

Significant Case Law For Attorneys and Mediators

Hernando County School Board v. Paul and Alison Nazar; 31 Fla. L. Weekly D 532 (Fla. 5th DCA; Opinion Filed February 17, 2006):

The School Board filed a motion with the Fifth District seeking the imposition of sanctions against appellee, Paul Nazar, and his counsel, for their failure to appear at a court-ordered appellate mediation. The Fifth District concluded that Nazar and his attorney failed to comply with this court's Order of Referral to Mediation without good cause, granted the School Board's motion and imposed sanctions. The facts of this case are interesting-and instructive. The mediation was scheduled to be held in Hernando County on September 2, 2005. The mediator chosen by the parties traveled to the mediation from Orlando. Counsel for the School Board traveled from Gainesville, while representatives of the School Board traveled from Palatka and Brooksville. Paul Nazar did not appear for the scheduled mediation, and his attorney did not appear in person for the mediation-although he attempted to appear by telephone. **No motion was filed with the court seeking to excuse the personal appearance of either Paul Nazar or his attorney** (Emphasis Added). Instead, the attorney contacted the mediator's office and sought to be excused from appearing personally at the mediation. The mediator could not, and thus did not, excuse the personal appearance of either the attorney or his client due to the court's order which expressly stated that personal attendance can only be excused by the court. In replying to the School Board's motion for sanctions, both Paul Nazar and his attorney offered reasons why they were unable to personally attend the mediation. However, the Fifth District stated that they never brought these matters to the attention of the court prior to the mediation, nor sought court permission to be excused from personal attendance at the mediation. The Court held: "Having failed to seek permission from this court to be excused from appearing, or to show good cause for their failure to appear at mediation, imposition of sanctions are appropriate against both..."

The Fifth District ordered Paul Nazar and his attorney to each pay fifty percent of the following amounts as sanctions within 30 days from the date of the opinion: 1) all fees charged by the mediator in connection with this appellate mediation; and, 2) reasonable attorney's fees and costs incurred by the School Board in preparing for and attending the appellate mediation and filing the motion for sanctions. The attorney was also prohibited from charging the sanctions imposed against him to his client.

PRACTICE TIP

It is imperative that you read all Orders of Referral to Mediation CAREFULLY. These Orders must be treated seriously by all participants. Do not assume that you and/or your clients do not have to personally appear for mediation. If there are any reasons why someone should be excused from personal attendance at mediation, these matters must be brought to the attention of the court PRIOR to mediation. Please remember this: WHEN IN DOUBT, SHOW UP.

MEDIATION CONFIDENTIALITY AND PRIVILEGE ACT BECAME LAW EFFECTIVE JULY 1, 2004

Yes, this has become a regular column in this newsletter. However, this information is so important I'm mentioning it one more time. If you are actively involved with mediating cases in your practice and you have still not yet read the new statute, you really should. Effective July 1, 2004, most mediations conducted in the state of Florida will be subject to new provisions relating to confidentiality and privilege. A complete copy of the new provisions can be obtained via the internet at www.flsenate.gov. Insert "1970" on the left hand side of the page where it says "Jump to Bill" and look for the enrolled copy, which is the last one on the list. After being approved by the Governor, it was assigned chapter 2004-291, Laws of Florida. The law creates the "Mediation Confidentiality and Privilege Act."

For those of you who are frequently involved in multiple party mediations, the new language of Section 44.405(3) is particularly interesting. It states:

"If, in a mediation involving more than two parties, a party gives written notice to the other parties that the party is terminating its participation in the mediation, the party giving notice shall have a privilege to refuse to testify and to prevent any other person from testifying in a subsequent proceeding regarding only those mediation communications that occurred prior to the delivery of the written notice of termination to the other parties."

