NJAPM

Mediation News

Volume 15, Issue 2
Summer 2011

New Jersey Association of Professional Mediators

80 Veronica Avenue
Somerset, NJ 08873

Inside this issue:

Upcoming NJAPM Events

NJAPM SOCIAL EVENT
Somerset Patriots Baseball Game
Friday Evening, August 12, 2011

NJAPM GENERAL MEETINGS
NJ Law Center, New Brunswick,
Wed., September, 14, 6:00 – 8:30 PM

NJAPM CIVIL MEDIATION
28-Hour Basic Training
Rutgers Univ., New Brunswick
Oct. 13, 14, 24 & 25

NJAPM DIVORCE MEDIATION
40-Hour Basic Training
Crowne Plaza, Monroe Township
Oct. 29 & 30, Nov. 5, 12 & 13

NJAPM 18th ANNUAL CONFERENCE
The Imperia Hotel, Somerset, NJ
Saturday, November 19, 2011

www.njapm.org
800-981-4800

President's Message

Are Times Changing?

by Carl J. Cangelosi, JD, APM

The NJAPM Board has established an ad hoc committee to look at the role of mediators today in New Jersey and other states and make recommendations to the Board on what the role should be in the future.

Inasmuch as I made the proposal to establish the committee to the board, let me give you some of my thinking that went into it. Over the years we have had many discussions about what a non-attorney mediator can do. Some have taken a very narrow view saying that almost anything a mediator does that even talks about the law runs afoul of the unauthorized practice of law statute. Others have taken a much broader view by pointing to the fact that realtors can prepare contracts for the sale of property. There have even been issues concerning what New Jersey licensed attorney mediators can do.

At the last 40-hour divorce mediation training class in March/ April, one of the students, who is a relatively recent law school graduate from Indiana, commented that it appeared that New Jersey mediators view their role very narrowly. In her state, non-attorney mediators prepare documents for signing by their clients.

The committee has been formed. There are nine seriously bright people on the committee who are tasked with serious research and analytical work. Hanan Isaacs and Allison Cardinal, the Indiana law school graduate I mentioned earlier, are co-chairs. One of the requirements to be on the committee is that all of them, regardless of their primary profession, must place the interests of the mediation profession first.

Since the notice about the committee went out on the listserve, I have been asked whether there is an agenda to limit what mediators do today; some have asked whether there is an agenda to broadly expand what mediators do today. There is no agenda. We will have to wait and see what the committee recommends.

Carl Cangelosi, JD, APM is NJAPM president for the term 10/1/10—9/30/11. He practices divorce and civil mediation in Princeton and Plainsboro, and also serves as NJAPM's director of divorce mediation training.

Photographs from Recent NJAPM Events
Pages 10 & 11

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Editor's Column

by Anju D. Jessani, MBA, APM

Notice something different about this issue of ***Mediation News***? Following the positive feedback we received from our last issue that included photographs from our November annual conference, we decided to include pictures taken by NJAPM members at NJAPM events in every issue. Take a look at pages 10-11 for photos from our 40-hour divorce mediation training, our April general meeting, our labor mediation special interest group meeting, and our May annual divorce seminar. If you take photographs at any NJAPM events, please email them to me at ajessani@dwdmediation.org.

Another difference is the number of articles about civil/ business mediation and mediators (we continue to welcome your divorce mediation articles).

Nick Stevens has provided guidance on the Rule 1:40 organizational telephonic conference. His advice can enable the mediator to establish the tone and control of the mediation from the outset of the referral.

Chris Kane discusses how the principles of mediation can play a much greater role in the decision-making for planning and implementing investments in improving our cities' infrastructure.

N. Janine Dickey suggests steps that may assist mediators reach that sought after Mediator-Attorney Synergy, which at its core is simply building a rapport of credibility and trust with counsel, to facilitate working together towards successful dispute resolution.

R. Fenimore Fisher explores the benefits of mediation in the workplace.

Spotlighting civil/business mediation, **Andie Donohue** interviews **Pat Westerkamp** about his decision, six years ago, to return to mediation and arbitration. Who said you can't go home?

Our regular columnists, **Carl Cangelosi** and **Anna Delio**, provide their respective columns: Family Law Case Update, and the NJAPM Membership Report. Additionally, in his President's Column, Carl describes the recently established NJAPM ad hoc committee on the *role of the mediator*.

