

# FORUM 8

Volume 69, No.7

Eighth Judicial Circuit Bar Association, Inc.

March 2010

## President's Letter



By Rebecca O'Neill

The EJCBA Pro Bono and Community Service Committees (Committees) met with General Magistrates Nancy Wilkov and Susan Miller-Jones to discuss various pro bono and volunteer opportunities for lawyers. Below are some of the topics

we discussed.

The Family Resource Center, located at 1130 N.E. 16<sup>th</sup> Avenue, Gainesville is the result of a collaborative effort between Department of Children and Family Services, the Alachua County Library District, Partnership for a Strong Families and United Way. The Family Resource Center offers services for families and children, such as parenting classes for adults and computer access for children, as well as a full service library for all to enjoy.

Marcia Green from Three River Legal Services (TRLS) advised that TRLS would like to organize a legal clinic at the Family Resource Center. Their goal is to staff the legal clinic with pro bono attorneys once a week so community members can obtain legal advice for their specific legal issues, such as landlord/tenant disputes. A volunteer attorney specializing in taxation has already made a presentation, discussing tax issues for low income taxpayers. TRLS is hopeful that more attorneys in our circuit will participate in making the legal clinic a success. You will only advise in the area of law you practice. Please contact Marcia Green at 352-372-0519 for more information or to schedule your participation in the legal clinic.

General Magistrate Wilkov talked about the Independent Living Court for teenagers who are aging out of foster care and who, once they turn 18 years of age, will be completely on their own without having

had the benefit of parental guidance during critical teen years. She mentioned that the Independent Living Court provides much needed positive reinforcement by rewarding accomplishments such as good grades, good behavior and improved attitudes with small gifts and recognition from the bench. Independent Living Court provides teens with gift cards for special occasions such as birthdays and graduation from high school. If you would like to donate a gift card, you may give it to any EJCBA officer at the monthly luncheons.

The Committees discussed the idea of having attorneys "donate a birthday," meaning that your family and friends purchase gift cards for the teens who are in the Independent Living Court instead of buying you another tie or more perfume. General use gift cards, such as Visa and MasterCard, are perfect, as are gift cards for Wal-Mart and Target.

Teens exiting the foster care system to live on their own are generally in dire need of furniture and home furnishings. The Independent Living program staff

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## Forum 8 has Gone Green!

As of January 2010, this newsletter, Forum 8, is automatically being sent electronically to the email address that EJCBA has for you instead of being mailed to your address. If you wish to continue receiving paper copies of the Forum 8, you must opt in by emailing Judy Padgett, Executive Director, at [execdir@8jcba.org](mailto:execdir@8jcba.org). EJCBA is helping our planet, one newsletter at a time.

**The officers of the Eighth Judicial Circuit Bar Association for the year 2009-2010 are:**

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

**Margaret Stack**  
*Past President*  
408 West University Avenue  
Suite 110-B  
Gainesville, FL 32601  
(352) 377-8940  
(352) 373-4880 (fax)  
[mmstack@att.net](mailto:mmstack@att.net)

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

**MEMBERS AT LARGE:**

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

**Ray Brady**  
2790 NW 43rd Street, Suite 200  
Gainesville, FL 32606  
352 378-6118  
352 378-8530 (fax)  
[rbrady1959@gmail.com](mailto:rbrady1959@gmail.com)

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

**Flint Crump**  
4703 NW 53rd Avenue, Ste. A-1  
Gainesville, FL 32653  
(352) 327-3643  
[flint@rflintcrump.com](mailto:flint@rflintcrump.com)

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

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

**Virginia Griffis**  
4041 NW 37th Place, Suite B  
Gainesville, FL 32602  
(352) 416-3494  
[griffis@scruggs-carmichael.com](mailto:griffis@scruggs-carmichael.com)

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

**Mac McCarty**  
*President-Elect Designate*  
926 NW 13th Street  
Gainesville, FL 32601-4140  
(352) 336-0800  
(352) 336-0505  
[mmccarty@nflalaw.com](mailto:mmccarty@nflalaw.com)

**Audrie Harris**  
*Secretary*  
P.O. Box 358595  
Gainesville, FL 32635-8595  
(352)327-1170  
[audrie.harris@yahoo.com](mailto:audrie.harris@yahoo.com)

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

**Phillip N. Kabler, Esq.**  
240 NW 76th Drive, Suite D  
Gainesville, FL 32607  
(352) 332-4422  
(352) 332-4462 (fax)  
[pnkabler@bellsouth.net](mailto:pnkabler@bellsouth.net)

**Sheree Lancaster**  
PO Box 1000  
Trenton, FL 32693  
(352) 463-1000  
(352) 463-2939 (fax)  
[shlpa@bellsouth.net](mailto: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](mailto:Frank@FrankMaloney.us)

**Lua J. Mellman**  
120 W. University Ave  
Gainesville, FL 32601  
(352) 374-3670  
(352) 491-4553 (fax)  
[mellman@sao8.org](mailto:mellman@sao8.org)

**Michael D. Pierce**  
18 NW 33rd Court  
Gainesville, FL 32607  
(352) 376-4694  
[mpierce@clayton-johnston.com](mailto:mpierce@clayton-johnston.com)

**Jeanne Singer**  
120 W. University Avenue  
Gainesville, FL 32602  
(352) 374-3670  
[singer@sao8.org](mailto:singer@sao8.org)

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

**Gloria Walker**  
901 NW 8th Avenue  
Gainesville, FL 32601  
(352) 372-0519  
[gloria.walker@trls.org](mailto:gloria.walker@trls.org)

## Save The Date

On April 30, 2010, 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!

## Save the Date!

In May, the EJCBA luncheon will be held on Thursday, May 13<sup>th</sup>, rather than our usual Friday, to accommodate our special guest, Stephen Zack, President-Elect of the American Bar Association. Please note this change of date on your calendar.

## About This Newsletter

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

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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](mailto: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](mailto:dvallejos-nichols@avera.com)

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

# Robert Rush Receives the Florida Bar President's Pro Bono Service Award for the Eighth Judicial Circuit

By Marcia Green

Robert "Rob" Rush received the Florida Bar President's Pro Bono Service Award for the Eighth Judicial Circuit at a ceremony at the Florida Supreme Court on January 28. The award recognizes members of the Bar who provide exemplary pro bono services to indigent individuals or groups.

Rush, well known in the community for some of his high-profile clients, was nominated for the award by attorneys Sal Mollica and Mike Weiss. Their nomination mentions several cases, including one in which a very "extraordinary resolution" was reached for a 17-year-old, facing life imprisonment, who was sentenced as a Youthful Offender and given the opportunity to enter a Boot Camp Program.

In another case, Rush represented a hearing-impaired man involved in a relatively minor moving traffic offense who was arrested and convicted without a proper interpreter and then lost his job. With Rush's representation, the conviction was overturned and the case dismissed allowing this husband and father to find new employment, which had become difficult with the obstacles of his impairment as well as the criminal conviction.

One of his high profile pro bono cases included the representation of a juvenile who, while driving his mother to work in the early morning, struck a batting cage in the road. At the time of the accident, a police officer was struggling to remove the batting cage from the road and was killed. In another pro bono case, Rush represented a 13-year-old on attempted first degree murder charges, fighting to keep him from being tried as an adult or being sentenced to state prison.

For more than 20 years, Rush has taken on pro bono cases, primarily criminal defense, and has often recruited his peers to help. Together they have put in hundreds of hours representing juveniles and others making their way through the criminal justice system. In addition, he has served as pro bono legal counsel and board member for several local non-profit organizations, including the Center for Independent Living and The Volunteer Center.

Rush is Board Certified by The Florida Bar in Criminal Trial and Civil Trial law and is a former local Board of Governors representative. Individually and with his law firm, Rush and Glassman, he sponsors many community organizations, activities and causes.

