FORUM 8

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President's Letter

By Elizabeth Collins

"No one actually reads your President's Letter," the speaker said at the recent Florida Bar Voluntary Bar Leaders' Conference.

Partly kidding and partly in truth, he continued, "It's merely a space filler for your newsletter, which everyone expects you to write as part of your duties. But, no one cares about your personal thoughts or opinions."

So, if you read nothing else in a President's Letter all year, read this:

Please take a moment now to ensure that your member profile (including your email address) is up to date on our website at www.8jcba.org **and that you add** execdir@8jcba.org **to your address book or "safe senders" list. Ask your friends and colleagues to do the same. Remember our primary form of communication in this paperless world is through email communications. We must have a valid email address on file for you to receive updates regarding upcoming events and new member benefits. You must have a valid email address on file to participate in our annual Judicial Poll.**

If you consider this column a space filler and choose never to read it again, so be it.

However, I sincerely hope **you** will choose to be more than a space filler in this organization. Don't just pay your dues, never to be seen or heard from again. Get involved!

Think you're too busy to get involved? We are all busy professionals who must manage our professional and personal responsibilities. I guarantee there are active members of the organization who are just as busy, if not busier than you. (I know that's hard to believe, but I promise that it's true.) However, you do not need to commit a great deal of time to make a significant impact. You can decide the level of involvement that fits your schedule, but do something to make a difference!

- Bring a potential member to a luncheon
- Mentor a law student member of the EJCBA through the Mentorship Committee
- Become a member of one of our sections (Family Law, In House Counsel, Probate, and Young Lawyers)
- Write an article for the Forum 8 newsletter
- Act as a liaison between the EJCBA and any other professional organizations in which you participate
- Suggest a topic or help recruit speakers for our luncheons and CLE seminars
- Come out to our socials, including our annual James C. Adkins Cedar Key Dinner and our annual meeting and reception in the spring
- Sponsor an event or activity
- Help enlist sponsorships and advertising from local vendors and businesses, so we can increase revenue and member services while keeping your dues low
- Support our community outreach and service projects with a few hours of your time
- Lend your expertise to our pro bono efforts
- Participate in our Law Week activities in May
- Play on a team for the annual golf tournament
- Join an EJCBA Committee (check your

Continued on page 15

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The North Central Florida Chapter of the Federal Bar Association to Host Reception for Federal Practitioners and Judiciary

September 29, 2010

The North Central Florida Chapter of the Federal Bar Association (FBA) is hosting a reception for federal practitioners and the judiciary on Wednesday, September 29, 2010, from 6:00 p.m. to 9:00 p.m. at Ti Amo! at 12 S.E. Second Avenue in downtown Gainesville (formerly the Sovereign). The FBA will also hold its Annual Meeting at this time.

Complimentary hors d'oeuvres and wine will be provided, and anyone interested in federal practice is encouraged to attend. Additionally, FBA officers and general board members will be elected.

For further information or if you are interested in a leadership position with the FBA, please contact Gary Jones at gary_r_jones@flmd.uscourts.gov or (352) 369-4869.

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

Three Rivers Hosts Training Through Webinars; We Need Your Help!

By Marcia Green

With a mini-grant from the Florida Bar Foundation and a wealth of expertise and assistance from members of our legal community, Three Rivers Legal Services has spent the past several months hosting webinar trainings for attorneys in the Eighth and Third Judicial Circuits.

Following up on our full-day Family Law and Wills/Probate trainings during the Spring, sessions have been held on Tax Issues and Divorce, Equitable Distribution, Summary Administration and Special Needs Trusts. Our gratitude goes out to attorneys Erica Shaffor, Jonathan Culver, Monica Brasington and Sam Boone. In August, Mary-Ellen Cross provided a webinar on Guardian Advocacy and Teresa Drake on Domestic Violence. Scheduled for September is Mary Kay Wimsett on adoption.

If you missed one of these sessions, check out our website at www.trls.org and go to Calendar of Events. The webinars are archived and can be viewed from your computer. Future events are listed along with registration information. CLE credits are available for those attorneys who attend the live webinar sessions and we are in the process of creating procedures to allow those who view the event through our website to also get the credits.

Our mini-grant from the Florida Bar Foundation came as part of our efforts to increase the number of clients being served through *pro bono* attorneys and to provide training to attorneys who want to volunteer but do not have expertise in areas of law most needed by those living in poverty. We are extremely pleased with the feedback we have received and hope to continue in this way to provide information (and CLE opportunities) to you. If you have an area of expertise that would benefit our client population and would like to share, let us know. Alternatively, if you have a suggestion for a future webinar, let me know and we will see if we can put one together.

One of the most exciting aspects of this style of training is that the trainer is in his/ her office and the trainees are in their own offices. Three Rivers hosts the webinars and handles the technology and applies for the CLE credits. While no one wants to replace in-person, live training, technology is enabling us to provide our community with needed services in a very low cost, efficient and creative manner.

As we continue to encourage and seek volunteer attorneys, we are grateful to those of you who have come forward in response to our call for help and to the Florida Bar's ONE campaign. However, we are still in need of more.

Funding for Three Rivers Legal Services is precarious and stagnated; the economic crisis is affecting everyone — our clients, our volunteers and our funding sources. Many of our grants have been reduced and some eliminated; funding from the Florida Bar Foundation has been deeply affected by interest rates. This is a time when it's even more critical to ask members of the legal community to step up and answer the call. While we do need volunteers, we also need your financial contributions. Our fundraising efforts this year have fallen short of our goals and, as of the date of the writing of this article, we have raised far less than last year.

Your monetary help to Three Rivers ensures that we have the staff and litigation funds to help the thousands of low income residents in our community.

Your contribution stays in this community; it is used to help Three Rivers provide direct assistance in the emergency and on-going legal needs of our

Continued on page 12

Alternative Dispute Resolution

Hamlet On A.D.R.

By Chester B. Chance and Charles B. Carter

"There are more things in heaven and earth, Horatio, Than are dreamt of in your philosophy." Hamlet, Act 1, Scene 5.

The purpose of this article is to discuss some "food for thought" you may not have considered when it comes to mediation and arbitration.

