FORUM 8

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President's Letter

By Margaret Stack

Spring is (slowly) on the way. We are so fortunate to live in such a beautiful area where the flowers and trees provide such a gorgeous display. It is also the season of festivals galore. In keeping with all this activity, your Board of Directors has been busy planning things that will (hopefully) be of interest to you in a number of ways.

By the time you read this, each member should have received an e-mail with a link to our web site (8jcba.org) and a password. This link should take you directly to our web site. When you get there you will be prompted to change your password. You can check your information and change anything that's not right. Please check carefully as the information now on the web site was put on by the web designers and may not be accurate. I've already discovered, to my chagrin, that they have my fax number listed for both my fax and my phone number! Also, they have put 2008 where it says "member since" regardless of how long you've been a member. If you have any problems, please feel free to call me at (352) 377-8940 and I'll get it taken care of.

For those of you who have been asking when we would have a new directory, you'll be happy to hear that we are going to have it available at our web site in PDF format. Members will be able to download it and print as many copies as they need.

A group of Third Year law students participating in a Public Service Fellowship through the Center for Government Responsibility at the law school have invited April Charney from the Jacksonville Area Legal Aid to put on a workshop about FORECLOSURE DEFENSE. This seminar is scheduled for Saturday, March 28 from 8:00 A.M. to 4:00 P.M. at the law school. They have applied for CLE credit, including 1.5 to 2 hours of Ethics. I have been told that there will be about 500 pages of written materials plus CDs. The cost is $75.00 for non EJCBA members, $50.00 for EJCBA members who pre-register ($65.00 at the door), $25.00 for Government or 501(c)(3) attorneys and paralegals and law students get in free. Breakfast and lunch will be provided. This is a great opportunity to get some really inexpensive CLE hours and to support a worthy cause.

EJCBA'S CHARITY GOLF TOURNAMENT – Mac McCarty has been hard at work putting this event together. It will be held May 1, 2009, at the Mark Bostick Golf Course at the University of Florida. Entry fee is $100.00 per golfer with lunch, prizes and a reception. Such a deal! Plus any proceeds will benefit our Holiday Project! Sponsorships are available as follows: Signature at $1000.00 which includes four free entries; $500.00 Gold and $200.00 Silver. Mac reports we need GOLFERS…surely we have enough lawyers and their friends to make this a success. Volunteers are also needed for a variety of jobs. So please sign up. Call Mac at (352) 336-0800 or e-mail him at MMcCarty@NFlaLaw.com. We will have flyers in the newsletter and at the Luncheon meetings to make it really easy to participate in this event.

Remember…membership has its privileges!

The officers of the Eighth Judicial Circuit Bar Association for the year 2008-2009 are:

Margaret Stack
President
PO Box 1437
Gainesville, FL 32601
352 374-3670
352 491-4488 (fax)
mmstack@att.net

John D. Whitaker
Past President
224 SW 2 Ave
Gainesville, FL 32601
352 375-6229
352 375-6652 (fax)
jdw@kinsellandassociates.com

Rebecca O'Neill
President-Elect
720 SW 2 Ave., Ste 360A
Gainesville, FL 32601
(352) 733-0030
(352) 733-0052 (fax)
oneilr@shands.ufl.edu

Elizabeth Collins
President-Elect Designate
PO Box 850
Gainesville, FL 32602-0850
(352) 372-4381
(352) 376-7415 (fax)
ecollins@dellgraham.com

Marynelle Hardy
Secretary
201 E. University Avenue
Gainesville, FL 32602
(352) 374-3636
mnh@thor.co.alachua.fl.us

Sharon Sperling
Treasurer
2830 NW 41 St., Ste. C
Gainesville, FL 32606-6667
352 371-3117
352 377-6324 (fax)
Sharon@sharonsperling.com

MEMBERS AT LARGE:

Nancy Baldwin
309 NE 1st St
Gainesville, FL 32601
(352) 376-7034
(352) 372-3464 (fax)
baldwinnt@cox.net

Ray Brady
1216 NW 8th Ave.
Gainesville, FL 32601
352 378-6118
352 378-8530 (fax)
rfbrady@bellsouth.net

Pamela Brockway
P O Box 1437
Gainesville, FL 32601
(352) 374-3670
(352) 491-4488 (fax)
brockwayp@sao8.org

Deborah E. Cupples
2841 SW 13 St, G-327
Gainesville 32608
(352) 273-0600
(352) 392-8727 (fax)
Cupples@law.ufl.edu

Denise Ferrero
Past President
2312 NW 14th Place
Gainesville, FL 32605
352 372-9999
352 375-2526 (fax)
drferrero@yahoo.com

Kathleen Fox
PO Box 1930
Alachua, FL 32616-1930
(386) 462-5157
(352) 538-2172 cell phone
(386) 462-1996 (fax)
kathleen@kcfoxlawoffice.com

Evan George
4400 NW 23rd Avenue, Ste. A
Gainesville, FL 32606
(352) 378-5603
(352) 378-5604 (fax)
edglaw@gmail.com

Leslie Haswell
2233 NW 41st Street, Suite 700-A
Gainesville, FL 32605
(352) 373-3800
(352) 373-8991 (fax)
leshaswell@aol.com

Brian Kramer
1 Southeast First Ave.
Gainesville, Fl. 32602
352-376-5242
352-375-0690 (fax)
Kramer@scruggs-carmichael.com

Mac McCarty
926 NW 13th Street
Gainesville, FL 32601-4140
(352) 336-0800
(352) 336-0505
mmccarty@nflalaw.com

Liz McKillop
P.O. Box 850
Gainesville, FL 32602-0850
(352) 372-4381
(352) 376-7415 (fax)
emckillop@dellgraham.com

Lua J. Mellman
120 W University Ave
Gainesville, FL 32601
(352) 374-3670
(352) 491-4553 (fax)
mellmanl@sao8.org

Sheree Lancaster
PO Box 1000
Trenton, FL 32693
(352) 463-1000
(352) 463-2939 (fax)
shlpa@bellsouth.net

Frank Maloney
Historian
445 E Macclenny Ave Ste 1
Macclenny, FL 32063-2217
(904) 259-3155
(904) 259-9729 (fax)
Frank@FrankMaloney.us

Howard Rosenblatt
2830 NW 41 St Ste H
Gainesville, FL 32606
(352) 373-7100
(352) 376-3760 (fax)
hmr.law@gmail.com

Dawn Vallejos-Nichols
Editor
2814 SW 13 St
Gainesville, FL 32608
(352) 372-9999
(352) 375-2526 (fax)
dvallejos-nichols@avera.com

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:

Eighth Judicial Circuit Bar Association, Inc.
P.O. Box 127
Gainesville, FL 32602-0127
Phone: 380-0333 Fax: 380-9112

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.

