

# FORUM 8

Volume 67, No. 10

Eighth Judicial Circuit Bar Association, Inc.

June 2008

## President's Letter



*by John Whitaker*

Final thoughts. It sure is funny how quickly, and how slowly a year passes when you are the President of an association such as this. I would be less than honest if I didn't admit that the monthly request for my newsletter article sent a fear through me that somehow reminds me of my mindset just before the bar exam. I somehow managed to get something written every month.

In reflection I would like to thank all of you who assisted in making this another successful year for the Eighth Judicial Circuit Bar Association. I am delighted with the outstanding contributions (both in time and money) of the members during the annual Holiday Project. Many thanks go out to members and non-members who helped create wonderful holiday memories for hundreds of underprivileged children in our community. There are too many to name but I would like to give special thanks to the State Attorney's Office, Bill Cervone and Margaret Stack. Without Margaret there is no Holiday Project. Bill once again let us use the office as a staging area for all of the gifts (believe me those gifts take up a lot of space). Several of his staff, including quite a few non-lawyers donated their time after hours and on weekends to make this project possible. To all of you who helped, thank you.

My goal this year was not to make any radical changes because I felt the association was, and is headed in the right direction and is fiscally sound. We were able to continue those projects that were successful in the past, such as the Cedar Key Annual Dinner, CLE's and the Holiday Project while looking to offer additional member benefits, such as an updated

website with new features, and a free luncheon. There is always room to improve and next year's president, Margaret Stack, and the incoming board are more than capable. As president, I leave with confidence of continued success of the association, thanks to the hard work of our current and future board members and the members at large. The credit for our success is not mine but yours.

During the summer there will be no newsletters but check your email for information on the upcoming judicial poll and the unveiling of the new website with additional benefits for members and the general public.

I thank you all for the opportunity to serve as president over the last year. Have a great summer and I look forward to seeing you at our first fall luncheon.

## 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 [dvallejios-nichols@avera.com](mailto:dvallejios-nichols@avera.com).

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# CEDAR KEY POLL

by Becky O'Neill, *President Elect Designate*

The annual Cedar Key dinner is a long standing tradition. For years, it has been held on the Thursday before homecoming. In order to better accommodate members, we pose the following questions to EJCBA members.

1. Would you prefer having the Cedar Key dinner on a Friday instead of a Thursday so long as it is not held on a home game weekend?
2. Would you be more inclined to attend the dinner at Cedar Key if the date was on a Friday but not a home game weekend?
3. If it is held on Friday, would you be more inclined to rent a condo and spend the night?

Please submit your responses to: cedarkeypoll@live.com. Feel free to include personal comments on how you believe EJCBA can improve this event. Responses will not be published. Thank you for participating.

## 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**

# Trail Lawyers' Fall From Grace

by Stephen Bernstein



At one time, William S. Lerach, Melvyn I. Weiss, and Richard F. Scruggs would have been described as three of the nation's most feared and successful trial lawyers. Now, all three can simply be called crooks.

Mr. Weiss pleaded guilty to paying kickbacks to plaintiffs he recruited to file a class action lawsuit against companies. He now must pay ten million dollars in fines and face up to 33 months in prison. His former law partner, Mr. Lerach, pleaded guilty to similar charges last fall; he was fined eight million dollars and was sentenced to one year behind bars. Mr. Scruggs, who came to national prominence in the 1990's as one of the lead lawyers in the massive litigation against tobacco companies, pleaded guilty to conspiring to bribe a Mississippi judge. Mr. Scruggs could be in prison for up to five years and be fined \$250,000.

Business figures and others who did battle with the trio are understandably celebratory over these developments. These three, after all, came to be seen as the epitome of all that is wrong with a legal system that believes or that business believes is driven by lawyers who make up legal claims to blackmail corporations into huge settlements. They were, in short, seen as opportunistic leeches, offering little or no benefits to clients in pursuing litigation only to line their own pockets. And each did become wealthy, earning tens if not hundreds of millions of dollars over their legal careers. Apparently the risk of prison time wasn't enough to keep them from stooping to crime in their quest for money.

