

# FORUM 8

Volume 67, No. 2

Eighth Judicial Circuit Bar Association, Inc.

October 2007

## President's Letter

by John Whitaker



How good is it to live in The Eighth Judicial Circuit? Being born and raised here I feel privileged, lucky and maybe a little spoiled. I had the opportunity to live in another city for 4 years during my undergraduate studies, and I have traveled and stayed in countless other cities large and

small, but I chose to come home for law school and stay and raise my family here. So here it is, my top ten reasons why the Eighth Judicial Circuit is a great place to live and practice law.

10. The weather. Ok so August in a suit is not great but it sure beats Cleveland in January.
9. Home of Tom Petty and the Heartbreakers-enough said.
8. University of Florida Homecoming, with the annual parade that still shuts down schools in Alachua County. Not perfect, as there is still court on that Friday, but still a great tradition. This also includes Gator Growl, the biggest student-produced pep rally in the world. This leads to my next item on the list which occurs the Thursday night before the homecoming parade.
7. The EJCBA's annual dinner at Cedar Key. I am a sucker for tradition and this is a great one. The Bar Association has been going to Cedar Key for as long as anyone still practicing can remember. Though it has evolved, it is still a great way to socialize with your fellow bar members, and there is

- usually at least one good story every year.
6. Outdoor activities. From fishing and hunting to just being outside, there is something for everyone. We have the Itchetucknee, Suwannee, and Santa Fe rivers, countless springs, Payne's Prairie, The Hawthorne Trail and numerous lakes. In fact, there are more than 10 state parks inside our circuit.
5. Close to almost anything you're looking for yet far enough away for peace and quiet. From Jacksonville to Orlando and the beaches on the Atlantic Ocean we really are centrally located.
4. It just looks nice. From Gainesville to the surrounding cities and communities in the circuit they just seem to do it right. I won't name other places to compare but you don't have to travel far outside the circuit to see some cities that have no visual appeal or apparently any sign ordinances, either.
3. Diversity, with the University of Florida and the Hippodrome State Theatre in Gainesville and numerous festivals and art shows in every county, there is little bit of everything in the Eighth Judicial Circuit.
2. The legal community. I have handled just enough cases outside of this circuit to know that we have a great group of lawyers in this circuit. The word professionalism means something around here and I am proud to be a lawyer in this circuit.
1. The Florida Gators- this is my list so if you don't like the Gators, well that's too bad. The last few years have been good to the mighty Gators, how could you live anywhere else?

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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 5<sup>th</sup> of the preceding month and can be made by email to [dvallejos-nichols@avera.com](mailto:dvallejos-nichols@avera.com).

### About This Newsletter

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

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

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

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

# Three Rivers Legal Services is a United Way Partner Agency

by Marcie Green

Our community is in the height of United Way fund raising and Three Rivers Legal Services is proud to report that we are an active Community Care Fund Partner Agency of the United Way of North Central Florida.

Three Rivers provides community support through a part-time office located at Florida Works, located on S. W. 13<sup>th</sup> Street. This office is a convenient location for low income individuals who are working to get off of welfare through education and employment training. Our new part-time paralegal, Leydyluz Symphorien, a graduate of the University of Florida College of Journalism, assists individuals seeking to eliminate some of the legal barriers to employment. Most commonly, she helps people with the expunction of minor criminal records which might hinder their ability to obtain jobs. This project is also supported by a CAPP grant from Alachua County.

This year, Three Rivers also received grants from both the United Way and Alachua County to work with homeless individuals applying for disability benefits. The goal of this project, spearheaded by attorney Nancy Wright, is to assist homeless clients with their initial application for disability benefits. It is our hope that, with a complete and in-depth application for benefits, the client will be granted disability at the initial application stage. The claims process is slow and enormously difficult, especially for those individuals who, because of homelessness and often mental illness, have difficulty navigating the cumbersome process. The ultimate goal is that by helping people obtain their disability benefits, we can help to eliminate their homelessness. The grants will pay for a part-time paralegal coordinator of the project.



Alarion Bank Representative Robert Page, sponsor of September bar luncheon

Monday, October 22, 2007 is

Three Rivers Legal Services Night

at all Alachua County  
SUBWAY Stores.

