

# FORUM 8

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Eighth Judicial Circuit Bar Association, Inc.

April 2011

## President's Letter

By Elizabeth Collins Plummer



Different people are motivated in different ways. Accordingly, this month, I hope to reach as many of you as possible with at least one reason that will motivate you to become more active in the EJCBA and, perhaps, even consider applying for the 2011-12 EJCBA board. To that end, I offer three "top ten" lists:

### Top Ten Reasons for Young Lawyers and Law Students to Get Involved

10. Becoming a fan of the EJCBA's facebook fan page is a quick way to gain a large number of new facebook friends and to get tagged in photos showing you hobnobbing with prominent judges, attorneys, and community leaders.

9. EJCBA socials and EJCBA YLD socials offer free food, free drinks, and an opportunity to mix and mingle without the repetitive and ear drum shattering bass lines and smoky atmosphere of the downtown clubs.

8. You have no idea whether the 2500 billable hour goal imposed by your current firm is reasonable unless you have an opportunity to meet others from other law firms to compare notes.

7. EJCBA luncheons are an acceptable excuse to dare to take a lunch break. (Your employer may even pay for your lunch!)

6. Being an active member of an EJCBA committee or an EJCBA YLD officer looks great on your resume.

5. Networking and mentorship opportunities.

4. Judges and more experienced opposing counsel are far less intimidating when you have met them in a social setting (and, perhaps, have even seen them drop a forkful of Beef Stroganoff down the front of their shirts).

3. You can't join the EJCBA's Young Lawyers Division (YLD) section unless you are a member of the EJCBA.

2. First year lawyers can join for free. Law students benefit from a greatly reduced membership rate.

1. All the cool kids are doing it.



### Top Ten Reasons for Established Lawyers and Judges to Remain Involved or Get More Involved

10. You can meet young lawyers and law students who would make good candidates for clerks or new associates. (They are also likely to fawn all over you in an effort to make a good impression.)

9. Your husband/wife/partner/children aren't at all interested in hearing your "war story" and do not understand (or particularly care) what the terms SOL, LOP, FOIA, IME, ADA, MMI, 57.105, Rule 11, 3.850 motion, 3.191 demand, 341 meeting, 1983 action, or 768.28 defense mean. However, your friends at the EJCBA social will sympathize and/or think it's hilarious.

8. You can learn a lot from other attorneys who specialize in fields outside your area of expertise, e.g. developing trends in worker's compensation

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## The officers of the Eighth Judicial Circuit Bar Association for the year 2010-2011 are:

**Elizabeth Collins Plummer**  
*President*  
4510 NW 6th Place, 3rd Floor  
Gainesville, FL 32607  
(352) 374-4007  
(352) 337-8340 (fax)  
[elizabeth@gloriafletcherpa.com](mailto:elizabeth@gloriafletcherpa.com)

**Rebecca O'Neill**  
*Past-President*  
1780 Ridgecrest Dr  
Boise, ID 83712  
(208) 493-0405  
[oneillr@slhs.org](mailto:oneillr@slhs.org)

**James H. "Mac" McCarty**  
*President-Elect*  
926 NW 13th Street  
Gainesville, FL 32601-4140  
(352) 336-0800  
(352) 336-0505  
[mmccarty@nflalaw.com](mailto:mmccarty@nflalaw.com)

### MEMBERS AT LARGE:

**Nancy Baldwin**  
309 NE 1st St  
Gainesville, FL 32601  
(352) 376-7034  
(352) 372-3464 (fax)  
[baldwinnt@cox.net](mailto:baldwinnt@cox.net)

**Jan Bendik**  
901 NW 8th Avenue, Ste. D5  
Gainesville, FL 32601  
(352) 372-0519  
(352) 375-1631 (fax)  
[jan\\_bendik@trls.org](mailto:jan_bendik@trls.org)

**Robert Birrenkott**  
P.O. Box 117630  
Gainesville, FL 32611  
(352) 273-0860  
(352) 392-4640 (fax)  
[rbirrenkott@law.ufl.edu](mailto:rbirrenkott@law.ufl.edu)

**Ray Brady**  
2790 NW 43rd Street, Suite 200  
Gainesville, FL 32606  
(352) 373-4141  
(352) 372-0770 (fax)  
[rbrady1959@gmail.com](mailto:rbrady1959@gmail.com)

**Jeff Childers**  
1330 NW 6th St., Ste. C  
Gainesville, FL 32601  
(866) 996-6104  
[jchilders@smartbizlaw.com](mailto:jchilders@smartbizlaw.com)

**R. Flint Crump**  
4404-B NW 36th Ave  
Gainesville, FL 32606  
(352) 327-3643  
(352) 354-4475  
[flint@rflintcrump.com](mailto:flint@rflintcrump.com)

**Deborah E. Cupples**  
2841 SW 13 St. G-327  
Gainesville 32608  
(352) 273-0600  
(352) 392-8727 (fax)  
[Cupples@law.ufl.edu](mailto:Cupples@law.ufl.edu)

**Marynelle Hardy**  
PO Box 600  
Gainesville, FL 32602  
(352) 548-3710  
(352) 491-4649 (fax)  
[mnh@alachuaclerk.org](mailto:mnh@alachuaclerk.org)

**Leslie Haswell**  
2830 NW 41st St., Ste K  
Gainesville, FL 32606  
(352) 377-3800  
(352) 377-8991 (fax)  
[leshaswell@aol.com](mailto:leshaswell@aol.com)

**Dawn Vallejos-Nichols**  
*President-Elect Designate/Editor*  
2814 SW 13 St  
Gainesville, FL 32608  
(352) 372-9999  
(352) 375-2526 (fax)  
[dvallejos-nichols@avera.com](mailto:dvallejos-nichols@avera.com)

**Audrie Harris**  
*Secretary*  
P.O. Box 358595  
Gainesville, FL 32635-8595  
(352) 443-0594  
(352) 226-8698 (fax)  
[audrie.harris@yahoo.com](mailto:audrie.harris@yahoo.com)

**Sharon Sperling**  
*Treasurer*  
2830 NW 41 St., Ste. C  
Gainesville, FL 32606-6667  
(352) 371-3117  
(352) 377-6324 (fax)  
[Sharon@sharonsperling.com](mailto:Sharon@sharonsperling.com)

