

# FORUM 8

Volume 80, No. 4

Eighth Judicial Circuit Bar Association, Inc.

December 2020

## President's Message

By Philip N. Kabler, Esq.



This column is being composed on Election Night. {Pizza done, television on....} By no means do I know (or will I attempt to predict) the federal, state, and local candidate or referendum results.

But what I *do* know is this year will come to an end [*insert your personal reflections about 2020 here...*], the seasons will change, and life will continue. Including for

our EJCBA.

During this coming month our Association hibernates...*just a bit*. As of now we are still planning our Holiday Party as an in-person gathering on December 11. (Once again conditions permitting.) If we are able to gather together, hopefully we can prevail upon President-Elect Evan Gardiner to wear his now famous (*not infamous*) holiday suit, and *also* prevail upon everyone else to sport whatever they find most festive in their closets.

December 11 will be a very busy day, because on that day we will also celebrate Chief Judge James P. Nilon's career as he departs our active ranks for retirement. We can all be sure the Chief Judge did not plan on this past year being quite the challenge it was, but he calmly led us through it, keeping our circuit well-informed at all times about the operation of our courts. (We all became experts at Zoom as a result.<sup>1</sup>) On behalf of the entire EJCBA, we extend our heartfelt thanks to Chief Judge Nilon, and our best wishes for a retirement doing exactly (and only) what you want. You will *always* be welcome among us at our events so you can remain connected with your lifetime of colleagues, friends, and admirers.

Then we will wish each other *Merry Christmas, Happy Chanukah, Joyous Kwanzaa*, and even *Happy New Year!* (Or perhaps even *Happy Festivus!*<sup>2</sup>) Now those are not

the *only* holidays observed during December.<sup>3</sup> In that regard, then, I offer you all the happiest, healthiest, and most meaningful year-end and year-to-come. (And the most successful, by *your* definition, of successes.) And an entire year of *Hallmark* movies.<sup>4</sup>

During January we will welcome Judge Mark W. Moseley as our incoming Chief Judge. He will present his first 'State of the Circuit' address to us at our January 15, 2021 luncheon meeting. We look forward to learning our incoming Chief Judge's vision for the Eighth Judicial Circuit and its communities.

We will do our very best to hold live events as soon as we can (including the Cedar Key Dinner, even if a bit off-cycle). And we will add more special events during the year. Be sure to regularly check *Forum 8*, our e-blasts, [www.8jcba.org](http://www.8jcba.org) calendar, and our Facebook page for event updates.

Please allow me to end 2020 by thanking you all. Thank you for remaining engaged. For participating. For supporting the communities of the six counties we serve together. For being leaders.

*Continued on page 4*

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<sup>1</sup>Perhaps the Florida Bar should consider adding a Zoom certification. Or at least a merit badge...

<sup>2</sup>"...for the rest of us". To see the *Seinfeld* scene that established this 'important' holiday please watch <https://tinyurl.com/FestivusSeinfeld>.

<sup>3</sup>For a complete list of December celebrations and observations see <https://nationaltoday.com/december-holidays/>.

<sup>4</sup>An admission (not against interest). My family watches a lot of *Hallmark* movies. A. Lot. I do have 'the app,' and check off the movies as we watch them. (Has anyone else noticed there are only about three story-lines? All of which involve hot chocolate.)

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

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## About this Newsletter

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

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

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

# Alternative Dispute Resolution

By Deborah C. Drylie



## A SALUTE TO BILL CERVONE... AND THOUGHTS ON WHY ZOOM MEDIATION IS HERE TO STAY

As with many things, there comes a time to say good bye. As some of you know, that time will soon arrive for our State Attorney, William P. Cervone, who retires at the start of 2021. I had the good fortune to work with Bill when I was a young attorney working at Jones, Carter, Singer and Cervone P.A., and cherish my time spent as his colleague. Mostly however, I cherish the friendship we have maintained since he returned to the State Attorney's office. He has served our circuit and our state for over three decades and as Carly Simon said, "Nobody Does It Better." I am sure the accolades will be many and far better written than this, but I and the other members of The Resolution Center would be remiss to not declare our admiration for his guidance and wisdom and friendship. Bill - you will be missed, but never forgotten by your former colleagues, current colleagues and countless friends and admirers.

