

Significant Case Law For Attorneys and Mediators

IN RE: FINAL REPORT AND RECOMMENDATIONS ON RESIDENTIAL MORTGAGE FORECLOSURE CASES (Case No. AOSC09-54; December 28, 2009): The Supreme Court of Florida approved the managed mediation program recommended by its Task Force on Residential Mortgage Foreclosure Cases to respond to Florida's residential mortgage foreclosure crisis. The Task Force recommended adoption of a uniform, statewide managed mediation program to be implemented through a model administrative order to be issued by each circuit chief judge. Under this program, all foreclosure cases in the state courts that involve residential homestead property will be referred to mediation, unless the plaintiff and borrower agree otherwise or unless effective pre-suit mediation that substantially complies with the managed mediation program requirements has been conducted. Referral of the borrower to foreclosure counseling prior to mediation, early electronic exchange of borrower and lender information prior to mediation, and the ability of a plaintiff's representative to appear at mediation by telephone are features of the model administrative order. The Supreme Court approved "... this recommendation as the best method to open communication and facilitate problem-solving between the parties to foreclosure cases while conserving limited judicial resources. The Court therefore adopts, with minor changes, the Task Force's proposed model administrative order. The model administrative order is incorporated into and appended to this Administrative Order..."

The Task Force's Final Report and Recommendations is available at http://www.floridasupremecourt.org/pub_info/documents.shtml#foreclosure.

Please review this Report as well as the Supreme Court's Administrative Order AOSC09-54 on this important subject.

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.BABMediate.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

"Treat Your Customers" by Bob Miglani (Published by Hyperion Books, New York 2006): The author grew up working at his family's Dairy Queen business. In this little gem of a book, he provides thirty lessons on service and sales that he learned at his family's Dairy Queen store. He writes: "Working at my family's Dairy Queen business has taught me many valuable lessons. The most important lesson is that the behaviors required for success in business are the same as those needed for success in life: engaging fully in everything you do, having and following some core principles or truths, and being fair and kind to all people. At the end of the day, it is not about how many cones I serve or my title and responsibility in a Fortune 500 company. It's the value I bring to others-family, friends, colleagues, employees, and customers." This is an easy, entertaining read. A great book for teens about to embark upon their first job as well as for everyone in your workplace (including you) to remind them that every job is important and that we are all in the business of serving our clients and customers.

The December, 2009 edition of Trial, the Journal of the American Association for Justice (www.justice.org) features several interesting articles about Mediation and the skills for closing the case without trial. "Mediation, step by step" by Ronald V. Miller Jr. and John B. Bratt; "Prepping

for mediation” by Mark Wolfe; “How I learned to relax and love mediation” by Douglas Landau and “Three strategies for a successful mediation” by Ronald E. Johnson Jr. are well written and provide valuable insights to help parties and their counsel get the most out of their mediation experience.

DISPUTE RESOLUTION IN THE NEWS -PART I

An article in the January 8, 2010 edition of The Miami Herald reported that Florida public hospitals and health departments will be paid \$1.5 million from a settlement with Abbott Laboratories and two related companies as part of a settlement over antitrust allegations regarding the cholesterol-reducing drug TriCor. The companies settled the suit by agreeing to pay \$22.5 million in all to state and local government agencies, including public hospitals and health departments, in overcharges for TriCor. The companies also agreed not to delete the drug codes for the latest version of TriCor, so a generic manufacturer could produce a cheaper, but identical, drug for a period of time.

DISPUTE RESOLUTION IN THE NEWS -PART II

Another article in this same January 8, 2010 edition of The Miami Herald reported that for the fiscal year ended September 30, 2009, there were 93,277 workplace discrimination complaints filed with the U.S. Equal Employment Opportunity Commission—the second highest number of workplace discrimination complaints ever filed with the federal agency. The EEOC reported that complainants received more than \$376 million through enforcement and mediation.

DISPUTE RESOLUTION IN THE NEWS -PART III

An article in the September 11, 2009 edition of Entertainment Weekly magazine reported that an arbitrator ruled that actor Jeremy Piven did not breach his contract with the producers of the Broadway play Speed-the-Plow when he pulled out of the show in December, 2008 after claiming to have sushi-related mercury poisoning.

