FORUM 8

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President's Letter

By Elizabeth Collins

"I hate lawyers," I thought, towards the end of my difficult day.

Alarmed at the thought, I quickly corrected myself, "No, I hate the behavior of some lawyers which gives the rest of us a bad name." Then, I considered that if I can have such a visceral reaction to two of the lawyers with whom I dealt today that, in my frustration, I condemn my entire profession, is it any wonder that lawyers so often get a bad rap? I can think of no other profession that is so vilified, maligned, stereotyped, and made the brunt of jokes by so many. Is our bad reputation deserved?

I turned to the issue before me with my opposing counsel and, for guidance, turned to Chapter 4 of the Rules Regulating the Florida Bar: Rules of Professional Conduct. The answer I sought was not there. I thought back to when I prepared for the Multistate Professional Responsibility Examination (MPRE). The rule of thumb was that if you did not know the answer to a question on the exam, you should rank the answers in order of least to most morally correct behavior, then pick the answer one notch below the "most moral" answer. The MPRE preparation course taught us that the ethical rules provided the bare minimum of acceptable conduct. "You should not choose the 'most moral' answer," the instructor said, "because that standard is too high." How sad. Although your response to a situation may not warrant sanctions because you meet the minimum standard of conduct, shouldn't we aspire to more?

I then turned my attention to finding the local guidelines for professional courtesy for the circuit in which the case was pending and where the offending lawyer has practiced for many years. My answer was there in clear black and white. The guidelines themselves were given force by the administrative order adopting them. I wondered if opposing counsel had ever read them.

I thought of *The Eighth Judicial Circuit's Guidelines of Professional Courtesy*, which were endorsed on behalf of the judges in our circuit by Chief Judge Cates in 1996. Since being named President-Elect-Designate, it has been one of my primary goals for my term as President to have the EJCBA revamp our own guidelines to include new provisions to address e-mail communications, electronic production, metadata, and other issues that were not contemplated a mere fourteen years ago. The EJCBA's board members, some of whom personally had a hand in drafting those guidelines back in 1996, have been supportive of that goal. I was so pleased when Chief Judge Lott reconvened the Eighth Judicial Circuit Bench/Bar Committee last October, knowing it was another step in the right direction. But, merely updating our guidelines is not enough, is it?

I feel fortunate that in our circuit I rarely need to turn to that little gray book containing our guidelines to look for a provision to include in a strongly worded letter to opposing counsel or to include in a motion seeking sanctions. I must admit, though, in all candor, I worry sometimes that our local bar is gradually changing and not for the better. The *Guidelines 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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Professional Courtesy can serve as a tool to keep our local bar on a professional, courteous, and dignified path. Unfortunately, it is the lawyer who needs the most guidance who will not value, consider, or, perhaps, even read the guidelines.

So, my mind turned back to my original question, is our bad reputation deserved? Or do the actions of a few lawyers spoil it for the rest of us? I realized that the answer to both questions may be a qualified "yes." If we "fight fire with fire" and deal with a lawyer who is obstructionist, aggressive, or obdurate by behaving in kind, we are letting the actions of a few lawyers spoil it for the rest of us and are earning our bad reputation. If we reward a lawyer, paralegal, or clerk who has gotten favorable results by resorting to actions that cross the line between effective advocacy and questionable behavior, we are condoning his or her actions and sending the message that the end justify the means. If we simply turn a blind eye to bad behavior, we are equally as guilty. Certainly, leading by example and peer pressure, *i.e.* presenting a united front that our local bar will not tolerate bad behavior, can be powerful tools to persuade some to mend their ways. But, it seems that the most powerful tool to improve the reputation of all lawyers would be not to let those who would ruin us succeed.

Why do some lawyers continually engage in unethical and/or unprofessional behavior? The answer is simple. Because it works for them. If such tactics were not successful, they would abandon their methods or fail.

As lawyers, we must all respect each other, our clients, our staff, and the legal process before the public will respect us. I believe that stating that the Florida Bar is self-regulating means much more than that we report misconduct to the appropriate authorities. It means that we take matters into our own hands. I am not suggesting that we form a posse and round up the villains, resort to vigilante justice, shun the offending lawyers, immobilize them in the stocks, or scold them like petulant children… although on a day like today, such options do have a certain charm. However, I challenge each of you not to descend to the level of an unworthy opponent. Do not abandon your own values to please a client who wants to win, no matter the cost. I challenge you to call out bad behavior when you see it in opposing counsel, but, more importantly, when you see it in a co-worker, a colleague, a friend, or yourself.

