



Mediation News

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Spring 2009

New Jersey Association of
Professional Mediators
1 AAA Drive
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Save the Dates!

NJAPM GENERAL MEETING SOUTH
Methodologies that Drive Child Support
Wyndham Hotel, Mt. Laurel, Rt. 73, NJ
Wednesday, April 22, 2009; 6:15 PM– 8:30

NJAPM GENERAL MEETING
NJ Law Center, New Brunswick, NJ
Thursday, April 23, 2009; 6:30 PM– 8:30

ANNUAL DIVORCE MEDIATION SEMINAR
Somerset DoubleTree, NJ (Rt. 287, Exit 10)
April 25, 2009

BASIC CIVIL MEDIATION CLASS
Fairleigh Dickinson University, Madison, NJ
April 27-28 & May 5-6, 2009

ADR DAY
Crown Plaza Hotel, Edison, NJ
June 5, 2009

NJAPM 16th ANNUAL CONFERENCE
Somerset DoubleTree, NJ (Rt. 287, Exit 10)
November 14, 2009

www.njapm.org
800-981-4800

President's Message

by Robert J. McDonnell, MS, APM

As I said at our 15th Annual Conference in November 2008, NJAPM has never been stronger or in better shape. We present outstanding professional programs, have growing membership and participation in programs and activities by our members, and continue to be the voice of mediation in New Jersey. By any measure, NJAPM is in excellent condition. We're off to a great year and we have exciting things coming up in the months ahead.

Let me recap the considerable progress of the past few months. The Annual Conference was another in a series of excellent meetings that stood out because of the great program and speakers, as well as the active participation by so many of our members. Anju Jessani, Risa Kleiner, and the conference committee deserve special acknowledgment for a truly outstanding program.

We also had very successful Family/Divorce Mediation and Basic Civil Mediation Training in the fall. Tony Limitone and his team produced the Basic Civil course, while Carl Cangelosi and his faculty team produced the Family/Divorce course. These training programs are important to NJAPM because, in their costs and generating income, they are part of the premier mediation training that we are committed to producing. These training

programs will continue in 2009. Last fall, the Judiciary introduced the foreclosure mediation program in answer to the critical situation facing homeowners here in New Jersey. NJAPM supported this program from the start, communicated such support to the Judiciary and to the public.

We have been supportive of this effort all along. While there may be some issues related to this program, NJAPM has been acknowledged for being in the forefront as we bring our professional expertise forward to help address this significant issue.

We are now into 2009 with a lot of work to do, but I am confident that we are making progress in meeting the needs of our members and promoting mediation as "The Right Way to Resolve Disputes." Let me mention just a few of the things that are in process.

In January, we provided input to Judge Hansbury in response to his request for input on the operation of the mandatory family economic mediation program over the last two years. Judge Hansbury requested these comments as Chair of the Supreme Court's Complimentary Resolution Committee. Because of the experience of our members, we were able to make substantive and meaningful comments about how the program can be improved. We have also been provided with an opportunity to appear before the Family Subcommittee to discuss the program in more

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Editor's Column

by Robert Karlin, PhD, APM

This newsletter begins with the President's Message. We are doing well and working to make NJAPM even better. In that vein, Katherine Newcomer surveyed peer mediation group meetings being held around the state; she and Risa Kleiner have provided a one-page summary.

Continuing education (CE) has become the norm for members of most professions. We require 10 hours/year for our Accredited Professional Mediators (APMs). The Board has called for the creation of low cost, member-based workshops for continuing education. Carl Cangelosi is the "action officer" for this project. The more thoughtful, useful CE we can provide, the stronger we become as a profession. This issue includes a call to action for members to suggest and/or develop new programs.

The challenge with CE is to encourage thoughtfulness, and at the same time allow for diverse views and creativity. My native discipline, clinical psychology, has opted for diversity and creativity. The cost of this is that one association will often allow total nonsense to be disseminated as CE. Another association in an ancillary field has opted for caution. The vast majority of what one hears at their conferences is about medication trials. This is useful, but there is a good deal being ignored. We must ensure that our CE programs provide a balance, and help make us better mediators.

Along with our usual columns, Carl Cangelosi's Divorce Update, my Psych 101 columns and the Membership Committee report, Armand Bucci concludes his three article series on marketing plans from the summer and fall of 2008

(back issues can be found on the NJAPM website). This time Armand discusses promotion. Anju Jessani has included a second article on communications skills for mediators. Lynne Broza relates the new rules for nontaxable gain from the sale of a primary residence. A brief note by Catherine Ross adds a couple of items to the tax checklist for divorce mediators. We have also included a summary of an article from *Newsweek* in which Jane Quinn provides several strategies to help families start over after bankruptcy and/or foreclosure.

In separate articles, Pat Westerkamp and Adam Berner discuss transformational mediation. Pat talks about how to listen carefully, and Adam reviews *Challenging Conflict: Mediation Through Understanding* by Gary Friedman and Jack Himmelstein, published in 2008 by the American Bar Association. The book won a prestigious award from an institute that clearly disagrees with the authors' aversion to caucusing. When authors receive a major award from those with opposite views, one must take note.

Eileen Kohutis provides us with insight into the dynamics of transference and countertransference in mediator/party relationship. On a somewhat lighter note, Pat Westerkamp challenges us to ask whether mediator deception of the parties can ever be justified, and if not, why not?

Sadly, Bob Friedman, long-time Treasurer of NJAPM recently passed away. This volume includes an obituary by George Hays. Bob will be greatly missed.

Lastly, let me invite you to submit an article for the next issue of our newsletter. I can be reached at bkrln@aol.com.

Transformative Mediators Listen Like Critters

By Patrick R. Westerkamp, JD, APM

At first glance, transformative mediation's focus on improving relationships appears at odds with facilitative and evaluative approaches that emphasize problem solving. However, practitioners of these other styles may benefit by incorporating aspects of the transformative approach into their practice.

In particular, as each party describes the issues in dispute, transformative mediators try to absorb the dynamics of the relationship. They attempt to make out its basic attributes including whether one or more of the participants feels suspicious, defensive, hostile, powerless, and/or vulnerable. The transformative mediator then "reflects back" on what has been heard, including its emotional valence. A transformative mediator might say "So, what's happening for you is when your boss cancelled the meeting without notice you became apprehensive about your job."

Reflecting the emotional climate along with a person's perception of the facts allows him to feel heard by the mediator, and by the other party. This positive experience does not always take place during facilitative mediations. It rarely occurs during evaluative mediations. Settlements, though, frequently turn on emotional wants. Transformative mediators stress the benefits of creating an environment where these needs are voiced and heard. Accordingly, in the words of Mary Rose O'Reilly, all mediators should find moments to just "listen-like a cow." In *Radical Presence*, she writes:

Pay attention... Just be there. Don't be thinking about a solution, or how you should fix it. Just listen hard and try to be present ... What I'm trying to construct is a theory of at-

tention that depends little on the therapeutic skills and the formal training; *listening like a cow.*"

Those of you who grew up in the country know that cows are good listeners ... We don't need fixing, most of us, as much as we need a warm space and a good cow. (New Jersey mediators from cities and suburbs may want to replace "cow" with their favorite pet's name: the one who sits quietly, with upturned head, while we disgorge the day's affairs.)

As mediators, we invite clients to share their concerns. We owe them a fair hearing. Active listening involves more than gathering facts. It is a means of connecting with clients, validating the importance of their feelings, and motivating the other participants to listen. Why trust mediators who--in giving less than complete attention--create the impression that they could care less.

My friend Maryellen, a real estate broker, is a wonderful role model for active listening. She engages fully in conversations through: eye contact; appropriate facial expressions; body language (e.g., leaning forward at critical junctures); tone of voice; brief expressions showing that she heard (e.g., "You've got to be kidding," a laugh, a sigh), and by not interrupting. Maryellen connects through listening. She also sells a lot of properties.

Parties who feel that they have been heard are more likely to move toward settlement. The resulting bonding establishes a climate where parties are more likely to recognize and embrace a portion of the intellectual and pragmatic reasons for ending their conflict. With apologies to Juan de Yepes Alvarez, for altering his beautiful poem

"A Rabbit Noticed My Condition":

*Angry one day I went to mediation
I sat in a room*

*The mediator noticed my
condition and came near.*

*It often does not take more than that
to help at times—*

*to just be close to persons who
are so full of knowing,*

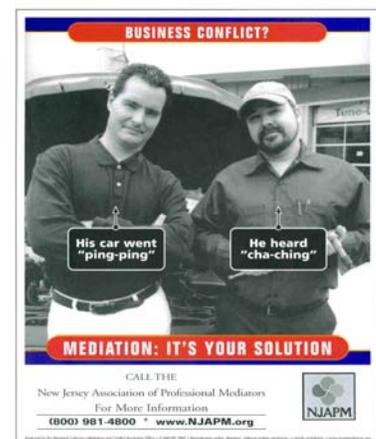
*so full of love
that they don't—*

*idly chatter,
they just gaze with
their marvelous understanding.*

Pat Westerkamp, JD, APM serves on the board of directors of NJAPM and is chair of the program committee. His practice is located in Matawan, NJ is restricted to serving as a neutral in all areas of employment and labor dispute resolution.

