

FORUM 8

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Eighth Judicial Circuit Bar Association, Inc.

June 2020

President's Message

By Cherie Fine



I would like to begin with a heartfelt “thank you” to the Eighth Judicial Circuit Bar Association for giving me this opportunity to lead you from 2018-2020. My service has been unexpectedly long and unbelievably remarkable. Thank you to the officers and members of the board for all you have done to make my time as president doable and fun!

Without you, the goals that we set this year would not have been accomplished. Your quick response to the challenges presented by the pandemic are a credit to your dedication and commitment to our local bar association.

I started the year discussing the need for balance in our lives and saying, “It may not be possible to stay in perfect harmony, but we need to find time for each part of the circle to be balanced. My challenge to us is to think about the areas we are neglecting and see if we can act to fill in the circle.” Well, life has certainly presented us with time to focus on filling in the wheel of life circle:

1. Family & Friends
2. Health
3. Physical Environment
4. Significant Other/Romance
5. Career
6. Money
7. Fun & Recreation
8. Personal Growth

I know the current situation has presented unprecedented challenges. This is a scary time. For most of us, the pandemic has upended our entire lives: important projects may have been halted, many folks have lost jobs, long planned trips abandoned, and we have gone weeks (and counting) without hugging our family and friends. And, as a southerner, not hugging is just crazy talk. However, I believe it has also given us

time to look at our lives and focus on what is really important. It has provided us with a chance to practice mindfulness: to be present in the moment and not worry about the future as we certainly can't control what will happen next. I hope the EJCBA has provided our members with comradery, ways to assist them in their practice, and a way to give back; in other words, ways to Gather, Grow and Give!

As I recap our year, we as an association continued to grow and reached new heights. We had fun in Cedar Key, provided support with our annual holiday project, golfed together to support the guardian ad litem program, and explored the purposes and need for professionalism at our annual seminar. And the Diversity Roundtable, one of our last in-person events before the quarantine, was a remarkable success; plans for next year's events are underway.

As a bar, we continued our tradition of CLE's and various speakers at our monthly luncheons, which were moved to Zoom and continued with no cancellations. Although we have postponed our in-person annual dinner, election of the new board and officers is proceeding as our by-laws require (with some modifications). We anticipate a Zoom swearing-in on June 4, 2020 – please be sure to join us!

I congratulate Mr. Phil Kabler as the incoming President and Mr. Evan Gardiner as the incoming President-Elect! I wish them and their Board all the best in 2020-2021. May their term be less challenging as it goes along!

In closing, I am humbled and honored to have been able to serve the Eighth Judicial Circuit Bar Association and our legal community these past couple of years. I wish you a safe, happy and mindful future!

Fondly,
Cherie

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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:

*****NOTE NEW MAILING ADDRESS*****

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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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Alternative Dispute Resolution

By Chester B. Chance and Charles B. Carter



Mediation: Cases Filed and Cases Tried

We came across an article from The Florida Bar from 2012. The article was entitled “Panel Fears the Declining Number of Jury Trials May Undermine the Public Confidence.”

The referenced panel was a committee appointed by The Florida Bar to study the decline of jury trials. As of the committee report in 2012, over the prior decade the number of cases filed had increased, but the number of cases resolved by jury trials had declined both as a percentage and in real numbers.

Decline in civil trials: in Florida, from 1962 to 2002, the yearly number of federal civil dispositions rose from 258,876 to 501,320, but the number of trials declined from 11.8 percent to 1.8 percent. During the same period, federal criminal filings went from 33,110 to 76,827, while the number of cases resolved at trial declined from 15 percent to 4.7 percent.

For Florida circuit courts, in 1986-87 there were 155,407 civil dispositions with 1.6 percent resolved by trials. By 2009-10, there were 401,463 civil dispositions but only .2 percent resolved by jury trials (879 trials.)