I look forward to your support of the EJCBA Board, as we take on the challenge to revise *The Eighth Judicial Circuit's Guidelines of Professional Courtesy* during the 2010-11 term. We will also continue our efforts to serve our members and our community by promoting professionalism, improving the image of attorneys through community service and civic involvement, providing networking opportunities, sponsoring CLE presentations, and maintaining ties between members of our local bar and judiciary. It will be my honor and sincere pleasure to serve as your President in the year to come.

EJCBA Charity Golf Tournament Benefiting the Guardian ad Litem Program

The Annual EJCBA Golf Tournament, held Friday, April 30 at the UF Golf Course, was a great success thanks to all those who helped through participation, sponsorship and volunteering. Look for more information on how much we raised for the local Guardian Ad Litem Foundation through tournament sponsorships in the June edition of Forum 8.

Residential Mortgage Foreclosure Mediation Program Manager

Eighth Judicial Circuit

Seeking Residential Mortgage Foreclosure Mediation Program Manager to create and manage Program in accordance with RFP #2010-3-19. Proposals must be submitted in accordance with the requirements set forth in the RFP. A full copy of the RFP may be found at: http://circuit8.org/foreclose/rfp.pdf

Alternative Dispute Resolution

The History of A.D.R.

By Ragnar Chance and Pericles Carter

Many of us think of mediation and arbitration as fairly recent phenomena. However, the activity of alternative dispute resolution appeared in ancient times. Historians describe early cases of mediation in Phoenicia and Babylon. The practice developed further in ancient Greece which even referred to a non-marital mediator as "proxenetas" (and a marital mediator as "very patient"). The Romans called mediators by a variety of names including: conciliator, interlocutor, internuncius, Julius and Luigi.

The Philistines used an early form of Power Point involving sandstone and chisels, but, this technique was abandoned until the subsequent invention of the laptop. King Solomon acted as an arbitrator to resolve a conflict between two women over the identity of a child and later this led to the use of the phrase "splitting the difference."

In *A History of Alternative Dispute Resolution by* Jerome T. Barrett and Joseph P. Barrett, the authors reference the Mari Kingdom of what is today Syria using ADR to settle conflicts with other kingdoms as far back as 1800 B.C. A Mari king intervened in a dispute between two other kings (apparently having been ordered to non-binding arbitration). However, ADR began to develop most notably in ancient Greece to resolve wars, trade issues, and gyro franchise disputes. The Greeks were the first to utilize a cancellation fee if parties failed to show up for the conference. At Thermopylae, the Spartans negated any chance of a negotiated settlement with the Persians by increasing their pre-mediation demand.

According to *Alternative Dispute Resolution,* 10 Willamette J. Int'l L. & Dis. Res., 47 (2002) one of the oldest forms of ADR is found in Homer's *The Iliad* and involved a dispute between Menelaus and Antilochos. The resolution is unknown as it was the subject of the first use of a confidentiality agreement.

The Peloponnesian War almost never occurred as the Athenians and Spartans entered into a written settlement agreement, but it was set aside by the court since one attorney did not sign it. In Athens, mediation was preferred to trial because Athenian jurors weren't even required to have a driver's license.

Greece apparently never advanced very far in ADR since Greece is currently involved in a dispute with Macedonia over the use of the name "Macedonia". Ever since the former Yugoslav Republic became independent in 1991 Greece has argued the name suggests territorial ambitions on its northern-most province, also named Macedonia, and is an attempt to usurp the heritage of Alexander the Great. In 2008 the president of Macedonia told the U.N. General Assembly "despite the obvious absurdity of the issue" his country was ready to compromise. Barrack Obama introduced a resolution in the U.S. Senate prior to becoming President in which he urged the two countries to resolve their dispute (he offered to take the name "Obama the Great and allow Greece to use the slogan 'hope and change'). In fact, during the 2008 presidential campaign the Balkan area suggested Obama was pro-Greek while John McCain was pro-Macedonian. Why didn't these things come up in the debates?

Roman law (Justinian's Code in 530 A.D.) recognized mediation. Pontius Pilate was a famous Roman mediator who unfortunately declared history's most famous impasse but still became known as the 'clean hands mediator'.

Julius Caesar once anticipated settling a war in the Middle East through mediation but then determined "I came, I saw, I mediated" lacked political impact.

