

FORUM 8

Volume 78, No. 4

Eighth Judicial Circuit Bar Association, Inc.

December 2018

(Past) President's Message

By Gloria Walker



(On November 6, 2018, this Circuit elected Ms. Walker to be its next Circuit Court Judge. As required, Ms. Walker has tendered her resignation to the EJCBA board, and President-Elect Cherie Fine has assumed the role of President and will serve in that capacity through the remainder of the 2018-19 term and her own term of 2019-2020. Congratulations to

you both. This article was prepared by Ms. Walker prior to her resignation. - Ed.)

As 2018 Comes To An End And 2019 Begins, An Appreciation Of Our Very Own Chief Judge Monaco...

What a wonderful 2018 we have had together at the EJCBA! Just this past month we gathered for our Annual James C. Adkins, Jr. Cedar Key Dinner, which is always a much anticipated gathering. Followed shortly thereafter by the Fifth Annual Amaze-Inn Race with the Adkins and Bennett Inns of Court – *exercise, intellect, and scavenger hunting combined!* Together, of course, with our monthly meeting when we welcomed Dean Onye Ozuzu, Dean of UF's College of the Arts.

And what of December? In addition to our December 14th luncheon meeting, there is the Annual Margaret Stack Holiday Project to benefit the Alachua County Headstart Pre-K program. The beneficiaries of this year's Project will be three and four year olds at Fearnside and Rawlings Elementary Schools on December 19th. (*Where 'Santa' may well make another special appearance just for the EJCBA.*) Please try to join us for each of these festivities.

Things slow down at the EJCBA through the balance of the year while our members enjoy their own families and holiday celebrations. But get ready for a busy

2019 together (look at the calendar on www.8jcba.org for more details).

While we reflect upon 2018, let us take a moment to appreciate Chief Judge Toby Monaco as he prepares to retire on December 31, 2018.

Chief Judge Monaco has sat on the Circuit Court Bench since 2001. During that time he was the Administrative Judge of the Family Division and the Circuit Civil Division (*twice!*). And, of course, he was unanimously elected to be Chief Judge in January 2017. The Chief Judge's leadership extends beyond the Eighth Judicial Circuit due to his service on the Legislative Coordinating Committee of the Circuit Judges' Conference Judicial Needs Assessment Committee. And if that were not enough, he has *also* held temporary assignments on the First and Fourth District Courts of Appeals.

Chief Judge Monaco is a "Double Gator," having received his B.A. degree (in psychology) in 1970 and his J.D. degree with honors in 1973. He was admitted to the Florida Bar in 1974, and was well known (and highly regarded) as a civil trial practitioner in the local community in and around Alachua County for over 25 years.

During his "free time" Chief Judge Monaco was the President of this very EJCBA from 1982-1983, and he was inducted into the American College of Trial Lawyers in 1994. Further, he served as a Trial Practice Adjunct Instructor at his *alma mater*, was a founding board member of both the Adkins and Bennett Inns of Court, and is a member of the Rotary Club of Gainesville.

The Chief Judge's Eighth Judicial Circuit colleagues will miss his fellowship and ever-polite charm. For Chief Judge Monaco set the standard for our circuit and may not know that we lawyers ask ourselves, "What would Judge Monaco do?" or WWJMD? We wish Judge Monaco a healthy and happy retirement!

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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. 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 Chester B. Chance and Charles B. Carter



“Lowering The Bar”

Kevin Underhill is an attorney with a website entitled “Lowering the Bar.” We strongly urge you to go to his website and review the humorous/sad/pathetic/funny cases he refers to on his website. They are broken down into every category of the law including civil procedure, lawyer advertising, etc. You

will not have time during the day at your office to review attorney Underhill’s website. Peruse it as you would stroke a fine cello or sip a fine glass of wine. Return to it, as you return to a wonderful restaurant.

A couple of years ago we celebrated the anniversary of Magna Carta. Lawyers all over England and America recognize this anniversary. We wrote an article about it. Inns of Court programs focused on Magna Carta.

Therefore, when we were reading the “Lowering the Bar” website we were interested when we came across an article entitled “Rejected Applicant Sues Law Schools for Violating Magna Carta.” In August 2018, a Complaint was filed in the Federal Court in Delaware. The Plaintiff in this action alleges he applied to at least 24 law schools but was *not* admitted to any of them. Interestingly, the Plaintiff had refused to take the LSAT, basically because he objected to taking the LSAT. In his words: “The LSAT is based on ideology rather than science and is planned, organized, coordinated, budgeted, and administered by radicals who ignore our law, our history, our culture, ethics and probably all of western civilization law.”

