

## Significant Case Law For Attorneys and Mediators

*Veronica Harrelson v. Joyce Hensley; 891 So. 2d 635(Fla. 5th DCA; Opinion Filed January 28, 2005):*

The Fifth District Court of Appeal ordered the parties to attend a court-ordered appellate mediation conference. The order stated that “parties with full settlement authority... are required to attend mediation in person unless excused by the court. The order also provided that “failure of an attorney or party to appear for a duly scheduled mediation conference or otherwise comply with appellate mediation program procedures, without good cause, may result in the imposition of sanctions by this court,...” Pursuant to this order, the parties jointly selected a mediator and a mediation conference was scheduled. On the morning of the mediation conference, Harrelson’s counsel contacted opposing counsel to advise that Harrelson would not attend the mediation conference. No motion to be excused from the mediation was filed with the court. The mediation conference proceeded with Hensley, Hensley’s counsel, and Harrelson’s counsel, but without Harrelson in attendance.

After the mediation, Hensley filed a motion with the appellate court seeking sanctions against Harrelson and Harrelson’s counsel for willful violation of the court’s referral order. In responding to the motion for sanctions, Harrelson provided no good cause for her failure to attend mediation, instead simply contending that she “has been so disturbed by the obnoxious conduct of Hensley’s counsel that she has become uncommunicative and willing only to allow counsel to continue to pursue her interests in this matter without her active involvement.”

On this record, the Fifth District held that the granting of sanctions against Harrelson was appropriate. Since the record did not indicate that Harrelson’s counsel encouraged or otherwise participated in Harrelson’s decision not to attend the court-ordered mediation, the Fifth District held that the imposition of sanctions against counsel was not warranted. The court ordered Harrelson to pay the following amounts as sanctions: (1) All fees charged by the mediator in connection with this appellate mediation; (2) Hensley’s reasonable attorney’s fees and costs incurred in preparing for and attending the appellate mediation and filing the motion for sanctions; and (3) Five hundred dollars (\$500.00) payable to the clerk of this court as a sanction for her willful failure to comply with the court’s mediation order.

In *Doorstep Beverages of Longwood, Inc. v. Willie Collier, 31 Fla. Law Weekly D 622 (Fla. 5th DCA; Opinion Filed February 24, 2006)*, the Fifth District imposed the same sanctions against Willie Collier when he did not personally appear for his court-ordered appellate mediation.

### PRACTICE TIP

The message of these cases is crystal clear. 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 is a regular column in this newsletter. However, this information is so important it bears repeating in each issue. If you are actively involved with mediating cases in your practice and you have still not yet read the new statute, PLEASE READ THIS. 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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## FLORIDA DEPARTMENT OF FINANCIAL SERVICES (DFS) AND COLLINS CENTER FOR PUBLIC POLICY OPEN NEW HURRICANE MEDIATION CENTER IN DAVIE, FLORIDA

In the last two issues, 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’s 2005 hurricane mediation program is now fully operational. 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](http://www.collinscenter.org) or by calling the DFS at 1-800-22-STORM.

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## MEDIATION AND NEGOTIATION SEMINARS AVAILABLE FOR CONTINUING EDUCATION CREDITS

For years, I have written and spoken extensively about 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.

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### 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. I welcome your comments. Thank you.

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### 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](http://www.fcadv.org), offers advice and information for those caught in abusive relationship. According to crime figures for 2004, the number of reported domestic violence offenses decreased 0.6 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.

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### NOTABLE QUOTATIONS

"There is only one success-to be able to spend your life in your own way."

- Christopher Morley

"If your success is not on your own terms, if it looks good to the world but does not feel good in your heart, it is not success at all."

- Anna Quindlen

"All men who have achieved great things have been great dreamers."

- Orison Swett Marden

"To laugh often and much; to win the respect of intelligent people and the affection of children; to earn the appreciation of honest critics and endure the betrayal of false friends; to appreciate beauty, to find the best in others; to leave the world a little better; whether by a healthy child, a garden

patch or a redeemed social condition; to know even one life has breathed easier because you have lived. This is the meaning of success."