Judy Padgett
Executive Director
PO Box 127
Gainesville, FL 32602
352 380-0333
866-436-5944 (fax)
execdir@8jcba.org

Dawn Vallejos-Nichols
Editor
2814 SW 13 St
Gainesville, FL 32608
(352) 372-9999
(352) 375-2526 (fax)
dvallejos-nichols@avera.com

Deadline is the 5th of the preceding month

Renewing the Passion for Pro Bono

By Marcia Green

A recent report, Pro Bono: Looking Back, Moving Forward, prepared for the Florida Supreme Court and the Florida Bar's Standing Committee on Pro Bono Legal Service, is an interesting and informative review of something very near and dear to my heart. The report states that while many attorneys provide pro bono and are passionate about their work, pro bono has been stagnant and in decline for the past several years (not just in Florida but throughout the country).

As you know, the Florida Supreme Court entered an opinion in 1993 that led to Florida Bar Rule 4-6 (Public Service) and to the requirement that members report annually his or her pro bono participation. The rules recommend that each attorney donate at least 20 hours of pro bono legal services or contribute $350 to a legal aid organization annually. The plan is voluntary and an attorney can report that he or she did not participate in any pro bono activity. Those who contribute may estimate their hours or contribution or report that they did not do pro bono work. Only the reporting is mandatory and is submitted as part of the dues payment.

The recent 98-page report states that the percentage of Florida attorneys reporting pro bono was stagnant at 52 percent and that pro bono programs have reported a 30 percent decline in the number of attorneys providing services. The report goes on to review the reasons why attorneys are not participating and makes recommendations to all facets of the legal community to meet the ever increasing need for services.

My goal is to take the list of suggestions to the pro bono programs and find ways to enhance, encourage and make possible your participation in the Volunteer Attorney Program of Three Rivers Legal Services. Working with the Florida Bar Foundation, the Florida Bar and Florida Legal Services, Three Rivers plans to increase the opportunities for pro bono services. Additionally, we plan to provide support such as training and mentoring to increase your knowledge of working within the scope of poverty law and the needs of our client population.

I am open to your suggestions and look forward to hearing your ideas of what we can do within the Eighth Judicial Circuit to make sure that North Central Florida's low income residents are not neglected by the legal system. Pro bono does not have to be

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Nominees Sought for 2009 James L. Tomlinson Professionalism Award

Nominees are being sought for the recipient of the 2009 James L. Tomlinson Professionalism Award. 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 complete a nomination form describing the nominee's qualifications and achievements and submit it to Raymond F. Brady, Esquire, 1216 NW 8th Avenue, Gainesville, FL 32601. Nominations must be received in Mr. Brady's office by April 30, 2009, in order to be considered. The award recipient will be selected by a committee comprised of leaders in the local voluntary bar associations and practice sections.

James L. Tomlinson Professionalism Award Nomination Form

Name of Nominee:_____

Nominee's Business Address:_____

_____

_____

County in which Nominee Resides:_____

The above named nominee exemplifies the ideals and goals of professionalism in the practice of law, reverence for the law, and adherence to honor, integrity, and fairness, as follows (attach additional pages as necessary):

_____

_____

_____

_____

Name of Nominator:_____

Signature:_____

Probate Section Report

By Larry E. Ciesla

The probate section held its regular monthly meeting on February 11, 2009. Mary Ellen Cross, an old member of the section wearing a new hat as a private practitioner, reported on her initial month in the private bar. She recently left her position as staff attorney for the Eighth Judicial Circuit and joined Cynthia Swanson's firm. Mary Ellen reported that she is handling primarily adoption, family law and probate matters. The section wishes her the best of luck going forward (tip: a very famous person once said, "The harder I work, the luckier I get"). This is not a bad way to approach the practice of law. Anyone wishing to send her an encouraging word may do so at mary-ellen.cross@acceleration.net.

One of the issues discussed during the January meeting is the idea of practitioners doing a little bit extra to assist the judges now that staff attorney help is at a minimum. It was suggested that one way to help would be to use a checklist when opening and closing estates, which in the past has been handled by the staff attorneys using forms available on the Eighth Circuit's web site. Another set of such checklists is available through the Leon County Clerk's web site. The checklist for opening an estate can be found at http://www.clerk.leon.fl.us/clerk_services/online_forms/probate/opening_estate.pdf. To access the form for closing an estate, use the same web address, except substitute the word "closing" for the word "opening". The forms both contain a signature line whereby the attorney certifies that he/she has reviewed the file and that the items listed have all in fact been filed. Use of such forms is not being officially required by the judges, however, it is a suggestion for helping to move cases more efficiently through the system.

Long-time section member Parker Lawrence has been personally involved in probate litigation for several years involving the estate of a family member wherein Parker was a co-personal representative. The case involved an adversary proceeding to admit a handwritten document to probate as the last will of the decedent, which was ultimately denied after trial. An appeal on the merits was dismissed by the DCA. The unsuccessful litigants then filed a motion for recovery of fees and costs in the probate case, which was denied as untimely. The litigation concluded with the 5th DCA issuing an important opinion on January 30, 2009 in the case of *Hays vs. Lawrence*. The court held that Rule 1.525, Florida Rules of Civil Procedure, applies in adversary probate proceedings, meaning that a motion for recovery of attorney's fees and expenses must be filed within 30 days of the date of filing of the judgment or service of a notice of dismissal. Appellants' losing argument was that Section 733.106(2), Florida Statutes, which does not contain such a limitation, was controlling. The DCA distinguished the case of *In re Estate of Brennan*, 391 So.2d 276 (Fla. 4th DCA 1980). That case involved a request for fees for the estate's attorney in a situation where the underlying proceeding had not been designated as an adversary proceeding. The bottom line is that probate litigators are now officially on notice that Rule 1.525 applies to requests for fees in adversary proceedings. It should be noted that certain proceedings are automatically deemed adversary even in the absence of a declaration of same. Under Probate Rule 5.025, these include proceedings to remove or surcharge a personal representative; probate a lost, destroyed, or later-discovered will; determine beneficiaries; construe a will; revoke a will; and determine amount of elective share.

The probate section continues to meet on the second Wednesday of each month in the fourth floor meeting room in the civil courthouse, beginning at 4:30 p.m. All interested practitioners are invited to attend. There are no dues and roll is not taken.

Additional Holiday Project Thank You!!

Many thanks to Judge Bernard Raum, who was kind enough to send in an additional contribution to the Holiday Project. Don't forget – contributions will continue to be accepted at the Eighth Judicial Circuit Bar Association, Inc., Holiday Project, P.O. Box 127, Gainesville, FL 32602-0127.

Immigration Matters

By Evan George

This column presents the issue of the detention of non-citizens by U.S. immigration enforcement agencies, and the options for a non-citizen's release from such custody. As the number of non-citizens detained during their removal proceedings rises at a steady pace across the country, the detention of non-citizens is increasingly affecting many local residents and their families.

The Immigration and Nationality Act (INA) provides for mandatory detention of non-citizens with criminal convictions, including aggravated felonies, violations of controlled substance laws, multiple convictions, and in most cases, crimes involving moral turpitude. INA 237(c). The INA also provides that the U.S. Immigration and Customs Enforcement (ICE) may arrest and detain any non-citizen, even if they do not have any criminal record, pending the determination of whether they are removable from the United States. INA § 236(a). For years, the detention of non-citizens was primarily reserved for those with criminal convictions; however, ICE is increasingly arresting and detaining non-citizens without criminal records.

