

FORUM 8

Volume 80, No. 5

Eighth Judicial Circuit Bar Association, Inc.

January 2021

President's Message

By Philip N. Kabler, Esq.



First, best wishes to you and yours for a happy, healthy, and successful (by your definition of success) New Year!

Now...Let us all take a deep breath and look into the rearview mirror at the prior year. (I dare not even type those four numbers again...*except when it is time to fill out my tax return, of course*). Now, back to eyes on the road, two

hands on the wheel.

Let us take what we discerned during that period. Individually and as an association we learned to be resilient, to be flexible, to pivot, and to observe, absorb, adopt, and adapt new means of doing business. Previously we had established procedures in-place – so we adjusted them. We had long-standing traditions – so we revised them. We could not meet in-person – so we met online. *All temporarily.*

With the passage of time, and the ingenuity of our scientific and medical colleagues, our lives will restore. Not magically with the wave of a hand. But sequentially.

That restoration will likely not result in our doing 'things' exactly as we did before. Our practiced flexibility will permit us to find new ways. And our new-found resilience will accordingly allow us to apply those new ways. *Which is optimistic.*

So let us move forward, because we have many good things to anticipate. First, we welcome our new Circuit Chief Judge Mark W. Moseley. (A bit more below.)

Which also means we bid a fare-thee-well to our now retired Chief Judge James P. Nilon. Chief Judge Nilon was our model of both flexibility and resilience as he guided us safely through the logistical challenges of the preceding year. Perhaps Judge Nilon will take up sailing in his second *salad days*, because he has shown he can successfully (and calmly/confidently) tack through

seemingly impassible shoals to smooth waters. We wish Judge Nilon a long and enjoyable retirement. And we hope he knows he is always welcome to be with us whatever he chooses to do next.

And these same sentiments apply to our now retired State Attorney Bill Cervone. His two decades of leadership of the Eighth Circuit's State Attorney's Office was also an exemplar of leadership. Despite recent societal events from a national perspective, as well as in the preceding years, his office operated smoothly, worked collegially with the Public Defender's Office, and the six counties of our Circuit were steadily safe and secure. We thank you, and hope you know, *too*, we will always greet you. *And...*we likewise greet our new State Attorney Brian Kramer, and wish him the best of fortune in the years to come.

Back to Chief Judge Moseley. On January 15th he will present his first State of the Circuit address to us. We look forward to hearing Chief Judge Moseley's vision for taking our already efficient and collegial circuit into the years to come. And then to working with him to fulfill that vision.

That will not be the only item on the January 15th meeting agenda. We will also hear from Florida Bar President-Elect Mike Tanner, and meet the candidates for the 2021 President-Elect election. Please put this meeting on your calendar. It will be well worth attending.

While you are at it, please include our February 19 meeting on your calendar. During that meeting, Professor Stacey Steinberg will discuss her book *Growing Up Shared*. It is so nice to have a home-grown star, and we look forward to her discussing parenting in the age of social media. (If we are able to have an in-person meeting, perhaps we can even buy copies of her book, and, if we are polite, ask her to autograph them.)

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2020 - 2021 Board Officers

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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.

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About this Newsletter

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

NOTE NEW MAILING ADDRESS

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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



They and *Them!*

Bryan Garner is the editor in chief of Black's Law Dictionary. He is also the author of several books on English usage and grammar.

Recently Mr. Garner addressed the use of the pronoun 'they' as a singular pronoun. The catalyst of his article was Merriam-Webster naming *they* as its 2019 Word of the

Year. Well, not as a new word, rather, *they* as an accepted singular pronoun.

Mr. Garner notes "By a confluence of natural linguistic evolution and a couple of social engineering campaigns, the word has been thrust into prominence in the last few years."

Why this prominence? Mr. Garner explains the evolutionary aspect of the use of the word arises from the absence in English of a common-gender third-person singular pronoun.

Historically, the singular pronoun *he* included the feminine. By the end of the twentieth century ". . . this solution never really sat well." The generic masculine pronoun was viewed as sexist.

Statutes and policy manuals struggled with this issue. Options: An employee may file an EEOC claim if he believes that he has been discriminated against (traditional); An employee may file an EEOC claim if he or she believes that he or she has been discriminated against (more progressive but admittedly wordy); or what is now suggested, an employee may file an EEOC claim if they believe that they have been discriminated against.

