

Significant Case Law For Attorneys and Mediators

Michael Dean v. Rutherford Mulhall, P.A., 34 Fla. L. Weekly D 1739b (Fla. 4th DCA Opinion filed August 26, 2009): The Defendant, Michael Dean, appealed a final judgment of the trial court which granted the Plaintiff law firm of Rutherford Mulhall, P.A.'s Motion for Entry of Final Judgment and ordered Dean to pay the law firm \$32,000.

The law firm filed a complaint alleging that Dean failed to pay for legal services rendered in the amount of \$24,236.29. Dean contended that the fees charged were excessive. In March, 2008, the parties attended mediation and failed to reach an agreement. The mediator reported to the trial court that the parties agreed to continue working towards a resolution. Subsequently, the law firm filed a Motion for Final Judgment and attached a purported Mediated Settlement Stipulation which provided that Dean would pay the law firm \$22,000 in forty-six payments and, if he failed to make timely payments, a final judgment in the amount of \$32,000 would be entered against him. While representatives of the law firm and Dean's attorney signed this Agreement, Dean did not. In its motion the law firm stated that Dean had orally agreed to the terms in the written Mediated Settlement Stipulation. After a hearing, the trial court granted the law firm's motion and ordered Dean to pay \$32,000. Dean filed a Notice of Appeal, arguing that the trial court erred in granting the law firm's Motion for Final Judgment because the decision was based on a purported Settlement Agreement between the parties that Dean did not sign.

The Fourth District agreed with Dean and reversed and remanded the trial court's decision, stating: "Florida Rule of Civil Procedure 1.730(b), regarding completion of mediation, states that "no agreement under this rule shall be reported to the court" unless, inter alia, the agreement is "reduced to writing and signed by the parties and their counsel, if any." Fla. R. Civ. P. 1.730(b) (2008). The Fourth District cited a string of cases in which Florida courts consistently held that a supposed settlement

agreement resulting from mediation cannot be enforced absent the signatures of all parties.

PRACTICE TIP:

In order to enforce a mediated settlement agreement in Florida's state courts, please make sure the mediated settlement agreement is reduced to writing and signed by the parties and their counsel, if any. Please follow this rule of civil procedure. An "oral" MSA is not worth the paper upon which it is not written.

CONGRATULATIONS TO JUDGE SHAWN L. BRIESE

In the last issue of this newsletter, I reported that Sharon Press, the longtime Director of the Florida Dispute Resolution Center (DRC), left the DRC for an exciting new opportunity as an associate professor of law and Director of the Hamline University School of Law Dispute Resolution Institute in Minnesota. At the DRC's 18th Annual Conference for Mediators and Arbitrators in Orlando, the DRC announced the establishment of an annual award honoring Sharon's outstanding leadership. The Annual Sharon Press Excellence in ADR Award will be bestowed to an individual who demonstrates the qualities Press embodies: "visionary leadership, professional integrity, and unwavering devotion to the field of alternative dispute resolution." The inaugural award was presented to Seventh Circuit Judge Shawn L. Briese. Judge Briese served as chair and vice-chair of the Mediation and Arbitration Training Committee; chair of the Alternative Dispute Resolution Rules Committee; and chair of the ADR Rules and Policy Committee. He has been a member of the Mediator Qualifications Board since the Board's creation in 1992, and has been involved with virtually every ADR rule, policy, and statute creation and revision since 1988. Congratulations and many thanks to Judge Briese for his extraordinary contributions to Florida's mediation profession and professional mediators.

MY "NEW" WEBSITE IS UP AND RUNNING

The "new" website is now more than two years old. You can find it at these addresses:

Mediate.com and **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

An entertaining article about Civility, or the lack thereof, appears in the September 15, 2009 edition of The Miami Herald. The article written by Lydia Martin is titled: **"How rude! Why is everyone so #*\$%!*# angry lately?"** It suggests that rudeness has taken center stage of late (old news to anyone who drives in South Florida) and etiquette experts say that society has changed, and not for the better. What do you think? I welcome your (polite) responses.

DISPUTE RESOLUTION IN THE NEWS

- PART I

An article in the Business Section of the September 15, 2009 edition of The Miami Herald reported that Amerijet agreed to install toilets on its cargo planes as part of settling a three-week strike by the Fort Lauderdale company's pilots. The settlement announced by Amerijet and the Teamsters includes a contract for pilots and engineers. Amerijet also agreed to reinstall restrooms on the planes that typically fly cargo and two or three crew members on routes between Florida, the Caribbean and Latin America. Pilots complained that they were forced to use special bags if they had to go to the bathroom during a flight.