Now, since this article is technically supposed to relate to mediation, here is the boring part of the discussion. For those of you who have participated in a Zoom mediation, think about your own assessment of its pros and cons. I suspect, for most of you, the pros outweighed the cons which is why you agreed to proceed via Zoom to begin with. However, the result may be what dictates your willingness to embrace Zoom into the future. Whether the experience and result was positive or negative, it is the belief of this mediator that some permutation of Zoom is here to stay, well after the COVID crisis is in our collective rear view mirror. Accordingly, here are thoughts on how to improve your Zoom experience for what may be years to come.

For a recap of recent history, once the court system closed down in the immediate aftermath of the COVID crisis, members of The Resolution Center met to discuss what we could do and should do regarding pending mediations. A collective decision was reached to try to accommodate parties and their mediation needs in a safe and effective manner. This was the one thing we could control, and do our part to keep the wheels of justice turning ever so slowly. Plus, we realized the pandemic was creating economic uncertainty on many fronts and trying to help parties resolve a matter may allow for some economic relief which could otherwise takes months or years to achieve. We all agreed that 'in person'

mediations are not only the model required by the Rules of Civil Procedure, but 'in person' mediations are the most effective format for a mediator to relate to the parties, to empathize with the parties and when necessary, have the tough talk needed to break through disagreements between the parties. So, how do we mimic these mediation needs via the computer? Quick and easy answer: both the mediator and all parties need to treat the mediation as though it were happening in person.

What does this mean? To begin with, make sure your clients are familiar with the Zoom format and process well in advance. Make sure the clients or party representatives can attend and participate via the Zoom format. And, make sure that participation is not just via a phone call, but also by video. Given the likelihood that a plaintiff has never attended a mediation before, it is imperative that they attend a Zoom mediation by video. If they do not possess a device to do so, then make arrangements for them to come to your office so you can appear together. While counsel may not prefer this arrangement, the mediator will appreciate it. Having now collectively handled approximately 300 Zoom mediations, the TRC mediators agree rapport building is one of the most helpful tools to break through negotiation logjams. Being able to make eye contact and demonstrate empathy and interest in the plaintiff as a person as well as their case is far more impactful when the mediator can physically see the plaintiff. Even if, as the mediator, we can communicate effectively on the phone alone, video interaction improves the mediator's effectiveness exponentially, and ultimately improves the chances of claim resolution.

Given technical challenges, if video participation by a party or representative is simply not an option, speak to the other side to discuss alternative arrangements. This is obviously something which requires forethought, well in advance of the scheduled mediation. As the pandemic timeframe advances, you may have already dealt with Zoom logistics in arranging for a client's Zoom deposition. Be prepared to make those same arrangements for the mediation. The preference is to simply make arrangements for the party or representative to appear with counsel. But, think outside the box - if travel is an issue, perhaps your client could join in from their place of work, or even a friend or family member's home. If a defense rep has Zoom limitations and a PowerPoint presentation will be shown, print the presentation out and send it to the carrier or counsel in advance of the mediation. This holds true if there are any exhibits you want to share during the course of the mediation. Be

*Continued on page 7*

# Criminal Law

By William Cervone



It was the summer of 1973 when I started my legal career as an intern at the State Attorney's Office. Until then I thought I'd chosen badly as far as going to law school went since I really disliked it. The courtroom, however, turned out to be far different. I remember an early assignment involving a burglary case in High Springs. I didn't even know where High Springs was but I found it, I found witnesses, and I figured out how to put the case together. I also found out that I loved doing that. Most of my time since then has been as a prosecutor, but I equally value my few years in private practice, not just for the experience with so many other areas of law but more for the lifelong friendships I would otherwise never have made.

