

## **Significant Case Law For Attorneys and Mediators**

**Mastec, Inc. v. Rolando Cue, 33 Fla. L. Weekly D2643 (Fla. 3rd DCA Opinion Filed November 12, 2008):** The Defendant, Mastec, appealed from an order denying its motion to enforce an alleged settlement with the Plaintiff, Rolando Cue. In December 2007, the Plaintiff's personal injury lawsuit proceeded to mediation. Mastec alleged that the parties agreed to a \$100,000 settlement at that time. However, it is undisputed that the alleged mediation agreement was not reduced to writing and signed by the parties in accordance with Florida Rule of Civil Procedure 1.730 (b). Based on this fact, the trial court denied Mastec's motion to enforce the settlement and for sanctions. On appeal, Mastec, citing the case of *Jordan v. Adventist Health System/Sunbelt, Inc.*, 656 So.2d 200 (Fla. 5th DCA 1995), argued unsuccessfully for the proposition that the absence of a writing containing the Plaintiff's signature was a "technical detail" which the appellate court could ignore. However, the Third District relied upon its previous holding in the case of *Gordon v. Royal Caribbean Cruises, Ltd.*, 641 So.2d 515 (Fla. 3rd DCA 1994), in which it held that the signatures of the parties to a mediation settlement agreement are necessary, and "an attorney's signature alone, albeit in the presence of his client, is wholly insufficient under [rule 1.70(b)]." at 517. Accordingly, the Third District concluded that the lack of a written agreement signed by both parties was more than a mere technical deficiency, and that the alleged mediation settlement was unenforceable. On the authority of Florida Rule of Civil Procedure 1.730(b), and the Court's Gordon decision, the trial court's order was affirmed in all respects.

### **PRACTICE TIP:**

Rule 1.730(b) says it all: "If a partial or final agreement is reached, it shall be reduced to writing and signed by the parties and their counsel, if any..." There are really no excuses for failing to memorialize and sign a mediation settlement agreement. In the absence of such a document, there is nothing for a court to enforce.

## **MY NEW WEBSITE IS UP AND RUNNING**

The "new" website is now more than two years old. You can find it at these addresses: [www.BAB-Mediate.com](http://www.BAB-Mediate.com) and [www.BruceBlitman.com](http://www.BruceBlitman.com). The website contains past issues of mediation newsletters, as well as information about current mediation caselaw, 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.

## **RECOMMENDED READING**

"Mediating Elder-Care Disputes", by Tom Lauricella, appeared in the Sunday, March 2, 2008 edition of *The Sun-Sentinel*. The author explains how the mediation process can help ease communications among family members for whom the elder-care dispute can reopen decades-old wounds. Common candidates for mediation are disagreements between family members who live far away and a sibling who lives closer to the elder and may have a different assessment of that person's needs. Sometimes the disputes are between children and elderly family members who have their own view of where they should be living and who should be caring for them. The author explains how mediation can be used to settle disagreements over living arrangements, how finances should be handled, who should be granted power of attorney, and even visitation rights among squabbling siblings. Agreement can specify the kinds of information, especially financial and medical updates, that will be provided to family members who live far away. At the moment, there is no formal licensing or credentialing for elder-care mediators. Online, [EldercareMediators.com](http://EldercareMediators.com) offers names of mediators (who pay small fees to be listed).

"Florida Should Consider Mediation in Foreclosures" by Gary Blankenship appears in the February 1, 2009 edition of *The Florida Bar News* (at page 11). The article reports that 12th Circuit Chief Judge Lee Haworth suggested to the Senate Judiciary Committee that the state should consider requiring mediation before a foreclosure is filed on a homestead. Judge Haworth presented numbers that showed the skyrocketing foreclosure problems in

Florida. Foreclosure filings from 2006 to 2008 rose from 73,878 to 359,717—a 387 percent increase. Last year, there were more than 100,000 filings in Southeast Florida alone. Judge Haworth reported that there are similar efforts around the country to resolve mortgage foreclosures.

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

An article in the January 30, 2009 edition of The Miami Herald reported that more than 740,000 consumers will receive restitution checks for funds that were fraudulently withdrawn from their Wachovia bank accounts by payment processors using remotely created checks, also known as “demand drafts.” The bank is paying more than \$150 million in restitution to resolve settlements involving the federal Office of the Comptroller of the Currency, which regulates Wachovia and other national banks. In order to recuperate any bank fees associated with the withdrawals, consumers must submit a claim form by March 11. For the claim form and more details, visit [www.restitutionpayment.com](http://www.restitutionpayment.com) or call 1-866-680-6659.