The detention of a non-citizen by ICE is generally initiated one of three ways. First, a non-citizen who has been arrested and is in the custody of local or state authorities will be transferred to ICE custody at the conclusion of the criminal proceedings. ICE does this by putting a "hold" on non-citizens in state or local custody, and it then has 48 hours to take them into custody from the time the non-citizen would have been released. Second, ICE also takes an increasingly large number of non-citizens into custody during immigration raids at worksites (although there is reason to believe that this particular enforcement tactic will change under the Obama administration). Finally, when non-citizens make applications for immigration status or various benefits, they now must submit to security clearances and/or fingerprints, thereby notifying ICE of their presence and potential deportability. Thus, a non-citizen may inadvertently initiate the process of detention and removal when applying for citizenship, renewal of green cards, employment authorization, or even simple status inquiries into their case.

Once ICE has the non-citizen in custody, it generally has up to 48 hours to notify the non-citizen of alleged grounds for removability by way of a charging document known as the "notice to appear." At this point, ICE may release from custody, on bond of at least $1,500.00, those non-citizens who do not have any criminal convictions, or who have only been convicted of certain minor criminal offenses. For non-citizens in Alachua County, ICE will generally transfer them to a processing facility in Jacksonville, FL, where the initial bond determination is made. If the non-citizen is not released on bond, ICE can transfer them to any detention facility in the country. While most non-citizens from the Alachua County area are transferred to the Krome, Broward, or Glades detention centers in South Florida, others are sent as far as Texas or Arizona, creating obvious difficulties for families and legal representation.

ICE will then file the notice to appear with the Immigration Court having jurisdiction over the area of detention. Non-citizens not subject to mandatory detention may seek a hearing for bond redetermination before the Immigration Court, where they must convince the judge that they are not a flight or safety risk, and, in many cases, that they are eligible for some form of relief from deportation. If bond is denied, the non-citizen will be detained during the pendency of their removal hearings, which can take anywhere from several weeks to over a year.

While non-citizens without lawful status, and legal permanent residents (green card holders) with certain criminal convictions are potentially subject to detention, there are ways to minimize the risk of being taken into ICE custody. Obviously, if possible, avoiding custody by state or local authorities can make a tremendous difference. Similarly, caution should be used when submitting any affirmative request for immigration benefits, including citizenship. Further, for those non-citizens living under a looming threat of detention, taking advance action, such as signing a power of attorney for financial decisions, and resolving child custody issues, can minimize the disruption for family members in the wake of an arrest.

If you have an immigration-related issue or question, feel free to contact me at 352-378-5603 or evan@evangeorge-law.com.

Alternative Dispute Resolution

The History Of Alternative Dispute Resolution: Part 2 of 2

By Chester B. Chance and Charles B. Carter

This is the second in a series of two articles on unusual alternative dispute resolution mechanisms.

Trial By Ordeal

This is one of the most ancient alternatives to trial and in Old English law was distinguished by the appellation of "Judicium Dei" (judgment of God). "If the glove don't fit me, it's Judicium Dei." - O.J. Simpson. It was assumed that supernatural intervention would rescue an innocent person from the danger of physical harm to which they were exposed in this ADR method to trial. The ordeal could be one of two types: either fire ordeal or water ordeal. Fire ordeal was confined to persons of high rank and water ordeal was reserved for common people. (Under current rules of civil and criminal procedure, fire ordeal is only available in Circuit Court and water ordeal would be appropriate for County Court or at Guantanamo).

Ordeal by fire involved the accused grabbing hold of a piece of red-hot iron from 1 – 3 pounds weight, or, the accused walking barefoot and blindfolded over 9 red-hot plow shares laid lengthwise at unequal distances. Thus, ordeal by fire is similar to many civil depositions.

Likewise, there was flexibility in trial by water. The hot-water ordeal was performed by plunging the bare arm up to the elbow in boiling water and hopefully escaping unhurt. The cold-water ordeal was performed by casting the person into a river or pond of cold-water and if they floated without any action of swimming it was deemed evidence of their guilt; if they sank, they were acquitted. (As an early form of a proposal for settlement, if a person sank 25% deeper than they predicted, they could recover costs and fees against the other party.)

Trial by fire today usually takes the form of someone turning off the air conditioning in the **opposing party's room during a** mediation. Usually, the party deprived of air conditioning gives-in within a few minutes, however, if they are tough enough to fight through the heat and lack of oxygen, such perseverance intimidates the A/C controlling party and either way a settlement is achieved. Because of budget cuts this same technique may be utilized by Buddy Irby to force juries to reach a decision.

Today, trial by water takes the form of forcing one party or the other to drink tap water instead of bottled water, blocking access to restroom facilities, or making both sides watch Kevin Costner's Waterworld until one or the other agrees to all of the proposed settlement terms.

Rock, Paper, Scissors

In 2006, Federal Judge Gregory Presnell from the Middle District of Florida ordered opposing sides in a lengthy court case to settle a trivial point over the appropriate place for a deposition using the game of Rock-Paper-Scissors. The ruling in Avista Management v. Wausau Underwriters, stated:

> " . . .The Court will fashion a new form of alternative dispute resolution, to-wit, at 4 p.m. on Friday, June 30, 2006 counsel shall convene at a neutral site agreeable to both parties. If counsel cannot agree on a neutral site, they shall meet on the front steps of the Sam M. Gibbons U.S. Courthouse, 801 N. Florida Avenue, Tampa, Florida 33602. Each lawyer shall be entitled to be accompanied by one paralegal who shall act as an attendant and witness. At that time and location, counsel shall engage in one (1) game of 'Rock, Paper, Scissors'. The winner of this engagement shall be entitled to select the location for the 30(b)(6) deposition to be held somewhere in Hillsborough County during the period July 11-12, 2006." (Actual ruling of Judge Presnell).

In 2005 the art auction houses of Christie's and Sotheby's used rock-paper-scissors to determine which would sell a rare collection of artwork. The Japanese industrialist who owned the art "resorted to an ancient method of decision-making that has been time tested on playgrounds around the world: rock breaks scissors, scissors cut paper, paper smothers rock." Christie's went with scissors. Sotheby's went with paper. Christie's auctioned off the artwork which

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Disabled Individuals Continue to Struggle for Benefits

Volunteer Attorneys Are Needed!

By Marcia Green

As many of you are aware, 2007 legislative changes reduced the services available to some 7000 developmentally disabled Floridians, services necessary for these individuals to live at home and in the community. More than 5000 of these developmentally disabled individuals have appealed the reduction in services and Three Rivers Legal Services, along with other legal service providers across the state, have been flooded with requests for assistance. Individuals in the Eighth Judicial Circuit alone have had annual cuts in excess of one million dollars.

Three Rivers is pleased with the response from private attorneys who have offered to provide pro bono assistance with these cases. The law firm of Dell Graham PA has taken the lead along with other individual attorneys who recognize the need for help to this extremely vulnerable population. A training for attorneys willing to represent these clients before the Division of Administrative Hearings was held in December 2008 at Dell Graham PA and another one is planned in the near future.

