) are resolved. (We had our share of litigation in our work for various reasons—but it was viewed as "business as usual," particularly in larger scale developments.)

10. The resolution of the dispute(s) results in a termination and/or alteration of individual agreements while the business contacts and relationships and other agreements/contracts may continue. Alternatively, in some cases, all agreements, contacts and relationships, by litigation or otherwise between the parties may cease.

Although not readily recognized in many cases, mediation and mediation techniques are and can be productively used at each stage of the "continuum" outlined above. If so used, hopefully "Dispute Resolution"—stages 6, 7, 8 and 9 above—which now receives the largest focused use of mediation, would diminish in size as many problems would have been dealt with proactively.

I will share a story about a $200 million "deal closing" after years of negotiation to illustrate that signing the document(s) is only part of the "continuum."

At the closing, one of the principals called in from overseas to try to "adjust" some terms. His call was literally coincident with execution of pre-prepared final documents. At the time, we joked that he was such good negotiator; he continued to negotiate the deal "until the ink dried on his signature."

He, as we did, undoubtedly understood that the "signed contract" was not really the "end." It really was only the beginning of a new phase of the business relationship among the parties involved—a move in effect along the "continuum" outlined earlier.

The signed contract was a big thick set of documents to guide the parties' relationship, but without the concerted commitment by the involved parties to follow through, the contract really is just "a lot of paper." (By the way, the project was built and is viewed a success!)

In conclusion, astute deal negotiators and "deal makers" understand that the "deal" itself becomes a "party" to the transaction, with the other participating "parties" understanding at some level that consummating a deal that is not reasonably sensitive to the interests of each party to the deal is doomed to result in formal disputes and ultimate failure.

Over the years, I found using mediation techniques to be far superior to "hard negotiating" tactics. Granted many of my experiences have been with larger, more complex transactions, but use of mediation techniques is possible in smaller deals too, even if using a formal mediator, or deal counselor, is thought not to be practical from a cost standpoint.

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Michael specializes in using mediation techniques; negotiating and closing deals, including as "Deal Counselor."

Divorce Case Update, Compiled by Carl Cangelosi, JD, APM

Miken v. Hind –Gloucester County Superior Court Judge John Tomasello ruled that for a gay couple registered under the Domestic Partnership Act there should be an equitable distribution of assets in the same way assets would be distributed in the divorce of a married couple. Recognizing the special circumstances of gay couples who often had years-long committed relationships before being permitted to legally formalize them, Tomasello dated the period of equitable distribution to the formation of the couple in 1999 rather than the establishment of the domestic partnership soon after the enabling law came into effect in 2004. January 31, 2008

Kruse v. Kruse, App. Div.—Ex-wife argued that the plaintiff ex-husband had misrepresented his income when the property settlement agreement was negotiated and that she therefore was entitled to an increase in alimony. However, the ex-wife agreed in the PSA that the financial arrangements set forth in that agreement allowed her to maintain the marital standard of living. The fact that the ex-husband's income increased following their divorce did not entitle the ex-wife to any increase in alimony unless she could demonstrate a change in her circumstances that required an increase in alimony so that she could maintain the marital lifestyle and the ex-wife failed to make such a showing. February 1, 2008

Mauriello v. Mauriello, App. Div.—The Family Part directed that the parties attend mediation and that, if there was noncompliance with the order, the court would consider the transfer of custody rather than monetary sanctions. Contrary to the mother's argument, "there was nothing punitive" in the Family Part's approach in arriving at the appropriate remedy for the mother's violation of the father's rights when she did not comply with the mediation order. February 5, 2008

Quigley v. Quigley, App. Div.—Post-divorce-judgment order that denied the plaintiff ex-husband's motion to terminate his permanent alimony obligations following his voluntary retirement at the age of 59 and a half affirmed. The alimony payments were necessary to allow the defendant ex-wife to maintain the marital standard of living, and the ex-wife's share of the ex-husband's retirement benefits already had been agreed to by way of equitable distribution in the property settlement agreement. To require the ex-wife to depend only on her equitable distribution share of the ex-husband's retirement income "would inflict an unfairness upon her without justification," other than the ex-husband's "understandable desire to retire early." The ex-husband's retirement was "a foreseeable eventuality" that he failed to address in the negotiation of the PSA, and the ex-wife "should not suffer from that omission." February 6, 2008

Lucarella v. Lucarella, App. Div.—The Family Part properly concluded that the father had failed to demonstrate a sufficient change of circumstances to reduce his child support obligation (1) where his income - which was $66,856 at the time of the divorce and $57,404 at the time of his application - had not "substantially diminished," (2) where a slip-and-fall accident had only temporarily prevented him from working at his desk job, (3) where his assertion that his business had been harmed by the negative publicity arising from his indictment for conspiracy to attempt to murder his former attorney was belied by the fact that his income actually had increased by $15,000 the year after his indictment, and (4) where his children should not be financially disadvantaged by the collateral consequences of any criminal acts that the father might have committed. February 20, 2008

