

FORUM 8

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Eighth Judicial Circuit Bar Association, Inc.

June 2010

President's Letter



By Elizabeth Collins

Looking back at the EJCBA's 2009-10 term, I am proud of what we have accomplished. Through the efforts of board members Nancy Baldwin and Deb Cupples, we have offered more CLE seminars throughout this term than I can recall in quite some time. Moreover, with Ray Brady at the helm, the

Professionalism Seminar was a continued success.

We enjoyed the camaraderie we shared at the James C. Adkins Annual Dinner in Cedar Key at Frog's Landing. Kudos to Pam Brockway and Jeanne Singer for planning the High Tea honoring Chief Judge Lott and the wine and cheese social at Amelia's. We look forward to seeing many of you at the Annual Reception at the Thomas Center the evening of Thursday, June 10th.

President-Elect Mac McCarty, Secretary Audrie Harris, Jamie Goble, and the rest of the Golf Tournament Committee have revived our once lost annual tradition and have given it a new spin by raising money for a charitable purpose. Through the generosity of our sponsors and sixty players, the event raised \$5000 for The Guardian Foundation, Inc., which raises and distributes funds for the Eighth Judicial Circuit's Guardian Ad Litem Program. Earlier in the year, under the leadership of Lua Mellman, the Holiday Project raised over \$1700 for The Guardian Foundation, Inc.

This term, our luncheon guests were Nick Ross (North Florida/South Georgia Veterans Health

System), Kenneth Marvin (Director of Lawyer Regulation for the Florida Bar), Larry Cretul (Florida House Speaker and District 22 Representative), Chief Tony Jones (Gainesville Police Department), Chief Judge Martha Ann Lott, Florida Supreme Court Justice Jorge Labarga, First District Court of Appeal Judge William Van Nortwick, Adrienne Davis and Jane Curran (the Florida Bar Foundation's ONE program), Jesse Diner (President of the Florida Bar), Adele Stone (President of the Florida Bar Foundation), and Steve Zack (President-

Elect of the American Bar Association). Moreover, Audrie Harris, Gloria Walker, and Judy Padgett were able to secure sponsorships of a number of our luncheons, which helps in our efforts to keep the cost of our luncheons down.

Phil Kabler spearheaded our new In-House Counsel section. The Membership and Bylaws committee worked to develop a tiered dues structure and create a new category for law student membership. In addition, next year we plan on implementing a mentor program with the law school in conjunction with UF Career Services.

The website committee continues to work to improve the functionality and appearance of our website and lead the charge, no pun intended, to allow online credit card payments during the next term. By the time of this publication, the 2010 judicial poll will have been completed and, in the very near future, the annual member survey will be coming your way. Over the summer, your newly elected board will have its annual summer retreat to plan for the year to come. I look forward to the return of

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EJCBA Luncheon Policy

Please be reminded that the EJCBA is once again enforcing its long-standing policy that if you RSVP to the EJCBA luncheon, but do not attend, you must still pay for your lunch. You will receive a bill if you have not pre-paid. The EJCBA is obligated to pay for the lunches regardless of whether you attend or not and we will expect the same obligation of you.

In addition, we encourage you to RSVP, when possible. We welcome your attendance and always hope to have as many of you attend as are able, but we need your help in ensuring an accurate headcount, so that our lunches can continue to run smoothly. Thank you in advance for your cooperation!

About This Newsletter

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

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

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

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Deadline is the 5th of the preceding month

President's Letter

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familiar faces and to working with some of you for the first time.

As always, Newsletter Editor Dawn Vallejos-Nichols and Historian Frank Maloney ensured all these events (and so many more) were shared with all of you in the Forum 8, which went "green" this year and is now available for our members online at www.8jcb.org. Many members contributed regular features, special articles and photos to the Forum 8, which is a vital part of its success.

I would like to express my personal appreciation and gratitude to each and every member of the EJCBA board, without whom we would not have achieved so much. In addition to those specifically recognized above, all of our board members, Past-President Margaret Stack, Treasurer Sharon Sperling, Flint Crump, Kathleen Fox, Evan George, Virginia Griffis, Marynelle Hardee, Sheree Lancaster, and Mike Pierce have dedicated their time and talents to the EJCBA board.

I thank each and every EJCBA member who supported us by coming to our luncheons, socials, and CLE's, and by lending a helping hand with our pro bono and community service efforts. And, of course, I also must recognize Becky O'Neill. As our President, the joy and dedication she put into her term of office was always evident and always inspiring. She may have left us in March for a new career opportunity, but her optimism and enthusiasm remain with us.

This term has once again proven the old adage that, together, we can do great things. I look forward to the 2010-11 term and all that we will accomplish together.

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.

EJCBA Golf Tournament Benefits The Guardian Foundation, Inc.

