



# Mediation News

Volume 10, Issue 1  
Spring 2006

NJ Association of  
Professional Mediators  
203 Towne Center Drive  
Hillsborough, NJ 08844

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## Upcoming Events:

- ◆ **NJAPM General Meeting: March 22, 7-9 PM, New Jersey Law Center, New Brunswick**
- ◆ **NJAPM New Member Orientation March 22, 5:30-6:30 PM, New Jersey Law Center**
- ◆ **40-Hr Basic Divorce Mediation Training Class: April 2, 9, 26, 29 & 30. Ramada Hotel, East Windsor (Exit 8, NJ Turnpike)**
- ◆ **18-Hr Civil Mediation Training Class: May 3, 10, & 17, DoubleTree Hotel, Somerset**
- ◆ **Annual/Advanced Civil Seminar: May 13, 2006, Ramada Hotel, East Windsor (see Page 4)**
- ◆ **NJAPM General Meeting: May 17, 7-9 PM, New Jersey Law Center, New Brunswick**

## President's Message

**N**JAPM continues to grow as an Association and to broaden its influence in the state. When I joined NJAPM in mid-1997, we had around 100 members; we are now about 325 strong – indicating a 15% annual growth. This growth is also indicative of the growing acceptance of mediation in New Jersey. I want to thank you for your support of the organization. Through your membership and involvement in NJAPM, you are the most essential part of our success.

In this message, I want to introduce you to our board, committee and peer group chairs, summarize our major accomplishments from the prior year, outline our plans for the coming year, and discuss some challenges. Before I get into the details, let me congratulate our immediate past President, Gale Wachs for really moving the organization forward during her two years as president of NJAPM, and also thank Bob Friedman, our outgoing Treasurer, for his eight years of service to the board.

### NJAPM Board of Directors

As I look at our board today, I am proud to say that we have one of the strongest boards of any association I have known. Our board members are actively involved in the association, attend board meetings, serve on committees, and are responsible for developing and implementing our

annual plan. Responsibilities for board members are as follows:

- ◆ The President serves as head of the organization and the board of directors, and speaks for the organization.
- ◆ Immediate Past-President, Gale S. Wachs, serves on the board to ensure a smooth transition in leadership, and to provide guidance to the President.

**When I joined NJAPM in mid-1997, we had around 100 members; we are now about 325 strong – indicating a 15% annual growth.**

- ◆ President-Elect, Anthony Limitone, provides assistance to the President in addition to providing leadership to various NJAPM committees. Tony also heads are civil mediation training initiative.

- ◆ Vice-President, Bill Donahue, provides leadership to various NJAPM committees. Bill heads our peer mediation and our peace building coalition.
- ◆ Secretary, Carl Cangelosi, is responsible for minutes at our board and executive board meetings. Carl also heads are family and divorce mediation training initiative, manages our general meetings, and is our webmaster.
- ◆ Treasurer, Armand Bucci, is responsible for overseeing our finances. Armand has also been busy working with our marketing

(Continued on page 3)



**Mediation News**  
A publication of the  
New Jersey  
Association of  
Professional Mediators

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Robert A. Karlin, PhD., APM  
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Michael J. Wolf, JD, APM  
(2005-2008)

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203 Towne Centre Drive  
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800-981-4800 or  
908-359-1184

**WebSite:** www.NJAPM.org

## Election of NJAPM Officers

**N**JAPM is now accepting nominations for 2006-2007. In accordance with the bylaws, candidates may be nominated by a petition signed by 12 or more members in good standing of the Association. A copy of NJAPM's by-laws is available for reference on the NJAPM website at [www.NJAPM.org](http://www.NJAPM.org).

The qualifications for officers and directors are as follows:

- ◆ A candidate for President-elect shall be a member-in-good-standing and shall have served on the Board for a minimum of two years at the time of nomination.
- ◆ A candidate for Vice-President shall be a member-in-good-standing and shall have served on the Board for a minimum of one year at

the time of nomination.

- ◆ Candidates for all other Board positions shall be members-in-good-standing at the time of nomination and have been members of the Association for a minimum of twelve calendar months at the time of nomination.