**Philip N. Kabler**  
240 NW 76th Drive, Suite D  
Gainesville, FL 32607  
(352) 332-4422  
(352) 332-4462 (fax)  
[pnkabler@kmcllp.com](mailto:pnkabler@kmcllp.com)

**Sheree Lancaster**  
PO Box 1000  
Trenton, FL 32693  
(352) 463-1000  
(352) 463-2939 (fax)  
[shlpa@bellsouth.net](mailto:shlpa@bellsouth.net)

**Frank Maloney**  
*Historian*  
445 E Macclenny Ave Ste 1  
Macclenny, FL 32063-2217  
(904) 259-3155  
(904) 259-9729 (fax)  
[Frank@FrankMaloney.us](mailto:Frank@FrankMaloney.us)

**Lua J. Mellman**  
120 W University Ave  
Gainesville, FL 32601  
(352) 374-3670  
(352) 491-4553 (fax)  
[mellmanl@sao8.org](mailto:mellmanl@sao8.org)

**Michael D. Pierce**  
PO Box 850  
Gainesville, FL 32602  
(352) 372-4381  
(352) 376-7415 (fax)  
[mpierce@dellgraham.com](mailto:mpierce@dellgraham.com)

**Anne Rush**  
35 N. Main Street  
Gainesville, FL 32601  
(352) 338-7370  
[anne.rush.1024@gmail.com](mailto:anne.rush.1024@gmail.com)

**Jacob Rush**  
11 SE 2nd Avenue  
Gainesville, FL 32601  
(352) 373-7566  
(352) 376-7760 (fax)  
[jake@rushandglassman.com](mailto:jake@rushandglassman.com)

**Carol Alesch Scholl**  
1200 NE 55th Blvd.  
Gainesville, FL 32641  
(352) 264-8240  
(352) 264-8306 (fax)  
[carol\\_scholl@dcf.state.fl.us](mailto:carol_scholl@dcf.state.fl.us)

**Gloria Walker**  
901 NW 8th Avenue  
Gainesville, FL 32601  
(352) 372-0519  
[gloria.walker@trls.org](mailto:gloria.walker@trls.org)

## 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

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

Eighth Judicial Circuit Bar Association, Inc.  
P.O. Box 127  
Gainesville, FL 32602-0127

Phone: (352) 380-0333 Fax: (866) 436-5944

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.

**Judy Padgett**  
*Executive Director*  
PO Box 127

Gainesville, FL 32602  
(352) 380-0333  
(866) 436-5944 (fax)  
[execdir@8jcbba.org](mailto:execdir@8jcbba.org)

**Dawn Vallejos-Nichols**  
*Editor*

2814 SW 13 St  
Gainesville, FL 32608  
(352) 372-9999  
(352) 375-2526 (fax)

[dvallejos-nichols@avera.com](mailto:dvallejos-nichols@avera.com)

**Deadline is the 5th of the preceding month**

## Nominees Sought for 2011 James L. Tomlinson Professionalism Award

Nominees are being sought for the recipient of the 2011 James L. Tomlinson Professionalism Award. The award will be given to the Eighth Judicial Circuit lawyer who has demonstrated consistent dedication to the pursuit and practice of the highest ideals and tenets of the legal profession. The nominee must be a member in good standing of The Florida Bar who resides or regularly practices law within this circuit. If you wish to nominate someone, please complete a nomination form describing the nominee's qualifications and achievements and submit it to Raymond F. Brady, Esq., 2790 NW 43<sup>rd</sup> Street, Suite 200, Gainesville, FL 32606. Nominations must be received in Mr. Brady's office by April 30, 2011 in order to be considered. The award recipient will be selected by a committee comprised of leaders in the local voluntary bar association and practice sections.

### ***James L. Tomlinson Professionalism Award Nomination Form***

Name of Nominee: \_\_\_\_\_

Nominee's Business Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

County in which Nominee Resides: \_\_\_\_\_

The above named nominee exemplifies the ideals and goals of professionalism in the practice of law, reverence for the law, and adherence to honor, integrity, and fairness, as follows (attach additional pages as necessary):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Name of Nominator: \_\_\_\_\_

Signature: \_\_\_\_\_

## Pro Bono Makes a Difference!

By Marcia Green

At a time when Three Rivers Legal Services' staff feels very concerned about imminent funding cuts from the federal Legal Services Corporation and a bleak outlook from the Florida Bar Foundation, as well as our other grant sources, it helps to look at the good work done by staff and volunteer attorneys.

Working at Three Rivers has always been a humbling experience. I am humbled by our clients who struggle and persevere, most often without a safety net and too often without some of the simple dignities I certainly expect for myself.

I am proud to be amongst my co-workers who, as our Executive Director Allison Thompson states, are "willing to give their time and service, making less money than they would have made in the private sector."

And I am happy to work with the attorneys in the Eighth Judicial Circuit who volunteer their time and expertise to help our clients and expand our resources. For instance, two local volunteer attorneys, Michael Pierce and F. Parker Lawrence, recently assisted a woman secure permanent, safe and affordable housing for herself and her family. The client, a widow, inherited a piece of property from her husband but another distant family member had years ago mistakenly placed her mobile home on the property. Our client, a low-income wage earner who had always paid the taxes on the land, was eligible for a low-cost, site-built home but first needed clear title to the property. Parker Lawrence volunteered to probate her husband's estate which established her ownership in the property but there was still the matter of getting the relative's old and abandoned mobile home off of her property so that her home could be built. Michael Pierce, an attorney with the Dell Graham law firm, negotiated an agreement with the mobile home's owner, the builder and the client so that the mobile home was removed and her new home was built.

In another case, attorney Roger Hatfield with Fisher Butts Sechrest & Warner, PA, represented a 25 year old low-income tenant who was awakened by an unintentional fire that apparently started outside the house he rented and worked its way into the attic. Although the fire department estimated the damages at \$2,000, the insurance company sued the tenants for \$42,000 which was the amount that the owner had incurred to improve the value of the

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# Family Law

## Motions for Continuance



By Cynthia Swanson

Although it is not a family law case, a very recent decision from the First District Court of Appeal, which arose from our own Gilchrist County, provides some good instruction on requests to continue a trial. While this case is from the civil division, motions for continuance of a trial are certainly not limited to the civil division. Family lawyers often meet up with just the type of conglomeration of circumstances that arose here. The case is *Garner v. Langford*, Case No. 1D10-1032.

