

Significant Case Law For Attorneys and Mediators

Cooper v. Austin, 750 So. 2d (Fla. 5th DCA Opinion Filed January 14, 2000): Cooper appealed the trial court's denial of his motion for relief from a final judgment which adopted a mediation agreement Cooper alleged was obtained by extortion. The facts of this unusual case are fascinating and instructive. During the course of a lengthy mediation conference, it was undisputed that the wife sent Cooper a note which stated:

"If you can't agree to this, the kids will take what information they have to whomever to have you arrested, etc. Although I would get no money if you were in jail-you wouldn't also be living freely as if you did nothing wrong."

Shortly thereafter, the parties "settled" their property matters. Although the trial judge recognized the extortionate nature of the note, he refused to give relief because he determined that the agreement did not result from the wife's demands. In Footnote 4 of its opinion, the Fifth District stated: "The crime threatened to be reported by the wife was Cooper's photographing a nude, underage girl. Cooper, who had experienced first hand the law's disapproval of this practice on an earlier occasion, was aware that in going through his property, the wife's children had found a photograph taken by him of a young woman who indeed looked underage. It was not until shortly before this action for relief from judgment was filed that Cooper tracked down the woman and verified she was "of age" at the time the photograph was taken."

The husband's uncontroverted testimony was that the result of the mediated settlement agreement was that the wife received \$128,000 in marital assets while the husband received \$10,000. The wife also received rehabilitative alimony and \$75,000 in non-modifiable rehabilitative alimony, and the husband was also required to pay the wife \$2,500 in order to gain access to the storage unit which presumably contained the allegedly incriminating photographs.

The Fifth District found this "grossly unequal distribution" of marital assets spoke volumes about the effect of the extortionate note sent by the wife. The Fifth District found the parties' agreement was neither just nor reasonable and did not justify ignoring the clearly extortionate actions of the wife. The Fifth District held: "In this case, the wife's "wake-up call," which demanded the husband either give in to her demands or go to jail, was clearly extortionate and her presentation of the extorted agreement to the court was a fraud on the court making the trial court an instrument of her extortion. Mrs. Cooper should not profit from her actions. Nor should this Court, or any court, ignore them." The trial court's decision was reversed and remanded with instructions to proceed in accordance with the appellate court's opinion.

This case also contains a thoughtful dissenting opinion by Judge Griffin in which he contends the Fifth District's standard of review for this case was narrow-and the appellate court could reverse only if no reasonable judge could say there was not clear and convincing evidence of duress established by Mr. Cooper.

PRACTICE TIP:

Even though a mediated settlement agreement has been reduced to writing and signed by the parties and their counsel, if any, in accordance with Florida's rules of civil procedure and statutes, there may be some circumstances under which that agreement may not be enforceable. The parties should enter into their Agreements freely and voluntarily, without undue coercion or duress.

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 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.

RECENT PRESENTATION

In October, my longtime friends and mediation colleagues Meah Tell of Coral Springs, Geraldine (Gerry) Lee Waxman of Lauderhill and I had the opportunity to present a seminar titled "Do's and Don'ts For Mediators Drafting Documents" at the Broward County Bar Association's 2009 Bench and Bar Convention in Fort Lauderdale. It was great fun having the chance to share this program with Meah and Gerry. Special thanks to those intrepid souls who were so kind to stick around very late on a Friday afternoon to attend our presentation.

MEDIATION WEEK IN FLORIDA: OCTOBER 12-18, 2009

Continuing a tradition started by the late Governor Lawton Chiles, Governor Charlie Crist proclaimed the week of October 12-18, 2009 as **Mediation Week** in Florida. Governor Crist's Proclamation states, among other things, that "Florida has been a leader in recognizing and promoting mediation as an alternative to litigation"; "administrative agencies and court programs use mediation to effectively and efficiently resolve disputes"; and "mediation is taught and practiced in many schools in Florida not only as a way of solving individual disputes but also as a means toward achieving a more peaceful society."

RECOMMENDED READING

The cover story of the Business Monday section of the October 19, 2009 edition of The Miami Herald provides a comprehensive look at the foreclosure process in Florida. The numbers are shocking. Court clerks say more than 135,000 foreclosures could be filed in Miami-Dade, Broward and Monroe counties this year-compared to a tri-county total of about 17,500 in 2006. There is also a column about Miami-Dade County's court-ordered mediation program-the 11th Circuit Homestead Access to Mediation Program (CHAMP), which requires lenders to negotiate with borrowers before foreclosing on a home. Since the Miami-Dade program was launched on May 1, 2009, 465 of the 599 cases scheduled for mediation were settled. The program, which is now mandatory in only three of Florida's

20 judicial districts, has led to settlements in 1,072 of the 1,401 cases scheduled for mediation statewide.