Case evaluation including costs which may be recovered by the prevailing party: In any case and at every mediation, lawyers evaluate the damage exposure to their client. Attorneys analyze the value of a soft-tissue injury, herniated discs, lost profits, breach of contract damages, etc. What counsel often fails to consider is the amount of costs that will be added to the *verdict* to reach the ultimate *judgment*. This is especially important in "low value" cases where a verdict for $10,000 in a case could evolve into a judgment for $16,000 once costs are added. At mediations, it is common for parties and lawyers to fail to consider a cost award much less the potential amount of such an award. We once had the experience of an insurance adjuster who argued the prevailing party does *not* get any costs (requiring the defense attorney to explain cost statutes, Uniform Guidelines, etc., during the mediation). Please try and remember to analyze the potential cost award to the prevailing party well in advance of mediation as part of your pre-mediation assessment with your client. The two parties may reach a result faster and impasse less if all potential risk is evaluated before the mediation.

Do you need more than one mediator? We are hesitant to raise this issue since there is a risk we will be accused of suggesting some type of Mediator-Relief Act. But we have observed and participated in multi-party mediations involving 6, 8 and up to 15 separate parties and afterwards everyone (the lawyers, parties and mediator) all agreed some multi-party cases require more than one mediator. Everyone initially rejects such an idea fearing "it will cost too much". However, having two mediators in an 8 party mediation may save time. While one mediator meets with a party the other may go back and obtain the answer to a question. Two mediators allow for more contact with participants thus reducing the frustration factor and increasing the feeling of being engaged rather than ignored. For example, the plaintiff makes an offer to 7 different defendants. One mediator meets with three parties and the other meets with four parties and a great deal of time is saved. Maybe an 8 party mediation with one mediator takes 8 hours at $250 per hour for the mediator (a total of $2,000, or, $250 per party). Maybe using two mediators get the job done in 6 hours (a total of $3,000 or $375 per party). An added cost of $125 for more attention, two heads and less time may be well worth it.

Some mediators from outside this circuit charge two to three times the rate charged by local circuit mediators. Consider the fact you could hire two to three local mediators for less than a mediator with the higher rate.

Moreover, the likelihood of one of the two mediators reaching a rapport with a party or attorney

Continued on page 12

Our Non-Political Supreme Court

By Stephen N. Bernstein

Our supposedly nonpartisan Supreme Court so often splits along ideological lines, with the four conservatives locked in combat against the four liberals and the eclectic Justice Anthony Kennedy determining which faction wins. We're now waiting to see what the effect will be of Elena Kagan on this formula.

It is interesting that all of our justices so often find in the Constitution a mirror image of their own political and policy views on issues as diverse as abortion, race, religion, gay rights, campaign financing, the death penalty and national security. Who am I to suggest the fact that none admit that interpreting the Constitution is an inescapably subjective enterprise in which policy and political preferences unavoidably play a big part? Nevertheless, this is especially true at the Supreme Court, which is not strictly bound by its own precedents.

Our Supreme Court cannot avoid subjective judicial policymaking for at least four reasons.

First, there has never been a consensus on the original meaning of expansive constitutional phrases such as "due process of law" and "equal protection of the laws", or how to handle the tensions among various other provisions. The Framers themselves often differed on how to apply the Constitution to specific cases.

Second, any consensus that may have once existed about the meaning of the most important provisions has been erased by time and by revolutionary changes in the way Americans live. Consider the landmark 5-4 ruling in 2008 that the ambiguously worded Second Amendment protects against the federal government an individual right to bear arms. The same five justices held in June that gun rights also apply against states. All nine justices claimed to be following the Second Amendment's original meaning but the liberal-conservative split matched the faction's apparent policy preference. You can read the 154 pages of opinions but I thought it was a dead heat philosophically.

Third, even when the original meaning is clear, almost everyone rejects it as intolerable some of the time. Take, for example, the fact that nothing in the original Constitution (which ratified slavery) or the 14th amendment (which required States to provide "equal protection") was originally understood to bar the federal government from discriminating based on race. Yet, since *Brown v Board of Education* almost everyone now agrees that the Constitution bars federal racial discrimination.

Fourth, the accretion of precedents contrary to original meaning pervades almost every area of constitutional law. In case after case, justices must choose whether to vary from originalism or to overrule precedents.

In these troubled political times, a policy court enjoys better approval ratings than an impotent Congress and an embattled president.

We have found ourselves in an inverse system of checks and balances due to a dysfunctional political family. We need some serious counseling intervention.

Criminal Law

By William Cervone

Welcome back from another hot summer. Global warming lives, except for last winter. While you were away, I diligently analyzed the results of last Spring's legislative session, and, as promised, start this publishing year with a compilation of all of the important and noteworthy accomplishments that came out of the session.

First, let me itemize and discuss the significant criminal legislation that was passed and signed into law in 2010.

Now that I've exhausted that topic, let me move on to other legislative action of note.

Significant discussions and hearings were held, at least in the Senate, about de-criminalization, especially of many traffic offenses, and re-evaluation of both the plethora of enhanced penalty offenses enacted in recent years and the structure of mandatory sentences in narcotics and other types of cases. You may recall that in 2008 the Correctional Policy Advisory Council was established by the legislature to study this same topic and to present recommendations. The problem with that Council is that the House never got around to appointing members so it never met. Regardless, the State Attorneys and Public Defenders collaborated and presented a variety of proposals that were debated this year. Not surprisingly, after the proverbial sound and fury signifying nothing, that's exactly what came of those debates: nothing.

On a sad note, the plight of Meg the Goat remains un-addressed. As you'll recall, Meg, a goat, was sexually battered by a Panhandle man in 2008, leading to both a huge outcry and the discovery that bestiality has not been a crime in Florida since 1971, when the Supreme Court struck down our old (as in 1868 old) law against it because that law used the grand but vague "abominable and detestable crime against nature" language, applying it to offenses against "either man or beast." Meg is not alone as a victim of this sort, there being other stories about men having been caught molesting a neighbor's dog in West Palm Beach in 2004 and sexually battering a guide dog in Leon County in 2005, but Meg was pregnant, making the crime more repellant, I suppose, and more worthy of legislative action. In any event, the legislature again this year failed to act despite the ease, one would think, of passing a law that says "You can't have sex with animals" or some such language. Some legislators were reported as saying that they didn't like discussing sex and animals in public committee hearings. Just whose sensibilities they are concerned about offending is a mystery to me based on what I do hear them talking about on a regular basis in Tallahassee, not to mention that I can assure you that the smoke filled back room where they can and do talk in private still exists. Meg's supporters have vowed to return for another effort during the 2011 session. We shall see.