I have to admit, as did the appellate panel, that the facts and circumstances in the case are pretty unusual. What happened is that Mr. Garner hit a horse in the middle of a road when he was driving home at night on New Year's Day 2003. The horse died and Mr. Garner was paralyzed from the neck down. Not quite two years later, in 2005, Mr. Garner filed suit against Mr. Langford, alleging that the horse belonged to Mr. Langford, and that Mr. Langford had been negligent in failing to keep his horse properly fenced. The parties proceeded to get the case ready for trial, albeit at what appears to be a rather slow pace. In 2007, approximately two years after suit was filed, Mr. Garner died as a result of complications caused by his injuries. The parties agreed to substitute his mother as plaintiff.

About a year later, the trial judge ordered the parties to mediation. It was successful, and the parties agreed to settle the matter completely and therefore moved to continue a case management conference scheduled for May 12, 2009, to allow time to finalize the settlement, which was contingent upon the Defendant obtaining financing to pay appellant a sum of money. The court continued the case management conference until August 11, 2009, and also scheduled a pretrial conference and a jury trial for December 28, 2009. In a pretrial order, the court ordered the parties to attend another round of mediation by November 1, 2009. Though the Defendant had not yet executed the terms of the settlement, the Plaintiff's counsel moved to dispense with any further mediation, citing the agreement reached after the initial mediation. The court denied the motion.

The opinion doesn't make this completely clear, but apparently the Defendant never did execute the settlement agreement and so the matter was set to proceed to trial. One might speculate that the Defendant

did not secure the financing he needed to pay the agreed upon sum.

Unfortunately, however, a couple months before trial, the Plaintiff's attorney himself was diagnosed with a life-threatening illness, and he closed his practice, intending to move to Greece (where, the appellate panel gratuitously noted, he would receive free state-provided medical care) and so he transferred his matters to other attorneys. He and the new attorney for the Plaintiff signed a stipulation for substitution of counsel, but no order was actually entered on it. Then, the new attorney developed a conflict with the trial date because his son needed to have surgery. Because no order allowing the substitution of counsel had been entered, the first attorney filed a motion for continuance and urged that his client would be deprived of due process without a continuance to allow his new attorney to properly represent him. The trial judge denied the motion for continuance and denied the first attorney's motion to withdraw, leaving the first attorney (the one with the life-threatening illness who was in Greece) as the Plaintiff's attorney of record.

In addition, two important witnesses, a Florida Highway Patrol officer and a veterinarian, could not be found. The Plaintiff and the Defendant stipulated that these were important witnesses, and in addition that they needed to obtain some photographs that had been taken by the Highway Patrol officer at the scene. At the pretrial conference, two new attorneys appeared on behalf of the Plaintiff, and requested a continuance to allow them to get up to speed. The judge denied the motion. The trial judge also apparently asked a bailiff to try to locate the Highway Patrol officer, and the bailiff reported the officer could not be found. Also, at some point, apparently while the Plaintiff's attorney situation was in flux, the Defendant had taken the depositions of the two witnesses who could not be located, and the transcripts of those depositions were provided to the Plaintiff only five days before trial. The parties again both requested a continuance, which the trial judge denied, citing the age of the case as justification.

After the matter was tried, without the Plaintiff's desired witnesses, the jury returned a verdict in favor of the Defendant, and the Plaintiff appealed. In a ten page long opinion, the First District Court of Appeal set out the law regarding orders denying motions for continuance. The appellate court first pointed out that a trial judge's rulings on these motions are entitled to considerable

*Continued on page 13*

cases tend to bleed over into personal injury cases, a criminal attorney's experience with an evidentiary issue or juror disqualification issue can lead to a solution in your civil case, etc. You're more likely to think outside of the box, if YOU get outside of your box.

7. You are tired of seeing the same lawyers and the same staff members day in and day out. It would be great to interact with new people.

6. Although Elvis-like sightings abound, no one has really spent any time with you in so long that rumor has it that you died two years ago.

5. Getting to know a judge or another attorney outside the courtroom (their character, their temperament, their preferences and dislikes, their quirks, etc.) can only make you a better lawyer when you practice before them, against them, or with them.

4. Only current EJCBA members have an enhanced profile in the online member directory at [www.8jcba.org](http://www.8jcba.org), which allows potential clients to find them by searching the database by practice area.

3. Your colleagues are a great referral source and the best way to get those referrals is to remain on their radar by attending EJCBA functions. Remember the basics of creating recognition: primacy, frequency, and recency.

2. You can't attend the annual James C. Adkins Cedar Key dinner unless you are a member. What happens in Cedar Key stays in Cedar Key.

1. No one likes a quitter.

**Top Ten Reasons for Everyone to Get Involved**

10. You've already paid your dues; don't let your money go to waste.

9. The food at Ti Amo! is far better than the remaining half of yesterday's sandwich which is being crushed at the bottom of the pile of lunches in the break room refrigerator.

8. Participation in the EJCBA can serve as a springboard for other leadership opportunities throughout the local community and statewide.

7. Over the years, our luncheons and annual meetings have attracted a wide variety of speakers and special guests, including local and statewide governmental leaders and candidates, presidents of the Florida Bar, appellate judges and Florida Supreme Court justices, Florida Bar representatives regarding legal ethics and attorney advertising, UF basketball coach Billy Donovan, UF Football coaches Urban Meyer and Charlie Strong, and so many more.

6. Free CLE opportunities are a "members only"

benefit.

5. Your resume, Martindale Hubble listing, Florida Bar profile, and website already all say that you are an EJCBA member. It's easier to renew your membership than to change all those listings.

4. Your board has been hard at work investigating the possibility of even more "members only" benefits, including: implementing an Eighth Judicial Circuit attorney referral service; creating a library to access to CLE, training, and educational resources; negotiating discounts on products and services, launching online message boards and practice area specific online forums; etc. The best is yet to come.

