



Mediation News

Volume 20, Issue 2
Spring, 2016

New Jersey Association of
Professional Mediators

26 Park Street, Suite 2041
Montclair, NJ 07042

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Upcoming NJAPM Events

NJAPM GENERAL MEETINGS (6-8:30 PM)

New Jersey Law Center, New Brunswick
4/20, and 5/18

40-HR DIVORCE MEDIATION TRAINING

Forsgate County Club, Monroe Township
All Day, 4/2, 4/3, 4/16, 4/17 & 5/1

BASIC CIVIL MEDIATION TRAINING

Rutgers Labor Center, New Brunswick
All Day, 3/20, 3/21, 4/3, 4/4, & 4/10

FUNDAMENTALS OF MEDIATION

Forsgate Country Club, Monroe Township, 5/19

NJAPM ANNUAL DIVORCE & CIVIL SEMINAR

The Imperia, Somerset, Saturday 5/7

CIVIL CASE MANAGEMENT TRAINING

Rutgers Labor Center, New Brunswick
TBD, 12:30 PM — 5 PM

Please Visit Our Website For Updates
& 2015 -2016 Schedule

www.njapm.org
800-981-4800

Annual Divorce and Civil Seminar Keynote: Lela Love Honoring: Hon. Helen E. Hoens Saturday, May 7, 2016



Katherine Newcomer



Andrew Smith



Hon. Helen E. Hoens



Lela Love



Hanan Isaacs



Nicholas Stevens

NJAPM is pleased to present a combined morning divorce and civil mediation program and separate afternoon divorce and civil workshops on Saturday, May 7 from 8 AM to 4 PM at The Imperia in Somerset.

Katherine Newcomer, chair of the NJAPM Annual Divorce Seminar, and Nicholas Stevens, chair of the NJAPM Annual Civil Seminar will open the program. Then NJAPM president, Andrew Smith will update members on NJAPM's goals for the future.

Keynote speaker Lela Porter Love is a professor of law at Benjamin N. Cardozo School of Law where she leads the Kukin Program for Conflict Resolution. Dr. Love's presentation, which will involve audience participation, is entitled "Stories Mediators Tell and Critical Lessons the Stories Teach."

At noon, the organization will honor the Honorable Helen E. Hoens, former Justice of the New Jersey Supreme Court. Justice Hoens authored over 100 published New Jersey Supreme Court opinions

and was has been acknowledged as the Court's leading voice on ADR issues.

Following lunch, Hanan Isaacs will provide an ethics segment entitled "The Law and Hypotheticals."

The afternoon divorce workshops will include a family law update by Bruce Matez and "The Effect Non-verbal Communication has on the Mediation Process" by Gerald Scola.

The afternoon civil workshops will include a panel discussion of mediation "before and after Willingboro Mall" with Justice Hoens, Nicholas Stevens, and Laura Kaster, and case analysis with Nicholas Stevens and Patricia Bell.

The seminar qualifies for 6.5 CPE and MCLE credits, including 1.5 ethics credits. NJAPM APMs receive NJAPM CE hours. The conference also fulfills the AOC's 4.0 hour annual requirement for mediators.

The cost of the seminar is \$129 for members and \$139 for non-members, with an early registration discount, and includes breakfast and lunch. For more information or to register, visit www.njapm.org.



Mediation News

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Professional
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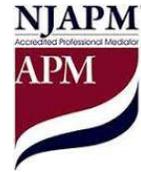
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Editor's Column

by Anju D. Jessani, MBA, APM



NJAPM presidents usually serve two, one-year terms. Andrew Smith ends his second term on September 30, 2016, with the end of our fiscal year. In his President's message, Andrew has summarized where the organization is as well as his vision for the future. As this is our last newsletter of his term, on behalf of the NJAPM membership, I thank him for his service.

This issue of the newsletter features the announcement of our Annual Divorce and Civil Mediation Seminars — that have been combined for the second year in a row. Seminar co-chairs, Katherine Newcomer for divorce mediation and Nick Stevens for civil mediation, have planned an exciting day with keynote Dr. Lela Love, honoring Justice Hoens, and featuring NJAPM members leading presentations and workshops.

In this newsletter, in addition to our regular columns from NJAPM committees, including membership and peer groups, and an update of New Jersey child support rules regarding emancipation, NJAPM members have submitted a range of relevant articles addressing how they assisted their clients navigate the emotional landscape of mediation. Note the new NJAPM APM logo next to the photos of accredited members.

- Jennifer Brandt relates her experience at the annual International Commercial Mediation Competition in Paris.

- N. Janine Dickey discusses three reasons why even the most skilled attorneys should consider mediation for most cases.

- Amy Wechsler describes how family and divorce mediators can

bring experts into the mediation process.

- Roz Metzger outlines how we can educate clients, attorneys, financial and mental health providers, and court staff to improve the Economic Mediation process.

- John Lane describes how the Transportation ADR Council ("TAC") of the Transportation Lawyers Association is developing a facility for the mediation of transportation-related legal disputes.

There are great photographs from last year's annual conference and our Fall 2015 40-hour divorce mediation training.

As I write this column, NJAPM's nominating committee is hard at work. They will publicize to the membership nominations no later than May 1. The committee has asked for parties interested in serving to step forward in multiple messages on our listserve. Even if you did not respond, its not too late. As indicated in the bylaws (see page 11), additional candidates may be selected by a petition signed by twelve or more members-in-good-standing of the Association, and delivered to the President and Nominating Committee Chair no later than June 1.

If you have an idea for an original article between 600 and 1200 words, please email me a one paragraph proposal. Please also email me photographs from NJAPM events.

My email address is ajessani@dwdmediation.org.

Anju D. Jessani, MBA, APM, 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.