For Florida criminal cases there were 130,575 criminal dispositions and 3.1 percent (4,091) jury trials in 1986-87. In 2009-10, the number of criminal case dispositions numbered 200,710 and there were 4,112 jury trials (2.1 percent.)

An ABA study for the years 1976-2002 determined that the number of trials in civil cases dropped from 36% to 15.8% between 1976 and 2002 (trials included both jury and bench trials). The ABA study determined that in criminal cases over the same time period trials dropped from 8.5 percent to 3.3 percent.

The conclusion is easily drawn from the above referenced studies: trials are decreasing as a percentage of case filings.

We want to focus on the study as it relates to civil cases.

The Florida Bar report suggested several reasons for the decline in civil case trials. Increasing use of mediation, arbitration and alternative dispute resolution methods were significant reasons. Another reason was the expense of a trial and preparing a case for trial. The expenses involved discovery, expert witness costs, attorney fees, and the ability of the client or attorney to

fund the associated costs. The use of proposals for settlement was another reason referenced.

As a result of a decreasing percentage of cases being tried, concern was expressed that fewer members of the public come into contact with the court system through jury service, and the use of mediation meant parts of the court system were private and not part of the public record associated with trials.

There was also concern that fewer trials (as a percentage) means fewer lawyers maintain trial skills.

Interestingly, while worried that the referenced statistics would result in lower funding for the court system, The Florida Bar report concludes, “There is a need for more courtrooms and more judges to try cases. While the number of jury trials has decreased the caseloads of the courts have greatly increased....”

With respect to alternative dispute resolution having an effect on the number of cases tried, we say “excellent.” The *purpose* of mediation, both pre-suit and during litigation, is precisely to decrease litigation costs and jury trials. If mediation plays a part in the decreasing percentage of cases tried, that is a glowing endorsement of mediation. Likewise, if the use of proposals for settlement means a decrease in trials, we note that result is consistent with the *purpose* of a PFS.

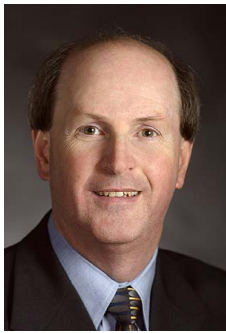
If resolution at mediation means fewer citizens are serving as jurors, we contrast that concern with several positives: the appreciation expressed at mediation by parties as to the savings in time and money; the privacy of mediation; the ability to “think outside the jury box” and reach resolutions that are not options at trial; and the potential for resolution of all issues important to the parties, not just the relevant legal issues.

Mediation has been an intricate part of the litigation/ court system in Florida for 30 years or more. We should never become complacent with nor take for granted its success rate or efficacy. And we should not lose sight of its purpose.



Criminal Law

By William Cervone



As the summer months are upon us many of you will enjoy, among other things (and coronavirus shutdowns permitting), the pleasures of boating in Florida weather and waterways. To end this publishing year, I am therefore passing along the following cautionary tale, the legal aspect of which is that, yes, one can be guilty as a principal to manslaughter by culpable negligence.

Our tale unfolds in Bay County where one Mary King and two others were planning a boating trip, supposedly to hunt gators. The four legged kind, not the two-legged ones that pummeled FSU last November. But I digress.

Along with Mary were her friend and soon to be co-defendant, Thomas, and an un-named person who now goes by the pseudonym Victim. Their plan included harvesting other people's crab traps, which, while illegal, isn't manslaughter. And, yes, alcohol, apparently in copious quantities, was involved. As the plans of such people often do, things quickly went awry when their boat began taking on water. Our Victim, quite impaired, refused to help bail water out of the boat, apparently because it wasn't his boat. Don't look for logic in any of this. Look instead for Mary and Thomas to have gotten rather annoyed. This in turn led to Mary punching Victim and stabbing him with a flounder gig, which is described to me as being something like Neptune's trident. Thomas joined in and did some stabbing and punching as well, finally telling Victim that he must leave the sinking boat due to his disrespect for it. Respect is, I can tell you, a big thing among the criminal element. It's akin to honor among thieves. In any event, Victim elected to swim away, heading towards some trees along the shore while holding his, I assume, bleeding side.