NJAPM Poster Campaign

A good supply of posters is still available — Please visit our website at www.njapm.org to view all 12 posters and email your order (Please also see Pages 9 & 17)



The State of NJAPM Peer Mediation Groups

by Katherine G. Newcomer, JD and Risa A. Kleiner, Esq., APM

NJAPM currently sponsors six peer mediation groups across the State. The purpose of the groups is to provide a venue where mediators can share their experiences and knowledge, refine their skills and improve their mediation practices.

All NJAPM peer groups create an opportunity for learning. Some groups have been in operation for more than ten years and others have been developed recently. Some groups focus only on divorce mediation or civil mediation, while others discuss topics of interest to mediators in both areas. Information on all meetings is posted on the NJAPM listserv. The following is an overview of the groups. Please confirm meeting dates with group leaders.

Bergen County Group: Meets at the Green Grill Brazilian BBQ Restaurant, 450 Hackensack Avenue in Hackensack (in the Staples shopping center across from Continental Towers, just north of Route 4) from 12:30 PM to 2 PM on the first Wednesday and the third Tuesday of each month. NJAPM members and other mediators are welcome at the meetings. The Wednesday meeting focuses on family and divorce mediation and the Tuesday meeting addresses topics in business and civil mediation. Each meeting has a host who sets the topic for discussion. The programs are designed to provide information on the latest mediation topics, marketing, legal updates and to promote advanced mediation skills. There are occasional guest speakers and some formal case consultations. Group leaders: Anna M. Delio (amdesql@verizon.net) for the Tuesday meetings and Gerard Scola (gerard.scola@yahoo.com) for the Wednesday meetings. Robert J. Lenrow administers the "Google Groups" listserv and provides general over-

sight for both subgroups (ceasefiremediation@juno.com).

Gloucester, Camden and Burlington Counties Group: Meets for breakfast at 8 AM on the second Tuesday of the month, except during July and August. Meetings alternate between Ponzio's Diner, Route 70 in Cherry Hill and the Diamond Diner, Route 38, Hainesport. Participants bring a case or topic of interest to the group that prompts informal discussion in both divorce and civil mediation.

Group Leader: Bill Donahue; Contact Info: onedonahue@aol.com.

Middlesex/Union County Group: Meets at Meiling's Chinese Restaurant, 435 Main Street, Metuchen from 12:30 PM to 2 PM on the third Thursday of the month. The group spends 45 minutes to an hour discussing mediation cases and additional time networking. Discussion topics include case studies, practice development, marketing and mediator opportunities. Guests are welcome. Group Leader: Marv Schuldiner; Contact Info: marvs@earthlink.net.

Morris Area Group: Meets at the Hunan Restaurant, Speedwell Avenue and Hanover in Morris Plains from 12:30 PM to 2 PM on the second Thursday of the month. The group networks at the beginning of the meeting, followed by topics of discussion that include mediation practices, case histories, marketing and ethical issues. Occasional guest speakers are also invited. Group Leaders: Beverly & George Hays; Contact Info: Hays.Mediation@verizon.net.

Princeton Group: Meets on the second Thursday of the month. The meetings alternate between lunch

from 12:30 PM to 2 PM at the Olive Garden in the Mercer Mall on Route 1 and breakfast meetings from 8 AM to 10 AM at a group member's office. Participants take turns selecting the topic and chairing the meeting. Discussions include peer consultation on pending cases. Group Leader: Gabrielle Strich; Contact Info: strichlaw@yahoo.com.

Somerset, Hunterdon and Warren Counties' Group: Has both a breakfast and a lunch group. The breakfast group meets at Loukas Diner, 3205 Hwy 22 in Branchburg from 8:15 AM to 9:45 AM on the second Tuesday of the month. The lunch group meets at Panera, 25 Mountainview Boulevard in Basking Ridge from 11:45 AM to 1:30 PM, usually on the first Tuesday of the month. Following the Woody Mosten case study method, each mediator presents a case description followed by questions from the other mediators designed to provide a fresh perspective on the case follow. Approximately 20 minutes is spent on each case. There is time set aside for networking and for occasional guest speakers. Guests are welcome. Group leader: Katherine Newcomer; Contact Info: katherinenewcomer@comcast.net

Katherine G. Newcomer, JD practices in Bedminster and Morristown where she focuses on divorce mediation and custodial mediation. Katherine serves on the NJAPM board and on the board for Safe Harbor Access Centers.

Risa A. Kleiner, Esq., APM, is Counsel with Wilentz, Goldman & Spitzer where she specializes in family law and divorce mediation. She is Vice President of NJAPM and is a member of the Middlesex County Early Settlement Panel and the Middlesex County Family Committee.

President's Message, Continued

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detail, and will take advantage of this appearance to further develop the comments we made in writing. This is an excellent opportunity for NJAPM to be heard.

For the past several months, the Board has been addressing the issue of refreshing our website. Our website has been around for many years and could benefit from a new look, updated features and functions, and an overall "boost" in appearance. Marv Schuldiner has taken over the leadership of the website project. We can expect the new site to be launched at the end of March. You will hear more about this from Marv and the Website Committee. Once the new site is launched, additional modules will be added for enhanced functionality and ease of use by members as well as the public.

Another thing we can all be on the lookout for is an NJAPM promotional ad program. In keeping with our mission to "foster awareness of mediation as the preferred method of dispute resolution," we expect to kick off advertising programs, primarily in print media. Anju Jessani and the Marketing Committee are looking at a variety of options available to increase public awareness of mediation, to reach out to organizations and potential users of mediation, and promote the use of our Accredited Professional Mediators (APMs) wherever possible. We need to let the public and others know about the many situations and people that can benefit from mediation. Other initiatives in progress include the member-led training programs that will focus on intermediate mediation skills, development of an electronic news service, and sponsorship of a mediation practicum apprentice program. These are just some of the programs that you will hear about in the not too

distant future.

Do you have any other ideas for consideration? If so, please let us know. As you know, we are a volunteer-led organization and are always looking for new proposals, as well as talented people to step forward to help implement these ideas.

I mentioned that NJAPM was supportive of the foreclosure mediation program when it was announced by the Judiciary in the fall of 2008. It has only recently been implemented and those mediators who have been trained in the program and added to the Court's foreclosure roster are in the process of mediating disputes between homeowners and lenders. Many of our members have stepped forward and are participating in this important effort. This is as it should be, as we are all professional mediators, and it is something we do every day.

The Judiciary is also training vast numbers of attorneys and other professionals, who will be added to the foreclosure roster and assigned to mediate these disputes. While it is too early to make judgments about the effectiveness of the program, we are optimistic and hopeful that it will result in meaningful settlements for the participating parties. The program is too important to the homeowners, the lenders, the sponsors of the program (both political and judicial), and for the practice of mediation. NJAPM members participating in the foreclosure mediation program should provide feedback to the AOC, the CDR coordinators and others involved in the program. We should help the managers of the program by telling them what is working, what is not working, and how the program can be improved. I am confident that we can help make it work, and have the highest of hopes

for the homeowners participating in the program.

Speaking of "hope," I have to share with you my experience of Inauguration Day. As we gathered around Noon for our monthly peer group meeting at the local restaurant in Hackensack, we clustered around the television watching the oath of office and inaugural address of our new president. Observing this truly historic occasion, I sensed a common feeling of hope and best wishes for President Obama among those gathered before the television, regardless of political affiliation. Some mentioned that they didn't support him in the election, but were wishing that he will be able to deal successfully with the monumental issues facing us, here at home and around the world. Others acknowledged the renewed sense of optimism and the peaceful transfer of power from one leader to the next, regardless of ratings or public opinion. I sensed that we were all together, bonded by a common feeling of hope for President Obama, for the country, and for the world.

Best wishes to all for a hopeful 2009. We are in a profession that can make a difference to our clients, the litigants in our courts, and those with disputes in our communities.

Thank you for your commitment to mediation. We know that it is "The Right Way to Resolve Disputes."

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

Transference and Countertransference: A Glimpse into Some Psychological Factors at Work in the Mediation Process

by Eileen A. Kohutis, PhD

People come to mediation for various reasons. Some are looking to end a marriage, some are looking to dissolve a business arrangement, and others are looking to settle a neighborhood dispute. Whatever their reasons for seeking mediation, your clients expect that you, their mediator, have special knowledge, skill, and experience that will resolve their conflict in a more amicable -- and less costly -- way than litigation. Because you work as a mediator, clients may attribute to you all the power of the legal system, and with it some not very realistic ideas about what you can accomplish.

As we psychotherapists would put it, your clients have *transference reactions* to you by virtue of your position and their wishes, and these transferences are at work even before they meet you.

TRANSFERENCE:

Transference is the unconscious displacement of thoughts, feelings, and behaviors that were first experienced in relation to significant figures in childhood (typically parents) onto a current figure. Transference phenomena contain elements of distortion, because the targets of them are not perceived as they really are but through the client's own experiences. While transference manifestations are in many relationships, in situations where a person may feel need, dependency, or fear, they may loom larger than usual and have to be reckoned with directly. In the fraught atmosphere of a serious dispute, where stakes are high, transference phenomena tend to flourish, and a client's view of you may be colored by prior experience of powerful authority figures that you may barely recognize yourself. Depending on

their past histories and present expectations, one client may perceive a mediator as all-powerful and highly judgmental, while another sees the same person as kind and understanding, but perhaps not optimally assertive.