Message from the President

by Andrew Smith, Esq., APM



NJAPM recognizes the 40th Anniversary of the Pound Conference where the concept of the multi-door court house was first suggested by Professor Frank E. A. Sander.¹ Today, the Pound Conference provides a global dialogue helping parties choose dispute resolution. The Pound Conference was the impetus of the court's mediation program and many mediation organizations, such as NJAPM.

I concur with the ABA referenced article that while mediation has made amazing progress, there is still a way to go, most notably on the demand side.²

NJAPM's five-fold mission includes "promoting mediation as the preferred method of dispute resolution."³ In conjunction with this core mission, the Board believed it was strategic and timely to assess the overall health of the organization, and therefore, with a number of committees, conducted a 360 degree view of the organization. Through a Strength – Weakness – Opportunity – Threat (SWOT) analysis, issues were revealed and categorized.

The SWOT analysis revealed that while we have many strong programs, it was important that measures be taken to strengthen other areas that would leverage greater opportunities for NJAPM and its members, including marketing, branding, website and credentialing.

Through dialogue with other organizations such as police, labor and education it became apparent that some were not aware of NJAPM. Further discussions revealed the value that NJAPM offers for both pre-litigation and post-litigation filings. Pre-litigation use of mediation allows parties to save even more

money, time and maintain existing and even enhance relationships.

NJAPM has engaged a company to assist with its marketing of divorce mediators. One item that market research reveals as important is placing ads using the internet to showcase the organization to hundreds of thousands.

On the civil mediation side, our market research indicates online mechanisms are not the optimum approach, rather face to face communication provides greater opportunities. Therefore, we are using business teams to engage various organizations, groups and individuals to inform them of NJAPM, its members and the value mediation provides.

We continue to work closely with the Court. We will develop a six hour supplement for both civil and family divorce mediation courses for applicants to the roster who have been trained in a 40-hour out-of-state mediation training or who took the 40-hour New Jersey mediation training more than five years prior to applying to the roster.

Our business development committee is broadening NJAPM's reach and promoting its brand and mediation

The organization is monitoring the effectiveness and results of all marketing programs used and also evaluating the potential for marketing divorce and civil mediation programs through print media.

Recently, the organization set up a program for members to submit peer-reviewed articles and white papers. These articles will highlight members' unique skills and provide the public with an appreciation of how mediation may be used in various areas, such as divorce, elder,

estate, construction, labor, employment, and technology. Subject matter experts have been designated. Members are invited to submit articles for consideration to Alan Erhlich at arehrlich@gmail.com.

To further enhance member experience and expand public awareness, NJAPM will soon upgrade its website. A vendor has been selected for this work and work will begin shortly.

NJAPM's Accredited Professional Mediator (APM) designation differentiates NJAPM in the marketplace. Credentialing has been an important topic at many Board meetings as this is a core mission of the organization. Mediator training and experience will continue to guide us on this. The organization recently designed a logo that APMs may use on letterheads, websites and related materials. Please see the logo next to my photo in the header section of this article as well as in all articles written by APMs in this newsletter.

The greatest measure of NJAPM success will be each member delivering quality service and volunteering to further the organization and themselves as a leaders in mediation. It has been said that the choices you make, make you. See the NJAPM committee list on page 12 of this newsletter and make a great choice!

1. www.americanbar.org/content/dam/aba/publishing/dispute_resolution_magazine/making_peace_and_making_money_authcheckdam.pdf
2. Id.
3. www.njapm.org/content/njapm-bylaws

Andrew Smith, MBA, MFin, Esq., APM is NJAPM President. He is an attorney, civil/commercial mediator, and business consultant. He can be reached at 908-246-9766 or als.smithlaw@gmail.com.

International Commercial Mediation Competition by Jennifer L. Brandt, JD, MA, APM



For the past eleven years, during the first week of February, nearly two-hundred professionals and students from around the world gather in Paris for the International Commercial Mediation Competition hosted by the International Chamber of Commerce (ICC). More than sixty schools and universities from more than forty countries compete, learn, bond, network and enjoy the beautiful city of Paris. For some, they have never left their home countries, never worn an overcoat, or seen such a large, cosmopolitan city. For others, this is where they live and study. Despite the numerous languages spoken, the competition is held in English, a challenge for many. I am always impressed at the amazing skill exhibited in conducting a mediation in a language that is not your native tongue. Many of us English speaking mediators would be daunted by such a prospect. Skillfully navigating mediation in your own language can be challenging enough.

During the course of the week, amidst the challenging preliminary mediation rounds, there are social events, cocktail parties, dinners and even a final dance party. The settings are spectacular; with events held in grand palaces, plush law firms, and even the "bateau mouche" - the sightseeing barge that cruises along the Seine. One year, the finalists were announced in the room where the Marshall Plan that followed World War II was signed.

Of course, there's the hard work, often rising early to arrive before 7:00 AM for the first morning rounds and sometimes working late, with the last sessions ending at 8:00 PM. We serve as judges or mediators, each with our own unique style. We fol-

low very specific criteria by which we judge or mediate. As mediators we are directed to be more than "the potted plants" but less directive or evaluative than some of us might be. The goal is to share our knowledge and experience with these young mediators, to critique and diplomatically point out their strengths, and give them insight into areas for improvement. It is a labor of love for which the students are always grateful.

Nearly two-hundred professionals and students gather in Paris.. During the course of the week, amidst the challenging preliminary rounds, there are social events, cocktail parties, dinners and even a final dance party.

The camaraderie amongst the students is matched only by the bonding that takes place between the professionals. Friendships and professional collaborations are forged amongst us and span the globe. It is hard to discern who enjoys this ICC Competition more; the students or the professionals. For all of us, it is one of the most professionally and personally rewarding experiences of our careers.