Mary and Thomas, meanwhile, marooned in a useless and partially sunken boat, waited for hours and were eventually rescued. While waiting, Thomas told Mary that he'd sliced Victim up but not bad enough to kill him. Upon being rescued, Mary and Thomas had some vague story about Victim having swum to shore but they omitted the parts about beating and stabbing him with the gig. As such stories are prone to do, this one eventually fell apart, leading to a search party and the eventual discovery of Victim, floating face down, bruised, lacerated, and bearing multiple puncture wounds. Not shockingly, his BAL was .30 but the ME determined that he had drowned and that none of his other injuries contributed to or caused his death

Mary was charged as a principal to manslaughter and, in her own right, aggravated battery. For our legal

lesson, after being summarily convicted and on appeal, the First DCA held that under these facts Mary knew that Victim was quite drunk and had been stabbed by Thomas. She did nothing to help him when Thomas ordered him overboard, should have known that what was going on subjected Victim to potentially lethal consequences, and even "neglected" to mention to her rescuers what had really happened. All of that constituted culpable negligence and reckless disregard for Victim's life. Conviction affirmed. I don't believe I've ever encountered a case of being a principal to manslaughter before but there it is for you. Mary got 14 years out of all of this. Thomas got 15.

Incidentally, Mary also disputed her independent conviction for aggravated battery, claiming among other things that the gig wasn't a deadly weapon. In fairly gruesome detail that argument was rejected, the DCA noting among other things that the recovered gig was not sharp, thus requiring extra force to penetrate Victim's skin, thus proving her intent and the gig's status as a deadly weapon.

All of this said, I suppose the lessons to be learned include that 1) you can be criminally responsible for someone else's negligence, 2) drunks do not make good boating companions, and 3) you are your brother's keeper. That said, have a pleasant, safe and COVID-19 free summer.



Becoming a Part of the Accomplishments

By Marcia Green



As we head into summer, still facing uncertainties due to the Coronavirus crisis, Three Rivers Legal Services looks back at our positive accomplishments while looking forward to our continued ability to serve. With your help, we can make a difference to those in need in our community.

The recently released Three Rivers 2019 Annual Report highlights the benefits received in our 17-county, rural north Florida service area. For example, our Home Sweet Home grant from the Florida Bar Foundation enabled two staff attorneys and several pro bono attorneys to save family homes through probate and bring lawsuits to clear title. The work enabled families to qualify for homestead exemption and obtain loans and grants for needed home repairs. Estate planning allowed the elderly to know that their homes would stay in their families moving forward. More than 160 individuals and families received services and at least 15 established home ownership, resulting in more than \$600,000 in value added to the community.

A review of the Annual Report, which can be found at <https://trls.org/> shows that, in total, the efforts of the staff and dedicated volunteers returned more than \$3.5 million dollars into our communities. As examples, our services help

- the disabled and unemployed receive benefits to which they are entitled
- victims of domestic violence obtain divorce and other relief
- children gain access to educational supports and benefits
- taxpayers resolve disputes with the Internal Revenue Service
- heirs obtain home ownership through probate and lawsuits to clear title
- homeowners and renters maintain housing when facing foreclosure or eviction.

We hope that you might be interested in becoming a part of the team that brings about these accomplishments. Your unique ability to practice law, your knowledge and your expertise can make the kind of change and benefit that ultimately serves us all.

Three Rivers needs you because the needs of our low-income residents and neighbors remain great. We know that number is increasing daily as our communities and the nation undergoes the massive changes brought about by current events. We are in this together and are so grateful for the efforts of our volunteers and donors; we rely on you, your time and your contributions.

Through our combined efforts, a home may be saved from foreclosure, a family may become safe from abuse, funds may become available to fix a home, or an elderly person may have their end-of-life paperwork put in order. Your participation is an essential part of the mission of Three Rivers.

