

FORUM 8

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Eighth Judicial Circuit Bar Association, Inc.

March 2009

President's Letter



What They Didn't Teach Me In Law School!

By Margaret Stack

It's been a long time since I was in law school and I'm just finding out what THEY DIDN'T TEACH ME...namely how to open a law office. If you go to work for a firm or a State or local agency your biggest problem is finding out who to call to fix whatever problem you have. If you're on your own, it's a whole different world.

First you have to find an office...hopefully within walking distance of the courthouses and with good parking for you and your clients. Some buildings offer various services, such as receptionist, runners, etc. I found a great space and all it needed was a door which took a couple of months to accomplish.

So what's the next thing you need??? It's an essential element and one of the most important things to a lawyer! If you said getting a telephone number and getting your name in the telephone book you'd be right. It used to be relatively simple. Now you have to decide what kind of service you want such as cable, AT & T or one of the other services out there. Don't forget ads. There are so many ads in the yellow pages these days it's hard to find the phone numbers! All I wanted was a listing and they messed that up! I guess I should have gone for a big ad!



Another important element is a computer and internet access. You need to be able to communicate via e-mail with clients, attorneys and the court system. Personally my favorite thing to do with my computer on the internet is shop! If you're not real computer literate, you have to find a "computer expert" to help you figure out what you need, walk you through buying the computer, install it, set it up and fix it when it doesn't work. Don't forget your printer, fax, scanner and copier.

Next you need to get some furniture for your office. Here the choices are limited only by your budget and your imagination. You can shop office furniture stores, antique shops or estate sales. Be sure and keep in mind that if you will be using a computer you get an ergonomically designed keyboard, keyboard tray and desk chair. These items are

well worth the extra money and your back and neck will thank you for it.

Since I embarked on opening my own office I have discovered many more things that are necessary for such a project...such as accountants, bank accounts and where to buy your pens and paper. What I have learned is that it is an ongoing project with new things popping up almost daily that you never thought of before. What I can tell you is that it's been a lot of fun so far!

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

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)
rbrady@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)
dferrero@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

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

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)
mellman@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

Additional Holiday Project Thank-You's

The following attorneys and law firms were not among those listed in our thank-you last month to our 2008 Holiday Project participants, but were among the many that donated to its success. Thank you all for your contributions:

Bill Hoppe
Hon. Mark Moseley
Chandler, Lang & Haswell
Carpenter & Roscow
Sharon Sperling
Kathleen Fox
Ellen Gershow
Michael Dupee
Elizabeth Martin

Remember, you can still donate to the holiday project. Please send your checks to the Eighth Judicial Circuit Bar Association, Inc., Holiday Project, PO Box 127, Gainesville, FL 32602-0127.



Administrative Order #3.700

Administrative Order #3.700 “**PRELIMINARY PROCEEDINGS UNDER THE FLORIDA CONTRABAND FORFEITURE ACT**” was signed by Chief Judge Frederick D. Smith on January 8, 2009. Please read the order at <http://www.circuit8.org/ao/index.html>.

This order establishes uniform procedures throughout the Eighth Judicial Circuit to supplement the provisions of the Florida Contraband Forfeiture Act and applicable Rules of Court in order to ensure that civil proceedings are conducted in a manner which complies with the Act and which facilitates the proper and efficient administration of such proceedings.

Clerk's Corner



By Buddy Irby, Clerk of the Circuit Court

One of my favorite sayings is, “A calm sea does not make for a skilled sailor”. For more than a year we’ve been experiencing “stormy seas” with regard to finances at the courthouse. You may have read recently that traffic fines were raised by the State Legislature in the special session in January. Those fines have now gone into effect and the increased revenue will go toward funding the state court system. However, none of the new funds go toward the operation of the clerk’s offices around the state, despite the fact that all but two counties are currently down in revenue. As a fee officer, when collections go up, the clerk’s office budget can go up. When collections go down, budgets go down. After the first quarter of our fiscal year, in Alachua County we are down more than 10% in revenue as compared to the FY 2008 and more than 16% under FY 2007. Some clerk’s revenue is down more than 20%.

Just like many of you, we are cutting back on staff and reviewing every procedure and process to ensure we are doing it as efficiently as practicable. Over the next few months you may see the lights on later than usual, but you can be sure the clerk’s office will not be the bottleneck in moving the documents through the court system. We continue to be committed to getting the job done regardless of the challenges.

Save The Date

On May 1, 2009, the Annual EJCBA Golf Tournament (associated with Law Week) will be held at the UF Golf Course. Lunch will be from 11:30 a.m. – 1 p.m.; tee off at 1:00 p.m., with a reception to follow. Put this on your calendar NOW!

Probate Section Report



By Larry E. Ciesla

The probate section continues to meet on the second Wednesday of each month. Following are some issues discussed during recent meetings.

Larry Ciesla and Evan George announced the relocation of their practice to their new office located at 4400 NW 23rd Avenue, Suite A, Gainesville, Florida 32606. Same phone number 352/378-5603; new fax number 352/378-5604. New emails: LCiesla@larryciesla-law.com and evan@evangeorge-law.com.