Suggested criteria for nomination are:

- Accredited member-in-good-standing.
- Commitment to attend Board and General meetings.
- Stature and respect in vocation or as a volunteer.

Please contact:  
Nominating Committee  
Chair, Gale Wachs at  
908-256-6505 or email  
[MediatorNJ@aol.com](mailto:MediatorNJ@aol.com).



# President's Message (Continued)

(Continued from page 1)

- committee to evaluate various affinity programs.
- ◆ Director Ed Bergman chairs our judiciary relations committee.
  - ◆ Director Ben Feigenbaum is chair of our marketing committee, and is assisted by Jilsarah Moskowitz
  - ◆ Director Tom Hanrahan is chair of our accreditation committee, and is assisted by fifteen accredited members who help review accreditation applications.
  - ◆ Director Bob Karlin is chair of the newsletter committee, and is assisted by Judy Shemming.
  - ◆ Director Bob McDonnell is co-chair of the membership committee with Claudia Cohen, and is assisted by Pat Westerkamp.
  - ◆ Director Michael Wolf is our liaison to the Dispute Resolution Section of the Bar and the Inn of Courts.

## Other Committee Chairs

We also have three committees who, by design, are not headed by board members:

- ◆ Legislative Relations, chaired by Ed Peloquin.
- ◆ Mediator Ethics Review Board, chaired by Gene Rosner with guidance from Greg Cannarozzi, and assisted by three other members who review inquiries.
- ◆ Speakers' Bureau, chaired by Jon Linden.

## Chairs of Peer Mediation Groups

Peer consultation meetings provide a great way to get to know colleagues, to network and to discuss difficult cases with a group of peers. The following NJAPM members chair or co-chair these county groups:

- ◆ Atlantic County, Jeff Light
- ◆ Bergen, Bob Lenrow
- ◆ Camden/Burlington/Gloucester
- ◆ Bill Donahue
- ◆ Cumberland/Salem Counties,

Noranne Stradley

- ◆ Essex/Union, Geoff Weinman and Lori Goldstein
- ◆ Hunterdon/Somerset, Katherine Newcomer and Roz Metzger

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- ◆ Middlesex, Art Lieberman
- ◆ Mercer, Gabrielle Strich

## 2005 Accomplishments

Coming on the heels of the passage of the Uniform Mediation Act (UMA) in November of 2004, 2005, was a tremendous year for NJAPM. It was much more than "business as usual." In an informal poll of our board, our top ten accomplishments for NJAPM for the year included:

1. The launch of both a 40-hour divorce training class and an 18-hour civil training class, which we now offer two times a year. Carl Cangelosi and Anthony Limitone have done a tremendous job delivering these programs, in addition to also delivering annual divorce and civil training seminars annually.
2. An annual conference that exceeded expectations, featuring Colin Rule, eBay's first Director of Online Dispute Resolution, Jim McGuire on social psychology, and Ken Neumann, our 2005 NJAPM Pioneer in Mediation Award winner, as well as diverse workshops ranging from "Civil Litigation 101" to "How to Market your Mediation Practice."
3. In recognition of our common interests, NJAPM, led by Michael

Wolf, worked with the Dispute Resolution Section of the Bar Association and the Justice Marie L. Garibaldi Inn of Courts to deliver an annual joint session on mediation techniques.

4. The co-sponsorship of training on the UMA, where NJAPM also initiated audio recording. Thanks to Hanan Isaacs and Bob Margulies for their coordination of this program.

5. NJAPM Booths at ADR day, the New Jersey Psychological Association Conference and the NJ Educational Association conference; members should be aware that this booth is available for usage at other conferences.

6. Provided feedback to the AOC on the family economic pilot program and the need to eliminate the free three-hours that mediators currently provide.

7. Developed an NJAPM Policies and Procedures Manual for the organization

8. Expanding our county peer group monthly meetings, with thanks to Bill Donahue for this leadership of this initiative.

9. Accredited the following practitioners in Family/Divorce: Anna Maria Pitella; and the following in Business/Civil: Ed Bergman, May-Britt Kollenhoff-Bruning, Bob McDonnell, Jenny Puchta, John Sands, and Risa Wasserman.