DISPUTE RESOLUTION IN THE NEWS

- PART II

An article in the August 14, 2009 edition of The Miami Herald reported that after years of negotiations, water managers and the White House signed a crucial contract that promises a much-needed infusion of federal dollars for the Everglades. The agreement ended years of dispute over splitting up a ballooning restoration bill, which is expected to top \$22 billion, and cleared the way to quickly begin long-stalled construction work. The "master agreement" details how the South Florida Water

Management District and the Army Corps of Engineers will share costs and duties for 68 projects Congress approved in 2000 to restore the natural flow of the River of Grass. Both sides hailed the agreement-reached when the Obama administration relented in a dispute over land values likely to shift as much as a half-billion dollars onto the federal ledger-as a breakthrough that should move restoration from talk to action.

DISPUTE RESOLUTION IN THE NEWS

- PART III

An article in the July 16, 2009 edition of The Miami Herald reported that drugmakers Merck and Schering-Plough will pay \$5.4 million to settle a multistate investigation that the companies delayed the release of test results casting doubt on the effectiveness of two blockbuster cholesterol drugs. The companies settled with attorneys general from 35 states and the District of Columbia. The investigation centered on allegations that the companies kept quiet the results from an unfavorable study, violating consumer protection laws. Merck and Schering-Plough will pay back the costs of the investigation, but don't have to make other payments or admit wrongdoing or liability.

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.

NOTABLE QUOTATIONS

"Freedom is what you do with what's been done to you."

-Jean-Paul Sartre

"In taking revenge, a man is but even with his enemy; but in passing it over, he is superior; for it is a prince's part to pardon."

-Francis Bacon

“We think in generalities, but we live in detail.”
-Philosopher Alfred North Whitehead

“For the majority of us, the past is a regret,
the future an experiment.”
-Mark Twain

“If you keep on saying things are going to be bad,
you have a good chance of being a prophet.”
-Author Isaac Bashevis Singer

“It is better to entertain an idea than to take it
home to live with for the rest of your life.”
-Poet Randall Jarrell

“Money’s a horrid thing to follow,
but a charming thing to meet.”
-Henry James

“We don’t know who we are until
we see what we can do.”
-Author Martha Grimes

“Laugh at yourself first, before anyone else can.”
-Columnist Elsa Maxwell

“The only sure thing about luck
is that it will change.”
-Wilson Mizner

“When we can no longer change a situation,
we are challenged to change ourselves.”
-Victor Frankel

“Every adversity, every failure, and every heart-
break carries with it the seed of an
equivalent or greater benefit.”
-Napoleon Hill

“The words you speak today should be soft and
tender, for tomorrow you may have to eat them.”
-Anonymous

“No one can make you feel inferior
without your consent.”
-Eleanor Roosevelt

“When you start down the road to revenge,
remember to dig two graves.”
-Chinese Proverb

“There is more to knowing
than just being correct.”
-Benjamin Huff

“There is no loss in letting the branches bend,
when resisting the wind would
cause them to break.”
-The Buddha

“The good news is, that the bad news can be
turned into good news when you
change your attitude.”
-Robert Schuller

“Life is a great big canvas and you should
throw all the paint you can.”
-Danny Kaye

“If you believe it will work out, you’ll see
opportunities. If you believe it won’t,
you’ll see obstacles.”
-Anonymous

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.

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 a certified County, Family and Circuit Civil Mediator.

COMMUNICATIONS GROK: THE STORIES BEHIND THE STORIES

By: Dave Yewman
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tion Coaching
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(Reprinted with Permission of Dave Yewman)

I had the great pleasure of co-presenting a seminar with Dave at the Southern California Mediation Association's 18th Annual Conference at beautiful Pepperdine University in November, 2006. We have remained in touch through the years. Dave has generously allowed me to share this interesting article with you. Enjoy.

Open any magazine or watch any news program on television and you're likely to see a back story, usually something that helps develop the main story, like the Olympic skater who grew up poor but is poised to win gold. We love the stories behind the stories. But back stories are woefully underused in contemporary communications, and that's a shame because they can be really interesting. Here are two old examples:

In 1856, a new dean named Henry Liddell arrived at Christ Church College at Oxford University in England. Liddell and his wife Lorina had three young daughters and the family befriended a tall, gangly, 24-year-old mathematics professor named Charles Dodgson. When he was a small child, Dodgson caught a fever that left him deaf in one ear. At 17 he suffered from whooping cough, which led to a weak chest and he also stammered badly. After Liddell's arrival, Dodgson became especially close to the three girls, Edith, Lorina Charlotte and Alice, and used to take them on rowing trips along the River Thames near Oxford.

It was on one of those rowboat trips on July 4, 1862 that Dodgson invented a story to tell the girls. In his diary, he remembered the day had a "cloudless blue above, the watery mirror below, the boat drifting idly on its way, the tinkle of drops that fell from the oars..." After Dodgson told the story, one of the girls, Alice, begged him to write it down for her. After some delay, Dodgson eventually put pen to paper and he gave a handwritten, illustrated book to Alice in November 1864.