To celebrate Law Day 2010, sixty golfers gathered at the UF Golf Course to participate in the Eighth Judicial Circuit Bar Association ("EJCBA") Charity Golf Tournament to benefit The Guardian Foundation, Inc. Thanks to the generous contributions of numerous organizations and individuals, \$5,000 will be donated to the Foundation to be used to provide support for the children who receive assistance through The Guardian ad Litem Program and the associated Foundation. Event sponsors and contributors included:

Dharma Endowment Foundation, Inc.
Hatchett Creek Farms, LLC
The Resolution Center
Renaissance Printing
Capital City Bank – Alachua
John Ives
Office Concepts & Furniture Design, Inc.
Dell Graham, P.A.
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James Feiber, Jr., Esq.
Mary Fossum
Gainesville Health & Fitness Center
Pete Enwall, Esq.
Mike Nabers – Rue Bar
Zaxby's
Kazbor's Grille – Magnolia Parke
UF's Mark Bostick Golf Course
Brashear, Marsh, Kurdziel & McCarty, PL
David's Real Pit BBQ
Floating Lotus Spa
Michelle Fossler, LMT
Gainesville Country Club
Kitchen & Spice
Northwest Seafood
Turkey Creek Golf & Country Club

Following a cooling lunchtime shower, the golfers enjoyed a beautiful Friday afternoon of golf competing in 30 two-person teams for gross, net and hole prizes. While playing golf with colleagues and local professionals made for a lot of fun, the fact that the EJCBA raised funds to help disadvantaged children in our community made it all the more meaningful for those who participated and donated.

Alternative Dispute Resolution

By Chester B. Chance and Charles B. Carter

Updates In A.D.R. Case Law



We have noticed there is a refreshing lack of litigation involving mediation issues. In the last 18 months (through April of 2010) very few appellate decisions address concerns arising from a mediated settlement. We suggest this is yet another reason to support and encourage mediated resolution and further proof of the

efficacy of mediation and the satisfaction of parties upon reaching a mutually acceptable agreement.

Unilateral Mistake

In *Rachid v. Perez*, 26 So.3rd 70 (Fla. 3rd DCA 2010), a husband's estate moved to enforce a mediated settlement between the estate and the wife. The appellate court affirmed the trial court's determination that the wife was not entitled to rescission of a mediated settlement agreement with the husband's estate on the ground of a unilateral mistake. The wife did not claim or show that any party misled or induced her to enter into the agreement, but rather that her own attorney misled or induced her. The court stated the wife had an obligation to read and know the legal perimeters regarding the validity and application of her prenuptial agreement prior to the mediation and the wife failed to demonstrate that denial of relief would be inequitable. The appellate court noted the burden to obtain rescission of a settlement agreement on the legal theory of a unilateral mistake "is a particularly difficult one". The court emphasized cases settled at mediation are especially unsuited for the liberal application of a rule allowing rescission of a settlement agreement based on unilateral mistake.

Signed Agreement

In *Dean v. Rutherford Mulhall, P.A.*, 16 So.3rd 284 (Fla. 4th DCA 2009) the court determined a purported settlement agreement resulting from mediation between a client and a law firm over unpaid fees did not bind the client when the agreement was signed by the client's attorney but was not signed by the client. The 4th DCA held a settlement agreement resulting from mediation cannot be enforced absent the signature of all parties.

Agreement Trumps Pre-Dissolution Designation

In *Barker v. Crawford*, 16 So.3rd 901 (Fla. 3rd

DCA 2009) the court determined that a statement in an amended, short form, family mediation agreement that the former husband was to retain retirement money with the Town of Surfside and the Deferred Compensation fund f/k/a Pepsco was sufficient to waive the former husband's pre-dissolution designation of the former wife as a beneficiary.



Right To Arbitration

In *DFC Homes of Florida v. Lawrence*, 8 So.3rd 1281 (Fla. 4th DCA 2009) the court reviewed the three elements considered by a court in ruling on a motion to compel arbitration: (1) whether a valid written agreement to arbitrate exists, (2) whether an arbitrable issue exists, and (3) whether the right to arbitration was waived. The court held a party to an arbitration agreement waives the right to arbitration by active participation in litigation before asserting that right. However, a mere attempt to settle a dispute outside the courtroom is not considered inconsistent with the party's right to arbitration. The court held a vendor did not waive its right to arbitration by participating in a deposition, making offers to settle the purchaser's lawsuit, filing a motion to dismiss for lack of prosecution, answering a purchaser's request for interrogatories, and participating in mediation. All of these actions occurred after the purchaser exercised its right to arbitration and the purchaser never filed an answer and affirmative defense to the complaint but rather submitted a motion to confirm an arbitration award, and, participation and discovery was determined to be limited to obtaining information relevant to the trial court's determination of whether the right to arbitration was present.

Confidential V. Lien Law

In *Trytek v. Gale Industries, Inc.*, 3 So.3rd 1194 (Fla. 2009), the Supreme Court of Florida reviewed the "significant issues" test for determining the prevailing party under an attorney fee provision in the Construction Lien law. The court noted an award of attorney's fees and costs to the prevailing party in a mechanic's lien action serves to encourage settlement of disputes before resorting to litigation. The court noted a need to examine earlier good faith offers to settle the claim.

