

Significant Case Law For Attorneys and Mediators

In Re: Petition of the Alternative Dispute Resolution Rules and Policy Committee on Amendments to Florida Rules for Certified and Court-Appointed Mediators, Case No. SCO5-998 (Fla. Supreme Court Opinion Filed November 15, 2007), the Supreme Court unanimously ruled that certified circuit court mediators no longer must be lawyers under mediation rules approved by the Florida Supreme Court. However, judges must appoint a lawyer-mediator if either party requests it, the court said. The court, ruling on November 15, 2007, made the change to the Florida Rules for Certified and Court-Appointed Mediators. The court had earlier approved changes recommended by Supreme Court Committee on Alternative Dispute Resolution Rules and Policy for going to a point-based system for mediation certification. However, at that time, the court did not adopt the committee's recommendation to drop the requirement for Bar membership, but instead requested further input - including from the Bar. In its follow-up filing the committee continued to recommend ending the requirement for Bar membership for certified circuit court mediators. The court noted that its previous ruling "recognized that 'the general consensus in the alternative dispute resolution field is that possession of academic degrees, including law degrees, does not necessarily predict an individual's ability to be a good mediator.'" The court also noted that most states do not require a law degree for such mediators, and so decided to do away with the requirement.

The court also added: "... However, in eliminating the Bar membership requirement for certified circuit court mediators, we also recognize that there may be situations in which a party to a circuit court mediation may object to the appointment of a mediator who lacks legal training. In such circumstances, we believe that the circuit court must necessarily appoint a mediator who is a member of The Florida Bar. Accordingly, on our own mo-

tion, we also amend Florida Rule of Civil Procedure 1.720(f)(2) to require courts to appoint a certified circuit court mediator who is a member of The Florida Bar upon the request of either party." The court ruled that the new point-based system, which had been previously implemented by an administrative order, be incorporated in the rules for mediators. The changes became effective with the release of the opinion. The full text of the opinion can be found on the court's Web site at www.floridasupremecourt.org.

TRAGEDY AT NORTHERN ILLINOIS UNIVERSITY

On Monday, February 25, 2008, classes resumed at Northern Illinois University in DeKalb, Illinois following another shooting rampage in which five students and the gunman were killed. Plans for a memorial for the victims are still in their infancy. Most of the 16 others who were wounded have gone home, although two were still hospitalized a week after the attack. No decision has been made on the future of Cole Hall, where the killings took place. At Northern Illinois, the student counseling center is extending its hours indefinitely and beefing up staffing as well as using about 300 volunteer counselors. In addition to reaching out to students particularly affected by the shooting, the school is also focused on providing support for the weeks and months after classes reconvene.

FIRST ANNIVERSARY OF TRAGEDY AT VIRGINIA TECH

April 16, 2007 will be remembered as one of the darkest days in the history of the Virginia Tech community and the world beyond. To remember and honor the victims of those tragic events, the university has established the Hokie Spirit Memorial Fund to aid in the healing process and generate financial support. The fund will be used to cover expenses including but not limited to:

Assistance to victims and their families;
Grief counseling; Memorials;
Communication expenses; and Comfort expenses

If you wish to contribute to this Memorial

Fund, please go to www.vt.edu/tragedy/memorial-fund.php and choose "Hokie Spirit Memorial Fund" from the dropdown menu. Thank you.

MY NEW WEBSITE IS UP AND RUNNING

The "new" website is now one year old. You can find it at these addresses: www.BABMediate.com and www.BruceBlitman.com. The website contains past issues of mediation newsletters, as well as information about current mediation case-law, ADR articles I've written and announcements about upcoming mediation seminars and presentations. Many thanks to Webmaster Gio Gutierrez for his invaluable expertise in designing this site. Please visit this site and let me know what you think. I hope you like it.