Because positive transferences are based on hopeful expectations of the other person, they may facilitate the interaction between you and your client, and make your work easier.

Transferences are ubiquitous in psychotherapy, and are extremely useful, as they allow therapist and patient to see, acted out before their eyes, exactly what the patient's expectations in a relationship are, and often where those expectations came from. Transferences usually change in form throughout treatment as different aspects of a patient's past relationships come into play. Most of the specific variants of transference that are commonly seen in therapy are not relevant here, but they fall into two broad categories, called -- logically enough -- positive and negative transferences.

For instance, a person with a positive transference perceives the mediator as good, competent, efficient, knowledgeable, trustworthy, or any other combination of positive attributes. This client tends to facilitate the process by cooperating, bringing the necessary documentation, keeping appointments, etc., and generally not giving the professional a hard time.

Remember that the higher the expectations, the greater the disappointment when expectations are not fulfilled, so it is dangerous to "play" to a positive countertransference, however useful that may seem in the short term. A negative transference may cause a client to experience the mediator as incompetent, difficult, lazy, biased, and so on. This client may forget appointments, come unprepared, or argue about the bill. While both types of transferences are powerful, the power of the negative transference tends to show up early, and can result in a stalemate between client and mediator, obstructing and derailing the mediation process. When this happens, another mediator may be sought -- who may elicit the same negative transference and the same problems or, by virtue of a different personality, a less destruction working relationship -- or mediation may fail and litigation begin.

Different people make a better match with some personalities than with others. Transference is less about the mediator's personality than it is about their client's history. Many mediators are very skilled "personality people," who can work comfortably with all different types of people. Sometimes, however, their skills fail and transference issues may be a reason why.

Positive transferences are affirming to us. They enhance our self-esteem, and therefore our desire to work with the client. Negative transferences, however, may leave us wondering what we're doing wrong, and may cause even the most skilled and confident professionals to doubt themselves.

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Transference and Countertransference: A Glimpse into Some Psychological Factors at Work in the Mediation Process

Continued

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COUNTERTRANSFERENCE:

Clients are not the only people whose unacknowledged perceptions affect the mediation process. Mediators, like psychotherapists, have transferences too. Unconscious feelings, thoughts, and behaviors from the mediator's early life may be elicited by something in the relationship and displaced onto the client. These are called countertransference reactions.

Like transference, countertransference phenomena may facilitate or hinder the mediation process. For example, uncharacteristically wanting to do a little extra for a client, or habitually running overtime, may not be a "rational" pursuit of the best possible professional outcome, but countertransference manifestations of a need to please.

Dreading a client's appointments, feeling tired and bored, or putting off the necessary work on the client's case may reflect the difficulty of the client's case, but they may also be clues that the mediator's own old reactions to certain relationships have been aroused.

Some countertransference manifestations may be the result of overidentifying with a client. For example, a mediator who has left a husband because he was violent may find it difficult not to feel punitive towards the abusive husband of a client whose divorce she is mediating. Maintaining a neutral and impartial perspective may be difficult for the mediator if unresolved and unacknowledged wishes against her own former husband have not been dealt with.

Psychotherapists are trained to recognize transference and countertransference reactions, and to work with them.

PRACTICAL TIPS:

Transference and countertransference phenomena are part of every relationship. When a client is cooperating to the hilt and praising you as the best mediator ever, enjoy the accolades and the feeling that you are helping to resolve a difficult situation -- but remember too that some realistic commentary on overly high expectations may save you both some grief later on.

If you are overreacting to the ordinary difficulties and vicissitudes of the situation, acknowledging it to yourself may help you focus better and tolerate the stresses of an of an extremely demanding job.

Alternatively, if you find yourself feeling bogged down with a case, wondering why it is not moving along, or how you have suddenly become so inept, it is time to take a step back and try to understand what is happening between you and the client.

First, has there been some genuine miscommunication between the two of you? When in doubt, reviewing the mediation process with the client and clarifying what to expect at significant points along the way can help to establish realistic cooperative plans.

Second, has something happened in the mediation process that has caused the client's attitude toward you to change? If you feel that the client is behaving differently but are unable to identify why, this may be a time to ask the client if something else is going on. Per-

haps a situation has arisen in some other area of his or her life that is having an impact on your work unbeknownst to either of you.

Third, what can you see about your own contributions to the situation? The mediation process has normal peaks and valleys of emotion and cooperation, and we all get distracted sometimes. If you are overreacting to the ordinary difficulties and vicissitudes of the situation, acknowledging it to yourself may help you focus better and tolerate the stresses of an of an extremely demanding job.

If after exploring the problem you come to the conclusion that it is not a so-called realistic one but a transference issue, either yours or the client's, consultation with a colleague or a group of peers may help you sort matters out and offer useful and perhaps more objective perspectives. They are interested in seeing you succeed and in advancing the field of mediation. Moreover, a trusted and caring colleague may help you to identify a missing piece or an unwarranted assumption that needs to be clarified. Finally, consultation with a psychotherapist who has an understanding of transference and countertransference phenomena may be an invaluable resource when troublesome feelings *within* the mediation relationship seem to be getting seriously in the way.

Eileen A. Kohutis, Ph. D. maintains a private practice in Livingston and Liberty Corner, New Jersey. She performs personal injury, employment, guardianship and custody evaluations, and as a certified psychoanalyst, she writes about and teaches a variety of psychotherapy topics.

Psychology 101: Observational vs. Experimental Research in Psychology by Robert Karlin, PhD, APM

As the economic crisis worsens, more and more people become concerned about the psychological/social effects of economic insecurity and uncertainty. Unsurprisingly, resource scarcity seems to lead to heightened conflict in the psychology laboratory and in the real world.

But why do we need the laboratory? Let's look at a typical experiment. I might use a trucking game to study ways to ameliorate conflict. In such a game, each player has to move his truck from one side of the board to another. The problem is that for part of the trip there is only one lane, only one truck can pass at a time. Generally, the only way to win is to cooperate by taking turns going first.

In such a laboratory game, degree of scarcity can be easily manipulated and studied uncontaminated by other variables. For example, the experimenter can provide fewer points for each trip or a longer one-lane part of the road. In either case, there is a smaller possible profit margin. To make things even worse, the experimenter can make rewards so scarce that even cooperative "turn taking" winds up costing points for one or both players. Additional variables, such as relative power and the ability to make threats can be similarly altered and their effects studied.

In general, the more scarcity, the harder it is to find the "taking turns" solution. Players tend to fight with each other and see the other person as different from themselves – bad, selfish, power mad. Under increasingly scarce conditions, it becomes very hard for players to stay cooperative, whether or not they are able to communicate with each other. About the only thing that works is bringing in a third party who tutors

the communication between the players. Each tutee is (essentially) told to be very polite to the other person, try to understand his/her point of view and to work toward mutually beneficial, fair strategies and solutions. Sound familiar?

Why are experiments like this important? As is the case here, the conditions that we create in a lab are usually only theoretical approximations of their real world analogues. However, from a scientific standpoint, one can only claim to know whether something causes something else with an experiment. And only when you have a causal relationship, can you write a prescription for change.

Let me illustrate why observation alone will not cut it and why "correlation does not prove causation." Did you know that cities with more churches have more alcoholics? Obvious prescription: close down some churches and you reduce alcoholism. The problem is that "third" variables, one of which is the number of people in each city, are related to both more churches and more alcoholics. Further, there are many other possible "third" variables besides population size. Maybe poverty plays a role, or available life style, or anonymity, or who chooses to live in larger cities. There are always an almost infinite number of "third" variables and their combinations that can explain a relationship between the two variables of interest. Correlation studies, even highly sophisticated ones, cannot get rid of them.

A less obvious third variable: About 25 years ago, the insurance industry, which is numerically sophisticated, published a full-page ad in every major Sunday

newspaper in the country. Purely in the public interest, they provided eight tips for living a longer, healthier life. The list was mostly what you would expect: stop smoking, exercise, eat a balanced diet, and so on. But number 5 on the list was "eat a hearty breakfast."

The other life style differences all had a clear mechanism that led to better health and increased longevity. But what was it about eating a hearty breakfast that was specifically good for you? Might a third variable underlie this relationship? To answer that, one asks what would make those who ate well in the morning different from those who had only a cup of coffee.

In fact, there were an enormous, almost infinite number of differences between those who did and didn't eat a hearty breakfast; lots of "third variables." For example, think about how the insurance companies got their huge sample. They started with a healthy population, all of whom had recently passed an insurance physical. Then they monitored health habits and saw who lived and who died. The problem is that no insurance physical could find all possible health problems. So, the original sample comprised people who varied from healthy as young astronauts to those who barely passed their physical and were almost clinically ill.

