

FORUM 8

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Eighth Judicial Circuit Bar Association, Inc.

November 2007

President's Letter

by John Whitaker



Jail overcrowding is not a new issue in Alachua County but it has become a serious one recently, and the Sheriff has made it a top priority (as you may recall from her speech at the annual bar dinner). I had two initial thoughts when the jail overcrowding issue became front page news. The first was

what do you expect; Gainesville and Alachua County are growing, and so will the jail population. The second was related to my practice: I hoped I would get better or more alternatives to jail plea offers for my clients. As Lee Corso is so fond of saying on ESPN's College Game Day, "not so fast, my friends." That is not to say that I have not gotten alternative offers, but they are not quite what I had hoped.

The County Court judges for the most part have not let jail overcrowding affect their sentencing. Defendants who plea, or are found guilty who would usually get a county jail sentence are still getting that same jail sentence. Those who violate county court probation are also receiving jail sentences as deemed appropriate. There has been use of alternatives such as the Day Reporting Program (intensive daily contact supervision) and the SCRAM unit (an ankle bracelet that monitors if a defendant consumes alcohol). But those alternatives are not for all Defendants, SCRAM costs money and not everyone can or should be in the day reporting program. Additionally, those programs have been around and have been utilized for several years. My overall impression is business as usual in County Court. I cannot find fault with the judiciary for doing this. Ask yourself, should a defendant's sentence be predicated on what is a fair and just

punishment, or whether or not it makes the jail more overcrowded?

On the other hand, some of the Circuit Court judges have demonstrated a different approach to sentencing to address the overcrowding issue. To be fair some of the Circuit Court judges have long held the belief that for the most part felony convictions result in either probation or state prison and violations of probation should result in prison time. The new twist is that more judges are leaning towards this approach. In the recent past it was, in my experience, fairly common in non-violent felony cases (like Driving While License Suspended or Revoked or simple drug possession) to get an offer from the State Attorney's Office that had two alternatives: state probation or county jail time. Obviously those cases that indicated/warranted a prison sentence were getting an appropriate prison sentence offer. But with state probation having zero tolerance for any sort of violation, I was advising clients to take the county jail offer and move on with their lives. With that alternative now more difficult to come by, the Defendants that fall into that category are more likely to get a state probation sentence. If they violate, they often end up in the county jail for 30-120 days waiting to have their violation case come to hearing or to be sentenced. That could create a cycle that actually adds to the overcrowding issue.

Both the County and Circuit Court Judges have made it a priority to keep cases moving on their dockets. Continuances are being granted only when necessary. I don't have access to any circuit wide statistics but I know the cases in my office are not staying open as long as they did a few years ago, and that's a good thing.

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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, or on a CD or CD-R labeled with your name. Also, please send or email a photograph with your name written on the back. Diskettes and photographs will be returned. 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.

The EJCBA Holiday Project is Underway!

by Elizabeth Collins

Each December members of the EJCBA, including attorneys, judges, and their illustrious staff members, have worked together to ensure that the children at Duval Elementary, who are among the most financially disadvantaged children in our county, receive gifts to celebrate the holiday season.

If you choose to participate, you will receive a gift bag tagged with the name, sex, and grade level of each child, as well as a wish list. You will also receive a list of extra fillers suggested by the teachers for the students, *i.e.* small items the children may need, but cannot afford. In years past, some of the requests included things as simple as "warm socks that fit," "crayons of my own," school supplies, dolls, matchbox cars, and candy. A little money can go a long way.

The suggested gift amount is \$50 per bag. The Holiday Committee kindly requests that the gift donations are not greatly in excess of or less than this amount to ensure that each child receives comparable gifts. Gift bags will be due in early December in time for delivery by our own Santa at a special event at the school.

If you wish to make a cash donation in lieu of purchasing a gift bag, the Holiday Committee will accept the donations and volunteers will purchase gifts for the children. However, I assure you that it is worthwhile, not only for your own holiday spirit, but to decrease the burden on the volunteer shoppers, if you take the time to fill a bag yourself.

If you are interested in participating, please sign up at the next bar luncheon or feel free to email Elizabeth Collins at ecollins@dellgraham.com or Virginia Clapp at clapp@scruggs-carmichael.com.