DISPUTE RESOLUTION IN THE NEWS-PART I

An article in the February 24, 2008 issue of The Sun-Sentinel reported that a busboy has settled a lawsuit against Lindsay Lohan over a 2005 car crash. The attorney for busboy Raymundo Ortega reported that the lawsuit was resolved for an undisclosed amount. Although the California Highway Patrol concluded that Ortega caused the October 2005 crash by making an illegal U-turn, he sued Lohan for damages, alleging that she was fleeing paparazzi at the time and was under the influence of alcohol.

DISPUTE RESOLUTION IN THE NEWS-PART II

An article in the February 24, 2008 issue of The Miami Herald reported that a woman who had her medical coverage canceled as she was undergoing treatment for breast cancer was awarded more than \$9 million in a case against one of California's largest health insurers. This article reports that the woman, a 52-year old hairdresser from Lakewood, California, had been left with more than \$129,000 in unpaid medical bills when her insurer, Health Net Inc., canceled her policy in 2004. On Friday, arbitration judge Sam Cianchetti ordered Health Net to repay that amount, plus \$8.4 million in punitive damages and \$750,000 for emotional distress.

DISPUTE RESOLUTION IN THE NEWS-PART III

An article in the February 24, 2008 issue of The Mi-

ami Herald reports that Sears, Roebuck has agreed to a major recall that could cost as much as \$546 million and cover almost four million households in order to settle an Illinois class-action lawsuit over household stoves' alleged propensity to topple. More than 100 deaths and severe injuries were caused by stoves that tipped over. Sears must notify all customers who bought a freestanding or slide-in gas or electric range over the past seven years that they're entitled to have a bracket installed, free of charge, that will secure the stove and prevent it from tipping over. The agreement was approved by a state court in January, 2008 to settle a national class action case that originated in Illinois. To see the settlement and related documents, visit www.citizen.org/autosafety/consumers/stoves. People who bought a Sears stove can visit www.searsrangeselement.com for more information.

DISPUTE RESOLUTION IN THE NEWS-PART IV

An article in the February 14, 2008 issue of The Sun-Sentinel reported that former Fresno State coach Stacey Johnson-Klein said she would accept \$6.62 million to put an end to her gender bias case against the school. A jury originally awarded her \$19.1 million, but a judge ordered a new trial unless she accepted the smaller amount.

FLORIDA LEGISLATURE AMENDS MANDATORY PRE-SUIT MEDIATION PROTOCOL FOR COMMUNITY ASSOCIATION-PARCEL OWNER DISPUTES

Under recent amendments to Chapter 720, Florida Statutes, which became effective on July 1, 2007, the Division of Florida Land Sales, Condominium, and Mobile Homes no longer administers the homeowners' association mandatory mediation program created under section 720.311, Florida Statutes. Chapter 2007-173, Laws of Florida, ended the Division's mandatory HOA mediation program and replaced it with a private mediation program. Should you have any questions about the new private mediation program, you can visit the Division's web site at <http://www.myflorida.com/dbpr/lsc/hoa/index.shtml> or call (850) 414-6867.

RECOMMENDED READING

The advent of blogging as a form of inter-

net communication has begun to revolutionize how information is disseminated on the web. The mediation field is not immune from this development. The National Institute for Conflict Resolution (NIACR) has compiled its Annual Mediation Blog Roundup. NIACR surveyed the field and identified its top five blogs. Here are its findings and comments:

“1. Florida Mediator (<http://floridamediator.blogspot.com/>) (Written by Perry S. Itkin, Fort Lauderdale, Florida): Florida Mediator always contains items of interest to mediators. Because of its longevity, this blog has an extensive archive collection and is a good read for a mediator in any geographic area, but a must read for any Florida mediator.

2. Online Guide to Mediation (<http://mediation.blogspot.blogspot.com/>) (Written by Diane Levin, Marblehead, Massachusetts): Smart, insightful, and highly readable, it consistently provides a surprising wealth of information relating to mediation, negotiation and law.