-Anonymous

"What's money? A man is a success if he gets up in the morning and goes to bed at night and in between does what he wants to do."

- Bob Dylan

"You always pass failure on the way to success."

- Mickey Rooney

"The toughest thing about success is that you've got to keep on being a success."

- Irving Berlin

"Success is the ability to go from one failure to another with no loss of enthusiasm."

- Sir Winston Churchill

"Sometimes I worry about being a success in a mediocre world."

- Lily Tomlin

"The secret to success is to know something nobody else knows."

- Aristotle Onassis

"A successful person is one who can lay a firm foundation with the bricks that others throw at him."

- David Brinkley

"Joy is one of the only emotions you can't contrive."

- Bono

"A minute's success pays the failure of years."

- Robert Browning

"Learn from yesterday, live for today, hope for tomorrow. The important thing is not to step questioning."

- Albert Einstein

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### RECENT PRESENTATION

In July, 2006 I hosted my first national Teleseminar called "Ten Ways to Promote Your Mediation Practice Inexpensively, Ethically and With Dignity." The Association for Conflict Resolution (ACR), the world's largest association for dispute resolvers, sponsored this program. The teleseminar was based on my article "Ten Tips To Increase Your Edge In A Competitive Marketplace", which was published in the Spring 2006 Issue of ACRResolution, ACR's quarterly magazine. Marketing principles discussed during this program may be of interest to lawyers and entrepreneurs as well as mediators. CD copies of this teleseminar can be purchased directly from ACR. For more information, please call ACR at (202) 464-9700 or visit ACR's website at [www.ACRnet.org](http://www.ACRnet.org).

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### RECOMMENDED READING CORNER

The March 2006 issue of "O" magazine contains an entertaining article by Anthony E. Wolf, Ph. D., entitled "The Good Fight." The author discusses the basic elements of a "good" argument between a couple: (1) Each person gets to say his or her own piece; (2) Each person is heard; (3) The argument ends; (4) The argument does not become violent; (5) The parties do not use cruel, demeaning language; (5) The parties do not bring up every grievance since the beginning of time; and (6) The parties do not get too stuck to allow their dispute to end. Aren't these elements the ingredients for any constructive negotiation?

The February-April 2006 issue of *Dispute Resolution Journal*, the American Arbitration Association's quarterly publication, contains valuable information. This issue features an interview with Roger Fisher, co-author of the best-selling "Getting To Yes", and Daniel Shapiro, both with the Negotiation Project, on how to deal with emotions during negotiations. The issue also contains an excerpt from their new book, "Beyond Reason". Amy L. Lieberman's article "The 'A' List of Emotions In Mediation From Anxiety To Agreement" provides an interesting perspective on the emotional stages that most parties experience as they progress through the mediation process.

The August 2, 2006 issue of *Trey Ryder's Lawyer Marketing Alert* features two interesting articles for your consideration: "Six Newsletter Mistakes Lawyers Make" and "How To Create An Effective Newsletter: 12 Steps To Designing A Newsletter That Attracts New Clients." Trey's free weekly e-newsletter contains useful marketing information for professionals. To subscribe, you can email Trey at [Trey@TreyRyder.com](mailto:Trey@TreyRyder.com) or call him at 1-888-873-9793.

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## MESSAGE OF OUR 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).

## 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](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 Fort 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) 321-1.059 • [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.

## DO YOU HAVE A FAVORITE CHARITY?

I am always interested in informing our readers about worthy causes. If there is some cause you want me to share with our readers in future issues of this newsletter, please send me an e-mail or a brochure which describes the charitable organization and its mission. I will be pleased to help you share this information.

## 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. How can it be that the summer vacation is almost over and another school year is about to begin? The older I get, the faster the time seems to pass. I hope you and the members of your family and staff enjoyed your summer vacations (hopefully, you were able to get away for at least a little while) and returned to the office relaxed, rested and refreshed. I hope you stayed that way at least for a little while. Let's keep our fingers crossed for a quiet and uneventful Hurricane Season. Enjoy the remaining weeks of summer. Best wishes for Good Health, Good Luck and Good Mediation in 2006 and beyond.

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