Long-time section member Steve Graves announced the sale of his law practice and impending retirement. Angela Bounds will be gradually taking over Steve's practice beginning in January 2009. Steve will remain as her mentor and consultant throughout the rest of the year, after which she will, for the most part, be flying solo. Steve will be retiring to a home he recently purchased in St. Augustine to pursue the important things in life: fishing and (Alabama) college football. Note to Steve: better luck next year.

Judy Paul announced her departure from her staff attorney position at the courthouse to take Karen Yochim's place at Rick Knellinger's office. Karen is taking some time away from lawyering to have a couple of children; after which she intends to rejoin the ranks. Judy will be sorely missed. She had an unmatched talent for handling all situations, including the occasional hotly contested dispute, with a certain grace and elegance rarely seen in these parts. Initial reports from Judy indicate she is working hard and learning quickly. It is rumored that she has of late become extremely interested in a complex legal application sometimes known as "home cooking" and that she is assembling a collection of anecdotes on the subject. Send yours to her at judithrmk@bellsouth.net.

Nancy Moses and Mary Grace Curtin from Buddy Irby's office attended the December 2008 meeting to discuss the current state of affairs regarding the court system's collective budget woes. The main problem is lack of staff attorneys. Due to the current hiring freeze, departing staff attorneys cannot be replaced. At this point, there are no full-time probate/guardianship staff attorneys. For the most part practitioners should proceed as they did before the advent of staff attorneys, at least for the

time being. One thing the clerk's office has done to help out is to set up a special email address for assisting lawyers with locating files. The address is: filelocation@alachuaclerk.org. To help move things along quicker, mail for the clerk should be addressed to the clerk at P.O. Box 600, Gainesville, Florida 32602-0600 and not to the courthouse's street address. All street mail is first delivered to Ted McFetridge's office, thereby building in a delay before the mail is ever received in the clerk's office. The clerk's LINDAS website has been hugely successful. If you have not yet done so, you may sign up by contacting Mary Grace or Nancy. There is a one-time registration fee. Thereafter images of everything in the court file in a case in which you file a notice of appearance (except certain specific items such as inventories and accountings) become available for viewing, downloading and printing online. For those cases where you have not filed a notice of appearance, the clerk's docket sheet is available, without images of the individual documents.

During the January 2009 meeting, Judges Monaco and Roundtree continued the discussion begun at the December meeting regarding budget woes. Judge Roundtree explained the bottom line is that the court system must now do more work (for example, each judge has 500 new mortgage foreclosure cases) with less resources (little or no staff attorney assistance). Everyone will need to be a little more patient. The judges will nevertheless always be available to deal with any urgencies that may arise. Matters such as issuance of letters of administration may be expedited by filing the necessary initial paperwork with the clerk; obtaining a case number; obtaining file-stamped copies from the clerk; and then hand delivering proposed orders directly to the judge's chambers. It will be helpful if the lawyers all take extra care to ensure that all i's have been dotted; all t's have been crossed; and all required papers have been filed. The judicial assistants will be using the probate and guardianship checklists posted online. Lawyers can use the same checklists; save everyone time and effort; and obtain quicker relief. Stay tuned for more details in this regard.

All interested practitioners are invited to attend the probate section meetings. There are no dues. Nobody takes roll. We meet on the second Wednesday of each month at 4:30 in the 4th floor meeting room in the civil courthouse.

Immigration Matters



By Evan George

While there is plenty of justified criticism of the U.S. immigration system, there are areas where the U.S. government deserves praise. One such area deals with protection for battered immigrants, whose lack of immigration status further complicates their ability to safely flee domestic violence. If you represent an immigrant who has been the victim of abuse, or a variety of other crimes, your client might be eligible to self-petition for permanent lawful status (green card).

In 1994, Congress passed the Violence Against Women Act (VAWA), which provides immigration relief to victims of domestic violence at the hands of U.S. citizens and permanent residents. Under normal immigration processing, an immigrant must rely upon their U.S. citizen or resident spouse to petition for a permanent visa on their behalf. In situations of domestic abuse, U.S. citizen and resident petitioners often use an immigrant's lack of lawful status, and the threat of deportation, as a tool to control and intimidate the battered immigrant. Victims of domestic violence are often paralyzed by the fear of physical retaliation or being reported to U.S. Immigration Agents for deportation. Under the VAWA, a battered spouse (or child) has the ability to self-petition for their immigrant visa, without the sponsorship or consent of their abusive U.S. citizen or permanent resident family member.

To be eligible for relief under the VAWA, an immigrant must show that: 1) they entered into the marriage in good faith; 2) during the marriage, they resided with the U.S. citizen or permanent resident spouse, who battered or subjected them to extreme cruelty; and 3) they are a person of good moral character. Importantly, battered immigrants whose abusers are also undocumented aliens are not eligible to apply for VAWA status. An alternate process, the U Nonimmigrant Visa, exists for those whose abusers are not U.S. citizens or permanent residents; however, it is much harder to qualify for this immigration relief and those who obtain this status are not provided the same benefits as exist under the VAWA.

