

# FORUM 8

Volume 68, No. 3

Eighth Judicial Circuit Bar Association, Inc.

November 2008

## President's Letter



By Margaret Stack

### Professionalism

In their September – October 2008 issue, The Capstone, which contains news and resources for Board Certified Lawyers, announced that 207 lawyers had become board certified. Out of the 207 lawyers 22% are members of the Young Lawyer's Division. There are currently 22 legal specialization areas. Those areas and the members are listed in the white pages of The Florida Bar Journal if you want to find out who in this area is board certified. Being curious by nature I decided to check it out. Out of 22 areas of specialization, lawyers in the Eighth Circuit specialize in 14 of those areas. There are approximately 70 lawyers listed as being certified; however, some lawyers are listed in more than one area of specialization. Civil Trial Lawyers have the most with a total of 19 and Construction Law is second with 10.

Many of you may ask "Why bother with getting board certified?" That question was best answered by Justice Harry Lee Anstead in April 2003: "Certification should be the capstone for a lawyer's professionalism goals." In this age of specialization we lag far behind the medical profession in the number of "Board Certified" practitioners we have. If you are seeking medical care most people are interested in whether their doctor is "Board Certified". That indicates that the person has gone the extra mile and has become skilled in the area they are "Board Certified" in. If

someone is going to be treating you or your loved ones, you want the best there is...you want a "Board Certified" professional. Don't you think the same is true of people in need of a lawyer?

Look through the white pages in The Florida Bar Journal where the Board Certified lawyers are listed and see the names of the people in our area that have taken that extra mile and can proudly advertise that they are "Board Certified". It may make you want to look into becoming board certified yourself.

### Holiday Project

This year's Holiday Project will benefit the MARJORIE KINNAN RAWLINGS ELEMENTARY SCHOOL located at 3500 NE 15<sup>th</sup> Street, Gainesville, FL. They have approximately 436 students in Head Start to Fifth Grade. As you may remember, last year we supplied nearly 1500 books and other goodies to Duval Elementary and to Prairie View Elementary. We want to make books the main feature of this year's gift giving. So, look around your house and if you have any gently used children's books that you would

like to donate to a good cause, please give me a call (352-491-4629).

As soon as we get the bags and the children's "Wish Lists" we'll let you know. Please remember that you can take a child's (or children) name to buy for or send money and we'll buy for you. We'll try to have bags for you at the November luncheon meeting. Also, don't forget the "Champagne and Chocolate" fundraiser by The Resolution Center on November 24, 2008. Hope to see you there!



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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 5<sup>th</sup> of the preceding month and can be made by email to [dvallejos-nichols@avera.com](mailto:dvallejos-nichols@avera.com).

### About This Newsletter

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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**

## Pro Bono Service Award Nominations Due By Nov. 7

Each year, the Florida Supreme Court and The Florida Bar give special recognition to lawyers, groups and a member of the judiciary who have freely given their time and expertise in making legal services available to the poor. The awards ceremony will be held at the Florida Supreme Court at 3:30 p.m., Thursday, Jan. 29, 2009. **Nominations must be received by Nov. 7, 2008.** Nominations that are received late will not be considered. Nominations currently are being accepted in the following award categories:

### 1. The Florida Bar President's Pro Bono Service Award

This award is given to an outstanding attorney in each of the state's 20 judicial circuits and in the "Out of State" circuit. One winner will be selected from each of the 21 circuits and these winners will be considered to receive **The Tobias Simon Pro Bono Service Award**, presented annually by the Chief Justice to the attorney who best exemplifies the highest ideals of the profession in assuring the availability of legal services to the poor. The award is named for the late Miami civil rights lawyer Tobias Simon. See the contact information for the Pro Bono Awards Circuit Committee chairs.

### 2. The Chief Justice's Law Firm Commendation

This statewide award recognizes a law firm which has demonstrated a significant contribution in the provision of pro bono legal services to individuals or groups that cannot otherwise afford the services. This award is not presented every year and recognizes extraordinary commitment on the part of a firm to provide access to the courts for all Floridians.

### 3. The Voluntary Bar Association Pro Bono Services Award

Also presented by the Chief Justice, this award recognizes a voluntary bar association that has demonstrated a significant contribution in the delivery of legal services on a pro bono basis to individuals or groups that cannot otherwise afford the services. Like the Law Firm Commendation, this award is presented only when an association demonstrates extraordinary commitment to provide access to the courts for all Floridians.

### 4. The Florida Bar's Young Lawyers Division Pro Bono Service Award

With more than 21,000 members, the Young Lawyers Division includes all lawyers in good standing

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## Federal Bar Association Hits the Ground Running

*By Peg O'Connor*

The Federal Bar Association (FBA) held its first board meeting on September 29, 2008, voted on a number of issues, and planned some enjoyable educational and social opportunities for both the FBA membership and the legal community at large.

In keeping with its goal of becoming a streamlined, efficient organization, the FBA voted to:

1. institute a local membership fee of \$25 to support chapter activities;
2. change the chapter's name from "Gainesville Area Chapter of the Federal Bar Association, Inc." to "North Central Florida Chapter of the Federal Bar Association, Inc." to more accurately reflect the demographics of the membership; and
3. eliminate the chapter's Young Lawyers Division, instead having two non-voting law student members of the board to be selected by the Law School Division.