According to the book *Arbitration, the Roman Way"* by Derek Roebuck and Bruno de Lones de Fumichon, the Romans encouraged arbitration of an existing dispute but, unlike courts today, did not allow contracts to require arbitration of future disputes. Roman arbitration was used to

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When Oliver Twist Came West

By Stephen N. Bernstein

When Charles Dickens came to the United States in 1842 he brought with him his wife, her maid and a couple of axes to grind as he launched a hectic reading and lecture tour. He despised slavery in all of its forms, from the bondage of poverty to the forced servitude of African blacks, a practice abolished by the British, but flourishing in America in 1842.

He would use some of his lecture time on that issue and some on a lesser matter - the American practice of pirating his books and those of other European writers and paying nothing to the authors. He wanted changes in international copyright law to remedy this "monstrous injustice". He quickly learned that the subject bored his audiences in the United States. The NY Times summed up public reactions: "It happens that we want no advice on the subject."

The author was not yet 30 years old when he came but was already world famous for such novels as The Pickwick Papers, Oliver Twist, and The Old Curiosity Shop; his novella, A Christmas Carol would be published the following year. Dickens' books and their vivid characters mirrored his own oppressive childhood and threw light on England's poor. Poverty and injustice were the themes of his stories and his life.

Initially he was idolized by his audiences and treated royally by the press. In Washington D.C. the president held a reception for him attended by nearly two thousand admirers. The New York Express reported that they "went in pursuit of him like hounds, horses, and riders in pursuit of a fox ... wherever he moved it was like throwing corn among hungry chickens." He had similar crowds in New York, Boston, Philadelphia, Richmond, Virginia and points west. However, the admiration wore thin and he grew weary of it as well, and of America in general by the time he journeyed by stage coach from Louisville, Kentucky to St. Louis.

He described the outskirts of St. Louis as "a dismal swamp upon which half-built houses rot away, stunted trees, unwholesome vegetation, no bird songs, no pleasant scents and the changeless glare of a hot unbinding sky." The people who lived there he described as "wretched wanderers: who were destined to droop and die and lay their bones in the ugly sepulchers of the hateful Mississippi, the slimy monster hideous to behold, running liquid mud six miles an hour."

The cultural backwater of St. Louis was described by Dickens in his American Notes, published a few months after he returned to England as well as in his novel Martin Chuzzelwit. In the latter Martin nearly dies of malaria in a raw frontier settlement named, with heavy irony, Eden.

His disappointment in American materialism and his attitude towards slavery did not prevent him from returning to the United States in 1867. This time he was in poor health and didn't go past the Atlantic seaboard. Mark Twain went to see him in January in 1868 in New York and reported that the creator of David Copperfield and Ebenezer Scrooge was tall, spry, and bald, "with side hair brushed fiercely and tempestuously forward". He went on to say that Dickens' reading was rather monotonous – "there is no heart, no feeling in it, it is glittering frost work."

Dickens made 76 readings in the five months of his second American visit and took home a fortune at that time of nearly $100,000 dollars. He died of a stroke on June 9, 1870 and is buried in London. Ultimately he made more income from speaking to and visiting the "wretches" in America than from all of his "scrooge" readers back in the civilized motherland. Perhaps that is why Dickens crossed the ocean.

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.

Criminal Law

By William Cervone

Happily, at least for me because I have no single topic this month to write about, I can again declare this National Stream Of Consciousness Month. After all, for the last few months I have written about actual legal stuff so it's time for a break. As a result, I offer the following random and unconnected thoughts:

I have in the past had the joy of sharing with you the annual winners of the American Dialect Society's Word Of The Year competition and am pleased to do so again, although the 2009 choice does not thrill me. Drum roll, please: the 2009 Word Of The Year is "tweet." Yes, tweet, as in the verb for sending a short message via Twitter, or the noun for the message itself. I do not tweet and I do not understand the need to use Twitter to advise the world of one's every move. I'm not interested. Might I also mention that using Twitter to tweet the world that you are leaving home for a two week vacation is somewhat akin to posting a sign in the front yard that says "Burgle Me - No One Home" or something like that? But apparently many others, including to my dismay many of you, do tweet so this word is exceedingly and inexplicably popular.

In fairness to the selection committee, the nominees this year seem sparse and uninspiring so their options were limited. Other finalists included "Fail!" as an interjection describing, what else, something egregiously unsuccessful, "H1N1," which I am more than over, and "-er" as a suffix used in such terms as birther (one who questions whether Obama was born in the United States), deather (one who believes that the government has death panels in its health care reform plans), and "truther" (one who doubts the official account of 9/11). Who needs these, though, when we have many current words such as "idiot" available to us to cover such matters?