SUBWAY Stores in Alachua County  
will donate \$1.00 to  
Three Rivers Legal Services  
from every Footlong Sub sandwich sold  
between 5:00 and 7:00 p.m.

*This donation is made by SUBWAY Stores  
though a commitment to United Way of North  
Central Florida.*

Thank you! Hope to see you at a neighborhood  
SUBWAY Store on Monday, October 22  
between 5 - 7 p.m.

## EJCBA October Luncheon Topic

**Everything you wanted to know about  
collaborative divorce but were afraid to  
ask\*\***

Please join us at Steve's Courtyard Café on October 12, 2007 when Pam Schneider of Wershow, Schneider & Arroyo, P.A. speaks on "collaborative divorce." Collaborative divorce returns control of their personal and financial lives to the divorcing parties, enabling them to determine the timing of their dissolution of marriage, as well. The divorce process occurs prior to any filing with the court and thus is much more confidential, with only the final agreement filed with the court. It helps the parties to work together in the best interest of their entire family assists them in maximizing the benefits each receives from their financial resources. It also generally costs less and is less painful than traditional divorce.

*\*\* This program was originally scheduled for the September luncheon, but due to time constraints had to be rescheduled for October.*

# Eighth Judicial Circuit Bar Association, Inc.

## Mission Statement:

The mission of the Eighth Judicial Circuit Bar Association is to assist attorneys in the practice of law and in their service to the judicial system and to their clients and the community.

Please send a check payable to EJCBA in the amount of \$75.00, along with your completed application to:

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P. O. Box 127  
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Email: [execdir@8jcba.com](mailto:execdir@8jcba.com); [chris@tharpfamily.net](mailto:chris@tharpfamily.net)

Interested in prepaying for your luncheons (non-refundable)? Please include an additional \$90.00 (for luncheons from September through May).

**Voting Members:** This category is open to any active member in good standing of the Florida Bar who resides or regularly practices law within the Eighth Judicial Circuit of Florida.

**Non Voting members:** This category of membership is open to any active or inactive member in good standing of the Bar of any state or country who resides within the Eighth Judicial Circuit of Florida, or to any member of the faculty of the University of Florida College of Law.

## Holiday Project Coming!

It is nearly time to begin preparations for the great Holiday Project at Duval Elementary School. We already have some volunteers but we will need many, many more to help light up the faces of these very special youngsters. EJCBA board members and volunteers will be soliciting your participation – either by donations of cash (\$50 per gift bag) or, what's even better, merchandise (you shopping and filling up the gift bag(s) yourself). Please join in – you can pick up your gift bags at the EJCBA luncheon on October 12. Let's make this holiday season the best ever! **GET INVOLVED AND SPREAD THE JOY!!!!**

## Renewal/Application for Membership

**Membership Year: 2007-2008**

Check one: Renewal  New Membership

First Name: \_\_\_\_\_ MI: \_\_\_\_\_

Last: \_\_\_\_\_

Firm Name: \_\_\_\_\_

Title: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Street Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Eighth Judicial Circuit Bar Association, Inc.

Telephone No: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

Fax No: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

Email Address: \_\_\_\_\_

Bar Number: \_\_\_\_\_

List two (2) Areas of Practice: \_\_\_\_\_

Number of years in practice: \_\_\_\_\_

Are you interested in working on an EJCBA Committee? Yes / No

## Make a Note of It

The EJCBA office has a new fax number. If you need to fax us something, the new number is (866) 436-5944. For newsletter submissions, email them directly to the editor at [dvallejos-nichols@avera.com](mailto:dvallejos-nichols@avera.com). Deadlines for submissions are listed in the Forum 8 calendar each month.

# Florida Bar Board of Governors Report

by Carl Schwait



The Florida Bar Board of Governors, at its August 17 meeting in Palm Beach, took the following actions:

- Approved a recommendation from the Board Review Committee on Professional Ethics that advertisements sent by lawyers to other lawyers are subject to Bar advertising rules. This recommendation is based upon the Supreme Court change to the advertising rules. The court declined to adopt the Bar's request for exempt lawyer to lawyer advertising. That overturned a vote by the Standing Committee on Advertising. The board, though, voted to have a moratorium on enforcing that position, as well as on communications sent to former or current clients, while the Bar seeks additional rule changes to be submitted to the Supreme Court.