The September 15, 2009 edition of The Florida Bar News features an interesting story about the Florida Supreme Court Task Force on Residential Mortgage Foreclosure Cases. The Task Force recommends a statewide managed mediation program that would be paid by lenders, allow plaintiffs to appear by telephone, and require financial counseling for borrowers. To read the Final Report and Recommendations on Residential Mortgage Foreclosure Cases, please go to www.floridasupremecourt.org.

DISPUTE RESOLUTION IN THE NEWS - PART I

An article in the October 15, 2009 edition of The Miami Herald reported that Mattel and its Fisher-Price subsidiary agreed to settle a consumer lawsuit for what could total more than \$50 million over the 2007 recall of millions of toys made in China that were found to contain high levels of lead. The companies agreed to provide refunds or other reimbursement to those who purchased the Chinese-made toys.

DISPUTE RESOLUTION IN THE NEWS - PART II

An article (by Paula McMahan of the Sun Sentinel) published in the September 22, 2009 edition of The Miami Herald reported that the Broward Sheriff's Office reached a \$2 million settlement with Jerry Frank Townsend, a mentally challenged man who was wrongly convicted and spent 22 years in prison for a series of murders that DNA later showed he did not commit. Under the terms of the settlement, Townsend will receive a series of payments. He was paid \$500,000 earlier this year and will receive \$300,000 per year in each of the next five years. Last year, Townsend settled a similar lawsuit against the City of Miami for \$2.2 million.

DISPUTE RESOLUTION IN THE NEWS - PART III

An article published in the September 19, 2009 edition of The Miami Herald reported that The Dannon Co. will reimburse consumers for up to \$100 of Activia and DanActivia yogurt purchases and

change its marketing and labeling to settle a class-action lawsuit that alleged Dannon overstated the yogurt's health benefits. The company claims the products can strengthen the body's defenses or regulate digestion because of bacteria they contain. Once the settlement is approved by the federal court in the Northern District of Ohio, consumers will be able to find out more about the process for filing for reimbursement and other information at www.DannonSettlement.com.

**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

"Keep your thoughts positive because your thoughts become your words. Keep your words positive because your words become your behaviors. Keep your behaviors positive because your behaviors become your habits. Keep your habits positive because your habits become your values. Keep your values positive because your values become your destiny."

-Mahatma Gandhi

"Anyone who keeps learning stays young."

-Henry Ford

"It is not enough to be compassionate
- you must act!"

-Tanzin Gyatso, Dalai Lama XIV

"You will make all kinds of mistakes; but as long as you are generous and true, and also fierce, you cannot hurt the world or even seriously distress her."

-Winston Churchill

"We don't see things as they are,
we see them as we are."

-Anais Nin

"Small minds discuss people. Average minds discuss events. Great minds discuss ideas."

-Anonymous

"Experience is the name everyone
gives to their mistakes."

-Oscar Wilde

"Genius... is the capacity to see ten things where
the ordinary man sees one."

-Ezra Pound

"Common sense is not so common."

-Voltaire

"A wise man will make tools of
what comes to hand."

-Thomas Fuller

"Never tell people how to do things.
Tell them what to do and they will
surprise you with their ingenuity."

-General George S. Patton

"When you talk, you repeat what you
already know; when you listen,
you often learn something."

-Jared Sparks

"To profit from good advice requires more
wisdom than to give it."

-Churton Collins

"None is so perfect that he does not
need at time the advice of others."

-Baltasar Gracian

"Words may show a man's wit, but
actions his meaning."

-Benjamin Franklin

"Nothing is a waste of time if you use the
experience wisely."

-Auguste Rodin

“We live in the present, we dream of the future,
and we learn eternal truths from the past.”

-Mme. Chiang Kai-Shek

“Education is a continuous process ending only
when ambition comes to a halt.”

-Col. R. I. Rees

“Education is that which remains when one has
forgotten everything he learned in school.”

-Albert Einstein

“Without freedom of thought, there can be no
such thing as wisdom.”

-Benjamin Franklin

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.

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 include 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. More recently, I received a newsletter reporting that more than 25,000 soccer balls have been shipped to Iraq.

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 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. 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.

Is it possible that another year is drawing to a close? It seems that the holiday displays at the stores go up a little bit earlier each year. With the end of Halloween, comes the beginning of the glorious Holiday Season. With the end of the major league baseball season, comes the start of another NBA and

college basketball season. College and pro football are just heating up now. Hopefully, the "cooler" air of winter will soon be upon us, and the 2009 Hurricane Season will come to an uneventful conclusion. I wish you and the members of your families and staff an abundance of good health, happiness and peace at Thanksgiving and always. I hope you will enjoy this beautiful season and have many reasons to be thankful. I am grateful for your generous and loyal patronage for so many years. Have a Joyous New Year. As always, Best wishes for much Good Health, Happiness, Success, and Peace (and Good Mediation, too) in 2010 and beyond.

BRUCE A. BLITMAN, ESQ.

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