President's Letter

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I don't know what the solution is for the overcrowding problem. There are committees (made up of those who know much more about this issue than I do) whose members include everyone involved in the issue, from the judiciary to the state attorney to court services, who meet often to look for solutions. I just hope that they continue to meet and seek alternatives to just building more cells. Remember, these are just my observations as a defense attorney; they are not the opinions of the EJCBA.

Florida Bar Pro Bono Nominations are Due!!

by Marcia Green

The Florida Bar is now accepting nominations for the 2008 Florida Bar President's Pro Bono Service Awards. This is an excellent opportunity for local bar members to recognize the pro bono work done by one or more of their peers.

So many Florida lawyers should be commended for the legal work they regularly and freely provide in their communities to those who otherwise would be unable to afford such help. The awards, presented before the Florida Supreme Court, include recognition for individual attorneys, law firms, members of the judiciary and young lawyers and hope to encourage more involvement to manage the huge need for pro bono assistance.

The Bar states that "the emphasis of these awards is on the direct delivery of legal services, free-of-charge, to the poor or, in some instances, to charitable organizations whose primary purpose is to provide other services to the poor."

Nomination categories are as follows and all recognize the commitment to the direct delivery of legal services to the poor: 1) The Florida Bar President's Pro Bono Service Award; 2) The Chief Justice's Law Firm Commendation; 3) The Voluntary Bar Association Pro Bono Service Award; 4) The Florida Bar's Young Lawyers Division Pro Bono Service Award and 5) the Distinguished Judicial Service Award.

Nominations are due by November 2, 2007 and must be submitted to the Florida Bar and to our circuit chair, Carl B. Schwait. The forms can be found at The Florida Bar website at www.floridabar.org.

Previous recipients of the Florida Bar President's Pro Bono Service Award for the Eighth Judicial Circuit include Frank Maloney Jr., Ause Brown, Joe Jackson, Walter Green, Cynthia Swanson, Al Bacharach, Jr., Mary Day Coker, Bruce Hoffman, Marilyn Wolf Peterson, Phyllis Rosier, Ray Brady, Richard Jones, Joye Clayton, EAW Pan Zettler, Jeanne Singer, Emory Springfield, Mitzi Austin, Martha Lott, Barbara Burkett, Kathleen Fox, Bobbie Lee Eubank, Marvin Bingham Jr., Michael Bryant, Kenneth Davis, Shon Saxon and Clara Gehan.

Florida Bar Board of Governors Report



by Carl Schwait

At its October 5 meeting in Coconut Grove, The Florida Bar Board of Governors:

- Heard a report from the Judicial Ethics Advisory Committee on a proposal from chief circuit judges to amend Canons 4 and 5 of the Code of Judicial Conduct to allow judges to participate in limited fundraising activities for civic, charitable, educational, religious, or similar organizations. The JEAC opposes those changes. The issue was referred to the Bar Executive Committee for study and to report back to the board.

- Heard a report from the Legislative Committee that the board should take no action on a request from the Out of State Practitioners Division that the Bar support its position advocating a change in state law to allow out-of-state Bar members to act as personal representatives in estates. Such an action would effectively repeal a position by the Real Property Probate and Trust Law Section opposing such a change to state law. Bar Counsel Barry Richard advised that the issue is outside the areas where the Bar is constitutionally allowed to lobby.

- Received the final report from the Disability Independence Group on a poll of disabled Bar members and the challenges they face. The Member Outreach Committee is studying the poll results and report.

- Approved a recommendation from the Disciplinary Procedure Committee to amend Bar rules to consolidate rules which provide that failure to comply with a subpoena for trust account records would be considered contempt. The Board also approved DPC recommended amendments to the rules to codify the long standing court practice of assessing costs in discipline cases in the form of a civil judgment. The changes now go to the Supreme Court. The board also got an initial look at several other rule changes that may come to it for approval in December.

- Heard a report from the Communications Committee that Bar members now can list advanced law degrees, all federal court admissions, and more detailed areas of practice on their member pages on the Bar's Web site.

- Heard that the Program Evaluation Committee has approved the recommendation of the Board of

Legal Specialization and Education for creation of two new certification areas on education law and adoption law. PEC Chair Ervin Gonzalez said those will come to the board along with recommendations about the minimum number of lawyers needed for a certification area, an issue the committee is working on with the BLSE.