In addition to *Mediation News*, you should be receiving our monthly *NJAPM Flash e-Newsletter*, which serve as a supplement to *Mediation News*. If you find a web article of interest about mediation, please email editor, **Katherine Newcomer**, at katherinenewcomer@comcast.net.

Competent mediation requires continuous learning. As you use the summer to recharge your batteries, please think about what small steps you can take today to enhance your mediation skills — whether it be writing an article for *Mediation News*, reading articles such as those on www.mediate.com, or attending or speaking at an NJAPM event. With regards to the latter, please check our calendar at the NJAPM website, www.njapm.org.

If you have a proposal for an original article between 600-1200 words, please contact me at ajessani@dwdmediation.org. Thank you again to all those who contributed to this issue.

Anju D. Jessani served as NJAPM president from 2005-2007. Her practice, Divorce with Dignity Mediation Services has offices in Clinton and Hoboken. She can be reached at www.dwdmediation.org.

Aspects of Rule 1:40 —The Organizational Telephonic Conference by Nicholas Stevens, Esq.

Paragraph 4 of the present Rule 1:40 mediation referral order ("MRO") states:

"Immediately upon receipt of this order, the mediator shall notify the parties and counsel of the date and time of the organizational telephonic conference ["OTC"]. During this conference, the mediator shall explain the mediation process, set the ground rules, schedule the mediation session(s), facilitate a focused information exchange and identify those persons with negotiating authority needed by each side to participate in the mediation process and assist in resolving the case and require their attendance. The mediator shall submit an initial procedural status report to the court no later than 35 days after this referral."

Observing the components of this provision is essential to a mediator establishing the tone and control of the mediation from the outset of the referral:

Immediate Notification. Attorneys are frustrated when they get the MRO and then do not receive any communication from the mediator for a while, or, some times, at all. Moreover, a mediator that fails to immediately contact the attorneys violates the MRO. Therefore, a mediator needs to set up a form of letter and, upon receipt of the MRO, immediately send a letter to the lawyers, telling them the date and time of the OTC, who is to initiate it, the subjects to be discussed as listed in the MRO's paragraph 4, and the procedure if either attorney is unavailable on the date the mediator selects. One suggested procedure in the case of unavailability is to have the attorneys confer and list for the mediator all of their mutually available dates that fall prior to the 35-day due date of the initial status report. The mediator can pick a date from their list.

The Process and Ground Rules. When the mediator starts the call, the first thing to do is to establish which attorneys are on the line and the parties that they represent. This allows the mediator to determine whether all of the necessary parties are present and, if not, to develop a plan to incorporate any missing parties once they "join the action" (e.g., by filing an answer). Next, the mediator should make clear to the attorneys that this is an organizational teleconference, not one about the merits. The goal is to learn about the positions and set up the mediation steps accordingly, not to resolve the case then and there. Avoid excessive arguing by the attorneys.

Facilitate A Focused Information Exchange. The designers of the MRO chose those words carefully, using the word "focused" and not using the word "discovery," which has a much more expansive meaning to attorneys. The goal is to establish, (1) the information the attorneys need to have in order to engage in an informed mediation process, and (2) the shortest amount of time in which they can exchange that information. The mediator should schedule the exchange to provide enough time for the attorneys to review the information with their clients and prepare a resulting position paper prior to the mediation date. The mediator should distinguish and define with the attorneys the information to be exchanged for mediation, in contrast to discovery, meaning all of the information to be exchanged prior to a trial, which they can discuss on their own time. The resulting 35-day status report should somehow identify that which is to be exchanged and the due date for each party.

Identify Persons With Settlement Authority. The mediator should try to have the attorneys commit during the OTC to the name and, if applicable, title of the person who will appear for each party, with authority to settle. Mediation is typically much more effective when the parties are there and live through the process first hand, seeing the other side present its case, reacting to factual and legal positions on the spot, and using their valuable time to participate in the legal process. While the mediator should try to insist on the personal appearance of persons with authority, it is not always feasible. Two occasions in which in person attendance can be difficult are where one party is located out-of-state and the case value is not high enough to justify travel costs, and where the defendant has an insurance adjuster who is negotiating several cases on any given day, is out of state, or both. In such circumstances, the mediator should have the attorney commit on the telephone to preparing the party or adjuster prior to the mediation date to be available throughout the day, know the case, and have authority to settle.