I've often wondered lately where the years went. During them I've seen several lifetimes worth of pain and hurt. Some was deliberately inflicted, some carelessly. The hurt was often as deep for the family of the defendant as on the victim's side. Who suffered more doesn't really seem to matter much. To be sure, I've also seen much of the better part of humanity - victims and survivors of inexplicably horrible things showing grace, courage and strength of spirit under circumstances where I don't know that I could have been so forgiving or resolute. All of it wears on you. The key is not letting it wear you out.

That isn't to say that there doesn't come a time when it's simply time to go. To all things there is indeed a time and a season. Some people have a hard time knowing when that time is, and some of you have heard me say before that the secret to success is getting out before they all want you out.

So I now take my leave of you, at least as your State Attorney. The past few weeks have been bittersweet, as I've begun to pack up an office full of memories. Among everything else was a pile of greeting cards from St. Patrick's Day in 2015 sent by many of you after our friend and colleague, Gloria Fletcher, died unexpectedly in February of that year. At her funeral I'd spoken about how she would always send cards and notes, not emails, to many of us throughout the year, and how I would miss that. I've kept those cards, and the kindness of so many of you who did that and many other things that you needn't have done over the years is something I will always have. I hope that you will all continue to do such kindnesses for each other - it's what makes our legal community special.

To the many fine men and women who have worked with and for me over all of these years I urge your continued compassion in the pursuit of justice.

Remember that justice and mercy are always related, a thought that I don't take credit for but that has always resonated with me. To so many others of you who have helped me along the way, and there are far too many of you to even begin to name, please accept my simple thanks.

Somewhere recently I read the phrase "I've always preferred the periphery," and believe it or not that's how I feel and have felt for all of these years while I've held elected office. To me, most who lust mightily for office and power probably shouldn't have either. I am glad to relinquish both and to have the luxury of the periphery again.

And so to all of you I wish not just the greetings of this Christmas season but also wisdom, patience, and all that life can and should be.

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## President's Message

*Continued from page 1*

As mentioned in previous columns, the EJCBA is a members-focused association. Accordingly, if you as a member have suggestions for programs, this is an open invitation to bring them forward. Please do that by sending your ideas to [pnkejcba@gmail.com](mailto:pnkejcba@gmail.com). For updates, please regularly visit our website ([www.8jcba.org](http://www.8jcba.org)) and consider joining our Eighth Judicial Circuit Bar Association Facebook page.

See you in the year to come.

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So they are always readily at-hand, the following are links to

The U.S. Constitution:

<https://constitution.congress.gov/constitution/>

The Florida Constitution:

<https://tinyurl.com/FloridaConstitution>

### SAVE THE DATE!

There will be a joint Zoom meeting of the EJCBA and the Alachua County Medical Society on Tuesday, February 16, 2021 from 6:00 p.m. – 7:15 p.m. This meeting will include a panel discussion of "General Legal Insights for Practicing Physicians." For questions or additional information, contact Ray Brady at [rbrady1959@gmail.com](mailto:rbrady1959@gmail.com); watch EJCBA emails and future issues of *Forum 8* for event registration information.

# Three Rivers Legal Services Retirements

By Marcia Green

Pro Bono Director, Three Rivers Legal Services



When Executive Director **Chris Larson** joined the Three Rivers Legal Services team in April 2014, we knew it would not be forever. Coming to North Florida after a 30+-year career in legal services in South Central Florida, we understood we were getting quality, experience and someone who might just one day want to retire.

Unfortunately, that time has come all too soon. Chris plans to return to South Florida at the end of the year to spend cherished time with her adult children and new grandchildren. Although greatly tempted to tie her to her desk, it would be unfair for us to deny her the long-awaited joy of grand-parenting.