Finally, something of a ruckus was created when legislation was introduced that would have basically designated the University of Florida as the flagship university for the state. This seems only logical to me, not to mention being entirely consistent with reality and history. Nevertheless, realizing that they could not meet the criteria for this designation themselves the good folks at FSU immediately launched an offensive (and I choose that word intentionally), including an internet appeal to all of their alums urging them to protest such "unwarranted" legislation. The men and women of the Senate, where the bill was under consideration, immediately folded and/or ran for cover.

Over such momentous causes do we spend untold hours and dollars during a legislative session. Have I mentioned lately that we ought to return to biennial sessions?

New Eighth Judicial Circuit Program: Mandatory Mediation for Homestead Foreclosures

By Jennifer Jones, Trial Court Staff Attorney, Eighth Judicial Circuit

Last year, the Florida Supreme Court acknowledged that our state faces a foreclosure crisis. The Court commissioned a Task Force to respond to the crisis and to propose a solution. The Final Report and Recommendation identified a lack of communication between plaintiffs and borrowers as the most significant issue impeding early resolution of foreclosures. As a result, the Task Force proposed an automatic referral to mandatory mediation for

Continued on page 14

Family Law Section

What the Legislature Did On Your Summer Vacation

By Cynthia Stump Swanson

Welcome back from your summer break. While you've been at the beach, the Legislature and District Courts of Appeal have been hard at work. Here are some highlights; of course, you'll need to read the full text of all the mentioned laws and cases to get a complete view.

The biggest news - or at least the one generating the most buzz - is HB 907, which does several things, and has several different effective dates. It is important to be sure you are clear on which section goes into effect when. Amendments to FS §61.08 codify "bridge-the-gap" alimony (which may not last longer than two years) and label marriages as short, moderate, or long term, and provide a new type of alimony, called "durational" alimony. This type of alimony is for moderate term marriages, where permanent alimony is not appropriate, but where there is no likelihood of a successful rehabilitative plan, so that rehabilitative alimony is not appropriate either. FS §61.08(2) is amended to require courts to apply a two-pronged analysis in all alimony cases. First, the court is to determine whether there is an actual need and ability to pay alimony. If neither one or only one of those requirements exists, then there can be no award of alimony. If both exist, then the court should move to the second prong, which is to consider all the factors listed in FS §61.08(2)(a)-(j).

Durational alimony is for a finite term. It automatically terminates upon the death of either party or the remarriage of the receiving spouse. It may be modified upon a showing of a substantial change in circumstances, but may never be longer than the length of the marriage. It would most likely, although not only, be considered for use in "moderate" length marriages, which is now "rebuttably" defined as more than seven years, but less than 17 years. FS §61.08(4). This alimony section of HB 907 is applicable to all initial awards of alimony and modifications of alimony made on or after July 1, 2010, and to all cases filed after or pending on July 1, 2010.

In addition, HB 907 provides some amendments to the calculation and determination of child support. For example, FS 61.13(1)(a) now requires that a court must allocate child support among the children where support is awarded for more than one child. The order must determine what the child support amount will

Continued on page 9

Exploring "Gotcha" Jurisdiction

By Siegel, Hughes & Ross

Most civil trial attorneys are well aware of the statutory bases for long-arm jurisdiction. Section 48.193, *Florida Statutes,* contains an extensive list of the various activities, and even some lone acts such as committing a tort within this state, that subject a defendant to the jurisdiction of Florida courts. However, reliance on these statutorily enumerated bases for jurisdiction can cause one to overlook another long-standing and important basis for jurisdiction over non-residents that is not included in section 48.193, *Florida Statutes.* As old as this country itself is the notion that "the courts of a State have jurisdiction over nonresidents who are physically present in the State." *Burnham v. Superior Court of California, County of Marin*, 495 U.S. 604, 610 (1990).

This form of jurisdiction, which has its roots in English common law, has been termed "gotcha" jurisdiction, since it requires only that the defendant be served within a state to be subject to the process of its courts. *See id.* at 633 (fn. 5) (J. Brennan, concurring). By merely stepping over the state boundary into Florida, a defendant can be validly served with process here for any cause of action. *See id.* at 610 ("each State [has] the power to hale before its courts any individual who [can] be found within its borders").

The only other qualification for this rule is that the defendant's presence in the state must be voluntary. *See Burnham*, at 613; s*ee also, Durkee v. Durkee*, 906 So. 2d 1176, 1177 (Fla. 4th DCA 2005). The U.S. Supreme Court explained that historically most states have exempted from service of process those individuals who were brought into the state by force or fraud. *See*

Continued on page 16

Brent Siegel, Charles Hughes & Jack Ross

Probate Section Report

By Larry E. Ciesla

The Probate Section continued to meet over the summer months. Following is a summary of recent legislation discussed at previous meetings.

In its recent session, the Florida Legislature passed a bill of interest to probate and trust practitioners. Laws of Florida Chapter 2010-132, also known as Council Substitute for Committee Substitute for House Bill No. 1237, contains several important new provisions, summarized as follows. A radical change in the law is contained in Section 732.401, Florida Statutes (dealing with descent of homestead). New Section 732.401(2), Florida Statutes, gives a surviving spouse, who receives a life estate in a homestead under the Florida Constitution, the right to elect to instead take an undivided one-half interest in the homestead, with the other one-half interest being shared as a tenant in common with decedent's children. The election must be made within six months after death. The earlier death of the surviving spouse terminates the right of election. Once made, the election is irrevocable. The election is exercised by filing a notice. A form for the notice is set forth in the statute. The statue goes on to establish the rules for allocation of expenses related to the homestead. Until an election is made, expenses are allocated between the life estate holder and the remainder holder in accord with existing law under Chapter 738, Florida Statutes. If an election is made, expenses are allocated between the parties in accord with their respective ownership interests, beginning with the date of the filing of the notice of the election. The main benefit to a spouse in making this election is to force the children to contribute their pro rata share of current expenses, primarily the monthly mortgage payment, insurance, and taxes.