Businesses are pointing to the terrible trio as proof positive that class actions should be abolished, punitive damages capped and losing parties compelled to pay the legal fees of their opponents. These changes would undeniably tilt the scales of justice in favor of corporate interest, which may be exactly what business wants. I would submit, though, that this imbalance is not necessarily in everyone's best interest.

The truth is that there always have been and always will be voracious and ethically challenged lawyers, just as there have always been and will always be voracious and ethically challenged people in business. Both sets of scoundrels deserve to be punished. What is needed now is a sober discussion about how best to achieve a fairer, more balanced legal system through comprehensive tort reform. Such a system should not be lopsided, but would shield businesses from legal blackmail, just as it would protect the rights of legitimate plaintiffs to win just compensation from negligent businesses that cause them real harm. Smart and ethical business people and lawyers – and yes, there are many who fit the bill – would be wise to start working together to craft such a remedy.



May 2008 Bar Luncheon  
Past President Denise Ferrero

# Alternative Dispute Resolution

## Preparation For Mediation



by *Chester B. Chance and Charles B. Carter*

In the March edition of the Forum 8, components of effective mediation were discussed. Bruce Bitman, past president for the

Florida Academy of Professional Mediators (FAPM) was quoted as saying, “. . . a mediation has no chance of success in any sense of that term if counsel for either side is not prepared.” Another author, Joel E. Davidson, commented that lack of preparation at mediation makes settlement unlikely because counsel may reject a reasonable offer if unprepared, or, perhaps even worst, may be persuaded to accept a resolution that is not advantageous to the client.

The latter principle was illustrated in the following recent decision: *Leff v. Ecker*, 972 So.2d 965 (Fla. 3rd DCA 2007); rehearing denied February 7, 2008.

In *Leff*, the plaintiffs argued that mutual mistake should allow the plaintiff to avoid the parties’ agreement reached at a mediation conference. The court noted a party may avoid a contract by proving mutual mistake regarding a basic assumption underlying the contract. However, the court stated to prevail on this basis the party must also show, “he did not bear the risk of a mistake.”

The court discussed how a party to an agreement bears the risk of a mistake when “he is aware, at the time the contract is made, that he has only limited knowledge with respect to the facts to which the mistake

relates but treats his limited knowledge as sufficient.”

In *Leff*, the court held the record amply established that plaintiff went into the mediation conference without a clear picture of what the policy limits were for



the incident in question. “In fact, this was plaintiff’s first question at mediation. Notwithstanding this limited knowledge, plaintiff chose to go ahead with the mediation and entered into an agreement at the end thereof. Despite his admitted suspicions about the policy limits, plaintiff made the decision to enter into the agreement.” *Leff* at 965.

The court lectured the plaintiff by stating the doctrine of mutual mistake was not created to relieve litigants of agreements entered into improvidently. The court described the all-out efforts plaintiff later engaged in following the mediation to ascertain what policies applied, policy limits, etc. and noted those efforts could have been performed before the mediation. The court reversed the trial court’s order denying defendant’s motion to enforce the settlement agreement reached at mediation and remanded it to the trial court for entry of an order enforcing the settlement agreement.

*Leff* illustrates Joel Davidson’s admonishment that lack of preparation for mediation may result in a party being persuaded to accept a resolution where, in this instance, too little was received. A point reinforced by a panel of the Third District Court of Appeal.

You and your guest(s) are cordially invited to the Eighth Judicial Circuit Bar Association's

# Annual Dinner

June 12, 2008 | Cocktail hour at 6:00 p.m. | Dinner at 7:00 p.m.