The issue, according to Garner, is similar to the issue several decades ago of the use of *Miss* or *Mrs.* versus *Ms.* ". . . just as we shouldn't care whether a woman was married or single, why should we care whether a person is male or female if it's irrelevant to an account?"

Garner further notes *they* is going the way of *you* in the 18th century. "*You* was once regarded as a plural only, the singular forms being *thou* and *thee*." The use of *you* as singular was the result of purely linguistic evolution. Perhaps thou did not know that.

Is there a legal aspect to pronoun use? Yep: the Fifth Circuit Court of Appeals recently addressed whether a prisoner originally known as Norman Varner who now identifies as a woman rather than a man could require the use of the pronouns *her* and *she* and require a name

change on their judgment of confinement. The Bottom Line: the court denied the request but in a very interesting discussion of the facts (Varner had not undergone either a legal name change nor sex-reassignment surgery) and with some other observations as to the long-term consequences.

Garner notes that *they* as a singular pronoun has been accepted by the Washington Post, The Associated Press, the New York Times, the American Medical Association, the American Psychological Association, and the American Dialect Society. All admittedly progressive but influential in bringing the issue of *they* into front-page awareness. He concludes ". . . it is fair to say that the progressives will vanquish all opposition" and *they* will increasingly move toward the singular sense.

Your authors agree with Garner and see the increasing use of a singular *they* as normal and expected. "They" should not be confused with "Them!" the 1954 science fiction movie about giant ants. Van Morrison's band *Them* was named after the movie. In 1999, New Jersey punk band *Misfits* released a song "Them!" with lyrics inspired by the film. The giant ants lived under Los Angeles but eventually moved due to earthquakes, forest fires, rolling blackouts and high taxes.

On a related subject, should individuals be able to dictate what pronoun applies to them? Options include: *he, she, xe, xem, xyr, xyrs, xemself* or whatever one might choose. Third person singular nominative pronouns are suggested to include *ae, ay, e, fae, he, per, she, they, ve, xe, ze, and zie*. The argument in favor of such an unlimited plethora of options is based on the position that the option is one of *individual* choice rather than one of *language*. An interesting if unworkable rationalization.

As Garner notes on this last issue: you may meet hundreds of people in a day and just how workable would it be to remember and apply each individual's choice? The result, not language but a Tower of Babel. However, for now, we wish merely to review the 2019 Word of the Year and explain its advancement in light of social engineering concerns and linguistic evolution. *Xem* may deal with other linguistic issues in a future article. In the meantime: where have those giant ants gone?

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Florida Basics on Employing Underage Students

By Donnelly + Gross



Worldwide, the coronavirus pandemic has led to a dramatic increase in child labor. Businesses have shut down, unemployment is rampant, and hundreds of millions of children are no longer in school due to school closures, according to the United Nations. In many countries, these children are required to work to support themselves and their families.

Here, in the United States, unemployment is very high, rent payments are overdue, and food lines are long. The economic fallout is widespread, though especially prevalent among Black, Latino, Indigenous, and migrant households. To support their families, underage students with no or little work history are looking for gainful employment. By attending school online, part-time or fulltime, they are more available to work, too. Before hiring and scheduling minors for work in Florida, employers need to review and comply with both state and federal child labor law restrictions.

Under Florida law, § 450.08, Florida Statutes, specifies:

- Minors 15 years or younger cannot work before 7 am or after 7 pm when school is scheduled the following day or more than 15 hours in any one week. Minors 15 years or younger who are not enrolled in a career education program cannot work more than 3 hours on a school day, unless there is no session of school the following day.
- Minors 16 and 17 years old cannot work before 6:30 am or after 11 pm or for more than 8 hours when school is scheduled the next day and cannot work for more than 30 hours in any one week. Minors 16 and 17 who are not enrolled in a career education program cannot work during school hours.
- Minors 17 years of age or younger cannot work more than 6 consecutive days in a week and cannot work more than 4 hours continuously without a 30-minute meal break.
- Exception: These provisions do not apply to minors 16 and 17 years of age who have graduated from high school or received a GED, minors who are within the compulsory school attendance age limit who hold an exemption issued by the superintendent, minors enrolled in public education who qualify to work on a hardship basis (economic necessity or family emergency) issued by the superintendent, and children who are in domestic service in private homes, employed by their parents, or pages in the Florida Legislature.