Please go to our website <https://trls.org/> and review our 2019 Annual Report; discover how you can become a volunteer or donor. Feel free to contact me directly at marcia.green@trls.org. Become a part of the team that is accomplishing so much in our communities.

NOMINEES SOUGHT FOR 2020 JAMES L. TOMLINSON PROFESSIONALISM AWARD

The deadline for submitting nominations for the recipient of the 2020 James L. Tomlinson Professionalism Award has been extended to **Friday, August 7, 2020** as a result of the EJCBA postponing its 2020 Annual Dinner to September 10, 2020. The award will be given to the Eighth Judicial Circuit lawyer who has demonstrated consistent dedication to the pursuit and practice of the highest ideals and tenets of the legal profession. The nominee must be a member in good standing of The Florida Bar who resides or regularly practices law within this circuit. If you wish to nominate someone, please submit a letter describing the nominee's qualifications and achievements and submit it to Raymond F. Brady, Esq., 2790 NW 43rd Street, Suite 200, Gainesville, FL 32606. Nominations must be received in Mr. Brady's office by Friday, August 7, 2020 in order to be considered. The award recipient will be selected by a committee comprised of leaders in the local voluntary bar association and practice sections.

From Office to Home: One Firm's Experience

By Peg O'Connor



By the time you read this, Turner O'Connor Kozlowski will have been telecommuting for more than two months. The transition has been seamless. We decided the weekend before the March 17 stay-at-home order to move our team to a work-from-home status. The decision was made easier by the fact that just a couple of weeks prior, we had invested in a new phone system with

VoIP (Voice over Internet Protocol) capability, which allowed us to bring our phones home, plug them into our routers, and use them as if we were sitting in the office.

Of course, some of us chose to leave the phones at the office—after all, isn't one of the benefits of working from home having uninterrupted production time? In those cases, when we need to make a call, we use a cell phone app that routes the call through our VoIP provider, making it appear on the other end as though the call is coming from the office.

Access to documents has been easy as well since we switched a while ago to an online practice management system and to Office 365. Our practice management software, Practice Panther, is completely web based, allowing us to capture time, generate invoices, create and update task lists, and log calls from anywhere. Office 365 provides not only essential programs such as Word and Excel, but its file-storage system, OneDrive, allows us to collaborate and edit a single document, updated in real time, rather than sending endless versions back and forth. On a PC, OneDrive can be mapped as a regular network drive, which many times is faster than using the web version.

One of the biggest benefits to online software is waving goodbye to hours of downtime and hundreds of dollars spent in tech support. Web-based programs are updated constantly by the provider, which removes the need to search for, download and install updates on your own. Files are always backed up, protecting against the possibility of lost or corrupted files (or having the files held ransom by malware). And don't forget repair costs. If a physical server malfunctions, it's down for the count until your IT guru can diagnose and fix the problem (which sometimes means purchasing expensive new hardware).

For us, working from home has been a technological piece of cake. But we've always prided ourselves on fostering a strong sense of camaraderie in the office and didn't want to lose that connection, so we established a daily and weekly Zoom routine for ourselves. Each day we have a brief daily Zoom session for the attorneys to brainstorm issues and report on case progress, while the

whole team gathers on Zoom every Thursday morning to review files, check in with each other, and shoot the breeze about nothing in particular. It's been fun to see furry "coworkers" making occasional appearances on screen. Plus, our associate Caleb Kenyon has an adorable one-year-old son who also makes a cameo once in a while.

We've found the Zoom meetings to be a big help in maintaining a sense of continuity and allowing us to quickly identify and address any needs that arise. For example, during one of our weekly get-togethers, our paralegal and legal assistant told us they were having difficulty working with Acrobat files at home. We realized that they were using the Reader version of the software, which doesn't allow the user to do necessary things like rotate, extract or rearrange pages. We purchased the Pro versions for their laptops, and now they can do everything they need without having to make a special trip into the office.

