

FORUM 8

President's Message

By Cherie Fine



As the year ends, I am grateful for all the support and help I have received in completing Judge Walker's term as EJCBA President and am excited to serve as your President for the upcoming 2019-2020 year. My goal for the EJCBA is that we work together to advance the professional and personal lives of our members

through outstanding services, unmatched collaborative opportunities, and professional development.

I want to find ways to make our association indispensable to the bench and bar, and to preserve and promote Gainesville as a unique place to practice law in a culture of camaraderie, collegiality, competence and mutual trust.

In June or July, the board of the EJCBA will meet in retreat to plan the upcoming year, and we would love to hear from you! What activities and presentations do you love? What do you think is missing? What should we change?

As an overview we offer:

Monthly luncheons with speakers on varied topics. Do you enjoy the speakers? Who would you like to hear from? Would you prefer that the luncheons be totally social with just announcements and no speakers?

Annual Cedar Key Dinner. Any thoughts on continuing the tradition? Is there anything missing? What do you love the most about Cedar Key? What would you change?

The Fall Family-Friendly Social. Should we continue this member's benefit? Should we change it? Did you like it at Depot Park or First Magnitude

best or is there another location you would suggest?

Various **CLE opportunities** including the Professionalism Seminar and the Leadership Diversity and Inclusion Roundtable – are there other CLE topics you think we should sponsor? What CLE's have you attended and were they worthwhile?

Various **volunteer and charitable opportunities** including the Annual Margaret Stack Holiday Project to benefit the Alachua County Headstart Pre-K program and the Charity Golf Tournament, "The Gloria" (in memoriam of Gloria Fletcher) benefitting The Guardian Foundation. We'd love your thoughts on these projects and other ideas of ways we can support our community and give back.

The Spring Fling. Should we continue this member's benefit? Should we change it? Did you like it at the Thomas Center or the Warehouse best or is there another location you would suggest?

The Annual Meeting. Should it be a dinner? A cocktail party? Or, some other format? What do you think?

Pro-Bono Opportunities. We provide free legal services through our Ask-a-Lawyer program. Do you participate? Do you want to? Are there other programs you think we should be participating in?

I want to know, do our actions meet the needs of all members of the Eighth Judicial Circuit Bar Association? What more can we do to ensure that the diverse members of our legal community are served by the EJCBA? By asking ourselves these questions, we may find the need to change how we currently do things. However, we may also find that we are serving the needs of everyone to the best of the EJCBA's abilities. I hope to facilitate the preservation

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Contribute to Your Newsletter!

From The Editor

I'd like to encourage all of our members to contribute to the newsletter by sending in an article, a letter to the editor about a topic of interest or current event, an amusing short story, a profile of a favorite judge, attorney or case, a cartoon, or a blurb about the good works that we do in our communities and personal lives. Submissions are due on the 5th of the preceding month and can be made by email to dvallejos-nichols@avera.com.

About This Newsletter

This newsletter is published monthly, except in July and August, by:

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Any and all opinions expressed by the Editor, the President, other officers and members of the Eighth Judicial Circuit Bar Association, and authors of articles are their own and do not necessarily represent the views of the Association.

News, articles, announcements, advertisements and Letters to the Editor should be submitted to the Editor or Executive Director by Email. Also please email a photograph to go with any article submission. Files should be saved in any version of MS Word, WordPerfect or ASCII text.

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Deadline is the 5th of the preceding month

Alternative Dispute Resolution

By Chester B. Chance and Charles B. Carter



Things Come In Threes, Or, Fours

This last article of the year involves 4 disparate items. You know how you often have a clean-up the refrigerator meal - a dinner where you grab whatever is leftover in your fridge and concoct an eclectic salad or omelette or stir-fry or whatever.

Well, that is sort of like a 4 subject newspaper article.

Topic One: A Rather Odd Floridian.

A Florida man recently threatened to destroy everyone with an army of turtles according to a local police department. This just happened recently on April 10, 2019 in Indialantic, Florida. On the referenced date, Thomas Lane was arrested in Indialantic after police received multiple calls about a man making a scene at various businesses. Mr. Lane was announcing that he was “a Saint” and threatening to unload his reptile army to destroy everyone and anyone. He was picked up by police and transported to police headquarters where he created yet another disturbance. After being released he was arrested again when he caused a scene at a local convenience store. He told the responding officer that he “needed to leave now or you will all be sorry you f***** with the Saint” as he was being arrested. Mr. Lane cursed and warned all bystanders about the impending doom from his turtle army. He was booked at the Brevard County Jail but then released on bail.