The federal Fair Labor Standards Act allows employment of minors under age 14 in certain non-agricultural occupations that are not covered by the FLSA (delivering newspapers, acting, minor chores in private homes, babysitting); ages 14 and 15 in nonmanufacturing and nonhazardous jobs for limited hours and under limited conditions; and ages 16 and 17 for unlimited hours in any occupation except hazardous occupations. More information can be found here: <https://www.dol.gov/agencies/whd/child-labor>.

President's Message

Continued from page 1

As mentioned previously in this series, we will do our very best to hold live events as soon as we can. And we will work to add more special programs during the year. Be sure to regularly check *Forum 8*, our e-blasts, the www.8jcba.org calendar, and Facebook page for event updates.

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 pnkejcb@gmail.com. For updates please regularly visit our website (www.8jcba.org) and consider joining our Eighth Judicial Circuit Bar Association Facebook page.

So, once again, let us focus on the road ahead. *Together.*

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>

Eviction Clinic Volunteers Needed

By Marcia Green

Pro Bono Director, Three Rivers Legal Services



The COVID-19 pandemic and related recession have wreaked havoc in the lives of many of our local residents. One of the most pressing and immediate challenges is the eviction crisis, expected to affect 25-40 percent of our population.

Individuals and families who have suffered reduced income, job losses, and/or illness have had some protections from state and federal eviction moratoriums and stimulus aid. However, at the time of writing, most of the safety net programs have expired. Help is needed to advise about options, provide forms and suggested defenses, or negotiate move out and/or repayment plans.

Chances of finding safe, secure and decent housing are significantly reduced when a renter has an eviction on their record, whether in court records or on their credit report. Your assistance in keeping these records clear could make a huge difference in current and future housing prospects for our clients, potentially preventing homelessness.

We do not seek to pass judgment on landlords who depend on the rent to pay their mortgage(s) or provide income for their own families. We are only asking that, as a community, we protect our low income residents and families during a time when all of us are facing a most difficult time.

Three Rivers Legal Services requests your commitment of 1-2 hours a week, biweekly or monthly to participate in Telephonic Eviction Clinics. Weekly clinics are already underway and we expect to experience an “explosion” of cases beginning the first of the year. Your role as lawyers will be to review the leases and/or court documents, advise about possible defenses and options, assist with self-help forms, and, if possible, negotiate with the landlord.

CLE credit training is available and each clinic is supported by Three Rivers’ staff experts to provide on-the-spot suggestions and advice.

Interested? We really do need you! Please contact marcia.green@trls.org to sign up. We will provide training materials. You will be scheduled for as many of the weekly Eviction Clinics as you are able. For those who may have conflict issues, we can provide client and adverse party names before sending you the full intake information.

We look forward to working with you.

Register Now for EJCBA/ ACMS Meeting

Register now online at <https://8jcba.org/event-4083345> for the 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.

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. until noon **via ZOOM**. 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>; the registration deadline is **February 17, 2021** in order to set up breakout rooms for the group discussions. Questions may be directed to the EJCBA Professionalism Committee chairman, Ray Brady, Esq., at 554-5328.

Seeking Punitive Damages: Just the Facts, Ma'am, Just the Facts

By Krista L.B. Collins



Any litigator knows that in order to seek punitive damages under Florida law, a claimant must make a proffer. As stated in Section 768.72, *Fla. Stat.*, “in any civil action, no claim for punitive damages shall be permitted unless there is a reasonable showing by evidence in the record or proffered by the claimant which would provide a reasonable basis for recovery of such damages.” But what does this really mean? What does a proffer entail?