- Directed the Professional Ethics Committee to draft an ethics opinion on a lawyer's duty of confidentiality to a potential client who, unsolicited, gives the lawyer information about the client or a potential case. Board members said there is a problem when a lawyer agrees to represent a party in a case, and then another party, without checking with the lawyer, sends information with the goal of hiring the attorney for the same case. If the lawyer gets sensitive information from the second party, it could be grounds for disqualifying the lawyer from representing the first party in the case, they noted.

- Approved an amendment to Bar rules requiring written notice when a lawyer accepts a nonrefundable fee, such as a retainer, a flat fee, or an advance fee. Disciplinary Procedure Committee Chair Andy Sasso said many lawyers do not understand the difference between those types of fees and disputes frequently wind up in the Bar's grievance system.

- Heard, during a report from the Citizens Forum, that the Judicial Administration and Evaluation Committee is studying creating a questionnaire for judicial candidates to provide basic background information about the candidates' training, education, civic involvement, etc., for distribution to the public to help educate voters about the candidate's qualifications.

- Heard a report that the Diversity Symposium Planning Committee is looking at revamping the

Bar's Diversity Symposium to attract broader interest and participation. One change will be to hold the next symposium at the Bar's June 2008 Annual Convention.

- Endorsed, as submitted, the three-year-cycle rule amendments for Appellate Court Rules, rules of Judicial Administration, and Family Law Rules.

- Heard annual reports from The Florida Bar Foundation and the Judicial Qualifications Commission.

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## Clerk's Corner



### Electronic Access To Court Records Is Here!

by J. K. "Buddy" Irby, Clerk of the Circuit Court

It has long been my goal to make the court files accessible to members of the Bar on a 24/7 basis. Therefore, I am happy to announce that the Alachua

County Clerk's Office will be offering a free subscription service allowing attorneys of record internet access to electronically view images of all documents\* filed in a case, as well as the case index and progress docket on all cases\*. During this pilot program, the Legal Information Data Access System (LINDAS) will be offered to attorneys at no cost other than a \$50.00 initial set up fee. The previous subscription service and fee will be eliminated as of October 1<sup>st</sup>.

I hope that access to LINDAS will provide a valuable service to our local legal community\*\*. If you wish to obtain a subscriber agreement and access to LINDAS, or would like additional information either about LINDAS or about the subscriber agreement, contact Edward Stiles, Assistant Clerk for Operations, at (352) 374-3663, or his assistant Sonja Mechane, at (352) 491-4406.

\* Where an image exists and it is not for a sealed or otherwise non-public record.

\*\* Pro se litigants will be provided assistance via the Clerk's public access terminals or on a case-by-case basis.

# Building a Family Law Website

by Cynthia Stump Swanson



One of my new year's resolutions for 2007 was to get a firm website up and running. And, let's see – it's mid-September as I write this, and this is still not accomplished. What a job! Care to follow along on my journey of pain?

First of all, I looked at dozens and dozens of other lawyers' websites. I checked all the ones for local family law attorneys, and then went further afield, moving to out of town and out of state lawyers, as well as to websites for attorneys handling other areas of law. I followed every link I could find to yet another attorney or law related website.

You know how on all those renovation shows on HGTV, the kitchen designers tell you to keep a notebook of pages you tear out of magazines showing counter tops and cabinets that you like? Well, I started making lists of things I liked on different sites. On some I liked the colors, on some the arrangement of photos, on some the substantive information. I also kept a list of stuff that was so bad it was horrifying.

I also checked the Florida Bar advertising rules, and followed the discussions reported in the Florida Bar News, of the consideration of a new rule requiring web shoppers to do something "extra" to really make it clear they want the information, so it seems less like an impermissible direct mail kind of advertisement.

So in all this, I accidentally came across some artsy sites ( not lawyers' sites) that I really liked. Checking the credits, I realized a couple that I liked were designed by a Gainesville firm. Bingo! I called the guy, and asked him if he had done any lawyers' sites. He said he had not, but didn't see why he couldn't. I sent him my list of links to good and bad sites, and the Bar rules, and he read it all and came and met with me. We talked about "concepts." Pretty heady stuff.