Another significant, "new" right created by this bill pertains to transfer of a homestead into a trust. New Section 732.4017, Florida Statutes, has been created to allow for a homestead to be transferred into a trust to avoid the constitutional and statutory rules regarding descent and distribution of a homestead. Interestingly, the last part of the new statute states that the legislative intent is to "...clarify existing law"; as opposed to creating a new right. In any event, this provision will undoubtedly be news to most practitioners. With many thanks to Richard White, the statute can be explained as follows. A single parent with one or more minor children can create an irrevocable trust and transfer his or her homestead into the trust. According to new Section 732.4017(1), Florida Statutes, upon the death of the grantor, the homestead will not pass as provided in the Florida Constitution and Section 732.401, Florida Statutes. Subsection (3) of new Section 732.4017 goes one step further and allows the grantor to retain a life estate and to provide in the trust for a date for automatic termination of the trust and return of the homestead to the grantor. Presumably, the date chosen will be the date upon which grantor's youngest child attains age 18, at which time the constitutional and statutory prohibitions against devise of the homestead are no longer applicable. In subsection (2) of the new statute, things get even better. The general rule under applicable tax law is that a transfer into an irrevocable trust, even if the grantor retains a life estate, is a taxable gift. Subsection (2) is an attempt to defeat the taxable gift rule. Supposedly, there will not be a completed taxable gift if the grantor retains the right, "... to alter the beneficial use and enjoyment of the interest within a class of beneficiaries identified in the trust instrument..." You have to give credit to our legislators, they don't let little things like the Florida Constitution, existing Florida Statutes, or federal tax law stand in their way when they are focused on accomplishing a specific goal.

Another potentially significant provision of Chapter 2010-132 is the creation of new Section 733.1051, Florida Statutes, dealing with the problems created by the expiration on December 31, 2009 of the federal estate tax. In order to avoid unintended consequences of the effect of the expired estate tax upon wills drawn to take maximum advantage of the prior tax law (utilizing so-called "formula" clauses), courts have been given the authority to construe such will provisions, at the expense of the estate, to consider extrinsic evidence and to allow delay of distribution of assets until the issue is resolved.

Other changes contained in the bill are as follows: Section 655.935, Florida Statutes, dealing with the procedure for opening a safe deposit box of a decedent, has been amended to provide that the lessor must now make a copy of any document removed from the box and to place the copy, together with a memo, in the box. The lessor may charge a reasonable fee for its services rendered. Section 731.110, Florida Statutes (caveats), has been amended to allow for the filing of a caveat by a person other than a creditor

Continued on page 15

 Continued from page 7

automatically change to when the obligation for the oldest child terminates, and when the second one does, and so on. This does not prevent either party petitioning for a modification under proper circumstances at any time. But for those cases where neither party ever goes back for a modification, the support will automatically decrease so that the payor parent will not rack up large arrearages unfairly. These provisions are effective October 1, 2010.

Amendments to FS §61.30(2)(b) provide for imputing income to a party who does not provide current, accurate income records, by providing a rebuttable presumption that the parent has at least the income equivalent to the median income of year-round full-time workers as derived from current population reports or replacement reports published by the United States Bureau of the Census. In addition, the Court is now authorized to impute income to a party greater than that party has ever actually earned if the party was "recently degreed, licensed, certified, relicensed, or recertified and thus qualified for, subject to geographic location, with due consideration of the parties' existing time-sharing schedule and their historical exercise of the time-sharing provided in the parenting plan or relevant order." FS §61.30(2)(b)(2)(b).

Amendments to the child support guidelines now provide "credit" for 100% of the child care costs, instead of only 75%. For purposes of adjusting any award of child support, "substantial amount of time" is changed from 40% to 20% of the overnights of the year. I prepared some child support guideline calculations myself in a sample case using the old guideline formula and the new one. I found that, at least in this particular case, the child support amount actually goes UP at the lower percentage of overnights than what it would be with no adjustment; it goes DOWN at the 30% - 35% range, and stays the same at 40% - 50%.

The provisions of HB 907 take effect on January 1, 2011, except the alimony provisions which went into effect in July, and the requirement to allocate child support among several children, which goes into effect in October.

In other matters which may be of interest to family law practitioners, the Legislature has essentially adopted a "Don't ask, don't tell" policy about firearm possession for adoption home studies. Prospective adoptive parents may not be asked about their possession or storage of firearms; however, they are required to sign a form stating they are familiar with certain Florida laws regarding firearm possession and storage. See HB 315 which creates FS §63.0422.

SB 694 provides that when parties apply for a marriage license, they must state under oath whether they are the parents of any child together, and if so, that marriage license application can be used to amend the child's birth certificate to add the father's name - even if he had not signed the birth certificate application and even without a judgment of paternity. It seems likely that if a father does sign such a statement under oath, he would be precluded from the disestablishment of paternity action which might be otherwise available to him under FS §742.18.

Also, HB 449, which became effective in May 2010, amends FS §57.105. This statute now provides for an award of fees against only the lawyer if the client can show that the client did not know the action was baseless. This creates a likely conflict between attorney and client - to foist the blame off on the other, and may require a second evidentiary hearing at which the lawyer would have to testify against his or her client.

The recently released case of Hunter v. Hunter, 36 So.3d 148 (Fla. 2d DCA 2010) provides an interesting discussion about what constitutes an emergency and the kind of irreparable harm that warrants the entry of ex-parte relief. A motion seeking ex-parte relief "must demonstrate (1) how and why the giving of notice would accelerate or precipitate the injury or (2) that the time required to notice a hearing would actually permit the threatened irreparable injury to occur." Injunctive relief in family law cases not related to the need for protection against domestic violence, repeat violence, dating violence, or sexual violence is governed by Fla.R.Civ.P. 1.610. The Court noted that the motion was neither verified nor supported by affidavits. Thus the motion was deficient under rule 1.610(a)(1)(A). Also, the motion did not contain the attorney's certification required under rule 1.601(a)(1)(B). Furthermore, the order itself was defective because it contained no explanation of the reasons for its entry other than "[t]he Emergency Motion is well taken." Thus the order itself violated rule 1.610(c), which requires that an injunction specify the reasons for entry. The Court held that to send a copy of a motion to opposing counsel without a notice of hearing and to present the motion to the court for the entry of an order granting the motion an hour or so later is unquestionably inadequate notice -- if it may even be deemed notice at all.

The Family Law Section will resume its regular meetings in September. Meetings are always the third Tuesday of each month at 4:00 pm in the Chief Judge's Conference Room in the Alachua County Civil

Continued on page 15

A Fresh Crop of Random Thoughts from a Florida Bar Foundation Board Member

By Phil Kabler

Welcome to these first post-summer meanderings about The Florida Bar Foundation, its statewide activities, and our local grantees.

Firstly, thank you to all of you who contributed to the 2010 Lawyers' Challenge for Children campaign when you renewed your Bar memberships. For those who did not (…yet…), it is never too late. All you need to do is visit www.floridabarfoundation.org/kamesha.