First, it helps to know what is *not* a sufficient proffer: simply pleading an intentional tort is not sufficient to show a reasonable basis for punitive damages. *Lancer Arabians, Inc. v. Beech Aircraft Corp.*, 723 F. Supp. 1444, 1447 (M.D. Fla. 1989); *also see Bistline v. Rogers*, 215 So.3d 607, 611 (Fla. 4th DCA 2017). In *Cypress Aviation, Inc. v. Bollea*, 826 So.2d 1091 (Fla. 2d DCA 2002), the plaintiffs claimed that §768.72, *Fla. Stat.*, did not apply or alternatively, was automatically satisfied, because they alleged fraud and punitive damages may be awarded in fraud cases. The Court stated that even where pleadings allege fraud, the procedures set forth in §768.72 must be followed. *Id.* at 1092. While a fact intensive investigation into the merits is not required, mere conclusory allegations in the complaint are not sufficient. *Id.* at 1340-1341. A plaintiff must plead specific acts of the defendant. *Porter v. Ogden, Newell & Welch*, 241 F.3d 1334, 1341 (11th Cir. 2001); *also see Cat Cay Yacht Club, Inc. v. Diaz*, 264 So.3d 1071 (Fla. 3d DCA 2019) (“Bare allegations are insufficient to support a punitive damages claim.”).

Several courts have set forth the facts they found sufficient to meet the requirement of a “reasonable showing.” While every case will have different facts, the following cases are helpful in illustrating facts that courts have previously found sufficient. In *Wayne Frier Home Ctr. of Pensacola, Inc. v. Cadlerock Joint Venture, L.P.*, 16 So.3d 1006, 1007 (Fla. 1st DCA 2009), the third-party plaintiffs brought claims for breach of contract, fraud, violation of FDUTPA and fraudulent misrepresentation. The First District Court of Appeal outlined the evidence proffered in support of the punitive damages claims: the mobile home delivered was not the one they had agreed to purchase; the third-party plaintiffs never lived in the mobile home that was delivered and promptly rejected it; one of the third-party plaintiffs informed the seller that the delivered home was not the one she had agreed to purchase; an employee of the third-party defendant testified that in the sale of repossessed mobile homes,

the homes could be switched and serial numbers changed on the sale documents without the buyer signing an amended contract; and the purchase contract showed a changed serial number. *Id.* at 1009. The First District Court of Appeal found that these proffered facts, viewed in a light favorable to the third-party plaintiffs, showed a reasonable basis for the recovery of punitive damages and reversed the trial court’s order denying amendment to add a claim for punitive damages. *Id.*

In *Domke v. McNeil-P.P.C., Inc.*, 939 F.Supp. 849 (M.D. Fla. 1996), the plaintiff sought to amend the complaint in order to plead punitive damages. The Court noted that the plaintiff proffered both a factually and legally similar Fourth Circuit case and allegations including “that Defendant had actual knowledge of the alcohol/acetaminophen problem, that Defendant’s intent was to ‘muddy the waters’ in the event of publicity, that Defendant sent a letter to pharmacists and hospitals stating there was no link between liver damage and casual alcohol consumption combined with acetaminophen, and that Defendant has not conveyed to consumers the risk of liver damage or alcohol/acetaminophen interaction to consumers.” The Court found that the Plaintiff had “provided a reasonable showing for a reasonable basis for a claim for punitive damages.” *Id.*

This reasonable showing can be made by evidence in the record or proffered by the claimant that provides a reasonable basis for the recovery of punitive damages. The “reasonable showing” is not required to be made in the complaint. *In re Johnson*, 453 B.R. 433, 437 (Bankr. M.D. Fla. 2001). A proffer is simply a representation of what evidence the party proposes to present and is not actually evidence itself. *Estate of Despain v. Avante Group, Inc.*, 900 So.2d 637, 642 (Fla. 5th DCA 2005). The trial court need not evaluate and weigh testimony and evidence; rather, the standard that applies is similar to the standard that applies to determine whether a complaint states a cause of action. *Id.* at 644. In *Despain*, the Court stated that a “reasonable showing by evidence in the record would typically include depositions, interrogatories, and requests for admissions that have been filed with the court” when it held that an evidentiary hearing is neither contemplated nor required by §768.72, *Fla. Stat.* *Id.* at 642. In fact, the Fifth District Court of Appeal has held that the term “proffer” refers only to timely filed documents and excludes oral representations of additional evidence first made during the hearing on the motion to amend to assert claims for punitive damages. *Varnedor v. Copeland*, 210 So.3d 741, 747 (Fla. 5th DCA 2017).

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Happy New Year and Thank You from Three Rivers Legal Services!