The Agency for Persons with Disabilities [APD], however, has sent very few cases to DOAH and therefore none of the cases are ready yet to be transferred to volunteer attorneys. Most commonly, APD has issued orders denying hearing requests giving 10 days from the date of the order to file an amended petition. Failure to file within that time frame will result in loss of the current level of services. This extremely short turn-around time is creating one more obstacle for the disabled and their caregivers and Three Rivers is continuing to manage the cases until they are sent to DOAH.

These disabled individuals are facing crippling budget cuts along with denial of the right to contest the reductions, denial of requests for new services, and an array of confusing, conflicting rules. Many have been institutionalized previously with poor results and these cuts may force them back into institutions. Many others will lose the support needed to continue to be part of the community and many are living with elderly or disabled parents who are already stretched thin. If you are interested in getting involved with this project, for more information or to volunteer, call Marcia Green or Nancy Wright at TRLS, (352) 372-0519, or email marcia.green@trls.org or nancy.wright@trls.org.

Judge Mickle speaks at FBA's Brown Bag Lunch Series on February 12, 2009

Alternative Dispute

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included paintings by Cézanne, Picasso, and van Gogh. Hopefully, lawyers for Sotheby's were not working on a contingency fee arrangement.

There is both legal and cultural precedent for different weapons being used in this game. A variation from Indonesia is composed of an earwig, a human, and an elephant. The earwig is able to climb into the elephant's ear and drive it insane while the human crushes the earwig and the elephant crushes the human.

The television show "That 70's Show" featured a nuclear war-like version. The cockroach survives the nuclear bomb, the nuclear bomb destroys the foot, and the foot crushes the cockroach. This form is best reserved for Federal Court.

Sarah Palin will confirm the Alaskan version is bear-fish-mosquito. You figure that one out. Other variations include: (1) cat, tinfoil and microwave; and (2) bear, ninja and cowboy. You may write to the authors for the symbols for any of these variations.

In 2002 the World Rock, Paper, Scissors Society began an annual International World Championship. We are trying to determine whether any lawyers have competed or even won. Carl Schwait is available to instruct a 3-hour course on rock-paper-scissors as an alternative resolution technique, and, has even figured out a way to include one hour of ethics credit.

Criminal Law

By William Cervone

Having nothing better to write about, I officially declare this National Stream Of Consciousness Month, as a result of which I offer the following random and unconnected thoughts:

"Our earth is degenerate in these latter days. There are signs that the world is speedily coming to an end. Bribery and corruption are common."

No, this isn't someone's personal observation on a particularly bleak day this year, or even this decade. It is, with thanks to the Gainesville Sun which ran it some months ago, a quote taken from an unknown Mesopotamian scribe as found on a tablet dated from around 2800BC. I guess all that can be said is that such concerns will always be with us. Rod Blagojevich, you are nothing new or special.

In a perhaps similar vein, Tom Hanks said during an interview a year or so ago that he wouldn't want to be a lawyer because that would be too much like doing homework for a living. He may have a point.

"We are instantly fascinated by the suggestion of conspiracies and cover-ups; this has become so much the stuff of our imagination these days that it is only natural, it seems, to expect it when we turn to ancient texts, especially biblical texts. We treat them as if they were unconvincing press releases from some official source, whose intention is to conceal the real story, and that real story waits for the intrepid investigator to uncover it and share it with the waiting world. Anything that looks like official version is automatically suspect." This from Rowan Williams, Archbishop of Canterbury, in his 2006 Easter message. I'm not sure what he was commenting on but the quote was in an article about the so-called Gospel of Judas. It seems rather apropos of much of the world view many people have these days. As a part of the government that supposedly creates so many conspiracies, let me assure you that most of us have neither the time nor the energy much less the creativity to have conspired in the ways we are often accused of.

You'll remember *Heller vs District of Columbia* - that's the Supreme Court case in which the District's handgun ban was struck down last year. To commemorate that event, Smith & Wesson has released a souvenir revolver, complete with engravings that include the case style, a scale of justice tipped towards Heller's name, and the inscriptions "Second Amendment" and "The right to keep and bear arms." Only in America.

In case you missed it, the legislature has opened. Once again, my cry for biennial sessions has fallen on deaf ears. Also in case you missed it, last year the legislature debated the serious issue of the state song. To solve the pressing problem of lyrics in "Old Folks At Home" (perhaps better known as "Way Down Upon The Suwannee") that do not fit contemporary political correctness standards, that ditty was allowed to remain the official song of the state but "Florida, Where The Sawgrass Meets The Sky," written by Jan Hinton, was adopted as the official state anthem. Perhaps the legislature can hum a few bars while Rome is burning?

Also on things legislative, last March I mentioned the plight of Meg the Goat and how her having been violated had led not just to "Baaa Means No" t-shirts but also to legislation that would have created a first degree felony bestiality crime. I don't think that went anywhere because this year a bill to create a new statute entitled Sexual Activities Involving Animals has been introduced. The law would include definitions, including that "sexual conduct" means "touching or fondling by a person, either directly or through clothing, of the sex organs or anus of an animal..." Clothed animals will thus be protected, but only by what would be a mere third degree felony. Other more graphic prohibitions are outlined as well. Somehow the whole thing just makes me feel dirty, but I'll let you know what happens to Meg's Law. For now I have nothing else to say beyond referring you back to the top of the page and that Mesopotamian quote.

Offices for Lease

1600 sq ft - 4 private offices, conference room, waiting room, and large work areas. Available June 1. MetroCorp Center - 3801 NW 40th Terrace, Suite B, Gainesville, FL. Call Eddie at 352-377-6666.

EIGHTH JUDICIAL CIRCUIT BAR ASSOCIATION

Charity GOLF TOURNAMENT

PRIZES

Low Gross

Magical Low Net

FRIDAY, MAY 1, 2009

AT THE MARK BOSTICK GOLF COURSE AT THE UNIVERSITY OF FLORIDA

Please join us for a fun day of golf with the 8 Bar and help support the children of Alachua County! All proceeds of this year's Charity Golf Tournament benefit the *EJCBA Holiday Project*. The EJCBA Holiday Project provides some of the most financially disadvantaged elementary school children in our county with gifts to celebrate the holiday season. Lunch, golf, reception, and prizes provided.

SCHEDULE	
11:30 am-12:30 pm	CHECK-IN & LUNCH
1:00 pm	SHOT GUN START
5:30 pm-6:30 pm	RECEPTION & PRIZES

SIGN-UP DEADLINE APRIL 22ND

FOR MORE INFORMATION, CONTACT MAC MCCARTY

Brashear, Marsh, Kurdziel & McCarty, PL
926 NW 13th Street
Gainesville, FL 32601
Phone: 352-336-0800
Fax: 352-336-0505
E-mail: MMcCarty@NFlaLaw.com

ENTRY FEE: $100.00 per golfer

Name _____ Partner's Name _____

_____

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- 2 Person teams, Captain's Choice
- At least one member of each person's foursome must be an attorney

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Packing Heat At Yellowstone

By Stephen N. Bernstein

In the eleventh hour, the Bush Administration's Interior Department pushed through a measure to allow visitors to National Parks to carry concealed firearms. This is a terrible policy.

National parks are among the safest places in our country. Crime, especially violent crime, is exceedingly rare in these settings, as are serious attacks by wildlife. Under these circumstances, why in the world would a visitor need or want to carry a gun? The Supreme Court last year recognized an individual's right to keep and bear arms that left plenty of room for sensible gun regulations. Such regulations are warranted here.

