

## **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](http://www.floridasupremecourt.org).

### **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](http://www.BABMediate.com) and [www.BruceBlitman.com](http://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.

### **ANNOUNCEMENTS, APPOINTMENTS AND RECENT TRAININGS**

The Collins Center for Public Policy recently developed a new program to provide Appraisal Services. The program, called The Collins Center Property Insurance Appraisal Services© Program, is designed to professionally resolve property damage disputes with insurance companies. The service takes 90 days or less to complete an Appraisal Process for residential properties and 120 days or less to complete an Appraisal Process for commercial properties. The Collins Center conducted a special two-day Umpire Education Training Program for umpires selected to participate in this new program. I am proud to have been among 70 dispute resolvers invited to participate in-and complete-this umpire training course. For more information about The Collins Center Property Insurance Appraisal Services©, please call Gloria Massey at (850) 219-0082 ext. 102.

In February, 2008, I successfully completed the 2008 WIND Advanced Umpire Certification Course sponsored by The Windstorm Insurance Network, Inc. in Jacksonville, Florida. This was an outstanding national conference attended by more than one thousand insurance professionals and exhibitors. The 10th Annual Windstorm Insurance Conference will be held January 25-28, 2009 at the Rosen Centre Hotel in Orlando, Florida. For more information on WIND 2009, please visit [www.windnetwork.com](http://www.windnetwork.com) or call (850) 473-0601. If you are looking for an umpire for an Appraisal matter, the Windstorm Insurance Network has compiled the 2008 edition of the WIND UMPIRE ANNUAL DIRECTORY: A PUBLICATION OF PROFESSIONALS SERVING AS UMPIRES IN PROPERTY INSURANCE APPRAISALS. (I am on page 42).

Mediation Works Incorporated (MWI) of Boston, Massachusetts recently invited me to join the MWI Employment Mediation Panel for the Coca-Cola Enterprises (CCE) Solutions Program. The Solutions Program is intended to provide for the quick, fair, accessible, inexpensive and individualized resolution of conflicts among Coca-Cola Enterprises' present and former employees. MWI is dedicated to providing innovative dispute resolution services and training to corporate, institutional and individual clients seeking to resolve difficult disputes.

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

An article in the August 2, 2008 issue of The Miami Herald reported that United Air Lines reached an agreement with the pilot's union to limit what the company calls work slowdowns that forced cancellation of hundreds of flights and cost millions of dollars. Neither the airline nor the union disclosed specifics of the agreement, which was worked out behind closed doors, and is to be in effect pending August 27-28 hearings on a federal lawsuit seeking a preliminary injunction.

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

An article in the August 3, 2008 edition of The New York Times reported that a pioneer in socially responsible investing agreed to pay \$500,000

to settle a claim by the Securities and Exchange Commission that the company violated its own investment criteria. Two funds managed by the Pax World Management Corporation bought at least 10 securities between them that the funds' policies would have prohibited because the companies are involved in producing weapons, alcohol, tobacco or gambling products, according to the SEC. Pax, which is based in Portsmouth, New Hampshire, began selling funds with a focus on social responsibility in 1971. It did not admit or deny wrongdoing.

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

An article in the August 1, 2008 issue of The Miami Herald reported that two of Canada's biggest tobacco companies will pay \$1.15 billion Canadian (\$1.1 billion US) in criminal and civil penalties after pleading guilty to customs charges related to contraband cigarettes and smuggling. The fines are the largest ever levied in Canada.

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

The front page story in the July 11, 2008 edition of the New York Post reported that supermodel Christie Brinkley settled her nasty divorce with husband Peter Cook. The settlement followed "five days of all-out war in the courtroom, where a nonstop cavalcade of lurid testimony painted Cook as a narcissistic sex hound who slept with a teenage employee and had a \$3,000-a-month Internet porn habit." The newspaper reported that the two sides holed up at a hotel until the wee hours of the morning hammering out the final details of the settlement. They reached agreement at 6:15 A.M. and announced their agreement in court a few hours later. A source close to Cook said he was disappointed not to have been able to unload against his ex-wife in court, but chose to end the case for the sake of the children and because of his ballooning legal costs.

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**FLORIDA DEPARTMENT OF FINANCIAL SERVICES (DFS) AND COLLINS CENTER FOR PUBLIC POLICY HURRICANE MEDIATION CENTER IN DAVIE, FLORIDA IS NOW OPEN TWO 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 serves as the administrator for the Florida Department of Financial Services (DFS) Hurricane Mediation Program.