3. Getting involved in the EJCBA is an easy way to get involved in the community as a whole. Bring a canned good to a food drive. Contribute an auction item or bid on an auction item at the May luncheon to benefit Interface. Join the EJCBA's team for the Great Strides Walk to benefit the Cystic Fibrosis Foundation. We do all the pre-planning to participate in community events. You just show up!

2. You can effect positive change, growth, and progress in your legal community.

1. The EJCBA can effect positive change and growth, professionally and personally, in you.



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# Possession, Custody or Control

By Siegel, Hughes & Ross

Florida Rule of Civil Procedure 1.350 requires a party to produce documents that are in the party's "possession, custody or control." The term possession is relatively clear, but the extent to which a party's custody or control of material is more ambiguous. It is clear that custody or control must mean more than simple possession or the words would be superfluous. Whether a party has the obligation to obtain documents of which it does not have possession from a non-party is determined by the relationship between the party and the non-party. If the relationship is a sufficiently close one, the court may charge the party with control over the documents.

A party is required to produce documents in the possession of his attorney, agent or employee. *Surf Drugs, Inc. v. Vermette*, 236 So.2d 108 (Fla. 1970). Other "agents" from whom a party must obtain documents to produce would include accountants and retained experts. Federal cases have defined the words "custody or control" to include documents in the possession of another when the party has "the right, authority, or the ability to obtain the requested documents." *Comeau v. Rupp*, 810 F. Supp. 1127 (D. Kan. 1992); *Resolution Trust Corp. v. Deloitte & Touche*, 145 F.R.D. 108 (D. Colo. 1992). Construction of a federal rule which is nearly identical to the state rule has been held to be pertinent and "highly persuasive." *Smith v. Southern Baptist Hospital of Florida, Inc.*, 564 So.2d 1115 (Fla. 1<sup>st</sup> DCA 1990).

Florida courts have identified specific relationships to be sufficiently close to require a party to obtain documents for production from a non-party. The corporate officer of a closely held corporation must produce documents in the possession of the corporation. *Lytton v. Lytton*, 289 So.2d 17 (Fla. 2<sup>nd</sup> DCA 1974). A subsidiary company can be required to produce documents in the possession of its corporate parent. *Medivision of East Broward County, Inc. v. Department of Health and Rehabilitative Services*, 488 So.2d 886 (Fla. 1<sup>st</sup> DCA 1986).

In evaluating the obligation of a party to obtain documents from a non-party to produce in discovery, the court and the parties must evaluate the nature of the relationship between the party and non-party. If the party has the right or authority to control the non-party it should be required to exercise that control to obtain the documents.



Brent Siegel, Charles Hughes & Jack Ross



CLE speaker Dr. Barrister Alexander and Board member and CLE Chair Nancy Baldwin

# Alternative Dispute Resolution

## The Story of The Mediator and The Seventeen Camels



By Chester B. Chance and Charles B. Carter

This story/fable comes from a mediation website in the UK. Interestingly, in the UK, mediation is described as “coming from the USA.” The website is “Mediation 1<sup>st</sup>” and the site includes some other interesting fables/stories. We are presenting the fable

verbatim with full acknowledgement as to the source.

Although Mediation is sometimes perceived in the UK as having “come from the USA,” in fact, it seems likely that mediation originated in the Far East, where Mediation has a long and honourable tradition of resolving conflict. The fable of the Mediator and the Seventeen Camels, however, comes to us from the Middle East, and like all the best fables, it contains a grain of truth...

*Once upon a time, a Mediator was riding through the endless wastes of the desert on his camel. The Mediator had been riding for a long time and as he scanned the sea of sand that surrounded him, he was pleased to see the palm trees of an oasis on the horizon. He turned his trusty camel towards it and made for the oasis.*

*But, as the Mediator neared the oasis he realized that all was not well. Raised voices drifted across the sand towards him, and he caught the unmistakable glint of sunlight on drawn swords. By the time the Mediator arrived in the oasis it was apparent that a full blown conflict was about to break out. Anxious to help (or, perhaps, seeing the opportunity for an unexpected bit of business!) the Mediator enquired as to what the problem might be.*

*The sad story was soon told. An old, and important member of the tribe had died. He had provided for the distribution of his worldly goods in his will, and as was common in those days, in that part of the world, he had divided his goods between his three sons, giving the most to the oldest, and least to the youngest. The eldest son was to receive one half of the estate, the middle son was to receive one third of the estate and the youngest son was to receive one ninth of the estate. That in itself would not have triggered a conflict, for the principle was not unusual, but the difficulty lay in the fact that the man’s estate consisted entirely of seventeen camels.*

*In a part of the world where wealth was measured*

*in camels this was a significant number. The difficulty, however, was that seventeen is a number that can be divided by neither two, to give the eldest son a half, nor by a third nor a ninth to give the next two sons their proper shares. Hence the impending conflict. The eldest son, not unnaturally, felt that he should have a bit more, but his younger brothers, again understandably, felt that as their older brother was already receiving the most it was he who should give something up. The only compromise that had been suggested was to kill all seventeen camels, to weigh the meat, and then to divide the estate that way. Unfortunately, whilst it was superficially attractive this solution was, in the searing heat of the desert, and before the age of the deep freeze, simply not practicable. So swords had been drawn, and the members of the family were about to fall upon each other, when the unexpected chance that a Mediator should suddenly appear out of the desert gave them a glimmer of hope, and they enquired of the Mediator whether he could help.*

*A fee was negotiated, and paid by each of the brothers out of their own assets, and the Mediator then said “I shall give you my camel.” The Mediator’s suggestion provoked amazement, with some asking how that was supposed to help, and others questioning the Mediator’s sanity. The Mediator went on to explain:*

*“Now you have eighteen camels. Eighteen is divisible to two, so the eldest son can have nine camels. Eighteen is divisible by three, so the middle son can have six camels and eighteen is divisible by nine, so the youngest son can have two camels”.*

*Satisfied, and overjoyed to have avoided a conflict, each of the sons took his camels and returned to his tent. Moreover, since nine plus six plus two comes to seventeen, the Mediator’s camel was left over and the Mediator was able to climb back onto his trusty camel and to resume his voyage across the desert.*

*And the moral of the story is? Probably to check your math when drafting a will, but also, and more importantly, that the input of an independent Mediator can transform even the most difficult of disputes.*



# A Remedy For Tucson: Reaching Out Before Tragedy

By Stephen N. Bernstein



What should we do about the mentally ill who walk among us, stumbling toward what may grow into violent confrontations with authority? That question arose in the wake of our collective inability to stop an unstable Jared Lee Loughner on his way to the rampage just outside of Tucson. Mentally ill people frighten their parents, neighbors and friends and people don't know where to get help. Most fear that the law protects the individual rights of the unstable person at the risk of the community's safety.