In thinking about what makes this event so special, notwithstanding the venue of Paris, is it the youth and enthusiasm of this next generation of mediators? Is it the inter-cultural learning we get from our colleagues and competitors? Is it the fact that we serve as teachers and mentors of these eager young students, imparting our knowledge and experience in mediation? Or is

it the fact that we are all mediators? Perhaps the answer is all of the above.

I have come to believe that mediators are special people. There is something about the process that attracts a certain type of person. Be they attorneys, architects, sociologists, economists, or businessmen and women, there is a commonality amongst us. We are peacemakers, problem solvers, and collaborators. We understand the value of settling disputes, the pitfalls and uncertainty of litigation, and the belief that it is better to settle your problems than to fight about them.

For many of us who don't have the opportunity to work with young people, we can share our experiences and help them become better mediators. In return we learn from their perspectives. While they are starting their careers with a mediation mindset, we have forged this path at many different stages of our careers. To see the next generation naturally embrace mediation as an important tool for dispute resolution bodes well for the future of the world.

Jennifer L. Brandt, JD, MA, APM is a solo practitioner specializing in mediation and alternate dispute resolution with a practice in Cranford. She has expertise in high conflict, intractable litigation. Her website is www.njmediators.org/jennifer-brandt.

Attorneys and Mediators: Negotiation Allies

by N. Janine Dickey, Esq., APM



Attorney advocates often pursue litigation over mediation. As an NJAPM Professional Accredited Mediator (APM) and a former litigation attorney, I believe that mediation is generally preferred. I concede that mediation may not be the top choice for all matters. For example, if a dispute turns on a novel issue of law or a disputed interpretation of a statute, the parties and their respective counsel may strategically choose to litigate.

As statistics show that 98% of cases in litigation settle prior to trial, this article discusses three reasons why even the most skilled attorneys should consider mediation for most cases. These include greater client satisfaction, the fact there is no or nominal “risk” in trying mediation, and that rather than being at odds, mediators and attorneys are often negotiation allies.

CLIENT SATISFACTION

Clients want their “Day in Court”, but ultimately will have greater satisfaction in – and respect for– negotiations in which they played a significant participatory role. Mediation offers both. The confidential caucus permits a party to present its case to a quasi-judicial neutral. The mediation process encourages self-determination so parties can meaningfully assist in fashioning and ultimately agreeing upon a resolution. Parties avoid the risk of an unpredictable jury, judge, or arbitrator and can avoid protracted court delays and repeated business interruption from an inflexible and unpredictable process.

NO RISK

Mediation caucuses are confidential, so there is no evidentiary risk. In other words, neither counsel nor the

party can compromise litigation strategy by confiding in the mediator. If the mediation does not fully resolve all issues, no litigation rights are waived.

ATTORNEY ADVOCATES AND MEDIATOR ARE NEGOTIATION ALLIES

Attorney advocates and mediators are natural allies in the settlement process. Consider the following:

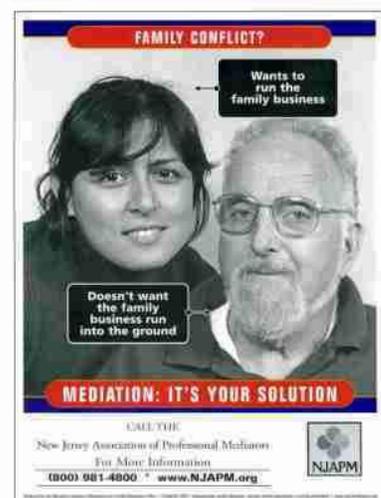
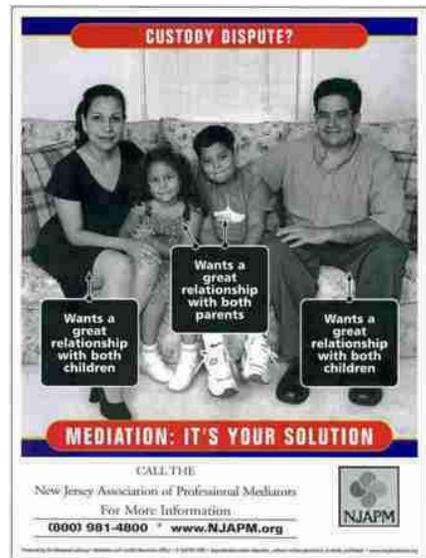
- Settlement discussions through a mediator do not have a stigma of “weakness”;
- The mediator can facilitate a focused discovery exchange—particularly valuable with an unreasonable adversary;
- The mediator is a particularly valuable ally if the party representative is emotional, unrealistic or otherwise “difficult”;
- The mediator can lend an objective perspective of legal merits and legal/financial risks;
- The mediator looks underneath the parties’ stated legal position in order to clarify underlying interests — a critical step to breaking conflict barriers;
- The mediator’s role can neutralizes power imbalances (party or counsel) which can thwart negotiations; and
- The mediation process encourages creative resolution terms not available at trial.

N. Janine Dickey, Esq. APM has mediated and arbitrated hundreds of matters throughout NJ, NY and PA. She serves corporations, small businesses, non-profits and individuals areas including commercial, business, property, insurance, employment and estate matters. She is located in Bridgewater. Her website is

www.accreditedmediation.com.

NJAPM Posters

Order from
www.njapm.org



IMPORTANT NOTICE

Passage of Termination of Child Support Law



NEW JERSEY DEPARTMENT
OF HUMAN SERVICES

The following is a verbatim transcription from New Jersey's child support website: www.njchildsupport.org.