In the same vein, the coveted Word of The Decade designation has been awarded to google, meaning, of course, to search the internet. I suppose google, the generic form of Google, has indeed entered the lexicon much like kleenex, xerox, and other such product names that have become words in their own right. At least the selection committee bypassed one of their other nominees, blog. Although blog was considered an early favorite, it turned out that more people google than blog and that lots of folks thought blog "just sounds ugly." Who says the pretty girl doesn't get asked to the prom first?

There were a few nominees that I think got shortchanged. Botax, a proposed levy on cosmetic surgeries to pay for health care reform, would be one. Sea kittens, a PETA submission as a new, improved name for fish, would not be. But, quite frankly, none of these can hold a candle to such all time favorites of mine as 1990's "bushlips," meaning insincere political rhetoric, 2005's "truthiness," which I've written about before, or 2006's phrase "to be plutoed." I still miss Pluto.

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

For now, I will reserve further comment on what happens in Tallahassee. I would, however, recommend that you hold on to your wallets. Perhaps next month when the session has closed I'll pass on some highlights. Which brings to mind the age old dilemma: is that a threat or a promise?

Save the Date!

In May, the EJCBA luncheon will be held on Thursday, May 13th , 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.

Family Law – Bankruptcy Discharge and Marital Debt

By R. Flint Crump

If you are anything like me, as someone who practices family law as a portion of his practice, the mere mention of the word "bankruptcy" and its, if not arcane (sorry bankruptcy practitioners), at least complicated rules causes your eyes to begin to glaze over and hopes of a nice nap to come to mind.

But, believe it or not, there is good news regarding one area of the rules governing bankruptcy for the family law practitioner. This issue was touched on briefly in the January edition of this newsletter in summarizing Sharon Sperling's bankruptcy presentation at the Family Law Section meeting. The fact is in Chapter 7 cases the federal government has actually simplified the rules regarding a discharge in bankruptcy of any obligation that arises in the context of a divorce.

Imagine a scenario which involves the entry of a final judgment of dissolution of marriage, whether after a contested trial or based upon the incorporation and ratification of a marital settlement agreement. The judgment requires a husband to make payment of $10,000.00 and turn over certain firearms to the wife within 12 months to balance the equitable distribution award and make monthly payments of permanent alimony to the wife.

Subsequent to the entry of the final judgment and prior to the deadline to make the payment of $10,000.00 and turn over the guns, the husband files a voluntary petition for bankruptcy under Chapter 7 of the Bankruptcy Code. The husband identifies all of the aforementioned obligations on the appropriate schedule of his bankruptcy petition. Subsequently, the former husband is granted a discharge under 11 USC Sec. 727 of the United States Code (the Bankruptcy Code). After the bankruptcy discharge and the 12 month deadline have passed, the wife moves the trial court for the entry of a judgment against the husband for the $10,000.00 owed plus interest, for the value of the firearms, and to hold him in contempt, because he has ceased to pay alimony. In his defense, the husband files a copy of the order discharging him from bankruptcy.

Certainly in this scenario, allowing the husband to avoid payment to the wife of the $10,000 would be unfair. Presuming that the trial court made a fair division of the property and debts when it entered the Final Judgment (a stretch I know), allowing the husband to avoid payment of the $10,000 would mean he walks away with $10,000 more in assets than the wife. Unfortunately, under the Bankruptcy Code as it stood prior to 2005, that is likely what would have been allowed to occur.

The question this article will explore is: Is an obligation a party incurred as part of a final judgment of dissolution of marriage for the equitable distribution of property and debts or payment of alimony dischargeable in Chapter 7 bankruptcy? The short answer: It no longer matters whether the obligation is in the nature of support or equitable distribution, it cannot be discharged in Chapter 7.

It has been my experience that a lot of family law practitioners and at least two judges in our circuit still cling to the belief that the issue is governed as it was under the previous rules. Presumably, this is fairly excusable since most family law practitioners and judges have such infrequent need to address bankruptcy issues.