- Upheld the recommendation from the Board Review Committee on Professional Ethics that radio and TV announcers who read lawyer ads, including public service spots, are required by Bar rules to identify themselves as nonlawyers. BRC Chair Jennifer Coberly also said the committee is studying possible rule changes affecting lawyer-to-lawyer advertising.

- Approved a recommendation from the BRC to change Bar policies to provide that when the Professional Ethics Committee seeks to withdraw an existing ethics opinion that notice must be provided to Bar members.

A CLE in Gainesville!!!!

The 8th Judicial Circuit Young Lawyers Division is hosting a CLE you don't want to miss:

Title: Principles of Case Evaluation and Selection.

Speakers: Jack M. Ross (Business and Financial Litigation), Richard M. Knellinger (Family Law), Patrick H. Perry (Personal Injury), and Michael Buchanan (Criminal Defense).

Date: November 16, 2007, 9:00am to 12:00pm

Where: Jury Selection Room, Criminal Courthouse, Gainesville

Cost: ONLY \$10.00.

3.0 General CLE Credit Hours

Please contact Kelly R. McNeal, YLD CLE Director, to reserve your spot today (Kelly@jackcrosslaw.com or 375-1000).

Clerk's Corner



The Clerk's Office Is Online

by J. K. "Buddy" Irby, Clerk of the Circuit Court

I am happy with the response and the number of contacts we have had at the Clerk's Office for information about

LINDAS, our Legal Information Data Access system. As I explained last month, LINDAS is an electronic database that contains images of most documents filed with the Clerk's Office, plus case indexes and docket lines. The Clerk's Office has initiated a pilot program that allows attorneys of record to electronically access LINDAS document images in their cases via the internet. There is no annual fee for this service. In fact the only charge is that subscribers pay a \$50.00 setup fee. They then receive a log-on and password enabling them to view document images in pending cases for which they are attorneys of record. In addition, subscribers can view all public indexes and case progress dockets.

Florida's courts have been moving for some time toward electronic transmission and filing of documents. However, in recent years, concerns about privacy and information security have prompted Florida's Supreme Court to appoint a Committee on Privacy and Court Records, and to establish statewide guidelines for the electronic release of court records. The pilot program described above adheres to the Supreme Court guidelines, which permit document images in a case to be transmitted electronically to a party or an attorney of record.

I hope this program will make your jobs easier by allowing you to view court records from your own computer 24/7, rather than actually making a trip to the courthouse. For a subscriber agreement or additional information about LINDAS access, contact Edward Stiles, Assistant Clerk for Operations, at (352) 374-3663, or Mr. Stiles' assistant, Sonja Mechaney, at (352) 491-4406.

New Officers for Gainesville Area Chapter of FBA

by Stephanie Marchman

On September 26, 2007, the Gainesville Area Chapter of the Federal Bar Association (FBA) kicked off the 2007-2008 year with an annual meeting at Ti Amo! (formerly the Sovereign). Gilbert Schaffnit, the FBA's loyal leader for the past few years, provided a report on the status of the organization and facilitated the election of new officers and board members. The following individuals were elected unanimously by the membership:

- President: Elizabeth Waratuke
- President-elect: Stephanie Marchman
- Secretary: Samuel Mutch
- Treasurer: Elizabeth Schule McKillop
- Membership Chairperson: Robert Griscti
- 4 General Board Members: U.S. Magistrate Judge Gary R. Jones, Michael Bruckman, Gary Edinger, and Gilbert Schaffnit

In addition, U.S. District Judge Stephan P. Mickle provided brief remarks about the history of the FBA and some of his more comical experiences on the bench. The food, wine, and company were wonderful, and the FBA is already looking forward to its next event.

The FBA would like to thank the following federal judges for attending the FBA's annual meeting and supporting the FBA: U.S. District Judge Stephan P. Mickle, Senior U.S. District Judge Maurice M. Paul, U.S. Magistrate Judge Allan Kornblum, Senior U.S. District Judge Wm. Terrell Hodges, and U.S. Magistrate Judge Gary R. Jones. In addition, the FBA would like to thank its sponsors for making the event possible: Turner, Jones & Hodge, Ted Curtis, Scruggs & Carmichael, Gilbert A. Schaffnit, Avera & Smith, Gary Edinger, and Robert Griscti.