The FBA has also planned an exciting series of brown bag lunches at the federal courthouses in Gainesville and Ocala. These lunches will feature small-group discussions with judges, members of the clerks' offices, probation officers, and United States marshals, to name a few. Each lunch meeting will be geared toward a particular aspect of federal law or practice and provide useful information to practitioners. These lunches will also be eligible for CLE credit, so keep an eye out in this newsletter for dates and locations.

As in the past, the FBA will host an annual dinner, most likely in the late spring or early summer. More details will follow as they develop.

The law school is playing an active role in the FBA this year. Harlan McGuire and Alexis Cooper, the two law students on the board, are taking the lead in hosting a federal practice roundtable on October 29th to teach law students the basic structure of the federal court system and give them a primer in interesting areas of federal law such as First Amendment jurisprudence and criminal law. Additionally, a law clerk roundtable will be held in March of 2009. Former and current law clerks will be invited to speak with law students about the role of law clerks and the application process.

Finally, in keeping with the chapter's name change to reflect increased participation by Ocala attorneys, meetings will be held alternately in Gainesville and

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# Alternative Dispute Resolution

## Poker and the Law



By *Chester B. Chance and Charles B. Carter*

Many local attorneys, including Ben “Aces” Hutson, Paul “River Man” Brockway and Eric “Chip Stacker” Struble consider themselves pretty fair poker players. Having lost money to all of them, we cannot dispute their assessment.

The affinity for many lawyers to play poker causes us to ponder the association between poker and the law.

We are not the only ones contemplating the matter. In 2006, Steven Lubet wrote a book entitled, “Lawyers’ Poker – 52 Lessons That Lawyers Can Learn From Card Players”.

It is commonplace to use poker terms to describe legal tactics. During discovery we are told to “keep your cards close to your vest”. During mediation we make an offer “for openers” and the other side may “sweeten the pot”. During this process it helps to keep a “poker face” and sometimes we should “stand pat”. The other side may “fold” and if not, they may be “bluffing”. Sometimes our opponent fails to discover our “ace in the hole” especially if we “play our cards right”. Ethically, we hope opposing counsel isn’t “dealing from the bottom of the deck”.

Often we accept a case despite adverse facts but decide to “play the hand we are dealt”. Taking cases of this nature is akin to “loose play”. Other lawyers only accept cases that are considered “premium hands”. Going to trial is the equivalent of “going all-in”. An unprepared lawyer is like a poker player who bets without looking at her cards.

Experienced lawyers know ultimately you should “fold a bad hand”. According to Lubet: “Nonetheless, lawyers continue to ignore the sage advice of their elders and the exasperated entreaties of the courts, larding their briefs and pleadings with repetitive and feckless verbiage. A few hours at the card table, however, might better drive home the virtues of tighter play.”

With respect to settlement discussions, Lubet comments that most lawyers are mediocre actors, at best. Feigned indifference is a reliable sign of active interest. “Tells” are as important in litigation as in poker. Lubet says the biggest tip-offs come

during settlement discussions. “The more a lawyer professes eagerness to bring a case to trial, the harder she is trying to shake out an early settlement offer”. He suggests you will need an entire saltshaker when you hear a lawyer say something like “my client will never settle, but I can do my best to convince him”. Sure, counselor, just don’t splash the pot.

Often a lawyer thinks his client is holding a winning hand: “Pocket Aces” (a very strong liability argument) with a “flop” of Ace, King, King (seemingly good injuries and damages). In a poker game a red flag would go up when you are heavily betting on such a hand but your opponent keeps betting along with you. That opponent may be holding 2 Kings and have you beat. Your legal opponent may be holding surveillance film of your paraplegic client water skiing.

All gambling involves betting, but not every bet is a gamble. The same holds true in litigation. “A lawyer’s job is to reduce risk for his client, not take chances on it. We see this principle in the often-repeated admonition that a cross-examiner must never ask a question if she doesn’t know the answer”. Lubet suggests asking a question out of curiosity is the equivalent of hoping to fill your hand on the river: you might get a good outcome, but don’t bet on it.

Lubet notes chips are so essential to poker games that card players have often repeated: the person who invented gambling was smart, but the person who invented chips was a genius. “Lawyers would do well to create their own saying: in litigation, there are no chips but there are clients”.

Lubet suggests poker players can take the long view, absorbing losses in the name of expected value, because they play with their own money. The long-run for them is continuous because the profits and losses are all from the same pocket. “Lawyers, on the other hand, have clients most of whom are not repeat players. Clients’ interests therefore are generally episodic



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# Florida Bar Board Of Governors Report



By Carl Schwait

At its October 3, 2008, meeting in Boston, MA, The Florida Bar Board of Governors:

- Heard on first reading a recommendation from the Rules Committee to create a new category in the disciplinary rules of permanent retirement without the possibility for reinstatement. It would apply to veteran Bar members who have their first – and minor – disciplinary problem at the end of their careers.
- Heard on first reading a recommendation from the Disciplinary Procedure Committee to amend Bar rules to allow emergency suspensions for incapacity not related to misconduct.
- Heard a discussion on educating Bar members about a recent Florida Supreme Court ruling on liens against client funds held in trust accounts. Silverstein said the ruling requires lawyers to stop payment on a check that has been issued to clients if a garnishment is received before the check clears. The DPC decided that current Bar rules do not need to be changed to comply with that ruling, but the committee is concerned that Bar members aren't familiar with the decision.
- Heard a report from the Florida Bar Foundation that more lawyers are needed for Florida Lawyers Saving Homes, which seeks to help homeowners having trouble paying their mortgages before foreclosure proceedings start. Stone said since the program opened in June, the Bar has received more than 10,000 calls plus more than another 1,000 applications made online. Around 670 lawyers have volunteered to represent homeowners. Of the calls and applications, so far 1,125 have been determined to meet the criteria of the program and around 600 have been referred to participating lawyers. But that means more than 500 cases are waiting for assignment, showing the need for more volunteers, she said. Bar members can volunteer and get more information about the program and education programs to help them with cases by going to [www.floridaprobono.org](http://www.floridaprobono.org).
- Heard that the Young Lawyers Division, at the request of the Federal Emergency Management Agency, has activated its disaster hotline to assist people with legal problems resulting from Tropical Storm Fay. The program needs volunteer attorneys,

especially those with experience in landlord-tenant matters, construction law, and fraud. Lawyers can get more information and volunteer program by going to the division's website at [www.flayld.org](http://www.flayld.org), and clicking on the link on the upper right hand side of the site, "Legal Help Needed for Florida Hurricane Victims." The toll free number for residents is (866) 550-2929.

- Heard Executive Director John F. Harkness report that the Bar is working on hiring a company to do a survey in connection with a request by the Supreme Court in its 2007 decision on new advertising rules that the Bar further look into lawyer advertising and marketing matters.

Please check the Florida Bar [News](#) for appointments to be made at the Board of Governors December meeting. I urge that you apply for an appointment to a committee. Let me know if you do.

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## Federal Bar

*Continued from page 3*

Ocala, not only sharing the travel burden, but also allowing Gainesville attorneys to become more acquainted with the Ocala membership.

We're looking forward to a productive year and invite you to join us. For more information on membership and its benefits, contact President Stephanie Marchman at 334-5011 or [marchmansm@cityofgainesville.org](mailto:marchmansm@cityofgainesville.org) or Membership Director Liz McKillop at 372-1109 or [lizmckillop@gmail.com](mailto:lizmckillop@gmail.com).

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## Pro Bono Awards

*Continued from page 3*

under age 36 and all new Florida Bar members of any age for their first five years in practice. The award will be given to the division member who best exemplifies the highest ideals of public service.

### 5. The Distinguished Judicial Service Award

Presented by the Chief Justice, this award is presented for outstanding and sustained service to the public, especially as it relates to support of pro bono legal services. **Nominees' pro bono service contribution may be cumulative. Consideration is not limited to the events of the immediate past year.** For additional information, contact public information coordinator Dorohn A. Frazier at The Florida Bar, 850/561-5764 or [dfrazier@flabar.org](mailto:dfrazier@flabar.org).

# Clerk's Corner



By J. K. "Buddy" Irby, Clerk of Court

Last spring, we gave you some preliminary information about increases in certain civil filing fees and service charges that were scheduled to take effect July 1. We now have final information on those increases. Some increases of particular interest are listed below. A complete list of filing fees and service charges can be found on the Clerk of Court's website at [www.alachuaclerk.org](http://www.alachuaclerk.org). Go to "Fees and Information" and click on "Fees."

As indicated below, some existing fees have increased, and some new fees have been added. Revenue from the new fees and fee increases will go toward court system funding.

## Increased Circuit Civil (Non-Family) Filing Fees Include:

Circuit Civil (For each defendant over 5 add \$2.50; Lis Pendens, add \$5.00 recording fee for one page; add \$4.00 for each additional page) \$300.00

Attachment, Replevin, Distress (in addition to main case filing fee) Garnishment Action (\$85.00, plus \$103 attorney fee deposit, registry fee) \$188.00

Eminent Domain Registry Fee \$170.00

## New Circuit Civil Fees Include:

Issuance of summons, per summons, per defendant, including alias, pluries \$ 10.00

Counterclaim, Crossclaim, Third Party Complaint \$295.00

## Increased Family Law Filing Fees Include:

Marriage Dissolution Action \$408.00

Marriage Dissolution Counterclaim, initial filing not marriage dissolution \$392.50

## Increased Probate/Guardianship Filing Fees Include:

Summary Administration < \$1,000 \$120.00

Summary Administration > \$1,000 \$230.00

Formal Administration \$285.00  
Disposition of Personal Property \$116.00

Guardianship – Person & Property \$285.00

Guardianship – Person only \$120.00

Determination of Incapacity \$116.00

## Increased County Civil Filing Fees Include:

Claims of \$500.01-\$2,500 \$175.00

Claims of \$2,500.01-\$15,000 \$300.00

Tenant Removal and/or Claims up to \$15,000 \$270.00

Attachment, Replevin, Distress (in addition to main case filing fee) \$ 85.00

## New County Civil Fees Include:

Issuance of summons, per summons, per defendant, including alias, pluries \$ 10.00