Under the previous rules, an obligation incurred in a divorce could be discharged unless it was for domestic support. The previous rules were modified, presumably at the behest of creditors, because of spouses manipulating the situation. One spouse, let's say the husband, would agree to take certain marital debt while all along planning to discharge it in bankruptcy and leave the creditor with its only option to pursue the wife for payment of the debt. Unfortunately, the wife usually had taken an equivalent amount of debt and was unable to satisfy the debt the husband had been able to discharge. What follows is the more detailed explanation of which rules currently govern this issue and how.

Pursuant to Section 523 of the United States Bankruptcy Code (as amended by Public Law 109-8 in April 2005), certain exceptions to discharge for debts between spouses as part of a dissolution of marriage proceeding were added. Specifically, Section 523 now provides in pertinent part that:

"(a) discharge under Section 727...of this title does not discharge an individual debtor from any debt...

(5) for a domestic support obligation; or

(15) to a spouse, former spouse, or child of the debtor and not of the kind described in paragraph (5) that is incurred by the debtor in the course of a divorce or separation or in connection with a separation agreement, divorce decree or other order of a court of record, or a determination made in accordance with state or territorial law by a governmental unit."

The bankruptcy courts in interpreting the 2005

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amendments to Section 523 have since determined that, "the plain language of the statute provides that all debts, which do not qualify as domestic support, are also (emphasis added) nondischargeable." IN RE: Douglas, 369 B.R. 462 (2007). Further, "the combination of section 523(a)(5) and 523(a)(15) excludes from discharge all (emphasis added) marital and domestic obligations, whether support in nature, property division, or hold harmless requirements..." Hon. William Houston Brown, Bankruptcy and Domestic Relations Manual, § 1:3 (2006).

Now back to the original scenario with the $10,000 payment owed along with transfer of the guns and payment of permanent alimony. As you can see, assuming the bankruptcy petition was filed subsequent to April 2005, a husband's obligation to pay the $10,000.00 would not be dischargeable in bankruptcy and neither is his requirement to turn over the firearms. This is despite the fact that it is clearly an obligation created as part of the property distribution instead of domestic support. This is true whether it is pursuant to a "separation agreement" or "divorce decree" so long as the obligation is incurred by the debtor (the husband here) "in the course of the divorce" or "in connection" with a separation agreement. This would also apply to make any "hold harmless" provision related to a joint marital debt non-dischargeable.

Finally, even under the previous version of the Bankruptcy Code, as well the current version, the alimony payments would be nondischargeable in Chapter 7 bankruptcy because they constitute "domestic support". As a result, the obligations of the husband in this scenario survived the general discharge order under Chapter 7 of the Bankruptcy Code by operation of law. The discharge in bankruptcy does not bar the wife from pursuing a judgment or other collection and enforcement remedies against the husband related to these obligations.

So the next time the issue of a Chapter 7 bankruptcy discharge arises in the context of enforcing an obligation incurred in the course of a divorce, whether by final judgment or separation agreement, no need to begin looking for somewhere to lay down and rest. Its simple you can essentially ignore the Chapter 7 discharge and pursue collection efforts as if it never happened.

By the way, did you know that an obligation arising from a divorce or marital settlement agreement denominated as alimony is treated differently for purposes of deductibility on Federal Income taxes depending on what form the payment takes? More on that next time, but the short answer is: If it is a cash payment, it is deductible by the payor and income to the payee. Otherwise, it is not deductible by the payor and not income to the payee.

Chief Judge Lott Appointed to Local Rule Advisory Committee

The EJCBA is pleased to announce that, in accordance with Florida Rule of Judicial Administration 2.140(h), Florida Supreme Court Chief Justice Peggy Quince has appointed Chief Judge Martha Ann Lott to the Florida Supreme Court Local Rule Advisory Committee to consider and make recommendations to the Supreme Court concerning local rules and administrative orders submitted pursuant to Florida Rule of Judicial Administration 2.215(e). Chief Judge Lott's term will run until June 30, 2012.

Precision, Clarity, and Conciseness
a CLE sponsored by the Eighth Judicial Circuit Bar Association

- Florida Bar CLE Credits: 2.0 General
- Free for EJCBA Members & UF Students
- $40 for Non- members

Time: Friday, May 7, 2010, 10:00 a.m. Noon
Location: UF Levin College of Law, Room 180

Speaker:
Deborah Cupples
Asst. Legal Skills Professor
UF Levin College of Law

Space is limited:

Please RSVP on or before Wednesday, May 5th to Judy Padgett at Execdir@8jcba.org

If you do not reserve a space, you are welcome to come, but you may or may not actually get a seat.