10. And finally, we managed the day-to-day operations of NJAPM, which includes bimonthly general, board and executive board meetings, maintenance of our website, listserves and Mediator Ethics Review Board, and publication of our newsletter.

## 2006 Initiatives

You may be saying that is all very nice, but what will you be doing this year. In brief, my answer is more of the same plus the following five initiatives:

1. Assist members in their marketing efforts with customizable materials.

*Continued on Page 4*

## President's Message (Continued)

(Continued from page 3)

Members need to do their own marketing, but NJAPM can make it easier

2. Revise NJAPM's Code of Ethics in light of the Uniform Mediation Act and the recently enacted ACR/ABA/AAA Model Standards for Mediators.
3. Push to resolve the three-free hour controversy regarding court referred mediation.
4. Develop more marketing opportunities for members, especially in the civil/business mediation area.
5. Recruit and involve more new members to ensure for a future generation of NJAPM leadership.

### The Challenge

Many new mediators join NJAPM primarily for lead generation (I did!). And, some leads are generated from listings on our website and client requests to our administrative office. But, members who

get more involved, come to find that the real benefits of NJAPM go far beyond leads. These benefits include

- ◆ Networking with peers to learn the ins and outs of the various mediation programs (mediators are surprisingly generous in sharing information).
- ◆ Developing a referral network of experts that enhances your credibility as a service provider.
- ◆ Taking advantage of NJAPM education programs and meetings that provide important information about developments in your field of expertise.
- ◆ Identifying co-mediation opportunities.
- ◆ Earning the "Accredited Professional Mediator" designation, that signifies both training and experience in the field.

I challenge members to take advan-

tage of all that NJAPM has to offer. Get your moneys worth from your membership. You will see that the more you get involved with NJAPM, the more payback you will get for your practice.

The highest turnover in membership is among our new members. If you are starting out, I speak from personal experience when I say that the first two years in practice are very rough; but, if you stay in the game and become actively involved, you will see a return on your investment.

If you have an interest in any of the initiatives or committees discussed in this message, all the contact information is on the NJAPM website at [www.njapm.org](http://www.njapm.org), along with our calendar for the year.

Please contact me with your questions or suggestions regarding NJAPM at [ajessani@dwdmediation.org](mailto:ajessani@dwdmediation.org) or (908) 303-0396. Thank you again for your support of NJAPM.

### **SAVE THE DATE**

**Saturday, May 13, 2006, 8:30 AM—4 PM**

**Ramada Inn, East Windsor**

**NJAPM Annual/Advanced Civil Mediation Seminar**

### **Featuring**

**Dan Shapiro, Co-Author of the bestseller  
"Beyond Reason - Using Emotions as You Negotiate"  
(with Roger Fisher of "Getting to Yes")**

### **Also Presenting**

**Michelle Fox, Esq., - Employment Mediation  
Peter A. Scarpato, Esq., - Insurance Mediation  
John A. Sands, JD, APM - Labor and Civil Mediation**

Contact Anthony Limitone for more information at [anthonylimitone@verizon.net](mailto:anthonylimitone@verizon.net) or (973) 539-6122  
(Please visit Page 7 of this newsletter for a review of "Beyond Reason—Using Emotions As You Negotiate")

# The Mediator's Toolbox

Book Review by Jon Linden, MBA, APM

## **"Beyond Neutrality"** by Bernie Mayer

In Bernie Mayer's new book, *Beyond Neutrality*, the author suggests expanded roles for alternative dispute resolution professionals in general and for mediators in particular. These roles involve our getting more deeply involved in what is needed to settle disputes. Mayer suggests that it may be necessary to help gather information as a neutral or prepare a party for a negotiation, rather than simply presenting ourselves as neutral facilitators.

The book proposes that we are all conflict specialists, those of us who are professional Mediators, Arbitrators, Facilitators, Coaches and other associated and those in affiliated ADR and conflict specialties. But to get "beyond neutrality", one must consider other roles. Our potential client base needs more than just a structured mediation system to help with problem resolution. For example, they also need help when they must engage in conflict.