By Marcia Green

2020! What a difficult year. Just review the *Forum 8* since March and the majority of the articles are related to COVID-19, working remotely, court and office closures, and keeping up our spirits.

Through it all, however, Three Rivers Legal Services still experienced the support and dedication this legal community provides by serving the needs of our low-income residents.

During the EJCBA November Zoom luncheon, we took the opportunity to recognize and thank our volunteer attorneys. The recognition event is one of my favorite annual activities but I really missed the opportunity to shake hands, experience hugs and share a meal with the attorneys in our community who have provided services, made donations and otherwise supported Three Rivers Legal Services in the past year. The support provided enables us to address the legal issues facing the community and we could not do it without your help. Because of the volunteers and donors in our legal community, all of our accomplishments are greater. It is a pleasure to share this list of very special lawyers with you.

Attorneys on this list recognize that there are residents in our circuit who need help in navigating the legal system, who face poverty, domestic violence, homelessness, and age and disability related impairments. This year, we add those who are experiencing the dramatic changes brought on by the COVID pandemic to the list of those needing assistance. Thank you for caring about these residents, and helping to make so much possible.

Amy Abernethy	Mark Fisher	Charles W Littell	Joshua Silverman
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Matthew A Dukes	Maury Ivey	Bill Salmon	Wanda M. Yachnis
Jeff Dollinger	Heinrich A Izaguirre	Elizabeth B Sanchez	Nick Zissimopoulos
Thomas L Edwards	Philip Kabler	M Paul Sanders	
Lisa C Elliott	Randy M. Kammer	Gail E Sasnett	My sincerest apologies to
Sharon Ehrenreich	Aaron Kelley	Peggy Schrieber	any names
Brooke Eliazar-Macke	John J. Kelly	Scruggs Carmichael &	omitted in error or
Stephanie Emrick	Charles Koval	Wershow	enrolled or donated
Peter CK Enwall	F Parker Lawrence II	Michael Sechrest	after publication deadline
Michelle L Farkas	Tee Hoa Lee	Ernest Sellers Jr.	
Julie Fine	Eric J Lindstrom	Juan Sierra	

We can make it easy for you to join this list!

Volunteer attorneys are referred cases in your area of expertise. We can provide training opportunities and information to assist you in other areas of law. You can participate in clinics or outreach events. Clients are pre-screened for financial eligibility and, if needed, we can connect you with other attorneys willing to discuss the case with you and share their legal expertise. We provide malpractice insurance coverage, litigation cost reimbursement (if feasible and available). Once our offices are open again for in-person meetings, we can offer office space for you to meet with your referred client.

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Probate Section Report

By Larry E Ciesla



The Probate Section meets via Zoom on the second Wednesday of each month, beginning at 4:30 p.m. Matters of interest, including those specifically discussed during recent meetings, are set forth below (in no particular order).

LEGISLATIVE UPDATES

The legislature passed and the governor signed CS/HB 505, portions of which became effective on July 1, 2020 and portions of which became effective October 1, 2020. The bill contains several new provisions in the areas of probate, trust and estate planning.

PRECIOUS METALS

Section 1 is intended to clarify existing law on the subject of the treatment of coins and bullion for probate purposes. A new Section 733.1065, *Florida Statutes*, has been created to specifically provide that precious metals such as coins and bullion are treated as tangible personal property. One of the purposes of this provision is to make it clear that such assets may properly be the subject of a separate list disposing of tangible personal property pursuant to Section 732.515, *Florida Statutes*. In addition, it is intended to serve as an aid in a potential will construction dispute regarding the scope of a provision in a will containing wording substantially along the lines of "I give to my beneficiary all of my tangible personal property."

INDISPENSABLE PARTY

Section 2 amends FS 731.201(32), defining the word "Property" so as to expressly include causes of action held by the decedent at the time of death. Section 6 amends FS 733.612(20) to add the newly defined term "property" to the scope of prosecution of claims by a personal representative. These provisions are intended to address the indispensable party issue raised by cases such as *Parker v. Parker*, 185 So.3d 616 (Fla. 4th DCA 2016), wherein the court permitted decedent's heirs to pursue a claim for return of assets conveyed by decedent during his lifetime without the necessity of opening an estate and having the claim prosecuted by the personal representative.