Next question: When you have a cold or a mild flu, do you want the Denny's Grand Slam breakfast: juice, eggs and bacon, home fries, toast and coffee? When I'm ill, I prefer dry toast and a little peppermint tea. Hold the juice, eggs and so on! Sick people tend not to eat a hearty breakfast. So, lack of morning appetite may be an illness marker. If so, the insurance industry study may

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Does This Dog Hunt Guerilla Mediators?

by Patrick R. Westerkamp, JD, APM

Robert Benjamin, with tongue not so firmly planted in cheek, has explored the concept of “guerilla mediation.” An advocate of an adaptive style, Benjamin has commented that “[n]ot unlike the warrior, the mediator necessarily relies on strategic planning, tactics and maneuvering, observing the terrain of the conflict and the use of deception.” When reconnoitering the conflict terrain, the guerilla mediator “does not rely solely upon reason, trust and good will to manage a dispute; he or she may well have to employ constructive forms of deception to accommodate and counter the anticipated fears and resulting manipulations of the parties.”

Benjamin’s challenging articles cause mediators to ponder: the ethics of puffery; when, where and whether to disclose salient information learned during caucuses; and the limits of what he labels as “constructive deception.” Where do you stand on these issues?

Consider the following hypothetical. You are asked to mediate a small claims dispute over the sale of Nosey, a Lakeland Terrier. Philadelphia junior executive Danny Duke, who had always dreamed of hunting deer, first saw Nosey at Gabby Gip’s farm when asking for directions. While they were talking Gabby commented, “Nosey is one fine hound, and tracks bear with the best of them.” Danny eventually purchased Nosey for \$1,900.00. Ten months later, after Danny abandoned hunting for golf, he demanded a refund claiming that Nosey was a lousy tracker who never found even one deer. Gabby refused to bend to this de-

mand, and you then agreed to mediate *pro bono*.

In joint session, Danny complained that hunting was no fun since Nosey never found any deer. Gabby replied, “Only a darn fool would use a hound to hunt deer.” Later, in caucus, Danny explained that he was limping owing to a severely sprained ankle following a fall while was in the woods with Nosey. This is why he gave-up hunting for golf. In any instance, Danny is convinced that Gabby tricked him, and will continue the “good fight” rather than allowing him to “make me look stupid.”

Gabby, in turn, told you in private that Danny was a stuck-up fool, who-- knowing nothing about hunting--had bought her story that Nosey was a tracker, when indeed the dog’s only use was to control rats, rabbits, and other pests. Gabby never wants to see Nosey again, and has no intention of refunding any money to “that rich kid.” You are close to calling impasse, but contemplate using guerilla mediator tactics to bring this low value dispute to closure.

Among the “constructive deceptions” that you consider to avoid impasse are: 1) allowing Gabby to infer that Danny’s limp resulted from shooting himself when Nosey jumped on him; 2) saying outright that Nosey caused Danny to shoot his foot; 3) telling Gabby that Danny was preparing to file a lawsuit against him because Nosey was a dangerous dog who injured him in the field; 4) advising Danny that if the matter went any further Gabby (who hates lawyers) could well sue him

for defamation; and/or 5) implying to Danny that, at 6’ 3” and well over 220lbs, Gabby is not a man to anger.

What would you do? Let us know on the listserve-civil@njapm.org. The best answer, judged in my sole discretion, will receive a very modest award from Westerkamp ADR Services, LLC.

Pat Westerkamp, JD, APM serves on the board of directors of NJAPM and is chair of the programs committee. His practice is located in Matawan, NJ is restricted to serving as a neutral in all areas of employment and labor dispute resolution.

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New Rules for the Sale of Residence Exclusion of Gain on Sale by Lynne Broza, CPA/ABV, CFF

The personal residence is often one of the most significant assets in a marital estate. Favorable tax treatment has been afforded people who realize a gain on the sale of a personal residence and meet specific requirements. These requirements, which exclude some or all of the gain from taxation, have changed over the years. Many of us remember past rules whereby you had to buy a house that cost more than you sold your old house for to exclude any gain. That changed about 12 years ago (see “The Basics” below). Now, with the passage of the “American Housing Rescue & Foreclosure Prevention Act of 2008,” which took effect January 1, 2009, there is a new twist that could have negative consequences for those selling their homes.

The Basics - In general, under IRS Code Section 121, a taxpayer may be able to exclude from taxation up to \$250,000 of gain on the sale of a personal residence. You qualify for this exclusion if the house was owned and used as a principal residence for at least two of the 5 years before the sale occurred and you had not made use of this exclusion within a 2-year period prior to the sale date. This amount doubles to \$500,000 for married couples if either spouse meets the ownership test and both meet the use test. This allowable exclusion is proportionally reduced if you used the exclusion for another home within the 2-year period prior to the sale date or if you did not meet the full ownership and use tests. Additionally, there were certain provisions for members of the armed forces.

The New Rule – For sales of personal residences after December 31, 2008, any gain that is allocated to periods of “non-qualified use” is not eligible for the exclusion. In general, “non-qualified use” is any time in

which the home is not the principal residence of the taxpayer or spouse. Examples of this are when the house is used as a rental property, a vacation home or is simply vacant.

This new provision was enacted to prevent someone with two homes from getting the exclusion on one house, moving into the other (maybe a vacation home) and then getting the exclusion on the sale of the second house two or more years later. However, it is bound to affect more than those people.

An interesting part of the new rule is that it is the maximum excluded gain that is reduced and not the allowable exclusion. Therefore, if a single person had a gain of \$700,000, which was reduced by 50% use of the house as a vacation home, the eligible gain would be \$350,000. Since the maximum exclusion a single person is entitled to is still \$250,000, that person would get the full exclusion of \$250,000.

There are many other nuances to the general rule and the new rule, which are beyond the scope of this article and I recommend consulting a tax professional before any sale of a personal residence. This is especially true in the divorce arena, where knowledge and proper planning can often save tax dollars and help the spouses toward an equitable settlement.

Calculating the Reduction – The reduction in the gain eligible for the exclusion is a fraction of the amount of time of “non-qualified use” (numerator) divided by the total time the property was owned by the taxpayer (denominator). Any “non-qualified use” prior to January 1, 2009 does not count as “non-qualified use” in this calculation. However, all time that the home was owned by the taxpayer will be

used in the denominator.

Example 1 – I bought my house on January 1, 2006 and used it as a rental property for all of 2006, 2007 and 2008. It is then used as my principal residence for 2009 and 2010. I sell it on January 1, 2011 at a gain of \$300,000. Since the years before 2010 do not count as “non-qualified use,” my fraction is 0/5 (no reduction) and I am entitled to the full exemption of \$250,000. Only \$50,000 of the \$300,000 gain would be taxed.

Example 2 – I bought my house on January 1, 2009 and used it as a rental property for all of 2009, 2010 and 2011. It is then used as my principal residence for all of 2012 and 2013. I sell it on January 1, 2014 at a gain of \$300,000. My reduction fraction will be 3/5, meaning that only \$120,000 of the gain is eligible for the exclusion from taxation. Since the \$120,000 is less than the \$250,000 maximum exclusion, the \$120,000 will not be taxed and the balance of \$180,000 (\$180,000 + \$120,000 = \$300,000) will be subject to tax.

Timing is everything and with the above examples, I am sure you can see why. Expects situations to arise that may not be clearly covered by the language now in effect. Court cases may be needed to interpret taxability of these gains in certain situations. For now, just be sure that you have a basic understanding that the issue exists and make sure your clients obtain advice from their tax practitioners.

Lynne Broza, CPA/ABV, CFF is a Director at Cowan, Gunteski & Co., P.A. with over 30-years experience. She is an expert in the financial aspects of matrimonial litigation and the valuation of closely-held businesses. She is also a Rule 1:40 qualified mediator.

NJAPM Membership Report by Anna M. Delio, Esq.

Greetings from the NJAPM Membership Committee. First, on behalf of the Membership Committee, I want to thank our out-going Chair, Bob McDonnell, for all the energy and hard work he devoted to the Committee and the New Jersey Association of Professional Mediators. As many of you know, Bob has become our new President, but will remain actively involved with the Membership Committee.

As our new membership year began on October 1, 2008, the dues renewal process brought some fluctuation of membership numbers. The Membership Committee is committed to actively working to identify potential new members from various analogous organizations, business industries, agencies and educational institutions. We already have identified several groups, sent out mailings introducing NJAPM and invited them to join our organization. Our mailings have started to bear fruit with new members.

In particular, we would like to welcome new member, Michelle V. Perone, Esq., Chief of Civil Court Programs for the Administrative Office of the Courts. As many of you know, Michelle is a tireless advocate of mediation and is committed to working with NJAPM to promote respect for and recognition of mediators. Welcome Michelle! We also especially welcome new member, Jeffrey S. Posta, Esq., who currently chairs the Dispute Resolution Section of the New Jersey State Bar Association. Welcome Jeff!

In addition, we would like to congratulate our newest APM, Caroline M. Petrilla, Esq., of the Office of Dispute Settlement, Department, of the Public Advocate. Caroline has been a member of NJAPM since 2007 and her recent application for

APM status was approved by the Accreditation Committee. Congratulations Caroline!