The story was called "Alice's Adventures in Wonderland" and Dodgson is far better known by his pen name, Lewis Carroll. The book became one of the most popular children's books in the world. Dodgson became so popular, in fact, that after reading "Alice in Wonderland" Queen Victoria suggested

that he dedicate his next book to her, which he did.

And that's the back story of "Alice's Adventures in Wonderland."

Around the same time Charles Dodgson was writing stories for Alice and her sisters, a Swedish inventor was reading his own obituary in a French newspaper. And it wasn't a very kind obituary, saying, in part, "Le marchand de la mort est mort" ("The merchant of death is dead"). It also said, "Dr. Alfred Nobel, who became rich by finding ways to kill more people faster than ever before, died yesterday."

Now Nobel, the inventor of dynamite, was still very much alive. His brother, Ludvig, had died and the newspaper had made a horrible mistake. So not only had he lost a brother, he now knew how he would be remembered. The premature obituary apparently had a huge impact on Nobel. And on Nov. 27, 1895, Nobel in his last will and testament assigned the bulk of his considerable fortune to establishing five Nobel Prizes, to be awarded annually in physics, chemistry, medicine, literature and peace (economics was added in 1969). When Nobel did die, in 1896, he left a fortune of 33 million krona or around \$9 million to endow the Nobel prizes.

When Nobel invented dynamite he naively thought it would be a force for peace, saying "...on that day that two army corps can mutually annihilate each other in a second, all civilized nations will surely recoil with horror and disband their troops." Nobel died around 20 years before World War I, which is probably just as well when you think about it.

And that's the back story of the Nobel Prizes.

Dodgson's ailments led to a classic children's story; Nobel almost choking on his espresso while reading his obituary led to the Nobel Prizes. Back stories add context and understanding. They're the color commentators of stories. They can be powerful and engaging in literature or business.

So what's your back story? You should find it because people love the stories behind the stories.

P.S. As a bonus for reading this far-and because

Grok subscribers are, by nature, smart, funny and good looking-here's a link to a free download of "On Getting to the Point," a collection of Grok essays in book form (you can buy a dead-tree version via Amazon.com for \$13, but this one's free to read online or download as a PDF) <http://www.scribd.com/doc/16359441/On-Getting-to-the-Point>

ATTORNEY BRUCE F. IDEN OFFERS COLLEGE KITS FOR ADULT CHILDREN

I have known veteran attorney Bruce F. Iden of Iden Law Offices for many years. Bruce earned his law degree from the George Washington University National Law Center and his L.L.M. in taxation from the University of Miami School of Law. He has been practicing in the areas of estate planning and probate and trust administration for over 25 years and he has been an adjunct professor at Florida International University in Miami for many years.

His firm has recently produced an excellent newsletter. In the most recent issue of Bruce's newsletter, there is a thought-provoking article about college bound kids. If you are the parent of a college student, or if you know a friend, colleague or client who is, I hope you will share this message with them. College kids are adults, so parents no longer have a right to obtain information regarding their healthcare or participate in decision making, even in emergencies. Bruce's law firm has developed a College Kit which provides the appropriate documents and 24/7/365 access to them by healthcare facilities worldwide. Bruce has generously granted me permission to share information about his College Kit with you. The College Kit includes the following:

(1) Advance Directives-Healthcare Power of Attorney authorizing you to participate in the decision making process regarding your child's medical treatment. It can also provide instructions to help you make choices your child would want; HIPAA release, without which, medical institutions cannot provide you the information you need about your child's health status so that you can make proper decisions; Living Will stating whether or not life-sustaining procedures should be continued under

what circumstances.

(2) Emergency Medical Information Card giving healthcare facilities access to your children's critical medical information anytime, anywhere in the world. Within minutes, all of your child's advance directives will be in the hands of those who need it.

These documents may help you or your clients relax a little bit more when your children leave home. For more information, you can contact Bruce at **(954) 885-0085 ext. 15** or e-mail him at: **Bruce@idenlaw.com**.

"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** and **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. On Memorial Day, 2009, ESPN updated its story about this project and reported that more than 21,000 soccer balls

inscribed with Nick's name have been shipped to Iraq and delivered to Iraqi children.

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. 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.

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.

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.

Where did the summer go? It always seems to pass too quickly. Now it's back to work and school full time. I hope you and your families and staff are relaxed and refreshed and ready for business. As the baseball season winds down, the Florida Marlins are still (barely) alive in the hunt for the playoffs. Thankfully, college and pro football are back. So many teams to root for (or against). So many games on so many channels. It seems like it is now possible to watch football almost every day of the week. As the Jewish holidays approach, Best wishes for a Healthy and Joyous New Year and an "easy fast". Halloween is not far off, and Thanksgiving is nipping at its heels. Enjoy this wonderful season and the "cool" of autumn. 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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