Onward, then, to the new "stuff"! In this case, the newly formed Florida Innocence Commission. (Which is, as explained below, different than the Innocence Project of Florida.)

You did not commit a crime. Imagine, though, that you were convicted of the crime you did not commit. How can this happen? What can our legal system do about it, both reactively in your case and proactively to prevent recurrences in other cases?

Now to the real case of James Bain. Mr. Bain of Lake Wales was released at age 54 after serving 35 years for a rape and kidnapping he did not commit. Given the duration of his incarceration, Mr. Bain has the unfortunate distinction of having been imprisoned longer than any other DNA exoneree in the country.

Hopefully as lawyers we can agree, notwithstanding our professional perspectives, that it is simply wrong to have an innocent person behind bars. Particularly when the actual perpetrator remains at liberty.

This past July 2nd, Chief Justice Charles T. Canady issued an administrative order establishing the Florida Innocence Commission, which was funded by both The Florida Bar Foundation and the Florida Legislature with the overall charge of making cases like Mr. Bain's a thing of the past. The Commission, which will study the causes of wrongful convictions and how to prevent them, is tasked with making a final report and recommendations by mid-2012.

Talbot "Sandy" D'Alemberte, a former president of the American Bar Association, the founding chairman of the Innocence Project of Florida, and one of the leading advocates for the creation of the Florida Innocence Commission, points to work done by the U.S. Department of Justice and a number of state commissions indicating that the leading cause of wrongful convictions is faulty eyewitness testimony, including victim testimony. Other causes include the use of jailhouse informants and improper scientific applications. Some wrongful convictions have even been based on false or coerced confessions. Mr. D'Alemberte said possible remedies include videotaping interviews with suspects, double-blind procedures for eyewitness identifications, systems to screen jailhouse informants, procedures to eliminate the use of faulty science, and review of jury charges and arraignment procedures.

The Florida Bar Foundation responded to the Florida Supreme Court's funding request with a $114,862 grant made through its Improvements in the Administration of Justice (AOJ) Grant Program. Among the grant program's stated objectives is the improvement and reform of the criminal, civil, and juvenile justice systems. In its grant application to the Foundation the Court stated that the Commission will study issues including "false eyewitness identifications, interrogation techniques, false confessions, the use of informants, handling of forensic evidence, attorney competence and conduct, processing of cases and the administration of the death penalty." The Foundation's grant will supplement a $200,000 appropriation made by the Florida Legislature to fund the Commission for 2010-11.

Through the AOJ grant program the Foundation has provided more than $1.5 million in funding for the Innocence Project of Florida since 2004-05, the most recent grant being for $319,600 in 2009-10. The Innocence Project of Florida, which represented James Bain, is the organization primarily responsible for exonerations achieved through the use of DNA evidence in Florida. The Foundation's funding of the Florida Innocence Commission is an effort to address the problem of wrongful convictions in a systemic way.

For additional information about James Bain's case please visit www.floridabarfoundation.org/bain. And for information about the Improvements in the Administration of Justice program please visit http://www.flabarfndn.org/grant-programs/aoj/.

If you have questions about The Florida Bar Foundation's grant programs or the Foundation in general, please feel free to call me at (352) 332-4422.

Surviving in the Legal Practice

By Sonia M. Gallagher, Esq.

Time is constantly ticking isn't it? Doesn't it seem to get even faster when you walk into your office? Competition for solo practitioners and law firm associates is only getting tougher each month as more lawyers lose their jobs.

So, how can you stand out? How can you differentiate yourself, be profitable, and truly enjoy being a lawyer?

As lawyers, we often see clients with issues that could have easily been prevented. We can learn from their mistakes to avoid these issues for ourselves. Though some days may seem like the world is against you, there are specific things we should always keep in mind. If opposing counsel yells at you on the phone, your paralegal gives you an attitude, or a client refuses to pay for work you've already done, always remember these 6 rules for the firm.

These 6 rules enable you to get more work done, keep you from getting a bad reputation, and allow you to be a happier lawyer.

Listen. How often do you truly listen? Paying close attention to your colleagues and staff can give you a wealth of knowledge. It allows you to have your finger on the dial. You can find out about issues, concerns, and developments going on in your own practice. Don't lock yourself up in your office. You can miss really important information about things going on around you. The information you miss can be incredibly helpful for your professional development, partnership potential, or change of employment.

Take a breath. We are known for liking to hear our own voices. Be careful not to say whatever pops into your mind, unless you want to take the risk of having to explain it later. This may happen at the worst possible time- like when you are up for a review or promotion to partnership. Think about the way you say things too.

Your beliefs become your reality. You are the captain of your own thoughts. The only thing in life that you have complete control over is your own thoughts. Yet, so many of us find it extremely difficult to control our thinking patterns. The easiest way to change this is to take 10 minute silence breaks each day. This can be done anywhere and at any time. Doing this frequently empowers you to be able to recognize negative thoughts for what they are, acknowledge and let them pass, and not be affected by them.

Patience is a virtue. Patience is one of the key elements to being an effective lawyer. After all, we work with a wide variety of cases and personalities each day. It's easy to see how we can lose it at some point. Remember, you can be patient and strong. In the practice of law more than any other profession, it's extremely important to keep your cool. Think about it. How quickly will you be at risk of losing a client or losing a case if you get affected by every little thing that people say or do to you? Don't give anyone else that much control over you.

Lend a hand. Try not to be so territorial in defining your work from the work of others around you. If you face an opportunity to be helpful, do it. Not only will it make you feel great to be useful, it reflects that you are willing to collaborate and go the extra mile - an attorney to watch come promotion time.

A moment. Sometimes the stress can get the best of us. The key thing to keep in mind when we face a difficult case, client, or situation is that it is only a moment in our life. Like all other moments, it too will soon pass. Remembering this can be the key to a profitable and balanced practice.

Apply these tips to your professional and personal life as often as possible. Before you know it they will become second nature and won't require any effort from you at all.

Sonia Munoz Gallagher, Esq. *is an attorney, trainer, and executive coach for lawyers at Time for Life, LLC. She works with lawyers nationwide to steer the direction of their careers, be happier and more effective advocates, and get more clients, more profits, and more free time. Contact her at Sonia@timeforlifenow.com to schedule a free coaching session or visit www.timeforlifenow.com for more information.*

Save These Important Dates!!