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Too Little Too Late

By Stephen N. Bernstein



"I didn't kill her. I never saw her. I am sorry she died, because her death has ruined my life." The truth of those words, spoken 27 years ago by Donald E. Gates as he was being sentenced to life in prison for the murder of a D.C. woman, was ultimately confirmed. He is finally

free but his case cries out for investigation because of absolutely appalling circumstances.

Mr. Gates, 58 years of age, was released after DNA tests revealed that another man committed the crime. Prosecutors had claimed that he attempted to rob a woman while she was on her way home from work in June 1981. But when she resisted, he raped her and shot her in the head. The key to the prosecution's case was the testimony of F.B.I. Special Agent Michael Malone that two pubic hairs found on the woman's body were microscopically identical to a sample taken from Mr. Gates.

What appalled the Judge was that information discrediting Mr. Malone surfaced as early as 1997 but that neither he, the original sentencing judge, nor the defense were informed about that until 2009. Particularly damning is a January 22, 2004 letter from the Justice Department informing prosecutors that Mr. Malone's lab report in the Gates case was not supported by his notes and advising them to determine whether the defense should be notified, as legally required under *Brady v. Maryland*.

The U.S. Attorney's Office said it only recently became aware of the letter and was conducting an investigation to determine whether it was absolutely received, and if so, why it wasn't given to the appropriate officials. A better question is why the government, as a matter of policy, didn't alert the defense to doubts raised in 1997, when the Inspector General concluded Mr. Malone had provided false testimony, or in 2002 when the government determined his work was material to Mr. Gates' conviction.

The really scary thing is that Mr. Gates' release came about only because of heroic individual efforts. His court appointed lawyer, Roger Durvan, was about to retire but was so upset about this case that he continued to bug both the judge and later the public defender's office, who took over the case. Their

efforts to get new DNA testing would have gone nowhere if not for the work of two police officers, who tracked down long lost evidence from the victim's body in the medical examiner's office. It's also scary that while Mr. Gates sat in jail, the victim's real killer went unpunished and probably continued on his evil ways. We have no way of knowing who got in his way since 1981.

Mr. Gates must await one more court ruling to be totally exonerated. Once that happens he will be able to make a claim for compensation for time spent in prison. Federal law provides for up to \$50,000.00 per year of incarceration but the total amount will be left up to the court. As much as Mr. Gates gets, it won't be enough.

Jimmy C. Adkins Inn of Court, American Inns of Court

By Shannon Miller, *Outgoing President*

Our final Inn meeting concluded the Inn of Court year on May 27, 2010. We had a super year filled with lots of new members, incredible programs and lots of great adventures on the horizon. Our Inn is busting at the seams and we are looking to expand to a rotating 2nd Inn shortly. Be a part of our exciting growth. If you have never heard of the Inns of Court, shame on you-- its origins date back to rainy England when litigators were barristers, wearing wigs and robes.... wait a minute, they still are! Our Inn of Court continues to be grounded upon principals of good, skill-based litigation and ethical practices. We also pride ourselves on our skills at networking and socializing! We serve both the Third and Eighth Judicial Circuits and boast 16-20 members of the bench as active participants. Be a part of it. You will find the application on our website at <http://www.innsofcourt.org/inns/adkinsinn>. Lucky you, if you are selected, our incoming President will be the Honorable Victor Hulslander to guide us through our next great year!

If you are a current member, you will be contacted shortly regarding your renewal, which will be due back to us by June 15. Have a great summer!!

Criminal Law



By William Cervone

I had intended to summarize this year's legislative session this month now that, thank God, it is over. Instead, I have found something better. What follows is the invocation given in the Florida Senate on March 31st of this year (which was, for context, during

Holy Week) by Rev. Don Roberts, President of Goodwill Industries Manasota in Sarasota. It says a great deal.

Holy Law Giver, the Seder meal has been blessed; Easter's resurrection sunrise is yet to come. We pause, as the Senate of the State of Florida, to reflect on the Passover celebration of liberty that the laws we create protect us, and we give you thanks for the resurrections that are often required to keep our laws tempered with a holy justice.

In this session, O God, some of our bills have suffered the death of the avenging angels; some of our bills remain hung upon a cross; some of our bills will never leave the darkness of their committee's burial cave; and some of our bills will experience the miracle of a resurrection. Such is the process we call politics, Lord.

Senator Bennett, being convinced of the rectitude of his legislative initiatives, is sometimes perplexed that his colleagues don't see the world in exactly the same way.

Senator Detert has the joy of trying to fund and fix an education system whose sole claim is to be the tallest midget in the class.

Governor Crist marches to the right in an attempt to be right; experiencing your divine wisdom that you cannot be right and in relationship at the same time.

Our tax system remains mired in 19th century purgatory with no clear consensus on how to get out of this mess, despite former Senate President John McKay's best efforts.

Our economy sucks, if you will excuse the expression, Lord, and like all the families in Florida, we are trying to figure out how to pay the bills. Other than that, Lord, this session is turning out to be just more fun than any legislator can stand.