The stories I've heard can be harrowing: One woman complained about a brother whose severe bipolar disorder first surfaced as her mother "cowered behind a locked door while he pounded on it and tried to knock it down." When the police arrived, nothing was done because he hadn't hurt anyone. In another instance, nothing was done when a parent complained that a daughter was mentally ill. Since she was an adult, no agency would do anything until it was established that she was a danger to herself or others. It took a suicide attempt to get treatment ordered. A mother tried to get her son into a treatment facility and was told to keep him on medication at home. When he was old enough, the young man stopped taking his meds and ended up being Baker Acted because he was a danger to himself or others. He ended up back on the streets because insurance would only pay for six days of inpatient care.

Nevertheless, there are good ways for communities to reach out to the mentally ill without depriving them of their legal rights. These programs require two things in limited supply - concern and money.

We, unfortunately, have an ethic of leaving people alone, but people should be able to call upon the mental health system to come and get engaged. What unites practical remedies is that they connect the community with isolated and unstable people, rather than leaving them alone as ticking time bombs. Psychiatrists have an obligation, for example, to warn potential victims if a patient threatens violence. Lawyers and health professionals are often required to notify police if they see signs of child abuse.

In the aftermath of the Virginia Tech massacre, many colleges have added mental health counseling. If Tucson's Pima Community College had had a

threat assessment team to intervene when a student acted erratically, Loughner might be in treatment and his victims still alive. What a difference an assertive community treatment approach might make right here in Gainesville, where teams of mental health professionals can be summoned for help, rather than the police. They are expensive, but perhaps less costly than the alternatives of hospitals or prisons.

There also are volunteer programs that reach out. The next time you read about Arupa Chiarrini and her group's efforts to provide services to Gainesville's needy, you might consider what you can add to the mix. We all have something to offer.

## North Central Florida Diversity Forum

Thanks to a grant from the Florida Bar, The Eighth Judicial Circuit Bar Association, along with its partners (the Josiah T. Walls Bar Association, the North Central Florida Chapter of the Federal Bar Association, and the Clara Gehan Association for Women Lawyers) will host the North Central Florida Diversity Forum. The event is designed to bring together lawyers, judges, scholars, and students to discuss the importance of diversity within the legal profession. The event will also provide a launching pad to support the identification and implementation of future collaborative diversity initiatives.

WHEN: Wednesday, April 6<sup>th</sup>, 6:30pm

WHERE: University of Florida Levin College of Law

COST: Free

CLE: (2 General and Professionalism Credits Expected)

RSVP: Please RSVP by Monday, April 4<sup>th</sup> by clicking on this link and filling out the fields [www.law.ufl.edu/news/events/2011/ncfdf/](http://www.law.ufl.edu/news/events/2011/ncfdf/)

Please contact Rob Birrenkott by phone: (352) 273-0860 or via email: ([Rbirrenkott@law.ufl.edu](mailto:Rbirrenkott@law.ufl.edu)) with any questions.

# Criminal Law



By Bill Cervone

I know some of you will be bored by this but I've decided on an actual legal topic this month. The topic, where a defendant's decision-making rights stop and counsel's judgment takes over, is one that has always interested me, especially given the explosion of post-conviction litigation in recent years, much of which comes from the hindsight defendants seem to get while passing away the time in a prison cell after their trial.

For a factual background, consider the plight of one Vincent Puglisi, now and for the rest of his life also known as Inmate #715844 at Okeechobee Correctional, where he is doing life for murder. Vincent, along with a paramour named Rex Ditto, finished off Super Bowl Weekend 2006 by robbing and killing one Alan Shalleck, who, shall we say, was a rival for their affections. The details, which are salacious, as well more legal stuff than I have space to outline in this column, can be found in *Puglisi v. State*, 36 FLW D7 (Fla. 4<sup>th</sup> DCA 2010) if you wish.

Suffice it for our purposes to say that when his trial rolled around Puglisi seems to have found himself alone at counsel table as Ditto had ratted him out. Actually, to be fair, Ditto had both inculpated and exculpated him at various times, apparently not being able or inclined to keep to one story. Ditto's various versions of who did what when were, in fact, so wildly inconsistent that the State wanted no part of calling him as a witness.

Things were apparently not going well for Puglisi at his trial, no doubt because of the wealth of other evidence against him, including his own confession. Citing the old maxim that it couldn't get any worse and he had "nothing to lose," Puglisi demanded to call Ditto as a witness. Defense counsel, distressed over the obvious glee the prosecutor would have in cross-examining Ditto, resisted this and the trial court refused to let Puglisi do it. Hence, the legal discussion as to whose right that decision was.

To make a long story short as I rapidly run out of space, the 4<sup>th</sup> DCA noted that US Supreme Court precedent itemizes four fundamental decisions as belonging to a defendant: whether to plead, to waive a jury, to testify, or to appeal. In *Jones v Barnes*, 463 US 745 (1983) and other federal cases, the Court has noted that defense counsel "is more than an

advisor," he is "a professional advocate" who is "present to exercise his professional judgment to decide tactics." The Supremes concluded in *Burke* that "If we add to the list of circumstances in which a defendant can trump his counsel's decision, the adversarial system becomes less effective as the opinions of lay persons are substituted for the judgment of legally trained counsel. The sound functioning of the adversarial system is critical to the American system of criminal justice. We intend to defend it."

The 4<sup>th</sup> DCA agreed and rejected Puglisi's appeal. Interestingly, there was some authority for Puglisi's claim in a 1984 Florida Supreme Court case. That case, however, in which a defendant had been allowed to call a witness over counsel's advice, and in which that move apparently turned out to be incredibly ill-advised as that defendant was also appealing from a prison cell, really seems to stand for the legal principal that if you, the defendant, insist on doing something really dumb during your trial, you're pretty much not going to get to complain about it when things go south on you.