Sept. 16 – Investiture of County Court Judge Robert K. Groeb in Courtroom 1B, Criminal Justice Center, 4:00 p.m.
Sept. 24 – Investiture of County Court Judge David P. Kreider in Courtroom1B, Criminal Justice Center, 4:00 p.m.
Oct. 14 - Annual James C. Adkins Cedar Key Dinner, Frog's Landing, Cedar Key, 6:00 p.m.

Voluntary Disclosure Form Gives Public A New Way To Learn About Judicial Candidates

When voters choose judges, they are selecting the people who will preside over business disputes and personal family matters that wind up in court as well as criminal trials. But frequently voters make decisions about who to vote for with only limited knowledge about candidates, who are constrained by law in what they can say in campaigns.

This year, however, with 59 judicial races on the ballot across the state, voters have a new means of learning about judicial candidates – The Florida Bar Judicial Candidate Voluntary Self-Disclosure Statement. Beginning July 19, these statements, which contain information about candidates' backgrounds as well as personal statements, can be found on The Florida Bar website at www.floridabar.org/judicialcandidates.

Biographical information includes education, work history and community involvement. Additionally, candidates were asked to include 100-word personal statements explaining why they believe they would serve the public well as judges. The statements were recommended by the Bar's Citizens Forum advisory group to help further inform voters.

As with other judicial candidate communications, the self-disclosure statements are governed by Canon 7 of the Code of Judicial Conduct, which bars candidates from making statements that appear to commit them on legal issues likely to come before them in court. Before posting information online with The Florida Bar, candidates had to attest to the accuracy of the information they provided. To be posted, statements had to be received by The Florida Bar by July 16.

In total, 70 candidates responded in 59 races, for a 47 percent participation rate. In the 32 circuit court races, at least one candidate responded in 29 races. In the 27 county court races, at least one candidate responded in 19 races.

The Florida Bar supports maintaining a high quality judiciary and is committed to educating the public on the legal system. To that end, the Bar's Judicial Administration and Evaluation Committee developed the voluntary self-disclosure statement. It was approved by The Florida Bar Board of Governors for implementation in 2010.

Additional information about judicial campaigns can be found on The Florida Bar website.

Alternative Dispute

Continued from page 4

is twice as great. Consider the use of two mediators in future multi-party cases and analyze the cost, timesavings and "more attention" benefits.

Consider Non-Binding Arbitration as a cost effective measure: Everyone seems to consider Non-Binding Arbitration as a four-letter word. But we suggest it may be cost effective. In a "small value" case, counsel may invest 1 – 2 hours in a Non-Binding Arbitration hearing. Both sides may feel compelled to accept the award of an individual arbitrator or panel experienced in the area of law that is the subject of the case; or, the award may serve as a catalyst for a quick negotiation. Remember, many arbitrators agree to serve for Non-Binding Arbitration at an hourly rate less than the typical mediation rate (on the basis the process is new and needs to be experienced). Even the cost of a panel of three arbitrators for 1 – 3 hours at a rate of less than $200 per hour each may be less than a mediation and certainly less than the cost and time associated with a 1, 2 or 3 day trial. Think about it. Consider Non-Binding Arbitration if one of the parties has unrealistic expectations, a non-binding award may illustrate reality. Again, no "Alternative Dispute Relief Act", rather just something to think about.

For those who have requested it, we have returned to our normal, non-hat photos for this issue. (Our wardrobe department was off during the summer holiday).

Three Rivers

Continued from page 3

neighbors, community members, the homeless and elderly, victims of domestic violence and those who have found themselves unemployed or underemployed in very difficult times.

You have the ability to help ensure that those living in poverty have access to the legal system, receive advice, and gain access to the courts, if needed. The legal field is a unique one; while some matters can be handled pro se, most cannot.

We ask your continued support by providing a tax deductible financial contribution to Three Rivers. Checks can be made to Three Rivers Legal Services, Inc. and mailed to 901 N. W. 8th Avenue, Suite D-5, Gainesville, FL 32601 or donations may be made through our secure PayPal account on our website www.trls.org.

Thank you to all of our volunteers and donors. You are a large part of the success of Three Rivers Legal Services in our community.

Congratulations To Our 2010 Florida Super Lawyers And 2010 Florida Rising Stars

Congratulations to the following lawyers from the Eighth Judicial Circuit who have been named as 2010 Florida Super Lawyers and 2010 Florida Rising Stars. Super Lawyers names top lawyers as chosen by their peers and through the independent research of Law & Politics. Congratulations – and if we have forgotten anyone, please let us know and we will recognize them in an upcoming issue.

2010 Florida Super Lawyers

Bankruptcy & Creditor/Debtor Rights

Karen K. Specie, Specie Law Firm
Gainesville

Business Litigation

James G. Feiber, Jr., Salter, Feiber, Murphy, Hutson & Menet
Gainesville

Civil Rights/First Amendment

Neil Chonin, Southern Legal Counsel
Gainesville

Criminal Defense

Bennett A. Hutson, Hutson & Brockway
Gainesville
Robert A. Rush, Law Office of Rush & Glassman
Gainesville
Larry G. Turner, Turner & Hodge
Gainesville
Robert S. Griscti, Law Firm of Robert S. Griscti
Gainesville

Estate Planning & Probate

Ellen R. Gershow, Dell Graham
Gainesville

Intellectual Property

David R. Saliwanchik, Saliwanchik Lloyd & Saliwanchik
Gainesville

Personal Injury Defense: General

Marcia Davis, Bice Cole
Alachua
Carl B. Schwait, Dell Graham
Gainesville

Personal Injury Defense: Medical Malpractice

John D. Jopling, Dell Graham
Gainesville

Personal Injury Plaintiff: General

Mark A. Avera, Avera & Smith
Gainesville
Leonard E. Ireland, Jr., Clayton-Johnston
Gainesville
Alan E. McMichael, The McMichael Law Firm
Gainesville
Robert O. Stripling, Jr., Stripling & Stripling
Gainesville

Real Estate

Melissa Jay Murphy, Salter, Feiber, Murphy, Hutson & Menet
Gainesville

Workers' Compensation

Lance F. Avera, Avera & Smith
Gainesville
Robert A. Keeter, Attorney at Law
Gainesville
Anthony J. Salzman, Moody, Salzman & Lash
Gainesville

2010 Florida Rising Stars

Civil Rights/First Amendment

Gabriela M. Ruiz, Southern Legal Counsel
Gainesville

Estate Planning & Probate

Julia M. Cook, Bovay & Cook
Gainesville

Personal Injury Plaintiff: General

Gilbert J. Alba, Decarlis Sawyer & Alba
Gainesville

Mentoring: If Not Me, Then Who?