Also as expected in any large organization such as ours, we have had some members retire, move out of the area, or experience tough economic conditions. In particular, we are saddened by losing, through relocation to North Carolina, of one of NJAPM's highly regarded "statesmen", Art Lieberman. Noteworthy among Art's many achievements, he authored the widely used DivorcewareNJ software, that many of our mediators and attorneys use to calculate child support, had a successful mediation practice, mentored many of our members, contributed valuable wisdom to our listserves and oversaw the Middlesex County Peer Mediation Group. Art will be missed, but we hope to hear from him from time-to-time as he monitors our listserves and newsletters.

This year we want to increase the statewide recognition of NJAPM, increase the diversity of our membership and promote quality mediation through the accreditation process. To further our goals, we will be examining ways to increase the number of APM members, such as by re-evaluating and streamlining the APM application process. We will attempt to equalize the standards and procedures of accreditation for attorneys and non-attorneys, civil and family mediators. We hope our general members will be encouraged to apply for APM status, and we also hope to provide increased opportunities for APM's to fulfill their annual continuing education requirement.

For our new members, NJAPM offers a variety of ways to find out more about the organization. The NJAPM website is the obvious first choice. In addition, new members

can network, meet other mediators, discuss mentoring possibilities, and enjoy a good breakfast or lunch at any of the monthly peer group meetings held in various counties throughout New Jersey. You can look for the meeting notices on the list-serves, but you also can find out more about the peer group meetings on the NJAPM website at: <http://www.njapm.org/pg/member/peerMediation.php>.

New members can also review the New Member Orientation presentation, which is available at: <http://www.njapm.org/pg/member/NJAPMnewmemberpresentation3-4-09.pdf>

And, as always, new members who have questions about NJAPM can contact any of their fellow mediators on the Membership Committee:

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Here is a list of the new members who have joined since the last newsletter. If your name is missing, just let us know and we will include your name in the next issue of *Mediation News*.

(Continued on page 19)

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

L *ARSEN v. JABLONSKI, App. Div.*—The judgment of divorce provided that the ex-husband's alimony obligation would terminate upon either party's death or upon the ex-wife's remarriage or cohabitation. The record revealed that the ex-wife had moved into the house owned by her boyfriend of three years and that the boyfriend had moved in with his mother, who lived next door. The boyfriend rented the house to the ex-wife for \$1,500 per month, but he never received any rental payments from her. The record supported the Family Part's finding that the ex-wife did not cohabit with the boyfriend. The Appellate Division directed that a "careful review is in order" because the Family Part's denial of any alimony reduction was "unexpected" in light of the "substantial financial support" that the ex-wife was receiving from her boyfriend. September 15, 2008.

Menzel v. Davis, App. Div.—In its order the Family Part incorporated the court-appointed parenting coordinator's recommendations to eliminate the father's "elective weekends" and to institute a four-week cycle. The Family Part found that the parenting coordinator's recommended schedule would reduce "the amount of contact and the amount of transfers" in what had been "an inordinately conflicted set of relationships". The Appellate Division rejected the father's arguments (1) that the Family Part had erred by modifying parenting time without conducting a plenary hearing and (2) that the Family Part had improperly delegated its decision-making authority to the parenting coordinator. October 1, 2008.

Medley v. Medley, App. Div.—Post-divorce-judgment order that denied

the defendant ex-wife's motion to reinstate the plaintiff ex-husband's alimony obligation affirmed. The Family Part concluded that the parties' 2001 settlement agreement and consent order clearly had provided for a final resolution of the defendant's alimony claim in exchange for the lump sum of \$28,100, that the settlement was binding on the parties, that the plaintiff had paid the money, and that there were no factual disputes that required a hearing. The settlement agreement and consent order were not ambiguous, and no reasonable person could construe the agreement in the manner suggested by the defendant. October 3, 2008.

Cammalleri v. Cammalleri, App. Div.—Post-divorce-judgment order that denied the plaintiff ex-husband's motion to modify his child support and other child-related obligations due to his alleged mental disability affirmed because defendant failed to make a prima facie showing that his mental disability was permanent and that he was totally disabled and unable to work in any capacity. October 16, 2008.

Adams v. Adams, App. Div. — The court affirmed an order that denied the defendant ex-husband's motion to modify or reduce his alimony obligation because it concluded that none of the events identified in the property settlement agreement that would trigger termination of alimony had occurred. The Family Part properly found that the defendant had failed to present any evidence "beyond mere assertion" that he had been forced to retire or that his capacity to earn a comparable salary had been reduced or that the reduction in

salary was anything other than temporary. October 29, 2008.

Rothfeld v. Rothfeld, App. Div.—The parties agreed to Limited Duration Alimony of \$500 per week for 4 years. The ex-wife wanted to increase both the amount and the term, or, in the alternative, to increase child support. Although the Family Part judge denied the application, the Appellate Division reversed and found that a *prima facie* case was presented for (1) an increase in alimony, based on changed circumstances; and (2) an extension of the length of the term, based upon "unusual circumstances," both pursuant to N.J.S.A. 2A:34-23(c). Because the current mental-health condition of the parties' child was unanticipated at the time of the divorce, there are genuine issues of material fact requiring an evidentiary hearing. November 12, 2008.

Horne NKA Manfredi v. Horne, App. Div.—Defendant appealed from the denial of his motion to emancipate the parties' daughter Amanda, age twenty-one, ordering him to pay \$800 per month for her support, and obligating him to maintain \$50,000 in life insurance to secure the child support obligation. Defendant did not contribute to Amanda's college expenses in Florida during her freshman year due to his diminished earning capacity. Thereafter, Amanda did not return to college and was employed on a full-time basis. Thus, she is emancipated within the meaning of the PSA. Additionally, Amanda presented herself to the state of Florida as an independent adult for purposes of residency. The appellate panel reversed finding there was no substantial credible evidence to support the trial court's findings that the PSA excused Amanda from

(Continued on page 14)

On Bankruptcy – Summary of a Recent Newsweek Article by Robert A. Karlin, PhD, APM

Jane Quinn recently published an article in Newsweek titled “The Case for Walking Away.” The complete article can be found in the 1/12/09 issue, and online at <http://www.newsweek.com/id/177749>. The article provides an interesting point of view about a difficult decision and, given both divorce mediation and our involvement in the foreclosure mediation program, it seemed worthwhile to summarize it in our newsletter.

In her article, Quinn suggests that this may be the year for many families to go bankrupt, despite the fact that it is painful and humiliating just to contemplate. If it is necessary, one should make sure bankruptcy accomplishes what it intends: giving one a fresh start. This fresh start means not throwing away the assets that remain in order to maintain a previous lifestyle a little longer.

As example, IRAs, 401(k)s and 529 college savings accounts are largely protected in bankruptcy. They should not be drawn down to make payments on impossible credit card savings accounts. She justifies this by noting the credit card compa-

nies charge large fees given the expectation that some of their debtors will not repay them. She also suggests that one go to the doctor and do what is necessary to protect you and your family’s health. Bankruptcy frees one from medical debt as well as consumer debt.

As to the house, she provides conflicting advice. First Quinn notes, along with Professor Katie Porter of the University of Iowa Law School, that families often struggle to keep their homes longer than they should. On the other hand, she suggests that bankruptcy can help save one’s home under specific circumstances. For example, most states allow people to keep a certain amount of home equity through a bankruptcy. So, if the market value of the house is less than the sum of its mortgage and your home equity exclusion, and your mortgage payments are current, a family may be able to keep its house, while getting rid of consumer and medical debt.

In the same vein, Porter has suggested bankruptcy judges reduce mortgage principal, if the house is

worth a good deal less than the mortgage.

Alternatively, if it is a Chapter 7 bankruptcy and the house is worth more than its mortgage or you are well behind on payments, you are likely to see the house sold. If losing the house is inevitable, Quinn suggests walking away slowly and fairly gracefully, rather than desperately hanging on. She suggests that the family stop making payments on the home, stay there until foreclosure forces them out, then move out and rent. She notes that if the mortgage is a good deal more than the house is worth, the family is already renting, in a sense, as they have no equity.

Quinn notes that few lenders will pursue borrowers for the remaining balance. (I have some doubts about this one.)

Finally, foreclosures stay on a credit record for seven years and bankruptcies for ten years. However, one might keep one or two zero balance credit cards through the bankruptcy and, in that and other ways re-establish one’s status as someone who pays on time. That may get decent credit restored even sooner.

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Family Law Case Update, Continued

(Continued from page 12)

attending college on a full-time basis due to financial considerations. November 13, 2008.