Hilton UF Hotel & Conference Center

1714 SW 34th Street, Gainesville

Speaker: Coach Urban Meyer

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# Family Law: St. Louis and ARTS

by Cynthia Stump Swanson



I am sorry to say that I was not at the April Family Law Section meeting. So, if anybody went, I certainly was fair game to be the topic of discussion. While I sincerely doubt that was the case, perhaps some of the topics from this year's columns and other meetings may have been discussed. This year, we have covered such topics as the need for family lawyers to sometimes be the bearers of bad news (No, the Judge will not likely award you 100% of the marital assets); the gearing up of the new Fla. Stat. §61.13001 titled "Parental Relocation with a Child;" the use of parenting coordinators in high conflict cases; my journey to create a new website; the new certification program for collaborative family law and the bad reputation of family law trials; as well an exploration of flat fees and professionalism in family law.

At our meetings, we had presentations by Ramona Chance and Jodi Cason on real estate issues for family lawyers; from Bob Muni and Gayle Seymour at the mortgage department of M & S Bank, we received some insight into the sub-prime lending market and its implosion; and from Ruth Angaran and Lisa Winn from Counseling Associates, P.A., discussion about a course called "New Beginnings. Judge Griffis taught us how to make contempt orders stick. Dr. Gerald Kish from the North Florida Evaluation and Treatment Center and Leah Vail from Meridian pointed out for us that one of the significant differences between a mental illness and a personality disorder is that the former is often treatable and symptoms can be ameliorated and even eliminated; whereas personality disorders are not easily treated.

I missed the April meeting, because I was attending the annual conference of the American Academy of Adoption Attorneys in St. Louis. I had never been to St. Louis before and was impressed that the conference was scheduled around two home Cardinals games. Also, St. Louis has a fabulous asset in Forest Park, the site of the 1904 World's Fair. This huge park (500 acres, which is larger than Central Park in NYC) is right in the middle of the city and is home to the St. Louis Zoo, an art museum, history museum, and science center (complete with IMAX theater and planetarium), baseball fields, soccer fields, a sculling center, tennis courts, three golf courses, and a photo setting so beautiful, there were three bridal parties waiting their turns for photos the day we were there.

And you know what? Admission to all of this is FREE. And we in Gainesville have to get private funding to build a soccer field or a tennis court. What a difference in vision and planning.

Anyway, the AAAA conference was excellent, and particularly had a very interesting presentation from some lawyers on the cutting edge of ARTS - Assisted Reproductive Technology law. You know - that's where a couple freezes some embryos, then gets divorced, and one or another of them wants custody of the embryos, or wants them destroyed. Other scenarios engendering litigation have been where the embryo storage facility loses or accidentally destroys the embryos; and where information about diseases or other defects have been negligently or maliciously withheld from "customers." Are embryos property? Do bailment-type theories apply? Are liquidated damages clauses appropriate in these storage contracts? What is the "value" of a "wrongful birth?" Not all assisted reproductive technology cases have as happy an ending as the "Baby Mama" movie (which actually was funnier than I thought it would be).

We also had sessions on due process, putative father registries, the Indian Child Welfare Act (ICWA), and the new versions of the Interstate Compact for the Placement of Children (ICPC). Say, did you all know that Steve Pennypacker is the new ICPC Compact Administrator for Florida?

On another note: General Magistrate Nancy Wilkov has asked me to pass along this information. There are more than 30 children and teens right now in Alachua County dependency court that could benefit from the representation of an attorney ad litem. The number of children in need of representation is going to continue to grow, as the Guardian ad Litem program is unable to represent children in all dependency cases due to the current budget crisis.

An attorney ad litem might be dealing with issues such as placement, educational needs, mental health and medical treatment, sibling visitation, and independent living program benefits. The advocacy will include working with DCF and other agencies in meetings and staffings, as well as attending regularly scheduled hearings, filing motions on behalf of the child and advocating in court.