In any event, I offer this case and commentary to those of you who must deal with difficult clients in the hope that it will strengthen your resolve to look them in the eye after they have proposed or demanded some particularly stupid tactic and say, resolutely, "Are you out of your mind? The answer is no. I'm in charge here, not you, you idiot." Unless, of course, they want to plead, waive a jury, testify themselves, or appeal.

## Congratulations, Chief Judge Lott!

The judges of the Eighth Judicial Circuit recently re-elected the Honorable Martha Ann Lott as Chief Judge for the two-year term beginning July 1, 2011. The EJCBA looks forward to continuing to work with Chief Judge Lott during her next term. Chief Judge Lott and her judicial assistant, Priscilla Holloway, can be reached at 374-3646.

# Cyberspace CLE's from the Federal Bar Association

## Upcoming FBA Seminar

by Peg O'Connor, FBA Chapter Secretary

On Friday, April 8, 2011, join us at the law school (in the brand new Advocacy Center) for a half-day of techno fun. "Federal Practice in the Electronic Age: Don't Be a Dinosaur" will show you how to successfully navigate cyberspace as a federal practitioner.

We'll discuss e-discovery, including Rule 26(f) conferences, the pitfalls of social media, and the how-to's of advertising on the web. We'll also show you a demonstration of a forensic computer examination.

Plus, if you're not currently an FBA member, \$50 of your registration fee will be applied toward your new national membership.

Send in your registration form below. Please e-mail [peg@larryturnerlaw.com](mailto:peg@larryturnerlaw.com) with any questions.

## Announcement Job Vacancy

### Alachua County 2011 Value Adjustment Board Attorney

Seeking applicants for contract position  
Call Linda at 352-374-3605  
or email [lks@alachuaclerk.org](mailto:lks@alachuaclerk.org)  
Deadline Friday, 4/8/11

### ***Federal Practice in the Electronic Age: Don't Be a Dinosaur***

*UF College of Law Advocacy Center*  
Friday, April 8, 2011, 9:00am-1:00pm

Name:		Employer:	
Mailing Address:			
Phone Number:		Email Address:	
Please send a completed registration form and remit payment according to the fee schedule below to: NORTH CENTRAL FLORIDA CHAPTER OF THE FEDERAL BAR ASSOCIATION c/o Peg O'Connor 204 West University Ave., Ste. 7 Gainesville, FL 32601			
Fee Schedule:			
Federal Bar Association Members	\$45	Law Students (FBA members)	free
Non-Members	\$95	Judges and judicial staff	free

## **EJCBA Charity Auction to Benefit Interface**

*By Marynelle Hardee*

Get ready to shop 'til you drop at the Eighth Judicial Circuit Bar Association Charity Auction! The auction to benefit the Interface Youth Program will be held during the last EJCBA luncheon of the 2010-11 term on May 13<sup>th</sup> at Ti Amo! in downtown Gainesville.

Pearse Hayes, of Hayes Jewelry, has graciously agreed to donate his time and serve as our auctioneer. Items donated for previous auctions have included one of a kind artwork, fine jewelry, autographed Gator sports memorabilia, tickets to Gator sports events, restaurant gift certificates, spa day packages, gourmet gift baskets, etc.

The EJCBA Outreach and Community Service Committee is currently seeking donations of auction items from local businesses. If you have ties to a business that might be interested in making a donation, which would not only serve a worthy cause, but provide a unique opportunity to promote themselves to the attorneys throughout the Eighth Judicial Circuit (or have an item you would be willing to donate), please contact Marynelle Hardee, chair of the Outreach and Community Service Committee, at [mnh@alachuaclerk.org](mailto:mnh@alachuaclerk.org).

Interface is a temporary shelter for youth ages 10-17 who are ungovernable, truant, or runaway. The program is operated by the CDS Family and Behavioral Services, Inc., a non-profit organization. Interface provides crisis stabilization, counseling, and development of case plans to meet short term needs and long term goals. It has facilities in Gainesville, Lake City and Palatka.

Other programs offered by CDS include substance abuse counseling for adult Drug Court defendants, the Reichert House program, which provides youth from high-risk neighborhoods with supervised after school activities, and the Independent Living Program, which teaches life skills to children in foster care to facilitate their transition into adulthood.

Check your email for additional details coming soon and mark your calendars now for this "can't miss" event!

## **Newly Formed Bennett Inn Of Court: Accepting Applications**

The Adkins Inn of Court was formed approximately 20 years ago and has been a great success in promoting professionalism amongst Bench and Bar. A second Inn, The Gerald T. Bennett Inn, has been formed in association with the University of Florida, Levin College of Law. The Bennett Inn will focus on technological developments and cutting edge legal issues with active participation by law school faculty, law students and Bar members in a cooperative learning format.

The Bennett Inn of Court anticipates an initial membership of 45 participants with approximately 10 members coming from law school faculty and students. Applications for membership will be available at the first open meeting to be held on April 19<sup>th</sup> at 5:30 p.m. in the courtyard of the law school. See you there! Check out our website at [www.bennettinn.org](http://www.bennettinn.org).

## **The Gerald T. Bennett Technology and Innovation Inn of Court Introductory Meeting**

The Gerald T. Bennett Inn of Court will sponsor a champagne and crepes event on Tuesday, April 19, 2011 at 5:30 p.m. at the courtyard of the University of Florida Levin College of Law.

All attorneys and judges are invited to attend the open program and introduction to the new Inn. Applications for membership in the newly formed Bennett Inn of Court will be available. The purpose and concept of the new Inn of Court will be discussed and Dean Robert Jerry and Dean Emeritus/Professor of Law Jon Mills of the Levin College of Law will speak to the gathering about the Inn along with Bennett Inn of Court President Chester B. Chance.

# EJCBA Charity Golf Tournament

## Benefiting the Guardian ad Litem Program



**Mark Bostick Golf Course  
at the University of Florida**  
2800 SW 2<sup>nd</sup> Avenue  
Gainesville, FL 32607  
Phone: 352-375-4866

**Friday, April 22, 2011**  
**Cost: \$100 per player**  
**Register & Eat: 11:30am**  
**Tee-time: 1:00pm**  
**Reception following round**

To help us properly plan for this event, please pre-register by going to <http://8jcb.org/events.aspx> or return this form with payment.