Schedule Position Papers and Mediation. Finally, the mediator should set dates for the submission of position papers and for mediation the latter of which should fall within the 90 -day completion period in paragraph 6 of the MRO. The Court typically will extend that deadline, if necessary, but it is easier for the mediator to retain control over the mediation process if the 90-day deadline can be met. State those two deadlines n the 35-day status report as well.

Following the above steps to prepare and submit the 35-day status report on time will enable a mediator to establish the tone and control of the mediation from the outset of the referral.

Nicholas Stevens is a partner with the law firm, Starr, Gern, Davison & Rubin, PC in Roseland. He specializes in employment and commercial litigation and mediation. He also serves on the NJAPM board of directors.

Use of Consensus-Building for Infrastructure Project Development. by Chris Kane PE, JD

The principles of mediation could play a much greater role in the decision-making for planning and implementing investments in improving our cities' infrastructure. Capital projects involving urban redevelopment, transportation, water and energy require a great deal of political will, substantial upfront investment and a very lengthy process for implementation. Typically the public involvement is merely a box to be checked in the environmental review process and not a serious effort to seek and build consensus. Project opponents often do not get seriously engaged at the outset and can create greater trouble later on, when a simple majority of the governing entity wants to move forward.

The delays in these projects can not only delay the benefits to communities, but also add tremendously to the cost. Cost and delay issues in turn further delay and jeopardize the project by adding more controversy. Consensus-building is a form of mediation in multi-stakeholder decision-making, and in many cases can help solve these problems by expediting the time to get to an agreement. This article describes the conditions and steps of consensus-building and how the process can improve the schedule and support for urban infrastructure improvements.

The Consensus-Building Process

Consensus can be defined as a general or wide spread agreement among all the members of a group of diverse stakeholders. It is not about achieving unanimity. Rather it is more of a nearly unanimous agreement. The process goes beyond reaching consensus to implementing the agreement successfully. It involves investing enough in your decision-making process to get the right people to the table, and to get the right ideas on the table, in ways that invite productive problem solving. It typically calls for the involvement of some form of mediator to shepherd the process.

Consensus can be defined as a general or wide spread agreement among all the members of a group of diverse stakeholders.

In consensus-building the mediator is used to assist competing interest groups to reach agreement on issues in controversy affecting a large number of people. Consensus-building typically involves informally structured, face-to-face interactions among representatives of stakeholder groups. One objective is to gain early participation from affected interests with differing viewpoints, including potential opponents. The goal is to produce sound decisions with broad support, thus greatly reducing the likelihood of subsequent disagreements or legal challenges.

The book by Lawrence Susskind and Jeffrey Cruikshank, *Breaking Robert's Rules: The New Way to Run Your Meetings, Build Consensus and Get Things Done*", is an excellent blueprint of how to conduct a consensus-building process. The purpose is to improve the simple majority rule process run by Roberts Rules of procedures, with a process intended to gain broader support and better solutions. Five steps are identified in the consensus-building process: convening, clarifying responsibilities, deliberating, deciding, and implementing agreements.

Consensus-Building Steps

STEP 1 – CONVENING

Every project must have a public champion, perceived as trustworthy, who has the interest of the community at heart and the wherewithal to get everyone's attention. This is the type of person that would serve as a convener. He would be assisted by a skilled mediator to support his efforts, but he must be the face of the process. To begin with, the convener, the community and other stakeholders conduct a written conflicts assessment to determine if a consensus-building process makes sense. Once decided the mediator and convener can educate interested parties on the process and help them think through whether they would wish to participate.

STEP 2—CLARIFYING RESPONSIBILITIES

After a conflicts assessment and a decision to proceed is made, the next activity is to clarify the roles – politicians, stakeholder groups, community representatives, mediators, and recorders. Agendas for meetings and ground rules for the process are all established during step 2. The group should assess available computer-based communication options since this can greatly simplify the process and get greater participation from more representatives and groups of stakeholders. A mailing list or email distribution list should be established as well, to keep everyone up to date on the process.

(Continued on page 5)

Use of Consensus Building, Continued

(Continued from page 4)

STEP 3 — DELIBERATING

Deliberations are a critical step in reaching agreement. As in any mediation the parties must feel their interests are heard and understood by the other parties. This must be done in a constructive fashion and the skills of the mediator will be very important in making this happen. Brainstorming and inventing must be separated from commitments so that all ideas are given consideration before beginning to narrow down the options. If necessary you can create subcommittees and seek expert advice. When it comes time to write everything down you should use a "single text" procedure. This a method to work with one neutral document recording the progress which is reviewed and approved by all the stakeholders.