Important Notice: Passage of Termination of Child Support Law

On January 19, 2016, Governor Christie signed S-1046/A-2721 into law. This law establishes 19 as the age when a child support and/or medical support obligation will end. The new law allows for child and/or medical support to continue up to age 23 for cases in which the dependent is still in high school; attending full-time college, vocational or graduate school; is disabled; if the parties reached a separate agreement; or, if continued support was granted by the court.

The effective date of the law is February 1, 2017 and applies to all child support orders. For families that have a child between the ages of 19 and 22 prior to July 31, 2017, the First Notice of Child Support Termination will be mailed out on February 1, 2017, with child support ending on August 1, 2017 (rather than on the child's 19th birthday) as the new law is phased in. This Notice will contain information on how to request a continuation of child sup-

port as well as how the amount of child support may change.

If you have a dependent turning age 19 after August 1, 2017, you will receive a First Notice of Child Support Termination 180 days before your child's 19th birthday.

If your Judgment of Divorce (JOD) or support order specifies an end date other than the dependent's 19th, that date will stand and will not be permitted to request an administrative continuation of support, you still may receive a Notice of Child Support Termination and be asked to send in a copy of the JOD or order.

If no continuation of child support is requested, a second Notice of Child Support Termination will be sent out 90 days before the dependent's 19th. If no continuation is requested after receiving the second notice, the order of support will end as of the child's 19th, and both parties will receive an update reflecting this change. (Note that if back child support is owed, the non-custodial parent still is responsible for paying that off.)

If you receive an updated order for continued support and wish to oppose it, you may file an application or motion with the court. If

there are younger children on the order in addition to the 19-year-old (or older) child(ren), parents may need to file an application or motion with the court to adjust the child support amount.

If your JOD or support order calls for child support to continue beyond the dependent's 19th- if they are in college, for example - you will receive a Final Notice of Child Support Termination 90 days before the dependent's 23rd (or other extended termination date) informing you that the child support will end.

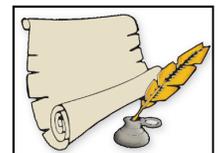
In order to ensure that all notices and informational updates are received, please confirm that the Child Support Program has your most current mailing address, cell phone number and email address.

* * * * *

More information regarding the new child support termination process will be posted on www.njchildsupport.org in the upcoming weeks and months.



DON'T GO NAKED! Now Available: Liability Insurance From Complete Equity Markets



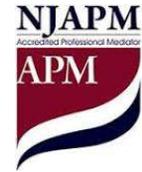
NJAPM arbitrator and mediator liability insurance for accredited and general members

Prices starting at less than \$400 for \$100,000 in annual coverage

Proof of NJAPM membership is required

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

Bringing Experts into the Divorce and Family Mediation Process by Amy Wechsler, APM, Esq.



The issues raised in mediation are no different than those raised in litigated matters, and often call for specific expertise beyond what the parties, the mediator and the attorneys can provide. Issues that may warrant outside expertise include parenting rights and responsibilities, accounting issues to ascertain income, valuation of a business or tracing of assets, and financial planning. When that is the case, the mediation team should consider bringing in outside neutral professionals, which can result in less costly, more efficient and perhaps even more creative solutions than litigation generally permits.

Mental Health Professionals Providing Settlement Based Evaluations: Custody and parenting time issues do not always warrant costly and drawn-out custody evaluations, but when a best interests evaluation is appropriate, licensed mental health professionals can conduct settlement-based evaluations without producing formal written reports, thereby considerably reducing cost and delay.

The Child Specialist: Couples addressing custody and parenting time issues in mediation can consider borrowing from one of the features of collaborative divorce: the child specialist. Child specialists are licensed mental health professionals who bring the voice of the children into the negotiation and decision-making process, without directly exposing the children to the conflict. They do not conduct evaluations, administer psychological tests, or make recommendations as to what the custody arrangement should be. Instead, the child specialist essentially brings the voices of the children to the process, after meeting the parents, speaking

with the children's therapists or other important collateral contacts, and meeting the children to get to know them and understand their concerns, needs and desires.

The child specialist is able to bring to the process: 1) the children's concerns, fears and needs; 2) how various parenting arrangements affect children at different developmental stages; and 3) the impact of parents' actions and reactions on each child's well-being. With this information, many parents can set aside mistaken assumptions about their children's needs, the impact of divorce, and appropriate parenting arrangements.

Forensic Accountants: When one or both parties are business owners, they will likely need an expert to establish the value of the ownership interest as well as the business owner's cash flow and income. A number of forensic accountants are experienced in alternate dispute resolution, and work as neutrals within the mediation process to provide analyses and schedules, without the necessity of a formal report. As information is made available, and as that information reveals important insights into the business value and cash flow, the accountant can bring it back to the mediation process, discuss it, and determine with the parties and mediator whether further review and analysis is needed.

Financial Planners: Divorce and separation involve financial settlements with respect to both support and the distribution of assets and debts. Couples will assess their needs and the resources available in order to understand the likely impact and viability of various proposals. Certified Financial Planners

and Certified Divorce Financial Planners and some other financial planners are trained and have tools that can help parties make this assessment.

* * * * *

In each of these instances, the professional is brought in to be part of the mediation process. Whatever their expertise, they should be held to the same confidentiality standards as the parties, attorneys and mediator. Communications made in the course of mediation are protected by statute, but questions can arise as to what constitutes a "communication" as opposed to a professional's work product. Before bringing an outside professional into the mediation process, the parties should discuss and agree on what will and will not be protected and kept as confidential. To the extent they agree, any protections should be memorialized by adding the expert as a signatory to the agreement to mediate, or by preparing a separate agreement.

In mediation, there is often the sense that the process must be quick, consist of only a few sessions, and there is a rush to "make a deal." When issues are outside the expertise of the mediator, it may take a bit longer, but experts can bring critical information to the table, level the playing field, and help ensure that both parties are making informed decisions in the process.