## 2010 Master Calendars & Administrative Order

By Ted McFetridge, Court Administrator

The 2010 Master Calendars for the Eighth Judicial Circuit have been revised by Chief Judge Martha Ann Lott. The master calendar allows the court to provide notice of court events and management of court resources throughout the circuit. It is important to adhere to a master calendar in a large and diverse organization and recognize that it cannot be changed without the Chief Judge's review and approval.

The revised editions of the Master Calendars are found online at the Eighth Judicial Circuit's Web Site under "Circuit Information" and then go to the heading "Calendars".

The following revised 2010 master calendars are now available online at [www.circuit8.org](http://www.circuit8.org):

- 2010 Alachua Circuit Court Master Calendar – 2<sup>nd</sup> Revision – 1/22/10  
<http://tinyurl.com/yasnwsb>
- 2010 Alachua County Court Master Calendar – Revised 1/28/10  
<http://tinyurl.com/ydk83m2>
- 2010 Regional County Circuit Court Master Calendar – 2<sup>nd</sup> Revision – 1/22/10  
<http://tinyurl.com/ydta664>

The *General Assignment of Judges Administrative Order* effective February 1, 2010 has been signed by Chief Judge Martha Ann Lott. The order assigns Judge Mary Day Coker and Judge Victor L. Hulslander to circuit assignments and shows a vacancy for both the Alachua County Court Civil Divisions.

This order may be found on the Eighth Judicial Circuit's Web Site under "Circuit Information" and then go to the heading "Judicial Assignments". A link to the new *General Assignment of Judges Administrative Order* is found below:

<http://tinyurl.com/yfc7jjs>

If you have any questions or comments, please contact me.

# Alternative Dispute Resolution

## Risk: "I'll Attack Kamchatka from China" (Parker Brothers, 1959)



By Chester B. Chance and Charles B. Carter

Risk: No, not the board game where you get all pumped up when you wipe 20 blue armies out of Western Europe. Risk as in any risk. The risk of global warming versus the cost of paying for carbon emissions. Ah, risk and its cousin uncertainty. Risk can often

be measured, as any poker player counting their 'outs' can attest. Uncertainty cannot be measured.

Going to trial is a risk. The risk involves uncertainty at numerous levels and on numerous issues. When an attorney is asked by a client "what are my chances of winning (or losing)?" the lawyer replies with statements akin to: "I think we have a good chance". "I think our chances are better than 50-50". "No one can predict, but your chances are maybe 60-80%". Those statements don't exactly make a client's risk analysis easy.

When a client in a personal injury case asks how much they will win (or lose), the lawyer might say things like: "No one can guarantee a result". "The case has a value between \$50-60,000 but it could be worth more or less". "I have seen similar cases go for \$50,000, but, no two cases and no two juries are alike".

A client at mediation is faced with dual uncertainty: imprecision on the chances of prevailing and uncertainty of the monetary gain (or loss). Stir in uncertainty about issues like the admission of certain evidence, the percentage of comparative negligence, etc., and it is no wonder clients are confused and frustrated at mediation.

Clients tend to settle at mediation because they get a bird in the hand. They have the comfort of the certainty of a settlement versus the uncertainty of any other choice. (Remember an earlier article in this column about "Choosing Gain to Avoid Risk").

How do people weigh risk versus uncertainty? Consider the Ellsberg Paradox discussed in SuperFreakonomics by Steven D. Levitt and Stephen J. Dubner. The Ellsberg Paradox is an experiment involving two urns. The first urn, you are informed, has 50 red balls and 50 black balls in it. The second urn contains 100 balls, but the number of red and black balls is unknown. Your task is to pick a red ball out of either urn, so, which urn will you choose? (Pause for effect while you contemplate. No, really think about your answer).

Most people pick the first urn. Why? They

prefer a measurable risk to an immeasurable uncertainty. This condition is known as *ambiguity aversion* by economists. Maybe it explains the logic and simple inclination to resolve cases at mediation. Or, maybe it is the variety of cookies and snacks available. Who knows? In any event, knowing about risk aversion



and the Ellsberg Paradox may make you more sympathetic to a client's dilemma at mediation. Also, please note there is no place in the Ellsberg Paradox to factor in anger or principle. You may hate red balls, or, have some principle which seemingly prevents you from selecting the second urn. But neither anger nor principle enters into the Ellsberg Paradox and probably shouldn't enter into one's decision during a negotiation. Questions should be asked such as: What is my best day in court, and what will it cost? What is my worst day in court, and what will it cost? The answers may be uncertain so try and remember the concept of ambiguity aversion. If you can't remember that concept, remember the black and red balls and two jars. And hope the other side doesn't keep rolling double sixes when you invade Kamchatka.

## Nominees Sought for 2010 James L. Tomlinson Professionalism Award

Nominees are being sought for the recipient of the 2010 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, 2790 NW 43rd Street, Suite 200, Gainesville, FL 32606. Nominations must be received in Mr. Brady's office by April 30, 2010, in order to be considered. The award recipient will be selected by a committee comprised of leaders in the local voluntary bar association and practice sections.

**RESERVE NOW FOR THE 2010 PROFESSIONALISM SEMINAR!**

WHEN: Friday, March 26<sup>th</sup>, 2010 – 9:00 a.m. – 12:00 NOON

WHERE: UF College of Law - Chesterfield Smith Ceremonial Classroom

PROGRAM: Our keynote speaker is Senior Judge Stan R. Morris, of the Eighth Judicial Circuit, speaking on the topic of “Professionalism: The Path to the Independence of Lawyers and the Judicial Branch”

COST: \$60.00 (Make checks payable to EJCBA)  
(3.5 Hours of CLE is expected)

REMIT TO: EIGHTH JUDICIAL CIRCUIT BAR ASSOCIATION, INC.  
c/o Raymond F. Brady, Esquire  
2790 NW43rd Street, Suite 200  
Gainesville, FL 32606

RESERVE: **By Tuesday, March 23, 2010** – Remit payment with reservation to Raymond F. Brady, Esquire

**Please identify first and second choices for your area of specialty for small group discussions.**

- \_\_\_\_\_ P. I./Insurance Defense Law
- \_\_\_\_\_ Family/Domestic Relations Law
- \_\_\_\_\_ Criminal Law
- \_\_\_\_\_ Estates & Trusts Law
- \_\_\_\_\_ Transactional/Commercial Law

NAME(s): \_\_\_\_\_  
\_\_\_\_\_

NOTE: Please send a separate card with specialty areas for each attorney attending.

Thank you.

**Parking:**  
Decal requirements  
For **Commuter** parking  
will be waived.  
Spaces are limited, so  
**arrive early.**

**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: \_\_\_\_\_

## Professionalism Seminar:

### Inexpensive (CHEAP) CLE Credits

*By Ray Brady*

Mark your calendars now for the annual Professionalism Seminar. This year the seminar will be held on Friday, March 26, 2010, from 8:30 AM until Noon, at the University of Florida Levin College of Law. The keynote speaker and topic are listed on the reservation card above.

We expect to be approved, once again, for 3.5 General CLE hours, which includes 2.0 ethics hours and 1.5 professionalism hours.

Watch the newsletter for further information and look in your mail for an EJCBA reservation card in early March. Questions may be directed to the EJCBA Professionalism Committee chairman, Ray Brady, Esq., at 373-4141.

# Getting Home On Time

## A book review of: Time Management for Attorneys, By Mark Powers and Shawn McNalis

By Siegel, Hughes & Ross

The subtitle of this book is, “A Lawyer’s Guide to Decreasing Stress, Eliminating Interruptions and Getting Home on Time.” Powers and McNalis draw on their combined forty years of experience working with lawyers to offer concrete, specific steps to accomplish just that. They begin by suggesting that the key to productive time management is to be proactive rather than reactive. They then offer seven strategies for becoming more proactive:

- Identifying and setting goals;
- Selecting clients wisely;
- Blocking like tasks together;
- Creating systems;
- Managing interruptions;
- Delegating work; and
- Taking vacations.