Notarizing has also been trouble free. The Florida Supreme Court has temporarily relaxed restrictions on remote notarization, doing away with the need to attend a class (that costs money) and to use special notary software (that costs even more money). All that's needed is a video connection to enable the notary to positively identify the witness. Our staff has successfully notarized a number of affidavits and other documents this way, and the individuals signing the documents have appreciated the convenience.

Given that health experts believe we will need to go through a few cycles of social distancing and stay-at-home orders before the virus is conquered, it's worth it to ensure that your office can quickly and easily switch to a work-from-home status as needed. Investing in web-based programs and VoIP phone equipment is the best way to ensure you have full access to your files no matter where you are, whether it's on your couch in your pajamas or in a cabin in the Colorado mountains. And of course, don't forget the personal connection. Stay in touch with your associates, supervisors, and staff. Ask them what they need. Check to see how they're managing at home. Share your Zoom screen and show everyone a funny meme to get their day started on a lighthearted note.

Our firm has found plenty of benefits to the move and very few downsides. It's given us a lot to think about regarding the future of "work" and the various forms it will take. For now, we know our team is safe at home and still able to crank out quality work to serve clients without a hitch.

Silent Admissions

By Siegel Hughes & Ross

Most of us are aware that a statement made by a party is considered a “party admission” and is an exception to the rule excluding hearsay. § 90.803.18(a), Fla. Stat. Fewer may be aware that, under certain circumstances, a party’s silence may also be introduced against the party as a party admission. Section 90.803.18(b), Fla. Stat., provides for admission of “[a] statement of which the party has manifested an adoption or belief in its truth”: an adoptive admission.



An adoptive admission need not be an express adoption. A party may adopt the statement of another by conduct, or even by silence. “An adoptive admission occurs either when there is a direct expression by the adverse party assenting to the statement of another or when the conduct of the adverse party circumstantially indicates the party’s assent to the truth of the statement.” *Jones v. State*, 127 So.3d 622 (Fla. 4th DCA 2014). Adoptive conduct may be mere silent acquiescence. “All that is required to find an adoption of another’s statement is some form of agreement, or in other situations, *silence under circumstances where the statement was so accusatory in nature that ...silence may be inferred to have been assent to the truth.*” *Phillip Morris USA, Inc. v. Pollari*, 228 So.3d 115, 126 (Fla. 4th DCA 2017) quoting *State v. Hernandez*, 875 So.2d 1271, 1274 (Fla. 3rd DCA 2004) (emphasis added).

Whether silence constitutes an admission is dependent on the circumstances. “The essential inquiry thus becomes whether a reasonable person would have denied the statements under the circumstances.” *Nelson v. State*, 748 So.2d 237, 243 (Fla. 1999). The factors to consider are:

1. Whether the statement must have been heard by the party;
2. Whether the statement was understood by the party;
3. Whether the subject matter of the statement is within the party’s knowledge;
4. Whether there were any physical or emotional impediments preventing the party from responding;
5. Whether the personal make-up of the speaker or his relationship to the party or event are such as to make it unreasonable to expect the party to deny the statement; and,
6. Whether the statement would, if untrue, call for a denial under the circumstances.

So, if an opposing party is silent, or by other behavior, indicates a belief in the truth of a third party statement, that statement is admissible against that party.

Reopening Your Workplace: Liability Waivers for COVID-19

By Laura A. Gross



While businesses are being pushed by federal and state governments to reopen, there has been limited federal and state guidance on how to do so safely. The truth is there is still a lot of information we do not know about COVID-19, its transmission, and our individual susceptibilities to this infection. Without specific government-enforced protocols that might offer businesses a safe harbor from liability, it remains uncertain as to what preventative measures will count as reasonable if challenged by a claim of coronavirus exposure and how businesses will be held accountable for coronavirus exposure as they reopen.