Additionally, Mayer challenges the competency and the quality of the Mediator Base. How much training have they had when they start mediating? Those of us who train and coach new mediators know that they start with far too little knowledge, technique and skills, and that many a mediation goes by the wayside, because the Mediator was not well trained and did not know how to

move the process along.

In developing his questions and observations, Mayer looks at why people resist going into mediation, and what would help them toward a process that is productive. He shows how Mediation is sometimes "Misused." He points out values and beliefs that are obstacles to our expanded roles. He analyzes the past role of Conflict Resolution in Society, which has a very ancient history.

Of all the ways in which to broaden our practice Mayer focuses particularly on this concept of "Conflict Engagement." Why is this an important concept? Because many parties either are not ready to start to resolve, or they anticipate a conflict and therefore need something other than a third party neutral. Instead, Mayer suggests that they need an advocate and/or a coach to help them properly prepare for an impending conflict (Contract Negotiations for example.). The ADR Specialist has all the tools necessary to advocate for a client. In addition, the ADR Specialist can play multiple roles, as long as the roles are not at cross purposes.

As briefly noted above, a mediator can go beyond neutrality by volunteering to procure this information as a neutral, if the parties will allow the neutral to act as their surrogate in collecting this needed information. This practice relieves a considerable monetary and time related expense for all the parties, as if the neutral finds out the information, then the work need only be done once, and the bill split between all the parties. If it is done by one advocate or the other, they both have to do it, and they both have to charge. And there is no fee splitting.

More than the specifics that Mr. Mayer mentions in his book, is the very concept of being non-neutral, breaking through long held beliefs, and provocatively challenging ADR/Mediators to reexamine what they are doing, what they're potential customer base needs, and how to combine those concepts in a

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single definition. If nothing else, the book truly calls into question some of the basic tenets we believe about mediation and third party neutral status. In Mayer's view, ADR practitioners must face up to the needs of the market place. In order for them to do so, they need to recognize the deficiencies that exist and work to correct them or alter the perceptions that keep people resistant to mediation. If we examine these beliefs and potential solutions, we find that there is a lot more that we can potentially do for a client than just mediate disputes. In my view, the book is an important one and its challenging ideas should be read and considered seriously by all ADR practitioners, particularly mediators.

***Our potential client base  
needs more  
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problem resolution.***

*Jon Linden is an accredited business/commercial mediator and a frequent contributor to Mediation News. He can be reached at Proactive Intervention, L.L.C., in Warren, NJ, 908-580-0744 or by email: jilisman@aol.com.*

# Mediate That...

Carl Cangelosi, JD, APM, Moderator

In each newsletter we will take an interesting and/or controversial topic and have the pros and cons argued by two members. If you have an interesting issue that would be appropriate for this column, please e-mail me at [ccangelosi@njmediation.org](mailto:ccangelosi@njmediation.org).

This issue's topic is:

## **Can every divorce case be mediated?**

Bill Donahue, Esq., APM will present the position that not all cases can be mediated, and I'll take the opposing position.

**Bill—**

Theoretically, every dispute can be mediated; practically, many cannot. I'll focus on two factors that make an agreement unlikely.

### 1. *Bad Faith*

Not everyone wants the mediation to work. Some use mediation to stall, hoping to prevent a divorce, or coerce a spouse into outrageous agreements. Some are so consumed with a need to punish that no settlement will have enough punitive effects.

There are red flags that suggest someone is mediating in bad faith. A party:

- i. gets what was asked for, and then party 2 ups the ante;
- ii. will not state a bottom line even after extended negotiation;
- iii. holds to unreasonable demands;
- iv. agrees to certain terms and then withdraws the agreement.

### 2. *Inability to Engage*

I do not diagnose psychological problems. But I watch carefully for signs that

someone is not able to engage in the process. Some red flags are that a client:

- i. will not make eye contact;
- ii. speaks only when asked a direct question, and will not elaborate;
- iii. appears to be afraid to assert a position;
- iv. gives in to every demand.

Some clients say things like, "Whatever he wants, it doesn't matter." I suggest that these clients meet with a therapist. If a client is not engaged in the process, probably he or she will stop coming to mediation. Even if the client continues, you may want to terminate the mediation.