Counterclaim, Crossclaim, Third-party complaint > \$2,500 & < \$15,000 \$295.00

## Increased Appellate Filing Fees Include:

Appeal from County to Circuit \$281.00

Circuit to DCA – Fee to Clerk of Circuit Court \$100.00

## Increased Service Charges Include:

Certifying copies \$ 2.00

Administering an Oath \$ 3.50

Issuing a Subpoena \$ 2.00

Document preparation \$ 7.00

Approving bond \$ 8.50

Preparing record on appeal, per document \$ 3.50

# Three Rivers Legal Services To Celebrate 30<sup>th</sup> Anniversary

By Marcia Green

This year Three Rivers Legal Services marks a significant milestone as we celebrate our 30th Anniversary in the provision of free civil legal services to North Central Florida's poor and most vulnerable residents. We invite you to join us on November 13 with Florida Supreme Court Justice Barbara Pariente to mark this occasion by recognizing the efforts of the many lawyers, staff members, volunteers and community members who have made legal assistance to the poor a reality.

Three Rivers Legal Services was organized in 1978 when the Legal Services Corporation, a federal agency, made funds available to local legal aid programs. With initial funding in place, Storefront Legal Aid - founded in the early 70s in Gainesville by a group of volunteer legal professionals - combined with the legal aid branch of Suwannee River Economic Council to form Three Rivers Legal Services. Initially, we served seven north central Florida counties with offices in Gainesville and Lake City employing just three attorneys, three paralegals and two support staff persons.

One year later, the service area increased to 12 counties including Alachua, Bradford, Columbia, Dixie, Gilchrist, Hamilton, Lafayette, Levy, Madison, Suwannee, Taylor and Union counties. As federal funding grew, services and staff increased to provide free civil legal services in an area the size of the state of New Jersey.

In 1981 the Florida Bar founded The Florida Bar Foundation and the first Interest on Lawyers Trust Accounts program in the United States. Funding from foundation grants helped supplement federal funds during the 1980s and continues to provide support for Three Rivers through funding and law student fellowships.

In the past decade, Three Rivers increased our financial base to include grants from Elder Options, Florida Coalition Against Domestic Violence, Victims of Crime Act, AmeriCorps, a private family foundation, the IRS, United Way and UF Community Campaign, counties and the State of Florida Access to Civil Legal Assistance. Although many of these funding sources have suffered financial declines or redirected their focus, the expanded funding base has allowed us to increase the range of our poverty law practice to include health, public benefits, education, low income taxpayer resolution and employment. Our critical consumer, housing and family law practices have become monumental in these times of economic turmoil.

Three Rivers participated in and survived a statewide reorganization plan, implemented over the past five years at the behest of our major funding sources. By opening a third office in a low-income Jacksonville neighborhood and working in coordination with Jacksonville Area Legal Aid,

we began serving neighboring Baker, Clay, Duval, Nassau and St. Johns counties.

As our funding and staff over these last 30 years have more than doubled, the demand for services and greater expertise has increased exponentially. We've grown from a program with \$100,000 in funding in 1978 to more than \$2 million in 2008. Our more than 20 staff attorneys handle cases ranging from routine hearings to complex federal litigation. Our paralegals represent clients in disability claims and other administrative hearings and we strategically integrate self-help clinics, community education and outreach into all of our work. At the same time, the number of individuals and families needing services grows increasingly while a frightening number remain without legal assistance.

As Three Rivers strives to protect and represent, advise and assist the low income members of our communities, local volunteer attorneys have worked along side, instrumental in creating Storefront Legal Aid, historically providing *pro bono* legal services throughout the rural service area and supporting our efforts with financial contributions.

Our work with the University of Florida Levin College of Law, through its Virgil Hawkins Civil Clinics, and law student and undergraduate volunteers, as well as those from Florida Coastal School of Law, have provided numerous hours of services including representation, intake, research and advice clinics.

**Please join us in celebration on Thursday, November 13, 2008 at the Sweetwater Branch Inn.** If you have not received your invitation to the event in the mail, please contact Marcia Green at 352-372-0519 or [marcia.green@trls.org](mailto:marcia.green@trls.org).

Please Join in Celebrating

## **Three Rivers Legal Services' 30<sup>th</sup> Anniversary**

Special Guest: Honorable Barbara Pariente,  
Justice of the Florida Supreme Court

**Thursday evening, November 13, 2008  
Sweetwater Branch Inn**

Contact Marcia Green for more information or to  
RSVP  
352-372-0519 or [marcia.green@trls.org](mailto:marcia.green@trls.org)

## Criminal Law



By William Cervone

This month I have interesting legal news to share from Great Britain, the source of much of our legal system. What follows may surprise you, as it did me. If so, put it all in the “Well, maybe our criminal evidence rules and procedures aren’t so bad after all”

category.

First, a bit of background. The House of Lords, which I’m sure everyone is familiar with, has more than just a legislative function. It has a judicial role as well and in essence hears appeals from lower courts in important or particularly complex matters. As I understand it, a form of what we would consider to be a certified question is involved. Only those Lords who are legally qualified fill this function, and they are called the Lords Of Appeal In Ordinary or, more simply, the Law Lords. I suspect that the late Judge Benmont Tench would very much like this nomenclature. I’m also sure I’m grossly oversimplifying the process but that doesn’t matter.