He went to work designing and I went to work writing text. Sheesh! I would rather have written quite a few appellate briefs than write these brief statements about divorce, post-divorce matters, adoption, and so on. How do you figure out what to write? How do you write enough to provide some useful information, but not provide legal advice? How do you seem friendly, but not like you're looking for new best friends? How do we target our preferred

client type, without sounding condescending? How do we toot our own horns without sounding like we're tooting our own horns?

Next, we had to add photographs into the mix. A bunch of boring text was likely to lose even my own mother's interest. So, our website designer suggested a few photos, and then when they didn't quite hit the mark, he sent me to a stock photo website to pick my own. Oh, my gosh! This was eye opening fun! Type in some search terms, like, say "grandparents" and "child" to illustrate a paragraph about relative adoption; and you get back like 600 photos showing an older man, an older woman, one of each, two of each, sitting, standing, in a car, at a park, on horseback, with one child, with two children, sitting, standing, some sitting and some standing, some are white, some are black, Asian, blonde haired, gray haired, in pink shirts, yellow shirts and so on and so on. You get the picture? I'm telling you, if for some reason you need a picture of a 42 year old man standing next to an orange tree in a blue striped shirt, holding a check book in his left hand with a Great Dane sitting beside him – you just type all that in and there's bound to be one.

What fun and what torture to look through all those photos. Is this photo of a stack of documents better than that photo of a stack of documents? I mean, really, how do you decide if these grandparents are cuter than those grandparents? Or if this couple shaking hands looks like they just reached an amicable divorce settlement or if one is taking out a "hit" on his or her spouse and just agreed on the payment terms?

And of course we needed some photos of us. And what about the inside of our office? Or the exterior? The sign in the parking lot? So, we walked around really noticing things - like the overflowing gutters and cobwebs in the corner on the outside door. Ick! No pictures of that, thank you very much. We have a pretty good looking conference room, but some of the pictures we took made it look like a jail. I'm sure there were a lot better stock photos, but still we wanted some real ones, too. So, one day, we all dressed up and the photographer came and took pictures of us sitting, standing, working, talking, and so on. Then, we all switched blouses and he took some more, to make it look like we own more than one outfit of clothing.

*Continued on page 7*

Now, to the real meat of a website – how does it get noticed by people? And, more importantly, by search engines? Our website designer had us make a list of important words, like “divorce,” “alimony,” “custody,” “adoption,” and so on. He’s “embedding” those words or something like that. Also, he pointed out that we need to change some of our content regularly - that search engines notice when you change things. Great! That means more agonizing blurb writing.

Finally, we had to decide if we wanted a little “contact us” place. How about those people sitting up at 3:00 a.m., looking around on the internet to get advice on whether they should empty out the checking account before they move out, etc.? Do we want them to email us for advice? If so, what would they expect back from us? An email just chock full of personal legal advice? Obviously, we don’t want anybody expecting that. The designer strongly urged us to have that, though. So we wanted some language to thank them for contacting us, but also warning them not to expect to ever hear from us. Or, at least, that’s what I wanted. Everybody else here thought that was rather antithetical to having a website in the first place. So, we compromised and said we’ll call them back “soon.”

OK, so now we have a pretty design, some text, some photos, and a “click here if you really want more information” button. It’s time to proofread. And proofread. And proofread some more. It’s September, and I’m still proofreading!

I did take the plunge and ask some friends, family members and colleagues to take a look at our work in progress and provide some feedback. It was mostly pretty positive, and in the fond hope that our website will actually be finished by the time this article is printed, I’m going to provide the site address. If it requires a password, then that’s a sure sign we’re still working on it and I’ll be so frustrated, I won’t want to hear about it. You can find us at [www.swansonlawcenter.com](http://www.swansonlawcenter.com), hopefully.

**Advertisement**

Gainesville Executive Center, 309 NE 1st Street, has space and virtual offices available. Please contact Patricia at 352-374-7755.