The FBA is planning at least two events for members and friends for the coming year: a continuing education event/social (like "View from the Bench") and an annual dinner with a prominent keynote speaker. If you have suggestions for CLE topics or keynote speakers related to federal practice, or you are interested in assisting with planning either of these events, please contact Elizabeth Waratuke at waratukeea@ci.gainesville.fl.us or Stephanie Marchman at marchmansm@ci.tyofgainesville.org or 352.334.5011.

Family Law Section



by Cynthia Stump Swanson

The Family Law Section met on September 26, 2007 with a very nice turn out. These meetings always have a synergistic quality. . . the more attorneys and judges who attend, the more and better questions we have for our speakers, and better the overall discussion.

The September meeting was no exception.

Ruth Angaran introduced us to her new colleague, Thomas N. Dikel, Ph.D. The two of them have formed a child-custody evaluation team, with a goal “to produce empirical, rigorous and objective custody evaluations in a timely manner (180 days or less) for a reasonable fee (\$5,000).” Both Ms. Angaran and Dr. Dikel possess specialized knowledge and experience, and have both been qualified as experts in several judicial circuits. The combination of their different perspectives allows greater flexibility and creativity, and helps them to avoid “groupthink” errors. We had a discussion regarding the general feeling among the attorneys that it is very difficult to find anybody to do custody evaluations now, and that some evaluations are taking six months or more and costing upwards of \$7,500 - \$10,000. Their phone number is 378-0900, and email is cassoc2@bellsouth.net.

Next, we had quite an informative presentation by Bob Muni, the Mortgage Department Manager at M & S Bank and his colleague, Gayle Seymour, a mortgage planner at M & S Bank. Bob’s phone number is 264-7215, and email is bmuni@msbank.com. They started off with an explanation of what we have been hearing about in the news – the explosion of ‘sub-prime lending,’ the explosion in numbers of residential mortgage foreclosures, and the implosion of some of the country’s largest lenders. I’m not sure which is the cause and which is the effect, but the overall result, as we all know, is the great downturn in the real estate market. Bob explained that many lenders had gotten caught up in loaning money with very little or no down payments; some were lending money to persons with no income verification provided, and so on.

We had a general discussion about residential mortgage rates, the effect of actions taken by the Federal Reserve Bank, and had some speculation about the likely near future of mortgage and interest rates.

The majority of Bob’s presentation, however, had to do with how the various financial provisions in a dissolution of marriage final judgment look from a banker’s perspective. We talked about a wide range of financial

matters – including the efforts by ex-spouses to refinance mortgages on marital homes, or the effect on one of the failure of the other to refinance. We also talked about the effect of the failure to pay credit cards, or to pay them on time.

Bob provided us with copies of some underwriting guidelines from GMAC, a very large lender, and, although he pointed out that each lender may have differing requirements, these were a good general set to consider. Here are some of the loan qualification points we discussed:

- For alimony and child support to count as income to qualify for a residential mortgage, the support payments must continue for at least 3 years, and must be based on a written separation agreement or court order. In addition, the support must be shown to have been paid regularly for at least 1 year (and must continue for another 3 years). If payments are sporadic, they cannot be considered as stable income to help qualify a borrower, or may result in a higher interest rate being offered.
- Bankruptcy or foreclosure history: A minimum of 4 years must have elapsed since the date of the non-Ch. 13 bankruptcy discharge or foreclosure; or a minimum of 2 years with extenuating circumstances (documented non-recurring event beyond borrower’s control that resulted in a sudden, significant and prolonged reduction in income, such that borrower had no reasonable option other than to default on financial obligations); or a minimum of 2 years must have elapsed since the completion of a Ch. 13 repayment plan. In all these situations, all credit accounts must be current at the time of application with at least 4 credit references and with no housing payments having been late in the intervening time.
- All tax liens must be satisfied. Period.
- An alimony or child support obligation is considered as an expense to be counted within a borrower’s monthly debt to income ratio if there are over 10 monthly payments still remaining to be made.
- When a borrower has an outstanding debt that was assigned to another party by a court order, this is now considered a contingent liability and does not have to be counted as part of the total debt to income ratio for this borrower.
- Where a borrower’s interest in a marital home

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Family Law

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is 'bought out' (via equitable distribution) by the spouse, without refinancing, the lender will not release the borrower from liability for that mortgage on the marital home. However, this is considered a contingent liability, and does not need to be included in the debt to income ratio provided adequate documentation has been provided confirming the transfer of title to the property.