So, more than most sessions, Lord God, we need your presence. Our prayers are simple, Lord. By your Passover presence, avert those avenging angels that our bills may not suffer the death of the first born. By your Easter resurrection presence, remind us that a bill's life always triumphs the temporary experience of a particular chairman's death, making us particularly

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Florida Lawyers Assistance, Inc. There Is Help, and There Is Hope

Florida Lawyers Assistance, Inc. (FLA) is a lawyers-helping-lawyers program which offers confidential help to judges, attorneys, and law students dealing with alcohol and drug abuse problems, compulsive gambling, stress, depression, other types of compulsive disorders, and similar conditions which may impair these individuals' quality of life and ability to practice in a competent, ethical and professional manner. FLA was created in 1986 by recovering attorneys and addiction professionals in order to help other lawyers deal with their impairments. The backbone of FLA is a network of over 200 attorneys throughout the State of Florida who are themselves recovering from substance abuse, psychological problems, and impairment caused by other conditions. These volunteers stand ready to assist their peers in all areas of their recovery. The staff and volunteers of FLA **know** the problems faced by impaired attorneys and how to help overcome these problems because they've been there.

Because of the sensitive nature of addiction and psychological problems, attorneys who may be in need of help are often very reluctant to seek that assistance. Recognizing this concern and in order to foster early and confidential contact with FLA, in 1986 the Supreme Court of Florida approved Rule 3-7.1(j) which states that any treatment provided to an impaired attorney shall be deemed confidential and may not be admitted as evidence in any disciplinary proceeding. In 1998, the Florida Legislature adopted §397.482-486, F.S. providing confidentiality for any voluntary communications made to FLA.

Among the confidential services provided by FLA are:

- **Assessment and Referral:** A trained member of the FLA staff will meet with an affected attorney, either at FLA's Ft. Lauderdale office or off-site, to evaluate the problem and recommend available treatment and rehabilitation options.
- **Interventions:** In appropriate situations, a member of the FLA staff will plan, rehearse, and facilitate a formal intervention to assist an impaired attorney.
- **Peer Support Network:** The affected attorney will be paired with a recovering lawyer in their geographical area to act as a mentor and to help with their rehabilitation.

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Family Law Section



By Cynthia Stump Swanson

We had a great presentation at our meeting on April 4, 2010 by Teresa Drake, the new Director of the new Intimate Partner Violence Assistance Clinic. This clinic is a partnership between the UF College of Law Center on Children and Families and Virgil D. Hawkins Civil Legal Clinics, UF's College of Medicine, Shands HealthCare, and Gainesville's nonprofit Peaceful Paths Domestic Abuse Network. The innovative clinic will be staffed by UF law and medical students who have been trained and certified to work with survivors of domestic-violence and by social and mental health workers from Shands at the University of Florida and Peaceful Paths. The clinic, set to open in May, will be located in the obstetrics, gynecology and pediatrics clinic at Shands at UF in Gainesville. The location was chosen due to the number of abuse victims treated in the clinics. In addition to providing immediate assistance to patients at the Shands clinics, Teresa and her staff will also provide education to all medical and law students at UF - so none of our aspiring doctors and lawyers will get through their professional schooling without becoming educated about domestic violence.

Teresa reminded us that domestic violence is about power and control. Teresa pointed out that batterers are often very charming and appear very rational. They can manipulate almost anybody. She pointed out that it is important to determine the context of any particular act of violence, but that about 95% of domestic violence acts are from a person who is actually a "typical" batterer. Other types of domestic violence, however, may happen from a one-time assault, from an assault in self-defense, or from someone with mental health issues.

Some of the "excuses" given by batterers to avoid responsibility for the violence include, "Well, I was just drunk and so I didn't know what I was doing." Teresa's response to that person is - "Well, if you were drunk, would you french kiss your grandmother?" Her point is that if violence is something you would never do, you're not likely to do it when you're drunk. But if it is, then being drunk only allows you to attempt to fool yourself into not taking responsibility for it.

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Immigration Matters



By Evan George

The issue of human trafficking often conjures up images of victims of the sex-trade or forced labor, huddled in dark rooms and crammed in the back of trucks. Until recently, human trafficking has generally been considered a global issue, and not a local problem. Unfortunately, and surprising to many, human trafficking has reached North Central Florida. The local authorities, however, are not overlooking this issue, and there may be significant immigration benefits for the victims of human trafficking.

In response to this growing problem of human trafficking within the United States, Congress enacted the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA). The VTVPA increased criminal penalties for those convicted of trafficking in humans. The VTVPA also allows victims of human trafficking to apply for a temporary visa, the T-Visa, which provides work authorization and can eventually lead to permanent resident status. Congress allocated 5,000 T-Visas per year. The VTVPA protects victims of human trafficking and allows victims to remain in the United States to assist in the investigation or prosecution of their human traffickers. The T-Visas are valid for a three-year period, after which time, T-Visa holders are eligible to apply for permanent resident status ("green card").