Gensinger v. Gensinger, App. Div.—Post-divorce-judgment order that required that the plaintiff mother pay $100 per week in child support, plus $25 toward arrears, affirmed. Initially, the mother had custody of the parties' youngest daughter, the father had custody of the parties' son, and the mother was required to pay $47 per week in child support. When the father moved to Florida, the youngest daughter moved with him, and he applied for custody and child support. Under the Guidelines, the mother would have been required to pay $194 per week in support. The Family Part determined that to require the mother to pay nearly four times the amount of support that she previously had been paying when each party had custody of a child would be "inequitable and unrealistic" in light of her financial situation. Under these circumstances, the Family Part's decision to deviate from the Guidelines was "reasonable." March 4, 2008

Coles v. Pinn-Wilson, App. Div.— May 10, 2007 order (1) that increased the plaintiff father's child support obligation retroactive to August 2005 and (2) that required that the father pay the $7,938 in arrears created by the modification at a rate of $30 per week affirmed. The facts of this case "unmistakably" required a retroactive increase in child support "to redress the unfair financial impact of a child support order that was based on shared parenting that never ultimately occurred." The defendant mother's delay in seeking the retroactive increase did not bar her right to seek it or the father's potential obligation to pay it. March 26, 2008

Sullivan v. Sullivan, App. Div.—A consent order contained an anti-Lepis clause, which provided that, in consideration of the plaintiff mother's compromise on the father's support obligation, the father waived his right to seek a reduction in his obligation. The father sought to rescind or modify the consent order because there had been a change in his financial circumstances. The consent order's language reflected the parties' consideration that the father could experience a reduction in income in the future and expressed the intent that such a reduction was not a basis on which to seek modification. Because the father had agreed to the benefit of the decrease in his obligation, he was required to accept the burden that accompanied it, especially where both he and the mother had anticipated such circumstances. April 4, 2008

Abbate v. Abbate, App. Div.—Order that reduced the alimony obligation of the defendant ex-husband to the plaintiff ex-wife from $650 per week to $350 per week affirmed. When the ex-husband agreed to the alimony obligation, his employer had already told him that it was restructuring its corporate organization and that his position would be eliminated. However, the ex-husband believed that the employer would offer him a new position in Chicago. The ex-husband later learned that he was not going to be offered the position. There was adequate, substantial, and credible evidence in the record to support the Family Part's findings that the ex-husband's loss of employment was involuntary and that he reasonably thought that he was going to obtain a new position, which failed to materialize. Those findings supported the Family Part's conclusion that the ex-husband's termination constituted a change in circumstances under *Lepis v. Lepis*, which warranted modification of his alimony obligation. May 8, 2008

Why I've Become a Founding Officer of the Princeton Collaborative Law Group by Carl Cangelosi, JD, APM

Collaborative law is not good news for divorce mediators. We are not an integral part of the collaborative law process and will only be used when there is some special situation, e.g., impasse, that requires our expertise.

First a little background. I have been a full-time divorce mediator since 2001. I am an officer of NJAPM and an accredited civil and divorce mediator. I believe mediation is the preferred method of resolving almost all disputes. While I am an attorney, I am not licensed in New Jersey and cannot practice in a collaborative law group as a lawyer. That said, let me explain why I am a founding officer of the Princeton Collaborative Law Group.

Every year when my children were young we would watch the Wizard of Oz. At one point in the movie, Glinda tells Dorothy to "tap your heels together while repeating the words, 'There is no place like home.'"

Well, tapping our heels together and wishing there won't be collaborative law isn't going to take us to the land with only mediation. Collaborative law is a trend that may grow much fast than mediation. There are too many unhappy divorce lawyers who want to make that transition to being "kinder and gentler" without going all the way to being mediators.

So, you have two choices. You can rail against collaborative law and hope it goes away. Or you can participate in a meaningful way so as to increase the likelihood that mediators are used during the collaborative law process. We may not be the main players but we will get to play more often than calling it another evil empire.

Here is a second reason to participate in a collaborative law group. While many lawyers will join such groups because they want to be kinder and gentler, they lack the skills that a good mediator can contribute. Mediators can act as trainers and role models so that the collaborative process can really become client-centered rather than another way to have a nicer, lawyer-controlled divorce.

