

## Significant Case Law For Attorneys and Mediators

*Dorsett v. Dorsett; 902 So. 2d 947  
(Fla. 4th DCA; Opinion Filed 2005):*

The parties attended court-ordered mediation. The Mediation Conference Report stated that the parties were still negotiating and may return to mediation. They did not return. Months later the former husband filed a Motion To Enforce Settlement Agreement, claiming that at the office of the Wife's attorney, the parties and their attorneys settled, resolved and agreed upon all issues in the case and the former Wife would not abide by the terms of the agreement. The former Husband admitted there was no signed agreement and claimed there was an oral agreement which the trial court adopted. Some of the terms of this adopted "oral agreement" addressed the parties' minor child. The Fourth District Court of Appeal held that "a trial court's responsibility to the child cannot be abdicated to any parent, any expert" and that "a court is not bound by any agreement between the parents."

### PRACTICE TIP

Parties and their counsel should always put the terms and conditions of their mediated settlement agreements in writing. "Oral agreements" are not usually enforceable. With respect to family mediations, the parties can create mediation agreements on some or all parenting issues. However, it is important to note that the courts must still approve these terms and conditions of the parties' agreements.

## 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](http://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."

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## COLLINS CENTER FOR PUBLIC POLICY ASSISTS IN NATIONAL HURRICANE RECOVERY EFFORT

The Collins Center has a long history of assisting the State of Florida with hurricane recovery and is now expanding its leadership on a national level. The Center will focus efforts on two new fronts: (1) expanding hurricane mediation services to Texas, Louisiana, Mississippi and Alabama; and (2) assisting the insurance industry and State of Florida with keeping the private homeowner insurance market viable, backed by public support. In addition to these new projects, the Collins Center is wrapping up the 2004 hurricane mediation program. Mediation requests from consumers exceeded 12,000 and the program generated an overall settlement rate of 92%. I was honored to serve on The Center's Roster of Mediators for the 2004 hurricane mediation program. Additional information about these programs is available at [www.collinscenter.org](http://www.collinscenter.org).

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## 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.

### NOTABLE QUOTATIONS

"May all of your troubles last as long as your New Year's resolutions."  
- Joey Adams

"Luck is a matter of preparation meeting opportunity."  
- Oprah Winfrey

"The time is always right to do what is right."  
- Martin Luther King, Jr.

"Never mistake knowledge for wisdom. One helps you make a living; the other helps you make a life."  
- Sandra Carey

"The highest reward for a person's toil is not what they get for it, but what they become by it."  
- John Ruskin

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"Truth has no special time of its own. Its hour is now-always."  
- Albert Schweitzer

"The most important thing in communication is to hear what isn't being said."  
- Peter F. Drucker

"A real friend is one who walks in when the rest of the world walks out."  
- Walter Winchell

"Money is a good servant but a bad master."  
- French Proverb

"Kind words can be short and easy to speak, but their echoes are truly endless."  
- Mother Teresa

"For fast-acting relief, try slowing down."  
- Lily Tomlin

"Meetings are indispensable when you don't want to do anything."  
- John Kenneth Galbraith

"The difference between the impossible and the possible lies in a person's determination."  
- Tommy Lasorda

"Education is learning what you didn't even know you didn't know."  
- Daniel J. Boorstin

"He that can have patience can have what he will."  
- Benjamin Franklin

"There ain't no surer way to find out whether you like people or hate them than to travel with them."  
- Mark Twain

"The greatest gifts you can give your children are the roots of responsibility and the wings of independence."  
- Denis Waitley

"Manners are the happy way of doing things."  
- Ralph Waldo Emerson

"Tact is the art of making guests feel at home when that's really where you wish they were."  
- George E. Bergman

"Correction does much, but encouragement does more."  
- Goethe

"When all else fails, read the instructions."  
- Agnes Allen

"What counts is not necessarily the size of the dog in the fight-it's the size of the fight in the dog."  
- Dwight D. Eisenhower

"Just as there are no little people or unimportant lives, there is no insignificant work."  
- Elena Bonner

"Character is like a tree and reputation like its shadow. The shadow is what we think of it; the tree is the real thing."  
- Abraham Lincoln

"The purpose of life is a life of purpose."  
- Robert Byrne

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## RECOMMENDED READING CORNER

The Fall 2005 issue of ACRResolution, the quarterly magazine of the Association For Conflict Resolution is devoted to "Spirituality And the Heart Of Conflict Resolution." This issue contains several interesting and thought provoking articles. Please visit ACR's website at [www.ACRnet.org](http://www.ACRnet.org). Several other interesting articles published in recent issues of Dispute Resolution Journal are: "Same-Neutral Med-Arb: What Does The Future Hold?" by Gerald F. Phillips; "Creating A Commercial Dispute Resolution Center In The Palestinian Territories" by William E. Davis, Lubna Katbeh and Shahla Maghzi-Ali; "The Power of Mediation to Resolve International Commercial Disputes and Repair Business Relationships" by Alexandra Alvarado Bowen; "Technical Mediation: A New Tool For Resolving Complex Construction Disputes" by Robert S. Peckar; "Georgia-Pacific's ADR Program: A Critical Review After 10 Years" by Phillip M. Armstrong (May/July 2005); and "Paying Attention to "Culture" in International Commercial Arbitration" by William K. Slate II and "Problem-Solving Advocacy in Mediations" by Harold I. Abramson (August/October 2004).