As a lifelong legal services attorney, Chris has devoted her entire professional life to the mission of legal assistance to the poor and to the dream of equal access to justice. Under Chris' leadership, Three Rivers faced and met so many of the challenges that come with grants, politics, disasters, and the increase in need.

Three Rivers experienced many changes during Chris' tenure, including the retirement of several longtime board and staff members. With those retirements, there is always some loss of history. Chris, however, has brought so much new and forward thinking to the program while making sure we remember our roots and the path along the way.

In the past six years, Three Rivers grew from a gross revenue of about three million dollars to more than four million. When Chris started as Executive Director, there were 40 employees and, although the number sometimes fluctuates, Three Rivers now employs more than 50 employees (attorneys and staff) plus a few contract attorneys who provide specialized services. Without a dedicated grant writer or resource developer, Chris has worn many hats, and all the while, she has led our team and organization as a family. While the major priority is the needs of our clients and the requirements of our grantors, Chris has made sure that the staff members have training and needed resources and are well prepared for the work. Pre-pandemic, when we were all able to be in person, Chris always made sure to stop by an office to say hello and ask about our work and family. We are so grateful she shared her love of books, stories from her regular Bunco games and dulcimer practice, and her dedication to the Florida Gators. The annual Thanksgiving feast at Chris and Matt's home was a treat that will be sorely missed by the staff and families.

Saying goodbye is not easy and, while the Board of Directors is actively seeking Chris' replacement, we all recognize that Chris' shoes will not be easy to fill! Since the pandemic prevents us from throwing a big retirement gathering and the appropriate send-off, we all wish Chris Larson the best in her retirement. If you want to say your farewells personally, feel free to reach out to her at [chris.larson@trls.org](mailto:chris.larson@trls.org).

Also leaving Three Rivers is **Jenny Seltzer**, one of our family law specialists, who is also seeking the ultimate gift of spending more time with her adult children and grandchild. Seltzer and Larson had worked together at Florida Rural Legal Services and Seltzer followed Chris to Gainesville when the opportunity arose. Known primarily within the family law community, Jenny has been an amazing resource to the Three Rivers team. Her wisdom and ability to analyze a client's needs brought needed perspective, especially during staff meetings. Jenny leaves for retirement near her family in the Charlotte County area and will be greatly missed. Jenny's email is [jenny.seltzer@trls.org](mailto:jenny.seltzer@trls.org) if you want to send her a farewell message.

## Professionalism Seminar – REGISTER NOW

### Inexpensive & Enlightening CLE Credits

By Ray Brady

Mark your calendars now for the annual Professionalism Seminar. This year the seminar will be held on Friday, February 26, 2021, from 9:00 a.m. (registration begins at 8:30 a.m.) until Noon at the Trinity United Methodist Church on NW 53<sup>rd</sup> Avenue or via Webcast if necessary. Our keynote speaker will be The Honorable Karen K. Specie, Chief United States Bankruptcy Judge for the Northern District of Florida, speaking on "COVID: 19 Professionalism Lessons for Lawyers."

We expect to be approved, once again this year, for 3.5 General CLE hours, which includes 2.0 ethics hours and 1.5 professionalism hours.

Register online at <https://8jcba.org/event-4057807>. Questions may be directed to the EJCBA Professionalism Committee chairman, Ray Brady, Esq., at 373-4141.

# So This is 2020, and What Have We Done?

By Krista L.B. Collins



We are swiftly approaching the conclusion of 2020. As I write this, I do not know whether, when you read this, we will be in the midst of an even worse wave of COVID-19 than we faced in the summer, or if we will finally be getting it under control. I do not know whether we will be embarking on civil jury trials in Alachua County, or if jury trials will again be put on hold indefinitely. What

I do know, and have known for some time, is how proud I am to be a part of the legal community here in the Eighth Judicial Circuit – how proud I am of how we have dealt with the uncertainties and changes we have all experienced this year. We all deserve some kudos:

First, to all the technical wizards at the courthouses, court reporters' and mediators' offices, and of course, our own offices, who quickly got us all up and running using Zoom, phone conferencing, or other means of remote communication, you are amazing! You figured out new systems and new software and got us all moving more quickly than we ever could have hoped. You enabled us to keep moving cases forward (even when trials were not possible) and to do the work of representing our clients and protecting their interests, in the strangest and most stressful of times. Thank you.

