

FORUM 8

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Eighth Judicial Circuit Bar Association, Inc.

April 2015

President's Message



“Chilled” is the Operative Word

By Ray Brady

There are two EJCBA events that I would like to highlight this month, and the word “chilled” is relevant to both.

First is my report on the new EJCBA “Spring Fling” party which was held on March 6th. We had great chilled craft beer and wine, and slightly chilled guests, given the cool front that hit Gainesville the night before. In spite of the chilly weather, a great time was had by everyone. This was a members-only free event. More than 80 members and their guests attended. We moved the event inside the beautiful Thomas Center, and also had a bar and seating on the outside covered porches. Our very own Bruce Brashear and his band “Squid Love” had us up dancing and clapping

along. They played favorites all night long of primarily classic rock and R&B. Bunky and his crew from the Wine and Cheese Gallery served us an outstanding selection of craft beers and wines. Two food trucks were featured (Humble Pie and Go-Go Stuff Yourself). I admit I sampled plentifully from both, and was thrilled with the fine quality and unusual selections of their food. It was an evening of socializing and fun. There were no speeches made, and no business was conducted (aside from the serious business of having a good time with friends and meeting new people).

Given how well the event went and was received, I think it is reasonable to predict that the EJCBA will be holding “Spring Fling” again next Spring. Finally, no successful event can occur without the hard work of dedicated volunteers. In this instance, we owe sincere thanks to President-Elect Rob Birrenkott (and his wife

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Attorney Al Bacharach and his wife Meredith dancing to the music of Squid Love at the EJCBA Spring Fling on March 6



Squid Love band members Bruce Brashear, Mike Fender, Conor Galligan, Connie Brashear and Rick Brawner play at the EJCBA Spring Fling. Colt Brewer helps out on the tambourine.

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Contribute to Your Newsletter!

From The Editor

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

About This Newsletter

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

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

News, articles, announcements, advertisements and Letters to the Editor should be submitted to the **Editor** or **Executive Director** by Email, or on a CD or CD-R labeled with your name. Also, please send or email a photograph with your name written on the back. Diskettes and photographs will be returned. Files should be saved in any version of MS Word, WordPerfect, or ASCII text.

Judy Padgett

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Deadline is the 5th of the preceding month

President's Message *Continued from page 1*

Amanda), President-Elect Designate Stephanie Marchman, and EJCBA Board members Leslie Haswell and Courtney Johnson. You all did a wonderful job.

As to the second EJCBA project I wish to highlight, the teaser question is this: Who would you rather see have a bucket of chilled ice water dumped over them – me, or the President of the Alachua County Medical Society (ACMS), Dr. Mary Grooms? It is going to be one of us! Why? Because the lawyers are taking on the doctors in an Ice Bucket Challenge to raise funds to open a kitchen to help feed our local homeless population at the GRACE Marketplace. I am tentatively calling this the “Pitch In for GRACE Kitchen” Ice Bucket Challenge. Our goal is to raise at least \$50,000 total by midnight on Sunday, May 10, 2015. The winning organization gets the prize of dumping an ice bucket over the President of the losing organization, which we hope will occur on the morning of Saturday, May 23, 2015, in front of the future home for the kitchen at GRACE.

So what would \$50,000 in donations mean for opening GRACE’s kitchen? It would mean they could serve hot and nutritious meals to 50,000 hungry people annually in our community. Presently, without a kitchen, GRACE relies upon

outside volunteer groups to prepare basic meals off site, and then transport them to GRACE. Once GRACE’s kitchen is open, they would be eligible to apply for grants for their ongoing operational costs. In year 3, GRACE plans to use their kitchen for job training and even catering services (which would provide jobs to the homeless and help generate program income). In addition to the \$50,000 that we hope to raise for the first-year operating costs, \$77,000 worth of kitchen equipment is being donated by the City of Gainesville. With our help, GRACE hopes to open its kitchen by October of 2015. Our donations are tax deductible, and should be made payable to the organization that operates GRACE (under contract with the City of Gainesville), which is the “Alachua County Coalition for the Homeless and Hungry, Inc.” You may mail your donation to the EJCBA at P.O. Box 13924, Gainesville, FL 32604. Also, we are developing a website where you will be able to make your donation, and also see a live tally of the amounts that the lawyers and doctors have given! Watch your email and this space for a link to that website. So please do your part and “Pitch In for GRACE Kitchen.” Let’s beat the doctors, and protect me from having a bucket

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No Increased Minimum Wage For Conchs

By Laura Gross



Last year, the City of Seattle passed legislation raising minimum wage to \$15 per hour over the next three to seven years depending on an employer’s size and health care benefits. In January of 2015, the City of Tacoma passed legislation requiring local employers to provide three days of sick leave per year. Now, Key West Mayor

Craig Crates would like to raise the local minimum wage, too, but that is simply not possible under Florida law.