The Bush rule went into effect on January 9, 2009 and my friend, Bill Moffitt, tells me that the Brady Campaign to Prevent Gun Violence, the National Parks Conservation Association and the Coalition of National Park Service Retirees have asked a federal judge to put this rule on hold. They ultimately hope to have the measure invalidated, arguing that the Bush Administration failed to follow proper legal procedure when evaluating and adopting the rule. Specifically, they claim that federal law required, and that the Administration refused to perform an environmental assessment, which would incorporate factors such as "public safety" and "human environment".

The District Court of Columbia should grant the temporary injunction in hearing this case next month. Such a pause will allow the Interior Department to conclude its 90 day internal review, wisely ordered by Secretary Ken Salazar, to determine whether proper procedures were followed in crafting and adopting this rule. If the judge ultimately concludes that procedures were breached, the rule would be thrown out: the Reagan–era rules restricting concealed weapons in the National Parts would once again be in effect.

Even if the rules are deemed legally proper, Mr. Salazar should launch a formal re-evaluation of the concealed firearms policy. No administration is empowered to overturn properly implemented measures from a previous administration without conducting in-depth analysis and gathering public comment. But such a process and expense would be warranted. President Obama has rightly called concealed weapons a menace to public safety. They should not be introduced into some of the most peaceful and pristine public lands in our country. All we have to do is remember that it was Vice President Dick Chaney who mistook one of his best friends for a turkey when he had a gun in his hand.

John Grisham is My Best Friend

By Elizabeth Collins

The title of this article is a completely untrue statement. However, at least now I have your attention… which brings me to my point.

Great speakers and timely topics ensure that our bar luncheons continue to be successful, entertaining, and informative and otherwise serve our members' needs. Many of you have friends, family, or other connections to notable members of the legal community, government officials, politicians, athletes and coaches, authors, local celebrities, and others who would be of interest to our members.

In the next several months, I will be working to coordinate our speakers and bar luncheon topics for the 2009-2010 term. If you have any suggested speakers or topics, particularly if you have personal ties to a potential guest, *i.e.* John Grisham is really *your* best friend, I would appreciate your input. Please feel free to email me at ecollins@dellgraham.com or call me at 372-4381. I look forward to hearing from you.

Margaret M. Stack

Announces The Opening

Of Her Office in

The Seagle Building

408 West University Avenue, Suite 110-B
Gainesville, Fl. 32602

(352) 377-8940

Fax: (352) 373-4880

E-Mail: Mmstack@Att.Net

April EJCBA Luncheon Speaker

John "Jay" White, III, current President of The Florida Bar, will be the speaker for the April EJCBA luncheon. Mr. White's practice includes commercial and complex business litigation, professional malpractice, personal injury, and wrongful death at Richman Greer, P.A. where he is a shareholder, director and partner. He was a past president of the Palm Beach County Bar Association and was selected by his peers as one of the Best Lawyers in America. He has served on the Board of Governors since 2000. Mr. White earned his bachelor and law degrees from the University of Florida. The noon luncheon will be held April 17, 2009 at Savannah Grande. Reservations are required.

Put Your CLE Videos To Use

ATTENTION members who have CLE videos they are finished with -- please donate them to the Law Library so folks who need some low cost CLEs can avail themselves of this resource. Thank you for assisting your fellow attorneys!

Children's Books & Dictionaries Needed

By Margaret Stack

While serving on a Committee involving the Alachua County Jail I met Eugene Morris, who is in charge of Inmate Programs and Services. From him, I learned that the jail needed books and magazines for its adult population. Recently I learned that books are needed for the jail's juvenile population, as well, which ranges in age from about ages 8 to 18. Especially needed are dictionaries for this group, as well as for various schools that Mr. Morris deals with.

Since spring usually brings Spring Cleaning, I'd ask that you all dig around and if you find books that you don't need please give me a call. I'll be glad to collect them and deliver them to the jail. Books and magazines are needed by the jail for all ages.

Also, if you find any T-shirts in good condition you don't need any more and don't know what to do with, let me know. Rosa B. Williams would like them for the clients at Tacachale and I'd be glad to collect those also.

Remember, one person's trash is another's treasure!

Clerk's Corner

By J. K. "Buddy" Irby

The Alachua County Clerk of Courts is pleased to offer Internet access to the index of the Alachua County court records on file in the Clerk's Office. This access to case information and docket lines is provided at no charge. Those using the online index should be aware of several items:

While the Clerk's Office has attempted to ensure the accuracy of the online version of the court records index, this online index is not the official index. The complete index of cases is available at the Clerk of the Court's office located in the Alachua County Family/Civil Justice Center. If you identify a name or document in the online index that appears to be indexed improperly, please notify us.

During the beta test, the online index will provide access to currently managed cases. Adding new docket entries to the index may require processing time of two business days.

Some records, such as those for adoption cases, do not appear in the index due to restrictions on public disclosure. In addition to those statutorily exempted, Mental Health, Jimmy Ryce, and Incapacity cases are not listed on the web site. In order to view document images, you will still need to pay a $50 setup fee and sign a subscriber agreement with the Clerk's Office. This will permit you to view document images in cases for which you are attorney of record.

Pursuant to Administrative Order #AOSC06-21 of the Supreme Court of Florida, electronic access to Alachua County Court Records will be limited to the information which is exempt from the restrictions identified in the Administrative Order.

Family Law Section

B*y Cynthia Swanson*

Here is a review of some recent interesting cases which may be of interest to family law and tort practitioners. I obtained much of this information from the Florida Family Law Reporter and from the Statewide Florida Guardian ad Litem Legal Briefs Newsletter.

The "Keeping Children Safe Act" does not apply to dissolution of marriage proceedings. See, Mahmood v. Mahmood, Fla. App. LEXIS 572, -- Fla. L. Weekly --, -- So. 2d – Fla. (Fla. 4th DCA Jan. 28, 2009). During a dissolution of marriage proceeding, the trial court set up a temporary visitation (or timesharing) schedule. The two children were 15 year old and 17 year old boys. The mother accused the father of inappropriate sexual contact with the boys, and made a report to the child abuse hotline, and filed a motion to suspend visitation. She also filed a motion for a hearing under Florida Statutes Section 39.0139, the ''Keeping Children Safe Act.'' In her motion, the mother stated that she had reported the father to a child abuse hotline and she sought (1) appointment of a guardian ad litem, (2) prohibition of visitation until the Section 39.0139 hearing, and (3) cancellation of a scheduled hearing on her prior motion to protect the children from lewd and lascivious molestation. The father filed several motions for contempt for the mother's failure to comply with the temporary visitation schedule. The trial court held several hearings, heard testimony from a detective who had investigated the abuse claims who said he believed the reports were unfounded and there was no probable cause for any arrest. The Court also appointed a guardian ad litem, but ordered the mother to comply with the temporary visitation order. The trial court also held that Section 39.0139 was not applicable in dissolution of marriage proceedings under Florida Statutes Chapter 61.