Second, to those of us, whether attorney, judge, mediator, clerk, judicial assistant, paralegal, or court reporter, who had to learn how to use these wonderful new systems set up by the technical wizards – especially those of us who are perhaps less comfortable with technology – hurrah! We learned new things and made our way through it. We figured out how to present evidence and share documents remotely and how to best question a witness who is not in the same building, let alone across a table or on the stand. We even went above and beyond simply muddling through the things we *had* to do and figured out how to participate in remote EJCBA and Inns of Court meetings! We may have started talking without remembering to unmute ourselves once or twice (okay, maybe more than once or twice), but we all got through with good humor and camaraderie.

Next, to those who had to continue to practice law and work while also teaching school-age kids or caring for babies and toddlers, well, not all heroes wear capes. It is easy to feel worn out or stretched too thin or worried that we're setting a bad example for our kid when we bribe him with new toys to stay quiet during a remote hearing. (That last one may be just me.) But our kids won't remember how frazzled we were trying to get everything done – they'll remember that year when mom and dad were home a lot more, and the family had more time

together. Maybe they'll even remember finally understanding exactly what it is that mom or dad does for work and thinking, "I want to do that too!" And a big thanks to our colleagues for understanding; after all, who doesn't love a Zoom cameo from a cute kid?

Finally, to those who quarantined, socially distanced, and wore masks—and continue to do so—and who made the tough call to ask the same of clients and staff, thank you for choosing to be a part of the solution and for helping your community.

I realize that many of us fall into more than one of these categories. And I realize that even with the most Pollyanna-ish view, we're not done yet. There will be more to learn and more stressful days to come. But to paraphrase John Lennon, "So this is 2020, and what have we done?" It turns out, in this year when everything seemed to be put on hold, the answer is "quite a lot, actually." We helped our clients, we deposed, we mediated, we argued at hearings, we participated in bench trials, we came together as a legal community, and we did it all remotely. And for that, I am proud of all of us. Well done, EJCBA members. Here's to 2021.

## Meridien Centre Office Available

Professional private office suite available for 1-2 person firm on second floor in the Meridien Centre, 2750 NW 43<sup>rd</sup> Street. Plenty of office parking. Office is furnished, including telephone system. Office has the following: Two separate lawyer offices, each overlooking office park, conference room, lobby/waiting room, copy room, kitchenette, bathroom, large common staff work area staged for 2-4 employees. Office has many built-in cabinets and other finished woodwork. Contact Scott Krueger, at 352-376-3090 or [Scott@SDKrueger.com](mailto:Scott@SDKrueger.com) for more information.



# Florida Votes to Raise Minimum Wage to \$15

By Laura A. Gross



Florida voters recently approved Amendment 2 which raises the state minimum wage to \$15 an hour. A 60 percent supermajority was required for approval, and the amendment barely squeaked by with just 61 percent of the vote. As a result, effective September 30, 2021, Florida minimum wage will rise from \$8.56 to \$10 an hour and then increase \$1 every year until it reaches \$15 per hour on September 30, 2026. Starting September 30, 2027, the wage will be adjusted annually for inflation. Florida employers must ensure that tipped employees' tips combined with the current tipped minimum wage of \$5.54 an hour meets or exceeds the new state minimum wage.

Floridians last voted to increase minimum wage in 2004. At that time, minimum wage was set at \$6.15 and adjusted annually for inflation. Approximately 200,000 Floridians live on the current state minimum wage of \$8.56 which, for full-time employees, amounts to an annual salary of \$17,804, just barely over the federal poverty guideline for a family of two. On top of that, Florida is among the states with a higher cost of living, according to the Council for Community & Economic Research (C2ER), which collects and publishes cost of living index data at the state and local level.