STEP 4 — DECIDING

Consensus-building, like other forms of collaborative conflict resolution, is based on the four basic principles of "win-win" negotiation (see Fisher and Ury 1996): separate the people from the problem; focus on interests, not positions; invent options for mutual gain; and use objective criteria. In this stage of the process, participants should try to maximize joint gains. All the principles of effective interest based and collaborative negotiations should be applied in coming to decisions. Multiple drafts of proposals may be circulated until consensus is reached. Again a record of the decision making process and conclusions is made through a single text document procedure.

STEP 5 — IMPLEMENTING AGREEMENTS

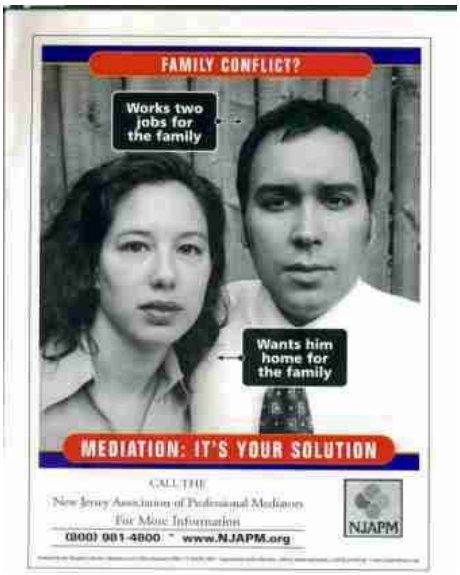
Once the decision has been reached, an implementing agreement should be finalized which incorporates some history of the process and participants and outlines the areas where agreement has been reached. All the stakeholders should be signatory to this agreement. This agreement should indicate not only how the agreement will be implemented but also how it will be monitored and enforced. There should be a process in the implementing agreement for how conflicts will be resolved that arise later on. Once again, a collaborative process such as mediation or using a standing neutral decision-maker, should be considered in the terms in the agreement.

Conclusions

A structured consensus-building process can help speed up the time to reach agreement for urban infrastructure projects and thereby can save significantly in costs. If done correctly, a consensus based implementing agreement will avoid the problem of detractors later challenging a project by making certain they are involved from the start. Mediators will help by using their skills of encouraging constructive dialogue and the exploring alternative solutions. In addition, the single text procedure allows the mediator to manage the development of the agreement. Hopefully, consensus-building will someday become a standard tool in the planning process and help speed up necessary infrastructure

Chris Kane is the president of P3 Collaborative LLC, specializing in infrastructure projects He has over 30 years of experience in project structuring, contract negotiations, and dispute resolution for energy, institutional, and infrastructure projects. He has been an active arbitrator and mediator for over 16 years. His website is www.p3collaborative.com.

What's on Your Wall?



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A good supply of posters is still available. Please visit our website at www.njapm.org to view all 10 posters E-mail your order to inform@njapm.org.
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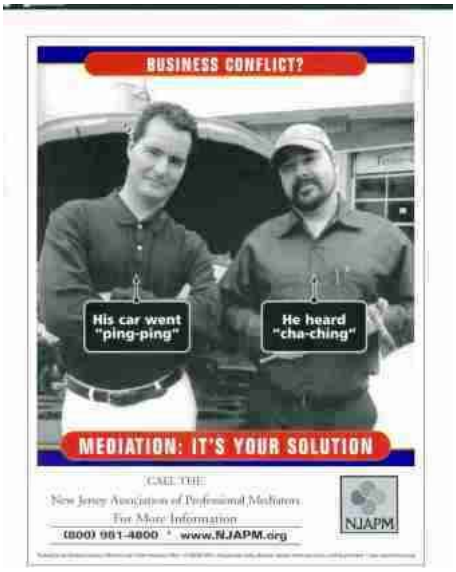

Establishing "Mediator-Attorney Synergy"

by N. Janine Dickey, Esq., APM

Many experienced mediators would likely rate their most notable successful mediations as those where *Mediator-Attorney Synergy****** moved the most intransient of parties towards a mutually satisfactory resolution. The idealist mediator would say this synergy occurs in every successful mediation, but the realist mediator knows it is a difficult goal which the mediator must intentionally strive to achieve using honed skills and expertise built up over time. The following considerations may assist both novice and experienced mediators to reach that sought after *Mediator-Attorney Synergy*, which at its core is simply building a rapport of credibility and trust with counsel, to facilitate working together towards successful dispute resolution.