However, Powers and McNalis go further than identifying strategies. They provide specific steps to implement each strategy and include numerous forms and checklists to assist implementation.<sup>1</sup>

The authors begin by suggesting specific steps to identify the lawyer’s vision. They view the law practice, not as an end in itself, but as a tool to enable the attorney to create the type of life he or she wants. Therefore, they encourage development of both a professional and a personal vision statement. When the vision statements are complete the next step is to identify the goals necessary to implement the vision. Again the authors offer specific steps and forms to assist the lawyer identify his/her specific goals.

In my opinion the most important step in developing a successful, enjoyable law practice is to choose clients wisely. Powers and McNalis point out that the top 20-40% of a firm’s clients (called A and B clients) are likely to produce 60-80% of its revenue. In addition, the bottom 20% of a firm’s clients (called C and D clients) are likely to produce 80% of its problems. The authors identify specific characteristics of the top clients. They also point out that the difficult clients, “do not sneak into your practice unannounced. They usually arrive at your door waving several red flags....” The book identifies many of those red flags. It even includes a “Client Selection Scorecard” to help evaluate potential clients.

Powers and McNalis also provide specific steps to identify those existing clients that may be draining time and energy away from more productive efforts. The best method, “Ask your staff, they will know.”

(When I first began to implement this system, I asked everyone in the office to identify the three most difficult clients. All four of us, two lawyers and two staff, identified exactly the same three clients.) Having identified the difficult clients the book includes specific suggestions of ways to modify their behavior or, if not possible, to terminate the representation.

The book also suggests two ways for the lawyer to do what he does more efficiently and two ways to reduce the amount of work he has to do. The authors correctly point out that we lawyers frequently do a great deal more than we have to do. We can lessen this workload by developing systems that allow others to do the work for us and by delegating tasks to our assistants.

Powers and McNalis point out that most law offices rely on “customary” ways of doing things. As an alternative they recommend adopting formal systems implemented by written checklists. The goal is for “everybody to do the same thing, the same way, every time.” The book includes suggested checklists and specific directions on ways to create additional checklists to fit your practice.

The second way to lessen the attorney’s workload is to delegate. Now that is hard. Most lawyers, particularly trial lawyers, are control freaks. However, delegation not only benefits the attorney, but also benefits the client by allowing the work to be done by a lower billing person. As previously mentioned, systems and checklists increase the ability of the attorney to delegate. In addition, Powers and McNalis offer specific step by step suggestions on how to identify those tasks which can be delegated and how to implement a delegation system.

What must be done by the lawyer can be done more efficiently if the lawyer can manage interruptions and block like tasks to be accomplished together. Managing interruptions can be the most difficult part of working efficiently. Powers and McNalis cite studies that find the average interruption to be seven minutes and that it takes three additional minutes to refocus on the task at hand; that’s an average of ten minutes per interruption. This results in a lost hour for every six interruptions. Those same studies find the average attorney faces twenty interruptions a day for a loss of three hours and twenty minutes a day. Imagine if you could cut that in half. That would give you an extra eight hours and 20 minutes a week, more than one full

*Continued on page 7*

# Somewhat Random Thoughts from a Florida Bar Foundation Board Member



By Phil Kabler

While you will receive an official EJCBA invitation to the March 19 luncheon, please allow this to serve as an unofficial but entirely sincere invitation. The speakers at that luncheon will be First District Court of Appeals Judge William Van Nortwick, Florida Bar Foundation Executive Director Jane Elizabeth Curran, and Adrienne Davis. This group will speak about the new “One” Campaign. (A housekeeping note: Ms. Davis is the Coordinator of the Campaign.)

Perhaps you have read or heard about the “One” Campaign. It has been profiled in prior Forum 8 articles. If you have not heard about it yet, you will. And you should.

The “One” portion of the title is an abbreviation of “One Client. One Attorney. One Promise.” Yes, this is a pro bono initiative. A statewide pro bono initiative. Promoted by Chief Justice Quince. Propelled by Judge Van Nortwick and Adrienne Davis. And funded to a large part by The Florida Bar Foundation. (Hence, my personal tie-in.)

Our Eighth Judicial Circuit is well-known for our participation in Florida’s aspirational pro bono program. No one really needs to tell us here that lawyers are supposed to use their talents to benefit the less fortunate in our community. Like everyone else, though, sometimes we have to be gently reminded. The “One” Campaign offers that gentle reminder. And our March 19 speakers will bring that reminder to the forefront.

Even before the March 19 luncheon, please make an opportunity to learn about the “One” Campaign, and the role each and every EJCBA attorney can play, no matter his or her practice area. It is possible for each one of us to make one promise to assist one client. If you do not know where to start, contact Three Rivers Legal Services (a Foundation grant recipient, by the way), which is the local “One” Campaign point-of-contact. They will help you.

Also, please visit [www.onepromiseflorida.org](http://www.onepromiseflorida.org). And by all means watch the video on the “One” Campaign’s website. It is truly outstanding.

I look forward to seeing you on March 19. If you want information about The Florida Bar Foundation – or even about the “One” Campaign – please feel free to call me (352-332-4422). (And just for one instant as an EJCBA board member, please pre-register for this luncheon. It makes it so much easier for us to plan.)

## Getting Home On Time *Continued from page 6*

day. The book contains multiple specific suggestions on how to avoid interruptions.

The difference between this book and others on the subject is the level of specificity. As you can tell from the number of times I have used the word “specific” in this review, this is not a book of philosophical musings on how to be more efficient. It is full of specific, concrete steps, including forms and checklists, necessary to implement the strategies necessary for “decreasing stress, eliminating interruptions and getting home on time.”

Powers and McNalis even give a list of things to do to prepare for a vacation, the final strategy to implement. Take a vacation: a week or two. Don’t call the office. Leave instructions you are only to be called in an emergency. When you get back the problems with your implementation will have revealed themselves. You know what you need to work on before your next vacation. I have not had the courage to implement this last strategy: maybe this summer.

<sup>1</sup> The book comes with a C.D. including the various forms and checklists.



You are cordially invited to attend  
the investiture of the  
Honorable

**James T. Browning**  
Levy County Court Judge

Friday, March 12<sup>th</sup> at 4:30 PM  
Levy County Courthouse  
355 South Court Street  
Bronson  
Courtroom A

*Reception immediately following*

# Criminal Law



By William Cervone

I have always had mixed feelings about technology, believing that for every blessing it provides there is an equal and opposite curse. E-mail means spam, for example, and far more of that than there ever was junk mail. Cell phones mean instant access. Electronic anything creates an expectation that the electronic part will always work. There are problems that pencils and carbon paper just didn't create. The law and our courts, inevitably, must deal with the same difficulties that confound us personally.

Which leads me to an interesting case released late last year, Bennett v State, 34 FLW D2428 (2d DCA '09). John Bennett was stopped for DUI in Manatee County back in 2007. Predictably, the arresting deputy said that Bennett did poorly on the usual FSTs that were given, but Bennett testified that he had done quite well on them, thank you. Enter the standard in-car video and let everyone make up their own mind, right? Technology to the rescue, right? Wrong! For undetermined reasons, the digital camera the deputy had and/or its electronic transfer of whatever it recorded to a DVD malfunctioned and there was no recording. Nothing was intentionally destroyed - the system just didn't work. The Manatee County Court ultimately dismissed the case, and the Circuit Court reversed. On cert, however, the Second DCA remanded for further consideration because of a misapplication of existing law that is not really relevant to this article.

If that's all there was, this wouldn't be so interesting. The fact of the matter, however, is that the Second DCA went on at considerable length in what it admits right up front is dicta to discuss the problem of what to do about missing evidence. And the context of the discussion - electronically preserved evidence - is where it gets really interesting, at least to me. After all, we've always had occasional problems with lost or destroyed evidence, but in the past those were tangible things, not something that exists only in the netherworld of electronic storage.