A few examples: We have children and teens who want to be placed with friends or family members who

*Continued on page 7*

## Family Law

*Continued from page 6*

have had home studies denied by DCF; an attorney advocating on their behalf might be able to convince the court to override a denied home study. We have children and teens who receive Social Security benefits that are diverted by DCF to repay the cost of foster care; there is a process by which an advocate can seek a fee waiver so that a greater percentage of the benefits are directed to meet specific needs of the child. There are children and teens who are not receiving adequate counseling services, there are children who change schools every few weeks and never get the appropriate testing or IEP services to meet their needs. Our teens in foster care are eligible for a wide range of services through the independent living program; budget cuts and program constraints mean that these teens will more than ever need an advocate to make sure they get all the benefits to which they are entitled.

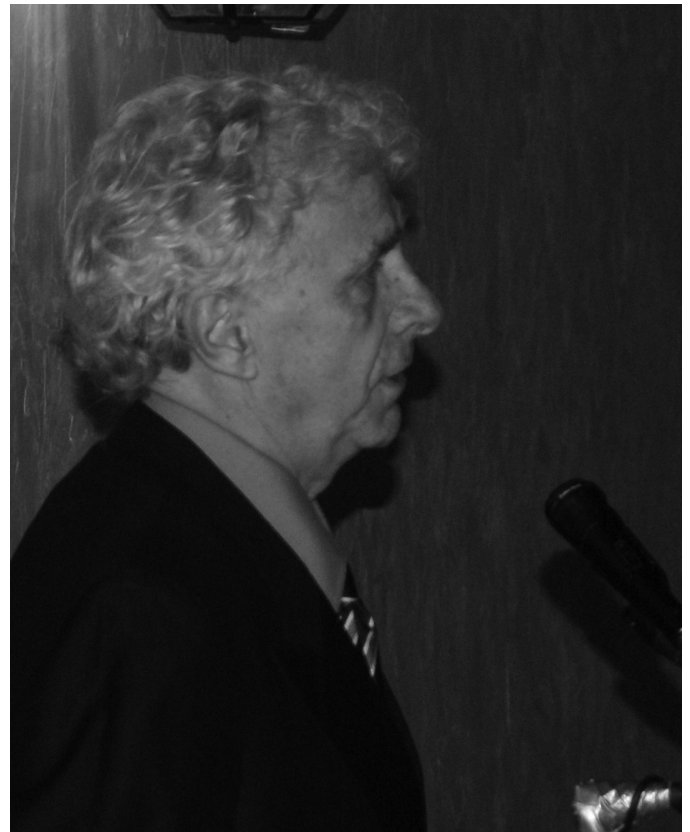
We also have children in the dependency system and teens aging out of the system with some special legal needs: immigration issues, Social Security disability issues, the need for appointment of a Guardian Advocate to make medical decisions; creation of special needs trusts. We would love to have some attorneys who would be willing to accept appointment for a specific issue if they are unable to commit to general representation of the child, or who would perhaps be willing to provide assistance to other attorneys ad litem or GAL attorneys on some of these specialized issues.

You can go to <http://www.guardianadlitem.org/index.asp>. There's a link on the left side of their home page to pro bono attorney training, which has a wealth of information on the GAL Fostering Independence Project, which aims to pair pro bono attorneys with older teens aging out of foster care. There is also some more general information on representing children in dependency cases. Or contact Ms. Wilkov at [naw@circuit8.org](mailto:naw@circuit8.org), or Mary K. Wimsett at [mwimsett@gmail.com](mailto:mwimsett@gmail.com) for more information. The training would not be required; they'll take anyone who is willing to volunteer. But the training is helpful, it's free, and gets you some CLE credit.