The interesting news is that last June the Law Lords rendered an opinion that anonymous testimony could no longer be accepted in British courts. The Law Lords are now of the belief that witnesses who will not publically identify themselves have nothing relevant to share on account of their inability to be questioned as to their motives for providing testimony. The stated goal of the Law Lords in coming to this conclusion is that defendants should be allowed to investigate and question their accusers prior to testimony being given in order to insure that anyone testifying against them is a reliable source of information.

I’m no scholar of British jurisprudence, but it came as quite a surprise to me that there was something akin to secret testimony from unidentified witnesses in either our legal ancestry or modern British courts. I’ve never heard of even our federal system allowing such a process, much less Florida courts. Visions of hooded witnesses shielded behind cloth curtains with voices electronically disguised run through my head. This whole concept is a decidedly un-common part of what I thought Common Law included. Our colleague Steve Scott, who tipped me off to this, says that our Founding Fathers were sufficiently aggrieved at this practice to have crafted the Confrontation Clause in response.

I have no idea how frequently witnesses testify anonymously in England but apparently prior to this ruling the ability of the Crown to do that had been quite an incentive to those who were reluctant to testify because of connections with a defendant. The story I was forwarded about this noted that the United Kingdom “had been successful in obtaining more witnesses and convicting more criminals” under this system. I’ll bet it has! Needless to say, Crown prosecutors are reported to be studying the new ruling “with trepidation.” The immediate result was the abrupt halt of a major murder trial underway in Old Bailey and a hue and cry the likes of which I haven’t seen since the last time an American politician railed against activist judges during confirmation hearings here in the colonies.

Not unexpectedly, the Home Secretary, whoever and whatever that is, said that “I accept we need to protect the rights of defendants. But the rights of people to be able to take part in a trial also have to be protected.” The Home Secretary went on to say that a fair trial required that witnesses be able to give evidence without fear of reprisal or intimidation. I agree and can point to any number of cases right here in the 8<sup>th</sup> Circuit where witness intimidation resulted in an outcome not remotely akin to the truth. I’ll also concede that witness anonymity could also result in less than just results. Editorialists in England are, of course, having a field day. One banner headline I saw while checking all of this on the Internet declared that “Criminals Could Walk Free In A Mockery Of Justice.”

Not all is lost in England and the Queen need not abdicate yet. Some measure of anonymity remains for child witnesses and rape victims, and there is already a move to remedy this situation legislatively, much as the Florida legislature does every time our courts do something it doesn’t like. And perhaps in the ultimate anticipatory “So there!” the Law Lords are already scheduled to lose their appellate function in 2009 when that will be transferred to a new Supreme Court Of the United Kingdom created by Parliament in 2005 and in place next year.

There are many morals to this story. One is that our defense bar might want to be glad it’s practicing here. Another is that no one has a monopoly on judicial angst. My favorite comment of all about this, which I saw in an on-line British newspaper, is that their “judges are getting too big for their wigs.” You gotta love it.

# Eighth Judicial Circuit Bar Association, Inc.

## Mission Statement:

The mission of the Eighth Judicial Circuit Bar Association is to assist attorneys in the practice of law and in their service to the judicial system and to their clients and the community.

Please send a check payable to EJCBA in the amount of \$75.00, along with your completed application to:

Eighth Judicial Circuit Bar Association, Inc.  
P. O. Box 127  
Gainesville, FL 32602-0127v  
Email: [execdir@8jcba.com](mailto:execdir@8jcba.com); [padgej@shands.ufl.edu](mailto:padgej@shands.ufl.edu)

Interested in prepaying for your luncheons (non-refundable)? Please include an additional \$108.00 (for luncheons from September through May).

Voting Members: This category is open to any active member in good standing of the Florida Bar who resides or regularly practices law within the Eighth Judicial Circuit of Florida.

Non Voting members: This category of membership is open to any active or inactive member in good standing of the Bar of any state or country who resides within the Eighth Judicial Circuit of Florida, or to any member of the faculty of the University of Florida College of Law.

## Renewal/Application for Membership

Membership Year: 2008-2009

Check one: Renewal  New Membership

First Name: \_\_\_\_\_ MI: \_\_\_\_\_

Last: \_\_\_\_\_

Firm Name: \_\_\_\_\_

Title: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Street Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Eighth Judicial Circuit Bar Association, Inc.

Telephone No: (\_\_\_\_)\_\_\_\_-\_\_\_\_\_

Fax No: (\_\_\_\_)\_\_\_\_-\_\_\_\_\_

Email Address: \_\_\_\_\_

Bar Number: \_\_\_\_\_

List two (2) Areas of Practice: \_\_\_\_\_

Number of years in practice: \_\_\_\_\_

Are you interested in working on an EJCBA Committee? Yes / No

## Advertisements

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

**Office For Rent-Well Located**  
703 N. Main Street/up to 1400 sq.ft.  
5 Private Offices & Reception Area  
352-373-8000

## Alternative Dispute

*Continued from page 4*

rather than continuous. The client wants to win the current case and doesn't care if your exquisitely calculated tactic will succeed fabulously for some other litigant down the road. Therefore, clients tend to care only about immediate returns, rather than expected value."

Lubet's book includes sections entitled "Controlling the Opposition", "Digging for Information", "Ethics and Character" and "Maximizing Your Winnings". The sub-chapters include such topics as Opening Hands, Bluffing, Folding, Beginner's Luck, etc.