In any event, the Second DCA at one point notes that there is, to say the least, confusion among jurisdictions about who has what burden under what circumstances regarding issues like this, and that one of its own previous opinions is a part of the confusion, including that "it is possible that...[the court's prior]

unqualified assurance [of a certain result]...seems to have been an overstatement." Just to really help all of us who are trying to actually practice law, the court provides a couple of additional observations. The first is that "this is an area of the law in which it is not safe merely to find an older precedent and rely" on it. Well, that's special. The second is that there are "significant issues...that are not well resolved in Florida" regarding lost evidence, whether it is materially exculpatory, and who has what burden of proof. So pity the poor Manatee County Court Judge who must sort this all out on remand.

I suppose it is my techno-phobia that makes this interesting to me as much as the legal questions involved. After all, enough mistakes in handling evidence have been made in the pre-techno world to fill a few volumes of reporters and that was before we had to deal with not just human error or malfeasance but now computers with minds of their own, which I'm convinced they have. To its credit the Second DCA does go out on a limb of sorts and "suggest" some protocols that might be useful to resolve this, although being careful to make it clear that those suggestions are, again, no more than dicta. How the issue gets resolved may take another year or more of litigation, and may involve so many steps between the county court, the circuit court, the DCA and maybe even the Supreme Court that John Bennett may never be heard from again, at least in these parts. But I suspect that the problem of exactly whose problem it is when the computer screwed up won't go away. Those of you having an interest in this should certainly read the current opinion.

## **EJCBA Charity Golf Tournament Benefiting the Guardian ad Litem Program**

On April 30, 2010, the Annual EJCBA Golf Tournament (associated with Law Week) will be held at the UF Golf Course. Registration and lunch will be from 11:30 a.m. – 1 p.m., tee off at 1:00 p.m., with a reception and awards to follow. A link to the registration form can be found on the events page of the EJCBA website. We hope to see you there!



# Family Law Section



By *Cynthia Stump Swanson*

We appreciate the attendance at our January meeting of Judges Moseley, Davis, and Smith. It was Judge Smith's last meeting with us, as he retired soon after this meeting (I'm not saying the two are related!). As a section, we are very lucky to have the family judges in attendance almost every month. I can't understand why more family lawyers don't take advantage of these excellent resources. I think it's safe to say that we can sometimes provide information to the judges that they may not have been aware of, and I know the opposite is also true.

We welcome Judge Mary Day Coker to the family law bench as a circuit judge. She will be handling Division AA in Alachua County, along with all the adoptions, and dependency and drug court matters. In addition, Judge Monaco is rotating into the family division, and handling Division F in Alachua County, as well as all of Bradford County family and civil actions. Judge Moseley is rotating out of the family division. Judge Davis remains, and moves to Divisions N and P, and juvenile delinquency matters, and will also be the administrative judge of the family division. He announced that he will be keeping several cases from his old division, where he has had substantial involvement in hearings and trials. Judge Cates will continue to handle Division M, as well as domestic violence and all simplified dissolutions.

Judge Smith led a discussion about domestic violence actions. He has many years experience in that area, and he and the other judges offered these tips:

(1) Attorneys of record in a domestic violence case should call ahead of the return hearing if more than just a few minutes of the Judge's time is desired. There is just not enough time in the "cattle call" docket for you to have a two hour hearing. A call ahead to the judicial assistant can provide a time certain (or pretty certain) perhaps at the end of the docket, or even on another day. This shows consideration to the others in court who would have to wait during your long hearing. It also allows the judge to focus more completely on just your matter, and allows you to present the evidence you want to get admitted.

(2) Consider requesting the continuance of a temporary order in appropriate circumstances. This allows an injunction to continue in place during the pendency of a difficult time - perhaps a separation, dissolution, or some juvenile or other family action. But it also takes into consideration the fact that the permanent consequences of a permanent injunction may not really

be called for. If the parties can stipulate to this, a new temporary order must be entered and served on the respondent. Judge Moseley agreed, and pointed out that he requires a personal appearance in court to accomplish this. This new order should contain all the conditions needed, such as time for access to the home, residence of children, time for contact with children, and so on.

(3) If a judge does not believe that a petition shows that the petitioner is in imminent danger, and yet, there does appear to be some danger, the judge should not deny the petition, but should set a hearing on it. At that time, further evidence (from both sides) can be presented, and a better picture will enable the judge to decide whether to then grant or deny the injunction request.

(4) In some cases, it may be helpful for the judge to review or at least be aware of other court files that relate to either or both of the parties. A request for a court to take judicial notice of a court file, however, does not mean that file is automatically entered into evidence. The relevant material still needs to be properly admitted. The judges pointed out that really only adjudications, findings of fact, guilty pleas, and the like are helpful. Otherwise, having a stack of court files is not helpful.

In another matter, the 8JCBA sponsored an excellent presentation on January 24<sup>th</sup> about the Hague Convention and its international operation. The speaker was a Brazilian attorney, Nadia J. Arujo, who was also personally familiar with many of the attorneys and personalities involved in the David Goldman case which has gotten so much press in the U.S. recently. She gave us a fascinating behind the scenes look into this case, as well as into the Brazilian family law justice system. For example, one point she made is that in the U.S. the determination of what is the child's country of habitual residence is a question of fact. In Brazil, it is a question of law. Also, she pointed out that the David Goldman case started as one of "wrongful removal" - that the mother wrongfully removed the child from the U.S. The mother won that Hague case, through several appeals. But after the mother died, then, the father being the natural guardian of the child, it became an issue of "wrongful retention." So the father was able to file a new Hague petition, and get "a second bite at the apple" so to speak. Many thanks to Nancy Baldwin for putting this together and hosting this presentation.

The Family Law Section meets on the third Tuesday of each month at 4:00 pm in the Chief Judge's Conference Room in the Alachua County Family and Civil Justice Center. Hope to see you there.

# Justice Thomas Speaks at Federal Bar Association Dinner

By UF Law Student Troy Hillier

Supreme Court Associate Justice Clarence Thomas spent an evening in Gainesville on February 3, 2010 informing and entertaining leading members of the judiciary, Justice Department, legal community and law students. The “Inn of Court” dinner was hosted by the North Central Florida Chapter of the Federal Bar Association and the University of Florida Levin College of Law.

Justice Thomas charmed the audience with his personable style and sense of humor, and laughter filled the ballroom throughout the evening. But when time came for the Q&A, the audience was quick to ask some tough questions.

Asked about his famous reluctance to ask questions at oral arguments, Justice Thomas posed a question back to the audience. “Why don’t you try an experiment sometime,” he said, “try to have a conversation with everyone talking and nobody listening, and everyone interrupting each other.”

Thomas noted that questioning seemed to be more organized and useful when he joined the Court, but that the current system creates almost an adversarial relationship between attorneys and justices.

Thomas saved his strongest words for those who look for ulterior motives behind the Court’s decisions. “There’s kind of this legal cynicism attitude towards what we do,” he said, “but I think that’s an easy way to dismiss the honest efforts of people making difficult, difficult choices.”

Thomas added that it is particularly easy for others to criticize the Court’s decisions when they don’t face the burdens he and his colleagues face.

“They’re not the ones who live with the consequences,” he said, “they’re not the ones who fear that you might put someone to death who’s innocent, who fear that you’re bankrupting somebody because you made the wrong decision, who fear that somebody is going to spend an extra 20 years in jail on a charge that’s unconstitutional. You may come out a particular way, but you agonize over every single one of them.”

Thomas said even though he sees this cynicism from the media, he doesn’t among his colleagues. “Thank goodness that when we sit in conference, just the nine of us, I have yet to see that attitude,” he said. “I have yet to see that cynicism, I have yet to see the negativism, I have yet to see the self-interestedness, I have yet to see people whose little temper tantrums are more important than the case. And I think that says something good about the institution.”