Section 218.077, Florida Statutes, “Minimum wage requirements by political subdivisions; restrictions” provides: “a political subdivision may not establish, mandate, or otherwise require an employer to pay a minimum wage, other than a state or federal minimum wage, to apply a state or federal minimum

wage to wages exempt from a state or federal minimum wage, or to provide employment benefits not otherwise required by state or federal law,” with the exception of the employees of the political subdivision, its subcontractors, or local employers who receive a direct tax abatement or subsidy.

Florida is not the only state to pass a blanket ban against local ordinances raising minimum wages and benefits. Alabama, Arizona, Georgia, Indiana, Kansas, Louisiana, Mississippi, North Carolina, Oklahoma, Tennessee and Wisconsin all have laws which restrict municipalities from raising the minimum wages or benefits set by state and federal laws.

Meanwhile, Mayor Crates of the southernmost city in the continental United States insists the cost of living on the island demands an increase in local wages. Maybe so, but at least for now, according to a Key West City Commissioner who opposes any increase, “the market dictates the policy.”

Family Law: 4 Rules for You to Follow if Your Case Might be Appealed



By Cynthia Swanson

This column will provide some advice to family law trial practitioners who may find their final judgments going up on appeal. While most family lawyers hope to help their clients work out their issues via settlement discussions, mediation, collaboration, and so on, many cases do end up being tried. If so, you should think as much about trying your case for the appellate court as for the trial court. So, herewith, some advice on that:

You're likely to know which issues are the ones that will be most hotly contested at trial, and thus the ones more likely to be appealed if they don't go the way one party or the other hopes. Thus, you want to have your record as clear as possible and as detailed as possible. So, first things first – create a record. This means you must have a court reporter. While it is theoretically possible to create a stipulated set of facts to send up instead of a transcript, this is really difficult in practice. Really, if you couldn't agree on how to settle a case, do you think it will be easy to stipulate as to exactly how this witness or that witness testified? Or whether a certain document that was shown to the Judge was ever actually admitted into evidence in case the Judge made an error in writing down exhibit numbers?

Rule #1 - Have a court reporter present at all contested hearings in which the ruling may have some effect on the eventual final judgment. Get money from your client and hold it in trust to pay for the reporter's attendance and for the eventual preparation of the transcript (as well as the appellate filing fees).

The appellate court is only able to review the written transcript of what was said and the documents or other records that were admitted into evidence. So, as important as having a court reporter present is actually getting your documents admitted into evidence. Sometimes a lawyer may hand a document to the Judge, may show it to the witness, may ask questions about it, may mention it in closing argument, and forget to actually ask that it be admitted into evidence. If it is not admitted into evidence, then it does not go up for the appellate court to see it on appeal. It's also important to get the evidence clearly marked and then to be scrupulous

in identifying the document correctly when you are asking questions about it of a witness. If it's a bank statement, for example, ask the witness to look at the SunTrust bank statement from December 2014 which was admitted into evidence as the Husband's Exhibit #3. It may seem awkward or cumbersome to say all that, and especially when you have 59 different bank statements that you are reviewing with a witness, but it is imperative that the appellate court be able to tell from the written transcript what bank statement the witness was looking at when he tried to explain just who made that \$50,000 withdrawal.

I encourage you to bring an assistant to trial to keep track of both your and your opponent's evidence. Your assistant can help organize paperwork, keep track of the number that has been assigned to an exhibit, and double check that a document was actually admitted. If you don't have an assistant, make yourself an evidence chart or table and print it out on neon orange paper (or something like that), and keep it on the very top of all the stuff you have in front of you. Have every document that you intend to offer into evidence already listed on it, and make yourself take 30 seconds after each document is admitted to write down the number of the exhibit, and to check that you have every exhibit properly identified and numbered. If a document you offer was not admitted, write that down, too (and why not), so that later you don't wonder whether you got your numbers off, or you forgot to offer it, or what.

Rule #2 - Be scrupulous about identifying your documents and be sure they are actually admitted into evidence.

Now, on to actually presenting your case. It's extremely important that you know what your client is asking for, and that you communicate that to the Court in your opening statement, and that every question you ask of every witness and every document you offer into evidence is calculated to lead the Judge inexorably to the conclusion that your client deserves exactly what your client wants. When you are preparing your case, think of all the facts you might be able to present to the Court, and then pare them down to only the facts you need to get the desired result. Leave the other crap out.

In family law cases, it can sometimes be hard to resist your client's (or their family's) desire to bring up irrelevant matters. But try to think of all this information from both the trial judge's standpoint and

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from the point of view of the appellate panel who may be reading a very dry 1,000 page transcript of the trial. Constantly ask yourself - what result does my client want and what is necessary and relevant and important to the Court to determine whether or not to award that to my client?