If you practice law and play cards (and even if you don't play cards) we think you will find Lubet's book provides valuable food for thought in either endeavor. Paul Brockway will even autograph it.

## November 2008 Calendar

- 1 Florida Gators v. Georgia Bulldogs – Jacksonville, TBA
- 5 Deadline for submissions to December newsletter
- 5 EJCBA Board of Directors Meeting; State Attorney's Office, 120 W. University Avenue – 5:30 p.m.
- 6 CGAWL meeting, 5:30 p.m., location TBA
- 8 Florida Gators at Vanderbilt, TBA
- 11 Veteran's Day (observed) – County & Federal Courthouses closed
- 12 Probate Section Meeting, 4:30 p.m., 4<sup>th</sup> Floor, Family & Civil Courthouse
- 14 EJCBA Monthly luncheon meeting – Guest Speaker: Justice Pariente; **Paramount Plaza Hotel**, 11:45-1 p.m.
- 15 Florida Gators v. South Carolina, TBA
- 22 Florida Gators v. The Citadel, TBA
- 24 Champagne & Chocolate Reception to benefit the Holiday Project – The Resolution Center; 5:15-7 p.m.
- 26 Family Law Section meeting, 4:00 p.m. in the Chief Judge's Conference Room of the Family & Civil Courthouse
- 27 Thanksgiving Day – County & Federal Courthouses closed
- 28 Friday after Thanksgiving – County Courthouse closed
- 29 Florida Gators at Florida State, TBA

## December 2008 Calendar

- 3 EJCBA Board of Directors Meeting; State Attorney's Office, 120 W. University Avenue – 5:30 p.m.
- 4 CGAWL meeting, 5:30 p.m., location TBA
- 5 Deadline for submissions to January newsletter
- 10 Probate Section Meeting, 4:30 p.m., 4<sup>th</sup> Floor, Family & Civil Courthouse
- 12 EJCBA Monthly luncheon meeting; Savannah Grande, 11:45-1 p.m.
- 12 Celebration for Judge Sieg, 3:30 p.m., Jury Assembly Room, Criminal Justice Center
- 25 Christmas Day – County and Federal Courthouses closed
- 26 Day after Christmas – County 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](mailto:dvallejos-nichols@avera.com).



Attorneys Evan George and Evan Andrei Boyarshinof at the September Bar Luncheon



At the September Bar Luncheon: Cindy Cambron, Cris Palacio, Becky O'Neill, and Larry McDowell (all from Shands Legal Services)

## Justice Pariente Is November Luncheon Speaker

EJCBA is pleased to announce that Justice Barbara Pariente is the speaker for the November 2008 EJCBA luncheon. The luncheon will be held at Paramount Plaza Hotel and Conference Center, located at 2900 SW 13<sup>th</sup> Street in Gainesville. The luncheon will begin promptly at noon. This is a plated lunch so RESERVATIONS ARE REQUIRED. See below for information regarding the price increase.

While she was born in New York City, Justice Pariente has lived in Florida since 1973. After law school, she was in private practice for 18 years in South Florida, during which time she was extremely active in the legal community as a member of the Fifteenth Judicial Circuit Grievance Committee, the Florida Bar Civil Rules Committee, and the Fifteenth Judicial Circuit Nominating Commission. In 1993, Justice Pariente was appointed to the Fourth District Court of Appeal where she served until her appointment to the Florida Supreme Court in 1997. During her tenure on the Florida Supreme Court, Justice Pariente has participated in several committees, including the Supreme Court's Steering Committee on Families and Children in the Courts (first as liaison, then Chair), the Florida Bar's Commission on the Legal Needs of Children, and the Governor's Advisory Committee on Character Education. She is committed to improving the lives of families and children through her work. At present, she mentors students through a program called Take Stock in Children, which assists economically disadvantaged students in earning scholarships for college.

Justice Pariente has served on the Florida Supreme Court since 1997 and is the second woman in Florida to hold the position of Chief Justice (July 1, 2004, until June 30, 2006). Her excellence has been recognized repeatedly as she has received over a dozen awards. Most recently, she was inducted into the Florida Women's Hall of Fame by Governor Crist. We are pleased and honored that she agreed to speak to EJCBA at our November luncheon.

For more information regarding this dynamic speaker and leader, please go to: [www.floridasupremecourt.org/justices/pariente.shtml](http://www.floridasupremecourt.org/justices/pariente.shtml).

Important note: The cost for nonmembers for November's luncheon is \$19.00. Members who have not prepaid must pay \$14.00 at the door, irrespective of whether you have reserved. This increase is due to the increase in price at the alternate location.

## Free Training Available through Florida Legal Services

### Representing Clients Who Challenge Medicaid Waiver Determinations by the Agency for Persons with Disabilities (APD)

Training Topics: Overview of Medicaid and Medicaid Waiver Programs, ADP Assessment and Service Planning Process, Florida Developmental and Disabilities Waiver Program, and Due Process Rights.

Friday, November 14, 2008 12:00 - 4:00 pm  
FSU - Tallahassee

CLE Credits are being applied for.

Preregistration is required. Contact [marcia.green@trls.org](mailto:marcia.green@trls.org) for more information.

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## Young Lawyers Division

The 8<sup>th</sup> Circuit Young Lawyers Division is proud to announce the Board of Directors for the 2008-2009 year.