Amy Wechsler, APM, Esq., is a Certified Matrimonial Attorney, an accredited divorce and family mediator, a trained collaborative divorce attorney, and partner in Shimalla, Wechsler, Lepp & D'Onofrio, L.L.P., in Warren, New Jersey. Please visit their website for more information at www.cswlawnj.com.

Maximizing Economic Mediation Success

by Rosayn A. Metzger, JD, APM



How many times do you have clients come in for court-ordered economic mediation for their divorce and they have no idea what to expect? Have you or anyone else shared information with them before that meeting that would make mediation easier for them and for you? While the clients can search the web and gain insight from the many helpful articles there, there is no substitute for a client being appropriately informed before attending mediation. It can make a world of difference, and could conceivably be the difference between a successful mediation, and one from which the client leaves disheartened.

So, how can we educate not just our clients, but those who send their clients to us (attorneys, financial and mental health providers, court staff), so that we get an optimum result? How can we become the best mediator we can be to maximize mediation success?

While my comments are targeted at economic mediation for divorce, many of the tasks apply to both private divorce mediation as well as civil/business mediation:

1. The Mediator Needs to Address Certain Tasks Prior to the Mediation Session:

As mediation professionals, we should do whatever we can to assist the parties, their attorneys and the court so that the outcome is a successful one. Here are a few suggested tasks prior to the mediation session:

Educating Your Client: When I receive a call or an e-mail from a potential new client, it is my opportunity to educate the client before our first meeting.

I refer them to www.njapm.org and www.mediate.com and also offer

to send them materials from the Association of Family and Conciliation Courts, including one brochure entitled "Is Mediation for Us?" I also offer to send them a small book on mediation by one of our very own members, William H. Donahue, Jr., entitled *Reconcilable Differences*.

Sending information to the clients in advance of our first meeting gives them some idea of what to expect so that they do not feel anxious about the process. Clients need to know that mediation takes time and may not be resolved immediately, either due to lack of information of readiness to settle.

Obtaining Information: I ask the attorneys to provide me with as much information as possible to enable me to assist them at what could be our only session. I also encourage attorneys to prepare their clients for the session so that the clients understand what it will be like, and how much they can hope to realistically accomplish.

2. The Mediator Needs To Manage Settlement Expectations At the Start of The Process

Clients need to know that mediation takes time and may not be resolved immediately, either due to lack of information of readiness to settle. Parties and/or their attorneys are always hopeful that they will resolve the issues in one session, but that may not be possible. The clients need to understand that they should put their best foot forward, and to respect (not necessarily agree with) the positions of the other party.

In economic cases, attorneys are their client's legal advisor as well as their support mechanism during the mediation negotiations so that

they can feel secure in reaching an agreement that is likely to be successful for them.

3. Clients Need to Understand That Mediation is Not Free

Well, sort of. Economic mediation is free for two hours of your time, one hour of preparation and one hour of actual mediation. If the clients come with their attorneys, then the mediator's time is "free" for one hour, but the parties will still need to pay their attorneys. Nevertheless, the cost of mediation may not be a dollars and cents calculation, but a dollars and "sense" calculation. The better the attorney's submissions to the economic mediator, and the better prepared their clients are before mediation, the more likelihood of success.

In the event you have an economic mediation that goes beyond the one free hour of actual mediation time, you need to be sure to enter into a written retainer agreement after the expiration of one hour, explaining your services and how you will be billing those clients before you proceed.

4. The Mediation Agenda Needs to Be Realistic

Anyone can come into a mediation session and make demands. Will s/he be successful? Maybe. But the more practical approach to any mediation is to refine the agenda and to ask the parties to view the issues from the other party's perspective before attending the session. What are the good points to their position? What can the client live with as a concession? If there doesn't seem to be a middle ground, a good mediator can often bridge that gap with creativity. We need to encourage the par-

(Continued on page 9)

(Continued from page 8)

ties to listen to options, think outside the box, and/or give the proposal a trial run.

We as mediators need to create a realistic agenda for the session based upon the information given to us by either the parties or their attorneys. If the suggested agenda covers every item from soup to nuts, it is up to us to explain that in one hour, we may be able to cover issue X. If you are successful in “getting to yes” on that issue, then perhaps you can reach some of the other concerns listed on the parties’ agendas. But the parties and/or their attorneys need to understand that there is a finite period of time within which to reach a resolution at any given session.

It is important that we be thorough and give the parties an opportunity to voice their concerns. If one of the parties is flying in from California, then it is important to have a set agenda and realistic expectations for what could be a six-hour or six-day mediation marathon. Arrange your calendar as necessary.

5. Clients and Attorneys Should be Educated (through correspondence and/or through the pre-conference call) that Being Prepared Will Save Them Time and Money

Being prepared makes the whole process go much more smoothly. When attorneys prepare their economic mediation memorandum, it is so helpful for them to provide the following information:

- The names of the parties and their ages;
- Work histories and incomes for the past three years;
- The marriage date as well as the date of the divorce complaint;
- If the parties lived together prior to the marriage, or if assets/debts were acquired prior to/in contemplation of marriage, then that should be noted;
- If the parties separated years ago, that should also be part of the information provided;

- The names and ages of the children;
- Special needs of any of the parties/their children;
- A copy of an updated Case Information Statement with tax returns;
- Any information relevant to the issue at hand.

Although economic mediation is supposed to be limited to economic issues, it has become apparent that often, the impediment to settlement is actually a custody and/or parenting time issue. Once that issue is addressed, the parties can often find their way to a resolution of the economic issues. As the mediator, I encourage clients and attorneys to keep an open mind with respect to these child-related issues because this could mean the difference between success and failure.