CHANGES TO NOTICE OF ADMINISTRATION

Section 5 contains an amendment to Section 733.212(2)(e), *Florida Statutes*, effective October 1, 2020 requiring the addition of the following words in the portion of the Notice of Administration dealing with elective share: "[That] unless an extension is granted pursuant to s. 732.2135(2), [an election to take an elective share must be filed on or before the earlier of the date.....]."

Section 5 further contains a new subsection (f) of Section 733.212(2), *Florida Statutes*, to provide that the Notice of Administration must now include a provision notifying the recipient that he or she may be prevented from bringing a trust contest if he or she fails to contest the will. This provision is intended to address the so-called "Pasquale trap," which is described in the decisions in the cases of *Pasquale v Loving*, 82 So.3d 1205 (Fla. 4th DCA 2012) and *Lewis v SunTrust Bank, Miami, NA*, 698 So.2d 1276 (Fla. 3rd DCA 1997) wherein the 4th and 3rd DCA's held that, where a trust is incorporated by reference in the decedent's will, failure to bring a will contest precludes a trust contest.

NEW ATTORNEY DISCLOSURE

Sections 8 and 9 of the bill contain lengthy provisions dealing with the situation where an attorney is both personal representative and attorney for the personal representative and where an attorney is both trustee and attorney for the trustee. In such a case, a new disclosure is required to be made by the attorney to the client before the estate planning document in question is executed. Forms for the required disclosures are contained in the bill.

The new requirements are effective for all such estate planning documents executed on or after October 1, 2020. Note that prior to the effective date of the new law, a different disclosure was required for these cases.

SMALL ACCOUNTS

CS/HB 1439 became effective as of July 1, 2020. This bill contains several provisions relating to disposition of small bank accounts after the death of the account holder.

Section 1 amends Section 655.059, *Florida Statutes*, dealing with confidentiality of banking records.

A new sub-section, 655.059(3), has been created to provide that a financial institution is now permitted to disclose to specified persons the existence and amount of a "qualified account." Specified persons include decedent's spouse, decedent's adult child if decedent left no spouse, decedent's adult descendant if decedent left no spouse or adult child, and decedent's parent if decedent left none of the foregoing. A qualified account is any account solely in decedent's name with no pay-on-death or other survivor designation.

Pursuant to the provisions of new sub-section 655.059(4), if the decedent is not survived by one of the foregoing persons, a financial institution is permitted to disclose the existence and amount of any account in decedent's name to the petitioner of a petition for administration of the estate under \$50,000.00 of a non-resident decedent (FS 734.1025); the petitioner of a petition for summary administration (FS 735.203);

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Probate Section Report

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or to the petitioner of a petition for disposition without administration (FS 735.301); and to the petitioner of a petition for disposition without administration of intestate property in small estates (new FS 735.304 described below).

Section 2 of the bill contains various provisions for the distribution of bank accounts containing up to \$1,000.00 in cases of intestacy where no probate proceedings have been commenced within six months from the date of death. New FS 735.303 contains the form to be used for an affidavit from a family member attesting to the foregoing. Section 3 of the bill creates new FS 735.304, which is similar to existing FS 735.301 (disposition without administration).

The new statute provides the following: (1) it applies only to cases of intestacy; (2) the decedent must have been dead for at least one year; (3) no probate proceedings can be pending in Florida; and (4) it is limited to disposition of exempt personal property under FS 732.402, personal property exempt under the Florida Constitution, and non-exempt personal property, the total of which does not exceed the sum of \$10,000.00 plus the amount of funeral-related expenses up to \$6,000.00 [FS 733.707(1)(a)] and plus the amount of reasonable and necessary medical and hospital expenses of the last 60 days of decedent's last illness [FS 733.707(1)(d)].

Disposition without administration is permitted upon receipt by the court of an affidavit submitted by an intestate heir. Requirements for the affidavit are set forth in the new statute and include the necessity of a diligent search and inquiry for decedent's creditors, a proposed plan of distribution (including payments to creditors if applicable) and service by formal notice upon ACHA if the decedent was over 55 years of age and upon heirs who have not joined in the execution of the affidavit.