**Federal Bar Association****Chapter Update**

The Federal Bar Association’s Gainesville Area Chapter recently kicked off its 2007-2008 activities with a meeting and wine tasting at Ti Amo restaurant. The Federal Bar Association is a professional association for judges and lawyers involved in federal judicial and administrative practice. The FBA gives its members a chance to meet with the federal bench and bar on issues of practice and procedure at local, regional and national levels, participate in discussions and seminars on substantive law topics, assume leadership positions at the local and national level, and network with other professionals in the field of federal practice. Persons wishing to join the FBA can do so at <http://www.fedbar.org/join.html>. For more information on the local Chapter contact Stephanie Marchman (marchmansm@cityofgainesville.org 352.334.5011), Rob Griscti (rgriscti@earthlink.net 352.375.4460), or Gil Schaffnit (gaslaw@gmail.com 352.378.6593).

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**The Annual Cedar Key Dinner is Upon Us Once Again!!**

Fellow bar members, believe it or not, it is that time of year again. The annual Cedar Key dinner is held each year on the Thursday before UF Homecoming weekend, so this year we will hold our feasting and festivities on November 1 (write that down). It will be here before you know it.

We are asking attendees to please bring some of their favorite desserts, as CGAWL has once again decided to hold its dessert contest/reception immediately following the dinner. As is our tradition, we will begin with a cocktail hour at approximately 6 PM to watch the beautiful Cedar Key sunset (which the US Navy tells us will be at precisely 6:46 p.m. with twilight ending at 7:11 p.m.). We’d love for you to be a part of this age-old tradition of the EJCBA. Watch for your invitation to arrive by mail and remember: you must have your 2007-2008 dues paid in order to attend this members-only event. If you have any questions or comments, please contact John Whitaker at (352) 375-6229 or at [jdw@kinsellandassociates.com](mailto:jdw@kinsellandassociates.com).

See you on Thursday, November 1, 2007. As always, a very special thank you to our Cedar Key sponsor, Attorney’s Title Insurance Fund.

# Welcome Wagon

by Dawn M. Vallejos-Nichols

The Office of the City Attorney, Gainesville has just recently had the pleasure of welcoming attorney Stephanie Marchman into their office. According to Stephanie, however, the pleasure is all hers – she is ecstatic at being back in Gainesville, where people are involved in the community and care about one another and speaks very positively about her job and her co-workers, telling her boss, Marion Radson (who she describes as “very good at what he does and good to work with”), what a great job it is because there is never a boring day. Now that’s something any employer would be proud to hear.

Stephanie was born and raised in New Port Richey, Florida, where her mother and one sister still live. Although she grew up on the river and spent most weekends boating on the Gulf (sounds pretty darn enjoyable), she was drawn to the big metropolis of Gainesville and the University of Florida for her undergraduate and law school educations. Stephanie earned two undergraduate degrees with Honors in 1999 - a B.A. in Political Science and a B.S. in Business Administration (Finance). While a law student at the Levin College of Law, she interned for the Honorable Barbara J. Pariente at the Supreme Court of Florida; she graduated *Magna Cum Laude* in May, 2004.



Following graduation from law school, Stephanie had the opportunity to clerk for the Honorable William Terrell Hodges at the US District Court for the Middle District of Florida. Her two years with Judge Hodges were a tremendous learning experience – Stephanie relates that Judge Hodges, appointed in 1972 by President Nixon, had such a wealth of experience and knowledge, and she was able to benefit greatly from that knowledge. She drafted orders for every kind of dispositive motion that came before the court, researched legal issues and made recommendations to Judge Hodges; she also assisted the Judge during hearings, conferences and trials. I am told that not only is Judge Hodges a pleasure to work for, but he is also a great story teller and a very funny man!

Following completion of her two-year judicial clerkship, Stephanie joined the firm of Thompson, Sizemore & Gonzalez in August of 2006, a labor and

employment firm in Tampa, where she litigated on behalf of employers. Although she liked the work, Tampa is not Gainesville, and she missed the city that she now calls home. In April, 2007, she and her husband headed back in this direction (although they are currently residing in Dunnellon at her in-laws’ retirement home until they can sell their Tampa home) and Stephanie began working at the City Attorney’s office. Although her position is still being crafted, she is presently working on labor and employment issues and special projects (such as First Amendment issues and the very recent panhandling ordinance), as well as receiving a general introduction into local governmental law. Stephanie is very much enjoying working as a team member with so many experienced attorneys - of the 9 attorneys at the City Attorney’s office, several of them have been with the City for approximately 30 years, and she recognizes how lucky she is to be able to have that history, guidance, and mentoring opportunities.