This information engendered some discussion about some possible practice tips. For example, in an equitable distribution matter, might a practitioner want to bring in a mortgage lender to provide testimony for the court on the actual ability of one party to qualify to refinance the marital home mortgage? Or on the ability of the other to obtain financing for a new home even if the marital home is not refinanced? These are often questions that a judge is, at least implicitly, faced with in making a distribution of the marital home, or in making an award of the exclusive use and possession of the home. And, moving backward to trial preparation – how can we get the opposing party to go actually make a loan application, so that this information is available to the court at trial?

Our next meeting will be Wednesday, October 31, 2007, with a very apt Halloween presentation by Dr. Gerald Kish. He will talk to us about the clients we have all had who certainly had personality disorders, and help us to understand, first, whether we even want to take them on as clients, and, second, how best to work with them if we do. He will also talk to us about helping 'normal' people through a very stressful time in their lives. Remember, this meeting will be at 3:00 pm. instead of 4:00 p.m. Mark your calendar now and don't come dragging in late. You will not want to miss any part of this presentation. And if you have had a particularly difficult client, we may ask you to share the problems you had for the edification of the rest of us.

Looking further into the future, Judge Stan Griffis has again volunteered to provide us a presentation. This time, he'll be talking about domestic violence actions, including criteria for four different types of injunctions, and the sometimes unexpected consequences of the entry of such an order. Look for this presentation at our meeting on November 28, 2007.

Our meetings are always on the last (not the fourth) Wednesday of the month, almost always at 4:00 p.m., and always in the Chief Judge's Conference Room in the Family and Civil Justice Center. If you would like to receive email reminders of the meetings, and do not presently receive them, please email me and let me know – cynthia.swanson@acceleration.net.

You Are Cordially Invited To A

*Champagne & Wine Reception and Book Signing**

For

Judge Nath Doughtie

Author of "ALL RISE", A Novel

Tuesday, November 13, 2007

5:30 p.m. – 7:30 p.m.

at

The Resolution Center

4719 NW 53rd Avenue

Gainesville, Florida 32653

Telephone: 352-381-9991

(Behind Hunter's Crossing Publix in Bristol Park)

About The Book: This story takes place in the Eighth Judicial Circuit of Florida. The reader will be taken behind the bench into the private world of judges. The charming and wonderful landscape of northern Florida is presented as the characters attempt to unravel the unusual events they are facing.

**Books will be available for purchase at \$20.00 per book. A donation of \$20.00 per book will be given to the Eighth Judicial Circuit Guardian Ad Litem Program.*

Advertisements

Gainesville Executive Center, 309 NE 1st Street, has space and virtual offices available. Please contact Patricia at 352-374-7755.

Downtown office suite for rent – walk to courthouse – 1,071 sq. ft., 2 offices, secretarial & reception areas and ½ bath. Call Shelley Salzman at 352-373-6791.

Be Somebody! - The Fostering Independence Project

by Mary K. Wimsett

There are currently over 41,000 children in Florida's dependency system and there are only 5600 active Guardian ad Litem ("GAL") volunteers. Many of these children without a voice in court are teenagers without family or community support who are in desperate need of an advocate.

One theme dominates the interviews of children who have spent significant time in the dependency system. Almost all of these children indicate that they wish there had been an advocate to give them a voice in court to ensure that they were prepared for life after foster care.

The GAL Fostering Independence Project pairs pro bono attorneys with teens in foster care to help them obtain the services they will need to prepare for adulthood. Attorneys volunteering through Fostering Independence represent the teen's best interest in dependency court.

Unlike the traditional GAL volunteer training, the GAL Fostering Independence Project only requires eight hours of training. The training program is on DVDs you can check out from the GAL Program and watch at your convenience. You will also be provided with a training manual and have full access to the GAL website, which includes numerous resources, checklists and additional trainings.

Throughout your case, you will have the support of the GAL team, which includes a case coordinator and GAL Program Attorney. The GAL Program Attorney will provide you with legal guidance as needed. The case coordinator will assist you in preparing reports to the court and advise you regarding community resources and program policies and procedures. Form motions and legal arguments are also available.