Here's an example: One of the things we hear so often is that when the child comes back from spending time with the other parent, the child's clothes are dirty, the child has not had a bath, the clothing that the child wore there was not returned, and so on. And yet, in over 30 years of contested family law hearings and trials, I have never, ever, ever once heard a trial judge say that this was an important factor in making a time-sharing decision, and I have never, ever read an appellate decision where an appellate panel said that. Sure, don't we all wish the other parent would give the child a bath, wash and return clothes, etc.? Sure. But, really, this kind of thing is a good part of the reason you're separating from that parent, right? You just don't share the same values, right? You are not going to change that parent's personality because you're getting a divorce. And the trial and appellate courts are much more interested in the factors listed in Fla. Stat. §61.13(3), and baths and clean clothes are just not listed there. So, resist the push by your client to include reams of material about the lack of a bath. At least, don't ask more than one question to one witness about this if your client just can't let it go.

Also, if the Court has no authority to make a certain award, don't ask the Court to do that. For example, unless you have some extremely special circumstances (which you don't), don't ask a Court to order a parent to pay for college expenses. Just don't spend any time on that.

So, Rule #3 - Pare down your issues and really, really pare down the information you want to present to lead the Court to the result you want. Don't overload the Judge with information that is not important. On the other hand, be aware of the facts that the Court needs to hear in order to give a certain result. If you're asking for alimony, but you don't put on evidence of your client's expenses, then no matter how fabulously wealthy the other party may be, the Court has no basis on which to make a finding of need on your client's part, and thus can't award alimony.

Finally, for purposes of this column, you must ask the Court for a rehearing when you believe the Court has made a mistake of fact or law in rendering

the final judgment. You must make an objection when testimony or documentary evidence is being offered if you have a good basis for an objection and if an error in admitting that evidence might later be the subject of an appeal. If the trial judge fails to make sufficient findings of fact on which to base the ruling, you must bring that up in a motion for rehearing if you later want to appeal that ruling.

Rule #4 - Make proper objections, even if you seem to be overdoing it. Even if the opposing attorney is getting annoyed. Be polite and respectful, but state the basis for your objection on the record. Get a ruling on your objection from the judge. And file a timely motion for rehearing if the trial judge has made an error, or has failed to make sufficient findings of fact on which to base his or her ruling. See, e.g., *Owens v. Owens*, 973 So. 2d 1169 (Fla. 1st DCA 2007). Otherwise, you are S.O.L.

Following these four basic rules will make the appeal of your final judgment much more likely to have some success.

Myriads of Candles

By Nancy T. Baldwin

The American Bar Association and lawyers throughout the United States will be celebrating the 800th anniversary of Magna Carta during the 2015 Law Week. During the local Law Week, the 8th Judicial Circuit Bar Association and the Levin College of Law will be celebrating more than 800 years of contributions to our legal system. The recognition ceremony will take place on Friday, May 8, at 7:00 p.m. at The Martin H. Levin Courtroom, Levin College of Law, University of Florida.

Those being honored include eleven local attorneys who have each been practicing for more than fifty years. Also being honored are five judges: two circuit court judges who were on the bench for more than twenty five years, a county court judge who was on the bench for more than twenty five years, and two federal judges. Three law professors who have taught and practiced for more than fifty years will also be honored. Each honoree will be individually recognized. There will be period music and film, as well. Attorneys and community members are cordially invited to participate in the honoring. A reception will follow. For more information, contact Nancy Baldwin at baldwinnt@cox.net.

Alternative Dispute Resolution

Mediating the Great Water Issue

By Chester B. Chance and Charles B. Carter



We are devoting this article to two pertinent issues: mediation and water. We shall engage not in a mock trial, but in a mock mediation addressing one of the great issues of our time: The Great Water Debate. We must point out the following disclaimer: this article is sponsored by the

Wine Industry.

Oh, what is the great water issue you ask? Is it the protection of our springs? The rise in sea levels rendering Crescent Beach into Crescent Fishing Flats? No, neither. The Great Water Issue involves a question more pressing than income redistribution or ISIS. It involves how much water a person has to drink per day. Let us begin.

Chance: Everyone knows the 8 by 8 rule: drink at least 8 ounces of water 8 times per day. That rule is so simple that kindergarten students or even Carter can remember it.

Carter: That is not a rule. We call it a myth.

Chance: Science supports it.

Carter: No, people who think they know science distort it and folks who sell water certainly promulgate it.

Chance: Then why did the Food and Nutrition Board of the National Academy of Sciences recommend that we drink eight 8-ounce glasses of water per day in 1945? Carter, you probably also deny global warming and like fossil fuels.