President	Kelly R. McNeal
Secretary/Treasurer	Alison Walker
Membership Director	Karen Yochim
Social Director	Evan D. George
CLE Director	Robert W. Bauer
Technical Director	Flint Crump
Charity/Special Projects Directors	Justin Jacobson/ Tanya Uhl
Directors	Rhonda DeCambre- Stroman/Brian Schackow

We are excited for our first judicial luncheon of the year!!! Judge Hulslander will be our guest at Dragonfly Sushi on November 12, 2008 at 12:00pm. We encourage all YLD members to join us. Please contact Kelly McNeal ([kellsmcneal@yahoo.com](mailto:kellsmcneal@yahoo.com)) for more information.

All lawyers under the age of 36 **or** lawyers of any age who have been a member of the Bar less than 5 years are eligible to join the YLD. Membership dues are only \$25 per year. Please e-mail Karen Yochim ([karenrmk@bellsouth.net](mailto:karenrmk@bellsouth.net)) for more information on how to become a member.

# Basic Family Law (and Other) Links You Might Not Know

By Cynthia Stump Swanson



This month, I want to include information on resources that you may not be using regularly or may not be aware of at all. This was inspired by my accidentally running across an article of a similar title about computer keyboard shortcuts. For example, I did not

know that, when viewing a website, merely tapping the space bar will scroll down one “screen’s worth.” Thus, you don’t have to hover your hand over your mouse to keep reading. That particular article can be found at: <http://pogue.blogs.nytimes.com/2008/10/02/tech-tips-for-the-basic-computer-user/?em> .

There are many tips there also for Palm phones, Blackberries, and other Smart Phones.

Now, as to actual family law related websites, try these:

<http://www.guardiaadlitem.org> This is a well organized and maintained website which contains information on how to volunteer to be a Guardian Ad Litem. But it also maintains a list of appellate cases related to child advocacy positions, including up to date case summaries and legislative information. In addition, you can subscribe to their monthly newsletter, which is aimed substantially at lawyers and contains updated case summaries. Here you can also find links to other legal resources for children, such as to the Children’s Defense Fund, the Annie E. Casey Foundation, and so on.

<http://myfloridahouse.com> In my opinion, the best place to follow the Legislative session, and to find comments about the histories of bills and law.

<http://www.familylawfla.org/> This is the homepage of the Family Law Section of the Florida Bar. Here you can find information about upcoming section CLE’s, meetings, and the current and past issues of The Commentator. The Summer 2008 issue of the Commentator has significant articles on Parenting Coordinators and Child Custody Evaluations, as well as a photo of our own Pam Schneider with a Mr. William Plowman, who is apparently Jon Wershow’s long-lost twin brother.

<http://www.circuit8.org>. This is the homepage for the Eighth Judicial Circuit. The thing I return to time and again is the list of the ever rotating judges to see who is the judge in the division of a new case I have. Here’s the current list of assignments: <http://www.circuit8.org/judassn/GENERAL%20ASSIGNMENT%20>

[01-01-08%20-%2012-31-08.pdf](#). I guess this will be changing at the end of December. You can also find our local administrative rules on this website, as well as locally adopted checklists, self-help packets, and locally used forms.

<http://www.alachuacounty.us/governmanet/clerk/famlaw/> There is a whole section here on marriage, divorce, and domestic violence.

<http://www.flrules.org> I use this website to try to find Florida Administrative Rules. I work some with interstate adoptions, and we have to follow the rules of the Interstate Compact for the Placement of Children - found in FAC. This site also gives the history of some rules, and you monitor notices provided when the Legislature is tinkering with rules you use often.

[http://www.flcourts.org/gen\\_public/family/caselawupdates.shtml](http://www.flcourts.org/gen_public/family/caselawupdates.shtml). This site is part of the Office of the State Court Administrator, and has a section just on family law case updates that are provided every month or two. You can download them in \*.rtf or \*.pdf format. This site also contains information on legislation which affects family law matters.

<http://www.8jcba.org> The new website for the EJCBA. They have a few of the Forum 8 newsletters archived there. Also, the results of the Judicial Poll for 2008 are announced there, but the link has not been working while I’ve checked for writing this article. It’ll probably be fixed by the time this comes out.

<http://www.alachuaclerk.org/lindas/index> If you haven’t signed up for LINDAS, you must not have many cases in Alachua County, or feel the need to check up on your employee applicants, opposing parties’ criminal backgrounds, or your daughters’ boyfriends. For a subscription fee paid to the Clerk, you get your own username and password, and you can see the dockets in all Alachua County cases (which are not “secret”) and you can see all the dockets and images of documents in cases in which you are the attorney of record, even the “secret” ones, such as adoptions. This is a very helpful service provided by the Clerk.

<http://www.abstractappeal.com> If you do appellate work, this guy has a good blog. He’s relentless about posting new stuff, and has great links to all the appellate courts, rules of procedure, and so on.

<http://adoptionattorneys.org> American Academy of Adoption Attorneys - a good resource to find adoption attorneys in other areas.

Continued on page 13

Moving away from strictly substantive legal topics:

<http://www.fldfs.com/aadir/interest.htm> Here's the link to the announcement of the statutory interest rate set each year on judgments and decrees. Presently, it is 11% per year.