While cases vary in complexity, most cases will require approximately 4-8 hours per month, with a little more time at the beginning. All time spent fulfills the Florida Bar's pro bono requirement. Moreover, you will receive 8 CLE credits, including 1 ethics credit after you complete the training.

Dependency Magistrate Nancy Wilkov

describes the need for legal representation for children in foster care, "There are many teens in foster care in our community who have had their lives and their futures dramatically altered as a result of the advocacy of a caring, committed attorney. There are many, many more who need and deserve the same support."

If just half of the attorneys in the ECJBA committed to representing one child, we could ensure that almost every teenager in foster care had a voice in our circuit. **It is easy to agree that children in the dependency system need an advocate and we all say, "somebody should do something." Be somebody!**

Please contact the Guardian ad Litem Program (374-3656) or Mary K. Wimsett (331-4922) if you are interested in volunteering for the Fostering Independence Project.

CHARLES G. FELDER
Certified Circuit Mediator

(352) 376-6178

Announcements

Judge William E. Davis will not be running for his current county judicial seat in 2008 as he has decided to seek the circuit judicial seat being vacated by Judge Peter Sieg.

The deadline for submission to the January issue of the Forum 8 will be December 3, 2007. Please make a note of it if you plan on submitting an article or advertisement.

Criminal Law



by Bill Cervone

Montana must be a beautiful place. It is full of counties with names like Big Horn, Glacier, Powder River, and Teton. Another is Yellowstone County, in which Billings is the county seat. Billings is also the home of Judge Gregory R. Todd, author of the following February 2007 Sentencing Memorandum filed in the 13th Judicial District Court in Cause No. DC 06-0323 and sent to me by a fellow EJCBA member, which I simply cannot resist reprinting here verbatim:

Mr. McCormack, you pled guilty to the charge of burglary. To aid me in sentencing, I review the pre-sentence investigation report. I read with interest the section containing Defendant's statement. To the question of "Give your recommendation as to what you think the Court should do in this case," you said "Like the Beatles say, 'Let It Be'".

While I will not explore the epistemological or ontological overtones of your response, or even the syntactic or symbolic keys of your allusion, I will say **Hey Jude, Do you Want To Know A Secret?** The greatest band in rock history spelled their name B-E-A-T-L-E-S.

I interpret the meaning of your response to suggest that there should be no consequences for your actions and I should just **Let It Be** so that you could live in **Strawberry Fields Forever**. Such reasoning is **Here, There And Everywhere**. It does not require a **Magical Mystery Tour** of interpretation to know **The Word** means leave it alone. I trust we can all **Come Together** on that meaning.

If I were to overlook your actions and **Let It Be**, I would ignore that **Day In The Life** on April 21, 2006. Evidently, earlier that night you said to yourself **I Feel Fine** while drinking beer. Later, whether you wanted **Money** or were just trying to **Act Naturally**, you became the **Fool On The Hill** on North 27th Street. As **Mr. Moonlight** at 1:30am, you did not **Think For Yourself** but just focused on **I, Me, Mine**.

Because you didn't ask for **Help, Wait** for **Something** else, or listen to your conscience saying **Honey Don't**, the victim later that day was **Fixing A Hole** in the glass door you broke. After you stole the 18 pack of Old Milwaukee you decided it was time to **Run For Your Life** and **Carry That Weight**. But when the witness said **Baby It's You**, the police

responded **I'll Get You** and you had to admit that **You Really Got A Hold On Me**. You were not able to **Get Back** home because of the **Chains** they put on you. Although you hoped the police would say **I Don't Want To Spoil The Party** and **We Can Work It Out**, you were in **Misery** when they said you were a **Bad Boy**. When the police took you to jail you experienced **Something New** and they said **Hello Goodbye** and you became a **Nowhere Man**.

Later when you thought about what you did, you may have said **I'll Cry Instead**. Now you're saying **Let It Be** instead of **I'm A Loser**. As a result of your **Hard Day's Night** you are looking at a **Ticket To Ride** that **Long And Winding Road** to Deer Lodge. Hopefully you can say both now and **When I'm 64** that **I Should Have Known Better**.