While a liability waiver cannot protect against a workers’ compensation claim based on coronavirus exposure, it could protect a business from coronavirus exposure claims by nonemployee subcontractors, interns/volunteers and customers. Nonemployees are relied upon heavily in some industries. Building construction and real estate companies employ subcontractors. Nonprofits use interns. Many professional services, like law, engineering, internet technology, architecture, and veterinary medicine, require physical interaction with their clients.¹ Other businesses send employees into customers’ homes for repair and maintenance. The exposure problem can occur in or out of the workplace through normal business operations.

In Florida, liability waivers that purport to deny an injured party the right to recover damages from another who negligently causes injury are strictly construed against the party seeking to be relieved of liability. This means ambiguous or confusing language will not be enforced. A liability waiver must clearly identify what is being waived. Here, the waiver should acknowledge that coronavirus transmission risks are inherent in increased interaction with other individuals and exposure to surfaces to which other individuals have also been exposed. The waiver should also acknowledge that such risks are present in the workplace, outside jobsite, and as a result of working with the business.

¹This article does not address healthcare providers as they have federal tort immunity for the administration of covered countermeasures in response to COVID-19 through the Public Readiness and Emergency Preparedness Act (“PREP Act”) and other state-based liability protections.



GERALD T. BENNETT AMERICAN INN OF COURT

The Gerald T. Bennett Inn of Court redirected the funds they would have spent catering their April meeting to feed first responders at local emergency rooms. The Inn regularly meets at Blue Gill restaurant, so when they were unable to meet in person, they asked owner Bert Gill to use the funds normally spent to cater the event to prepare individually packed meals.

Mildred's provided, at cost, 180 lunches and dinners. The attorneys from the Inn delivered meals throughout the day. This was a win-win because it allowed the Inn to support a local business while feeding our community.

In lieu of an in-person meeting, the group still gathered for a virtual meeting via Zoom to finish the Inn year. The Bennett Inn is now accepting applications for the 2020-2021 Inn year. If you are interested in joining, please visit www.bennettinn.com



EJCBA Conducts Annual Election Via Email Due to COVID-19

The EJCBA is pleased to announce the outcome of our annual election of board members and President Elect Designate which was conducted this year by email, due to COVID-19 restrictions. 62 votes were cast, all in favor of the slate of nominees presented by the EJCBA Nominations Committee, and there were no "floor nominations" made.

The following are the 2020-2021 EJCBA Officers and Directors:

President: Philip Kabler

President-Elect: Evan Gardiner:

President-Elect Designate: Robert Folsom

Immediate Past President: Cherie Fine

Treasurer: Sharon Sperling

Secretary: Dominique Lochridge-Gonzalez

Board of Directors:

Jan Bendik	Mikel Bradley	Ray Brady	Jodi Cason	Derek Folds
Norm Fugate	Dean Galligani	Alexis Giannasoli	John "Eric" Hope	Abby Ivey
Frank Maloney	Mac McCarty	George Nelson	Peg O'Connor	Lauren Richardson
Scott Schmidt	Dawn Vallejos-Nichols			

The new Officers and Board of Directors will be sworn in remotely on June 4, 2020, by the Eighth Judicial Circuit Chief Judge James P. Nilon.

We look forward to seeing you at the Annual Dinner and "Welcome Back" that will be held on the evening of September 10, 2020 where we will hold a ceremonial swearing-in.

June 2020 Calendar

- 4 EJCBA Annual Meeting & Dinner (***DINNER POSTPONED; PORTIONS OF ANNUAL MEETING MAY PROCEED VIA ZOOM – WATCH EMAIL FOR INFORMATION***)
- 10 Probate Section Meeting, 4:30 p.m., Chief Judge’s Conference Room, 4th Floor, Alachua County Family & Civil Justice Center (***CONFIRM WITH SECTION CHAIR***)
- 16 Family Law Section Meeting, 4:00 p.m., Chief Judge’s Conference Room, Alachua County Family & Civil Justice Center (***CONFIRM WITH SECTION CHAIR***)
- 15-19 2020 Annual Florida Bar Convention, Virtual Only (check The Florida Bar website for information)

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