Carter: Well, I do like fossil fuels and the global warming matter can be reserved for another day. But, the National Academy of Sciences never said what you say it said. In a footnote, the Academy suggested an individual should have 64

ounces of water per day.

Chance: Then you admit I am right.

Carter: No, you said "drink 8 glasses of water per day of 8 ounces per glass".

Chance: Do the math: 8 times 8 equals 64.

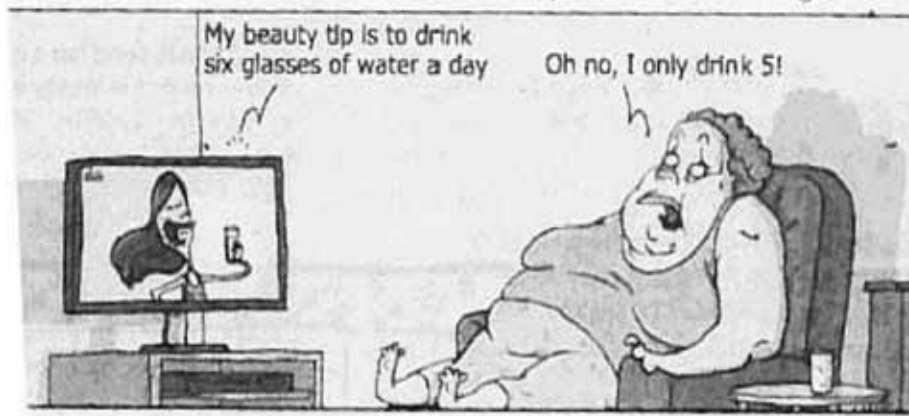
Carter: But the Academy did not say drink 8 glasses of 8 ounces of water. It said take in 64 ounces of water per day. That is a completely different thing.

Chance: Sounds like word games. How is it a different thing?

Carter: Because more than a third of the



water we take in each day comes from the food we eat. In fact, anywhere from 22-30 ounces per day comes from food. And studies show that occurs whether you are a vegan or eat at McDonald's each day. In fact, the U.S. Food and



Nutrition Board states most of the water you need each day comes from the foods we eat.

Chance: I never see you drink water. I see you eat, but, I never see you drink water. So, even if you are correct about that food thing, you are still short about 30-40 ounces of water per day. That explains why your brain is dehydrated.

Carter: No, I drink water in the sodas I consume, and in the coffee, tea, wine and juice I drink. You do realize all of those things are mostly, well what is the scientific term? H₂O. And, please remember, many groups behind the push for drinking water have a monetary interest in selling, well, water.

Chance: That is ridiculous; coffee and tea are diuretics.

Carter: Well, saying you need to drink more

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Criminal Law



By William Cervone

At the risk of perhaps falling into Messrs. Carter and Chance's trap of ultracrepidarianism, I have some advice for both criminal and civil practitioners: don't try to understand hearsay. Or value. As a corollary thereto, don't try to count the number of dancing

angels on the pin head.

F.T., a juvenile whose real name, as with the villainous Valdemort, is not to be said, stole some things from a J. C. Penney store in Miami. At issue at his trial was the value of what he stole, which determined the degree of his crime. The store security agent was allowed to testify, over objection, as to what the price tags said.

Right? Wrong? Hearsay? Hearsay but admissible? Indifferent? Ultracrepidarianism dictates that we all have an answer but only the 3d DCA's answer counts and theirs is a resounding "It depends" -- the best and most common of all legal answers.

What it depends on, it seems, is under what theft statute F.T. or some other thief is charged. And here, for the record, I will do as Messrs Carter and Chance urged and admit I didn't know this. I knew that there was both theft and retail theft. I just didn't know that whether the price tag was hearsay or not depended on which of those statutes was used. I mean, a thief is a thief. Those of you who wish to continue in your ultracrepidarianistic ways can go on saying you knew better.

So on to the legal lesson for the rest of us. Plain old theft under FS 812.014 relies on the definition of value contained in FS 812.012. That, in turn, is that value equals market value, also referred to as actual worth in F.T.'s case. Market value requires external proof of what the market might determine is a fair price between a willing buyer and a willing seller. That is a quagmire all its own.

Under retail theft, a specific variant of ordinary theft found in FS 812.015, however, value is defined as sale price. Sale price has nothing to do with market value, a truism that all of us know from bitter and often unkind experiences such as buying something at Burdine's (only to see the identical item being sold at SteinMart for half as much).

Because of this difference, ruled the 3DCA in F.T.'s case, the price tag is not hearsay if the charge is retail theft under FS 812.015, even though it would be hearsay if the charge is plain old theft under FS 812.014. The price tag speaks not the truth of market value, it

speaks only stated value, and that is all that FS 812.015 concerns itself with. Because stated value is not true value, the price tag is not hearsay.