To establish eligibility for a T-Visa, applicants must demonstrate that they have been victims of "severe trafficking," which includes proving that they were brought to the United States either for sex or labor that is induced by force, fraud, or coercion. An applicant for a T-Visa must: 1) be physically present in the United States or at a port of entry on account of trafficking, 2) comply with any reasonable request from a federal, state, or local law enforcement agency for assistance in the investigation or prosecution of human trafficking, and 3) demonstrate that they would suffer extreme hardship involving severe and unusual harm if they were removed from the United States. Victims of human trafficking may be able to apply for derivative status for certain members of their family.

Local authorities and community organizations have joined efforts to form the Alachua County Human Trafficking Task Force to raise awareness of the issue of human trafficking in our area. In Alachua County, the U.S. Attorney for the Northern District of Florida and the Alachua County Special Victims

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Howdy From Haiti (Part Deux)

By Dan Sikes



Haiti is a country devoid of law. Literally. It strikes a bold contrast to my early experience in the Army. Having spent three years

flying against the Russians on the East German border, I have been an eye witness to a government that sought to control all aspects of their citizens' life. People risked death to have the freedom that we as Americans take for granted. The East German border was a monument to authoritarian government. The fence was three meters high with stamped diamond shape holes with razor sharp bottoms designed to slice off fingers of the would be undocumented immigrant. Of course that assumes that the escaping citizen could have avoided the watch towers, roving sentries, guard dogs, machine gun pill box nests, land mines, and patrolling helicopters. Whatever East Germany was, Haiti is the exact opposite, yet paradoxically not free.

The first thing you notice in Haiti are the traffic laws. There are none. It is kind of a mixture of British driving laws with American driving laws. Apparently each driver gets to choose. Bumper car is the national sport and curbs are used interchangeably as traffic control devices or public restrooms. Intersections are marked with congestion not traffic lights. If traffic lanes are marked at all, it is akin to Khadafi's line of death with the oncoming traffic serving as F111's thumbing their noses over the Gulf of Sidra. Any daylight observed in between the spaces of cars is attacked as a breach in a defensive wall. My wife would love the fact that most drivers ride the horns and use hand gestures as an integral part of their safe driving skills. Speed limits are marked by the fenders of the vehicles in front of you, and I swore I saw that car from the Farber College Homecoming Parade being driven by D-Day.

Last Tuesday it took almost an hour to ride four miles so I could brief our troops on the lawful use of force to protect food distribution. Tuesday and Thursdays are market days which mean traffic was at a standstill. We constantly train our troops on how to behave and obey the law. Hence, the Haitians have a very difficult time understanding us. A couple weeks ago a crowd became unruly during food distribution and the lieutenant on the scene was on the verge of losing control of the situation. He ordered his soldiers

to march three steps backward and take a knee. No more food would be given out until the Haitians calmed down. In a land where looters are summarily shot, such restraint was deafening. The crowd calmed down and food distribution resumed.

We had a passing semblance to law last Saturday as a local attorney, a local judge, and armed law enforcement officers arrived on our compound. Apparently a contractor that we had employed had not finished paying his lease payments on a truck and the actual owner had enough clout to bring out the entire court on the weekend with a heat index of over 105 degrees. The lawyer and the judge explained that we Americans were in criminal violation if we did not immediately deliver the truck. Instead of relying on the fact that our guys had M16s and their guys had pistols, we explained that the vehicle would be immediately delivered, thank you very much. Somehow I have a hard time seeing any American judge showing up at an Army camp on a hot Saturday morning to see to it that his orders were enforced.

The worst impact of the lawlessness is on the children, and especially the disabled children. Haiti is a Darwinian society where only the strongest survive and the weak or feeble are kicked to the curb. The orphanage that my church sponsors is an isolated safe haven for these children. The happiest moments I have spent in Haiti have been Sunday afternoons at this oasis. Last week, I held a six year old child the size of a three month old baby and cooed her to sleep. The healthy children, unfortunately, are rarely adopted and end up back on the streets upon emancipation. I fear that they are not prepared for that fate. The disabled children either don't survive, get a flight to the States for rehabilitation paid for by church charity, or linger in the orphanage. There is one disabled lady in the orphanage who is in her thirties. They do their best to protect their wards for as long as they can.

When I look to one extreme in the fallen old communist regime of East Germany and the other extreme of the free falling anarchy in Haiti, what I am left with is a profound appreciation for the blessings of home. While I can't wait to be back to love and care for my own children, I am touched by the children I have met. My hope for them is that their country finds balance through the law. One of the most important things I have learned in Haiti is that only a society committed to law and justice can grace be freely given, shared, and accepted. The children of Haiti need all the grace they can get.

Another excuse is anger – “I was just so angry, I was out of control. I just didn’t know what I was doing.” But, as Teresa pointed out, when you question that person as to “Well, what exactly did you do?” it often turns out that when he went on his violent rampage, only the stuff belonging to his intimate partner was trashed, and not any of his own stuff. This leads to the conclusion that he did, indeed, know what he was doing.

Teresa and the staff at the clinic will conduct comprehensive needs assessments to determine what services are required and guide them through each process. The services provided by the clinic will include medical treatment, mental health and housing counseling, and legal consultations regarding protective injunctions, child support and court proceedings. Teresa’s group has developed a three question assessment to identify patients who can benefit from services right when they come in for medical treatment for themselves or a child.