By Rob Birrenkott (UF Law Center for Career Development)

The EJCBA has partnered with the UF Levin College of Law to launch a mentoring program this fall. We are currently seeking members of the EJCBA who are willing to share their insights and ideals with the next generation of legal leaders. If you are interested in serving as a mentor, or would like to learn more, please email Rob Birrenkott at rbirrenkott@law.ufl.edu. We hope you will consider participating.

Mandatory Mediation *Continued from page 6*

foreclosures concerning residential homestead property.

The Florida Supreme Court adopted this statewide managed mediation program to be implemented in each circuit through a local administrative order. However, budget considerations in the trial courts required a novel solution: the use of an outside entity to manage the mediation program on a large scale. Each circuit was charged with selecting a Program Manager and implementing the program locally.

In March, Chief Judge Martha Ann Lott issued a Request for Proposal as a fair and impartial way to select a Program Manager. After a Review Committee reviewed the proposals received, conducted interviews, and made a recommendation, Chief Judge Lott chose the American Arbitration Association to serve as the Eighth Judicial Circuit's Program Manager. In July, Chief Judge Lott signed Eighth Judicial Circuit Administrative Order #3.0954 and implemented the Residential Mortgage Foreclosure Mediation (RMFM) Program in our circuit.

Under the RMFM Program, each newly-filed qualifying case is automatically referred to mediation. For a period of time, the homestead residential foreclosure is diverted to the Program while the Program Manager attempts to arrange mediation. After the diversion period expires (within 45 days if the borrower cannot be contacted) or the mediation occurs, a special foreclosure court resumes action on the case. The use of foreclosure court at this stage will provide litigants in other matters with more hearing time before circuit civil judges.

The RMFM Program is designed to give borrowers and lenders an opportunity to sit down together and discuss workout options in a neutral setting. After a foreclosure is filed, the defendant / borrower will receive a Notice of RMFM Program from the Court sent along with the summons. The Notice informs the borrower about the Program, provides contact information for the Program Manager, and lets the borrower know they have the option to attend mediation.

The Program Manager also reaches out to those borrowers who may not otherwise make an appearance in their case. A "no-show default" occurs in many cases in our circuit and constitutes a significant problem. To overcome this problem, the Program Manager attempts to contact the borrower by phone, mail, and email. The Program Manager answers questions about the Program and provides information. If the borrower chooses to participate, the Program Manager will schedule the required foreclosure counseling session and the mediation at no up-front cost to the borrower. The plaintiff pays the required fees initially.

In addition, the RMFM Program requires the plaintiff to follow new procedures. For example, all complaints for foreclosure concerning residential property must be accompanied by a special form, known as Form A. By filing Form A, the plaintiff tells the Court whether the foreclosure qualifies for the RMFM Program. A foreclosure qualifies if it originates under TILA Regulation Z (usually a commercial loan) and concerns homestead residential property.

Within twenty-four hours of filing the complaint and Form A with the Clerk of Court, the plaintiff's attorney must also file a copy of Form A with the Program Manager. Our Program Manager provides plaintiffs' attorneys with a help line and a sophisticated electronic platform to make the exchange of information as easy as possible. The Program Manager will work with both the lender and the borrower to schedule the mediation and to exchange financial documents. A complete list of the new procedures can be found in Local Administrative Order #3.0954.

The Eighth Judicial Circuit's RMFM Program varies from others across the state, particularly through its local focus. Our Program Manager is required to give preference to local mediators who reside within the circuit. A local training session was hosted by UF Law in August to provide our mediators with foreclosure certification close to home. Mediations are held in the county in which the borrower resides and in all six counties of our circuit. Local staff and local resources must be incorporated to the "fullest extent possible." Our hope is that this local focus will serve to stimulate the economy right here in the Eighth Judicial Circuit.

The extent to which the local and statewide economy will improve as a result of this Program is unknown. We do know that the Program addresses several serious issues that continue to plague foreclosures in our circuit, such as the "no-show default" and the lack of communication between lenders and borrowers. The RMFM Program will provide the many *pro se* borrowers in the Eighth Judicial Circuit with a much-needed opportunity to prevent the loss of their home. This is a goal that many borrowers previously thought unavailable or unattainable. In addition, lenders will have the

Continued on page 15

New Administrative Orders

3.0954 "Administrative Order For Case Management Of Residential Foreclosure Cases And Mandatory Referral Of Mortgage Foreclosure Cases Involving Homestead Residences To Mediation" (July 20, 2010). This administrative order requires mediation services to be provided to the litigants in residential mortgage foreclosure cases in all six counties.

1.003 "Rescinding and Vacating Outdated Administrative Orders" (July 1, 2010) This Administrative Order rescinds 20 Administrative Orders which were unnecessary or outdated.

1.590 (A) "Envelopes for Distribution of Conformed Copies and Other Documents Provided by the Court" (May 28, 2010).

8.100(N) "General Assignment of Alachua Circuit and County Court Cases to Divisions" (May 28, 2010). This administrative order governs the assignment of cases to divisions for the circuit and county court cases in Alachua County.

Chief Judge Martha Lott signed these Administrative Orders on the dates in parentheses above. Copies of these orders are available at www.circuit8.org/ao/index.html.

Family Law

Continued from page 9

and Family Justice Center. So, the next meeting is September 21, 2010.

Our October meeting, on October 19, 2010, will focus on Parenting Coordination. FS §61.125 was created last year to provide more definition to this area. My experience has been that most parties think parenting coordination accomplishes nothing, costs too much, and is just a layer of bureaucracy that provides them no benefit, and that most parenting coordinators are unclear as to what they should and can do and how to do it, and that they worry about not being paid. Ruth Angaran has helped to arrange this program and will bring with her Lawrence Datz. He is an attorney in Jacksonville who chairs the Parenting Coordination Ad Hoc Committee of the Florida Bar's Family Law Section. Ruth promises that all the parenting coordinators of the circuit will attend and that they will BRING REFRESHMENTS! Let's have a great turnout of lawyers, too.

Finally, I'm going to attempt to purge and renew the email list I have of people who are interested in receiving email reminders of Family Law Section meetings. So, please let me know if you do or don't want to be on the reminder list. Hope to see you at our September meeting.