Sophistry, you say! Well, quite possibly so. But who am I to disagree? To paraphrase many a truism, it is what it is. The 3d DCA went on at length to describe a scenario where a thief such as F.T. steals something and is charged with retail theft of a degree dictated by the price tag detail, easily enough proven, and a second thief who steals F.T.'s ill gotten plunder from him before he can enjoy it and thus has to be charged with ordinary, not retail, theft, requiring proof that the item with the price tag of \$100 wasn't really worth only \$99.99 - all of this because of the difference in the degree of theft committed.

Just to make at least my head hurt a little more, the 3d DCA by way of footnote concedes that with the proper foundation as a business record the price tag might nonetheless still be some evidence of value in an ordinary theft case, and that, by the way, the 1st DCA takes a contrary position to all of this in *Lujak v State*, 729 So2d 965 (Fla. 1st DCA 1999). *Lujak*, however, is an exactly two sentences-long opinion that does not have the depth or detail of F.T.'s case, which for the curious is found at 146 So.3d 1270.

On re-consideration, I did know the answer all along because I'm a 1st DCA adherent and I prefer that 104 word *Lujak* case.

ADR

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water and urinate more to get rid of it is like saying you should consciously breathe more often than you feel like because if a little air is good for you a lot of air must be better. As for diuretics: regular coffee and tea drinkers become accustomed to caffeine and lose little, if any, fluid. One glass of tea, juice, milk or caffeinated soda has as much water as, well, a glass of water. If you eat food, drink tea, milk, wine and juice, and, on top of all that drink 8 glasses of water you may drown, or, you may spend a lot of time in the bathroom. But you do not need to drink the water to stay hydrated, much less stay healthy. Hey, you can even drink things like kombucha, kvass, herbal tea and kefir if you like. These things, like a piece of lettuce or a bite of porterhouse steak, all have water in them.

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Nominees Sought for 2015 James L. Tomlinson Professionalism Award

Nominees are being sought for the recipient of the 2015 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 43rd Street, Suite 200, Gainesville, FL 32606. Nominations must be received in Mr. Brady's office by Friday, May 8, 2015 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: _____

Reserve Now for the 2015 Professionalism Seminar

WHEN: Friday, April 17, 2015 – 9:00 a.m. – 12:00 NOON

WHERE: UF College of Law—Chesterfield Smith Ceremonial Classroom

PROGRAM: Linda Calvert Hanson, Director of the Henry Latimer Center for Professionalism at The Florida Bar, speaking on "Professionalism: An Expectation in Florida"

COST: EJCBA paid members: \$40, Non-Members: \$75

CLE: 3.5 Hours of CLE is expected

DEADLINE: Register on or before **Monday, April 13, 2015 at:**

<http://8jcba.dev.acceleration.net/event-registration/2015-professionalism-seminar/>

Parking:

Decal requirements for **Commuter** parking will be waived.

Spaces are limited, so **arrive early**.

When registering online, you will need to select your first and second choices for your area of specialty for small group discussions from the following options:

Civil/Tort Law

Family/Domestic Relations Law

Criminal Law

Estates & Trusts Law

Business Law

Government Lawyers

Real Estate & Land Use Law

LEADERSHIP ROUNDTABLE



Sponsored by the Clara Gehan Association for Women Lawyers, Eighth Judicial Circuit Bar Association, Florida Association for Women Lawyers, The Florida Bar Diversity Leadership Grant, Josiah T. Walls Bar Association, North Central Florida Chapter of the Federal Bar Association, and the University of Florida Levin College of Law

A CULTURAL REVOLUTION: REDEFINING SUCCESS IN THE LEGAL PROFESSION

April 10, 2015, 1:00 p.m. – 5:00 p.m.

The Leadership Roundtable immediately follows the Eighth Judicial Circuit Bar Association Luncheon beginning at 11:45 a.m. with Featured Speaker:

Diversity Award

Please send your nomination to recognize a member of our legal community who advances diversity, inclusion, and equality in the legal profession to the email address below by March 30th!



Give the Gift of Reading

Bring an early reader book (new or gently used) or donate to buy a Summer Reading Pack (\$20/child) for a local elementary student in need. For more information, go to UnitedWayNCFL.org.

Florida State University Law Professor Lawrence S. Krieger
"What Makes Lawyers Happy?"

University of Florida Law Professor Nancy Dowd will serve as the Roundtable Moderator and discuss with the panelists, including local leaders and judges, how they define success, what has made them happiest in their careers, and how a happier legal profession may help attract and promote women and minority lawyers in the profession. Each panel discussion will be followed by moderated small group discussions.