The Mother filed a Petition for Writ of Certiorari to the Fourth District Court of Appeal. The appellate court ruled that a petition for writ of certiorari was appropriate to be filed in this case, but ruled against the mother. The appellate court held that the presumptions and remedies provided for in Chapter 39 are not applicable to the Chapter 61 proceedings, because dissolution of marriage courts already have broad powers to protect children. Chapter 39 provides an entry into the court system for children who may need protection in the form of dependency and termination of parental rights proceedings. In the instant case, there were dissolution of marriage proceedings pending, and the court in which the proceedings were being conducted was a family division of the circuit court, not a division that hears a docket of dependency and parental termination cases.

The "parenting plan" legislation changes don't really mean that much. See, Lombard v. Lombard, 997 So.2d 1188 (Fla. 2d DCA 2008). The Second District Court of Appeal has held that the changes made by the Legislature effective in October 2008 to delete the terms relating to "custody" and "visitation," and to instead require the adoption of a "parenting plan" and a "timesharing schedule" don't really change too much. Specifically, the Court held that the party who has more time with the children is the de facto custodial parent, and the other parent is the de facto visiting parent, and further that only the visiting parent can be entitled to makeup visitation.

Despite acknowledging the statutory nomenclature changes, on reviewing the former statutory provisions concerning visitation, the Second District held that the term ''visitation'' applies only to a noncustodial parent (citing Florida Statutes Section 61.13(4)(a) (''when a noncustodial parent ... who is afforded visitation rights''), (4)(b)-(c) (''when a custodial parent refuses to honor a noncustodial parent's visitation rights''), and Florida Statutes Section 61.13001(2)(a) (''if the primary residential parent and the other parent ... entitled to visitation rights'').

In addition to interpreting the prior statutes as applying visitation only to noncustodial parents, the Second District interpreted the 2008 legislative amendments as continuing that principle. In particular, the court held that the 2008 amendments left the principle the same because the amendments maintain the child's best interests as the standard for making timesharing decisions, and maintain discretion in the trial courts to do equity

Which parent will be a child's "natural guardian" for the purposes of bringing lawsuits under the new "timesharing" terminology? See, e.g., Gordon v. Colin, 997 So.2d 1136 (Fla. 4th DCA 2008). The parents of a child had been divorced, with them sharing parental responsibility and the mother having primary residence. The Fourth District Court of Appeal held that a trial court correctly interpreted Florida Statutes Section

Continued on page 13

744.301 to mean that because a father did not have primary residential custody of his son, he was not his son's natural guardian and therefore, he did not have standing to file a tort suit on his son's behalf against a third party.

Under the 2008 legislation, parents and courts may opt for shared parental responsibility arrangements that are based on a traditional primary-residence-and-visitation model as part of their parenting plans, but if traditional terminology is not used in the plans, it is not clear how the statute at issue in this case, Florida Statutes Section 744.301 regarding natural guardians and parental authority to sue on a child's behalf, should be interpreted. That is, if there is no ''primary residential parent,'' it is not clear which parent will be deemed the natural guardian of their child.

It may come down to counting who has the most overnights. See Lombard above. Or if parents have equal timesharing under their parenting plan and the 2008 legislation, the arrangement may be equivalent to ''joint custody'' under Section 744.301, and both parents may continue to be ''natural guardians'' of their child. There has not been a case on this point yet.

Findings of Fact ARE Required to Justify an Award of Shared Parental Responsibility where the father was incarcerated, was a convicted felon, had threatened bodily harm to himself and his wife, had a history of substance abuse, depression, anger-control problems, and criminal conduct with a deadly weapon. Seems the First District Court of Appeal wasn't able to affirm that decision without some findings of fact. Smith v. Smith, 971 So.2d 191 (Fla. 1st DCA 2007).

Modification of Alimony Based on Cohabitation-Conflict Between Jurisdictions- The Fourth District Court of Appeal has held that a relationship between an alimony-obligee and his or her cohabitant must be the economic equivalent of a marriage to qualify as a statutory "supportive relationship" that will allow a reduction in, or termination of, alimony. See Linstroth v. Dorgan, 2008 Fla. App. LEXIS 8434, 33 Fla. L. Weekly D1520, ___ So. 2d ___ (Fla. 4th DCA June 11, 2008), reh. denied, 2008 Fla. App. LEXIS 13910 (Sept. 3, 2008). The Second District Court has held that economic impact is only one factor to consider in determining whether a supportive relationship exists as contemplated by the statute. Buxton v. Buxton, 963 So. 2d 950 (Fla. 2d DCA 2005).

Party Requesting Alimony Has Burden to Show Lack of Income - More Conflict Between Jurisdictions-- In a decision that may conflict with decisions by the Fifth District Court of Appeal on the same issue, the Second District Court of Appeal has held that a spouse who is requesting alimony has the burden to prove that he or she is unable to work and is not voluntarily unemployed if the other spouse requests that income be imputed to the requesting spouse on the basis he or she could be employed. Esaw v. Esaw, 965 So. 2d 1261, 1267 (Fla. 2d DCA 2007) (noting possible conflict with, e.g., Andrews v. Andrews, 867 So. 2d 476, 478 n.2 (Fla. 5th DCA 2004) (party asserting that spouse is voluntarily unemployed or underemployed has burden of proof).

Trial Court May Consider Marketability Discount in Valuing Close Corporation--The Second District has held that trial courts may apply marketability discounts in valuing the shares of closely held corporations or corporate stock. If the evidence is sufficient to support application of such a discount, the court does not abuse its discretion in doing so. Erp v. Erp, 976 So. 2d 1234, 1239 (Fla. 2d DCA 2008).

Finally, I wanted to mention an oldie but goodie, and what may be my favorite case of all time: Gilman v. Butzloff, 155 Fla. 888, 22 So.2d 263 (Fla. 1945): "A party may waive any right to which he is legally entitled, whether secured by contract, conferred by statute, or guaranteed by the Constitution." Keep a copy of that one on your desk.

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NICK B. HARVEY

Officers & Lawyers: Kinship In Seeking Justice

By Jacob A. Rush

As a kid I shared the popular dislike of cops and antagonism towards authority. As a youth I frowned in disgust of lawyers when I heard about the McDonald's coffee case, repeating the famous Shakespearean line about killing all the lawyers. Years later, I am a new lawyer: fresh from the rigor of law school and wide-eyed to the reality of practice. Before that, I was a Sheriff's Deputy here in Alachua County. I am filled with pride every time I see a uniform because I know the reality of an officer's choice to strap on his or her gear, kiss their loved ones goodbye, and step forth into a hostile world to do justice on behalf of strangers. I imagine that's not the first thought that comes to every adult's mind when they see a badge. How about regarding lawyers?

I am surprised at how similar the life of a lawyer is to that of a cop. Again I set out to do justice on behalf of strangers. The horrors are different (with less biological exposure) but just as poignant. People's lives are ruined and we are called on to hold the pieces or work miracles for unrealistic expectations. After dealing with horrors, sometimes the next client or citizen is just asking for directions and we have to switch gears while maintaining a professional demeanor no matter how small their issue. We get long hours, high burnout, little sympathy, and a steady supply of stress. The misconceptions abound in both careers. I remember in law school orientation the speaker telling us that we were entering the most hated and most misunderstood profession. Lawyer jokes were now personal. Oh buddy, I thought, as my handcuff key flashed before my eyes. Out of the frying pan and into the fire.