Even Thomas’ strongest responses were shaped by respect for the questioner and good humor, and by the time he finished speaking, it seemed he had won over every attendee. Rob Griscti, a board member of the North Central Florida Chapter of the Federal Bar Association, was no exception.

“At both the dinner table and at the podium, he was completely open and candid,” Griscti said, “and that really leads to an education of the people who were here tonight.”

Those feelings were echoed by Danny Ponce, chair of the External Relations Committee of the University of Florida’s Board of Trustees.

“Justice Thomas’ visit to Gainesville was highly beneficial to our law students, who were able to interact with and learn from this great man,” said Ponce. “It has also been very meaningful to all of us in the legal community to have this opportunity to listen to his candor and willingness to reveal who he is.”

Ponce said that was particularly impressive because the crowd didn’t refrain from asking hard questions. “There weren’t any lob shots headed his way,” Ponce said.

Zane Altman, a second-year law student and student representative to the Federal Bar Association, said, “I was very impressed by how personable and sincere he was. He was also very conscious of the impact of his decisions.” Altman said that even though she often disagrees with Thomas’ written opinions, she might have a new perspective of them. “I wonder now whether I’ll see them in a different light.”

Despite the rigorous questioning, Thomas was among the last of the attendees to leave the ballroom, making sure that everyone who wanted a picture with him or autograph was able to have one taken, from the most important VIPS in the room to his servers, who he thanked and took the time to ask about their lives.

The Federal Bar Association is the professional organization for private and government lawyers and judges involved in federal practice, and has offered an unmatched array of leadership opportunities and services for more than 80 years. The North Central Florida Chapter represents a broad geographic area that includes Alachua, Dixie, Gilchrist, Lafayette, Levy, and Marion counties and the many cities in those counties.

For more information on Justice Thomas’ visit, including a photo gallery and video of his Feb. 4 lecture to University of Florida Levin College of Law students, go to <http://www.law.ufl.edu/news/events/2010/JusticeThomas/>.

# Gainesville District Office Transitioning to the Future

By David Langham, Deputy Chief Judge of Compensation Claims.

The Florida Office of Judges of Compensation Claims (OJCC) is responsible for mediation, adjudication and resolution of workers' compensation (WC) benefit disputes throughout Florida. Such disputes are pled in WC by filing a Petition for Benefits (PFB) with the OJCC Tallahassee central office. Fiscal 2009 began July 1, 2008 and was a busy year for the Florida Office of Judges of Compensation Claims (OJCC). In the midst of internal innovation and process changes, much attention of workers' compensation practitioners and constituents was riveted to the Supreme Court proceedings in Murray v. Mariner Health, 994 So.2d 1051 (Fla. 2008), which was argued before the Supreme Court late in Fiscal 2008. The anticipation and debate of the Court's decision ended with publication of their decision on October 23, 2008.

The Murray case was the Florida Supreme Court's first substantive analysis of a 2003 statutory amendment to the section controlling claimant's attorney fees. Since the passage of the broad statutory amendments in 2003, Florida PFB filings had decreased (52%) from 151,021 in Fiscal 2003 to 72,718 in Fiscal 2008. Some analysts believed that some portion of this decrease was attributable to the fee structure changes. During the first half of Fiscal 2009, July 2008 through December 2008, the downward PFB trend continued. Filings in the second half of fiscal 2009 increased, however, resulting in an overall 2009 statewide PFB volume of 73,871, representing the first increase (1.6%) in annual filing volumes since the broad 2003 amendments.

The Florida Legislature addressed WC fees again in the 2009 Session, intending to legislatively reverse Murray. The effects of the Court's action and the Legislature's action are not identical. Murray results in the potential applicability of hourly attorney fees for all cases between October 1, 2003 and June 30, 2009 controlled by the Court's interpretation of Fla. Stat. §440.34(2003). That October 2008 decision effected a change applicable to a population of filed and potential cases for dates of accident in the past. The Legislature's 2009 statutory amendment applies only to cases in which the accident occurs after the amendment's effective date, i.e. after June 30, 2009. Thus, the Murray analysis of the 2003 law will control and hourly fees will remain payable for claims on dates of accident between October 1, 2003 and June 30, 2009. With hourly fees applicable to this potentially

large volume of outstanding cases, many expected that the PFB filing rates would continue their upward trend in Fiscal 2010. However, through the first six months of Fiscal 2010, Florida PFB filings have resumed their pre-Murray downward trend. Overall, PFB filings in 2010 are down almost six percent compared to the same six month period (July through December) in 2009.

The OJCC consists of thirty-two Judges, and operates seventeen district offices throughout Florida. These offices range in size from one to five Judges, and each District has primary responsibility for adjudicating and mediating the PFBs for accidents in the certain counties assigned to that District. The PFB filing volume is rarely close to uniform throughout the various Districts, and the OJCC has striven to appropriately distribute workload among these Districts and Judges. This effort has included reapportionment of districts and temporary "visiting judge" efforts by Judges in some Districts. In Fiscal 2009, the OJCC completed deployment of video teleconference system (VTS) capabilities in all Districts, facilitating assistance in busier Districts by other Judges, and without the attendant monetary and time expense of travel.

One of the 17 District Offices is in Gainesville on SW 34<sup>th</sup> Street; District GNS includes Alachua, Columbia, Dixie, Gilchrist, Levy, and Marion counties. Approximately four percent of Florida's population resides in this one-Judge District; with 32 Judges in the system, three percent represents an equal distribution of responsibility among the various Judges, and so this District includes greater than an even share of the population. Since May 2009, Judge M. Renee Hill has presided over the cases in District GNS, and manages that office. Her predecessor was Judge John Thurman, who transferred to the GNS District from Orlando in 2007. Prior to Judge Thurman, Judge Jonathon Ohlman had presided in GNS for many years prior to his appointment to the Circuit bench in 2007. Thus, District GNS has experienced significant and periodic change over recent years.

Litigation in Florida workers' compensation is begun with a Petition for Benefits ("PFB"). Each PFB might seek a single benefit, or many benefits. A given workers' compensation trial might decide the issues in one PFB or several PFBs serially filed prior to trial. The overall number of PFBs filed is therefore one measure of workload volume. A second measure of workload

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# Probate Section Report



By *Larry E. Ciesla*

The first monthly meeting of the Probate Section for the new decade was held on January 13, 2010. The meeting began with a discussion of current estate planning strategies, given the unique circumstances of the estate tax law (no estate tax for persons dying in 2010; a one million dollar estate tax exclusion beginning on January 1, 2011). We all agree congress will pass new estate tax legislation this year. Most likely the law will provide that it is retroactive to January 1, 2010. This provision will certainly be challenged in court, which could take years to resolve. Simply put, nobody knows where we will end up on the estate tax issue. Peter Ward indicated he favors use of a disclaimer trust, thereby building in a level of flexibility at the time of death. Richard White indicated he likes the idea of a formula trust, leaving the maximum amount which will result in no tax, in trust, for the benefit of the spouse, so as to keep this amount out of the estate of the second-to-die spouse. Another suggestion from Richard is to ask the client what he or she would do if there were no tax, and work from there. Richard indicated he would monitor the advice coming from the top estate planners around the state and report back to the section at the next meeting.

The meeting next progressed to a discussion regarding the powers of a health care surrogate designated under Chapter 765, Florida Statutes. Peter Ward questioned whether a surrogate could direct that nutrition and hydration be withheld or withdrawn in a situation where the patient is not in a terminal or end stage condition. Peter expressed his discomfort at the thought of doing so as the surrogate. A quick review of the statutes indicates that this is clearly permissible. Some of the applicable statutes are summarized as follows: (1) Section 765.102, Florida Statutes, contains a legislative finding that every competent adult has the right to choose or refuse medical treatment and that a person may plan for subsequent incapacity by designating another to determine his or her future medical treatment. Furthermore, every person has the right to make an advance directive to provide, withhold or withdraw life-prolonging procedures, or to designate another to make this decision in his or her place in the event the individual becomes incapacitated or is personally unable to direct his or her care. Section 765.101(10), Florida Statutes, defines "life-prolonging procedure" to include providing sustenance and hydration. Section 765.105, Florida Statutes, allows any interested person who disagrees

with the surrogate's decision to seek expedited judicial intervention under Rule 5.900, Florida Probate Rules. Section 765.109, Florida Statutes, provides immunity from criminal prosecution or civil liability for health care personnel and surrogates acting in good faith.