Direct and frank discussion may be effective, but in some cases, nothing I, the parties' lawyers, therapists, accountants or other experts can overcome the problem.

**Carl—**

Well, maybe not every last case can be mediated. But you can dramatically increase the percentages if you change your mediating style in specific situations.

Early on, I did special civil mediation. I was very directive and found that most cases would settle. After taking divorce mediation training, my approach changed and I became exclusively facilitative. My civil settlement rate declined dramatically.

I believe the same is true for divorce mediation. The more directive you are, the more cases will settle. Take a client who is not engaged in the process. You

could insist that an advocate be in the mediation to assist the party who will not engage. Or one could have an agreement with the other party that you will actively help the non-engaged party negotiate the agreement.

The number of bad faith cases is very, very small. The more likely situation is the person who doesn't get the reality of his/her situation. If the mediator is willing to forcefully convey reality (in caucus), parties are more likely to settle. Since most people will not do unrealistic things, frank discussions often get them thinking "right".

Many will say that the mediator should be only facilitative and never directive. But facilitative mediation is only one style. There is nothing inherently wrong with being directive. My style is still only facilitative but sometimes I wonder whether my clients would be better served by a directive mediation that reached an MOU than when the mediation ends before the MOU, and they start litigating.

*Carl Cangelosi is an accredited civil and divorce mediator with offices in Princeton and Plainsboro. He can be reached at the New Jersey Mediation Group, 609-275-1352 or by email at [ccangelosi@njmediation.org](mailto:ccangelosi@njmediation.org).*

*Bill Donahue is an accredited divorce mediator with offices in Westmont, NJ and Philadelphia, PA. He can be reached at Transitions Mediation Center, 856-854-0303 or by email at [onedonahue@aol.com](mailto:onedonahue@aol.com).*

**As a service to our members, NJAPM now offers Professional Liability Insurance.**

**Policies are available to all general and accredited members of NJAPM.**

**NJAPM has been able to negotiate favorable group rates for Arbitrators and Mediators**

**Liability Insurance for members who are not otherwise covered.**

**For further information or to obtain forms, please visit our website at [www.njapm.org](http://www.njapm.org), or contact NJAPM Treasurer, Armand Bucci, at [armandbucci@alum.drexel.edu](mailto:armandbucci@alum.drexel.edu) or 856-663-2237.**

# The Mediator's Toolbox II

## Book Review by Anthony P. Limitone, Jr., Esq., APM

### **"Beyond Reason: Using Emotions As You Negotiate"** By Roger Fisher and Daniel Shapiro

All mediators know the importance of emotions during mediation. They also recognize that dealing effectively with emotions will increase the likelihood of a satisfactory resolution to the dispute. Many mediators, however, have neither the training nor the skills necessary for counteracting strong negative emotions. *Beyond Reason: Using Emotions as You Negotiate* by Roger Fisher and Daniel Shapiro will help mediators overcome this gap in their training. This new book, from the Harvard Negotiation Project, identifies the sources of the strong emotions that can interfere with effective negotiations, and provides practical strategies and tactics for defusing those emotions.

The authors are well qualified for this task. Roger Fisher is, of course, the co-author of *Getting To Yes*, one of the basic texts for mediators and negotiators. He is also Director of the Harvard Negotiation Project and the Samuel Williston Professor Emeritus at Harvard Law School. He brings to the book his extensive experience as a lawyer, consultant and negotiator of a wide range of disputes. Daniel Shapiro has a Ph.D. in psychology and is Associate Director of the Harvard Negotiation Project. He teaches negotiation at Harvard Law School, and is in the psychiatry department at Harvard Medical School/McLean Hospital.

One of the book's key insights is that five "core concerns" give rise to most, if not all, emotions that negotiators encounter during a negotiation. Those core concerns are appreciation, affiliation, autonomy, status and role. The book teaches that negotiators will be able to handle the emotions that arise during the negotiation



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if they focus on the "core concern" generating the emotion rather than the emotion itself. This approach is analogous to the advice in *Getting to Yes* that negotiators should concentrate on interests rather than positions.