Even More Random Thoughts from a Florida Bar Foundation Board Member

By Philip N. Kabler

Perhaps the longest enduring benefits that result from The Florida Bar Foundation's grant funds commence with law students. The most tangible outcome is the choice of a life-long public service legal career by a grant-funded participant. It is here that the passion to assist those who cannot help themselves is inculcated and developed. And it is here where future leaders of the public service law community hone the knowledge, skills, abilities, and "street sense," gained only from real-world and real-time experience they will need to proceed from a "learner's permit" to a license.

Certainly, "black letter" knowledge of the law is essential to being a well-rounded and effective lawyer. Practice and mentoring under the tutelage of alumni from the prestigious "school of hard knocks" is also essential to professional lawyering. (That last sentence was, by the way, an after-the-fact acknowledgment of this past March's well-attended EJCBA/UF Law School Professionalism Seminar, and an early invitation to next year's Seminar.)

The Foundation funds three program areas directed to law students through its Law Student Assistance grant programs:

(1) The Summer Fellows program funds law students to work at Foundation funded programs in the provision of civil legal assistance to the poor in critical areas of need, provides an in-depth educational experience in representing the poor and working with individual clients and client groups in civil matters, increases law student interest in and awareness of the legal problems of the poor and the challenges and satisfactions of representing the poor, and promotes commitment to pro bono representation of the poor. (Needless to say, in the current economic environment the Summer Fellows program has become a very popular program.)

(2) The Public Service Fellows program funds law schools directly to promote public service/pro bono activities among law students and continuing public service/pro bono activities among lawyers. Specifically, the program funds law schools to support Florida law student internships at public interest agencies providing legal services and to promote awareness of the general student body about the importance of public service activities by lawyers.

(3) The Law School Civil Clinic program provides support to law school civil clinics which involve law students in the provision of civil legal assistance to the poor, provides an in-depth educational experience in representing the poor and working with individual clients and client groups in civil matters, and encourages law students to pursue public interest careers representing the poor and/or promote a commitment to pro bono representation of the poor.

So, that was long enough (a reader rightly thinks). But how do these Foundation programs play out at UF? In the interest of brevity (…thank you, the reader again thinks), the following is a <u>summary</u> of Foundation sponsorships to the Law School and its students:

Summer Fellows Program – the program runs for 11 weeks in the summer; 1-Ls receive $5,500 stipends and 2-Ls receive $7,000 stipends

- Summer 2007 – 8 students
- Summer 2008 – 5 students
- Summer 2009 – 8 students
- Summer 2010 – 7 students have been accepted to participate

Public Service Fellows Program – the program runs for one year

- 2007 - 2008 – 4 students
- 2008 – 2009 – 5 students
- 2009 – 2010 – 6 students; UF received $18,115

Law School Civil Clinic Program; UF receives $25,000 every fiscal year

- 2007 – 37 students
- 2008 – 50 students
- 2009 – 35 students

<u>Nota bene</u>: Some UF law students receive two-year Fellowship grants from Equal Justice Works, a Washington, D.C.-based grant program, and the Foundation matches those grants. Here is a summary to close out this very, very long (but hopefully informative) piece.

2007-2009 EJW Fellow worked at Florida

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Federal Judicial Law Clerk Roundtable

hosted by the North Florida Chapter of the Federal Bar Association and UF Law's Center for Career Development

By Troy Hiller

For most first-year law students, and many third-years, finding a job means applying to a firm or maybe becoming a solo practitioner. However, great opportunities lie on the other side of the bench in the form of judicial clerkships. To help spread the word about the possibilities in this field, the student liaisons of the North Central Florida Chapter of the Federal Bar Association teamed up with the Center for Career Development to host the Federal Judicial Clerkship Roundtable on Tuesday, April 6th.

Four current and former federal judicial clerks came to give their thoughts, each with their own unique experience. Jason Marques is a 2007 graduate of UF Law and now clerks for the U.S. Middle District of Florida. Also working for the Middle District are Lundi McCarthy, who is soon moving to Washington D.C. to work for the Pentagon, and Janine Toner, who now works as a staff attorney, having finished her clerkship. Finally, Michael Dupée is a career clerk with the U.S. Northern District of Florida.

The conversation ranged from the clerks' backgrounds to their average day, but with the room full of students eager to follow in the footsteps of the clerks, most of the event focused on how to get a clerkship.