The meeting next proceeded to a continuation of a prior discussion regarding the standard operating procedure for probate lawyers with regard to serving or not serving a copy of Notice to Creditors upon secured creditors. Several practitioners indicated that they had in the past not served secured creditors due to the fact that Section 733.702(4)(a), Florida Statutes, specifically provides that secured creditors are not required to file a creditor's claim against an estate as a condition precedent to maintaining an action to enforce its rights to reach the security. Richard White pointed out that the landscape has changed as it pertains to real estate mortgages. Many real estate owners are now faced with a situation where the security for their mortgage is worth much less than the amount owing on the mortgage. Upon the death of such a property owner, the issue of the possibility of recovery of a deficiency judgment against the property owner for the difference becomes significant. Accordingly, Richard feels the better practice is to now serve Notice to Creditors upon secured creditors. In this regard, it should be pointed out that in the event the secured party files a creditor's claim against the estate, Sections 733.705(7) and (8), Florida Statutes, contain detailed procedures for differing possibilities for dealing with the future uncertainty inherent in such a situation.

The Probate Section continues to meet on the second Wednesday of each month beginning at 4:30 p.m. in the fourth floor meeting room in the Civil Courthouse. All interested parties are welcome to attend. Please send an email to [lciesla@larryciesla-law.com](mailto:lciesla@larryciesla-law.com) if you wish to be added to the email list which is sent each month two days prior to the date of the meeting.

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# The Florida Bar Board of Governors Report



By Carl Schwait

The Supreme Court of Florida recently issued orders in 2 cases that will affect lawyer websites. The first order amends Rule 4-7.6 Computer Accessed Communications (effective January 1, 2010). In Re: Amendments to Rules Regulating The Florida Bar - Rule 4-7.6, Computer Accessed Communications, 34 Fla. L. Weekly S627 (Fla. Nov. 19, 2009), Case No. SC08-1181. The Court's order made all lawyer advertising regulations applicable to websites, with the exception of the filing requirement. The amendments were effective January 1, 2010.

There has been much confusion among members of The Florida Bar over the last several years regarding which rules apply to websites of lawyers and law firms. Even prior to the court's various rulings on this issue, many Florida Bar members were unaware that the lawyer advertising rules might ever apply to websites of lawyers and law firms. Many lawyer websites are not currently in compliance with the lawyer advertising requirements. For example, many websites contain testimonials, past results, and statements that characterize the quality of legal services, all of which are prohibited under the lawyer advertising rules. Many firm websites are extremely voluminous, and it will take considerable time for the lawyers to review and amend them.

Recognizing these unusual circumstances, the Board of Governors voted on December 11, 2009, to impose a moratorium on enforcement of the lawyer advertising rules against websites for a 6 month period. The moratorium will provide time so that lawyers may be educated about the issue and be given sufficient time to bring their websites into compliance. Unless the Court determines otherwise, enforcement of the lawyer advertising rules as applied to websites will begin on July 1, 2010. The moratorium only applies to enforcement of the lawyer advertising rules; if a lawyer posts false or deceptive information on a website, The Florida Bar may prosecute that lawyer as a violation of Rule 4-8.4(c), which prohibits conduct involving dishonesty and deceit, rather than a violation of the lawyer advertising rules.

Although websites must comply with substantive lawyer advertising requirements, websites are not required to be filed with The Florida Bar for review under Rule 4-7.8(f), which sets forth this exemption to the filing requirement. Because of the large number of lawyer websites and the volume of information contained on

many websites, the Board of Governors has adopted a policy that The Florida Bar will not accept voluntary filings of the entire contents of a lawyer or law firm website. Although The Florida Bar will not accept the filing of a website, staff of the Ethics and Advertising Department will respond to specific questions involving a specific phrase or image to be included on a website. To make such an inquiry, please call the Ethics and Advertising Department at (800) 235-8619. In an effort to assist lawyers who are trying to bring their websites into compliance with the lawyer advertising rules, staff of the Ethics and Advertising Department has prepared a quick reference checklist pointing out potential rule violations. The quick reference checklist is included herein.

The Court's other order amended rules according to the master rules petition filed October 8, 2008 (effective February 1, 2010). In Re: Amendments to Rules Regulating The Florida Bar, 34 Fla. L. Weekly S628 (Fla. Nov. 19, 2009). In that case, the court amended 4-7.2, adding a prohibition against the use of celebrities in advertisements and a prohibition against background sounds that are deceptive, misleading, manipulative or likely to confuse the listener. These amendments affect all advertising media, including websites, and go into effect on February 1, 2010.

The quick reference checklist for websites and the updated Lawyer Handbook on Lawyer Advertising and Solicitation are available on the bar's website under Lawyer Regulating, Advertising Rules. They include the Court's amendments that were effective on January 1, 2010 and February 1, 2010. The URL to the Advertising Rules section of the [www.floridabar.org](http://www.floridabar.org) website is:

<http://tinyurl.com/ye2ajsv>

## Quick Reference Checklist - Websites

Below please find the Quick Reference Checklist for Websites.

The following quick reference checklist is intended to assist advertising attorneys develop websites that comply with the Rules of Professional Conduct. Although websites must comply with these requirements, they are not required to be filed with The Florida Bar for review. Rule 4-7.8(f), Rules Regulating The Florida Bar. The Florida Bar Board of Governors has adopted a policy that The Florida Bar will not accept voluntary filings of the entire contents of a lawyer or law firm website, although staff of the Ethics and Advertising Department will respond to specific questions involving a specific

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## Another Constitutional Tear



By Stephen N. Bernstein

For over one hundred years, Congress and several of the states have recognized the danger of letting corporations use their money to wield undue influence in political campaigns. The Supreme Court has previously upheld these efforts, but now mocking any pretensions of judicial restraint,

they unnecessarily and improperly ruled, five to four, that the Constitutional guarantee of free speech now allows corporations to spend whatever sums they want to elect favorite candidates or defeat those they oppose. This, as dissenting justices wrote, “threatens to undermine the integrity of elected institutions across the nations.”

This result was unnecessary because the Court’s conservative majority, including supposed exemplars of judicial modesty, lunged to make a broad constitutional ruling when narrower grounds were available. It was wrong because nothing in the First Amendment dictates that corporations must be treated identically to individuals. Further, it was dangerous because corporate money, never lacking in the American political process, may now overwhelm both the contributions of individuals and the faith people may have in their democracy.

The majority found its pretext in the documentary “Hillary: The Movie” produced by a conservative group called Citizens United and released during the 2008 primaries. Citizens United wanted to make the movie (“a feature-length negative advertisement” the Court termed it) available as a video-on-demand, accessible through cable television. That brought into play a provision, part of the McCain-Feingold campaign finance law, that bars corporate and union and political advertisement close to the time of an election. The provision applies to Citizens United because the group is organized as a non profit organization and because it takes a small amount of corporate donations. The relevant McCain-Feingold provision could have been interpreted to permit such speech by a clearly ideological, as opposed to commercial for-profit corporation.

Instead, the Supreme Court went much further. It overruled a 1990 decision that upheld a state law prohibiting individual corporate expenditures to political campaigns. It overruled its own 2003 decision

*Continued on page 15*

## Clerk’s Corner



By J. K. “Buddy” Irby

The Florida Supreme Court amended the Florida Rules of Civil Procedure, effective January 1, 2010, to revise the Civil Cover Sheet that plaintiffs and petitioners are required to file upon initiation of a civil case. The Court also adopted a Final Disposition Form

for filing by the prevailing party upon the conclusion of a civil case. The Civil Cover Sheet is Form 1.997 in the Rules of Civil Procedure. The Final Disposition Form is Form 1.998. In addition, the Florida Family Law Rules now require a separate Cover Sheet for Family Court Cases. It is Form 12.928.