We had suspected all of those things but did not have the courage to voice those suspicions.

The Plaintiff has sued numerous Defendants, including Duke University (who would not process his law school application because he did not take the LSAT), The Law School Admissions Council, Harvard University, the ABA, the Pennsylvania and California State Bar Associations and a variety of other officials affiliated with these Defendants, along with Betsy DeVos.

According to Kevin Underhill at “Lowering the Bar,” the Plaintiff seeks many millions of dollars and an order admitting him to practice law in

Pennsylvania (because it would be crazy to request an order admitting him to practice law in New Jersey).

The Complaint alleges the ABA broke its promise to Eleanor Roosevelt in 1947 (promissory estoppel?) when the ABA told her its members would comply with the Universal Declaration of Human Rights. We suspect the Plaintiff is not moving for a Motion for Summary Judgment at this point. But there are many arrows in this Plaintiff’s quiver. According to the previously referenced law suit, the Plaintiff alleges that not admitting him into law school “constituted various torts including trespass, trespass on the case (since we remember that term from our own law school days we think that is kind of neat), intentional infliction of emotional distress, bad faith, trover (another knock-out punch), and failure to provide a Republican form of government.

The website explains the last cause of action refers to The Guarantee Clause in The United States Constitution, Article IV, Sec. 4. Article IV, Sec. 4 apparently guarantees to every state a Republican form of government. Although your current authors, along with Kevin Underhill can’t really figure out how the named Defendants violated the Constitution, we think it is always excellent form to allege violations of the Constitution, the Magna Carta, or the Supreme Council of Vulcan.

What about Magna Carta? According to Mr. Underhill, the Plaintiff is relying on “the law of the case” which is referenced in Black’s Law Dictionary and Article 34 of Magna Carta.

What are some other amusing articles found in “Lowering the Bar”? Well, to be honest, there are thousands that are hysterical or sad depending on your viewpoint. One article is entitled “Can You Sue Somebody for Forcing You to go to Law School?” Plaintiff Duncan has sued someone named Clein alleging Clein gave him bad legal advice and as a result, Plaintiff Duncan resigned and had to enroll in law school, which caused the Plaintiff to incur substantial costs. Thus, we have a new cause of action: attending law school based upon advice. *Duncan v. Clein* is a 2011 case out of Georgia.

Continued on page 5



Criminal Law

By William Cervone



In news of the bizarre, it is now possible to get yourself into criminal trouble over lizards. Or, to take a different side of the same coin that I will discuss next, it's almost impossible to do anything annoying enough to get you in trouble because we tolerate almost anything.

Edmond St. Fleury, who I believe lives in the Miami-Ft.

Lauderdale area, which might explain a lot, appears to like lizards. He likes lizards so much that he went to a pet store in Broward County to buy a lizard as a pet. "This is my pet lizard, Lassie" doesn't bring back fond memories of my childhood but so be it. Apparently there is some sort of threshold requirement concerning the ability of a person to properly care for a lizard because the pet store employee vetting Edmond didn't think he'd be a good owner for Lassie The Lizard, and without the employee's affirmative approval, the store manager wouldn't sell Lassie to Edmond.

This did not sit well with Edmond, who began to loudly demand that he be allowed to buy Lassie. This, in turn, got the attention of other customers, some of whom stopped and stared and some of whom left the store. After all, one never knows who's packing heat in Florida nowadays. In any event, Edmond refused to leave when asked to do so and the police were called. He greeted them with insistence that he be allowed to buy Lassie and things quickly deteriorated further, including robust screaming at the deputies, who, PETA be damned, probably would just as soon have let Edmond have his lizard of choice even if he was not an appropriate foster parent.

To make an already too long story short, more deputies arrived and all other customers were ordered to leave the store. Edmond was told that he was under arrest for Disorderly Conduct because he was being loud and boisterous, and the fight was really on, complete with thrashing about and punching, leading to the tazing, handcuffing and removal of the still lizard-less Edmond. Eventually, a jury concluded that Edmond had indeed been conducting himself in a disorderly manner and convicted him.

And so the story should end if we didn't live in an increasingly crazy world where the 4th DCA actually wrote an opinion disclosing all of these facts and then concluding that "mere boisterous behavior, even if it disrupts the operations of a business and draws onlookers' attention, is not enough" for Disorderly Conduct. This all

flows, logically or not, from prior decisions of the 2nd DCA (yelling and cursing at bank employees and police to the extent of drawing the attention of other customers without them responding in some unspecified way is a no-go for Disorderly Conduct) and the 3rd DCA (yelling over the phone in the doorway to a bank and then fighting there with police to the point where other customers could neither enter nor leave, again without some response by those customers that threatened the peace, is equally a no-go). The 4th DCA carefully clarified that Edmond's fighting with the deputies was a non-factor because it was after his more general yelling and screaming, apparently to distinguish away its own prior holdings that allowed a Disorderly Conduct conviction to stand when the magic words "You're under arrest" followed as opposed to proceeded the fighting part of the disturbance.