FLORIDA DEPARTMENT OF FINANCIAL SERVICES (DFS) AND COLLINS CENTER FOR PUBLIC POLICY OPEN NEW HURRICANE MEDIATION CENTER IN DAVIE, FLORIDA

In the last issue, I reported on The Collins Center's long history of assisting the State of Florida with hurricane recovery. The Collins Center, which has served as the administrator for the Florida Department of Financial Services (DFS) Hurricane Mediation Program, recently concluded its 2004 hurricane mediation program. Mediation requests from consumers exceeded 12,000 and the program generated an overall settlement rate of 92%. The DFS and Collins Center are now preparing for their 2005 hurricane mediation program. In mid-February, 2006, the Department of Financial Services opened its newest Hurricane Mediation Center in Davie (Broward County), Florida. This Center is mediating claims arising out of Hurricane Wilma as well as prior hurricanes, and is now operating Mondays through Fridays. Additional information about these programs is available at www.collinscenter.org, or by calling the DFS at 1-800-22-STORM.

MEDIATION AND NEGOTIATION SEMINARS AVAILABLE FOR CONTINUING EDUCATION CREDITS

For many years, I have written and spoken extensively about many mediation and negotiation-related topics, including: "Florida's Mediation Case Law", "Ingredients For A Successful Mediation Process"; "The Alternative Dispute Resolution Continuum"; "What Is Your Negotiating Style?" and "Effective Negotiating Tips And Tactics". If you want to put on a seminar for your law firm, clients and/or staff, please contact me for details.

RECENT APPOINTMENT

I was recently appointed to serve on the Litigation Alternatives Committee for the Florida Patient Safety Corporation. This Committee is charged with exploring alternative methods for resolving medical malpractice disputes. If you have any suggestions, ideas or recommendations you'd like to share, please contact me. Thank you.

DOMESTIC VIOLENCE COALITION OFFERS HELP

The Florida Coalition Against Domestic Violence offers victims a toll-free domestic violence hotline, 800-500-1119, and is the professional association for the 41 domestic violence centers that serve the state's 67 counties. Its website, www.fcadv.org, offers advice and information for those caught in an abusive relationship. According to crime figures for 2004, the number of reported domestic violence offenses decreased 0.8 percent in Florida, and arrests for those crimes decreased 1.5 percent from 2003. However, more than 119,000 incidents of domestic violence were reported, including 184 murders.

NOTABLE QUOTATIONS

"We are always getting ready to live, but never living."
- Ralph Waldo Emerson

"Life is a grindstone, and whether it grinds you down or polishes you up is for you alone to decide."
- Cavett Robert

"An optimist sees an opportunity in every calamity; a pessimist sees a calamity in every opportunity."
- Sir Winston Churchill

"Life is the solution not the problem."
- Og Mandino

"Humor is tragedy plus time."
- Mark Twain

"Imagination is more important than knowledge."
- Albert Einstein

"Self-confidence is the first requisite to great undertakings."
- Samuel Johnson

"Success is simple. Do what's right, the right way, at the right time."
- Arnold Glasow

"The important thing is to not stop questioning."
- Albert Einstein

"A wise man will make more opportunities than he finds."
- Frances Bacon

"It's what you learn after you know it all that counts."
- John Wooden

"Follow your bliss."
- Joseph Campbell

"Shoot for the moon. Even if you miss, you will land among the stars."
- Les Brown

"All things are possible until they are proved impossible and even the impossible may only be so as of now."
- Pearl S. Buck

"We all live with the objective of being happy; our lives are all different, and yet the same."
- Anne Frank

NEW PUBLICATIONS

My article "Ten Tips To Increase Your Edge In A Competitive Marketplace" appears in the Spring 2006 issue of *ACResolution*, the quarterly magazine of the Association for Conflict Resolution. ACR is the world's largest professional association for dispute resolvers. The Spring 2006 issue features several articles about business development, which should be of great interest to mediators, lawyers and entrepreneurs. For more information, please call ACR at (202) 464-9700 or visit ACR's website at www.ACRnet.org.