Dupée said that he was fortunate in getting his first clerkship, the process taking only one week. But after that concluded, he had to spread a wide net to find another. "I sent out 104 packets," Dupée said, "and I got four responses, and one offer." After completing that clerkship in Cleveland, he came back to Florida, and after clerking for several more years, was asked to be a career clerk.

Dupée then gave some advice on how students can help set themselves up to be good applicants. Graduating at the top of your class was his first suggestion, but added that it can take more than that to get a highly coveted clerkship. "If you're at the top of your class and you have great credentials, there's still more that you can do," Dupée said. He added that externing with a judge can be of enormous benefit, not only because you get experience in chambers and build a relationship with a judge, but also because other judges will then have a reliable reference to check.

Even when all those things are judged, Dupée said that there are still a few excellent candidates remaining, and soft factors become important. Things like personal interests and hobbies can sometimes strike an unexpected chord, he said.

Marques said that he could very well owe his clerkship to some personal information he included. When he applied, he listed that he is a fan of the Boston Red Sox, and two of the people who were then working for the judge just happened to be fellow Red Sox fans. "You just never know what kind of thing will stick out and push you over the top," Marques said.

But McCarthy warned students that they don't want to be too quirky about the personal information that they include. "We had one applicant who put that he was a bee keeper," she said, "and he sent a jar of honey with his application." While that applicant did get an interview, McCarthy said that it was probably only because the judge wanted to satisfy his curiosity by seeing him in person.

Finally, the clerks discussed some of the benefits of clerking. Toner, who worked in private practice for four years before clerking, told students how nice it is not to have the burden of billable hours, and how a clerk can explore a legal problem much more thoroughly. "When you clerk, you can really dig into an issue," she said.

Random Thoughts

Continued from page 9

Institutional Legal Services; the Foundation provided $75,000 in matching grant funds

2008-2010 EJW Fellow works at Florida Institutional Legal Services; the Foundation provided $104,000

2010-2012 EJW Fellow will work at Florida Justice Institute; the Foundation will provide $90,000

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A follow-up to the March 19 EJCBA luncheon. For those who did not see the link to the "One" campaign and its video, here is the link: www.onepromiseflorida.org. After watching the video, if you are inspired to participate, please contact Marcie Green at Three Rivers Legal Services (352) 372-0519 or me at (352) 332-4422.

The Florida Bar Board of Governors Report

By Carl Schwait

At its March 26, 2010, meeting in New York City, The Florida Bar Board of Governors:

• Approved the Bar's 2010-11 budget, which calls for expenditures of $38.2 million. The budget is balanced and has a good chance of producing a surplus. The budget projection is based on the assumption the Bar *Journal* directory issue will no longer be printed and that Clients' Security Fund operations next year will be financed by fund surpluses.

- Approved a request from the Criminal Law Section that the board adopt a Bar legislative position opposing any legislation that would reduce pay or benefits for assistant public defenders, assistant state attorneys, and assistant attorney generals. The position also "urges that the Justice Administration Commission (JAC) is adequately funded for all costs and fees associated with criminal justice matters."
- Heard Bar President Jesse Diner warn that the Bar could face severe challenges in the 2011 Legislature. One challenge may be maintaining court funding when the state could be looking at a $6.8 billion deficit and no federal stimulus money to offset that. Another difficulty could be a possible attempt to have the Legislature take over court procedural rule-making authority from the Supreme Court.
- The Clients' Security Fund Procedures Committee will be presenting several recommendations at the board's May meeting. Those include allowing the fund to compensate a client when a partner of the client's lawyer has stolen from the client and the client has no other way to recover the loss. The committee discussed, but has made no recommendation on compensating third parties in certain cases when a lawyer has stolen from them, such as the lawyer had received money from the third party to be held in trust for a client and then stolen the money. The committee has decided not to recommend random audits of trust funds as a way to prevent losses, but is looking at other methods to prevent losses that could lead to claims on the CSF.
- Received on first reading a rule that prohibits lawyers from signing blank trust account checks, using a signature stamp on trust account checks, or allowing nonlawyers to sign trust account checks.
- Received on first reading a rule amendment that would allow lawyers facing financial hardships to pay their annual membership fees in installments.
- Approved a revision to the Bar's annual membership fee statement, to clarify the trust account certificate. The change will add a new category for judges, government attorneys, and others to report that they do not handle trust funds and are not required to have a trust account. On a related matter, Bar President Jesse Diner reported that the statement will include an option to make a voluntary donation to FLAME, the Florida Lawyers Association for the Maintenance of Excellence. FLAME has significantly enhanced our efforts to secure funding for our state courts, including commissioning studies by Washington Economics Group and TaxWatch to illustrate the consequences of inadequate funding and by conducting a public awareness campaign to gain widespread support. FLAME has also supported the statewide General Election Voter's Guide by the League of Women Voters for many years.
- Approved two new member benefits. One is property insurance coverage for law offices, including offices in low-lying coastal areas. The second offers a 20 percent clothing discount at Ann Taylor.