As you may know I am the director of divorce mediation training for NJAPM. As part of the 40-hour course, Anju Jessani and I teach a marketing segment. One point I always make is that every personal contact is a marketing opportunity. Whether it is formal networking with a mental health professional or merely letting my local merchant know that I am a divorce mediator, it all counts. In that way, being a member of a collaborative law group is a marketing opportunity. If the members of the group value your contributions and respect you, they are likely to refer business to you.

I feel a little guilty making the following point last because it really should be first. Collaborative law is a very healthy development for divorcing couples. It's another alternative and a much better one than traditional adversarial divorce. While Ken Neumann, who among many other things is also a 40-hour instructor, has said that all divorce lawyers should be collaborative, they simply aren't. And until they all are, there is a need for divorce lawyers who want to create a better legal environment for couples getting divorced.

Carl Cangelosi serves on the NJAPM board as Secretary, is director of the 40-hour divorce mediation training course, and has a mediation practice in Princeton.

Marketing Plan for a Professional Service Business

by Armand Bucci

One of the first things that people are told when they want to start a business is to develop a business plan. Even if you currently have a business it is recommended that you have a business plan with a marketing plan included in it.

As with a business plan, there are several advantages to having a marketing plan. It helps you focus your marketing efforts. It helps you to allocate your money, people and time most efficiently and productively. A marketing plan provides disciplined, yet flexible marketing guidelines and brings all employees at all levels into the marketing process.

There are several ways you can develop a marketing plan depending on how much time and money you want to commit. You can hire a consultant, work with a representative from SCORE (Service Core of Retired Executives), buy a computer program and fill in the blanks or buy one of hundreds of books on the subject.

No matter what approach you take there are a few things that a marketing plan doesn't have to be. It doesn't require a long, uninterrupted block of time to put together. It doesn't require extra visits from your accountant at additional cost. There is no need for the plan to be at least 50 pages long and contain glitzy pie charts and graphs. The one thing that it has to be is written down, it shouldn't be in your head.

You can also develop a plan yourself. If you want to take that route there are basic principles for all marketing plans regardless if your business is retail, manufacturing or a professional service. Any marketing plan for a service business starts the 4 "P's"; Price, Positioning, Packaging and Promotion. There have been times when Persuasion and Performance have been added to the equation. In this article I'll concentrate on Positioning.

Part of Positioning is developing a core marketing message. That is first done by first answering the following questions:

What is your target market? Who are your clients? Develop a detailed profile of your ideal client including demographics and psychographics. Demographics include industry, geography facts while psychographics include values, character and interests. If you don't know where to start with your profile use Pareto's 80/20 principle and look at the characteristics of the 20 percent of your clients that give you 80 percent of your business. This was discussed in a previous article "Marketing Yourself Smarter, Not Harder."

What is your prospects problem? What is the problem, pain, issue, challenge or predicament facing your clients that would make them look to you for assistance?

What is your solution? What results do you produce for your clients? When you've completed working with your clients what can they expect their condition to be?

What proof can you show? What do you have that shows that you deliver on what you say you will do. This is done by references, testimonials and case studies that make the case for your results.

How do you stand out from the crowd? What makes you different and stand out from your competitors. Competitors are not only others that offer the same service that you do but those that offer an alternative method for the same problem. For mediators there are usually two issues that have to be overcome. First, prospects need to be shown that mediation is the best alternative to a conflict and, second, you are the mediator who can solve the problem.

In your advertisements, brochures or when you speak to people you shouldn't start out by talking about what you do. Instead talk about and promote who you work with and what their problem is. This takes the focus off of you and onto your clients. Remember everyone has the same favorite radio station, WII FM (what's in it for me). Your message wants to show how your service will be a benefit to them. You can be the first, biggest, best at what you do. You can have all the designations available so that there are more capital letters after your name than anyone else. What does that mean to your prospect and how will it help them solve their problem? If the prospect doesn't understand how you can help them it doesn't mean a thing.

Now that you have your message how to you get to the public? That is where the rest of the marketing plan comes in. We'll discuss Packaging, Promotion and Price strategies in upcoming articles.

Armand Bucci is a marketing/business expert as well as a mediator. Treasurer of NJAPM and Vice Chair for Drexel's Alumni Association's Board of Governors, his background includes management positions in radio, the healthcare, insurance and financial services industries over the last 25 years.

NJAPM Membership Report

by Robert McDonnell, MS, APM

NJAPM membership continues to grow. The membership roster currently stands at a total of 395 members, 100 of whom are Accredited Professional Mediators, or "APMs."

While we don't have a General Meeting until September 10, 2008, there are plenty of opportunities for members to network, meet other mediators, discuss issues of the day, and enjoy a good breakfast or lunch at any of the County Peer Group Meetings. These meetings are held throughout the state, generally on a monthly basis. Look for the notices on the listserves, but you can also find out more about Peer Group Meetings on the NJAPM website at – *http://www.njapm.org/pg/member/peerMediation.php*.