3. Mediator Blah...Blah... (<http://mediatorblahblah.blogspot.com/>) (Written by Geoff Sharp, Wellington, New Zealand): Mediator Blah...Blah... never fails to deliver relevant content. Packed with useful information, it's often downright funny, making it great for reading at the end of a tough day.

4. Mediator Tech (<http://mediatortech.com/index.php>) (Written by Tammy Lenski, Dublin, New Hampshire): Mediator Tech offers a gold mine of information relating to technology issues affecting the mediation field. Need tips for setting up a mediator website? Want to learn the ins and outs of marketing your mediation practice? This blog has the answers. It also includes a periodic roundup of links to informative online resources.

5. Mediation Mindset (<http://mediationmindset.blogspot.com/>) (Written by Anthony Cerminaro, Pittsburgh, Pennsylvania): With a focus on negotiation, this blog presents its information in a compelling and informative style. This blog is great for mediators interested in keeping abreast of developments in this area.”

FLORIDA DEPARTMENT OF FINANCIAL SERVICES (DFS) AND COLLINS CENTER FOR PUBLIC POLICY HURRICANE MEDIATION CENTER IN DAVIE, FLORIDA IS NOW OPEN THREE DAYS A WEEK

In previous issues, I've 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, has 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 still fully operational. The Department of Financial Services opened its newest Hurricane Mediation Center in Davie (Broward County), Florida in mid-February, 2006. Although the Center continues to mediate claims arising out of Hurricane Wilma as well as prior hurricanes, it is now operating only three days a week-on Tuesdays, Wednesdays and Thursdays. 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 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.

LITIGATION ALTERNATIVES ADVISORY COMMITTEE

I have previously reported on my appointment to the Litigation Alternatives Advisory Committee for the Florida Patient Safety Corporation. This Committee is charged with exploring alter-

native methods for resolving medical malpractice disputes. I continue to welcome your suggestions, ideas or recommendations on this matter. If you'd like to share, please contact me.

NOTABLE QUOTATIONS

"I once wanted to become an atheist but I gave up... they have no holidays."
-American comedian Henny Youngman (1906-1998)

"If your ship doesn't come in, swim out to it."
-Jonathan Winters

"Success is a lousy teacher. It seduces people into thinking they can't lose."
-Bill Gates

"When wealth is lost, nothing is lost.
When health is lost, something is lost.
When character is lost, all is lost."
-Rev. Billy Graham

"Genius is immediate, but talent takes time."
-Janet Flanner

"Every excuse I ever heard made perfect sense to the person who made it."
-Dr. Daniel T. Drubin

"Life is what we make it. Always has been.
Always will be."
-Grandma Moses

"Don't be afraid your life will end;
be afraid that it will never begin."
-Grace Hansen

"While others may argue about whether the world ends with a bang or a whimper, I just want to make sure mine doesn't end with a whine."
-Barbara Gordon

"I don't want to get to the end of my life and find that I just lived the length of it. I want to have lived the width of it as well."
-Diane Ackerman

"The distance is nothing; it's only the first step that is difficult."
-Marquis Du Deffand

"If I had to live my life again, I'd make the same mistakes, only sooner."
-Tallulah Bankhead

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.

19 YEARS AS A SUPREME COURT CERTIFIED COUNTY AND CIRCUIT CIVIL MEDIATOR-AND COUNTING!

In February, 2008, I celebrated my nineteenth anniversary as a Florida Supreme Court certified County and Circuit Civil mediator. How quickly the years have passed. It doesn't seem possible that I completed the training course so many years ago. I greatly appreciate 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 am looking forward to (at least) another 19 years as a certified County, Family and Circuit Civil Mediator.

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.

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.

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.

PEDIATRIC BRAIN TUMOR FOUNDATION:

The Pediatric Brain Tumor Foundation is dedicated to supporting the search for the cause and cure of childhood brain tumors. For more information, please contact the Foundation at: Pediatric Brain

Tumor Foundation, 302 Ridgefield Ct, Asheville, North Carolina 28806, (800) 253-6530, www.curethekids.org. Thank you.