The self-petition for a visa is the first step in a two-step immigration process resulting in a green card. The visa petition establishes the qualifying family relationship, or the employment based labor

certification; however, an immigrant must still establish that they are eligible for permanent residency, i.e., that they are not inadmissible for a variety of reasons, including criminal convictions, immigration violations (illegal entry or visa overstay), health-related grounds, etc. Many immigrants can have an approved family-based or employment-based visa petition; yet they cannot take the final step to convert their approved visa petition into a green card, unless and until they are eligible to submit an application for adjustment of status to lawful permanent resident. Some battered immigrants may file their petition concurrently with an application for adjustment of status to lawful permanent resident, which would also provide them with authorization to obtain employment, a restricted social security card, a driver's license and various other benefits.

The VAWA is far from perfect, and abuses of this form of relief exist; however, the VAWA is a piece of immigration reform that has undoubtedly provided protection for some of our society's most vulnerable people. If you have an immigration-related issue or question, feel free to contact me at 352-378-5603 or evan@evangeorge-law.com.



Presentation of Circuit Court Judicial Robe by Margaret Stack, President of EJCBA, to the Honorable William Davis

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.

Alternative Dispute Resolution

The History Of Alternative Dispute Resolution: Part 1 Of 2



By Chester B. Chance and Charles B. Carter

We think of alternative dispute resolution (ADR) as something new; however, students of the history of law are well aware of early attempts at numerous alternatives to courtroom litigation. This is the first of two articles exploring the

history of ADR.

Trial by Combat/Wager of Battle

Trial by wager of battle was introduced in England by William the Conqueror as an alternative dispute resolution technique. The person accused fought with his accuser under the belief that Heaven would give the victory to him/her who was in the right. Trial by battle was abolished by St. 59, Geo. III, c 46 in 1818. Given the date it was abolished, trial by combat *may* still be a part of Florida law.

"The common and statute laws of England which are of general and not of local nature, with the exception hereinafter mentioned, down to the 4th day of July, 1776, are declared to be of force in this State; . . . Section 2.01, Florida Statutes."

Since 1776 no court in the United States has addressed the issue of whether wager by battle remains a valid alternative dispute resolution method to a civil action under the law. In "Forgotten Trial Techniques: The Wager of Battle" by Donald J. Evans published in the ABA Journal in May 1985, the possibility of trial by battle was set-out in a parody of author Raymond Chandler and set in a lawyer's office.

In 1166, in England, trial by jury became available and lawyers steered their clients away from combat as a means of resolving disputes. It has been suggested the practice of averting trial by combat led to the modern concept of attorney's representing litigants. (The authors assume it was easier to collect a fee from a living client with all limbs intact, i.e., the term "contingency" takes on new meaning if it is contingent on your client surviving.)

English trial by combat was to begin before noon and interestingly had an early form of "discovery". Before fighting, each litigant had to swear an oath disclaiming the use of witchcraft for advantage in the combat with the following words:

"Hear this, ye justices, that I have this day neither eat, drank, nor have upon me, neither bone, stone, ne grass; nor any enchantment, sorcery, or witchcraft, whereby the law of God may be abased, or the law of the devil exalted. So help me God and his Saints."



Today, formal discovery under the Rules of Procedure allow an attorney to determine if the opposing side exalts the devil or carries bones or stones. A Request to Produce is appropriate if the opposing party is suspected. A lot of discovery is needed to determine what in fact is *ne grass*, (perhaps some early form of performance enhancing drugs).

Either combatant could end the fight and lose his case by crying out the word "craven" (from the Old French for "broken"). Today, a litigant may shout out "broke" and thus acknowledge he has been rendered bankrupt by litigation costs and attorney's fees. Parties shouting-out "craven" are assumed to be referring to opposing counsel.

Absent crying out "craven", the fighting continued until one party or the other was dead or disabled. Under current rules of civil procedure, a dismissal with prejudice is akin to dying and a dismissal without prejudice is similar to being disabled with an HMO policy.

In 1400 a trial by combat was fought in France between a man and a greyhound dog. The dog won after latching onto the man's throat and the man then confessed he had murdered the dog's owner. The use of the dog eventually evolved into hiring attorneys to go for the opponent's throat with equal efficacy.

It is suggested trial by combat may be used during a mediation to break an impasse. The Resolution Center is considering investing in paint guns, Super Soakers and Nerf guns for attorneys to use as substitutes for maces, lances and long swords as a tribute to historical precedent. Al Bacharach suggests attorneys who are licensed to carry concealed weapons are especially suited and prepared for this form of alternative dispute resolution.

At your next case management conference,

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Alternative Dispute

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before the judge orders the action to mediation or to non-binding arbitration, respectfully suggest the court consider trial by combat/wager of battle. Cite the above referenced Florida Statutes as authority. If Al Bacharach is your opposing counsel you may wish to reconsider this suggestion.

However, an ADR technique we do not recommend is “eenie, meenie”. In a 2005 Federal case, the use of the phrase “eenie, meenie, minie, moe, pick a seat we gotta go” by a Southwest Airlines flight attendant was determined not to be an intentional infliction of emotional distress nor a violation of passengers’ civil rights. Since Southwest Airlines litigated the issue for several years the use of the nursery rhyme as an ADR mechanism is best avoided. As alternatives, the authors suggest drawing straws, flipping a coin or one-potato-two-potato (or for Dan Quayle one-potatoe).