Nancy Dowd



Sara Alpert



Mac McCarty



Martha Peters



Stacey Steinberg



Gloria Walker



Mary K. Wimsett



Hon. Monica J.
Brasington



Hon. Gary R.
Jones



Hon. Philip R.
Lammens



Hon. Sheree H.
Lancaster



Hon. Mary S.
Scriven



Hon. Mark E.
Walker

The Woolly, 20 North Main Street, Gainesville, Florida 32601

Cocktail networking reception to follow the Leadership Roundtable

The Roundtable is free for members of sponsoring organizations; \$50.00 for non-members. The Luncheon is \$17.00 for EJCBA Members (who have not prepaid through the meal plan); \$25.00 for Non-EJCBA members. Register for the Roundtable and/or Luncheon by March 30th at <http://events.8jcba.org>. Space is limited and will be guaranteed on a first come, first serve basis only. 5 hours of CLE are anticipated. Contact Stephanie Marchman at 352-393-8816 or marchmansm@cityofgainesville.org with questions.

The Silver Bullet Method for Breaking an Impasse



By Bob Stripling

The phrase “Silver Bullet” is used to describe a quick, effective solution to a difficult problem. It is derived from the folk belief that bullets made of silver were especially effective against werewolves, vampires, and other supernatural monsters.

See, Common Errors in English

Usage, Paul Brians. The phrase seems especially apropos when discussing how to avert an *impasse* in a difficult mediation.

When using the “Silver Bullet,” the mediator tells both sides that they are close to an *impasse*, but asks the parties if they are willing to reveal their “bottom line” to the mediator (which will never be disclosed to the other side). If the parties agree, they typically write the number down and give it to the mediator. If the two numbers overlap, a settlement has been reached.

This is often an effective way to move each side towards their bottom line, while protecting the confidentiality of this number if the case doesn’t settle. If the numbers do not overlap, the mediator can declare an *impasse*, and neither side knows the other’s number.

Assuming that the numbers do not overlap, but are close to doing so, what should the mediator do? In that event he may choose to tell the parties that they are close to getting the case settled, and should try a little harder to reach an agreement. This is often enough to entice litigants to make one final move for the sake of resolution.

The more perplexing problem arises when the “Silver Bullet” results in the number submitted by the defense being greater than the plaintiff’s number. What should be done with the difference? For the sake of illustration, assume that the defendant wrote down \$100,000.00 as his last move, but the plaintiff’s number was \$80,000.00, leaving a \$20,000.00 difference. Should the mediator split the difference, and declare the case settled at \$90,000.00?

The answer to the question involves certain ethical concerns for the mediator, who unquestionably has the duty not to give false or misleading information to the parties. *See Rule 10.310(c), Florida Rules for Certified and Court-Appointed Mediators*. If, under the example, the mediator splits the difference at \$90,000.00, is he misleading the defendant by not telling him that the case could have been settled for \$80,000.00? Conversely, is he also misleading

the plaintiff by failing to disclose that the case could have been settled for \$100,000.00? Perhaps the better approach might be to clearly define the rules in advance. If the parties are told that the case will be deemed settled at plaintiff’s number if the defense number is equal or greater than plaintiff’s, then no one has been misled. Alternatively, if the parties agree that the mediator has the right to split the difference, it would seemingly be ethical to declare the case settled at \$90,000.00. The question was fully discussed in an Advisory Opinion submitted by the Mediator Advisory Committee of the Dispute Resolution Center of Florida. The opinion can be found at MEAC 2008-004.

The “Silver Bullet” method can be an effective way to break an *impasse*, as long as the rules are clearly defined and agreed upon by the parties in advance.

Digital Home Identity Project

By Marcia Green

When I had to renew my driver’s license a few years ago, I carefully made sure I had all of the required documents before heading down to the DMV. Although tedious, it wasn’t difficult because I am a fairly organized person, have a “home office” for important papers, have easy access to the internet and resources and, yes, I had recently undergone a name change securing many updated records.

But what happens when a person is faced with the obstacles presented by homelessness? Individuals without housing are at a higher risk for loss of possessions, exposure to inclement weather, theft and victimization. Keeping track of important documents and records can be extremely difficult when confronted with the instability facing the homeless.

Mark Watson, a paralegal at Three Rivers Legal Services, works almost exclusively with Alachua County’s homeless population. He is working on a project to provide “cloud-based” technology to homeless individuals to store personal and important documents and photos. The proposal is to assist individuals to establish on-line or “cloud-based” accounts and then scan important documents into these accounts for safe and secure storage. Because the storage is “in the

Continued on page 11

Digital Home Identity *Continued from page 10*

cloud,” the individual will have the ability to access it electronically regardless of whether they remain in Gainesville or move to another part of the country. As a back-up, the documents will be stored in Three Rivers’ case management system.