Okay, you’re thinking this fellow does not have all his oars in the water. Well, think again. Less than 5 minutes after reading the news article about St. Terrapin we locked our office, got in our car, drove about 50 yards, and, there in the middle of the parking lot exit was a box turtle. Actually, more like a Mutant Ninja Box Turtle. Coincidence? There are no coincidences. This fanged, muscular albeit pathetically slow reptile was obviously part of weird guy’s army of turtles, on some sort of recon mission.

Conclusion: Not everyone who sounds crazy is crazy.

Topic Two: Age Old Wisdom.

At a time when everybody from Founding Fathers to Presidents to explorers and generals are being lambasted and demonized and having their name sandblasted from school signs, we recall some

words of the historians Will and Ariel Durant about Catherine the Great of Russia: “Her faults were the faults of her time, her good points were her own.” We offer this middle ground perspective in the spirit of mediation.



Topic Three: A Great Loss.

Notre Dame de Paris (Our Lady of Paris) has burned. The entire world lost a friend. A friend of peace, contemplation and hope. This loss touches all of us. It is ironic how a falling spire can inspire. How is this related to mediation? In the Catholic faith, Our Lady is described as the Mediatrix.

The bells of Notre Dame de Paris were rung in memory of every victim of the 9/11 terror attack. What can we do in return? This loss is an architectural loss, a historical loss, a cultural loss and a religious loss. And we are all inspired.

Topic Four: Thank You.

Every year we try to take a moment in our June article and thank Dawn Vallejos-Nichols for her work in putting together this newsletter. In that regard, she does an excellent job and those of us who submit articles greatly appreciate the job she does. Without her there would be no newsletter. Dawn: thank you for what you do and how you do it.

(Thank you, gentlemen, but without wonderful contributors like yourselves, there would truly be no Forum 8. I appreciate each of you. –Ed.)



Guardian Foundation Past President/Board Member Judy Padgett accepts the check for the proceeds from “The Gloria,” EJCBA’s Annual Charity Golf Tournament to benefit the Guardian Foundation. This year, the Tournament raised a whopping \$21,846 for the charity.

Criminal Law

By William Cervone



So when is a weapon not a weapon? Or, put another way, when is something that's not a weapon a weapon after all? Off we go to the land of angels dancing on the heads of pins.

Some facts first. Adam Shepard was drinking at a bar and watching a basketball game back in 2011 somewhere in Duval County. He got into some sort of fight with the soon-to-be victim and was thrown out of the bar. The victim then started getting phone calls, after one of which he left the bar too. A witness at the victim's apartment complex saw the victim pull into the complex, park, and rush towards a white car that was flashing its lights while pulling off his jacket. This might be what we call taking a fighting stance. In any event, the white car advanced on the victim and hit him, causing head injuries from which he died a few days later. Adam was driving the car and he eventually got 30 years for Manslaughter, which the court enhanced from an F2 to an F1 offense because the car was a weapon. The reclassification statute that allowed this is operative when a defendant "carries, displays, uses, threatens to use, or attempts to use *any weapon* or firearm" during the relevant crime.

Now for some history and law. The reclassification statute does not define a "weapon." In 1884 the Florida Supreme Court said that any object can be a weapon if it is used as one. In 1926 the Florida Supreme Court went a bit further and said that a weapon was an instrument of offensive or defensive combat, something to fight with, anything used or designed to be used in destroying, defeating, or injuring an enemy. Over the ensuing decades, the word "weapon" has been used to define various ordinary objects that were used as weapons. The contents of a fire extinguisher made the cut in 2003. A mop did as well in 1987. Sticks seem to have been included as far back as 1934. Shoot, even an automobile was approved as a weapon in that 1926 case referred to a moment ago [for those having a real desire to do so, all of the appropriate cites for your reading pleasure are in Adam's appellate opinion].