Fisher and Shapiro wrote the book for negotiators and not mediators. Therefore, mediators will have to spend some time and thought before they can incorporate all of the book's insights into their practice. Nevertheless, the results will be worth the effort. By mastering the book, mediators should be able to neutralize the negative emotions that frequently derail a mediation.

Despite its intended audience of negotiators, much of the information in this volume will be immediately useful



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for mediators. For example, Fisher and Shapiro note that the "core concerns" can create positive as well as negative emotions. They emphasize the importance of these positive emotions in helping the negotiators overcome some of the substantive obstacles that may arise during a negotiation. The authors also provide specific techniques negotiators can use to engender positive emotions on the other side of the bargaining table. Mediators can use the same techniques to build trust between themselves and the parties in the mediation.

Mediators will also find Chapters 8 and 9 immediately useful. In these chapters Fisher and Shapiro provide many useful tips about preparing for mediation. In Chapter 8, On Strong Negative Emotions, the authors focus on how to anticipate negative emotions, and prepare to neutralize them. In Chapter 9, On Being Prepared, they offer advice on how negotiators (and mediators) should structure their preparation for the negotiation/mediation. Their tips cover not only the emotional aspects of the negotiation, but the procedural and substantive aspects as well. Even experienced mediators may well benefit from these tips.

Beyond Reason is an important book. Little has been written in the past about emotions and negotiation; this book fills that gap in the literature. It is also a useful book. Mediators who master the content of this short volume may greatly enhance their ability to help their clients resolve disputes.

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*Anthony Limitone is an accredited civil mediator specializing in employment with law. He can be reached at the offices of Limitone & Hillenbrand, Morristown, NJ, 973-529-6122, or by email at anthonylimitone@verizon.net*

## **Editor's Column**

### **Robert Karlin, PhD, APM**

**T**here are two things I'd like to discuss in this newsletter. The first is a simple: "Hello, this is Bob Karlin. I'm now the Newsletter editor." Gale Wachs, after leaving me a wonderful example to follow, is continuing to be the person who does the composition/computer format part of the job. She will determine how the newsletter looks by working with the (relatively user unfriendly) software that I am scared to touch. Judy Shemming, our assistant editor and I will try to make things read well and to solicit interesting material. Several people will

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continue to do features. For example, our President, Anju Jessani, will keep us informed of the current state of organizational matters, Carl Cangelosi's "Mediate That" column, and his synopsis of recent cases will continue. We will go on depending on people like Jon Linden and Tony Limitone to keep us up-to-date on new books on mediation. And we will try to publish (electronically) three times/year rather than twice.

**But we also need input from you.** Tell us what you are doing. If you just got honored as PTA mom or dad of the year, let us know. If your eldest child just graduated from 8<sup>th</sup> grade or Harvard Law School, tell us about it and tell us something about the kid. If you went to a good conference, describe it and when and where we could attend the next such meeting. If you read a good book on mediation or a mediation related topic, write a brief review. If you give a talk or read a

paper at a local or national gathering, let us know what you said. Lastly, if you have an opinion about something, write and let us in on it.

Whatever you do, don't worry about being verbose. Judy and I are good at cutting, if we need to. As often as cutting, we may ask you to expand on something, if you can. We want the newsletter to keep us all in touch. So, tell us what is going on with you and yours and help make mediation and mediators even more of a community than we already are.

Second, I want to talk about publicity for mediation. Many of us have tried and are trying to let the public know about mediation. However, we have a very long way to go. I think this problem pervades all areas of mediation, but I will talk about it in terms of divorce mediation (because that is all I know). The odds are still high that when two people decide to get divorced, neither has heard of divorce mediation as a way of going through the process. It is not that they don't know that mediation is a better way to get divorced. It is that they never heard of obtaining a divorce with the help of a mediator; they don't know the service exists.

So, they go directly to a divorce attorney. Or they obtain a referral to a divorce attorney, because the well-intentioned referral source has, at best, barely heard of divorce mediation. When they get to the divorce attorney, the new court rules seem to require that attorney to tell the client about mediation. In fact, that still doesn't happen much of the time. If it does happen, the discussion almost certainly resembles the way I tell people about the availability of a pro se divorce kit at Barnes and Nobles. The kit is something I've heard of, but using it comprises hidden pitfalls that no sane adult would risk.