- Longest Putt Contest
- Men and Women Longest Drive
- Closest to the Pin Challenge
- "Mulligans for Kids" for sale

### 2-Person Scramble



This year's event will be held **Friday, April 22<sup>nd</sup>, 2011**, at the beautiful Mark Bostick Golf Course at the University of Florida in Gainesville, Florida. Registration and lunch begin at 11:30am, with shotgun start at 1:00pm. Post-round reception immediately following golf.

The cost for this event is **\$100** per golfer. This price includes 18 holes of golf, riding cart, lunch, reception and various awards and/or prizes. All net proceeds of this charity tournament will benefit the Guardian ad Litem Program of the 8<sup>th</sup> Circuit through the Guardian Foundation, Inc.

A Guardian ad Litem is a volunteer appointed by the court to protect the rights and advocate the best interests of a child involved in a court proceeding. Currently, the Florida GAL Program represents close to 27,000 abused and neglected children, but more than 4,600 children are still in need of a voice in court. Additional funding to the GAL Program provides invaluable financial support for the volunteers.

**SIGN-UP DEADLINE**  
**APRIL 21<sup>ST</sup>**

**FOR MORE INFORMATION,  
CONTACT MAC MCCARTY**

Brashear, Marsh & McCarty, PL  
926 NW 13<sup>th</sup> Street  
Gainesville, FL 32601  
Phone: 352-336-0800  
Fax: 352-336-0505  
E-mail:MMcCarty@NFlaLaw.com

**ENTRY FEE: \$100 per golfer**

_____	_____
Name	Partner's Name
_____	_____
Address	Partner's Address
_____	_____
Phone Number	Partner's Phone Number
_____	_____
Email Address	Partner's Email Address

Make checks payable to Brashear, Marsh & McCarty, PL Trust Account

deference. “The trial court’s determination of a motion for continuance is within [its] discretion and the court’s ruling thereon will not be disturbed ‘unless a palpable abuse of discretion is demonstrated.’” *Robinson v. State*, 561 So. 2d 419, 420 (Fla. 1st DCA 1990) (quoting *Smith v. State*, 525 So. 2d 477, 479 (Fla. 1st DCA 1988)). The panel wrote that it would accord “even greater deference to continuance orders than is required of other discretionary rulings.” See *id.* Given this highly deferential standard, we acknowledge that “a reversal for failure to grant a motion for continuance would be justified only in very rare situations.” *Id.*

However, the appellate court also pointed out that the most important thing is justice, not time deadlines or the trial judge’s discretion to control his calendar. The Court noted that sometimes the appellate courts “. . . have no alternative but to reverse, because the injustice caused by the denial of the motion outweighs the judicial policy of deferring to the trial judge.” *Id.*; *Silverman v. Millner*, 514 So. 2d 77 (Fla. 3d DCA 1987) (acknowledging that “[s]pecial circumstances sometimes exist . . . in which the denial of a motion for continuance creates an injustice for the movant”).

Factors to be considered in determining whether the trial court abused its discretion in denying the motion for continuance include whether the denial of the continuance creates an injustice for the movant; whether the cause of the request for continuance was unforeseeable by the movant and not the result of dilatory practices; and whether the opposing party would suffer any prejudice or inconvenience as a result of a continuance. *Fleming v. Fleming*, 710 So. 2d 601, 603 (Fla. 4th DCA 1998).

In this case, there was the death of the Plaintiff, the life-threatening illness of the Plaintiff’s first attorney, the unforeseeable need for surgery by the second attorney’s son, the unavailability of two of the Plaintiff’s important witnesses, the fact that new attorneys for the Plaintiff came on board 13 days before the trial was scheduled, with the trial scheduled three days after Christmas, and, perhaps most importantly, the fact that both parties requested a continuance several times. Given all the circumstances in this case, the appellate court wrote, “We respectfully do not see that the trial court could cite any sufficiently just reason to deny the motion, even given the age of the case.” The appeals court reversed the judgment and remanded the matter for a new trial.

On another matter, in my continuing effort to make good use of my iPad, I have discovered a nice little legal research app. It’s sort of a “Lexis-Very-Lite.” If you have a Lexis subscription, you put in your ID and

password, assign the client that you are doing research for, and then you can “get a document” if you already have its citation. The full case will display. You can then shepardize the case. Unfortunately, all you get is the “treatment” of it, not the actual list of cases which cite it. But you can at least see if it has positive or negative treatment. In addition, your history is transferred to your Lexis account, so when you open up your account on your PC, those cases that you viewed on your iPad are included. I can see this being useful in court when the opposing attorney fails to provide copies of cases to me that he or she is arguing to the judge. Oh, yes, that does happen. If you don’t have a full Lexis subscription, but have the Lexis Advance for Solos, there is also an app for that.

Finally, I will admit that “Angry Birds,” which I derided in my first mention of iPad apps, is addicting. I’ve only downloaded the couple of free versions available so far, but it’s really, really addicting. My daughter and her boyfriend liked it so much, they have both downloaded it for their phones and play it on those tiny screens. As a joke, I even downloaded the theme music from the app and made it a ringtone for my daughter’s calls. Really, really addicting!

Please feel free to bring your smartphone or iPad or whatever to the next Family Law Section meeting and let us see your favorite stuff. The Section meets on the third Tuesday of each month, even if I forget to send out a reminder email, at 4:00 pm in the Alachua County Civil and Family Justice Center. I would also like to shamelessly refer you all to my blog: <http://swansonlawcenter.blogspot.com/> . I post interesting items related to family law, adoptions, probate, and so on.

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## **Pro Bono**

*Continued from page 3*

property. Mr. Hatfield defended this young man against the insurance company, assisted with a negotiated settlement, and the case was dismissed with prejudice, saving him from a huge debt that was neither due to his complete personal negligence nor a true representation of the cost of the damages.

Neither of these two clients could have paid for the services of their attorneys; both are employed and do the best they can in an economy that is difficult for all levels of society. Again, at a time when things are somewhat insecure, I greatly appreciate knowing of the good work being done in our community and the tremendous impact it has on all of us.