Freda v. Freda, App. Div.—In this case, both parties were in their 70s and had been married for more than 50 years. Their means were limited. The wife requested that their Social Security benefits be equalized so that post divorce they both had the same amount of money (the wife's Social Security benefit was \$797 and the husband's was \$1,400). The appellate panel found that the trial court abused its discretion in denying plaintiff's alimony claim without equalizing the parties' social security income. Defendant was ordered to pay \$300 per month to plaintiff. Further, the award of attorneys' fees to defendant was affirmed as the panel found it warranted to balance the inequity of defendant paying \$400 a month in alimony plus all the marital home expenses for two years pendente lite, during this period plaintiff was residing in the marital home and defendant lived with his sister because he did not have the resources to pay for his own accommodations. November 20, 2008

Schwartz v. Schwartz, App. Div.—The trial court's use of a percentage of defendant's gross income to fix alimony and child support upon a motion for modification was error. The implementation of a formula percentage ignores the requirements of law and shirks the responsibilities of the court to make specific factual findings and then determine alimony guided by N.J.S.A. 2A:34-23, and to calculate child support in accordance with the court's child support guidelines. January 13, 2009

Barbato v. Barbato, App. Div.—The appellate court affirmed the trial court order vacating the parties'

property settlement agreement on the basis that it was unenforceable due to defendant's mental illness, pro se status and the one sided nature of the agreement. January 13, 2009

Curry v. Curry, App. Div.—The appellate court reverses a final restraining order because the judge did not find that defendant engaged in a "course of alarming conduct or of repeatedly committed acts"; did not find that it was defendant's purpose to seriously annoy plaintiff, finding only that he expressed "his anger and frustration and did it with the purpose to annoy"; did not find a previous history of domestic violence, or the existence of any immediate danger to plaintiff. The appellate court said that the evidence established no more than the "ordinary domestic contretemps" that one might expect when a spouse believes that he or she has discovered direct evidence of the other spouse's infidelity. January 20, 2009

Note: Carl Cangelosi's column in each newsletter briefly reviews a number of recently decided, important family law cases and allows us to "keep up." For a more comprehensive approach, each year the family law team at the Wilentz, Goldman and Spitzer law firm puts together a compendium of family law cases. Risa Kleiner Esq., APM is shown as second author on these summaries. This year's 46 page document may be found at: http://www.wilentz.com/Personal_Articles_Pubs.aspx?ViewType=All. Similar summaries for 2006 and 2007 are also available at that URL.

Robert Friedman, CPA and Long-Time NJAPM Treasurer by George Hays, PE, MBA, APM

I regret having to tell you that Robert Friedman passed away on January 16, 2009.

Bob joined NJAPM in 1995 and became accredited in both civil and family/divorce in 1999. That same year, he joined the board as NJAPM Treasurer. Bob served as our treasurer until 2006, when he retired from the board. As treasurer, he saw his role as being the conservator of our financial resources and often urged the board to use them wisely. He gave freely of his time and knowledge for the benefit of the association and was an excellent resource for his mediator colleagues when accounting and tax questions arose in their mediations.

Bob's professional history was distinguished. He became a CPA in 1958 and in 1966 founded Friedman, Strulowiz & Buren, Certified Public Accountants. In 1982 he started Friedman, Bressler & Co., Certified Public Accountants. From 1995 to 2000 he was a partner of Smolin, Lupin & Co., P.A. Still later, he became the managing member of Generational Financial Planning, LLC. Bob practiced forensic accounting, including valuations of closely held businesses and professional practices. He consulted on the purchase and sale of many businesses and was responsible for detecting, deterring and investigating fraud.

NJAPM honored Bob for his service to the board in 2006 at that year's conference. Since his retirement from the NJAPM Board and reactivation of the Morris Area Peer Group, Bob had been an active member of that group as well.

Those of us who had the privilege of knowing and working with Bob will miss him.

Marketing Plan for a Professional Service Business

Part 3, Promotion by Armand Bucci

In the first two articles, we covered three of the four “P’s” of most marketing plans: Price, Positioning and Packaging. To close out the series, I want to cover Promotion. This can be broken down into six strategies that can be classified in two categories. The first category can be called strategies for educating and informing your prospects and includes writing, speaking and keep-in-touch strategies. The second category can be called strategies for building relationships with existing clients and new prospects and includes referral, networking and direct outreach strategies.

Writing can involve having your material appear in a newspaper or magazine as a regular contributor. It’s the best way to get exposure and usually the most difficult. Your best opportunity will be having your article published in the local paper where the editor is usually looking for contributors. Many national columnists got started this way. If you don’t know the editor of a newspaper or magazine you can always write a response to the “Letters to the Editor” section of most any publication. It’s a great way to get your name before the editor that could lead to a regular contributing piece.

Another way to get to know people at a publication is contacting the reporter of an article when they write about mediation, especially when mediation is used in the wrong context. There have been several times that the reporter used the term mediation when you can tell from reading the article that another process was used. Contact the reporter, their email address many times appears at the end of the article, and offer an informative correction.

At the same time, offer yourself as

a professional reference source should the subject matter come up again. There has not been one time that I have not heard back from a reporter when I have done this.

There are plenty of opportunities to speak before civic and professional groups if you take the time to do a little homework. I’m assuming that you’re comfortable speaking before people. If you are not one of the first things you should do is join Toastmasters. It’s the best place to get the experience of speaking in public and the members will help you improve your skills. Even if you have spoken in public before, you can always learn something from the other speakers and with 157 clubs in New Jersey, it is also an excellent networking opportunity. The homepage of their web site, www.toastmasters.org, provides a link to the local clubs.

When you do speak, make sure your topic is of interest to the group. Check out the association’s web site and see if you can find something to show how mediation can be useful to what they do. NJAPM has developed a PowerPoint presentation and script for members to use as a guideline. Getting approved for continuing education credits opens many doors for you. The presentation I give on “Mediation Skills for the Healthcare Professional” is approved for education credits for Certified Case Managers and nurses. It’s very easy for me to get into insurance companies and hospitals as well as association meetings because they need the credits.

Keep-in-touch means the best way to stay in front of clients and prospective clients. You need your name in front of people on a regular

basis so when the need arises they will think of you. There are several ways you can do this including newsletters, letters, calls, postcards and eZines (email newsletters). If you’re not sure how to go about this or what to comment on think about how others keep in touch with you. What do you receive in the mail or electronically that keeps that person or company in front of you?

I’ve written before about how I like attending business expos and talking to the exhibitors as a way to network. Another advantage to this is collecting their marketing materials, reviewing them and seeing what you like or don’t like. Many times the handout will include a newsletter. If you’re on the website of a company or organization that offers an email newsletter sign up to see what they send. What ideas do you see that you can use? When you select the method or methods you are comfortable with remember that the message needs to be relevant to the reader. Granted not every topic will be of interest to every person.

Bringing in business from nothing but referrals should be the ultimate goal of any mediator. When you’re at the point where you never have to make a cold call for business, a referral is considered a warm call, you know you are set. The biggest problem in getting to that point is “remembering to ask.” This is the biggest problem for professional sales people so you’re not alone. The question usually is when in the process do you feel you are justified in asking. For most people, it is usually at the end of the mediation when the dispute has been resolved.

One way to get referrals is to join

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Challenging Conflict: Mediation Through Understanding

Authors: Gary Friedman and Jack Himmelstein 2008, ABA

Book Review by Adam J. Berner, Esq., MA. APM

C*hallenging Conflict, Mediation Through Understanding*, published in cooperation with the Harvard Program on Negotiation, is a must-read for mediators serious about deepening their mediation skills. Demonstrating the “Understanding Based Model of Mediation”, this book enlarges our understanding of the magic of mediation and the dynamics of conflict while conveying a profound respect for the humanity of the parties who seek our help.

Challenging Conflict first provides a brief introduction to the mediation process and the authors’ approach to mediation. Each of the following 13 chapters presents a different case and the authors’ commentary. The cases cover a wide range of commercial, workplace, and neighborhood/environmental disputes, each with annotated line-by-line dialogue. The reader gets an insider’s view of a master mediator in action. So, by the end of the book, the reader has gone through a mediation mini-training and had a lesson on the values, stages and/or skills essential to the Understanding Based Model (UBM) of mediation. The basic values of the model include:

Relying primarily on the power of understanding rather than the power of coercion to drive the process;

The parties are to be primarily responsible in determining whether and how the conflict will be resolved;

The parties are best served working *together* in reaching a resolution (in contrast to caucusing separately); and

Conflicts are best resolved by uncovering what lies under the level at which the parties experience the conflict – both on a substantive level as well as on the inter-relational level.

Some of these topics or skills in-

clude the following: Pre-mediation considerations including how the parties are engaged in their conflict and who should be responsible to resolve it; Ground rules or ground “Agreements”; Looping (a.k.a. active listening skills) to generate understanding; Establishing the motivation to work together in mediation; Deepening the discussion and awareness; The role of the law and lawyers; Understanding each side without judgment; and Developing and evaluating options for agreements.

Applying these values and skills as the authors suggest results in an approach that differs radically from both the traditional attorney model and the way many mediators practice as well.

Here are some highlights of the differences.

At the outset, the authors’ attention to “conflict trap,” defined as “a set of mutually reinforcing responses to a conflict that keep the parties locked in battle even when the moves and countermoves are seemingly designed to end the struggle.” Instead of enabling the parties to continue to engage in this same way of interaction, UBM (as per core value #4 above) seeks to make the parties not only more aware of the underlying needs and interests on a substantive level, but more aware the conflict dynamic between them and how this dynamic is interfering with resolution of the dispute focus. This model aspires to reach not just mere settlements, but opportunities for resolutions and relationships.

This model of mediation is not looking to minimize conflict, nor evade or go around it, but as the title of this book suggests - going

through it, to challenge it head on. In this view, there is value in having the tension of the conflict in the room, while (and even especially while) all sides are in the room together. This is certainly a radical departure from most lawyers (and mediators) who, upon any glimpse of tension, are quick to send both sides to their respective rooms. Not so for these non-caucus mediators, who define mediation as a “process in which the parties make decisions together based on their understanding of their own views, each other’s, and the reality they face.” The opportunities for deeper understanding of one’s self and others are at the greatest potential when all sides are part of the same conversation. As the authors explain, it is then the role of the mediator to create a safe place for that authentic conversation to happen.