So, from all of this we are to conclude that being a huge and loud jerk causing a big disruption in a place of business is OK because we care less about the behavior of the idiot doing the disrupting than we do about whether some other idiot reacts to it in an equally inappropriate fashion.

We also, I think, should conclude that Lassie the Lizard, who might more closely resemble the Grinch than even Edmond does, is probably happy not to have been given as a Christmas gift to Edmond.

Merry Christmas, everyone!

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Continued from page 3

We just find the juxtaposition of the 2 above articles interesting: someone is suing because they can't get into law school, and someone else is suing because they got into law school. I actually think the second Plaintiff has the stronger argument, if not a viable cause of action.

Legal update:In our review of "Lowering the Bar," we found an April 24, 2018 update on Naruto the Indonesian Macaque monkey who has been represented by PETA. As you recall, or as a legal professional you should know, PETA sued after Naruto took a selfie with a photographer's unattended camera. PETA argued the monkey had a trademark/copyright claim which, it (the monkey, not PETA) could assert. Even though PETA settled with the original defendant, the Ninth Circuit Court of Appeal, despite PETA requesting the Court not rule on the matter, did enter a ruling. Surprisingly, in this day and age, the Court framed the issue as follows:

We must determine whether a monkey may sue humans, corporations, and companies for damages and injunctive relief arising from claims of copyright infringement...we conclude that this monkey – and all animals, since they are not human – lacks statutory standing under the Copyright Act. We therefore affirm the judgment of the District Court. (*Naruto v. Slater* (9th CCA, April 23, 2018).

Interestingly, but not surprisingly, the Court held that it "gravely doubted" that PETA could act as Naruto's "next friend." As Kevin Underhill notes: "Naruto couldn't do it himself because he's a monkey."

Since Naruto was technically abandoned by its "next friend" PETA, we are wondering if Naruto can now go to law school and represent himself in a lawsuit against PETA. Yes, these are the things we wonder about. We equally wonder if you read the referenced decision and an earlier case, *Cetacean Community v. Bush* (also of course a 9th CCA decision), wherein the 9th Circuit held animals have standing to sue. Remarkable.

Please let us know if you are contemplating bringing an action against anyone because you went to law school. Also, please let us know if you are aware of any monkeys who may be contemplating a lawsuit with or without PETA.

Thank you for indulging us.

Holiday Proejct Update

By Dominique Lochridge-Gonzales

EJCBA's Annual Margaret Stack Holiday Project to benefit the Alachua County Headstart Pre-K program is underway! This year, we are again collecting new toys (educational preferred) appropriate for 3 and 4 year olds to be distributed to the Headstart students at Fearnside and Rawlings Elementary Schools and providing bags of 12 books which correspond with the Headstart curriculum's monthly themes to each of the 35 Alachua County Headstart classrooms.

We are still in need of contributions towards toys and books! The Amazon Wish List of books for the classroom bags may be found at https://www.amazon.com/gp/registry/wishlist/1FCAQ713NLUYG/ref=nav_wishlist_lists_1. Please ship books directly to the Headstart Gift Registry address and include a gift receipt!

The gift distribution parties will be on Wednesday, December 19th! We will visit the six Pre-K Headstart classrooms at Fearnside and Rawlings Elementary Schools to distribute presents and have "Santa" read a story.

Any ECJBA members are more than welcome to attend; please let Dominique Lochridge-Gonzales know if you would like do so at (352) 415-2324 or dominique.lochridge-gonzales@trls.org.



CEDAR KEY 2018



Judge Davis, Jan Bendik, Judge Colaw and Judge Nilon enjoy Norm Fugate's hospitality at the "Cedar Key Sidebar"



Peg O'Connor, Norm Fugate, Mac McCarty and Denise Hutson pause for a photo at Cedar Key



Paul Donnelly, Laura Gross and Stephanie Marchman having fun at Cedar Key.