RECOMMENDED READING CORNER

The March, 2006 issue of *TRIAL*, the monthly magazine for the Association of Trial Lawyers of America, features a special section devoted to the modern law office. This section contains several interesting articles on dealing with the media, new technology and a device called a "smartphone", as well as computer security and developing a plan to protect your firm's most important electronic assets. Two Florida lawyers contributed articles to this issue: Spencer Aronfeld's article "Ten Steps to Finding the Perfect Legal Assistant" and Michael Eriksen's article "Love Boats on Troubled Waters" are well worth reading. For more information, contact ATLA at 1-800-482-ATLA (2852) or visit the website at www.atla.org.

DISPUTE RESOLUTION IN THE NEWS-PART I

The March 9, 2006 issue of *The Miami Herald* reported that, on March 8, 2006, the National Football League extended labor peace for at least six years as the owners approved a proposal from the NFL Players Association on the collective bargaining agreement and salary cap within it, reversing a stand they made less than a week before. Two days of talks, including a rare speech from commissioner Paul Tagliabue, prevented the league from going into labor unrest in the near future. NFLPA executive director Gene Upshaw thanked the owners: "On behalf of the players, the NFLPA staff and the negotiating team, we are pleased that this process has been concluded with an agreement. This agreement is not about one side winning or losing. Ultimately, it is about what is best for the players, the owners and the fans of the National Football League."

DISPUTE RESOLUTION IN THE NEWS-PART II

The March 17, 2008 issue of *The Miami Herald* reported that the University of Miami agreed to give hourly workers healthcare and raise their pay by at least 25 percent. Some UM janitors and other contract workers of Unicco Services Co. had been on strike for three weeks, arguing for better pay, healthcare benefits and union representation. Effective immediately, wages were to go up for many of the university's 900 contracted employees.

DISPUTE RESOLUTION IN THE NEWS-PART 111

The March 11, 2006 issue of *The Miami Herald* reported that the Cracker Barrel restaurant chain will pay \$2 million to settle a race and sex discrimination lawsuit brought by current and former employees, according to the U.S. Equal Employment Opportunity Commission. A Federal District Court Judge in Chicago entered the consent decree resolving the lawsuit, which alleged sexual and racial harassment and retaliation at several Cracker Barrel restaurants in Illinois. The company admitted no wrong doing. Under terms of the consent decree, 51 current and former employees at the Cracker Barrel restaurants will share in the settlement.

MESSAGES OF THANKS TO OUR TROOPS

To remember our troops in Iraq and around the world who risk their safety every day on our behalf, messages of appreciation and support can be sent via www.OperationDearAbby.net.

THANK YOU FOR 17 WONDERFUL YEARS - AND COUNTING!

I can't believe that in February, 2006, I celebrated my seventeenth anniversary as a Florida Supreme Court Certified County and Circuit Civil Mediator (I became a Certified Family Mediator in 1990). How quickly the years have passed. Many thanks for your patronage and generous support through the years. It is always an honor and privilege to be of service to you and your clients. I look forward to working with you for (at least) another 17 years.

WORTHY CAUSES

THE COOPERATIVE FEEDING PROGRAM: This 20-year-old agency, which dishes out more than a million meals a year, also provides free haircuts and other services to the needy, such as food stamp information and legal advice, with the help of volunteers. The agency also has an emergency food pantry that periodically supplies families with enough groceries to get them by for a few days. The program has seen a 25% increase in the demand for free food over the last year, but funding has been flat for the same period. Checks can be mailed to: The Cooperative Feeding Program, 1 NW 33 Terrace, Fort Lauderdale, Florida 33311. For more information, call (954) 792-2EAT (2328) or visit feedingbroward.org. Thank you.

THE GIFT OF LIFE: For information on how to become an organ donor, please visit www.organdonor.gov. Thank you.

THE FLORIDA LIONS FOUNDATION FOR THE BLIND, INC.: The Foundation provides eye surgery and sight related services to indigent blind and near blind individuals throughout the State of Florida and Grand Bahama Island. The Foundation works closely with the Division of Blind Services in the State of Florida to make sure eye medical care is not denied to Florida's poor. It is the principal charitable arm of the Lions' Clubs of the State of Florida. For more information, please contact Roger N. Messer, Esquire, the President of the Foundation for 2005-2006, in Port St. Lucie, Florida at: (772) 879-3000. Thank you.