Identification is necessary for everything – applying for housing, seeking public benefits, obtaining a driver’s license, opening a bank account and securing employment. By providing accessible and secure access to important documents, one more barrier contributing to homelessness can be removed.

The Dignity Home Identity Project is seeking funding; Mark has created a fundraising campaign through “IndieGoGo,” an online process known as “crowd funding.” Donations are being sought to purchase portable equipment including a scanner, laptop computer and laminator, as well as supplies and other program expenses.

Check out <https://www.indiegogo.com/projects/digital-home-identity-project> and review the project. Please make a secure tax-deductible donation through your credit card or PayPal® account. Email Mark at mark.watson@trls.org if you have questions.



President's Message *Continued from page 3*

of ice water dumped over my head. I am born and raised in Florida. If I am going swimming, I expect the temperature to be tepid!

Finally, a brief reminder of some of the EJCBA activities and events that are coming your way this Spring:

-On April 10th, following the EJCBA luncheon, we will offer **the Leadership Roundtable 2015**, which is a major CLE event. The title for this year’s Roundtable is “A Cultural Revolution: Redefining Success in the Legal Profession.” A reception will follow the program.

-**The Annual Professionalism Seminar** will be held on Friday, April 17, 2015, from 9 a.m. to noon, at the U.F. College of Law. The speaker this year will be Linda Calvert Hanson, Director of the Henry Latimer Center for Professionalism, speaking on “Professionalism: An Expectation in Florida.”

-**Law Day 2015** will be on May 1, 2015. The theme this year is “Magna Carta: Symbol of Freedom Under Law,” to mark and celebrate the 800th anniversary of Magna Carta. Magna Carta

has taken root as an international symbol of the rule of law and as an inspiration for many basic rights Americans hold dear today, including due process, habeas corpus, trial by jury, and the right to travel. The EJCBA’s Law Week is chaired this year by Past President Nancy Baldwin, who is developing a number of outstanding programs to honor Magna Carta. Watch this Newsletter and your emails for more information on Law Week.

-**The EJCBA Annual Dinner** will be held on the evening of Thursday, June 18, 2015. We will hold the dinner again this year at the Sweetwater Branch Inn, which was a great success last year.

If you would like to volunteer to assist with any of the programs and activities that remain this year, please contact either me, or any one of the EJCBA Officers or Directors. Thank you all for your ongoing support and participation in the EJCBA activities! And, lastly, we welcome having new members join the Board of the EJCBA. If you are interested, please complete and return the “Application for EJCBA Board Membership” contained within this Newsletter.

First District Court of Appeal Judicial Nominating Commission Announces Vacancy

First District Court of Appeals Judge Nikki Clark has announced her resignation, creating a vacancy in the First District Court of Appeal. The First District Court of Appeal Judicial Nominating Commission has been asked to provide Gov. Rick Scott with nominees.

Qualifications of Applications:

Applications submitted after the deadline WILL NOT BE CONSIDERED. All applicants must have been members of The Florida Bar for at least ten (10) years, electors of the State of Florida and be residents of the First District prior to taking office.

Instructions for Submission:

1) Judicial applications for this one (1) District Court vacancy must be received before 4 p.m. on April 2, 2015, to the following electronic addresses: Attn: First District Court of Appeal Judicial Nominating Commission c/o Edward P. Fleming, Esquire

epfleming@pensacolalaw.com
psheidebrecht@pensacolalaw.com

2) The Judicial Application (which can be downloaded from the Florida Bar website, www.floridabar.org) must include:

One (1) digital (electronic) copy of the application (either as a PDF file or in Microsoft Word) to epfleming@pensacolalaw.com and copied to psheidebrecht@pensacolalaw.com; and one (1) digital (electronic) copy of the application with personal information redacted in a format suitable for submission in response to a public records request;

A recent photograph should be attached to the original and each copy;

All letters of recommendation in your possession that you wish the Commission to consider, however, recommendations may also be sent as supplements, after the application is submitted;

Copies of the applicant's completed Federal Income Tax Returns for the preceding three (3) years OR current financial statement and financial history. NOTE: if you are practicing law as a professional association, your tax returns for the three (3) year period should include the tax

returns for the professional association (these shall be transmitted electronically together with the original of the application);

Any additional information which you feel may be helpful to the Commission in assessing your qualifications.

3) After the deadline for submitting applications, the Commission will determine which applicants to interview. If you are to be interviewed, you will be contacted to confirm the date, time and location.
4) As you know, all proceedings of the Commission are open to the public except for deliberations. Accordingly, you should not expect your application to be kept confidential.
5) If an applicant is nominated, all materials attached to the original application will be submitted to the governor.
6) If there is any question about the application process, please contact Edward Fleming at the address above. Members of the bench, the Bar and the public are urged to contact the members of the Commission concerning applicants for judicial positions.