A lot of lawyers get to work with law enforcement rather often and it would be a shame to overlook the kinship. If nothing else, you share a nod with the Court Security Deputies as you pass through the metal detector. I bet you never realized that they have the same fear of cocktail parties where a chummy mingler finds out their profession and wants to talk about a problem they have (sometimes with *your* profession). For every lawyer joke there's a cop joke to fill the same space. For every grumble an attorney has about a cop, cops have a complaint about attorneys. The amazing truth is that you have more in common than you think (including frailties) and many of the opinions are based on faulty preconceptions. How is it that we work so closely but misunderstand so thoroughly? Maybe we see the reflection of our paths more clearly than we realize. Familiarity does breed contempt. Being on both sides is an enlightening experience and I end up laughing at my own previous views. I learned that Shakespeare's line, in context, was in regard to overthrowing the government. Oh. The joke's on me.

While it might be harder to picture yourself as suiting up for justice when you strap on your thin leather belt bereft of weaponry or tools, the designation of a lawyer holds a meaning. We took an oath. Law enforcement officers take an oath. You may not have a badge, but joining the profession is an act of responsibility just the same. If you take pride in being a lawyer, consider the parallels and you just might find yourself slowing down like I do to check on officers who are out on a scene alone.

Passion for Pro Bono

Continued from page 3

just taking cases; it can include community legal education, advice clinics and other creative avenues to address the legal needs of the poor. Remember that Three Rivers provides malpractice coverage and other support services for referred cases.

Please contact me at 372-0519 or marcia.green@trls.org to discuss ways that our community can meet the challenge and renew the passion for pro bono.

Judge Davis, Judge Hulslander, and Judge Jaworski "strike" a pose at the YLD 2nd Annual Bowling Brawl

Lunch with United States District Judge Stephan P. Mickle

By Stephanie Marchman

On February 12, 2009, approximately 45 local attorneys and law students had lunch with United States District Judge Stephan P. Mickle as part of the North Central Florida Chapter of the Federal Bar Association's ongoing Brown Bag Lunch Series this spring.

Judge Mickle began the lunch by introducing his staff, including his law clerks, Dori Lowry and Lashanta Harris, and his judicial assistant, Rebecca Butler. Judge Mickle also gave attendees a broad overview of his role in the Gainesville Division – Judge Mickle handles about 60% of the criminal cases in the Division, as well as 70% of the civil cases. In the past year, Judge Mickle presided over approximately 20 criminal trials, as well as a couple of civil trials. Judge Mickle stated that pre-trial criminal motions, pro se prisoner cases, and discovery matters are typically handled by the magistrate judge. In addition to his responsibilities in Gainesville, Judge Mickle also travels to Tallahassee one week per month to handle cases.

Judge Mickle provided attendees with invaluable practice pointers during the lunch. For instance, Judge Mickle informed the lawyers that he preferred not to have a hearing before resolving a motion since most motions deal with legal issues and not factual disputes. Judge Mickle also advised lawyers to avoid common mistakes, like filing replies, failing to confer with opposing counsel before filing a motion, and requesting discovery in criminal cases. Judge Mickle informed lawyers that they were welcome to call his chambers regarding administrative matters, such as scheduling or the status of pending motions, and he stated that lawyers should call his chambers and explain the situation when lawyers have true emergency motions. Judge Mickle also informed lawyers that cell phones are not permitted in the courtroom, but laptops are permissible if lawyers first receive permission from chambers.

Generally, Judge Mickle strives for timeliness and smoothness in the cases before him. He expects lawyers to provide accurate witness lists and time estimates for trial, and he handles motions in limine prior to trial so as not to take up the jury's time. For that matter, Judge Mickle expects lawyers to handle all non-jury matters at the pretrial conference, during the lunch hour, or in the half hour before the trial begins, not on jury time. Judge Mickle also advised that lawyers should ensure that their witnesses are lined up and ready to go in the hallway during trial so as not to delay a trial because no witnesses are available. In addition, Judge Mickle requested that lawyers return to the courtroom 3 minutes before the end of a break, so as not to hold up trial proceedings.

Judge Mickle also provided attorneys the following insights with respect to trials in his courtroom:

Lawyers are not permitted to perform voir dire, but they may submit questions to the Court

Lawyers should coordinate with the information technology specialist (Jason Miller) to ensure exhibits involving technology are operational in the courtroom prior to the start of trial

Lawyers should file proposed jury instructions after conferring with opposing counsel

Lawyers should anticipate and raise objections before trial or during a break outside the presence of a jury. If an objection is required in the presence of the jury, lawyers should state the legal basis only unless asked by the Court to expound

When asked about his pet peeves, Judge Mickle stated that lawyers should not waste the jury's time, that they should be prepared, and that lawyers would be better off if they disagreed without being disagreeable and focused on the relief sought for their client rather than getting even with the other side. In conclusion, Judge Mickle remarked that in his 30 years as a judge, he has never had to hold a lawyer in contempt. In his view, all around, the lawyers in the Northern District practice with commendable civility.

The FBA would like to thank Judge Mickle for participating in this lunch, and providing lawyers and law students with an opportunity to learn more about his responsibilities and expectations. The FBA would also like to congratulate Judge Mickle on being named Chief Judge of the Northern District of Florida, effective June 17, 2009.

Continue The Tradition, Save-The-Date

CGAWL will be holding the annual JA Luncheon on May 1, 2009 at the Gainesville Golf and Country Club. Please help us continue this honorary tradition, and save the date! More details will follow soon.

Is Expert Testimony Required To Recover a Reasonable Attorney's Fee

By Siegel, Hughes and Ross

Given the experience trial judges have with attorneys and attorneys' fees, one might question the usefulness of an attorney/expert witness to testify about the reasonableness of the fee. There is no question that the amount of a reasonable attorney's fee is in the discretion of the trial court. Further, even if an expert does testify, the trial court's discretion is not limited by his/her expert testimony. Twenty-six years ago in *Harrell v. Sproul*, 426 So.2d 63 (Fla. 5th DCA 1983) the Fifth District Court of Appeal reviewed a trial court's decision awarding the attorney fees for 250 hours instead of the 450 hours which two experts testified was reasonable. The district court affirmed the trial judge stating, "While the opinion of an expert witness testifying on attorney's fees is persuasive, it is not binding on the court in determination of a reasonable fee. Such testimony is to be weighed with the other evidence in the case bearing upon the value of the services." *Id*. at 64. The court does not state what the "other evidence" in the case was, but the opinion reveals that only two experts testified, both of whom supported the attorney's claim.

The Fourth District also held a trial court may reject an attorney/expert's opinion of a reasonable attorney's fee in *Baldwin Piano and Organ Co. v. Dote*, 740 So.2d 1230 (Fla. 4th DCA 1999). In that case the district court affirmed the decision of the trial court to award a fee less than the uncontradicted testimony of the movant's attorney/expert. The district court explained its affirmance on two grounds. First the court stated the trial judge could have reduced the award based on the cross examination of the expert. Secondly, the court held, "the trial court was not bound by the testimony of the expert as to the amount of a reasonable attorney's fee, even though there was no opposing expert. *Id*. at 1231. By relying on the trial court's right to reject the expert testimony as a separate ground from the trial court's reliance on cross examination of the expert the district court seems to allow the trial court to base its decision on its own "expert" evaluation of the case.