WITNESSES TO LEASE

HB 469 became effective on July 1, 2020. This bill amends FS 689.01 so as to eliminate the requirement for the signature of the lessor of a lease of real property for a term in excess of one year to contain two witnesses. The purpose of the new law is to eliminate the "gotcha" defense of lack of witnesses frequently raised by a lessee in a suit by the lessor to enforce the terms of the lease. Caselaw in such situations contains so many failures of courts to enforce the witness requirement that the smart people who decide these things decided that it would just be simpler for all concerned to eliminate the requirement.

TYPOS IN LEGAL DESCRIPTIONS

CS/HB 886 also became effective on July 1, 2020. This bill creates new FS 689.041, which contains a procedure that in very limited circumstances can be used

to cure a title defect arising from an error in a legal description contained in a deed which is not a quit-claim.

The new statute contains the form for a Curative Notice (affidavit) which, when recorded in the public records, operates as a correction of the erroneous deed, including any subsequent erroneous deeds which may have perpetuated the original error. Application of the statute is limited to a single error or omission in the legal description. Other limitations are described in the statute.

Of particular note is the fact that the Curative Notice need not be executed by a surveyor or by the grantor of the defective deed. Rather, it may be executed by anyone (i.e., lawyer) who has examined or caused to be examined the public records, including the affected deeds, in the county in which the real property is located.

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The Probate Section meets via Zoom on the second Wednesday of each month at 4:30 p.m., and all interested parties are invited to attend. Please contact Jackie Hall at (352) 378-5603 or jhall@larryciesla-law.com to be included on the e-mail list for notices of future meetings.

Legal Assistant/Paralegal Position

The Miller Elder Law Firm in Gainesville, Florida is looking for a Legal Assistant/Paralegal, preferably experienced in Estate Planning/Probate/Guardianships/Litigation. Proficiency in Microsoft Word is required. Knowledge of Trialworks, Timematters, Lawgic is a plus. Salary range \$17.00-\$27.00/hr commensurate with experience. Please respond by email to: rachelb@millerelderlawfirm.com, with a cover letter, resume, salary requirements and two references.



ADR

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RETIREMENT ACKNOWLEDGEMENT: We will take the time again this month to congratulate William Cervone on his retirement as State Attorney. It is odd entering 2021 without Bill as our State Attorney. Bill has represented our circuit as State Attorney in both the state and the national associations, and is an acknowledged and accomplished leader in both groups and his rising tide floats the boats of all lawyers and judges in our circuit. We will miss Bill for his legal expertise and for his professionalism, but we think he will still be found at any given Gator sports event. Bill: Please accept our sincere 'thank you' and best wishes for a great retired life.



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 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. via ZOOM
- 18 Birthday of Martin Luther King, Jr. observed, County and Federal Courthouses closed

Seeking Punitive Damages

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As such, it is clear that when seeking to add a claim for punitive damages, facts are key. While it is not necessary to *prove* the claim at this stage, conclusory statements or allegations of the elements of a claim are not enough.

TRLS Thank You!

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We will make every effort so that your experience is positive while recognizing that our clients are often needy and confused with the legal system.

For those who donate money, we thank you for your kindness and generosity. As you are aware, funding for Three Rivers Legal Services is a constant challenge. Our program survives with good management, dedicated staff, and generous donors and volunteers.

Please contact me to volunteer at marcia.green@trls.org or call me at 352-415-2327. Check out our website at <http://www.trls.org/> for opportunities to volunteer and to donate. We look forward to your continued support and working with you in 2021.

February 2021 Calendar

- 3 EJCBA Board of Directors Meeting via ZOOM, 5:30 p.m.
- 5 Deadline for submission to March Forum 8
- 10 Probate Section Meeting, 4:30 p.m. via ZOOM
- 14 Valentine's Day – show the love!
- 15 Washington's Birthday (observed) – Federal Courthouse closed
- 16 ZOOM Meeting of EJCBA & Alachua County Medical Society, 6:00 p.m. – 7:15 p.m., Panel discussion of "General Insights for Practicing Physicians."
- 19 EJCBA Monthly Luncheon Meeting, Stacey Steinberg, Professor, UF Levin College of Law and author of *Growing Up Shared*
- 26 EJCBA Annual Professionalism Seminar, Keynote Speaker the Honorable Karen K. Specie, Chief United States Bankruptcy Judge for the Northern District of Florida, "COVID: 19 Professionalism Lessons for Lawyers," via ZOOM