Future articles in this series will address Trial by Ordeal and Rock-Paper-Scissors.



Margaret Stack and Judge Smith

Continuing Legal Education: Defending Residential Foreclosures

On Saturday, March 28, **April Charney** of Jacksonville Area Legal Aid will be hosting a CLE training called **Defending Residential Foreclosures**. The training will be a complete workshop on foreclosure defense, and will cover topics including securitization, standing, discovery, depositions, attorneys fees, internet research tools, negotiation, mediation, settlements, loan workouts and restructuring, credit repair, second mortgages, understanding loan documents, federal laws and regulations, bankruptcy and tax considerations, and common law causes of action.

Ms. Charney is a leading expert on foreclosure defense and was called the “Foreclosure Killer” by Forbes Magazine. There will be a discounted registration fee for EJCBA members and government or 501(c)(3) attorneys. Lunch will be provided, and details on CLE credits and how to register will follow soon. The event will be held at the UF Law School, and will be put on by UF Law’s Center for Governmental Responsibility, with assistance from the Eighth Judicial Circuit Bar Association and funding by the Florida Bar Foundation.

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

Florida Bar Board of Governors Report

By Carl Schwait



At its January 30 meeting in Tallahassee, The Florida Bar Board of Governors:

- Heard a report from the Budget Committee that the Bar's 2008-09 budget, originally projected to be balanced, will be in deficit because of the downturn in the national and state economies. The primary impact has been

from returns on the Bar's investments, although other parts of the budget have also been affected. It was noted that Bar expenditures are running below projections for the year. The 2009-10 budget, which will be presented to the board in April, is also expected to have a deficit, although less than the current year. An increase in annual membership fees is not expected because the Bar has adequate reserves.

- Approved a request from the Family Law Section to file an amicus brief with the Third District Court of Appeal supporting a ruling of an 11th Circuit judge striking down the state's law banning homosexual couples from adopting. Board members said this was a different matter than the section's 2004 request to lobby for a change in the state law, which was rejected, in that it seeks to uphold a judicial ruling. The amicus brief will be filed in the name of the Family Law Section, not The Florida Bar. No Bar or section funds are being used to write the brief, which is being prepared by a volunteer.
- Heard Chief Justice Peggy Quince outline a program for getting better funding for the state court system. The program includes a review of the around \$1 billion in court fees and fines collected annually, little of which reaches the courts. She said, however, that judicial salaries should come from state general revenues, and not court fees or fines.
- Conceptually approved a public survey on attitudes about lawyer advertising as part of a new study of Bar advertising regulations ordered by the Supreme Court. The poll will be conducted by the University of Florida Research Center and the Bar will get final review of the questionnaire before it is used.
- Approved the Bar's 2009-2012 Strategic Plan.

The plan keeps the same top four priorities from the 2008-2011 plan: ensuring that the judicial system is fair, impartial, independent, and adequately funded; promoting the legal profession and improving the public perception of the judicial system; ensuring access to the courts and legal services; and improving the value of Bar membership for its members and improving the Bar's relationship with its members. The ways those goals are accomplished is changing because of the economy and other factors, and there will be an increasing emphasis on technology.

- Heard that the Board Review Committee on Professional Ethics (on which I serve) is continuing to consider a rewrite of Ethics Opinion 90-6, which advises lawyers who have clients in a criminal case who are proceeding under a false name. The committee is trying to resolve potential conflicts between Bar rules and constitutional protections before bringing the issue to the board.
- Were invited by the Virgil Hawkins Florida Chapter of the National Bar Association to the Legacy Gala on June 27 at the Bar's Annual Convention to honor the publication of *Florida's First Black Lawyers (1869-1979)*.

This is very important. Rule 1-3.8 of the Rules Regulating the Florida Bar requires that all attorneys in writing designate an inventory attorney who is willing to serve. A local attorney (single practitioner) recently passed away without having made the required designation. Thus, it was necessary for me to make the designation to the Bar for final approval by our local Chief Judge. When the designation is not made the business of a deceased's attorney cannot go forward; checks cannot be signed; cases cannot proceed; and/or legal information cannot be given until the Bar intercedes.

So, to comply with the requirement of all attorneys:

1. Go to the Florida Bar website.
2. Fill in the "search" box with the words Inventory Attorney.
3. Go to the Frequently Asked Questions that appears.
4. The first question has the proper form for completion

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Criminal Law



By William Cervone

This month I thought I would update those of you who might be affected or otherwise interested in the progress my office has made towards going paperless with our files.

By way of background, most of you, like me, have probably gotten tired of the seemingly decades old promise that we were going to become a paperless society. No longer would we be burdened by piles of paper on our desks. No longer would we routinely consume a continent's worth of trees to make paper to record things on. No longer would we spend a ton of money buying more tons of paper, most of which was ultimately thrown away anyhow. And my pet peeve, no longer would I find an entire legal pad in a closed file in storage, only the first page or two of which had been used. The problem was that "no longer" never arrived, the paper kept piling up, the file room was bursting at the seams, and the whole thing was just not happening.