6. During the Mediation Process, the Mediator Should be Sensitive Yet Realistic

When clients come in to see us, they are heavily burdened by everything that has transpired before your initial meeting. In an economic mediation, the parties have been battling for a while, and they are apt to become entrenched in their positions. Consequently, we need to be sensitive to the circumstances of the parties, and help them and/or their attorneys be realistic in what can be accomplished.

7. Mediators Should Use the Skills of Other Professionals as Needed

While we would like to think that we can do it all, we sometimes need other professionals to assist us. A financial neutral can be tremendously helpful in bringing reality to proposed budgets for the couple. Does one of the parties need advice about how they will use their share of equitable distribution post divorce? If so, send them (or suggest to their attorneys to send them) to a financial expert who can help them understand the proposed settlement,

the budget they will have to work with, and what can be done post divorce to assure a viable standard of living.

Is your case too emotional? Then bring in a divorce coach, a mental health specialist who is specially trained to help couples going through the divorce process. It is often the case that the mediation will not settle because of an emotional barrier. The divorce coach can assist either at the sessions, or in addition to the sessions, to help the parties navigate the divorce process.

8. The Wrap Up

Finalizing your mediation is as important as how you conduct the process. It is important for your MOU or mediation summary to contain all relevant information about how decisions were made so that the review attorneys understand the agreement. By way of illustration, if one party declines alimony, you need to be sure to include in your MOU why that decision was made, that you gave both parties an opportunity to discuss the issue of alimony with counsel, that they had ample time in session to review the issue, and nevertheless, the client elected to forego alimony.

It is also important to list all documents considered and attach copies, if available.

* * * * *

As mediators, our goal is to have a successful meditation process as well as a successful result. I hope that these helpful hints will help you maximize your efforts to be the best mediator you can be!

Rosalyn A. Metzger, JD APM is a divorce mediator and collaborate law attorney in Clinton, New Jersey. She is also available for referrals in Lehigh and Northampton Counties in Pennsylvania. Her website is <http://www.mediate.com/RMetzger/>.

A Look at Transportation Mediation

by John C. Lane, Esq.



The Transportation ADR Council (“TAC”) of the Transportation Lawyers Association is developing a facility for the mediation of transportation-related legal disputes. This endeavor will have the advantage that disputes can be resolved with the help of fellow transportation lawyers who do not need to be further schooled in our specialty.

Disputes that cross state lines, or even international borders, and involving multiple parties, can be accommodated by the same mediator or arbitration panel, because of the commonality of substantive law of international conventions, under federal statutes and regulations, and such uniform state laws as the Uniform Commercial Code. Transportation lawyers and their clients deal, as they must, with transactions in interstate and international commerce.

A mediation based in Chicago could involve a containerized shipment of machinery that travels to San Francisco on a vessel owned by a foreign ocean carrier with a general agent in New York, by train through Chicago, to a New York rail terminal by a Florida-based rail carrier, and trucked inland to a New Jersey warehouse where some of the machinery is found greatly damaged.

Litigation ensues in New Jersey among the consignee, the seller, shipper, the three carriers, and the warehouse. After discovery the parties seek private mediation with a mediator in Chicago, with the approval of the New Jersey court. The mediator and the parties can navigate the transportation issues over the three modes, and the product liability and warehouse legal issues.

The proposed TAC Rules provide

that no participant or person in the mediation may later testify or seek to compel another to testify in any proceeding as to statements made or omitted “in connection with the mediation session” or any event or occurrence during the mediation. Nor shall any such statement be subject to discovery.

But, what state’s law governs the crucial mediation issues of confidentiality of mediation communications and evidentiary privileges following a mediation? Some states such as Illinois and New Jersey have enacted the Uniform Mediation Act, while California and Florida have their own regimes which in some ways provide for stronger rules of confidentiality and non-waiver of the privileges. The UMA has been introduced this year in the New York Senate after years of study and comparison with New York’s wide-ranging collection of privilege laws. But the UMA is far from enactment in New York.

It will be important for the mediator working with parties from more than one state to clarify that the mediation will be governed by the mediation law of the mediation-forum state. This may be particularly true if some or all mediation participants are participating via telephone or videoconference.

The proposed TAC Administrative Rules for mediation also cover mediator qualifications and selection, mediation procedures, disclosure of facts which may call into question the neutrality or impartiality of a mediator, and confidentiality of statements or disclosures made during the mediation.

The TAC will maintain a roster of qualified mediators, who must be

members of TLA or CTLA, have been engaged in transportation law practice for a minimum of ten years, have agreed to abide by the TAC administrative rules for mediation, and have undergone a minimum of forty (40) hours of mediation training.

Provision is made for a TLA member to request that the training requirement be waived. A mediator selected to mediate a TLA-related dispute has a duty to disclose to the TAC administrator any facts which may present a conflict, including any past, present or prospective relationship between the mediator and the parties. The format of the mediation is left to the mediator’s determination.

The proposed TAC Administrative Rules for Mediation present a comprehensive plan for mediation of transportation disputes before fellow TLA members knowledgeable in our subject matter and qualified as professional mediators. The plan provides for confidentiality and privilege rules not inconsistent with most states’ mediation acts, and which can be augmented where necessary by the particular rules of the individual states.

For more information about the TAC Mediation Program, please visit www.translaw.org.

John C. Lane, Esq. started his litigation and mediation practice in 1997 based upon more than two decades of experience in transportation, construction and insurance law. The firm is located in Sparta. The website is www.thelanelawfirm.com.

NJAPM Membership Report

by James Hamilton, Esq., Membership Chair



As vibrant and vital as NJAPM has become under a succession of motivational leaders, there remain opportunities for NJAPM to increase its standing in the ADR community and to expand its roster of members. The Membership Committee views its charge as finding ways to retain current members and attract new members by searching for new ways to inspire seasoned and new mediators.