# It's that time again!

The Eighth Judicial Circuit Bar Association Nominations Committee is seeking members for EJCBA Board positions for 2010-2011. Please consider giving a little time back to your bar association. Please complete the application below and return the completed application to EJCBA. The deadline for completed applications is **May 2, 2011**.

## EIGHTH JUDICIAL CIRCUIT BAR ASSOCIATION, INC.

### Application to Nominations Committee

Name: \_\_\_\_\_ Bar No. \_\_\_\_\_

Address: (Office) \_\_\_\_\_  
\_\_\_\_\_

Telephone Numbers: (Home) \_\_\_\_\_ (Office) \_\_\_\_\_  
(Fax) \_\_\_\_\_ (Cellular) \_\_\_\_\_  
(E-Mail) \_\_\_\_\_

Area of practice: \_\_\_\_\_ Years in practice: \_\_\_\_\_

Office of Interest: (Check all that apply)

Secretary \_\_\_\_\_ Treasurer \_\_\_\_\_  
Board member \_\_\_\_\_ Committee Member \_\_\_\_\_

Preferred Committee Interest: (Check all that apply)

<input type="checkbox"/> Advertising	<input type="checkbox"/> Law Week	<input type="checkbox"/> Professionalism
<input type="checkbox"/> Annual James C. Adkins Dinner	<input type="checkbox"/> Lawyer Referral Services	<input type="checkbox"/> Publicity/Public Relations
<input type="checkbox"/> Annual Reception	<input type="checkbox"/> Luncheon/Speakers	<input type="checkbox"/> Social
<input type="checkbox"/> CLE	<input type="checkbox"/> Member Survey	<input type="checkbox"/> Sponsorships
<input type="checkbox"/> Community Service	<input type="checkbox"/> Membership	<input type="checkbox"/> Website
<input type="checkbox"/> Judicial Poll	<input type="checkbox"/> Policies and Bylaws	<input type="checkbox"/> Young Lawyers Division Liason
<input type="checkbox"/> Judicial Robes and Reception	<input type="checkbox"/> Pro Bono	<input type="checkbox"/> Other (Describe Below)

Briefly describe your contributions, if any, to date to EJCBA.

What new goals would you like to explore for our association?

How many hours per week can you devote to your EJCBA goals?

Return to: EJCBA – Nominations Committee  
P O Box 127  
Gainesville, FL 32602-0127

Or email completed application to: [execdir@8jcba.org](mailto:execdir@8jcba.org)

▶ Free Workshop on Foreclosure Mediation

▶ Please join us!

# Free Workshop:

## Get the Most out of Your Court-Ordered Foreclosure Mediation

AAA® RMFM Program / Eighth Judicial Circuit Court of Florida

Alachua, Baker, Bradford, Union, Levy and Gilchrist Counties



# Homeowners in Foreclosure —

We invite you to attend a free, informal workshop to ask questions you have about the process of court-ordered foreclosure mediation. You can learn how to get the most benefit possible from the program the Supreme Court has established for residential foreclosures.

### Who will be there?

Attorneys and financial counselors and staff from the RMFM Program will be on hand to answer questions and describe the steps borrowers complete in order to mediate.

▶ Join Us. Free Workshop.

May 2, 2011

6:00-8:00 PM

Alachua County Downtown Library  
401 East University Avenue, 4th FL,  
Meeting Room A  
Gainesville, Florida 32601

For more information on  
Residential Mortgage Foreclosure Mediation,  
visit [www.mortgagemediation.org](http://www.mortgagemediation.org) or  
call 1.866.222.6541.

**Florida**

American Arbitration Association

Residential Mortgage  
Foreclosure Mediation Program



Eighth Judicial Circuit Bar Association, Inc.  
Post Office Box 127  
Gainesville, FL 32602-0127

## April 2011 Calendar

- 1 2011 Professionalism Seminar at UF College of Law - Chesterfield Smith Ceremonial Classroom, 9:00 a.m. – 12:00 noon; speaker John T. Berry, Director of the Legal Division of The Florida Bar, “The Challenges of Teaching Professionalism”
- 5 Deadline for submission to May Forum 8
- 6 EJCBA Board of Directors Meeting; UF Levin College of Law, Faculty Dining Room, Bruton-Geer Building, 5:30 p.m.
- 6 North Central Florida Diversity Forum, UF Levin College of Law, 6 p.m.
- 7 CGAWL meeting, Flying Biscuit Café, NW 43<sup>rd</sup> Street & 16<sup>th</sup> Avenue, 7:45 a.m.
- 8 FBA Seminar – “Federal Practice in the Electronic Age: Don’t be a Dinosaur,” UF Levin College of Law, 9:00 a.m. – 1:00 p.m.
- 8 EJCBA Luncheon, Ti Amo!, 11:45 a.m., Ken Bryk, Florida Bar Counsel, speaking o “Judicial Referrals Based on Impugning and/or Disparaging the Judiciary”
- 13 Probate Section Meeting, 4:30 p.m., 4<sup>th</sup> Floor, Family & Civil Courthouse
- 19 Gerald T. Bennett Inn of Court Introductory Meeting, UF Levin College of Law Courtyard, 5:30 p.m.
- 22 2011 EJCBA Golf Tournament, Mark Bostick Golf Course, UF, 11:30 a.m.
- 26 Family Law Section Meeting, 4:00 p.m., Chief Judge’s Conference Room, Alachua County Family & Civil Justice Center

## May 2011 Calendar

- 2 Applications for 2011-2012 EJCBA Board of Directors due to Nominations Committee
- 4 EJCBA Board of Directors Meeting; Ayers Medical Plaza, 720 SW 2d Avenue, North Tower, Third Floor – 5:30 p.m.
- 5 Deadline for submission to June Forum 8
- 5 CGAWL meeting, Flying Biscuit Café, NW 43<sup>rd</sup> Street & 16<sup>th</sup> Avenue, 7:45 a.m.
- 11 Probate Section Meeting, 4:30 p.m., 4<sup>th</sup> Floor, Family & Civil Courthouse
- 13 EJCBA Luncheon, Ti Amo!, 11:45 a.m., Charity Auction to benefit Interface
- 24 Family Law Section Meeting, 4:00 p.m., Chief Judge’s Conference Room, Alachua County Family & Civil Justice Center

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).