Is there anyone that moves to Gainesville who doesn’t love the Gators? Certainly not someone who is as anxious to return as Stephanie was. Stephanie and her husband, Brian, who by the way is a school administrator for Florida Virtual School (and formerly a teacher and Vice Principal at P.K. Yonge), go to *nearly all* of the football and *nearly all* of the basketball games, as well as *all* of the championship games!!! They also attend soccer matches and women’s gymnastic meets, as well, which Stephanie says pretty much fills up their social calendar. Other hobbies that she enjoys include reading (now that she is no longer a full-time litigator, she finds she has more time for fiction), visiting her 1-1/2 year old nephew in New Port Richey, and travel; she and her husband are planning a very exciting trip to China in 2008.

Because Stephanie will practice primarily in federal court, she has joined the local federal bar association (see its meeting announcement in this issue) and has plans to assist in making that organization an active local bar. She is also a member of Inns of Court; please introduce yourself to Stephanie at their next dinner program. Welcome back to Gator Country, Stephanie.



# Criminal Law



by William Cervone

This month I thought I'd share with you some historical information that came my way recently. All of what follows is directly from *The Florida Handbook, 1947-48*. Sometimes it's good to look at our past to see where we are today and where we might be going in the future. Sometimes it's also just baffling to do so.

In any event, back in those days Florida observed as legal holidays Robert E. Lee's birthday (January 19<sup>th</sup>), Confederate Memorial Day (April 26<sup>th</sup>), and Jefferson Davis's birthday (June 3<sup>rd</sup>). Shrove Tuesday was also a legal holiday, but only in counties where carnival associations were organized for the purpose of celebrating the day. General Election Day was a legal holiday, too, and might be the one of these that should have survived, although I'm not sure even that would help our pathetic voter turn-out rates. The rest must form some sort of social comment on where our collective heads were in those days, as might their absence from the calendar now.

The 8<sup>th</sup> Judicial Circuit had two Circuit Judges, John Murphree and A. Z. Adkins. Ted Duncan was the State Attorney, as he had been for some time and would continue to be for many years. There were only 15 circuits in the state.

The state Senate consisted of 38 men, including some very familiar names from our area: Charley Johns of Starke, Edwin Fraser of Macclenny, and W. A. Shands of Gainesville. Somehow, Sen. Bert Riddle listed his address as Geneva, Alabama. More familiar names dot the House of Representatives delegations from our counties, including Ira Carter, Jr., of Gainesville, N. D. Wainwright, Jr., of Starke, and Carl O. Drummond of Trenton. All of the names were male.

In an article of some length, then United States Senator Spessard Holland expressed concern that "some of our natural resources have been depleted or diminished" since statehood in 1845. He also commented that "The revision of our State tax system, and of the method of assessing and collecting taxes by the counties, has at last brought order into this field." One wonders what he'd have to say today on those topics.

The largest city in the state was Jacksonville, population 173,065 as of the 1940 census. Miami was close behind and, with Tampa, was one of only

three cities with a population exceeding 100,000. Lakeland was the 10<sup>th</sup> largest city in the state with a population of 22,068. I'm pretty sure there are more people than that now on westbound University Avenue at 5pm on any given Friday. Even then, it was noted that people were moving to Florida because of climate. Gainesville, by far the largest town in the Circuit, had a population of 15,081 in 1945. Many days I wish it still did.

As for higher education, the state had "three outstanding institutions, two for white and one for Negro students," not counting numerous private colleges. These were, of course, the University of Florida, Florida A&M, and Florida State College For Women, which you may know has changed names since then.