UNIVERSITY OF MIAMI-NOVA SOUTHEASTERN UNIVERSITY CENTER FOR AUTISM & RELATED DISABILITIES (UM-NSU CARD): Is dedicated to optimizing the potential of people with autism, dual sensory impairment and related

disabilities. In 1993, the legislature passed a statute that appropriated startup funds to establish the Center for Autism and Related Disabilities (CARD) at sites throughout Florida, including the University of South Florida, the University of Miami, Florida State University, University of Florida at Gainesville and Jacksonville, and the University of Central Florida. Individuals of any age with autism, pervasive developmental disorder, dual sensory impairment or sensory impairment with other disabling conditions, their family members, friends and professionals are eligible to receive CARD's free service. For contributions or information, please contact UM-NSU CARD's main office at: 5655 Ponce de Leon Boulevard, Coral Gables, Florida 33125-0725 Telephone: (305) 284-6563, 1-800-9-AUTISM, Fax: (305) 284-6555 www.umcard.org. Thanks.

HOPE OUTREACH CENTER, INC.: HOPE, which stands for Helping Other People Everyday, is a not-for-profit 501(c)(3) organization, founded in 1995, by the Reverend Gabriel O'Reilly, pastor of St. David Catholic Church, whose vision was to develop and provide services that address quality of life issues and help the disadvantaged residents of Broward County. For more information, please contact HOPE at: 4700 SW 64 Avenue, Suite A, Davie, Florida 33314. Telephone: (954) 321-0909, Fax: (954) 321-1059 www.hopeoutreach.org. Thank you.

MAKE-A-WISH FOUNDATION: Since 1980, the Make-A-Wish Foundation has granted more than 144,000 wishes for children with life-threatening medical conditions. It is the largest wish-granting charity in the world, with 74 chapters across the United States and its territories and 28 international affiliates on five continents. For more information, please visit the Make-A-Wish web site at: www.wish.org or call (866) 880-1382 (toll-free). You can also support the Make-A-Wish Foundation by returning a generous tax-deductible contribution to the Gift Processing Center at: P.O. Box 97104, Washington, DC 20090-7104. Thank you.

MAY I ASK A FAVOR?

IF YOU HAVE A QUESTION OR SUBJECT you'd like me to address in this newsletter, please send me an e-mail with your suggestion. Thanks.

PLEASE FORWARD: If you'd like to share this newsletter with your partners, associates, clients, friends and colleagues, feel free to forward this issue including the copyright notice.

ADDRESS CHANGES: If you want to continue to receive my newsletter, please make sure I have your current e-mail address.

QUESTIONS? COMMENTS? IDEAS? OPINIONS? I'm always happy to hear from you.

Can you believe the first quarter of the new year has already passed, "March Madness" is over (Congratulations to NCAA Men's Basketball champions, the Florida Gators! I hope your favorite college basketball team made, and did well in, the NCAA tournament), as is The Masters golf tournament (Phil Mickelson won his second green jacket, and my favorite golfer, Rocco Mediate, also played well until he reinjured his back during the final round). Baseball season has started and, so far, the Florida Marlins are still in Florida (This is a very young team much like the 1962 NY Mets, but the players try hard and are exciting to watch). The end of another school year, and the beginning of summer vacation, are rapidly approaching. I hope you and the members of your families and law firms celebrated a very Happy Easter and a Joyous Passover.

Enjoy the beauty and wonders of Spring. Best wishes for Good Health, Good Luck and Good Mediation in 2006 and beyond.

BRUCE A. BLITMAN, ESQ.

Certified County, Family, Circuit Civil and Federal Mediator

9050 Pines Boulevard Suite 450

Pembroke Pines, Florida 33024

Phone: (954) 437-3446

Fax: (954) 431-8828

E-Mail: BABmediate@aol.com

Full Bio: www.tfapm.org/bio_listing.shtml

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