Exercise professionalism and intentionality during each and every communication. The first substantive communication in the mediation process is typically the telephonic organizational call. While it is my practice to have previously reviewed the parties' pleadings, I still begin by asking each counsel to briefly summarize the matter. This invites the attorneys to be active players in the process from the onset, and becomes the first step towards establishing *Mediator-Attorney Synergy*. This preliminary exchange also gives the mediator instant cues and insight as to the personality, advocacy style and relationship between counsel.

Conduct case management with deferential control and flexibility. I have heard a myriad of complaints from attorneys that mediators often push them into a mediation session before they are ready. While one of mediation's greatest benefits is the opportunity to resolve disputes before the parties incur substantial discovery costs, a mediator can destroy the opportunity to establish *Mediator-Attorney Synergy* if he/she dictates the level of discovery without meaningful input from counsel. Counsel needs a comfort level regarding his/her ability to advise clients during the mediation. Thus, while a mediator should encourage the exchange of only critical discovery prior to the initial mediation session (typically document production), in appropriate cases, a deposition or two, or even the exchange of expert reports may be essential. Establishing the sought after *synergy* demands that you work WITH counsel and avoid conveying that your mediation process is at odds with counsel's perceived early discovery needs.

Mediator-Attorney Synergy demands deferential, yet FIRM CONTROL of case management and the mediation process. This is not a contradiction. To the contrary, because a mediator must consider the positions and requests of all counsel representing adverse parties, a mediator's role as a neutral offers built-in checks and balances. It is, in fact, essential to firmly reign in unreasonable demands of one party (for example demands for costly excessive pre-mediation discovery) in order to promote a controlled balanced forum. [And *always* confirm discovery and scheduling agreements in writing.] Attorneys will respect a mediator who maintains deferential control; this two-way professional respect fosters *Mediator-Attorney Synergy*.

Customize your mediation approach and process. One size does not fit all. One of mediation's greatest benefits over litigation is the ability to tailor the process to account for the substantive nature of the dispute, the complexity of issues, the amount in controversy, the personalities of the parties, and the personalities of counsel. Attorneys will appreciate the mediator's willingness to be flexible and said flexibility will lead to a more synergistic and effective process.

Remain Accessible. A mediator should extend an open invitation for counsel to contact him/her confidentially prior to and throughout the mediation process.

* * * * *

Incorporating the above, maintaining professionalism, and exercising intentionality during each and every communication with counsel, will result in the establishment of *Mediator-Attorney Synergy* and the ultimate goal of effective mediation.

*****SYNERGY *n.* "The action of two or more substances, organs, or organisms to achieve an effect of which each is individually incapable." *The American Heritage Dictionary 2nd Col. Ed. 1985.*

N. Janine Dickey, Esq., APM practices in NJ and NY and is accredited in business and commercial mediation. She serves as: advanced mediation trainer & coach; co-chair of NJAPM's employment mediation interest group; director of NJSBA- DRS; member of NYSBA-DR and member of Garibaldi Inn of Ct. njdickey@civil-mediator.com

Managing the Personal in Workplace Conflict

by R. Fenimore Fisher

Keeping people and personal issues separate from solving conflict in the workplace is one of the most challenging skills needed as a manager of people. As the saying goes, "wherever you go there you are." People bring more than just their Blackberrys to work: agitation with co-workers, frustration with missed performance goals, un-ease with changing leadership direction, fear of losing their jobs, and certainly conflict from home. As an employer how you manage conflict makes all the difference in whether the dispute will be resolved equitably, professionally, and objectively. Let's explore the benefits of mediation in the workplace.

The Equal Employment Opportunity Commission provides multiple reasons for using mediation to resolve workplace conflicts. An independent survey showed 96% of all respondents and 91% of all charging parties who used mediation would use it again. Parties have an equal say in the process and they, not the mediator, decide the terms of the settlement. There is no determination of guilt or innocence. Mediation saves time and money avoiding litigation. Mediation works to discover the true problem, fostering a problem-solving approach to complaints ultimately reducing workplace disruptions.