Speaking of names, Alachua County was named from a Creek Indian word meaning "grassy" or "marshy." Baker County was named after James McNair Baker, a Confederate Senator and later judge. Bradford County was named for Capt. Richard Bradford, the first Florida officer killed in the War Between the States at the Battle of Santa Rosa Island in 1861. Gilchrist County was named for Albert H. Gilchrist, Governor of Florida from 1909-1913. Levy County was named for David Levy Yulee, a territorial delegate and later United States Senator. Union County derived its name from the obvious common term for unity, which is interesting since I've heard it said that Union's split from Bradford was somewhat acrimonious.

I don't know if any of this means anything. Certainly, it's got precious little to do with the current practice of the law. It does seem worthwhile, however, to appreciate what we were in terms of knowing who we are.

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## “Tempt Not A Desperate Man”: William Shakespeare



by Stephen N. Bernstein

A judge's decision in July to throw out criminal charges against thirteen former employees of the accounting firm KPMG illustrates a problem I see in the Government's pursuit of some criminal cases. In his July 17<sup>th</sup> decision, U.S. District Judge

Lewis A. Kaplin of New York dismissed the charges because he found that the Justice Department had so egregiously violated the constitutional rights of the defendants that allowing the cases to go forward would be wrong. What prompted Judge Kaplin's extraordinary actions was evidence that Federal prosecutors had demanded that KPMG stop paying legal fees for the individual defendants, even though companies commonly pay such fees until employees are convicted. The Justice Department, according to Judge Kaplin, strongly suggested that cutting off legal fees would put the company in the Government's good graces and possibly help it avert indictment. The incentives for KPMG were palpable: just remember the Arthur Andersen accounting firm, which collapsed after Enron-related charges were lodged against it.

The tactic on attorney's fees is one of several contained in the so-called McNulty Memorandum, a Justice Department guide for how prosecutors should proceed with corporate cases. The memo also contains provisions allowing prosecutors to ask companies to waive their attorney-client and work-product privileges, two long-ensconced legal principles. The memo was revised in December and now requires prosecutors to obtain permission from agency headquarters before seeking such waivers. The Department claims the tools were not often invoked and had been used even less frequently since the revisions. These tactics so tilt the scales toward prosecutors and are so potentially damaging to due process that some remedy is needed.

It seems to me that judges, not the legislature, are usually in the best position to keep overzealous prosecutors at bay, and no one wins when corporate crooks get away scott free. Along this same line, I have long argued that the temptation to fudge on the part of a drug dealer/user caught red-handed when given the opportunity to work off his sentence by finding other poor mopes to take his spot in the judicial food chain infects the accuracy of our Criminal Justice

system. I am grateful for the judicial courage of a jurist like Judge Kaplin to reign in such overzealous tactics. This case reminds me of an old Calvin and Hobbes cartoon: Calvin: "Do you believe in the devil? You know, a supreme evil being dedicated to temptation, corruption and destruction of man?" Hobbes: "I'm not sure man needs the help."

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*Author of "ALL RISE", A Novel*

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*\*Books will be available for purchase at \$20.00 per book. A donation of \$20.00 per book will be given to the Eighth Judicial Circuit Guardian Ad Litem Program.*

# Alternative Dispute Resolution

## Successful Mediation: Client Preparation and Client Concerns

by Chester B. Chance and Charles B. Carter



Almost every contested case is ordered to mediation. In the last fifteen years mediation has gone from the exception to the rule. The process is often taken for granted by attorneys who routinely participate in court ordered mediations.

Attorneys often overlook the fact that their clients may have never participated in a mediation, or, at best, had a brief exposure to the mediation process. The word “mediation” itself, let alone the process, may be totally foreign to the client.

Prior to any mediation, counsel should explain the purpose, sequence of events, and role of mediation participants. Of course, part of this pre-mediation preparation should include a review and discussion of relevant issues of law and fact. Any discussion should involve a review of acceptable parameters for resolution. The attorney should also explain any parameters are flexible as information is received and analyzed during the mediation.

Inform your client the process may take time, i.e., you may need to “squeeze the lemon” a bit. Explain how the process is about resolution rather than ego. Determine if your client is angry with the other side and, if so, ameliorate any such feeling.

Explain future litigation costs which can be avoided along with any time delays which are inherent in the litigation, trial and appellate process.

Discuss the concept of risk: what are the odds of obtaining a particular result at trial (and what will it cost!).