By serendipitous good fortune, in 2007 I stumbled upon some prosecutors in other parts of the country who had decided that enough was enough with the paper. Their offices had decided to take the bull by the horns and do something about it, and they had actually started down the road to paperless files. After some initial reservations about how it could work and some careful study of electronic alternatives, I became a believer. The result was an experiment of sorts in 2008 through which the Juvenile Division of my office became a guinea pig for the Great Paperless File Project.

The way the process works, at least globally, is that everything is scanned when received by my Juvenile Division. Everything. Correspondence, police reports, pleadings, everything. This happens immediately, meaning before the attorneys even see it. The paper is tossed. The electronically scanned version is wherever electronically scanned stuff is. More importantly, it is electronically delivered to the attorney who has the file, or what used to be a file. Outgoing, as opposed to incoming, stuff is treated the same way. When we can, things are done electronically. When we can't (court pleadings, for example), a paper document is created, the original is sent where it needs to be, and all we keep is a digital copy. Attorneys keep their notes

electronically, either to begin with or by scanning something that was generated elsewhere. When necessary, anything that might be needed is printed but for the most part, attorneys work from their computer instead of a paper file. This is so both in the office and in the courtroom (or anywhere else for that matter, including home) through a laptop instead of a desktop.

I picked my Juvenile Division to start this experiment with for several reasons, not the least of which is that it provided a relatively small microcosm of the office as a whole through which we could explore how to make this work and fix the inevitable glitches. There have been surprisingly few. In fact, the entire process has gone so smoothly that in January of this year we undertook an ambitious second step and began to convert our County Court cases in Alachua County to the same paperless system. So far, so good. Ultimately the rest of the office will follow suit, certainly in Alachua County and hopefully in all six counties although there may be some extra technological challenges with the five regional counties in doing this. But we are going to do it. The benefits are simply too many to ignore. No more lost files to be searched for. They're in digital heaven, available for retrieval by whoever needs them. No more "I can't do it now - so-and-so has the file" problems. Everyone - attorney, secretary, investigator, victim advocate - can access the digital file to work on their part of it at the same time. No more lugging hundreds of files back and forth to the courthouse for routine dockets. And best of all, we are slowly but surely emptying the file cabinets (which perhaps we will start using as planters), clearing our desks of paper, and cutting our copying costs. That latter benefit is especially relevant to the rest of you because as a part of this you can expect us to force as many of you as possible to accept things from us electronically in the future.

Obviously, we still have some paper around so calling this a paperless system is a bit of a misnomer. What it actually is and what we call it is Electronic Case Management, ECM in acronym speak. Call it what you want, it's still the wave of the future and at least a start.

I hasten to add that all of this is no problem to me because I don't have the hundreds of files to

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The System Needs To Bend, Not Break



By Stephen N. Bernstein

From 2001 to 2004, Michael Brillon was represented by six different publically funded attorneys. He fired two, claiming they did little-to-no-work on his case; he threatened the life of a third, forcing him to withdraw, and had two others leave because he was so unlikeable. As a result, Mr. Brillon, who had three prior felony convictions, spent three years in jail before, with the six lawyers representing him, he was convicted by a jury of second degree aggravated domestic assault and sentenced to 12 to 20 years in prison. He was given credit for the time he served before his trial. This scenario is not necessarily the exception to the rule in serious criminal cases involving unpopular defendants.

The Vermont Supreme Court, however, threw out Mr. Brillon's conviction and barred prosecutors from retrying him after concluding that his right to a speedy trial had been violated – even though the delay was the fault of Mr. Brillon or his lawyers. The court concluded, in part, that because the Public Defenders were paid with state money, the state must be held responsible. The United States Supreme Court recently heard argument in the case and they should overrule the decision on both legal and policy grounds.

Public Defenders do provide an indispensable service and our court system would not run well without them. Since I worked as one in the 1970's they have been overworked and underfunded for far too long, and it is little wonder that some may not be able to competently manage all of their cases. This neglect risks travesties of all kinds, not the least of which is the incarceration of innocent people. Nevertheless, letting defendants and their lawyers benefit from delays of their own making would create a perverse incentive for them to drag their feet. Some may question the likelihood of a defendant's choosing to remain behind bars without being convicted but it is not far-fetched to imagine such a calculus from those who, as Mr. Brillon did, face long sentences. Believe me, to some, playing the

system is far preferable to a "search for the truth" and a substantive review of the facts of the case.

Linking dismissal to time factors alone is a bad idea, although a defendant must have an opportunity for relief if a public defender's neglect is significant or serious delays are caused because of their lawyers being cycled through a case. A defendant who can prove such delays and neglect substantially harmed their cases would be entitled to new trials as opposed to dismissals. These kinds of motions are rarely granted, but they provide a safety valve in extraordinary circumstances. Vermont should pay attention to the Florida scheme and provide a brief window of time to try a defendant whenever an expiration of Speedy Trial period has elapsed.

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Get Lunch, Get Educated:

Federal Bar Association Brown Bag Lunches

The first lunch in the FBA's Brown Bag Lunch Series, a lunch with **United States Magistrate Judge Gary R. Jones** on January 28th, was a great success. Judge Jones discussed the basics of federal practice, as well as the role of the magistrate judge in the Ocala Division, with approximately 20 local federal practitioners. The FBA sincerely appreciates Judge Jones' participation in this event.