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!

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

resolve matters relating to the family, property, inheritance, sales, leases, loans, partnerships and what are today torts. Some things never change. In fact, the Latin term *compromissum* translated as the combination of two mutual promises to go to arbitration and to submit to the arbitrator's award (also ranking as the longest definition in Latin history). In the second century B.C., Greek city-states regularly looked to the Roman senate to arbitrate disputes. The power of Rome enforced any decision and Rome apparently cared little about conflict of interest or ethics as the dispute was usually resolved in the best interest of Rome itself. Later the Romans required mediators to take courses not only in ethics, but, also cultural awareness and domestic violence (the latter somewhat incongruous given Roman mediators also attended fights between lions and Christians).

It is unknown whether in ancient Greece or Rome one party could ask the other party to bear the full cost of mediation. Historians are still working on this missing link in the history of ADR but suspect it occurred in Tuscany in about 89 B.C. when an attorney made the request as part of a demand to settle on behalf of a client struck by a chariot.

Later, at the time of the Norman Conquest, a dispute could still be mediated even *during* trial-by-combat if both sides agreed. This is very similar to settling a case during the middle of a trial. During the Middle Ages and Renaissance, the Papacy highly developed the practice of both mediation and arbitration in international settings, although in addition to declaring an impasse the Pope could also excommunicate or exorcise a participant.

In the 19th Century, the Franco-Prussian War was resolved through mediation even though the insurance representative appeared by telegraph.

ADR has a long history in the United States. In the above-mentioned *A History of Alternative Dispute Resolution* the authors discuss the use of ADR by colonists and Native Americans. In fact, Indian commissioner Ben Franklin said the Indians gave him an education in persuasion, compromise and consensus building. Modern words such as 'caucus' and 'pow-wow' stem from Native American tradition of talking matters through. It is unknown if lunch was provided during pow-wows. Settlement at mediation is the ultimate example of burying the hatchet.

Franklin also acted as an arbitrator in business disputes. John Adams used his negotiation skills to handle the touchy issue of French interference with U.S. shipping. The authors of the referenced text note Adams averted war but it cost him re-election. This is the price mediators must pay when devoted to their ultimate client: settlement.

George Washington put a provision in his will stating if any dispute should arise over the wording of the will a panel of three arbitrators would be used to render a final binding decision to resolve the dispute. Perhaps George anticipated a fight by heirs over his false teeth.

When local members of the EJCBA participate in a mediation or arbitration they stand in the historic ADR timeline along with Solomon, Pericles, Caesar, Washington, Franklin, Kissinger, kings, popes and that guy run over by the chariot.

FORUM 8

Eighth Judicial Circuit Bar Association, Inc.
Post Office Box 127
Gainesville, FL 32602-0127

May 2010 Calendar

5 Deadline for submission to June Forum 8
5 EJCBA Board of Directors Meeting; Ayers Medical Plaza, 720 SW 2d Avenue, North Tower, Third Floor – 5:30 p.m.
6 CGAWL meeting, Flying Biscuit Café, NW 43rd Street & 16th Ave., 7:45 a.m.
7 Clara Gehan Association for Women Lawyers' Annual Judicial Assistant Luncheon, 11:30 a.m. – 1:30 p.m., Gainesville Country Club.
12 Probate Section Meeting, 4:30 p.m., 4th Floor, Family & Civil Courthouse
13 EJCBA Luncheon, Steve Zack, President-Elect of the American Bar Association, Steve's Café, 11:45 a.m. **(Special Date)**
13 North Florida Association of Real Estate Attorneys meeting, 5:30 p.m.
17 Family Law Section Meeting, 4:00 p.m., Chief Judge's Conference Room, Alachua County Family & Civil Justice Center
31 Memorial Day Holiday, County and Federal Courthouses closed.

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.
21 Family Law Section Meeting, 4:00 p.m., Chief Judge's Conference Room, Alachua County Family & Civil Justice Center

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.