Through careful Internet exploration, I've found that Deer Lodge is the name and location of the Montana State Prison, to which I assume Andrew Scott McCormack was thereafter sentenced by Judge Todd. Its name inspires idyllic images of waterfalls, mountain views, and pastoral peace. I suspect Mr. McCormack finds it to be otherwise.

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Stranger Than Fiction: The Art of Denial



by Stephen N. Bernstein

Imagine this: The World's Premier Military and Economics Superpower (let's call it Country A) gins up a war against a far away opponent (Country B) after it refuses to kowtow to Country A. Country B, it should be said, is rich in the essential resources that

Country A requires to continue its expansion. A shows B with name calling invectives and then, not only does B not fold – it rallies and fights back guerilla style. Meanwhile, in Country A, the war's architects and proponents are accused of misjudging the enemy. Country A's leader (let's call him George) is accused of being ill-informed and downright ignorant of the people and customs of Country B. Within Country A, tensions rise and the nation divides on the issue of the war. Country A throws everything it can at B – including a number of “surges,” and still B fights back. After 8 long years of warfare, Country A concedes defeat and from those ashes, B rises to become the next great sphere of influence in the world. No, you're wrong – this is not just a cheap shot at George Bush.

Country A is the late 18th Century Great Britain under the reign of another failed George; King George III. Country B is the formative United States of America. Politician Edmund Burke once said, “A great empire and little minds go ill together.” David Selbourne, author of “The Losing Battle with Islam” wrote that as historical processes quicken, the longevity of empire is diminishing; the American Imperium, like the Soviet, has entered its decline after only some six decades.

For another interesting parallel on the United States' decline, take a look at Cullen Murphy's “Are We Wrong?” where he cites that one of the underlined causes of the fall of the Roman Empire was privatization of governmental business. Murphy goes on to say that the United States has “embarked on a privatization binge like no other in its history.” The firms the work is being outsourced to are not only taking over nearly every vital function of government, but also are unregulated and unaccountable to the public. And who is running those firms? They all seem to be former administration officials like John Ashcroft.

The current administration has entered into what I would term “an age of denial” which is the first stage of a nation's decline. I guess that would make President Bush the “Denial in Chief”. It is interesting that the President has recently inquired about leaving his memoirs and papers in a planned Bush Presidential Library and “think

tank” at Southern Methodist University in Texas. (I don't know about you, but reading and thinking are not two of the things I associate with this President.) However, those plans have hit a snag because the President of S.M.U. received a letter signed by more than five dozen faculty members complaining that the Bush legacy has represented “an erosion of habeas corpus, a denial of global warming, disrespect to international treaties, and alienation of long time U.S. allies, and a pre-emptive war based on false premises and displays a form of disrespect for the global community.” Perhaps we would do well, as would the President, to look back to a historical perspective and learn to be somewhat more modest and stop denying our shortcomings, as now is the time to adjust our aims for the future.



Pam Schneider, the October luncheon speaker, speaking on “Collaborative Divorce”

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Alternative Dispute Resolution

Non-Binding Arbitration: A New Twist To An Old Process



by Chester B. Chance and Charles B. Carter

Section 44.103, Florida Statutes addresses the alternative dispute resolution process of “court-ordered non-binding arbitration”. The statute was recently amended and the new statute, with some important new twists, became effective October 1, 2007.

Non-Binding Arbitration: The court “may refer **any contested civil action** filed in a Circuit or County Court” to non-binding arbitration. See, Section 44.103(2). Arbitrators (either a three party panel can be used or a single arbitrator) are compensated by the parties.

The non-binding arbitration process is conducted informally. Presentation of testimony and evidence shall be kept to a minimum, and matters shall be presented to the arbitrators primarily through the statements and arguments of counsel. In addition to the “informal” process, parties may petition the court in the underlying action to authorize the arbitrator to issue subpoenas for the attendance of witnesses and the production of documents and other evidence at the arbitration. (See Section 44.103(4), Florida Statutes).

After the arbitration proceeding, a decision is presented to the parties in writing. This decision “shall be final” unless a request for a trial de novo is filed within the time provided by rules promulgated by the Supreme Court. (Section 44.103(5), Florida Statutes). If request for a trial de novo is not made within the time limits, the arbitration decision is referred to the presiding judge in the case who shall then enter such orders and judgment as are required to carry out the term of the decision.