The second lunch in the FBA's Brown Bag Lunch Series, a lunch with **United States District Judge Stephan P. Mickle**, scheduled for **February 12, 2009** from **11:00 A.M. – 12:30 P.M.**, will have occurred by the time we go to press. Thank you, Judge Mickle, for your time and expertise; we will report on this lunch in a future issue.

The FBA is excited to announce its third and fourth brown bag lunches of 2009 with **United States Magistrate Judge Allan Kornblum** and **Senior United States District Judge Maurice M. Paul**.

The Honorable Allan Kornblum, United States Magistrate Judge for the Northern District of Florida, Gainesville Division, will hold an informal discussion geared toward less experienced federal practitioners on **March 3, 2009** from **12:00 P.M. – 1:30 P.M.** Judge Kornblum will discuss the role of the United States Magistrate Judge in the Gainesville Division, chambers procedures, and "staying out of trouble" in federal court. With regard to "staying out of trouble," Judge Kornblum will focus his discussion on conflicts of interest and ineffective assistance of counsel. This is a great opportunity to interact with a local federal magistrate judge, ask questions pertinent to one's practice, and learn about the inner workings of the federal court in Gainesville.

The Honorable Maurice M. Paul, Senior United States District Judge for the Northern District of Florida, Gainesville Division, will speak with local practitioners about the basics of federal practice on **March 17, 2009** from **12:00 P.M. – 1:30 P.M.** This is also a great opportunity to interact with a local federal judge, ask questions pertinent to one's practice, and learn about the inner workings of the federal court in Gainesville.

The FBA anticipates that each Brown Bag Lunch will be approved for **1.5 hours of CLE** credit, including a half hour of professionalism credit. In addition, for each of the FBA's Brown Bag Lunches, lunch will be provided. To cover the cost of the lunch, the cost to attend each Brown Bag Lunch is **\$10.00**. Please

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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: _____

Shannon Miller is the Recipient of the 2009 Florida Bar President's Pro Bono Service Award for the Eighth Judicial Circuit



Shannon M. Miller received recognition for her pro bono work at the Florida Supreme Court in Tallahassee on January 29, 2009. As the winner of the 2009 Florida Bar President's Pro Bono Service Award for the Eighth Judicial Circuit, Shannon was

recognized for her pro bono work with Medicaid qualification, guardianship and representation of the severely disabled. She is often called upon by the judiciary and local bar members and has taken on estate matters and other cases on a pro bono basis. She has a special interest in the elderly and defending their rights.

Shannon is a partner at Miller & Brasington P.L. and is a member of the elder law section of the Florida Bar. Her principal areas of practice are guardianship, special needs planning, Medicaid planning, guardian advocacies, estate planning, trust and probate administration and litigation. She is also a resident Mediator/Arbitrator at The Resolution Center of North Central Florida. She serves on several committees and has lectured on Medicaid, advance directives, guardianship, homestead and estate planning to organizations such as the Alzheimer's Association, Hospice and The National Association of Mental Illness.

As a graduate of the University of Maryland School of Law and Virginia Polytechnic Institute and State University, Shannon became a member of the Florida Bar in 1994. She was admitted to the U.S. District Court Southern, Middle, and Northern Districts in 1996. She was commissioned into the United States Marine Corps in 1992.

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NICK B. HARVEY



Young Lawyers Division at the
February Luncheon with Judge Davis

YLD Judicial Luncheon

The YLD invites all young lawyers to attend our next judicial luncheon with Judge Mosely on March 10, 2009, 11:45am at Harry's. Cost for YLD members is only \$5.

March Luncheon Speaker

By Rebecca O'Neill

EJCBA is pleased to announce that Chief Justice Peggy Quince is the speaker for the March 2009 EJCBA luncheon. The luncheon will be held at Savannah Grande, located at 301 North Main Street in Gainesville. The luncheon will begin promptly at noon. RESERVATIONS ARE REQUIRED.

Honorable Peggy Quince is the third female and first African American to hold the position of Chief Justice of the Florida Supreme Court. She graduated from Howard University with a major in Zoology, then proceeded to Catholic University for her J.D. She received an honorary doctor of laws degree from both Stetson University College of Law and St. Thomas University School of Law.

After her first job as a hearing officer for the Rental Accommodations Office in Washington DC, she proceeded to private practice in Norfolk, VA with an emphasis in real estate and domestic relations. Justice Quince moved to our great state in 1978. She practiced general civil law for two years in Bradenton before proceeding to the Attorney General's Office where she handled appeals in the Second District Court of Appeal, the Florida Supreme Court, the Eleventh Circuit Court of Appeals and the U.S. Supreme Court. During this tenure, she spent three years exclusively handling death penalty cases on direct appeal and in post conviction proceedings.