<http://www.zipskinny.com> This site includes demographic information taken from the U.S. Census on all U.S. zip code areas. There are certain disclaimers, but this is to provide you a "first glance" at places where parents might be wanting to move their children. For the 32601 area code, they have the median household income listed at \$17,664, and state that 41.1% of the population in this zip code lives below the poverty line. In the 32605 zip code area, the median household income is \$52,169 and only 10.2% live below the poverty line.

A few sites and blogs dedicated to getting rid of the billable hours for attorneys: "The billable hour is dying for a simple reason: There's no proven economic theory that shows there's a relationship between time (inputs) and value to the customer."

<http://stayviolation.typepad.com/chucknewton/2008/09/i-come-to-bury-.html>

<http://www.verasage.com>.

Now, away from the internet and down to earth. Our local Family Law Section meets the last (not the fourth) Wednesday of each month September through May. Our meetings are at 4:00 p.m. in the Chief Judge's Conference Room on the 4<sup>th</sup> floor in the Family and Civil Justice Center. This group is mostly attorneys, although we are sometimes graced with the presence of a Judge or a mental health professional. The meetings are open to all who are interested in family law. Our next meeting is October 29, 2008. The following one is November 26, 2008, and we will have a presentation by Dr. Horace Sawyer on vocational evaluations.

In addition, the Family Law Advisory Group meets on the 4<sup>th</sup> Monday of each month at 4:00 p.m. in the same room. Myrna Neims ( [mrneims@aol.com](mailto:mrneims@aol.com) ) presently chairs this group. Presentations are made on the diverse areas of family law, including dependency, domestic violence, custody matters, and so on. Their next meeting is on October 27, 2008, and will be a roundtable discussion with family law judges. The following meeting is on November 24, 2008 and will be a presentation regarding collaborative family law.

If you are interested in getting on or off the email list by which I try to remember to notify members of upcoming Family Law Section meetings, please email me at [cynthia.swanson@acceleration.net](mailto:cynthia.swanson@acceleration.net).

## Creationism's Latest Mutation: Red-Herring Arguments About Academic Freedom



*By Stephen Bernstein*

No one would think it acceptable for a teacher to question the existence of gravity or to suggest that two plus two equals anything but four. Therefore, it is mystifying to me that there is a movement to undermine the teaching of evolutionary biology under

the justification that this is an academic freedom issue.

Bills that would protect teachers critical of the findings of Charles Darwin appeared in five states this year and legislators in others are said to be considering similar moves. Florida came perilously close to inviting creationism back into the classroom, but its legislative session ended before different versions of the bill could be reconciled. Supporters said they will be back. This is all part of a national movement generated from a new film by writer and actor Ben Stein that purports to speak out for free expression by educators.

What's concerning about the legislation is that at first it appears harmless. Isn't everyone in favor of academic freedom? What is so wrong about allowing all sides of an issue to be heard? Why should teachers be punished for speaking their minds? This argument might have standing if there were any doubt about the reality of evolution. However, an official with the National Academy of Sciences told the Wall Street Journal, "there is no controversy." Now I ask you, is there really any such thing as academic freedom in elementary and secondary education? Can a teacher really deviate from accepted curriculum as an alternate lesson plan and offer kids her own notions of how things ought to be? The Florida Teachers Association opposed the rule, even though proponents argued that they are meant to benefit educators. Clearly, the strategy here is to provide an end run around legal decisions, going all the way up to the Supreme Court, which restrict the teaching of creationism in public classrooms.

You are Cordially Invited to the  
Second Annual

## Champagne & Chocolate Reception

Monday, November 24, 2008  
5:15 p.m. – 7:00 p.m.

at

The Resolution Center  
4719 NW 53<sup>rd</sup> Avenue, Suite A  
Gainesville, Florida 32653

(In Bristol Park, behind Hunter's  
Crossing Publix)

Use entrance to Publix off NW 53<sup>rd</sup> Avenue

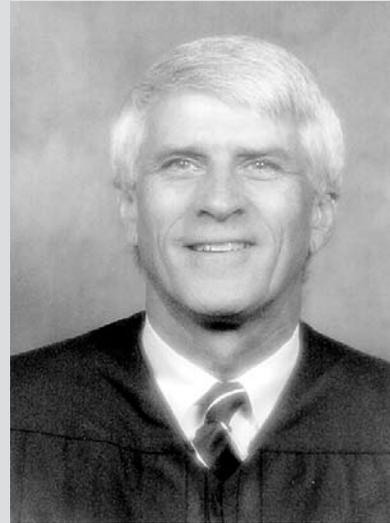
\$10.00 donations at the door  
Entire donation to benefit the  
EJCBA's Holiday Project

Please Help Raise Funds for  
the Annual EJCBA Holiday Project!

**Hosted By:**  
**The Resolution Center**  
GAINESVILLE, FLORIDA  
(352) 381-9991

## Judge Sieg Retirement Celebration

After 17 years of dedicated service to the 8th Judicial Circuit, Judge Peter K. Sieg will be retiring at the end of the year. Please join us in celebrating his time on the bench on December 12, 2008 at 3:30 PM in the Jury Assembly Room of the Criminal Justice Center. Light refreshments will be served.



**FORUM 8**

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