In addition to recognizing the trial court's discretion to reject uncontradicted expert testimony, the Fourth District has reserved to itself the discretion to reject uncontradicted expert testimony based on "our own expertise." *Miller v. First American Bank and Trust,* 607 So.2d 483, 485 (Fla. 4th DCA 1992). In that case the trial court had awarded fees based on specific findings of a reasonable number of hours and a reasonable hourly rate for each of several attorneys who had provided services. The district court reversed even though the record contained no transcript of the attorneys' fee hearing on which the trial court's findings had been based. "Nor are we precluded from reaching this result by the fact that, under *Applegate,* we must presume that someone testified that the hours in question were actually employed and that an 'expert' opined that they and the fee awarded were 'reasonable.' The existence of such evidence does not require that we abandon our own expertise, much less our common sense." *Id.* at 485 (underlining added).

If the trial court can rely on its own knowledge and experience in rejecting the testimony of an attorney/expert on attorney's fees, it would seem the court could rely on its own knowledge and experience in determining a reasonable fee without expert testimony? That seems to be the position of the Fourth District Court of Appeal in *Island Hopper, Ltd. v. Keith*, 820 So.2d 967 (Fla. 4th DCA 2002). The holding of that case allowed a contingency risk multiplier in cases in which fees were awarded under the Offer of Judgment Statute. That holding subsequently was rejected by the Supreme Court in *Sarkis v. Allstate Ins. Co.*, 863 So.2d 10 (Fla. 2003). However, the court also discussed the role of expert testimony.

> Though Florida courts have long required the corroborative testimony of an expert "fees witness," we question whether the rule is always the best, or most judicious, practice. We note this practice has existed since at least the 1960s. Yet, we note as our profession matures and evolves, as it has over the past forty years, and continues to do so, our trial judges have become highly experienced in all aspects of litigation, often with knowledge equal to, or in some cases far superior to, that of those attorneys who are called upon to provide expert testimony as a "fees witness." Our trial judges see attorneys representing all levels of skill and experience in their courtroom; it is not uncommon for a trial judge to conduct multiple fee hearings practically every week. At the most basic level, we fail to see what, if any, 'guidance' these 'fees experts' actually provide to the well- versed trial judges of this state, who ultimately have the responsibility to determine, in their relatively unfettered discretion, whether the hours sought are reasonable, and what hourly fee(s) should be applied. 820 So.2d at 972. (Citations omitted).

Continued on page 17

Expert Testimony

Continued from page 16

In his concurring opinion Judge Gross was even blunter stating, "I concur with the result of the majority opinion and write separately to emphasize that the rule requiring an independent 'expert' in every attorney's fee case rests on shaky theoretical grounds." *Id. at* 976.

After *Island Hoppers, supra,* it appeared the testimony of an attorney/expert at a fee hearing was no longer required. However, as with Mark Twain, the rumors of the death of that requirement had been greatly exaggerated. Only one year after its decision in *Island Hoppers, supra,* the Fourth DCA, the same court that lauded the "highly experienced" trial judges in *Island Hoppers,* held the evidence supported an award of attorney's fees as a sanction against the appellant/attorney, Steve Rakusin, but reversed the award. The court held, "Even when an attorney's fee award is entered as a sanction, it must be supported by expert evidence as to the reasonableness of the amount of time expended and the reasonableness of the hourly fee." *Rakusin v. Christiansen and Jacknin*, 863 So.2d 442, 443 (Fla. 4th DCA 2003). Recognizing its language in *Island Hoppers, supra,* might have led litigants to believe expert testimony was no longer required, a completely different panel of the same court stated, "However, agreeable or not, the existing case law requires the presentation of corroborating testimony of the reasonableness of attorney's fees." *Rakusin, supra,* at 444. For now, at least, an award of attorney's fees still requires expert testimony even though the trial judge is free to ignore it and substitute his/her own expertise for the evidence.

Now for the most interesting part of this article. Yes, Mr. Rakusin, *supra*, is the same Steve Rakusin who practiced in this circuit in the 1980's. Those who litigated against Mr. Rakusin may want to read the opinion to learn the facts which the district court held justified an award of attorney's fees against Mr. Rakusin.

Judge Jaworski, Larry McDowell, and Jeff Lloyd show off their trophies

Eighth Circuit YLD Bowling Brawl Fundraiser a Success!

By Kelly R. McNeal

The ECJBA YLD hosted its second annual Bowling Brawl on February 28, 2009. Everyone had a wonderful time, with approximately 40 bowlers participating. Donated prizes were awarded throughout the event, including Gator gear and Burrito Brothers and Spa Royale gift certificates. The event was sponsored by Folds & Walker, McNeal & Saini, PL, The Law Office of R. Flint Crump, P.A., Rush & Glassman, Siegel, Hughes, & Ross, and Van Landingham, Durscher, & Van Landingham.

Congratulations to the big winners of the day:

Best Overall: Jeff Lloyd
Best Judge: Judge Jaworski
Best Young Lawyer: Larry McDowell.

Thank you to all those who participated and made the day so enjoyable. We look forward to future success next year! All proceeds from the event will benefit Three Rivers Legal Services.

Staff from Three Rivers take a break from bowling

The YLD Board at the 2nd Annual Bowling Brawl

April 2009 Calendar

1 EJCBA Board of Directors Meeting; Ayers Medical Plaza, 720 SW 2d Avenue, North Tower, Third Floor – 5:30 p.m.
2 CGAWL meeting, Albert's Restaurant, UF Hilton, noon.
6 Deadline for submissions to May newsletter
8 Probate Section Meeting, 4:30 p.m., 4th Floor, Family & Civil Courthouse
9 North Florida Association of Real Estate Attorneys meeting, 5:30 p.m.
10 Good Friday – County Courthouses closed
17 EJCBA Monthly Luncheon Meeting, 11:45-1:00 p.m., Savannah Grande
21 Family Law Section Meeting, 4:00 p.m., Chief Judge's Conference Room, Alachua County Family & Civil Justice Center

May 2009 Calendar

1 JA Luncheon, Gainesville Golf & Country Club
5 Deadline for submissions to June newsletter
6 EJCBA Board of Directors Meeting; Ayers Medical Plaza, 720 SW 2d Avenue, North Tower, Third Floor – 5:30 p.m.
7 CGAWL meeting, Albert's Restaurant, UF Hilton, noon
8 EJCBA Monthly Luncheon Meeting, 11:45-1:00 p.m., Savannah Grande
13 Probate Section Meeting, 4:30 p.m., 4th Floor, Family & Civil Courthouse
14 North Florida Association of Real Estate Attorneys meeting, 5:30 p.m.
19 Family Law Section Meeting, 4:00 p.m., Chief Judge's Conference Room, Alachua County Family & Civil Justice Center
25 Memorial Day – County and Federal Courthouses closed

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.

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