So, it is up to us to let people know. How? There are probably lots of little things we can do as individuals to "talk up" mediation. One interesting ap-

proach has recently been started in Maryland, where MACRO, the Maryland Alternative Conflict Resolution Organization, recently began circulating a series of humorous posters emphasizing the utility of mediation in various circumstances. See page 9 for an example. (The posters will soon be available in a variety of sizes, including handout size.). For example, one poster shows a happily smiling couple. It also shows their thoughts. He is thinking, "My mom is moving in." She is thinking, "No, she's not." Underneath one finds the legend,

---

**The odds are still high that  
when two people decide to  
get divorced, neither has  
heard of divorce  
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going through the  
process.**

---

"Mediation: It's your solution." That legend appears at the bottom of each of the 20 posters. Each is humorous, but makes the point."

Mediation needs publicity. If you have any creative ideas, send them to us. While I don't envision any of us quieting participants on Jerry Springer, perhaps we should be talking on Oprah.

**Robert Karlin, PhD, APM is an Associate Professor of Psychology at Rutgers University, and an NJAPM accredited family/divorce mediator. He can be reached at 609-924-7019 or by email at [bkrln@aol.com](mailto:bkrln@aol.com).**

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# Divorce Case Update

prepared by Carl Cangelosi, JD, APM

**Hildebrandt v. Hardy, App. Div.**—Because of defendant's recalcitrant and impracticable behavior, advancement of unreasonable settlement positions and refusal to accept the opinions of both experts involved in the case, plaintiff incurred substantial additional and unnecessary counsel fees, at least 25% of which were directly attributable to defendant's conduct. Court awarded plaintiff 25% of the \$95,000 in attorney's fees she sought for litigation of the custody and visitation issues in this case and denied defendant's application for counsel fees in its entirety. September 7, 2005

**DelPizzo v. Costanzo, App. Div.**—In this case arising out of a visitation dispute between the plaintiffs-paternal grandparents, and defendant, the mother of their deceased son's two children, the appellate panel affirms the Family Part order directing that the parties engage in counseling to facilitate future unsupervised grandparental visitation. October 25, 2005

**Sobe v. Sobe, App. Div.**—Post-divorce-judgment order that denied the plaintiff ex-husband's motion for a reduction of his alimony obligation based on changed circumstances reversed and remanded. The parties had negotiated alimony payments of \$600 per week in 2001, and the ex-husband sought a reduction after his employment was terminated. The trial court found that the ex-husband's income from employment had decreased from \$87,000 to \$51,500 since alimony was negotiated, but it denied his motion because his annual combined income from employment and from his pension was about 95 percent of the amount on which the alimony award had been based. The trial court erred as a matter of law because the pension had been equitably distributed and because income from the pension therefore could not be considered under N.J.S.A. 2A:34-23(b)(13) to determine alimony. October 31, 2005

**Jennings v. Reed, App. Div.**—On an application to enforce a settlement where the opposition is founded on claims of duress and lack of mental capacity to contract, a party's emotional distress and apprehension over counsel's purported

withdrawal from representation is insufficient to vitiate the agreement. Nor does that party's absence when the settlement he executed is later placed on the record render the agreement any less binding, since there is no legal requirement that there even be court approval in such a case. Finally, the panel finds that both the attorney and the spouse of the party now opposing enforcement acted within the scope of their authority -- actual and apparent, respectively -- so that the agreement is enforceable against the absent wife. November 10, 2005

**L'Esperance, Jr. v. Devaney, App. Div.**—Summary judgment for the plaintiff condominium owner in a Law Division action to eject the defendant ex-girlfriend and denial of her request to transfer the matter to the Family Part, where her palimony action was pending, affirmed. The parties had a long-term romantic relationship. He was her boss and was married to someone else, but had "essentially supported" her since 1983 and had repeatedly promised her that he would get divorced, marry her, and father her child.