According to a 2007 Uniform Crime Report, more than 2,300 incidents of domestic violence occurred in the 8th Judicial Circuit that year. Existing legal service providers were able to respond to only 951 requests for legal assistance in 2007, leaving as many as 1,349 documented domestic violence victims with unmet legal needs.

This is the first all inclusive clinic of its kind in the United States, and is being funded by a \$449,785 U.S. Department of Justice grant. Teresa mentioned a “danger assessment” instrument developed by Jacquelyn Campbell, PhD, RN at Johns Hopkins University. If you google that phrase, you can find copies of the assessment and additional publications and research regarding its use.

Gary Moody pointed out that there is a civil cause of action provided in Florida Statutes §768.35 for “continuing domestic violence.” This section provides that, “A victim of domestic violence... who has suffered repeated physical or psychological injuries over an extended period of time, as a result of continuing domestic violence, has a cause of action against the perpetrator responsible for the violence.” The statute also provides a four year statute of limitations, measured from the date of the last incident of violence. However, Gary points out that if even one act occurred within the four years, evidence of all the previous violence will come in. That section also provides that there is no limit to the punitive damages which may be awarded, which

would otherwise be limited by Florida Statutes §768.73. It seems unlikely that there would be any insurance coverage for this, because the violence would be considered an intentional act. Thus, the provisions of this statute would only be useful where the perpetrator has some financial means.

Another item I want to mention is a bill which, if signed, will impact the preparation of child support guidelines, and also has some impact on the award of alimony. At the time I’m writing this, this bill has been passed by both houses, but not yet signed by the Governor. Go to myfloridahouse.gov and look for CS/HB 907. Some highlights of this bill:

It creates three categories for determining whether a marriage is long term or not, and some presumptions that go with that determination. There is presently some variation among appellate districts, so this will now be standardized throughout the state. This bill provides that a marriage of less than seven years is considered short term; of seven years to 17 years is a “moderate term” marriage, and 17 years or more is long term.

Bridge-the-gap alimony is codified and may not last longer than two years. It also creates a new type of alimony, called “durational,” which may be awarded after short or moderate term marriages. This is like permanent alimony, in that there is no rehabilitative plan required, but is for a shorter, finite period of time. Courts are required to take into consideration the tax consequences of an award of alimony, as well as any child rearing responsibilities of the parties. The amendments to the alimony provisions will apply to all cases pending on July 1, 2010.

One of the main provisions affecting child support include a requirement that where there is more than one child, the court is to set the reduced child support that will automatically go into effect when the child support obligation terminates for the older child; and set the “month, day, and year” that the reduction goes into effect.

The bill also provides that in certain circumstances there is created a rebuttable presumption that a parent has income equivalent to the median income of year-round full-time workers as derived from current population reports or replacement reports published by the United States Bureau of the Census. In order to impute income in an amount greater than that, the party seeking to impute the income has the burden of proof, and

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Yet More Random Thoughts from a Florida Bar Foundation Board Member



By Phil Kabler

Thank you all for reading these articles about The Florida Bar Foundation and its local and statewide activities. They have been my attempts to show how our EJCBA member contributions and actions benefit the legal services community in our midst and throughout Florida.

(Perhaps even beyond Florida in the case of the Law Student Assistance grant programs I outlined last month.)

This month, I (briefly) highlight a very straightforward opportunity for all of our EJCBA members to assist The Foundation's programs. As we know, in June The Florida Bar will send us our annual Fee Statement forms. One voluntary contribution line on that form is for the 2010 Lawyers' Challenge for Children campaign. Yes, I know; we will have all paid a good deal of money on that same Statement for our license renewal and section memberships, but the Children's campaign line is unique and should not be overlooked.

Please allow me to describe what we are "buying" when we contribute to the Children's campaign: We are underwriting grants for Children's Legal Services. That is it. Specifically, the Foundation uses our contributions for the following priorities -- representation of foster children, and access to special education, medical, developmental and mental health services that are required under law.

For those quants among us wishing greater detail, here are the numbers:

For 2009-10, the Foundation distributed \$2.8 million in Children's Legal Services grants.

Individual donations supporting Children's Legal Services totaled \$220,763 in 2009. Of that total, contributions from 3,033 lawyers through the Lawyers' Challenge for Children campaign came to \$160,425. (Every dollar contributed goes out in grants. The Foundation does not deduct any administrative costs for operating the grant program.)

All-in-all, this was one of my simplest articles to write. The Lawyer's Challenge for Children supports an important priority for us all as lawyers -- children who are in need. It is easy to participate. The participation of all our EJCBA members adds direct value to the Children's campaign. Please, then, give serious consideration to contributing when you are

already attending to your Bar Fee Statement.

And, just in case someone wants the background information on the Children's campaign and Children's Legal Services grants, here it is all in one convenient place:

Lawyers' Challenge for Children campaign: <http://www.flabarfndn.org/giving/ways-to-give/lawyers-children.aspx>

Children's Legal Services grants: <http://www.flabarfndn.org/grant-programs/lap/childrens.aspx>

Questions about the Lawyers' Challenge for Children campaign or The Florida Bar Foundation in general? Please feel free to call me at (352) 332-4422.