All of these forms can be found on the Clerk of Court’s website at [www.alachuaclerk.org](http://www.alachuaclerk.org). To locate them, click on “Forms” on the left side of the main page, then scroll down to “New Coversheet for Family Cases,” “New Civil Cover Sheet,” and “New Final Disposition Form.” The courts use the information on the forms to report judicial workload data.

The new Civil Cover Sheet requires more detailed information about the type of case being filed, the relief sought and the complexity of the case. For example, under the case category for negligence cases other than auto negligence, there are 10 subcategories including business tort, environmental/toxic tort, mass tort, construction defect, nursing home negligence, premises liability – commercial, and premises liability – residential. For real property/mortgage foreclosure cases, there are 12 subcategories indicating the value of the case and, if it is a foreclosure action, whether the property involved is commercial, homestead residential or non-homestead residential. For all civil cases, the filer also is asked to indicate whether the relief sought is monetary, non-monetary declaratory or injunctive relief, or punitive. Finally, the form requires the filer to list the causes of action, indicate whether the case is a class action, and list any related cases that have been filed.

The Final Disposition Form is briefer. It simply asks the prevailing party to provide the case style/number and the means of final disposition. The main disposition categories are Dismissed Before Hearing, Dismissed After Hearing, Disposed by Default, Disposed by Judge, Disposed by Non-jury Trial, Disposed by Jury Trial, Other. There are three subcategories each under Dismissed Before Hearing and Dismissed After Hearing.

The Cover Sheet for Family Court Cases requires

*Continued on page 15*

the filer to indicate whether the proceeding is an initial action, a modification/supplemental petition or a motion for enforcement. That information has not previously been requested on a cover sheet. In addition, 20 possible case types are identified, including simplified dissolution and dissolution, domestic dating, repeat and sexual violence, support IV-D and Support Non-IV-D, Chapter 39 or Chapter 63 adoption, name change, paternity, juvenile delinquency, juvenile dependency and shelter petition. Like the Civil Cover sheet, the Family Court cover sheet also asks the filer to identify any related cases.

Please do not hesitate to contact the Clerk's Office if you have any problems locating, downloading or printing the forms from our website.

## Free Family Law Training

March 5, 2010

CLE credits pending (including ethics)

### Invited Speakers:

The Honorable William E. Davis, 8<sup>th</sup> Judicial Circuit Judge  
Louise Godfrey, Mediator

Dan Marsce, Esq., Mediator

The Honorable Gregory S. Parker, 3<sup>rd</sup> Judicial Circuit Judge

Professor Stephen Pennypacker, UF College of Law

Pamela Schneider, Esq.

Professor Peggy Schrieber, UF College of Law

Professor Steven Willis, UF College of Law

Location: Hilton Garden Inn, 4075 SW 33<sup>rd</sup>  
Place, Gainesville

Program: 9:30 am - 3:30 pm

Lunch will be provided

This free training is intended for attorneys of the 3<sup>rd</sup> and 8<sup>th</sup> Judicial Circuits who are interested in learning more about family law.

Please RSVP by March 2 to:

[georgia.chamberlin@trls.org](mailto:georgia.chamberlin@trls.org) or call Marcia

Green at 352-372-0519

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upholding the same decision of McCain-Feingold that it struck down this year. So much for following precedent.

"We find no basis for the proposition that, in the context of political speech, the Government may impose restrictions on certain disfavored speakers," the Court said through Justice Anthony M. Kennedy. Rules against direct corporate contributions to candidates still stand, but corporations are now free to engage in unlimited independent expenditures, something that Congress has banned since 1947 (incidentally the year I was born, that's how long ago that was!).

More importantly, the conclusion that corporations have free speech protections (and they do) does not mandate that they be treated identically to real people. Corporations and labor unions, which by implication now will also be free to spend without limit, have not been "censored" or "banned" from engaging in political speech, as the Court claims: rather, they have been required to spend through political action committees which raise money in limited amounts from employees and members. Reasonable limits on their electoral spending recognize what is obvious to anyone who has not gone to law school: there is a difference between a corporate entity and a real person.

President Obama said after this decision that he wants a "forceful response" to the ruling. That will not be easy, given its grounding in the Constitution. This decision now invalidates state laws restricting corporate spending, which exist in nearly half of our states. On a federal level, the damage of this ruling, under the false flag of free speech, will not be easily repaired.

## President's Letter

*Continued from page 1*

currently collects donations on an ad hoc basis, but could provide for these young people on a much greater scale if storage space was available. If you have storage space you can donate on an ongoing basis, please contact Rhonda Lockwood at the number listed below.

Other ways you can help:

◆ Jobs. If you can hire a teen, please contact Rhonda Lockwood, Independent Living Services Coordinator, CDS Family and Behavioral Health Services at 352-318-9433 or email her at [Rhonda\\_lockwood@cdfsfl.org](mailto:Rhonda_lockwood@cdfsfl.org)

◆ Electronics. If you recently replaced cell phones, laptops, or other electronics, please donate your old electronics to the Independent Living program by contacting Rhonda Lockwood.

## District Office

*Continued from page 11*

volume for a WC Judge is the volume of “new cases” assigned each year. District GNS has historically experienced slightly above-average PFB and “new case” filing volumes. In 2009, approximately four percent of the PFBs filed were in District GNS, indicating a somewhat increased workload in that District. This PFB filing volume is consistent with what might be predicted from the analysis of the District population volume. However, “new case” filings were approximately three percent, which is more indicative of appropriate workload distribution among the 32 Judges throughout Florida, and is lower than what might be predicted from the population analysis.

The vast majority of issues in PFBs filed in Florida must be mediated; the statute requires that mediation occur within 130 days of the PFB filing. Stuart Suskin, Esq. is the state mediator in District GNS, and has served in that capacity for many years. The average time between PFB filing and the initial mediation in 2009 was 92 days, which was lower than the statewide average, and within the 130 day statutory period. Mediator Suskin has averaged less than the statutory 130 days for the last two fiscal years. His efficiency and consistency are a tribute to his focus and professionalism.

Following trial, Judges of Compensation Claims (JCC) are required to enter their resulting order within 30 days. Judge Hill began her tenure in GNS close to the end of the fiscal year, but notably averaged 5 days for her trial orders in 2009. Judge Thurman averaged 26 days between trial and trial order in Fiscal 2009, which was likewise within the 30 day statutory period.

Judge Hill came to Gainesville from a long tenure at the Florida First District Court of Appeal in Tallahassee. She brings significant managerial experience from her leadership of the Court’s workers’ compensation unit, as well as considerable experience in interpreting and applying the workers’ compensation law in appellate cases. She has already demonstrated her intent of actively managing both the District office and the docket assigned to it. We predict that Judge Hill will bring stability and continuity to the GNS District for many years to come. District GNS is fortunate to have Judge Hill, Mediator Suskin, Clerk Erical Shaw, Secretaries Carolyn Morgan, Cathy Cavalier, and Donna Williams.

The achievements of the OJCC generally, and District GNS specifically, are detailed in the OJCC 2009 Annual Report. This statutorily mandated report is published annually on the OJCC website at [www.fljcc.org](http://www.fljcc.org), under the “reports” tab.

## EJCBA YLD... Working Hard for the Money...

*By Kelly R. McNeal*

So you better treat us right!! The EJCBA YLD applied for grant money from the Florida Bar for two projects. Thanks to an amazing amount of work by Rhonda Stroman, we were able to secure \$350.00 for the project “Holidays in January”. These funds will be used to provide necessary sports equipment to low-income youth in Gainesville’s local youth soccer league, Youth Soccer, Inc. The league is a recreational soccer league for kids ages 5-15 and is organized to provide an opportunity for children to have fun while learning soccer skills, and competing in refereed soccer games.