Another striking element of this book is its discussion of the role of emotions in mediation. Anger, for example, is to be explored and understood. It is not just about venting. “It is not a question of simply giving the anger room for expression... It is a question of the mediator authentically seeking to understand that the parties are angry and the parties’ feeling that that is understood. And it doesn’t stop there. Once the fact of each party’s anger is understood, the challenge is to go beneath....These feelings that are often unexpressed and unappreciated, hidden at times even from the party who holds them Addressing these feelings with the parties may begin to loosen the hold of the attack/defense mode that keeps their conflict intact.” (p. 211)

While this more personal, value based, and interpersonal focused mediation might be more readily

(Continued on page 17)

Challenging Conflict: Book Review Continued

(Continued from page 16)

accepted in the family arena, one of the most important contributions of this book is its demonstration how this orientation should be valued in the business arena. In this regard, the annotated line-by-line dialogues demonstrate how, when and why to have a conversation on the impact of the law and the legal process. In my own experience, I have come to expect attorneys to be resistant to these kinds of conversations, worrying that it will risk their client position or their strategic arguments at trial. The authors provide an articulate and thoughtful response to such concerns.

With all of the values underlying this work, it is done in a modest humble way that does not declare that this model is right for every conflict and does not presume to take parties to a place or into a relationship that the parties don't want. As the authors explain, "what we seek and hope for is to provide the parties the opportunity to resolve their conflict at the fullest level they wish."

In sum, I found this book me out of the immediacy of my caseload. It reminded how much more we can learn and grow if we want to continue doing this work in a meaningful, human and authentic way. Jack Himmelstein and Gary Friedman have eloquently and profoundly articulated a rich and rewarding mediation process. *Challenging Conflict*, indeed a fitting title, was worth the wait and even more worth the time to read and re-read.

Postscript: Subsequent to the completion of this book review, *Challenging Conflict* was honored as the recipient of the highly prestigious award, CPR Book of the Year Award for 2008.

This is quite noteworthy as the

CPR (International Institute for Conflict Prevention and Resolution) is a leading international practice and teaching dispute resolution institute and is a proponent of the caucus model of commercial mediation. That caucus model is strongly challenged in this book.

[1] Published by Workman Press in 1993, authored by Gary Friedman and introduction co-authored by Jack Himmelstein.

Adam Berner practices mediation and Collaborative Family Law, with offices in Bergen County and New York City. He is Past President of the Family & Divorce Mediation Council of Greater New York, Founding President of the North Jersey Collaborative Law Group and a founding member of the New York Association of Collaborative Professionals. Adam has served as an Adjunct Professor for over a decade at Cardozo School of Law in Manhattan and as an instructor for NJ ICLE's divorce mediation training.

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Items to Add to your 2009 Tax Checklist:

by Catherine Ross, Esq., APM

Family mediators may want to add the following items to their 2009 tax checklist when working with clients' residences:

1. If the home is recently purchased, did the purchasers take advantage of the 10% purchase price tax credit (\$7500 max) for new home buyers? If so, who will bear the annual interest free repayment obligation over the next 15 years? Have they failed to make timely payments in the past resulting in a different IRS problem?

2. If homeowner(s) are expecting to exclude gain of \$250k (individual) or \$500k (couple), check the 5 year, 2 year, and any prior or future rental of the property and refer the clients to a CPA for more detailed analysis of the tax issue.

Catherine Ross maintain a family law and divorce mediation practice in Lawrence Township. Please see our fall 2008 newsletter for her feature article and extensive checklist for divorcing clients.

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NJAPM Introduces Member-Led Training Programs You Can Make this Happen!

by Carl Cangelosi, JD, APM

Do you have a program or specialized knowledge that you would like to share with fellow members? If so, please consider putting on a training course or workshop with NJAPM.

The NJAPM Board recently approved the notion, and is actively soliciting proposals for educational programs to be presented by NJAPM members.

We already offer a variety of basic and annual educations programs. These include a basic four-day civil mediation training a basic five-day divorce mediation training, and annual civil and divorce seminars. There are also frequent general meetings, as well as the annual conference.

Many members have said that they would like additional programs on specific subjects. Additionally, there have been requests for “intermediate” level training programs. The problem is finding qualified presenters and significant topics. That is where contributions from you, our fellow members, can make this happen.

Here are the ground rules for offering a program:

1. A member may submit a proposal to present a program directly related to the mission of NJAPM (see next column).
2. Program organizer and presenters receive no payment, but attend programs at no cost.
3. NJAPM’s objective is to provide meaningful programs and cover program costs so nominal fees will be charged for all programs.
4. The proposal should be detailed, e.g., a course outline, CV’s of presenters, proposed dates for the program, etc.
5. Generally, programs should be a half-day (about four hours).



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Fostering excellence in the field of mediation

Promoting mediation as the preferred method of dispute resolution

Encouraging and providing mediation education to the public, the government and the professions

Training and accrediting professional mediators

Protecting the public with a Code of Ethics and Standards for mediators



If the Special Program Committee accepts the proposal, NJAPM will facilitate the meeting place, advertising within NJAPM, cover miscellaneous costs (copying, etc.), and provide registration and billing services

NJAPM will sponsor the program, but the content will be the responsibility of the presenter.

Continuing education credits will be determined individually for each program.

Interested? We hope so.

Please provide your proposal to me at ccangelosi@njmediaiton.org or (609) 275-1352.

Psychology 101 Continued

(Continued from page 8)

have “discovered” that people who were sicker at the beginning of a study tended to die sooner. That seems much more likely than getting your calories at 8 AM rather than at noon leads to increased longevity. When this problem became obvious, the insurance industry, which should have known better, wound up with a good deal of egg on its face.

Why is a laboratory experiment different? In a psychology experiment, people randomly selected from the population are randomly assigned to groups. Due to randomization, the groups start the same on all the “third” variables that prevent causal inferences in correlation research. In simple experiments, the groups are then treated differently. If, after being treated differently, the groups respond more differently than they should if only random sampling error were involved, we say that the different ways the groups were treated caused the increased differences. Then we replicate to make sure the same thing occurs with another sample. Then other labs, in other universities with access to different populations, replicate important findings. Only then may we safely make the causal inferences that allow us to write effective prescriptions for change.

If anyone is interested in precisely how randomization does this, email me at rakarlin@rci.rutgers.edu and I will send you an explanation. For the rest of you, trust me on this one, it is true.

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

Marketing Plan for a Professional Service Business, Continued

(Continued from page 15)

a formal networking club. Some of the larger ones include LeTip, Business Networking International and Ali Lassen's Lead Club. Each week the group gets together to exchange referrals. Usually there is one representative from each type of business and I can almost guarantee that mediation is not one of them. There is usually a lawyer in the group and mediation is not one of their services. A stockbroker friend of mine always put the following as a tag at the end of every email, "A Referral is the Greatest Expression of Appreciation I can Receive" - a great subliminal reminder.

I have written about networking before so I'll talk about where you can network. The Chamber of Commerce, professional associations and networking clubs are a great place to start. Most every county and many cities has chamber. NJAPM is a member of the New Jersey Chamber of Commerce so we can network and promote mediation. If you have decided what industry you would like to concentrate in and don't know where to find a group a great way to do so is use the *Encyclopedia of Associations*, available in the reference section of the library. You can look up an industry and it will list all of the associations related that industry. From the website for the national listing, you can find the local chapters. Another source is *Weddle's Association Directory*. The site is geared towards human resources people, recruiters and job hunters and it works the same way as the *Encyclopedia of Associations*. That website is www.weddles.com.

The final strategy is direct outreach. This is the culmination of the previous strategies and when you put your marketing plan into action.

The best way to do this is start with the 20 percent of your referrals that give you 80 percent of your business. Having developed your target market, you will maximize your efforts to get the quickest results. You may have to experiment with the combination of direct mailing, email newsletters, brochures and advertising to see what works best but at least you know it's going to the right audience. Your marketing plan is a guideline to reaching the audience you want. By paying attention to the response of each strategy you will be able to refine it to make it that much more effective.

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

SAVE THE DATE

**Saturday
November 14, 2009**

**NJAPM's
16th Annual
Conference**

**DoubleTree Hotel
Somerset, NJ**

8:15 AM — 4PM

NJAPM Membership Report, Continued

(Continued from page 11)

Welcome New Members

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Heidi I. Bressman
Lisa C. Charles
Arnold Cohen, MSW
James M. Cooney, Esq.
Michelle Maria Cresti, JD
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Kenneth F. Rempell, JD, MBA
Brian Lee Royster, Ed. D.
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Andrew Smith, Esq.
Linda Stamato
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Anna M. Delio, Esq. practices law and mediates civil and family/divorce disputes in Kenilworth, NJ. She is on the New Jersey Court's roster as a civil and foreclosure mediator, serves as a volunteer mediator & coordinator for the Special Civil Part Mediation program in Passaic County and serves as Secretary for NJAPM.