The new twist involves the following: upon motion made by either party within thirty days after entry of judgment, the court may assess cost against the party requesting a trial de novo, including arbitration costs, court costs, reasonable attorney’s fees, and other reasonable costs such as investigation expenses and expenses for expert or other testimony which were incurred after the arbitration hearing and continuing through the trial of the case in accordance with the guidelines for taxation of costs as adopted by the Supreme Court. Section 44.103(6), Florida Statutes. The above referenced costs may be assessed by the Court if:

(a) The plaintiff, having filed for a trial de novo, attains a judgment at trial which is at least 25% less

then the arbitration award. In such instance, the costs and attorney’s fees pursuant to Section 44.103, Florida Statutes “shall be set off against the award.” Moreover, when the costs and attorney’s fees pursuant to Section 44.103 total more than the amount of the judgment “the Court shall enter judgment for the defendant against the plaintiff for the amount of the cost and attorney’s fees less the amount of the award to the plaintiff”.



(b) The defendant, having filed for a trial de novo, has a judgment entered against the defendant which is at least 25% more than the arbitration award.

The statute addresses the meaning of the term “judgment” for purposes of determining whether fees and costs are awarded against a plaintiff and a defendant.

In summary, non-binding arbitration now incorporates a new twist which has a similar “bite” as the rules and statutes dealing with proposals for settlement.

A court may refer any civil action to non-binding arbitration. After the arbitration proceeding, the parties will receive a written award. If either party rejects the award and asks for a trial de novo, there is a risk of incurring fees and costs as discussed above if the trial result is 25% less than the arbitration award (for a plaintiff) or 25% more than the arbitration award (for the defendant).

These changes in Section 44.103, Florida Statutes should be reviewed in detail. The attorney fee and cost award provision which form the new parts of the statute need to be given strong consideration by counsel. The non-binding arbitration proceeding itself should not be addressed in a casual fashion. Preparation and persuasion will be an important part of a non-binding arbitration process given the potential downside of rejecting the arbitration award and electing a trial de novo. The consequences of electing a trial de novo need to be reviewed in detail and these consequences are clearly set out in Section 44.103(6)(a)(b), Florida Statutes.

Future articles will address tactical issues relating to the non-binding arbitration process including:

- When should a case be referred to non-binding arbitration?
- Should all cases be referred or only certain types of cases?
- The difference between mediation and non-binding arbitration.

November 2007 Calendar

- 1 JCBA Annual Cedar Key dinner, 6 p.m., The Captain's Table
- 3 Florida Gators v. Vanderbilt, TBA
- 5 JCBA Board of Directors Meeting; Ayers Medical Plaza, 720 SW 2d Ave., North Building, Third Floor conference room, 5:30 p.m.
- 5 Deadline for submissions to December newsletter
- 9 EJCBA luncheon – Steve's Courtyard Café, 11:45 a.m.
- 10 Florida Gators at South Carolina, TBA
- 12 Veteran's Day (observed) – County & Federal Courthouses closed
- 14 Probate Section Meeting, 4:30 p.m., 4th Floor, Family & Civil Courthouse
- 17 Florida Gators v. Florida Atlantic, Noon
- 22 Thanksgiving Day – County & Federal Courthouses closed
- 23 Day after Thanksgiving – County Courthouses closed
- 24 Florida Gators v. FSU, TBA
- 28 Family Law Section meeting, 4:00 p.m. in the Chief Judge's Conference Room (former Grand Jury Room) of the Family and Civil Courthouse

December 2007 Calendar

- 3 Deadline for submissions to January newsletter
- 3 EJCBA Board of Directors Meeting, Ayers Medical Plaza, 720 SW 2d Ave., North Building, 3rd Floor conference room, 5:30 p.m.
- 14 EJCBA luncheon – Steve's Courtyard Café, 11:45 a.m.
- 20 Flex Day – Alachua County Public Schools
- 20 Jan 2 – Winter Holiday – Bradford County Public Schools
- 21 Flex Day – Alachua County Public Schools
- 24 Jan. 4 – Winter Holiday – Alachua, Gilchrist & Levy County Public Schools
- 24 Christmas Eve – County Courthouses closed
- 25 Christmas Day – County & Federal Courthouses closed

Have an event coming up? Does your section or association hold monthly meetings? If so, please fax or email your meeting schedule 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.



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