NATIONAL CANCER FOUNDATION FOR CANCER RESEARCH:

Founded in 1973 to support cancer research and public education relating to the prevention, early diagnosis, better treatments and ultimately, a cure for cancer. For more information, please visit www.NFCR.org or call 1-800-321-CURE. Thank you.

EASTER SEALS DISABILITY SERVICES:

Easter Seals mission is to provide exceptional services to ensure that all people with disabilities or special needs and their families have equal opportunities to live, learn, work and play in their communities. For more information, please visit www.easterseals.com or call 1-800-221-6827. Thank you.

PACE CENTER FOR GIRLS, INC.:

Provides girls and young women an opportunity for a better future through education, counseling, training and advocacy. PACE values all girls and young women, believing each one deserves an opportunity to find her voice, achieve her potential and celebrate life defined by responsibility, dignity, serenity and grace. Since its inception, PACE Center for Girls, Inc. has played a critical role in promoting gender responsive programming, influencing juvenile justice policy and changing the lives of over 12,000 at-risk girls. PACE is a not for profit, 501(c)(3) minority provider that has 22 locations in Florida (19 direct care centers and 3 outreach locations), with its headquarters in Jacksonville. For more information, please visit the website at www.pacecenter.org or call Aggie Pappas, MSW, Executive Director of the PACE Center for Girls Broward at (954) 561-6939. Thank you.

AMERICAN LUNG ASSOCIATION: It's mission is to prevent lung disease and promote lung health. To learn more, please call 1-800-LUNG-USA (1-800-586-4872) or visit www.lungusa.org. Thank you.

MICHAEL SCHOLZ MEMORIAL CHARITABLE FUND: This Fund was established in the spring of 2003 to celebrate the passion for the outdoors displayed by the late Michael Scholz (the

son of veteran mediators Mel Rubin, Esq. and Susan Scholz-Rubin, Ph.D.) during his lifetime. In Michael's memory and honor, the Fund introduces youth from diverse backgrounds to the natural beauty of places such as Key Biscayne and teaches about South Florida's fragile environment through enriching hands-on experiences. The Fund is a 501(c)(3) not-for-profit, tax-exempt organization. You can send your donations to: Michael Scholz Memorial Charitable Fund, 111 Majorca Avenue, Coral Gables, Florida 33134 or make an online donation at the Fund's web site, www.michael-scholfund.com. For information, please call (305) 361-6166. Thank you.

EASE FOUNDATION, INC.: The mission of this 501(c)(3) non-profit foundation is "To aid those qualified residents who are in need of temporary emergency assistance with food and financial help. Our objective is to assist them back into a self-sustaining, productive life." EASE helps approximately one hundred families each month that come into the office for groceries. EASE only handles non-perishable items, paper products and canned goods for its pantry. The shelves are in need of food. If your business, church or organization would like to have food drive, please contact Linda Owen at (954) 797-1077 or e-mail Linda at Linda_owen@davie-fl.gov. Thank you.

MILES FOR MONDAYS: The Miles For Mondays program was developed to encourage donors to give platelets on Mondays. Platelets are needed to treat patients who are in danger of bleeding and do not produce enough platelets themselves to protect against fatal internal bleeding. The program has now been expanded to include Saturday platelet donors as well. Just donate platelets two eligible Mondays or two eligible Saturdays in a row and earn American Airlines AAdvantage Miles. To schedule an appointment, please call the Community Blood Centers of South Florida at (800) 869-9628, ext. 5608 or visit online at www.cbcsf.org. 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. Can you believe it's Springtime already? I hope that you and the members of your family and staff are well. Enjoy the beauty of spring. As always, Best wishes for much Good Health, Happiness, Success, and Peace (and Good Mediation, too) in 2008.

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