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

An article in the January 2, 2009 edition of The Miami Herald reported that the programmer Viacom and Time Warner Cable agreed on compensation that preserved access for the cable system operator’s 15.7 million subscribers to the Nickelodeon network, MTV and 17 other channels. The two sides, citing disagreement over fee increases, had threatened a damaging blackout at a minute past midnight on Thursday, January 1 that would have cut off shows such as Dora the Explorer, Sponge-Bob SquarePants and The Colbert Report for Time Warner Cable customers. Terms of the deal were not disclosed. The companies said that details still had to be finalized over the next few days.

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

An article in the January 21, 2009 edition of The Sun-Sentinel reported that Philadelphia Phillies first baseman Ryan Howard asked for \$18 million in salary arbitration, the third-highest figure submitted since the process began in 1974. Philadelphia offered \$14 million to Howard. Howard, who won the 2006 NL Most Valuable Player Award, hit 48 homeruns and drove in 146 runs during the 2008 season, and helped the Phillies win their first World Series title since 1980.

## **FLORIDA DEPARTMENT OF FINANCIAL SERVICES (DFS) AND COLLINS CENTER FOR PUBLIC POLICY HURRICANE MEDIATION CENTER IN DAVIE, FLORIDA FINALLY CLOSES ITS DOORS**

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. I am saddened to report that after almost three years of operation, the Hurricane Mediation Center in Davie, Florida officially closed its doors on January 28, 2009. During this time, thousands of hurricane disputes were mediated through this program. There was no charge to consumers who chose to mediate their hurricane disputes through this program. In a future issue of this newsletter, I will provide statistical data about the success of this program. For additional information about how you can still mediate hurricane claims, please call 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).

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### NOTABLE QUOTATIONS

“Children and dogs are as necessary to the welfare of the country as Wall Street and the railroads.”

-Harry S. Truman

“Politics is the art of looking for trouble, finding it everywhere, diagnosing it incorrectly, and applying the wrong remedies.”

-Groucho Marx

“Farming looks mighty easy when your plow is a pencil and you’re a thousand miles from the cornfield.”

-Dwight D. Eisenhower

“Ideas are great arrows, but there has to be a bow. And politics is the bow of idealism.”

-Bill Moyers

“To lodge all power in one party and keep it there is to insure bad government.”

-Mark Twain

“Service to others is the rent you pay for your room here on earth.”

-Muhammad Ali

“We must accept finite disappointment, but we must never lose infinite hope.”

-Martin Luther King, Jr.

“Your most unhappy customers are your greatest source of learning.”

-Bill Gates

“I can accept failure, but I can’t accept not trying.”

-Michael Jordan

“The only man who never makes a mistake is the man who never does anything.”

-Theodore Roosevelt

“Never lose sight of the fact that the most important yardstick of your success will be how you treat other people.”

-Barbara Bush

“It’s not enough we do our best; sometimes we have to do what’s required.”

-Sir Winston Churchill

“A good exercise for the heart is to bend down and help another up.”

-Anonymous

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

In February, 2009, I celebrated my twentieth 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 20 years as 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 with 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 on them 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.

### **STARBUCKS HAS A MISSION STATEMENT-DO YOU?**

On a recent visit to Starbucks, I picked up the business card of the store's manager. On the back of the card was something I never noticed before—a Mission Statement. It read as follows:

“The following six guiding principles will help us measure the appropriateness of our decisions:

- Provide a great work environment and treat each other with respect and dignity.
- Embrace diversity as an essential component in the way we do business.
- Apply the highest standards of excellence to the purchasing, roasting and fresh delivery of our coffee.
- Develop enthusiastically satisfied customers all of the time.
- Contribute positively to our communities and our environment.
- Recognize that profitability is essential to our future success.”

Couldn't we all benefit from developing a Mission Statement for the unique interests and needs of our own practices and businesses?

### **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 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.

### **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 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](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.

What a wonderful time of year to live in Florida. Thankfully, the weather has cooled a little bit. I hope that you and the members of your family and staff are well. I wish all of you a Healthy, Joyous and Prosperous New Year. If you made any resolutions for the New Year, I hope you are still on track. If you have fallen off course, it is never too late to try again. Many thanks for your loyal patronage for so many years. As always, Best wishes for much Good Health, Happiness, Success, and Peace (and Good Mediation, too) in 2009 and beyond.

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