But enter a maybe aberrational case from the same (technically) Florida Supreme Court in 1995. In that case, one John Houck, not coincidentally also at a bar but this time in Orlando, bashed his victim's

head repeatedly against the pavement during a fight, causing brain injuries from which he died. The pavement was held NOT to be a weapon allowing reclassification of the crime. Fearing a Pandora's Box of creative prosecutors turning any intentional injury into one caused by a weapon (such as the ground if a person was pushed off a high building; or the water if a person was thrown overboard from an ocean liner), the court grabbed some of that 1926 language and said that a weapon had to be something commonly recognized as an instrument of combat, (which pavement wasn't). In other words, a weapon had to be something commonly recognized as, well, a weapon.

And so it was until Adam's case hit the Florida Supreme Court. To cut to the chase, we are now told that the plain and ordinary meaning of the word "weapon" is not just those things designed to injure or kill but also anything used with the intent to cause harm. I think that this all means that pavement is back in, at least as John Houck used it. Maybe the ground and water are too. At least in the context of felony reclassification that was the literal issue in Adam's appeal. Maybe overall.

As important, the Houck case also held that it was for the judge to decide as a matter of law "whether what is used in the commission of a felony is a weapon" for the reclassification statute. That's gone too. We are now told that this "is typically a question of fact for the jury." Just one more in the growing number of interrogatory verdict questions criminal practitioners must deal with, and, candidly, not inconsistent with the legal trend toward more and more such jury findings in criminal cases.

Anyhow, cars can be weapons if juries say they are. Adam will stay in prison for the duration of that 30 year sentence. And the number of those angels I mentioned earlier keeps going up.

Enjoy your summer and perhaps spend some of it counting the dancing angels.

President's Message

Continued from page 1

and promotion of the best the bar association can offer you. I look forward to speaking with you and hearing your thoughts, or feel free to email me at cfine@ffplaw.com! Fondly, Cherie

Sixth Annual Leadership Roundtable, Diversity Conference

The Eighth Judicial Circuit hosted the sixth annual Leadership Roundtable & Diversity Conference on April 12, 2019 entitled, “The Business of Inclusion: How Inclusivity Affects Your Bottom Line.” The EJCBA, in conjunction with the Florida Association of Women Lawyers - Eighth Judicial Circuit Chapter, Josiah T. Walls Bar Association, North Central Florida Chapter of the Federal Bar Association, and The Florida Bar Diversity Leadership Grant funds, sponsored the event.

In previous years, the Roundtable focused on diversity and inclusion in the legal community, exploring the complexity of these issues in a dynamic legal environment. The Roundtable Committee expanded the scope of this year’s event to include area business leaders. We were pleased to welcome the following panelists: Tara Blythe (Vice-President of Info Tech, Inc.), Dr. Jamie McClave Baldwin (President of Info Tech Consulting), Rick Carlson (Founder and CEO of SharpSpring, Inc.), Abhi Lokesh (Co-Founder and CEO of Fracture), Dr. Kathy Sohar (Director for the Collaboratory for Women Innovators), and Jody Swanson (Vice President of Human Resources of Exactech, Inc.). Nikki Lewis Simon, Chief Diversity Officer for Greenberg Traurig, moderated the event.

The panelists discussed diversity and inclusion in their respective businesses through the hiring process, employee retention, and customer outreach.



Back row: Rick Carlson, Tara Blythe, Nikki Lewis Simon, Jamie McClave Baldwin, and Kathy Sohar.
Front row: Hon. Kristine Van Vorst, Abhi Lokesh, Mary K. Wimsett, and Jody Swanson.

Diversity and inclusion as part of corporate culture and vision was emphasized by all panelists. The Roundtable was interactive, with Ms. Simon engaging the audience in questions and answers as well as commentary.

Thank you to Roundtable Co-Chairs, Mary K. Wimsett, Esq. and the Hon. Kristine Van Vorst, as well as all members of the Roundtable Committee.



Jack Ross, Scott Walker, Bruce Brashear and Larry Turner were in attendance at the Annual Leadership Roundtable.



UF Assistant Dean of Inclusion Michelle Smith speaks at the Leadership Conference.

2019 Annual Dinner & Meeting

Thursday, June 13, 2019
6:00 pm until 8:30 pm
(Cocktails 6:00 pm - 7:00 pm)

Cocktails and Dinner Buffet Included
Entertainment by UF Jazz Trio

Reservations Required
\$45 for members and their non-lawyer
guests
\$60 for non-members

**Reservations must be received no later
than
Thursday, June 6, 2019**

<https://8jcba.org/event-3029691>

Driver License Clinic

There will be a Driver License Clinic to assist individuals whose licenses have been revoked, suspended, or cancelled on Thursday, June 13, 2019, in the Jury Assembly Room of the Alachua County Criminal Justice Center. The event will be held from 9 a.m. to 2 p.m.