In 1993, Justice Quince became the first African-American female to be appointed to a district court of appeals, a position she held for five years. Justice Quince's term on the Florida Supreme Court began the same day that Governor-elect Jeb Bush took office, so to avoid controversy over her appointment, Bush and governor Lawton Chiles both agreed to jointly announce Justice Quince's appointment in

December 1998. Accordingly, she is the only Supreme Court Justice in Florida history to be simultaneously appointed by more than one governor. In addition, the task of signing Justice Quince's commission to the Florida Supreme Court fell to Chiles's successor, Governor Buddy MacKay, when Governor Lawton Chiles died of a heart attack just a few days after the appointment. Consequently, three Florida governors were actually involved in Justice Quince's appointment.

Justice Quince's service to the community, as well as the list of awards, honors and achievements is quite exhaustive. For a list of these achievements and for more information regarding the Chief Justice of the Florida Supreme Court, please visit the following link: <http://www.floridasupremecourt.org/justices/quince.shtml>

We are honored that Chief Justice Quince agreed to travel to Gainesville and speak to EJCBA at our March luncheon.

FBA Luncheons

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make checks payable to the North Central Florida Chapter of the FBA, c/o Stephanie Marchman, 200 E. University Ave. Ste. 425, Gainesville, FL 32601.

RSVP: Limited space is available for each lunch, so hurry and send your RSVP to Jamie Shideler at shidelerjl@cityofgainesville.org to reserve your seat. Members of the FBA will have reservation priority. **Please note on the RSVP which lunch you plan to attend.**

Where: The Brown Bag Lunches with Judges Kornblum and Paul will all be held in the Jury Assembly Room of the United States Courthouse, 401 SE First Avenue, Gainesville, FL 32601.

Criminal Law

Continued from page 9

manage that each of my Assistants do so I don't have to be proficient at electronically doing so. I'm one who struggles to do computer research because I'm still wedded to having the books spread out all over a table while I go back and forth between cases while researching. But I choose to think that if forced to I could come more fully into the digital age. My Assistants who have been a part of this process have adapted with ease, as have others on our staff. So can the rest of us. Paperless. It's the way to go.

Board of Governors

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5. Download and complete the form.
6. Sign and send to the Bar.

I would ask that each of you attempt to attend the upcoming Bar luncheons. On March 20, 2009, Chief Justice Peggy Quince will be making an appearance. She is a passionate, eloquent speaker. On April 17, 2009, our Florida Bar President, Jay White, will be discussing Bar business. We were honored that he chose to attend our luncheon in light of his tight schedule.

If you have any questions or comments, please feel free to call, write or email.

Is the bad economy going to be good for family lawyers? Not.

By Cynthia Stump Swanson



Do you agree that financial problems really are the #1 reason that couples get divorced? Does it seem that money troubles are the ones that grate the most? Cause the most dissension? If that is true, would a bad economy not just exacerbate all those financial disagreements and thus

result in a huge increase in divorces?

In the past, we've been told that the number of divorces increases during a bad economy, but does this economy seem different? Most family law blogs I've seen are talking about a decline in divorce filings owing to the severity of the economic downturn. This very flat economy seems to have resulted in decreased divorce rates for couples with limited financial resources. The prospect of incurring expenses for two households seems overwhelming for those with limited resources.

On the other hand, high net-worth clients may seek to take advantage of the diminished value of their homes, stock and investment portfolios, and businesses to decrease their overall financial liability to their soon-to-be ex-spouse. When the marital residence or a family owned business is the most significant marital asset, the party who is able to retain the house or business may reap a significant benefit down the road, rather than the one who is compensated by cash or other assets, because the value of the house or business is likely to increase once the economy recovers. On the other hand, those who made agreements two or three years ago to pay large sums of cash in order to keep what they thought were greatly appreciating real estate or business assets are now having second thoughts about those agreements.

So, where divorce filings may be decreasing, modification and enforcement filings may be increasing. Parties are returning to court as a way to deal with financial hardships that are affecting their divorce obligations. Retirement accounts have dwindled to nothing for some people; people have been laid off, hours cut back. Both need and ability to pay are being affected.

The credit crisis has impacted us, as practitioners, as well. Have you been hearing from clients that their credit cards are maxed out and they can not replenish their retainer?

News reports abound that more people are acting as their own lawyers. "The number of people serving

as their own lawyers is on the rise across the country, and the cases are no longer limited to uncontested divorces and small claims. Even people embroiled in child-custody cases, potentially devastating lawsuits, and bankruptcies are representing themselves, legal specialists say," the AP reported, as quoted in the Wall Street Journal's Law Blog. That blogger goes on to say, "Worse yet, these do-it-yourselfers are apparently making things worse for the professionals. The trend has resulted in court systems clogged with filings from people unfamiliar with legal procedure. Moreover, some of these pro se litigants, as they are known, are making mistakes with expensive and long-lasting consequences - perhaps confirming the old saying that he who represents himself has a fool for a client."

As the courts see more pro-se litigants, the courts are also suffering budget cuts. Support services are dwindling. There are fewer court resources to help pro se litigants figure out what the heck they are supposed to do.

If it is difficult for courts to handle pro se litigants, it is even more difficult for a lawyer on the other side of a pro se litigant. Most bar associations have gone to great lengths to publish manuals, handbooks, and forms to help pro se parties. The Florida Supreme Court has approved what must be hundreds of forms for use by pro se parties (and anybody else). The Florida Bar's Appellate Practice Section has published a 238 page handbook for self-represented appellants and appellees. So, there is a plethora of forms available, but that doesn't always mean that a cause of action will be properly stated, or that there is any evidence to support it.