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, at the end of July, 2008 it reduced its operating hours and is now open only two days a week-on Tuesdays and Wednesdays. There is no charge to consumers who choose to mediate their hurricane disputes through this program. 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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### **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 alternative 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.

Recently, the Board of Directors for the Florida Patient Safety Corporation ratified our Committee's recommendation to adopt "The Sorry Works!" concept dedicated to promoting full

disclosure and apologies for medical errors as a "middle-ground solution" to the medical malpractice crisis. For more information, please visit [www.sorryworks.net](http://www.sorryworks.net).

### **I DIDN'T KNOW THAT...**

According to The Miami Herald's Action Line column (July 30, 2008), if you have a complaint about a towing experience, you can contact your county's consumer affairs department for mediation.

According to The Miami Herald's Action Line column (July 16, 2008), if you have a complaint about a national bank, you can contact the Office of the Comptroller of the Currency for mediation. [www.helpwithmybank.gov](http://www.helpwithmybank.gov). Also, it was reported in this column that if you are tired of automated phone systems (who isn't?), you can find shortcuts at [www.gethuman.com](http://www.gethuman.com) to get through to live customer service representatives at major companies.

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### **NOTABLE QUOTATIONS**

"If passion drives you, let reason hold the reins."  
- Benjamin Franklin

"A pessimist is one who makes difficulties of his opportunities and an optimist is one who makes opportunities of his difficulties."  
- Harry Truman

"On the whole, human beings want to be good, but not too good and not quite all the time."  
- George Orwell

"Buy land because they're not making it anymore."  
- Mark Twain

"There are two kinds of light-the glow that illuminates, and the glare that obscures."  
- James Thurber

"Only when we are no longer afraid do we begin to live."  
- Dorothy Thompson

"It's never just a game when you're winning."  
- George Carlin

“Each day comes bearing its own  
gifts Untie the ribbons.”  
- Ruth Ann Shabacker

“Each day is a new life. Seize it. Live it.”  
- David Guy Powers

“If you would thoroughly know  
anything, teach it to others.”  
- Tryon Edwards

“It is best to learn as we go,  
not to go as we have learned.”  
- Leslie Jeanne Sahler

“It only takes one person to  
change your life-you.”  
- Ruth Casey

“I have found that if you love life,  
life will love you back.”  
- Arthur Rubinstein

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## 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).

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## 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.

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## “KICK FOR NICK” PROJECT

On May 26, 2008, Memorial Day, I watched

a beautiful and moving story on ESPN's "Outside the Lines" program about Private First Class Nick Madaras, who was tragically killed while serving in Iraq. The story by Tom Rinaldi described a program called "Kick For Nick," which was established by Nick's father, Bill Madaras, and friends and neighbors, to honor Nick's memory and promote Nick's dream of improving relations between American soldiers and Iraqi children through the sport of soccer. Shortly before his death, Nick asked his father to send him some soccer balls so that he could play the game with Iraqi youngsters. Nick was going to give these balls to the children so they could enjoy playing soccer with the troops and develop friendships with them. Sadly, Nick was killed before the soccer balls were delivered. The "Kick For Nick" Foundation was established to carry out Nick's vision for friendship and peace. Soccer balls are collected, they are each inscribed with Nick's name and they are shipped to American soldiers in Iraq. These soldiers personally deliver the soccer balls to Iraqi children and tell them about Nick's dream. To learn more about this wonderful project, please visit the website at [www.kickfornick.com](http://www.kickfornick.com) and [www.kickfornick.org](http://www.kickfornick.org). The site contains video about the program, as well as photographs of American soldiers and Iraqi children playing soccer and testimonial letters from American soldiers describing the positive affect this project has had on everyone.

## OTHER 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.

**UNIVERSITY OF MIAMI-NOVA SOUTH-EASTERN 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.

### **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.

### **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](http://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](http://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](http://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](http://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](http://www.lungusa.org). 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](mailto: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 Advantage 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](http://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. I hope that you and the members of your family and staff are enjoying the summer. Hopefully, the hectic pace of your practices has slowed a little bit as we enter the “dog days” of heat and humidity. There are still a few weeks left before the start of another school year. No matter how long the summer vacation, it never seems to be quite long enough and it always passes too quickly. Who would have thought the Florida Marlins would still be in playoff contention this late in the season? I hope that you and the members of your family and staff are well. Relax and enjoy the remainder of the summer. As always, Best wishes for much Good Health, Happiness, Success, and Peace (and Good Mediation, too) in 2008 and beyond.

#### **BRUCE A. BLITMAN, ESQ.**

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