Target 18 – A Checklist of Eighteen Tips to Better Telephone Communications for Mediators by Anju D. Jessani, MBA, APM

In the fall 2008 issue of Mediation News, I provided tips to better email communications for mediators and others. If email communications are challenging, then the telephone conversation, which is often impromptu and rushed, has even more challenges.

Albert Mehrabian, Professor Emeritus of Psychology, UCLA states: “Seven percent of meaning is in the words that are spoken, 38% of meaning is paralinguistic (the way that the words are said), and 55% of meaning is in facial expression.”

Acknowledging that telephone communications without visual reference appear not to be disappearing anytime soon, I have attempted to provide a checklist for telephone communications – seven for outgoing calls and six for incoming calls, two for dealing specifically with divorcing clients, and three for all phone calls.

Outgoing Phone Calls

1. Know Purpose of Call: Before you call, you should have a clear purpose for the reason for the call, the information you need to provide in front of you, what you are planning to say, and what you hope will be the outcome of the call. Know in advance the call back phone number you are going to give, your fax number, email information and other details that may be requested of you during the phone call. Prepare a list of questions or bullet points you need to cover in the phone call.

2. Schedule Phone Calls: If appropriate, email the recipient in advance for permission to call, the reason for your call, with an approximate idea of how much time you will need for the call. Unscheduled phone calls of more than a couple of minutes are bound to

interfere with the recipient’s schedule, unless you are calling customer service.

3. Be Aware of Time & Place: When possible, make outgoing phone calls from a time and place where you can talk comfortably, and can take notes. A sporting event or rock concert is not the best place to be placing a phone call, unless the call is of an urgent nature. You should also try to call at a time convenient to the recipient; calling at the end of the day when people are short-staffed or in a rush to leave the office, is usually not productive.

4. Identify Yourself & Reason for Your Call: Give your name, business affiliation and reason for your call to whoever answers the phone, and please spell your name slowly, not getting annoyed if you are asked to repeat the information. If you were referred, let the person on the phone know that as well. Think about the telemarketers and collection agents who call with just their first name; you have nothing to hide. At the same time, be succinct.

5. Ask Permission for the Call: Ensure that you have reached the recipient at a good time. If you only need five minutes let them know that. Is the person in a place where they are able to speak comfortably, or is there a better time for you to reach them. Even though you might feel your matter is urgent, they are going to be more receptive to your phone call when they are in a comfortable position to speak to you and spend the time with you that you require to address your concerns.

6. Treat Gatekeepers with Respect: When calling someone with a secretary or administrative assistant, be patient and polite, and obtain his/her name. If appropriate, provide the reason for your call. The secretary/assistant can be your ally in getting to talk with the target, or your adversary in screening out your call

7. Leave a Coherent Message on Voicemail: Speak slowly and clearly, and if appropriate, leave a brief reason for the call. Repeating your phone number twice can be helpful, and if you have a name that is not “John Smith” – spelling your name can be helpful. Don’t you hate those messages that are long and then the person zips so fast through his/her phone number that you have to replay the message a number of times? FYI, the easiest way to ensure that there is no confusion regarding your callback number, is to make the phone call from the number you want a callback to if the phone has caller identification.

Incoming Phone Calls

1. Answer Call in a Timely Manner: Believe it or not, customer service organizations do keep track on how long the phone rings before the call is answered. You should do the same, especially if your phone is answered by a service or someone else. Phone your office from a non-identifiable number occasionally; it will not only allow you to experience what a client might, but will also keep your administrative staff on their toes.

2. Identify Yourself & Firm: In the pet peeves area, I do not want

(Continued on page 21)

Telephone Tips for Mediators, Continued

(Continued from page 20)

to know what number I have reached, I want to know the name of the firm and the person I have reached. Additionally, ask how you might be able to assist the caller. If you have a secretary or assistant, have someone else call the office to check to see how the phone is answered. You may be losing business in the first 30 seconds of an incoming call from a potential client if the phone is answered inadequately.

3. Ask Permission to Callback: It is better to answer your phone when you are in a position to speak, but we do not always have that luxury. Getting information about the reason for the call and the time the person needs, will allow you to have a conversation at a time convenient to you and the caller. The caller cannot possibly know your other commitments. Therefore, letting them know that their call is important and that you would like to call them back at a mutually convenient time where you can allocate the appropriate time is better than rushing them off the phone.

4. Callback in a Timely Manner: If you cannot take the call, return the call in a timely manner. If the call is truly of an urgent nature, let the person know that you are not in a position to speak right now, but will call them back at a specified time. In business, the expectation is that most calls should be returned within one business day.

5. Let Caller Know Out-of-Office Status: As with email, if you are on vacation or in a situation where you and will not be able to return calls immediately, let the caller know that via your assistant, secretary or answering machine or service. You might also let them know who else might be able to address their concern during your absence.

6. Go Easy on Holding: If you are expecting a call, let the caller know that and ask if you receive the other call, would they prefer they but put on hold or be called back, and get a callback phone number in advance. Otherwise, ignore the call-waiting signal; better to call the other caller back once you are off this phone. If you do have to put someone on hold, time, explain that briefly and ask for permission to do so. Try not to forget the person is on hold!

Divorcing Clients

1. Practice Discretion When Calling the Home Phone: If you are calling on a divorce matter and the wife has contacted you, be very careful when the husband answers (or visa versa). Leave just your name and phone number. The same applies to leaving messages on voicemail.

2. Let the Parties Call You First: The husband calls you to inquire about divorce mediation, and at the end of the conversation, he gives you his wife's phone number and asks you to call her. Do not fall into the trap. You might be the one breaking the bad news to her that he wants a divorce if you call. Ask the husband to give your contact information to the wife so that she may contact you.

Incoming and Outgoing Phone Calls – During the Call

1. Speak Clearly with Pauses: Overcoming the barrier of facial expression, attempt to speak clearly and calmly in your conversation so that your intentions are not misconstrued. Allow pauses that will in turn give the other person permission to speak. If you are happy, say that; if you upset, say that as well (courteously). We rely

on visual cues for many human emotions, and one cannot assume that the person will be able to notice these emotions from the tone of our voice alone.

2. Be Polite at All Times: How you speak is a reflection of your firm. If it is hard to do this, try to imagine that the phone call is being recorded and could be on the Internet. Be especially careful in leaving a message on an answering machine or service (e.g. Alex Baldwin's snafu); this is a permanent recording, and you have no control of the distribution of your message.

3. Take Notes and Summarize: We tend to try and multitask while we are on the phone, reading emails or even washing dishes! Instead, take notes while you are on the call. It will help you listen and focus on the speaker. At the end of the call, summarize the conversation and the next steps. Make sure the reason for your call was accomplished.

Tallying your Results

So, how did you do with the checklist? We all make mistakes. Nevertheless, being more mindful about telephone communications will definitely prevent disasters and help your professional reputation. If you have any tips or pet peeves on the subject, please email me, and I will include them as an addendum to this article in the next issue of Mediation News.

Anju D. Jessani is a past president of NJAPM, having served as President from 2005-2007. She has mediation offices in Hoboken and Clinton, New Jersey, and is instructor in NJAPM and ICLE's 40-hour divorce mediation training classes. Anju can be reached at (201) 217-1090 or ajessani@dwdmediation.com

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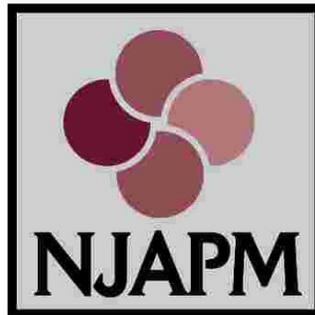


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Mark Your Calendar

NJAPM Seminars and Conferences

Annual Conference: Saturday, November 14, 2009, Somerset DoubleTree Hotel
Annual Divorce Mediation Seminar: Saturday, April 25, 2009, Somerset DoubleTree Hotel
Annual Advanced Civil Seminar: See website www.njapm.org for details

NJAPM Committee Meetings/General Membership Meetings

All Committee Meetings and General Membership Meetings are held at the New Jersey Law Center, 1 Constitution Square, New Brunswick, NJ 08901—Unless Otherwise Noted
 Committee meeting from 5:30 to 6:30 PM

An optional dinner is from 6:00 PM to 6:30 PM; reservations must be made in advance
 General Membership Meetings follow from 6:30:PM to 8:30 PM

General Meeting Schedule — April 23 (TH), May 20 (Wed), September 9 (Wed), 2009
Additional South Jersey General Meeting, Wednesday, April 22, 6:15 to 8:30 PM, 2009
 Wyndham Hotel, Mt. Laurel

NJAPM Board of Directors Meetings

Board of Directors are held from 8:30 AM to 12:00 Noon

Meeting Schedule — **All Wednesdays Unless Noted:** May 13 & September 16, 2009
 Board Retreat: Saturday, June 20, 2009

NJAPM Basic Training

Spring Basic (40-hour) Divorce Mediation Training: March 21-22, March 28, April 18-19, 2009
Spring Basic (24-Hour) Civil Mediation Training Course: April 27-28, May 5-6, 2009
Fall Basic Divorce and Civil Mediation Training: See website www.njapm.org for details



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