Judge Groeb, Gloria Walker and Rogers Walker are all smiles at EJCBA's annual Cedar Key dinner



George Nelson & Rogers Walker at the "Cedar Key Sidebar"



Judge Susan Miller-Jones and EJCBA's Immediate Past President, Gloria Walker

11th Circuit Limits Scope of Accident-Based OSHA Inspection

By Laura A. Gross



When Occupational Safety and Health Administration (OSHA) comes knocking on the door for an accident-based inspection, can it require the employer to submit to a comprehensive inspection of the facility, not just an inspection of the hazard at issue? This question was recently asked in *U.S. v Mar-Jac Poultry, Inc., No.*

16-17745, 2018 WL 4896339 (11th Cir. Oct. 9, 2018).

OSHA is the federal agency responsible for enforcing the Occupational Safety and Health Act which sets and enforces workplace and safety standards. While states are encouraged to develop and operate their own plans and 26 states do, Florida, Georgia and Alabama are covered by federal OSHA. OSHA's principal enforcement means are inspections -- (1) programmed inspections which are randomly generated, or (2) un-programmed inspections based on information received concerning a specific facility, often accident-related information provided by the employer in compliance with law.

An un-programmed inspection occurred in *Mar-Jac*. There, the employer, a poultry processing plant in Georgia, reported an electrical accident which caused severe injuries to an employee. Four days later, OSHA sent an inspection team. Rather than limit the investigation to the hazards involved in the accident, OSHA sought to conduct a "comprehensive inspection of the entire facility for additional hazards" based on information in Mar-Jac's OSHA 300 logs, the work-related serious illness and injury logs mandated by federal regulation. Mar-Jac refused. OSHA obtained a judicial warrant for a comprehensive inspection. Mar-Jac filed an emergency motion to quash which was granted by the district court.

OSHA appealed, and the Eleventh Circuit affirmed the district court. While the court recognized that OSHA 300 logs "can be relevant to whether hazards exist," there was little information about the illnesses and injuries listed on Mar-Jac's OSHA 300 logs. The court found the information listed did not establish that there were hazards at the workplace, and, moreover, a hazard is not necessarily a violation. Thus, based on the logs, the court held there was no reasonable suspicion that a

violation existed to support OSHA's warrant application.

This decision should be considered when advising employers who wish to limit consent or challenge a warrant for a comprehensive accident-based inspection by OSHA in Florida, Georgia, or Alabama.



2019 EJCBA Charity Golf Tournament

"The Gloria: In Memoriam of Gloria Fletcher"

By Rob Birrenkott



Please consider joining our team to help youth in our circuit who are in the dependency system enjoy the normal experiences that many of us may take for granted. All of the proceeds from the tournament go to The Guardian Foundation, which provides resources to children in our community who have been abused, neglected, or abandoned. We have made it possible, whether you're a golfer or not, to support the tournament; you can: [PLAY](#), [SPONSOR](#), or [DONATE](#).

This year's tournament will take place on Friday, March 1, 2019, at the UF Mark Bostick Golf Course. Registration, lunch, and warm up will begin at 11:30 a.m. followed by a 12:30 p.m. tee time. The tournament format is a two-person or four-person scramble (player's choice). The registration fee is \$130 per golfer (early bird rate of \$115 if registered by February 16). Please contact Rob Birrenkott (Rbirrenkott@law.ufl.edu) to learn more about supporting the tournament.

New Time Computation and E-mail Service Rules Go into Effect Jan. 2019

By Tee Lee



The use of technology in law continues to change how attorneys are required to practice. Starting January 1, 2019, there are important changes going into effect that all attorneys in every field of law need to know.

E-service has been mandatory in Florida since September 2012. With these technological requirements in the daily practice of law came a variety of rules regarding time-computation. In order to allow every attorney to become accustomed to the use of e-service and the Florida e-portal, service by e-mail was considered the same as service by regular mail. Commonly referred to as the “mailbox rule,” service by regular mail and e-mail allows the recipient an additional 5 calendar days to respond (such as discovery requests or to issue a subpoena). To get around the additional 5 day “mailbox rule” when serving by email, the filer would be required to serve the documents by facsimile or hand delivery.

On October 25, 2018, the Supreme Court of Florida entered an order changing the e-mail “mailbox” rule in an effort toward consistency among the different rules of procedure. The Supreme Court now differentiates service by email and service by mail, stating that “E-mail, unlike postal mail, is now nearly instantaneous and no additional time should be permitted for responses to documents served by e-mail.” Supreme Court of Florida, No. SC17-882.

The Rules of Judicial Administration, which specifically addresses time computation has been amended to no longer allow parties an additional five days to respond following service of a document by e-mail.