In raising the minimum wage to \$15, Florida joins Washington DC and seven states—California, Connecticut, Illinois, Maryland, Massachusetts, New Jersey and New York. Twenty-three states have a minimum wage of between \$8.65 (Montana) and \$12 (Arizona, Colorado, Maine), with Oregon maintaining a three-tiered minimum wage of \$11.50 for rural counties, \$12 for non-rural counties, and \$13.25 for the Portland metro area.

Meanwhile, federal minimum wage has remained at \$7.25 per hour since July 4, 2009. Nineteen states have followed suit by holding their minimum wage at \$7.25 (or less) or having no state minimum wage at all: Alabama, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, New Hampshire, North Carolina, North Dakota, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Virginia, Wisconsin and Wyoming.

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## ADR

*Continued from page 3*

prepared in advance to screen share the documents rather than waiting to 'figure it out' during the mediation itself.

The bottom line when it comes to a Zoom mediation is that you should treat it like an old fashioned, in-person proceeding. Spend just as much time preparing for it as you would an in-person mediation but do so sooner than you usually would, in order to give time to address connection and attendance issues. We are now past the initial hiccups of Zoom application to the mediation process and we all need to treat it as the formal proceeding it was intended to be. This means do not do what some of us have seen - attend mediation while leaning up against your headboard, do not have your client's boyfriend walk bare chested past the computer screen, do not appear wearing a tube top, and for goodness sakes, tell your client they should not be getting their hair cut and colored while on Zoom. Yes, this actually happened albeit during a deposition rather than a mediation. Finally, make the mediator's job a bit easier and stress that confidentiality is a requirement so they should be in a private location, free of inquiring eyes and ears. If that discussion regarding location does not begin until the mediation begins, there may be no time to kick people out of a room, out of a house, etc.

While none of us had ever heard of Zoom before mid-March, we quickly became proponents of this format. It has proven to be more successful than we expected and as our experience with Zoom has grown, so has our confidence in its permanent role in future mediations.



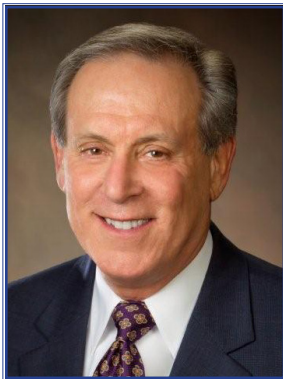
## December 2020 Calendar

- 2 EJCBA Board of Directors Meeting, Gainesville Chamber of Commerce, 300 E. University Avenue (or via ZOOM), 5:30 p.m.
- 4 Deadline for submission to January Forum 8
- 5 UF Football at Tennessee, TBA
- 9 Probate Section Meeting, 4:30 p.m. via ZOOM
- 11 EJCBA Holiday Event, TBA
- 12 UF Football v. LSU, TBA
- 19 SEC Football Championship, Atlanta, GA – TBA
- 24 Christmas Eve Holiday, County Courthouses closed
- 25 Christmas Day, County & Federal Courthouses closed

## January 2021 Calendar

- 1 New Year's Day – County and Federal Courthouses closed
- 5 Deadline for submission to February Forum 8
- 6 EJCBA Board of Directors Meeting, Gainesville Chamber of Commerce, 300 E. University Avenue (or via ZOOM), 5:30 p.m.
- 13 Probate Section Meeting, 4:30 p.m. via ZOOM
- 15 EJCBA Monthly Luncheon Meeting, Chief Judge Moseley, "The State of the Circuit," 11:45 a.m.
- 18 Birthday of Martin Luther King, Jr. observed, County and Federal Courthouses closed

# Happy Holidays



Carl Schwait  
cschwait@uww-adr.com

**Mediator Carl Schwait**  
*is available for mediations in our circuit, Ocala, and the rest of Florida.*

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