Staff from the Alachua County Clerk of Court, Alachua County Tax Collector, Alachua County Sheriff's Office, Department of Highway Safety and Motor Vehicles, Office of the Public Defender, Office of Regional Counsel, Office of the State Attorney, along with judges and court staff, will be on hand to assist registrants and provide individualized information relevant to each participant's personal circumstances. The goal of the clinic is to provide "one-stop shopping" for citizens to interact with the appropriate state agencies and/or the court, so they can determine how to regain their driving privileges. Registration is limited to the first 125 registered participants. If you need additional information click on this [link](#).



GERALD T. BENNETT
AMERICAN INN OF COURT

Gerald T. Bennett Inn Of Court Now Accepting Applications For 2019-2020

The Gerald T. Bennett Inn of Court is now accepting applications for student and attorney members. Membership in the Inn is an excellent opportunity to network with local attorneys, judges, law students and professors and facilitate communication between law students and legal professionals and learn about cutting-edge legal issues, theories, and technology. Membership dues includes attendance at all in meetings, a cocktail reception prior to the meeting and dinner.

Membership in the Inn does not auto-renew from year to year, members must re-apply for membership to the Inn each year.

Please note the following deadlines for applications:

For returning attorney members: June 15, 2019

For prospective attorney members: July 12, 2019

For prospective student members: August 30, 2019

Please visit www.bennettinn.com for more information and to apply online



May luncheon speaker Juliette Lippmann, President of the Florida Bar Foundation, Howard Rosenblatt (2019 Pro Bono honoree for the 8th Circuit), EJCBA President Cherie Fine, Pro Bono Coordinator Marcia Green (Three Rivers Legal Services), and attorney John Bonner, a frequent volunteer attorney for the Ask-A-Lawyer program, at the May luncheon.

Insurance for Employers (EPLI): 4 Key Considerations

By Laura Gross



Employment Practice Liability Insurance (EPLI) coverage is not the solution for every employer. Here are four key considerations which are complicated enough that they require the assistance of a knowledgeable and trusted insurance broker and an experienced employment defense attorney.

1. Selection of Counsel. Most policies provide for the employer to be represented by panel counsel chosen by the insurer. For Gainesville employers, this may mean remote representation by an unfamiliar attorney located in a different city. The attorney also may have different experience, skills, and performance standards than those to which the employer is accustomed. To avoid this problem, an employer should opt for a policy that allows the employer to select its employment defense counsel.

2. Coverage. EPLI typically covers limited claims of discrimination and harassment based on a protected status, retaliation, negligent supervision and retention. It is not umbrella coverage. In fact, most EPLI policies exclude many common claims that an employer may face related to breach of contract, wage and hours under the FLSA, labor matters under the NLRB, plant closings under the WARN, employee benefit issues under COBRA and ERISA, workplace safety under OSHA, and workers compensation. Enforcement of restrictive covenants is also generally excluded. The exclusion of FLSA wage and hour claims, however, is particularly significant as these claims carry the potential for liquidated damages and substantial attorney fees and are the most likely source of employment-related liability. Recently, insurers have been selling endorsement for FLSA coverage for defense costs only—not indemnification. In some cases, this endorsement coverage seems to have resulted in unnecessarily extended litigation under the FLSA which allows plaintiff's counsel to run up attorney fees which, like wages and liquidated damages, are uncovered by EPLI and payable solely by the employer. Special consideration should be given to whether an endorsement for FLSA coverage is truly helpful.

3. Policy limits and the deductible. Companies choose a policy with a deductible of \$15,000 or more to keep costs down. A deductible of \$15,000 is not

helpful for employment-related claims that are simply filed at the administrative level and go no further. These claims often cost less than \$15,000 in fees and costs to resolve. Moreover, if the deductible is on a per case basis and the employer faces a spate of cases as may occur in response to a particular manager or practice, EPLI does little to control costs.