Family Law

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the court must find competent, substantial evidence that the unemployment or underemployment is voluntary; and must identify the amount and source of the imputed income, through evidence of income from available employment for which the party is suitably qualified by education, experience, current licensure, or geographic location. Income may not be imputed based upon records that are more than 5 years old at the time of the hearing or trial at which imputation is sought; nor may income be imputed at a level that a party has never earned in the past, unless the party is recently degreed, licensed, certified, relicensed, or recertified and thus qualified for, subject to geographic location.

In doing the math to determine child support, the child care amount will no longer be reduced by 25%. In addition, the definition of "substantial time" of timesharing responsibility for applying a reduction in child support has been reduced from 40% to 20%. This means that the child support obligation will be reduced in virtually all cases..

As I said, at the time, I'm writing this, this bill has not yet been signed into law.

The Family Law Section does not meet in June, July, or August. Our next meeting will be the third Tuesday in September - September 21, 2010 at 4:00 pm in the Alachua County Family and Civil Justice Center. Have a great summer!

- **Attorney Support Meetings:** FLA sponsors over 30 weekly meetings around the state where recovering attorneys network to help each other deal with the problems and stresses of practicing law without having to resort to using substances or engaging in self-destructive behavior.
- **Education and Prevention:** FLA works with law firms, the courts, The Florida Bar, and the Florida Board of Bar Examiners to educate members of those entities concerning attorney impairment and recovery. In addition, FLA makes regular presentations at CLE seminars and law schools throughout the state regarding addiction and mental health issues.
- **Annual Workshop:** FLA presents a CLE seminar in July of each year dealing with such issues as recent developments in the treatment of various impairments, disciplinary proceedings in which lawyer impairment was involved, and Board of Bar Examiners and Supreme Court decisions and procedures concerning admission of applicants with histories of chemical dependency or psychological problems.
- **Structured Rehabilitation Program:** In cases involving attorney discipline or admissions problems, FLA can implement a structured rehabilitation program which will document an attorney's or law student's recovery. Such evidence of recovery will often be taken into consideration by The Florida Bar or Board of Bar Examiners when determining discipline or recommendations for admission.
- Complications associated with the use of cocaine include damage to the heart, brain, and other major organs. Continued use causes dramatic personality changes and deterioration of ethical values, leading to criminal and disciplinary penalties.
- More than 400,000 Floridians suffer from gambling addiction.
- One of the symptoms of addiction is denial - an individual who is addicted usually has little or no insight into their problem.
- 35% to 50% of disciplinary cases can be traced to an underlying impairment.
- Early intervention and treatment of the addicted attorney often leads to complete recovery.

Addiction is not a moral issue, but rather is a treatable illness which causes a deterioration of moral and ethical values. The stigma is not in having the illness, but in **failing to seek treatment once its presence is recognized**. Seeking treatment is perfectly acceptable social behavior. Addiction is a progressive disease - it never gets better by itself.

Free, confidential help is available to you or a lawyer you know who may be having problems with drugs, alcohol, gambling, or a psychological condition which is impairing the ability to practice law or live life. If you or someone you care about is suffering from such a problem, professional and peer assistance is available to help bring about a positive change.

FLORIDA LAWYERS ASSISTANCE CAN HELP.
For Additional Information call the FLA Hotline or visit the FLA web site: (800) 282-8981 | www.fla-lap.org

Facts About Impairment

- Addiction and depression are treatable illnesses.
- Addiction and depression occur in every socioeconomic group. It has been estimated that their prevalence within certain professions (including attorneys) may be higher than in the general population.
- Alcohol is the most widely used and destructive drug in America. Alcohol abuse among women has doubled in recent years. Previously the ratio of women alcoholics to men was 1 to 6; it is now 1 to 3.
- Marijuana is not a "benign" drug. It severely affects memory, concentration, and ambition.

Governor Crist Appoints New Judges to the Alachua County Court

On May 4, 2010, Governor Charlie Crist announced the appointment of Robert K. Groeb and David P. Kreider to the Alachua County Court. Groeb and Kreider will fill the vacancies created by the elevations of Judge Mary Day Coker and Judge Victor Hulslander to the Eighth Judicial Circuit Court. The EJCBA welcomes and congratulates our two newest judges.

It's that time again!

The Eighth Judicial Circuit Bar Association Nominations Committee is seeking members for EJCBA Board positions for 2010-2011. Please consider giving a little time back to your bar association. Please complete the application below and return the completed application to EJCBA. The deadline for completed applications is **June 1, 2010**.

EIGHTH JUDICIAL CIRCUIT BAR ASSOCIATION, INC.