DISPUTE RESOLUTION IN THE NEWS -PART IV

An article in the February 10, 2010 edition of The

Miami Herald reported that Western Union agreed to a \$94 million settlement in disputes with Arizona prosecutors that centered on the state’s effort to reduce the flow of immigrant and drug smuggling money through wire transfers. The deal includes \$50 million for a nonprofit center that will offer grants to law enforcement agencies in California, Arizona, New Mexico and Texas to tackle money laundering and the smuggling of immigrants, drugs and guns along a 2,000-mile border. Western Union will pay \$7 million to each of three Arizona law enforcement agencies to pay for costs of investigating the company and its agents. The company will spend another \$19 million to strengthen its own anti-money laundering efforts and pay an additional \$4 million for independent monitoring of those efforts.

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

“Not life, but good life, is to be chiefly valued.”
-Socrates (469 BC-399 BC)

“Extraordinary claims require extraordinary proof.”
-Carl Sagan

“The voyage of discovery is not in seeking new landscapes but in having new eyes.”
-Proust

“The world we have created is a product of our thinking; it cannot be changed without changing our thinking.”
-Albert Einstein

“You are today where your thoughts have brought you; you will be tomorrow where your thoughts take you.”

-Author James Lane Allen

“We are what we repeatedly do. Excellence, therefore, is not an act, but habit.”

-Aristotle

“A candle loses nothing by lighting another candle.”

-Father James Keller

“The worst things you can do for the ones you love are the things they could and should do for themselves.”

- John Wooden

“Experience is the teacher in all things.”

-Julius Caesar, De Bello Civili (52 BC)

“Leadership is the art of getting someone else to do something you want done because they want to do it.”

-General Dwight D. Eisenhower

“Always bear in mind that your own resolution to succeed is more important than any other one thing.”

-Abraham Lincoln

“Things turn out best for the people who make the best of the way things turn out.”

-John Wooden

“Dreams come a size too big so that we can grow into them.”

-Josie Bisset, Actress

“The power of words is immense. Well-chosen words have stopped armies, changed defeat into victory and saved empires.”

-French novelist Emile de Girardin

“If your ship doesn't come in, swim out to meet it.”

-Comedian Jonathan Winters

“Success is the sum of small efforts, repeated day in and day out.”

-Author and publisher Robert Collier

“The farther backward you can look, the farther forward you can see.”

-Sir Winston Churchill

“What is a weed? A plant whose virtues have not yet been discovered.”

-Ralph Waldo Emerson

“New Year's is a harmless annual institution, of no particular use to anybody save as a scapegoat for promiscuous drunks, friendly calls and humbug resolutions.”

-Mark Twain

“If you get up early, work late, and pay your taxes, you will get ahead if you strike oil.”

-J. Paul Getty

“...Where there is no law, there is no freedom.”

-John Locke

“Strong reasons make strong actions.”

-William Shakespeare

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.

21 YEARS AS A SUPREME COURT CERTIFIED COUNTY AND CIRCUIT CIVIL MEDIATOR; 20 YEARS AS A CERTIFIED FAMILY MEDIATOR-AND STILL COUNTING!

February marks another anniversary as a certified mediator and another milestone. In February, 2010, I celebrated my twenty-first anniversary as a Florida Supreme Court certified County and Circuit Civil mediator and my twentieth anniversary as certified Family 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.

“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. According to the most recent newsletter I received in December, 2009, the last count for balls distributed by our troops to Iraqi and Afghani children was 26,769 (and still going)!

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 de-

mand 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. Isn't it amazing that Spring is just around the corner? After an unusually cool winter (for Florida), I'm sure many of you are looking forward to the sunny days and warmth of Spring (although I am not looking forward to the oppressive heat and humidity of another South Florida summer). Spring training has begun and the start of another baseball season is just weeks away. Maybe this will be the year the Marlins will win another World Series-or the Chicago

Cubs will win their first Series in more than one hundred years? Hope springs eternal. I wish you and the members of your families and staff a joyous Passover and a Happy Easter. I hope you will enjoy this wonderful season. I am grateful for your generous and loyal patronage for so many years. As always, Best wishes for much Good Health, Happiness, Success, and Peace (and Good Mediation, too) in 2010 and beyond.

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