Here you have a uninvolved third party seeking to understand each side's point of view to subsequently present a working solution that: a) addresses the conflict head on; b) communicates to each party the other's point of view; c) identifies options for closure; and d) ultimately returns each party back to the workplace with a sense of being heard with issues addressed and resolved. Whether you have a workforce of 100,000 or 100 relationships and how people interact with each other can be exceptionally complex. The size of your business will dictate what mediation model you use. For larger companies, in-house is the most efficient option. For smaller businesses, outsourcing will enhance the perception of impartiality. Also, outsourcing allows businesses with no mediation experience to learn the craft of dispute resolution from professionals. Each business has a culture and communication style which can bring out great teamwork as well as personal tensions.

The foundation of employees' interactions with each other is personal baggage

In consensus-building, tensions can fester and when finally addressed the tone is often adversarial. People don't leave companies, they leave people. The foundation of employees' interactions with each other is personal baggage. Such interactions place a strain on human resources personnel, create perceptions concerning the equity of the process, and lengthen closure.

Many companies still grapple with how to integrate mediation into their existing conflict review protocol. The question must be asked whether your protocol is perceived as adversarial. If there is a perception that there is a bias towards either the complaining party or the responding party, you've got issues. If there is a perception that only one party gets to design a solution, you've got issues. Here is where mediation provides perhaps the ultimate benefit. When integrated into your grievance process, mediation gives you a tool, a protocol, a format that actually has its origins in dispute resolution. Anything else will eventually sour how your employees and supervisors ultimately feel about your conflict review process.

Professionals wear masks in the workplace. As those masks start to fall during intense personal conflict there is a tradeoff between using mediation versus a traditional intake and investigation. Using the wrong tool(s) to resolve conflict can create a price far greater than litigation. The loss of group cohesion and lack of trust can have a sustaining long term impact on culture, engagement and subsequently productivity. Mediation ultimately creates faith that the review of disputes will be equitable, solution oriented, and impartial. These serve as truly sustaining benefits.

R. Fenimore Fisher is the president and founder of the R. Fenimore Fisher Group, LLC, a global diversity and inclusion consulting and arbitration firm focused on workplace strategy and workforce and commercial dispute resolution. Fisher previously served as vice president, diversity initiatives and analysis for Wal-Mart Stores, Inc.

Mediator Spotlight: Six Years Ago, Pat Westerkamp Decided to Go Home by Andie Donohue

Prior to heading to law school in his thirties, Patrick Westerkamp was employed by the American Arbitration Association (AAA) in NYC as a tribunal clerk and then supervisor, to administer their arbitration endeavors. Eventually, he became the regional manager/director heading a staff of fifteen responsible for labor, insurance, and commercial arbitrations. Additionally, he conducted settlement training programs.

Law School in his Thirties

Law school beckoned, and upon graduation from Seton Hall University Law School, Pat began litigating labor and employment cases. This led to his involvement with commercial arbitration, primarily in the areas of purchase agreements, franchises, construction financing, home-owner warranties, real estate and employment contracts.

Labor Arbitrator

The next step was to become a labor arbitrator specializing in contract interpretation and discharge grievances for a myriad of sectors. Two more stops as an attorney advocate in the private sector and then a labor and employment attorney for PSE&G all proved to be "wearing, difficult, and ultimately, unsatisfying." He wanted to return to what he refers to as his "comfort zone".

Quits Day Job and Then Takes Mediation Training

Despite all of his qualifications, Pat didn't exactly jump right in to becoming a mediator, but rather, decided to take two forty-hour courses – one for employment mediation and the other for labor and employment arbitration and mediation. He did, however, resign from his full-time job, something, in retrospect, he feels was premature.

Patrick Westerkamp

Pat's Mediation Practice

Today, Pat's specializes in partnership disputes, real property issues, and labor and he is on many civil mediation panels and lists.

Although he doesn't feel one must be an attorney to do well as a mediator, he says "being an attorney helps in two ways. First, I speak the language of an attorney and second, I am not afraid of attorneys."

A Typical Work Week

A typical work week for him includes a goal of at least 40 hours of mediation time, more if warranted, teaching and/or participating in continuing education training programs, phone calls, attending hearings, writing, computer work inclusive of keeping accounts current, working on articles for publication, maintaining a presence on panels, and, of course, networking. He belongs to several associations throughout NJ, NY, and PA. He states, "I love what I do now. It's the best stuff in the world!"