After she could not become pregnant, he told her to get another boyfriend, because he did not want to go through in vitro fertilization with her. Although she was in "tremendous shock," she "went looking for a new boyfriend right away," and met her current boyfriend on the internet about 4 months later. Although she remained friendly with plaintiff, she had no more sexual relations with him, thinking that, "If I'm not getting pregnant, I'm not having sex with him." Nevertheless, she expected him to allow her to keep the condominium, saying, "after nineteen years of promises and after pulling that nonsense...about the baby, yes, he owed me." He leased a condominium for her and gave her a check in 1999 to purchase it in his name at a public auction. They never lived together and he spent only a few nights at the condominium. On the "narrow question" presented, the Law Division correctly concluded that there was not "a scintilla of evi-

dence" that he promised her the condominium. In affirming, the Court discusses Kozlowski, Crowe and Roccamonte, disagreeing that there were sufficient promises to constitute an enforceable contract. The trial court correctly noted that these cases deal with cohabitation and promises of support, not promises of an interest in real estate. November 21, 2005

**Daniels v. Daniels, App. Div.**—Dismissal of the grandmother's complaint under the Grandparent Visitation Statute (GVS) [N.J.S.A. 9:2-7.1] is affirmed. The trial court is reversed, in its holding that the GVS could not constitutionally be applied to an "intact" family where the parents both opposed visitation. But to justify the potentially unconstitutional burden on parents posed by the process of discovery and trial, a complaint under the GVS must contain clear and specific allegations of concrete harm to the children if visitation is not permitted. In this case, dismissal was appropriate because the complaint did not allege harm to the children, and plaintiff's certification did not allege specific facts from which harm could be inferred. November 29, 2005

**Jorgensen v. Jergensen, App. Div.**—Mother was found in violation of litigant's rights for failure to comply with the court-appointed parenting coordinator's directive that she participate in family counseling with the children and for further failure to follow the parenting, visitation and custodial recommendations of that coordinator. She was ordered to use all available means to prevent erosion of the father's parenting time. The coordinator noted that the children needed to find their own voices in the neutral environment counseling could provide. November 18, 2005

**State v. Ruutikainen, App. Div.**—Court affirms father's conviction for interference with custody and contempt of court, based on the jury's finding that he took his son with the purpose of concealing him and depriving the mother of custody and, in so doing, knowingly disobeyed a pre-existing custody order. November 30, 2005

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### ***From Your Membership Committee Claudia Cohen, Bob McDonnell, Patrick Westerkamp***

**P**lan on coming to an upcoming NJAPM General Meeting? Or, heading out to one of the County Peer Group Meetings in your area? What better way to share the benefits of NJAPM than to invite someone to join you as a guest.

Sharing a meeting, or any one of a number of other events that are available for us in the mediation community, can be a wonderful opportunity for all of us to share the experiences of mediation with others in our professional and personal lives. These guests might be other mediators we know who may not be "joiners," or they could be other associates in our law firm who may be expanding their practice into mediation.

Potential invitees are also those therapy associates mediating divorces, or the

accountant down the hall in your building who expressed an interest in dispute resolution.

At an NJAPM meeting or a Peer Group meeting, a guest can be introduced to the benefits of joining NJAPM and becoming a part of the professional mediation community in New Jersey. The guest will find out how the Association promotes mediation and fosters excellence in the field. Further, the guest can find out about the accreditation process for mediators, both civil and family, and hear about the ongoing educational opportunities available within the Association.

Also, a guest at an NJAPM meeting will readily see that the Association provides all of us with a great mechanism for professional networking. As

we all know, NJAPM is a diverse assembly of professionals in the extremely dynamic field of dispute resolution. Having these professionals as resources for referrals, questions, or just for a plain old discussion of a concept or an issue often proves invaluable.

As a very active Association with over 325 members, NJAPM is always looking for new members who are willing to make the Association an even better place. That fellow mediator in your office or community who is not an NJAPM member will appreciate an invitation to hear about what NJAPM is, and how it can help his or her practice. Give them the opportunity to hear about how.

Next time you are heading out to an NJAPM get-together, take the time to share the opportunity with a guest.

## ***NJAPM Welcomes New Members*** ***( Joining 9/1/05—12/31/05)***

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