Summertime also brings with it the NJAPM notices for dues renewal. These notices will be sent out in early August. Take advantage of the reduced fee "early payment" option and send your dues renewal payment promptly. Help your Association eliminate extra costs of sending out reminder notices. Along with the dues renewal, "Accredited" members are reminded to complete and sign the "Annual NJAPM Continuing Education Report" to certify completion of the required 10 hours of annual continuing education.

Those who have joined in recent months can review the New Member Orientation. 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/pg/member/Newmemberorientation13006.pdf

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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Here is a list of the new general members who joined since February 1, 2008 through May 31, 2008. 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!

Megan Oltman, JD
Robert N. Turken
Jeffrey J. Waldman, JD
Robert Kennedy Bridwell
Lisa Cook Bayer, JD
Joseph F. Dillon
Lynne Broza, CPA
Patricia A. Soffer, JD
Dr. Michele C. Rabinowitz
Clara S. Licata, Esq.
Deborah Ann Keller
Susan K. McConnell, CDFA
Leonard Frank Rappa, Esq.
Najam A. Najmi
Amie Wolf-Mehlman, Ph.D.
Laura Mann, JD
Nancy M. Hartzband
Michael B. Meltzer, Esq.
Albert E. Smith, CPA
Kenneth Allen Genoni, Esq.
Leonard Steinberg, EA, CMC
Susan Sangillo Bellifemine, Esq.
Alexander Cocoziello, BSCE

Robert McDonnell is Chair of the Membership Committee and also serves as Vice President for NJAPM. Bob specializes in civil mediation. His practice is located in Lincoln Park, NJ.

NJAPM's 15th Annual Conference Saturday 11/15/08

by Anju D. Jessani, MBA, APM

NJAPM's 2008 Annual Conference, which will be our 15th, is scheduled for Saturday, November 15th, will be at the Somerset DoubleTree Hotel.

Risa Kleiner and I, co-chairs for the 2008 conference have listened carefully to the feedback from our 2007 conference. We plan to return to six workshops, versus the five from last year, will work with the hotel on better breakout rooms, and try and provide a healthier breakfast! And of course, we promise you another great program!

We are looking for people to join our committee to help chair the registration desk, put the conference help book together, solicit advertisements for the Yellow Pages section of the book, and act as host for some of our non-member speakers. This is a working committee. Apart from the joy that comes from helping NJAPM, volunteers are offered discounted admission to the conference. So, please contact me at (908) 303-0396 or ajessani@dwdmediation,org if any of these volunteer opportunities sound interesting to you.

We have included advertisement rates and information for the conference book. There is no easier way or better value for getting your name out to our membership than by adverstising in the conference book

So, please save the date and plan on joining us, look for conference updates at our website, and send in your advertisement copy of business card ad today!

Anju D. Jessani is Immediate Past President of NJAPM and has mediation offices in Hoboken and Clinton, NJ.

Committee Chairpersons

Committee	Chairperson(s)	Telephone	E-mail Address
Accreditation	Jeffrey Light	609-646-0222	jeffl@gmslaw.com
Annual Conference	Anju D. Jessani Risa Kleiner	908-303-0396 732-855-6015	ajessani@dwdmediation.org rkleiner@wilentz.com
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Peer Consultation /Mentoring	Bill Donohue	856-854-0303	onedonohue@aol.com
Programs	Patrick Westerkamp	732-672-3222	mediatorpat@verizon.net
Organization/Marketing	Open Position		
Technology	Michael Wolf	210-392-1699	michaelwolf@comcast.net
Youth Peacebuilding Coalition	Bill Donohue	856-854-0303	onedonohue@aol.com
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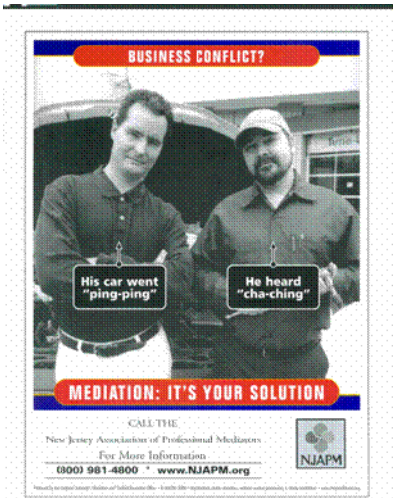

Poster Campaign

A good supply of posters is still available — Please visit our website at www.njapm.org to view all 12 posters and e-mail your order. Posters are free to NJAPM members and the public!