We also secured \$500.00 for the project “Morning at the Courthouse”. For this project, members of the YLD will attend several different court events in the morning, and have lunch with several of our judges, to discuss aspects of the hearings. This will give the young lawyers an opportunity for informal interaction with the judges, and an opportunity to understand and experience areas of law not typically in the area in which they practice. We also expect that this project will encourage young lawyers to participate in more pro bono activities.

Finally, the EJCBA is proud to announce the addition of two new board members:

- Jorja M. Williams (of Sam W. Boone, Jr., P.A.)
- Sondra Randon (of Folds & Walker, LLC)

We are very excited to have these wonderful young lawyers on our Board.

## Cancellation

The Florida Dispute Resolution Center of the Florida Supreme court has announced that the Annual Conference for Mediators and Arbitrators previously scheduled in August of 2010 has been canceled due to budgetary issues. Please contact Becky MacFarlane at (352) 491- 4417 with any questions.



phrase or image to be included on a website. To make such an inquiry, please call the Ethics and Advertising Department at (800) 235-8619.

A NO answer to all the questions does not guarantee that the website complies with the rules regulating lawyer advertising.

If the answer to any of the following questions is YES, the website fails to comply with the Rules of Professional Conduct of The Florida Bar.

1. Does the website contain any misrepresentations of fact or law? Rules 4-7.2(c)(1)(A), 4-7.2(b)(2).
2. Does the advertisement contain any information that promises results? Rule 4-7.2(c)(1)(G).
3. Does the advertisement contain any references to past results? Rule 4-7.2(c)(1)(F).
4. Does the website contain any statements that describe or characterize the quality of the lawyer's services? Rule 4-7.2(c)(2).
5. Does the website fail to disclose the city of at least one bona fide office location of the advertising attorney? Rule 4-7.2(a)(2). Is the geographic disclosure illegible? Rule 4-7.2(c)(11).
6. Does the website fail to contain the name of at least one lawyer responsible for the website? Rule 4-7.2(a)(1). Is the name illegible? Rule 4-7.2(c)(11).
7. If the advertising law firm employs a fictitious or trade name, does the fictitious or trade name fail to appear on all the firm's advertising, letterhead, business cards, office sign, pleadings, and other firm documents? Rule 4-7.9(c).
8. Only attorneys who are board certified in a particular area of the law may claim to be certified, board certified or claim a specialization or expertise and only in the area of law in which they are certified. A firm cannot claim a specialization.
  - Does the advertising attorney, who is not board certified, claim a specialization or expertise? Rule 4-7.2(c)(6).
  - Does the advertising attorney, who is board certified, claim a specialization or expertise in an area of law other than that in which he or she is board certified? Rule 4-7.2(c)(6).
  - Does the advertising firm claim a specialization? Rule 6-3.4(c) and Rule 4-7.2(c)(6).
9. If the website quotes a fee, does it fail to disclose

whether the client will be responsible for any costs or expenses in addition to the advertised fee? Rule 4-7.2(c)(7). Is the cost disclosure illegible? Rule 4-7.2(c)(11). If the website appears in a language other than English, does the cost disclosure fail to appear in that language? Rule 4-7.2(c)(10).

10. If the website states that the attorney will not receive a fee unless an award is obtained, does the website fail to disclose whether or not the client will be responsible for costs or expenses in the absence of a recovery? Rule 4-7.2(c)(7). Is the cost disclosure illegible? Rule 4-7.2(c)(11). If the website appears in a language other than English, does the cost disclosure fail to appear in that language? Rule 4-7.2(c)(10).
11. Does the lawyer advertise for legal employment in an area of practice in which the lawyer does not currently practice? Rule 4-7.2(c)(4).
12. Does the website contain any illustrations or photographs that are likely to deceive, mislead, manipulate or confuse the viewer? Rule 4-7.2(c)(3).
13. Does the website contain a visual or verbal description, depiction, or portrayal of persons, things, or events that is deceptive, misleading, or manipulative? Rule 4-7.2(c)(3).
14. Does the website contain any testimonials or endorsements? Rule 4-7.2(b)(1)(J).
15. Does the website fail to disclose that the case or matter will be referred to another lawyer or law firm? Rule 4-7.2(c)(13). Is this disclosure illegible? Rule 4-7.2(c)(11). If the website appears in a language other than English, does the disclosure fail to appear in that language? Rule 4-7.2(c)(10).
16. Does the advertisement contain the voice or image of a celebrity? Rule 4-7.2(c)(15).
17. Does the advertisement include any sound that is deceptive, misleading, manipulative, or likely to confuse the listener? Rule 4-7.2(c)(16).
18. Does the website fail to disclose all jurisdictions in which the lawyer or members of the law firm are licensed to practice law? Rule 4-7.6(b)(1).

I want to thank Elizabeth Tarbert, Ethics Counsel for the Florida Bar, for her help in producing this article.



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## March 2010 Calendar

- 3 EJCBA Board of Directors Meeting; Ayers Medical Plaza, 720 SW 2d Avenue, North Tower, Third Floor – 5:30 p.m.
- 4 CGAWL meeting, Flying Biscuit Café, NW 43<sup>rd</sup> Street & 16<sup>th</sup> Ave., 7:45 a.m.
- 5 Deadline for submission to April Forum 8
- 10 Probate Section Meeting, 4:30 p.m., 4<sup>th</sup> Floor, Family & Civil Courthouse
- 11 North Florida Association of Real Estate Attorneys meeting, 5:30 p.m.
- 12 Investiture of the Honorable James T. Browning, Levy County Court Judge, Levy County Courthouse, 4:30 p.m.; reception following
- 16 Family Law Section Meeting, 4:00 p.m., Chief Judge’s Conference Room, Alachua County Family & Civil Justice Center
- 19 EJCBA Luncheon, Judge William Van Nortwick (First District Court of Appeal), Adrienne Davis, and Jane Curran from the Florida Bar Foundation speaking on the “ONE program,” Steve’s Café, 11:45 a.m.
- 26 Professionalism Seminar, 9 a.m. – 12 p.m., UF College of Law, Chesterfield Smith Ceremonial Classroom

## April 2010 Calendar

- 1 CGAWL meeting, Flying Biscuit Café, NW 43<sup>rd</sup> Street & 16<sup>th</sup> Ave., 7:45 a.m.
- 2 Good Friday, County Courthouses closed
- 5 Deadline for submission to May Forum 8
- 7 EJCBA Board of Directors Meeting; Ayers Medical Plaza, 720 SW 2d Avenue, North Tower, Third Floor – 5:30 p.m.
- 8 North Florida Association of Real Estate Attorneys meeting, 5:30 p.m.
- 14 Probate Section Meeting, 4:30 p.m., 4<sup>th</sup> Floor, Family & Civil Courthouse
- 16 EJCBA Luncheon, Jesse Diner, President of the Florida Bar, “The Florida Bar’s Efforts to Ensure Financial Security and Responsibility of the Bar During Tough Economic Times,” Steve’s Café, 11:45 a.m.
- 20 Family Law Section Meeting, 4:00 p.m., Chief Judge’s Conference Room, Alachua County Family & Civil Justice Center
- 30 EJCBA Charity Golf Tournament Benefiting the Guardian ad Litem Program, 11:30 a.m. – 1:00 registration; 1:00 p.m. tee off time; reception/awards following, UF Golf Course Have an event coming up?

Does your section or association hold monthly meetings? If so, please fax or email your meeting schedule let us know the particulars, so we can include it in the monthly calendar. Please let us know (quickly) the name of your group, the date and day (i.e. last Wednesday of the month), time and location of the meeting. Email to Dawn Vallejos-Nichols at [dvallejos-nichols@avera.com](mailto:dvallejos-nichols@avera.com).