One of the most visible benefits of membership is our annual divorce and civil mediation seminar discussed in the first page of this newsletter. There are many other perquisites of being a card-carrying member of NJAPM. Regional peer groups allow for informational and networking opportunities. Continuing legal education programs enable members to achieve mandatory credits at discounted prices. Gathering with like-minded practitioners of the art of mediation, many of whom are recognized leaders who offer perspectives developed in a variety of disciplines, can serve to expand and enrich your skills.

On December 4, NJAPM members attended a holiday social event at the Grounds for Sculpture in Hamilton. We are planning additional social programs to promote collegiality and networking. Perhaps you would enjoy attending a wine tasting, a concert, or a cultural outing arranged for by NJAPM. Time and travel considerations may make regional social events more accessible for you. NJAPM is your organization, so any input you are able to offer will be much appreciated.

If you have not yet renewed your membership, please do so at www.njapm.org.

Here is our list of new members since our last newsletter through 3/15/16. If there is a mistake or your name is missing, please let us know.

WELCOME NEW NJAPM MEMBERS:

Aaron Albert
David Allshouse
Wendy Armour
Raymond Batten
Richard Bauch
Joel Bogorad
Felice Busto
Colette Charles-Davenport
Theodore Cheng
Jessica Colon
Donato D'Angelo Jr.
Candice Drisgula
Regan Elliott
Kenneth Gilmore
Rachel Goloff
Diane Grant
Marvin Hammerman
Rashidah Hasan
Samantha King
Allison Madden
Joseph Malone
John McHugh
Kathleen McNamara
Emerson Medina-Ordeix
Ann Mrkic Zgonena
Arthur Naylor
Lynn Norcia
Melissa Post
Ronald Prusek
Renee Rubino
Lanhi Saldana
Paula Sawyer
Torqwase Sekou
Adam Shefki
Steven Stoehr
Julie Surbaugh
Maura Tuite
Isabella Wezdecki
Frank Williams
Ella Wilson
Angelica Zapata

For more information about NJAPM membership, please contact Jim at jimhamilton@dshllaw.com.

Nominations & Elections

NJAPM Bylaw X

1. The Nominating Committee shall select candidates to fill the positions of President-elect, Vice President, Treasurer, in the absence of an Executive Director, a Secretary, two Directors and one member of the Nominating Committee. The Committee shall select at least one candidate but not more than two for each position. Nominations shall be made and publicized to the membership no later than the first day of May.

2. Prior to the first day of March, the names of potential candidates may be proposed for consideration by the Nominating Committee or by any group of three members-in-good-standing.

3. No members of the Nominating Committee may be selected by that committee for an elected position for the period while he/she is serving on the Nominating Committee or for a period of one year thereafter.

4. Additional candidates may be selected by a petition signed by twelve (12) or more members-in-good-standing of the Association. All nominating petitions shall be delivered to the President and Nominating Committee Chair no later than the first day of June.

5. Should more than one person be nominated for a single office, the election shall be by letter ballot. Said letter ballots shall be mailed to all members-in-good standing no later than the first day of July with at least 30 days allowed for response. The ballot shall list all candidates for each office and shall include the deadline for response. Ballots shall be counted by a teller committee consisting of the Immediate Past President and the President-elect who shall report the results to the membership no later than the general membership meeting in September.

6. The qualifications for officers and directors are:

a. A candidate for President-elect shall be an accredited member-in-good standing and shall have served on the Board for a minimum of two (2) years at the time of nomination.

b. A candidate for Vice President shall be an accredited member-in-good-standing and shall have served on the Board for a minimum of one (1) year at the time of nomination.

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

d. The name of any members having the necessary qualifications may be proposed to the Nominating Committee for its consideration provided that the proposal is made prior to the first day of March.

NJAPM Peer Groups

by Katherine Newcomer, Esq. (Retired)



Mediators share their insights on cases. You do not need to be a member to attend. Attendees pay for their meal. Contact the group leader to confirm meeting time and location.

Bergen Divorce: Lunch, 1st Wednesday (of the month), 12:30 to 2, Maggiano's, 390 Hackensack Ave., The Shops at Riverside, 70 Riverside Sq., Hackensack. **Bergen Civil:** Lunch, 3rd Tuesday of the month from 12:30-2:00 at Houlihan's, 65 Route 4 West, Paramus. Contact Robert J. Lenrow, Esq., APM, 201-986-1821, ceasefiremediation@juno.com.

Camden/Burlington/Gloucester/South Jersey: Lunch @ Noon, 2nd Wednesday, at different member offices. Contact William H. Donahue, Jr., Esq., APM, 609-238-9245, whdonahuejr@gmail.com.

Essex: Lunch on a Wednesday, every other month, starting in Oct.,

12:30 at the China Gourmet, 468 Eagle Rock Avenue, West Orange (just west of Prospect Ave.). Contact Don Steig, 973-761-6099, dbsteig@alum.mit.edu.

Mercer: Lunch, 2nd Thursday, 12:30-2:00, alternating between Olive Garden on Rte. 1 South, Lawrenceville, near Mercer Mall (and members' offices. Gabrielle Strich, Esq., APM, 609-924-2900, info@strichlaw.com.

Middlesex/Union: Lunch, 3rd Thursday, 12:30-2:00, Empire Asian Fusion 435 Main Street. Metuchen Bruce Waltuck, MA. 609-577-1584, brucewcollaboration@gmail.com.

Monmouth/Ocean: Lunch, 1st Thursday, 11:30, Pazzo Restaurant, 141 W Front St, Red Bank. Contact David Leta, 908-278-6335, mediation@DavidLeta.com or Anna-Maria Pittella, Esq., APM, 732-842-6939, pittellalaw@verizon.net.