Handling a matter against a self-represented party often seems like twice the work. It seems like you're the only one following the rules of procedure and evidence. It often feels like the Judge is bending over backwards to guide the pro se party, and offer the pro se party extensions of time, extra help in understanding what to do next, and so on. It is very important for you to create a good record, to provide a memorandum of law if needed, and for you to act with super-professionalism. And the temptation not to be professional will be great. When the other party files inappropriate documents, tries to get inadmissible items into evidence, fails to show up on time for hearings, makes arguments which are illogical or have no basis in the law, tries to talk to the Judge outside a

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hearing, and especially when it appears the Judge is going along with all of this, the temptation is very great to point fingers, call names, or worse, to underestimate your opponent, or to underestimate the credibility the Judge is finding in your opponent or his story. You do have to work twice as hard to prepare your client, your case, your evidence, and your arguments. Don't be pulled down or sucked in by a person who appears to be disorganized, uneducated, and ill-prepared. That doesn't mean he or she doesn't have a case, or that the Judge will not find him or her sympathetic.

Be polite and do not fuel the pro se litigant's David-and-Goliath complex. Politely remind the court that there are limits to indulging self-represented parties. Try to increase the seriousness of the pro se party's breaches of procedure, and decrease the court's sympathy for that person.

So, to sum up: It appears that divorce filings may be decreasing, while enforcement and modification actions may be increasing. But clients are having a harder time paying attorneys' fees and more are representing themselves. Is it time to move to a different area of practice?

The Family Law Section meets on the third Tuesday of each month at 4:00 p.m. in the Chief Judge's Conference Room of the Alachua County Family and Civil Justice Center.

Eighth Judicial Circuit

Part-time Hearing Officer (Traffic)

Independent Contractor

Independent Contractor to hear and adjudicate civil traffic and parking cases. The contract would be at a rate not to exceed \$50/hour. Applicants must be members in good standing with the Florida Bar. Contractual services are needed immediately. The successful candidate must be immediately available to complete a 40-hour training program before commencing work. Applicants must submit a resume with a detailed cover letter outlining credentials to Ms. Jan Phillips, Human Resources Manager, Alachua County Family/Civil Courthouse, 201 E. University Avenue, Room 410, Gainesville, FL 32601. If you need any special accommodations to participate in the application/selection process, please call 352-337-6237, (Office & TDD). The successful applicant will be subject to a criminal background check. Open until filled.

Pro Bono Attorneys Needed for Teens & Youth!

Following Chief Justice Peggy Quince's lead urging lawyers to volunteer as Guardian ad Litem attorneys for teens, the 8th Judicial Circuit Guardian ad Litem (GAL) Program is seeking Pro Bono Attorneys to represent the best interests of teens through their new Fostering Independence Project. Attorneys can volunteer to help teens who are transitioning into adulthood from foster care by simply submitting an application and taking a free 8 hour on-line (or DVD) CLE-approved course.

To serve as a Guardian ad Litem through the "**Fostering Independence Project**", an attorney will complete the above training, be a member in good standing of the Florida Bar, and undergo a screening application and interview. Once certified, an attorney will be assigned a dependency case for a teenager living in foster care. Among the areas of the Guardian ad Litem's focus will be ensuring that the child has the necessary skills and training to become successfully independent (i.e., housing, job skills, education, health care, etc.)

The Guardian ad Litem Program in the 8th Circuit hopes that local attorneys will consider joining the growing team of volunteer attorneys serving as Guardians ad Litem for these young people in our community. The local program will provide administrative and legal support to you.

A representative from the GAL Program will be available at the March 20th Bar meeting with more information on this Project.

Please contact Lauren DePaola at (352) 374-3656 ext. 2631 if you would like more information about the Guardian ad Litem Program's "Fostering Independence Project" or if you have any questions, etc.

March 2009 Calendar

- 3 Federal Bar Association Brown Bag Lunch with The Honorable Allan Kornblum, 12:00-1:30 p.m.
- 4 EJCBA Board of Directors Meeting; Ayers Medical Plaza, 720 SW 2d Avenue, North Tower, Third Floor – 5:30 p.m.
- 5 Deadline for submissions to April newsletter
- 5 CGAWL meeting, Albert's Restaurant, UF Hilton, Noon
- 10 YLD Judicial Luncheon with Judge Mosely, 11:45am at Harry's.
- 11 Probate Section Meeting, 4:30 p.m., 4th Floor, Family & Civil Courthouse
- 12 North Florida Association of Real Estate Attorneys meeting, Scruggs & Carmichael, 4041 NW 37th Place – 5:30 p.m.
- 17 Federal Bar Association Brown Bag Lunch with The Honorable Maurice M. Paul, 12:00 – 1:30 p.m.
- 17 Family Law Section Meeting, 4:00 p.m., Chief Judge's Conference Room, Alachua County Family & Civil Justice Center
- 20 EJCBA Monthly Luncheon Meeting – Guest Speaker – Chief Justice Peggy Quince, Florida Supreme Court – 11:45-1:00 p.m., Savannah Grande

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 April 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

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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