There will not be any Family Law Section meetings in June, July and August. We will start up again in September. We meet on the last (not the fourth) Wednesdays of each month at 4:00 p.m. in the Chief Judge's Conference Room in the Alachua County Family and Civil Justice Center. If you know anybody who wants to get on or off this Family Lawyers email list, please email me at [cynthia.swanson@acceleration.net](mailto:cynthia.swanson@acceleration.net). Likewise if you have some ideas for programs, topics or speakers. Have a great summer! RETIREMENT

## Party for Johnny Kearns

Johnny Kearns, who has served 35 years in the 8th Circuit Public Defender's office and has been Deputy Public Defender since 1984, is retiring and we're throwing a little party!! Please join us on Wednesday, June 25 from 5 p.m. to 6:30 p.m. at Savannah Grande. This is a community event and the public is invited to celebrate the retirement of an outstanding public servant. There will be food and a cash bar.



May 2008 Bar Luncheon  
Professor Fletcher Baldwin

### June 2008 Calendar

- 12 EJCBA Dinner – Hilton UF Hotel & Conference Center (34th St. & Hull Road); Speaker – UF Football Coach Urban Meyer, 6:00 p.m.

# Criminal Law



by William Cervone

“An ounce of parenting is worth a pound of policing.”

I can't take credit for this quote. It comes from Circuit Judge Israel Reyes of Miami who was a part of a panel discussion I participated in at last year's

Florida Bar convention. The Judge, who I do not know but who introduced himself as having been a police officer before becoming an attorney and who I also think was a prosecutor before taking the bench, was addressing a question about why there are so many people in American prisons

On almost the same day that the panel discussion was held FDLE released some updated crime stats for Florida. Those stats showed a continuing decline in crime rates across the state. More recent stats have shown an increase statewide but not, thankfully, in Alachua County and the 8<sup>th</sup> Circuit as a whole. Stats can be what you want them to be, of course, and our local crime rates, along with the state's, are sharply lower regardless of the current numbers than they were a decade or so ago. Crime will, however, never be at zero.

Maybe not co-incidentally, both of those events coincided with the culmination of a special legislative session that was supposed to bring property tax relief to Floridians. The flip side of that coin was the dire predictions, mostly from local governments, of social services cuts that would be required to accommodate revenue shortfalls that reduced property taxes will cause. Those predictions are rapidly coming true as the most recent legislative session has imposed even deeper cuts in social services, including the justice system.

If you stick around anything long enough you start to see patterns and cycles. I've been around the criminal justice system more than an ample time to be at that point. Crime goes up, crime goes down. Bureaucracies organize, re-organize, re-name themselves, and re-organize some more. Legislators promise tax cuts, then impose fees instead. One thing is a constant, however, at least in my view: family stability and structure is the fabric of our society and the more we tear it apart the more chaotic our society will become.

There are some common threads that permeate the culture of our criminal courtrooms. Defendants have and may never have had a stable family life. There is, perhaps, no father present at all, or if he is present he is distant and un-involved. Mothers are so young that they still need mothering themselves. Both parents are so self-consumed, possibly because neither had the maturity to be a parent to begin with, and interested in their own pleasures that child rearing is a distant second, third or worse on their agenda. Grandmothers are trying to raise grandchildren or great-grandchildren when they are at an age where they should never have to shoulder that responsibility. Our neighborhoods, the churches and faith community, the school system, the multiple social agency networks that we have are all being asked to substitute for family, mom and dad. And all of that is to say nothing about another side of this complex problem, which is the all too frequent cry of unfairness or oppression raised by anyone who is disciplined by a teacher or school administrator for mis-behavior.

All the policing in the world cannot stop crime if basic values are not instilled early. If children do not learn to grow into responsible adults who recognize such fundamental principles as the property and personal rights and freedoms of others, crime will continue to go up and down and up again.

I have no solution to this. I have no elixir to pass out that will make everyone behave civilly. But I do know this: “An ounce of parenting is worth a pound of policing.”

## Advertisements

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

**Space available for sole practitioner**; includes use of conference room, kitchen, parking and copy machine. Call Pete Enwall at 376-6163.