Morris County: Lunch, 2nd Wednesday, noon, Hunan's Rest., 255 Speedwell Ave., Morris Plains. Contact Beverly & George Hays, APMs, 973-539-5242,

George@HaysMediation.com.

Somerset/Hunterdon/Warren: Breakfast, 2nd Tuesday, 8:30, Readington Diner, 452 Route 22 West, Whitehouse Stn. Lunch, last Tuesday, every other month starting September, 11:45, Panera, 25 Mtn. View Blvd., Basking Ridge. Contact me at 908-625-0043,

katherinewcomer@comcast.net.

South Jersey Shore: New group for Atlantic & Cape May Counties, 6 PM quarterly at members offices, next mtg. Nov 3, Carol Goloff, Esq., APM 609-646-1333, carol@golofflaw.com

Katherine Newcomer, Esq. (Ret.) provides divorce mediation in Morris & Somerset counties. Her website is www.equalitydivorcemediation.org

NJAPM Committees & Special Interest Groups

NJAPM Committee Name	Chair or Co-Chair	Phone	Email Address
Accreditation	Nick DeMetro	973-747-6428	metrode@aol.com
Annual Conference	Katherine Newcomer	908-625-0043	katherinewcomer@comcast.net
Annual Conference	Megan Oltman	609.947.0784	megan@mercerfamilymediation.com
Civil, Basic Mediation Training	Marv Schuldiner	732-963-2299	marvs@earthlink.net
Communications	Bennett Feigenbaum	973-682-9500	feigenbaum@gmail.com
Divorce, Basic Mediation Training	Anju Jessani	201-217-1090	ajessani@dwdmediation.org
Education Committee	Anna-Maria Pittella	732-842-6939	pittellalaw@verizon.net
Education Committee	Risa Kleiner	609-951-2222	risa@rkleiner.com
Fundamentals of Mediation Training	Carl Cangelosi	609-636-1557	ccangelosi@njmediation.org
Judiciary Relations	Hon. John Harper (Ret.)	973-813-7667	jharper@lauferfamilylaw.com
Legislative Relations	Roger Jacobs	973-226-6663	roger.jacobs@jacobslawnj.com
Long Range Planning	Andrew Smith	908-246-9766	als.smithlaw@gmail.com
Marketing	David Leta	908-278-6335	mediation@DavidLeta.com
Mediator Ethics Review Board	Hanan Isaacs	609-683-7400	hisaacs@hananisaacs.com
Mediator Quality	Marv Schuldiner	732-963-2299	marvs@earthlink.net
Membership	James Hamilton	856-365-7665	jimhamilton@dshllaw.com
Newsletter	Anju Jessani	201-217-1090	ajessani@dwdmediation.org
Nominating Committee	Marv Schuldiner	732-963-2299	marvs@earthlink.net
Peer Consultation / Mentoring	Katherine Newcomer	908-625-0043	katherinewcomer@comcast.net
Programs Including General Programs	Mitsu Rajda	877-744-3944	rmitsu@yahoo.com
Website	Carl Peters	609-751-4104	cpeters@carlepeters.com
Special Interest: Construction	Carl Peters	609-751-4104	cpeters@carlepeters.com
Special Interest: Estate & Elder Mediation	Anna Alexander	973-763-7314	wga9vose@verizon.net
Special Interest: Estate & Elder Mediation	Gabrielle Strich	609-924-2900	info@strichlaw.com
Special Interest: Employment	William Dwyer	848-932-2730	wdwyer@work.rutgers.edu
Special Interest: Ombuds	Andrew Smith	908-246-9766	als.smithlaw@gmail.com
Special Interest: Technology	Andrew Smith	908-246-9766	als.smithlaw@gmail.com

NJAPM 22nd Annual Conference 11/14/15, Photo Collage



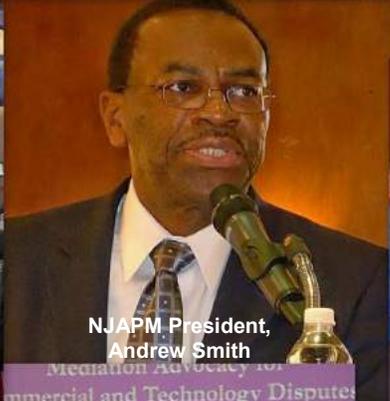
Paul D. Kreisinger,
"Relationally Disordered
Couples"



Conference Co-Chairs,
Katherine Newcomer and Megan Oltman



Keynote, Lee Jay Berman,
"Impasse is Fallacy"



NJAPM President,
Andrew Smith



Harrie Samaras,
"Mediation Advocacy for Commer-
cial and Technology Disputes"



Nicholas Stevens,
"Mediation and Ethics"



Marvin Schuldiner,
"Mediation and Ethics"





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Fall 2015 40-Hour Divorce Mediation, Class Photo, Day 5



Back (L-R): Matthew P. DeSantis, Marvin J. Hammerman, Roseann Todd, Marquis D. Jones, Jr., Ann Mrkic Zgonena, Puya Joseph Nili, Frank J. Williams, Kenneth J. Gilmore

Middle (L-R): Elena Serra, Linda Spelling, Dawn Catania, Haley Minix, Matthew J. Rosen, Adi Roffe-Schaffer, Joan Catherine Kramer, Catherine Golfinopoulos, Linda Torosian

Front (L-R): Sharon Green, Barbara Rowens, Joseph Malone, Emerson Medina-Ordeix, Donato D'Angelo, Jr., Magda Occhicone, Michael A Giasi

Floor: Instructor, Carl Cangelosi, Instructor Anju D. Jessani