4. Defense costs and settlement. Defense costs are usually included within EPLI. Every dollar paid for defense erodes the amount available for settlement or to pay a judgment. This is something plaintiff's counsel may factor into the case evaluation. However, the insurer and employer may disagree on settlement. While the insurer may want to reduce the risk of exposure and settle the claim, the employer may not want to send a message to employees that employees who bring frivolous claims will receive at least a nuisance settlement.

Employers who have or are considering EPLI should thoroughly analyze the policy and understand the coverage limits.



Mary K. Wimsett, Judge Kristine Van Vorst and Judge Monica Brasington at the Leadership Roundtable



Chief Judge Nilon greets EJCBA Board Member and pro bono honoree Frank Maloney at the May luncheon.

Three Million Dollars Returned to North Florida Low Income Residents

By Marcia Green



Money returned to the community! Three million dollars for low-income residents! That sounds significant – and it is! Interest peaked? I hope so, and that you take the time to review Three Rivers Legal Services' 2018 Annual Report. You will find it on our website at <https://www.trls.org/> or contact me and I'll send you a copy.

Of note, you will see that this past year, our clients received cumulative benefits of more than \$3,000,000. This impressive sum represents disability benefits, tax and debt relief, alimony and child support, educational support services, saved homes, and more.

For example, we assisted 16-year-old Jane (not her real name) who found herself the owner of her family home after losing her brother and both parents. Alone and unable to manage the property, which was encumbered by a mortgage, she moved in with her boyfriend's family. Her boyfriend's mother reached out to Three Rivers to obtain guardianship in order to sell the home and create a college fund. With representation, a guardianship was established and help was provided for the sale of the home, already in foreclosure. Jane has now graduated from high school and, with funds available from the sale, is pursuing post-secondary education as well as counseling.

Three Rivers Legal Services provides legal remedies to those who may not otherwise have access to the legal system. We provide civil legal representation and pro se assistance. We meet with clients at senior centers and rural locations and reach out to residents at health fairs and community events. We have paralegal/social workers working with elderly patients at Shands Hospital and who visit the camps and service sites for those experiencing homelessness. We speak at events to provide preventative legal assistance and we meet with representatives of social service agencies to make sure they are aware of legal rights and possible legal remedies. We reach out to victims of disasters to make sure their legal rights are protected and we collaborate with other legal services providers to expand the scope and potential for help.

These services and activities would not be possible without our funding sources. The financial benefits could not be possible without access to the civil legal system. Three Rivers Legal Services, with staff attorneys, paralegals and other advocates, along with volunteer attorneys and law students, serve the low-income residents of 17 counties in north Florida. With our grants, awards, partnerships and donations, we are the entry point of access to the justice system for thousands of our low-income residents and neighbors.

Results and outcomes that can be seen and felt are what keep us going and passionate about our work. But we are still only meeting about 20% of the need. More needs to be done and more of our residents need help.

If you want to become a part of this work, as a volunteer or by making a donation, please go to our website at <https://www.trls.org/> to discover "How You Can Help" or contact me at marcia.green@trls.org.

United States Magistrate Position Available

The United States District Court for the Northern District of Florida is currently accepting applications for a full-time United States magistrate judge position to be resident in the Tallahassee division of the court. Additional details regarding the position and the application process are available on the court's website at www.flnd.uscourts.gov or by using the link below. Applications must be received no later than August 1, 2019.

<http://www.flnd.uscourts.gov/news/appointment-full-time-united-states-magistrate-judge-tallahassee-division>

June 2019 Calendar

- 12 Probate Section Meeting, 4:30 p.m., Chief Judge's Conference Room, 4th Floor,
Alachua County Family & Civil Justice Center
- 13 EJCBA Annual Reception and Meeting, 6-8:30 p.m., Cade Museum
- 18 Family Law Section Meeting, 4:00 p.m., Chief Judge's Conference Room,
Alachua County Family & Civil Justice Center
- 26 - 29 2019 Annual Florida Bar Convention, Boca Raton Resort and Club

Have an event coming up? Does your section or association hold monthly meetings? If so, please fax or email your meeting schedule to let us know the particulars, so we can include it in the monthly calendar. Please let us know (quickly) the name of your group, the date and day (i.e. last Wednesday of the month), time and location of the meeting. Email to Dawn Vallejos-Nichols at dvallejos-nichols@avera.com.

*HAVE A GREAT
SUMMER!
See you in September!*