# Clerk's Corner



by Buddy Irby, Clerk of the Circuit Court

The 2008 Legislature's budget for the upcoming fiscal year contains a number of court cost and filing fee increases. Some of the increases are minimal, while others are quite substantial. All will take effect on July 1. A complete list of the increases will appear on the Clerk of Court's website. Below are some of the most significant changes. Please note that the amounts listed are base fees; most court filings also are subject to additional fees totaling \$5 pursuant to Sections 28.2401, 28.241, 34.041 and 44.108, Florida Statutes. Check with the Clerk's Office for total filing fees applicable to each case type beginning July 1.

COST/FEE	PREVIOUS AMOUNT	NEW AMOUNT
<b>Filing Fees - County Court</b>		
Eviction Action	\$ 75.00	\$265.00
Small Claims \$501-\$2,500	\$150.00	\$170.00
Small Claims over \$2,500	\$250.00	\$295.00
Garnishment/Attachment/Replevin	\$ 75.00	\$100.00
<b>Filing Fees - Circuit Court</b>		
Garnishment/Attachment/Replevin	\$ 75.00	\$ 85.00
Circuit Civil Complaint	\$250.00	\$295.00
<b>Filing Fees - Probate/Guardianship</b>		
Disposition of Personal Property	\$100.00	\$115.00
Summary Admin. value \$1,000 or more	\$200.00	\$225.00
Summary Admin. value less than \$1,000	\$100.00	\$115.00
Formal Admin./Guardianship	\$250.00	\$280.00
Guardianship of Person	\$100.00	\$115.00
Determination of Incompetency	\$100.00	\$115.00
<b>Filing Fees - Appeals</b>		
Notice of Appeal – County to Circuit	\$250.00	\$280.00
Circuit to DCA – Circuit Clerk fee	\$ 50.00	\$100.00
<b>Service Charges</b>		
Certified Copy	\$ 1.50	\$ 2.00
Administering an Oath	\$ 3.00	\$ 3.50
Issuing a Subpoena	\$ 6.00	\$ 7.00
Eminent Domain deposit	\$150.00	\$170.00
Document preparation	\$ 6.00	\$ 7.00
Approving a bond	\$ 7.50	\$ 8.50
Prep. Record on Appeal, per instrument	\$ 3.00	\$ 3.50

# Dues Statements are Coming! Donate your Time or your Money!

by Marcia Green

As Three Rivers Legal Services settles into our 30<sup>th</sup> year of providing civil legal services to North Central Florida, we need your assistance to ensure that those who would otherwise be unable to afford legal help can get it. As all of you know, the huge increase in the cost of living is creating havoc in the community and the needs of those living on-the-edge-of and in poverty have increased tremendously. While Three Rivers is enjoying the benefits of an energized staff, more than ever our resources are stretched thin and the community needs have never been greater.

Three Rivers' once general practice office now provides services that span the gamut from routine hearings to complex federal litigation along with self-help clinics, community education and outreach. Our consumer practice (extremely critical in times of economic downturn) has grown as more individuals and families come in facing foreclosure and debt collection. We continue to work in the fields of landlord-tenant law, family law, public benefits, employment and general civil legal services. The work of pro bono attorneys expands these services as do the hundreds of hours provided by volunteer law students.

Our expanded funding base includes the Legal Services Corporation, Elder Options, United Way, Florida Coalition Against Domestic Violence, Victims of Crime Act, the Florida Bar Foundation, AmeriCorps, a private family foundation, county funds and the State of Florida Access to Civil Legal Assistance. All of these sources, though, are facing the same tough times and decreases that we are locally.

Soon Florida attorneys will be receiving Florida Bar dues statements in the mail. This is an excellent time to look at the work you have done and reflect on your activities of the past year.

If you discover that you have not met the Florida Bar's aspirational goal of providing 20 hours of *pro bono* service, please consider signing up and becoming a volunteer with Three Rivers. Alternately, we ask that you donate at least the suggested \$350 per year to Three Rivers Legal Services in lieu of providing services. Your contribution will not only help to support the efforts of Three Rivers, but it will also provide matching funds necessary to obtain grants from other funding sources.



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