At the mediation itself, a good result is more likely if all participants express a belief that a mutually positive outcome is possible. There is no psychological gain in bravado. Within this positive scenario you of course should clearly outline the strengths of your case. However, you should also stress to your clients and to the other side how everyone has a common goal to meet everyone’s needs, address everyone’s risks, and determine an equally fair result. Break down barriers and walls which either your client or the opposing side has constructed by stressing matters which are not disputed.

Determine (with both your own client and

through inquiry with the opposing party) whether there are any non-monetary matters of interest such as an apology, a confidentiality agreement, some type of remedial action, etc.

Explain the lack of tax consequence or the presence of tax consequence to your client. Ask your clients questions such as: What is the best outcome of the case and what will it cost? What is the worst outcome of the case, and what will it cost? What worries you the most about the lawsuit? Will a local jury listen to your position? To your opponent’s position? Did you learn anything new during the mediation? What are the negative aspects of your case or your position? What are your fears about this case? Do you have any questions about any legal issues? What are the future costs of discovery and trial? What time will be spent in future litigation? In future appeals? Most importantly ask: What is your real interest as opposed to your position?

Determine if there are any reasons your client cannot resolve the case at mediation: are there any liens that must be addressed? Are there pending motions which need to be resolved in order to assess ultimate risks? Are there outside factors involving non-parties?

As the mediation process draws to a close, and if resolution has not been obtained, before giving up, remind your clients that if they give up too easily they are throwing away the benefits of the prior mediation process and throwing away all of the savings in time and cost including the cost of that day’s mediation.

Remind your client numerous other parties have reached similar settlements in similar cases.

**SUMMARY:** As an attorney who participates in hundreds of mediations you may have forgotten your client is a tyro to the process, concepts, goals, etc. Your client may be unaware of the very factors which need to be considered before they can make an intelligent decision to resolve a matter at mediation. Taking a moment and putting yourself in your client’s shoes may be the best way to ultimately insure a successful result during mediation.



## October 2007 Calendar

- 1 EJCBA Board of Directors Meeting; Ayers Medical Plaza, 720 SW 2d Ave., North Building, Third Floor conference room – 5:30 p.m.
- 4 Deadline for submissions to November newsletter
- 6 Florida Gators at LSU, TBA
- 10 Probate Section Meeting, 4:30 p.m., 4<sup>th</sup> Floor, Family & Civil Courthouse
- 12 EJCBA luncheon – Steve's Courtyard Café, 11:45 a.m.
- 20 Florida Gators at Kentucky, TBA
- 26 Pupil Holiday/Teacher Workday, Alachua County Public Schools
- 27 Florida Gators v. Georgia, Jacksonville, FL, TBA
- 31 Family Law Section meeting, 4:00 p.m in the Chief Judge's Conference Room (former Grand Jury Room) of the Family and Civil Courthouse

## November 2007 Calendar

- 1 EJCBA Annual Cedar Key dinner, 6 p.m., The Captain's Table
- 3 Florida Gators v. Vanderbilt, TBA
- 5 EJCBA Board of Directors Meeting; Ayers Medical Plaza, 720 SW 2d Ave., North Building, Third Floor conference room, 5:30 p.m
- 5 Deadline for submissions to December newsletter
- 9 EJCBA luncheon – Steve's Courtyard Café, 11:45 a.m.
- 10 Florida Gators at South Carolina, TBA
- 12 Veteran's Day (observed) – County & Federal Courthouses closed
- 13 Reception & Book Signing for Judge Doughtie, 5:30 p.m. at The Resolution Center
- 14 Probate Section Meeting, 4:30 p.m., 4<sup>th</sup> Floor, Family & Civil Courthouse
- 17 Florida Gators v. Florida Atlantic, TBA
- 22 Thanksgiving Day – County & Federal Courthouses closed
- 23 Day after Thanksgiving – County Courthouses closed
- 24 Florida Gators v. FSU, TBA
- 28 Family Law Section meeting, 4:00 p.m in the Chief Judge's Conference Room (former Grand Jury Room) of the Family and Civil Courthouse

Have an event coming up? Does your section or association hold monthly meetings? If so, please fax or email your meeting schedule 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](mailto:dvallejos-nichols@avera.com).



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