On March 12, 2015 Jake Rush (back row, far left) was admitted to the Supreme Court of the United States in a private ceremony for the Florida YLD Board of Governors. Chief Justice John Roberts came out to meet the group and answer questions on work-life balance and his days as a young lawyer.

It's that time again!

The Eighth Judicial Circuit Bar Association Nominations Committee is seeking members for EJCBA Board positions for 2015-2016. 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 8, 2015.

Application for EJCBA Board Membership

Name: _____ Bar No. _____

Office Address: _____

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"/> Annual James C. Adkins Dinner	<input type="checkbox"/> Annual Reception
<input type="checkbox"/> "Ask A Lawyer" Project	<input type="checkbox"/> CLE	<input type="checkbox"/> Community Service/Diversity
<input type="checkbox"/> Continuity & Transition	<input type="checkbox"/> Golf Tournament	<input type="checkbox"/> Judicial Poll
<input type="checkbox"/> Law Week	<input type="checkbox"/> Medical - Legal	<input type="checkbox"/> Member Services
<input type="checkbox"/> Mentorship	<input type="checkbox"/> Oral History Project	<input type="checkbox"/> Policies & Bylaws
<input type="checkbox"/> Pro Bono	<input type="checkbox"/> Professionalism	<input type="checkbox"/> Social
<input type="checkbox"/> Sponsorships	<input type="checkbox"/> Website/Social Media	<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 13924
Gainesville, FL 32604

Or email completed application to: execdir@8jcba.org

Chance: Well, I may not need to drink 8 glasses of water per day, but, if I do, I will be in better shape than you as you gulp down vast glasses of Vernaccia.

Carter: Not so. First, you would be blindly following a myth and giving in to the pressure from the idea that drinking water is a health virtue, like exercise. Second, you would be assuming someone who sells water or who gives into non-scientific peer pressure knows more about how much water you need than you own body. Your own body tells you when you need water, it is called feeling thirsty. Third, you could be throwing off your electrolyte balance. Over-hydration causes several problems including, strangely, dry mouth and inhibits digestion and adversely affects

blood sugar.

Chance: I am not conceding a thing. Drinking water is good for you. Everyone knows that.

Carter: Well, it is not good for our springs. It is not good for our landfills. Do you find it odd that the folks who want to save our planet serve bottled water at their meetings? It takes more energy and fossil fuels to recycle a plastic bottle than to make one. If you don't believe the science of hydration, consider the alleged benefit to the environment.

Chance: I will agree that wine has a lot of water in it. Pour me some more Vernaccia.

Carter: Here, have some wine. Did we mention A.D.R. in this article?

April 2015 Calendar

- 1 EJCBA Board of Directors Meeting – 5:30 p.m., Gaineswood Clubhouse
- 3 Good Friday, County Courthouses closed
- 6 Deadline for submission of articles for May Forum 8
- 8 Probate Section Meeting, 4:30 p.m., Chief Judge's Conference Room, 4th Floor, Alachua County Family & Civil Justice Center
- 10 EJCBA Luncheon, FSU Law Professor Lawrence S. Krieger, "What Makes Lawyers Happy?" The Woolly, 11:45 a.m.
- 10 EJCBA Leadership Roundtable: "A Cultural Revolution: Redefining Success in the Legal Profession" (CLE), The Woolly, 1-5 p.m.; reception immediately following
- 17 EJCBA Professionalism Seminar: Linda Calvert Hanson, Director of the Henry Latimer Center for Professionalism at The Florida Bar, speaking on "Professionalism: An Expectation in Florida," UF Levin College of Law, 9 am - Noon
- 21 Family Law Section Meeting, 4:00 p.m., Chief Judge's Conference Room, Alachua County Family & Civil Justice Center

May 2015 Calendar

- 5 Deadline for submission of articles for June Forum 8
- 6 EJCBA Board of Directors Meeting – 5:30 p.m., Gaineswood Clubhouse
- 8 EJCBA Luncheon, Bruce Blackwell, Florida Bar Foundation, The Woolly, 11:45 a.m.
- 8 Myriads of Candles, A Celebration Honoring the Dedication of Attorneys, Judges & Professors, 7:00 pm, Levin College of Law (reception to follow)
- 13 Probate Section Meeting, 4:30 p.m., Chief Judge's Conference Room, 4th Floor, Alachua County Family & Civil Justice Center
- 19 Family Law Section Meeting, 4:00 p.m., Chief Judge's Conference Room, Alachua County Family & Civil Justice Center
- 25 Memorial Day, County & Federal Courthouses closed

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