Advice to Others

His advice for becoming a mediator? "Don't quit your other job. I made that mistake. If I had to do it again, I would not have quit my job right away. Start by doing the things you'll need to do to get started – use a year and a half to take classes, sit on panels, get Rule 1:40 training, go to general meetings, and then prepare your resume." Good advice from a man who successfully went home again.

Contacting Pat

Pat Westerkamp can be reached at mediatorpat@verizon.net.

Editor's Note: Thanks to Andie for conducting this interview with Pat. NJAPM's talent pool is impressive, and we hope to spotlight other NJAPM members in future issues. If you would like to conduct an interview for this newsletter, please email ajessani@dwdmediation.org.

New Jersey Association of Professional Mediators

Mediation: The Right Way to Resolve Disputes

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For further information or to obtain forms, visit our website at www.njapm.org

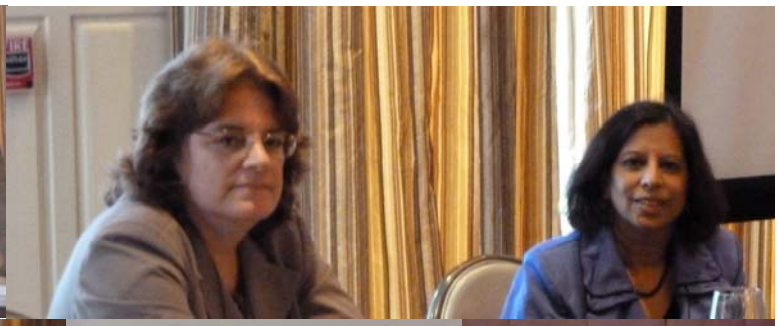
NJAPM PHOTOS

NJAPM 40-Hour Divorce Mediation Class, Picture Taken on Day 5, April 10, 2011, Crowne Plaza Hotel—Monroe Township

NJAPM General Meeting, Does it Take A Village to Get Divorced? April 13, 2011, New Jersey Law Center, New Brunswick

NJAPM PHOTOS

NJAPM Labor Mediation Interest Group, April 13, 2011, New Jersey Law Center, New Brunswick



NJAPM Annual Divorce Mediation Seminar, May 21, 2011, The Imperia, Somerset

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

Rinder v. Bloir, App. Div.—The court rejects defendant's claims that the trial court erred in finding that there had been a prima facie showing of changed circumstances warranting modification of alimony and child support. Where one child had been emancipated and the provision in the parties' PSA provided that the youngest child's entry into high school could be considered a change in circumstances there was no need to conduct a plenary hearing because there were no disputed facts. The matter was remanded for consideration of whether the loan to officer made to him should have been included as potential cash flow for purposes of the Child Support Guidelines. May 2, 2011; Not approved for publication.

Perlstein v. Perlstein, App. Div.—Plaintiff appeals from the denial of her motion to vacate the financial portions of the parties' amended judgment of divorce which incorporated their property settlement agreement, alleging that defendant had misled her and had hidden relevant information. The panel affirms, finding no basis by which the judge could have vacated the financial terms of the JOD or allowed a plenary hearing where the record clearly shows that plaintiff, her attorney and her accountants knew of the allegedly withheld information and there are no disputes of material facts. April 26, 2011; Not approved for publication.

Jannarone v. Jannarone, App. Div.—A couple whose divorce also meant the end of their real estate business must return to court for an examination of how swings in the housing market caused fluctuations in their individual incomes, an appeals court says. One of the issues on remand is whether a limited-duration alimony obligation may be reinstated for the remaining unpaid term if the parties' economic circumstances change. Jane and William Jannarone operated Pearce Jannarone Real Estate until just before their 2004 divorce. Their settlement called for William Jannarone to pay $300 per week in alimony for five years. A judge terminated the alimony in 2006, citing significant growth in Jane Jannarone'a business. But last year, Jane Jannarone moved to reinstate, claiming the real estate downturn had caused her income to plummet. Reversing a trial judge who denied the motion, the Appellate Division said a plenary hearing is required. April 25, 2011; Not approved for publication.