The Rules of Civil Procedure are also being amended to reduce the time required to issue a subpoena from fifteen days to ten days under rule 1.351. There is an identical rule under Family Law Rules of Procedure 12.351, but the Family Law Rules are not specially addressed by the Supreme Court of Florida in this order. Historically, the Family Law Rules would refer to the Civil Rules of Procedure, but Family Law Rules were amended to have no reference to the Civil Rules of Procedure at all. Only after seeing the new set of rules in January 2019 will we know if the Family Law Rules will also be amended to be consistent with the Civil Rules.

Another major change is the method of computing

time. Currently, if you e-file and serve a Request to Produce on a party opponent on a Friday, you exclude the day of the event that triggers the period and start counting on Saturday to compute the 30 days for the deadline to respond. With the new change to the rule, you begin counting from the next day that is not a Saturday, Sunday, or legal holiday. For example, currently, if you serve a document on Friday, December 7, 2018, you start counting time from Saturday and the deadline to respond would be January 7, 2019 or January 11, 2019 if served by email/mail. Under the new rules, you start counting on Monday and the deadline would be January 8, 2019 or January 14, 2019 if served by regular mail.

Be sure to review the new rules that go into effect on January 1, 2019 at 12:02 a.m.

Professionalism Seminar – SAVE THE DATE

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, March 29, 2019 from 9:00 a.m. (registration begins at 8:30 a.m.) until Noon at the Trinity United Methodist Church on NW 53rd Avenue. Our speaker will be Roberta Kemp Flowers, Professor of Law at Stetson University College of Law and William Reece Smith Jr. Distinguished Professor in Professionalism (topic TBD).

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

Watch your email and the Forum 8 newsletter for reservation information in early February. Questions may be directed to the EJCBA Professionalism Committee chairman, Ray Brady, Esq., at 373-4141.

Florida Bar Seeks Applications For Judicial Nominating Commissions

There is one lawyer vacancy on each of Florida's 26 Judicial Nominating Commissions, and The Florida Bar has the opportunity to nominate three lawyers for each commission to the governor for his appointment. Each appointee will serve a four-year term, commencing July 1, 2019.

Applicants must be members of The Florida Bar engaged in the practice of law and a resident of the territorial jurisdiction served by the commission to which the member is applying. Commissioners are not eligible for state judicial office for vacancies filled by the JNC on which they sit for two years following completion of their term.

Persons interested in applying for these vacancies may download the [Judicial Nominating Commission Application for Appointment](#) from the Bar's website, www.floridabar.org, or call Bar headquarters at 850-561-5667 to obtain the application form. Completed applications must be received by the Executive Director, The Florida Bar, 651 E. Jefferson St., Tallahassee, FL 32399-2300 or submitted via email to jncform@floridabar.org no later than 5:30 p.m. on **Monday, Jan. 14, 2019**. Resumes will not be accepted in lieu of the required application. The Board of Governors will review all applications and may request telephone or personal interviews.

December 2018 Calendar

- 1 SEC Championship Game, Atlanta, GA – 4:00 p.m.
- 3 Hanukkah begins
- 5 Deadline for submission to January Forum 8
- 5 EJCBA Board of Directors Meeting, Three Rives Legal Services, 1000 NE 16th Avenue, 5:30 p.m.
- 12 Probate Section Meeting, 4:30 p.m., Chief Judge's Conference Room, 4th Floor, Alachua County Family & Civil Justice Center
- 14 EJCBA Luncheon, Frank LoMonte, Professor & Director of The Brechner Center for Freedom of Information, The Woolly, 11:45 a.m.
- 18 Family Law Section Meeting, 4:00 p.m., Chief Judge's Conference Room, Alachua County Family & Civil Justice Center
- 19 EJCBA holiday gift distributions at Fearnside and Rawlings Elementary Schools, 9-11 am
- 24 Day before Christmas – County Courthouses closed
- 25 Christmas Day – County and Federal Courthouses closed

January 2019 Calendar

- 1 New Year's Day observed – County and Federal Courthouses closed
- 2 EJCBA Board of Directors Meeting, Three Rivers Legal Services, 1000 NE 16th Avenue, 5:30 p.m.
- 7 Deadline for submission to February Forum 8
- 9 Probate Section Meeting, 4:30 p.m., Chief Judge's Conference Room, 4th Floor, Alachua County Family & Civil Justice Center
- 15 Family Law Section Meeting, 4:00 p.m., Chief Judge's Conference Room, Alachua County Family & Civil Justice Center
- 19 EJCBA Luncheon, Chief Judge James Nilon, "The State of the Circuit," The Woolly, 11:45 a.m.
- 21 Birthday of Martin Luther King, Jr. observed, County and Federal Courthouses closed