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## DISPUTE RESOLUTION IN THE NEWS - PART I

The December 2, 2005 issue of The Herald reported that the Boston Red Sox asked a judge to let the team keep the ball that Doug Mientkiewicz caught for the final out that clinched Boston's 2004 World Series title. Ownership of the ball has been in dispute during the 13 months since pitcher Keith Foulke flipped it to Mientkiewicz, giving Boston a four-game sweep of the St. Louis Cardinals and its first World Series championship in 86 years. Mientkiewicz, the team's first baseman, was traded to the New York Mets in January, 2005, claimed ownership of the ball when the Red Sox asked for it. Lawyers for the Red Sox filed a lawsuit in Suffolk (Massachusetts) Superior Court asking the court to keep the ball or place it in some other "secure location" until a judge decides the ownership question.

## DISPUTE RESOLUTION IN THE NEWS - PART II

Terrell Owens, the gifted but tempestuous wide receiver for the Philadelphia Eagles, was suspended for four games without pay because of a "large number of situations that accumulated over a long period of time", according to head coach Andy Reid. After the suspension, the team deactivated Owens for the rest of the season. The players' union notified the National Football League that it was grieving the team's right to take disciplinary action against Owens. After an arbitration hearing, the arbitrator ruled in the team's favor and sustained the team's sanctions against Owens. The four-game suspension cost Owens almost \$800,000.

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## **DISPUTE RESOLUTION IN THE NEWS - PART III**

The January 5, 2006 issue of The Miami Herald reported that actors Charlie Sheen and Denise Richards are continuing with their divorce process. Lawyers for Sheen and Richards filed legal papers asking a private judge to handle their divorce, reports The Associated Press. The papers, filed in Los Angeles Superior Court, requested that the case be taken out of court and assigned to retired commissioner Jill S. Robbins. Publicist Stan Rosenfield said, "They asked the court to go to a private arbitrator. They want to keep it private."

### **WISE WORDS**

Take time to work,  
It is the price of success.  
Take time to think,  
It is the source of power.  
Take time to play,  
It is the secret of perpetual youth.  
Take time to read,  
It is the foundation of wisdom.  
Take time to be friendly,  
It is the road to happiness.  
Take time to love and be loved,  
It is the privilege of the gods.  
Take time to share,  
Life is too short to be selfish.  
Take time to laugh,  
Laughter is the music of the soul.

(From Dear Abby column, The Herald, March 17, 2005)

### **HOW TO MAINTAIN YOUR SANITY BY: TREY RYDER**

1. Do a good job. You'll be happier.
2. Be honest. You'll stand out from the crowd.
3. Give good service. You'll find yourself far ahead of competitors.
4. Deliver more than you promise. Then everyone wins.
5. Help your competitors. There's plenty of business for everyone.
6. Just do it. Doing something is infinitely more valuable than doing nothing.
7. Don't worry about making a mistake. Everybody makes them and most people never notice.
8. Learn how to say no. You're the only person who can make that decision.
9. Don't try to help everyone. You can't.
10. Return phone calls quickly. Most people don't.
11. Don't overlook small clients. Someday they'll be big clients.
12. Do what you love and the money will follow.
13. Don't be easily impressed. People who tell you how successful they are usually aren't.

14. Stay away from negative people. They drain your energy.
15. Don't discount your fees. You deserve the full value of what you charge.
16. If you charge a lot, make sure you're worth it.
17. When you charge too little, you undermine everything you do.
18. Accept rejection. When God closes one door, He opens another.
19. Typos are always bad. Proofread.
20. If you overlook a typo, don't worry. The person reading your material will likely miss it, too.
21. Take time for fun. It recharges your batteries.
22. Take a break.
23. Don't sweat the small stuff. It's all small stuff.
24. The shortest distance between two people is a smile.
25. Give people the benefit of the doubt. Like everyone else, they're pedaling as fast as they can.
26. Apologize.
27. Forgive.

This wonderful article appeared in the April 21, 2005 issue of Trey Ryder's Lawyer Marketing Alert. Trey publishes a free, weekly newsletter which contains valuable marketing information for lawyers. To receive this Alert, send an e-mail to [trey@tretryder.com](mailto:trey@tretryder.com) and put "Subscribe LMA" in the subject line. You can also call Trey at 1-888-873-9793. Please feel free to mention that you read about him in my newsletter.

### **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](http://www.OperationDearAbby.net).

### **CONFLICT RESOLUTION DAY 2005**

The Association for Conflict Resolution (ACR) officially adopted October 20, 2005 as "Conflict Resolution Day" and requested Congress to "issue a resolution calling on the people of the United States to observe "Conflict Resolution Day" with appropriate ceremonies, activities, and educational programs." For the complete text, please visit [www.ACRnet.org/crday](http://www.ACRnet.org/crday). As reported in the last issue of this newsletter, Governor Jeb Bush proclaimed the week of October 16-22, 2005 Mediation Week in Florida. In his proclamation, Governor Bush stated "Florida is a leader in recognizing and promoting mediation as an alternative to litigation;..." and "... mediation empowers individuals to develop solutions to conflicts that are tailored to their particular needs;..." Florida has recognized Mediation Days and Mediation Weeks since the administration of the late Governor Lawton Chiles.

### **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

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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](http://feedingbroward.org). Thank you.

**THE GIFT OF LIFE:** For information on how to become an organ donor, please visit [www.organdonor.gov](http://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](http://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.hope-outreach.org](http://www.hope-outreach.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](http://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.

It's hard to believe another new year has arrived. I hope you and the members of your family and staff enjoyed the holiday season, and that everyone has returned to work and school rested, relaxed, refreshed and reinvigorated and ready to welcome the New Year. I wish all of you a New Year filled with Good Health, Joy, Peace and Prosperity. Enjoy the beauty (and cooler weather) of winter. Best wishes for Good Health, Good Luck and Good Mediation in 2006 and beyond.

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