Van Brunt v. Van Brunt, Ch. Div., Family Pt.— An order requiring proof of college attendance, credits and grades as a condition for child support and college contribution does not violate the student's rights to privacy under FERPA. Both the student and the custodial parent have an obligation to produce such proof. Decided December 3, 2010; Approved for publication April 15, 2011.

Donaldson v. Donaldson, App. Div.—Defendant appeals from part of an amended dual judgment of divorce that awarded plaintiff one-half of the value of four parcels of real property. Defendant contends the matter should be remanded to determine equitable distribution without including the three properties defendant purchased in his name alone, prior to the parties' marriage. The trial court found that the parties engaged in a marital-type relationship after the birth of their first child and that all four properties were eligible for distribution. In addition, the court expressly considered and applied the statutory factors enumerated in N.J.S.A. 2A:34-23.1 before deciding that the total value of the properties should be equally shared by the parties. The appellate panel concludes there is sufficient credible evidence to support the trial court's findings and the matter was correctly decided. April 5, 2011; Not approved for publication.

Cantelme v. Archetti, App. Div.—The denial of defendant's motion for a downward modification of his alimony and child support obligations is reversed and the matter is remanded since defendant established a prima facie showing of changed circumstances sufficient to warrant an order directing the exchange of discovery and, if necessary, further proceedings. Defendant's income had substantially decreased as he had been unemployed for nearly one year at the time he filed his motion, plaintiff's income had doubled since the parties' PSA, and the judge failed to make findings as to why she rejected defendant's explanation of the efforts he had made to secure employment. April 1, 2011; Not approved for publication.

Carl Cangelosi, JD, APM is NJAPM president. He practices divorce and civil mediation in Princeton and Plainsboro, and also serves as NJAPM's director of divorce mediation training.

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

Greetings from the NJAPM membership committee. NJAPM has over 400 members, 95 of whom are APMs, or Accredited Professional Mediators. Our organization continues to grow and has many exciting events upcoming in the new NJAPM year, including the monthly general meetings, the always cordial and friendly county peer group meetings held around the state, as well as the NJAPM Annual Conference to be held on November 19, 2011. Like many related professions, our mediation practices can be helped substantially by networking and expanding our lists of contacts. These meetings are the places to do exactly that. See the website for the schedules of the general meetings and the coordinators of the peer group meetings.

Annual Dues

We will soon start the annual membership renewal process for the upcoming fiscal year starting October 1, 2011. Dues must be paid by the end of September. The process is fast and relatively painless and you will receive a notice about doing it online soon.

New Member Orientation

Are you a new Member? Please take a few minutes to 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/content/new-member-orientation-presentation

NJAPM Membership Committee

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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Congratulations!

Congratulations are in order for one of our (former) APM's, Jeffrey Light, who was recently appointed to the bench as a Judge, Superior Court, Family Division, in Atlantic County. Congratulations Jeffrey and best wishes from all of us at NJAPM!

New NJAPM Members

Here is a list of the new members who have joined since the last newsletter and through mid-June 2011. Welcome new members!

Jodi Argentino
Enrique Biasotti
Stephanie Bush-Baskette
Brian Caesar
Allison Cardinal
Brian Cige
Jeannette Collings
Kimberly Corbett
Richard Dalessandro
Jessica Devivo
Andie Donohue
Michele Douglas-Smith
Megan Duffy
Edward Dunne
Mindey Elgart
Marc Feldman
Todd Finchler
R. Fenimore Fisher
Judith Fullmer
Debra Geller
Hollis Greenspan
Gladys Marie Harris
Renee Henderson
Jane Herchenroder
Jerry Jaquinto
Samuel Kamanu
Teresa Keeler
John Kerns
Marie Kraus
Anna Lazar
Danielle Lazzaro
Scott Levine
Paul Lubetkin
Rosemarie Moeller
Jessica Napoleon
Rhonda Panken
Debra Seitz
Elena Serra
J. Bryan Smith
Donald Steig
Anthony Sytko
Glenn Trimboli
Catherine Verna
Adrina Walker
Pegeen Williams
Will Winston
Steven Zorowitz

Anna M. Delio, Esq., APM works as a foreclosure mediator for the Office of Dispute Settlement. She also is on the New Jersey court's roster as a civil mediator, is an Instructor for NJAPM's mediation apprenticeship training program. She serves as the vice president of NJAPM. In addition, Ms. Delio has law practice, and mediates civil and family/divorce disputes in her Kenilworth, NJ office.

Committee Chairpersons

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