Application to Nominations Committee

Name: _____ Bar No. _____

Address: (Home) _____

(Office) _____

Telephone Numbers: (Home) _____ (Office) _____
(Fax) _____ (Cellular) _____
(E-Mail) _____

Years in practice: _____ Type of practice: _____

Office of Interest: (Check all that apply)

President Elect Designate _____ Secretary _____ Treasurer _____

Board member _____ Committee Member _____

Areas of Interest: (Check all that apply)

Judicial Poll	_____	Membership	_____	Membership Benefits	_____
Community Services	_____	Publicity	_____	By-Laws	_____
Membership Survey	_____	Director	_____	CLE	_____
Law Week	_____	Newsletter	_____	Mentoring	_____
Sponsored Programs	_____	Programs	_____	Long Range Planning	_____
Professionalism	_____	Historian	_____	Pro Bono	_____
Computer Technology	_____	Meeting Activities	_____	Other (Describe below)	_____
Bag Luncheons with Judiciary	_____	Judicial Robes and Receptions	_____		

Briefly describe your contributions to date to EJCBA.

What new goals would you like to explore for our association?

How many hours per week can you devote to your EJCBA goals? _____

Return to: EJCBA – Nominations Committee
P O Box 127
Gainesville, FL 32602-0127

Or email completed application to: execdir@8jcba.org

Return by June 1, 2010

Alternative Dispute

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The court held the overall purpose of § 713.29 and attorney's fees statutes in general is to discourage rather than encourage needless litigation. The trial court has the discretion to make a determination that neither party has prevailed on the significant issues in litigation after examination of all the factors, including the issues litigated, the amount of the claim of lien versus the amount recovered on the lien, the existence of setoffs and counterclaims by the homeowner, and the amounts offered by either party to resolve the issues prior to the litigations assuming that those negotiations were not otherwise confidential either by agreement or statute. [See, e.g., § 44.405(1), Fla. Stat. (2008) "accept as provided in this section, all mediation communications shall be confidential. A mediation participant shall not disclose a mediation communication to a person other than another mediation participant or a participant's counsel."]

As always, THANKS to Dawn Vallejos-Nichols for all she does in getting out the Newsletter.

Immigration Matters

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Unit for Human Trafficking Division have made the investigation and prosecution of human traffickers a priority. If someone you know is, or has been, a victim of human trafficking, contact the authorities immediately. If you have an immigration-related issue or question, feel free to contact me at 352-378-5603 or edglaw@gmail.com.



Judges Jaworski, Nilon, Davis, and Reiman enjoying the golf outing.

Maximizing Your Valuable Time

*By Linda Calvert Hanson, Assistant Dean
Center for Career Development, University of
Florida Levin College of Law*

careers@law.ufl.edu (352) 273-0860 www.law.ufl.edu/career

Florida is ranked third in the nation, behind only New York and California, for hosting the largest number of law schools. On any given day, almost ten thousand students are attending one of the eleven law schools in Florida. These law students are eager to learn, gain experience and a real world perspective. In today's world there are countless ways that solo or smaller firm practitioners can benefit from hiring a law student or recent graduate, part-time or on an as-needed-project basis to free up their most valuable resource – time. Even if you do not have the space for a law clerk, many projects can be done by students "virtually"; that is they can work for you from home or school and e-mail you the result of their research.

Independent of more traditional in-office tasks such as document review or case organization, law students can virtually perform research on topics you lack the time to conduct. For example, they could Shepardize or check citations for you, research and draft memos or briefs, provide you with background research for your upcoming CLE presentation or talk, provide or update content on your website, research and provide content for the brochure or newsletter you always planned to create, help you to incorporate innovative technology into your practice by creating a blog, or assist you at trial.

The career development office at any of the Florida law schools will be happy to post your law clerk, project-based research assistance, summer associate, entry-level or lateral position announcement at no cost. Just provide the law school's career office with a description of your time frame and position needs and you will receive a packet of resumes from interested applicants for your review and follow up. Invest a few minutes now to list your opening and gain hours of increased productivity on the complex work only you can handle.

June 2010 Calendar

- 3 CGAWL meeting, Flying Biscuit Café, NW 43rd Street & 16th Ave., 7:45 a.m.
- 9 Probate Section Meeting, 4:30 p.m., 4th Floor, Family & Civil Courthouse
- 10 EJCBA Annual Reception, Thomas Center, 6:00 p.m.

Have a safe and happy summer!

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.

Criminal Law

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grateful for term limits.

So, thanks for keeping us company, Lord, as you have promised, even when we would prefer you leave our proverbial smoke filled rooms as we tend to the sometimes less than holy business of legislation. So, with you, Lord, we wish our Jewish colleagues the happiest of Passover seasons. With you, O Lord, we wish our Christian colleagues the best of the Easter season. And, finally, to our Atheist colleagues, we simply say "Good Luck".

Amen.

Perhaps remarkably, I have nothing further to say this publishing year. In the Fall, after I've recovered from far too much time in Tallahassee and distanced myself from the necessary evil that each session seems to be, there will be ample time to review what was, and as important, wasn't done to and for us by the legislature in 2010. I hope all of you have an at least sometimes restful summer.

Save The Date

Please add to your calendars now EJCBA's Annual Reception, which is rapidly approaching. The event will be held at the Thomas Center on the evening of Thursday, June 10, beginning at 6:00 p.m. We look forward to seeing you all there!