Probate Section

Continued from page 8

prior to death. Such a filing expires, without further action, two years after the date of filing.

Some of you may have noticed an article in the Florida Bar News to the effect that e-filing has been approved for probate cases in Alachua County. I have consulted on the status of this issue with Jean Sperbeck and Buddy Irby. They advise that there is a delay in implementing e-filing, as more time is needed at the state level to work out all of the details regarding operation of the single portal through which all filings will be made on a statewide basis. E-filing is expected to go online later this year or at the beginning of 2011. When implemented, unlike in the federal court in Gainesville, e-filing will be optional. Practitioners will retain the option to file documents by mail or in person at the clerk's office.

The Probate Section continues to meet on the second Wednesday of each month at 4:30 p.m. in the fourth floor meeting room in the civil courthouse. All interested parties are invited.

President's Letter

Continued from page 1

emails for more information on upcoming opportunities)

- Just do something!

By doing so, you will expand your professional and social networks, increase your referrals, grow as a legal professional, strengthen our legal community, and improve the image of lawyers throughout the Eighth Judicial Circuit. On behalf of the EJCBA Board, we look forward to working for you and with you in the upcoming 2010-11 term.

Mandatory Mediation

Continued from page 14

opportunity for a meaningful exchange of financial information in order to evaluate feasible workout options.

To participate in the RMFM Program, local mediators are encouraged to contact the Program Manager, acquire foreclosure certification, and begin mediating cases. Local attorneys representing lenders and borrowers are encouraged to thoroughly review Eighth Judicial Circuit Administrative Order #3.0954 and to contact the Program Manager with any questions.

For more information, please visit the Eighth Judicial Circuit website at http://circuit8.org/foreclose or the Program Manager's website at http://www.mortgagemediation.org.

Burnham, at 613 (citing *Wanzer v. Bright*, 52 Ill. 35 (1869)). Further, many states also exempt from service any individual who was in the state as a party or witness in an unrelated judicial proceeding. *See id.* (citing *Burroughs v. Cocke & Willis*, 156 P. 196 (Okla. 1916); *Malloy v. Brewer*, 64 N.W. 1120 (S.D. 1895). Florida continues to adhere to the rule that in-state service of process is valid to establish jurisdiction over a non-resident defendant only where the defendant's presence in this state is voluntary. *See e.g., Durkee*, at 1177.

Despite the long history of the rule allowing jurisdiction based on in-state service of process, it seems to be often overlooked as a valuable tool in establishing jurisdiction over a non-resident defendant. Perhaps the reason for the oversight is reliance on the specifically enumerated statutory bases for jurisdiction, which require certain "minimum contacts" with Florida. *See, International Shoe Co. v. Washington*, 326 U.S. 310 (1945). Indeed, since *International Shoe,* the focus of attorneys wishing to establish jurisdiction over a non-resident defendant has been whether the defendant's contacts with the state satisfy certain due process considerations, i.e. "traditional notions of fair play and substantial justice." *See Burnham*, at 609-10. Specifically, the attorney tries to establish that "the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980).

The effort to establish the presence of these due process elements can cause one to overlook the jurisdiction-based-on-in-state-service rule because the notion that jurisdiction can be established over a defendant merely by finding him within this state does not seem to comport with the "minimum contacts" analysis applied in the long-arm statute framework. In other words, how can a defendant's lone contact with a state (i.e. service of process within its borders), which likely has nothing to do with the suit for which he was served, satisfy the due process "minimum contacts" test? *See, Burnham* at 612 ("personal service upon a physically present defendant suffice[s] to confer jurisdiction, without regard to whether the defendant was only briefly in the State or whether the cause of action was related to his activities there.")

The answer to this question is found in the historical development of long-arm jurisdiction. Historically, the ability of a court to render judgment *in personam* has been grounded on its *de facto* power over the defendant's person. *See, International Shoe,* at 316. Thus, the defendant had to be present within the territorial jurisdiction of the court for its judgment to be personally binding on him. *See id.* Under English common law, "transitory" actions arising out of events outside the country were sometimes allowed to be maintained against nonresident defendants in England provided that the defendant was present in England. *See Burnham*, at 611. Justice Story traced the jurisdiction based on in-state service principle to Roman origins and believed it to be firmly rooted in English traditions. *See id.* "'[B]y the common law[,] personal actions, being transitory, may be brought in any place where the party defendant may be found,' for 'every nation may … rightfully exercise jurisdiction over all persons within its domains." *Id.* (quoting J. Story, Commentaries on the Conflict of Laws §§ 554, 543 (1846)).

In short, because a defendant's physical presence was necessary to render judgment, the notion that his presence conferred jurisdiction for such judgment naturally followed. *See id.* A judgment was not binding on a defendant unless the court could obtain jurisdiction over his person. *See id.* As a result, where a defendant failed to appear before the court, the court would issue a *capis ad respondendum*, or a writ to bring the defendant before the court for imposition of judgment. *See International Shoe,* at 316.

Over the years, the *capis ad respondendum* has given way to personal service of process. *See id.* As a result of this transition, the due process "minimum contacts" requirements developed in order to subject defendants to judgments *in personam* where they could not be found within the territory of the forum. *See id.* The "minimum contacts" requirement became an alternative to the traditional rule of establishing jurisdiction over a defendant's person by serving him within the forum. *See id.*

In fact, the "minimum contacts" standard was developed by ***analogy*** to "physical presence". *Burnham,* at 619. Thus, it is axiomatic that jurisdiction based on in-state service, which is perhaps the most ***traditional notion*** of *in personam* jurisdiction, satisfies the due process requirements of *International Shoe*. *See Burnham*, at 623. The fact that a defendant is voluntarily present in a particular State gives him the "reasonable expectation" that he will be hailed to court there. *See id.* Because jurisdiction based on in-state service is "one of the continuing traditions of our legal system that ***define*** the due process standard of 'traditional notions of fair play and substantial justice", it not only comports with the *International Shoe* due process considerations, it is the very foundation of their development. *See id.*

Despite its long-standing validity, simplicity, and

Continued on page 17

Eighth Judicial Circuit Bar Association, Inc.

Mission Statement:

The mission of the Eighth Judicial Circuit Bar Association is to assist attorneys in the practice of law and in their service to the judicial system and to their clients and the community.

Please send a check payable to EJCBA in one of the following amounts:

- $55 For lawyers with less than 5 years experience; lawyers with the State Attorney's Office, Public Defender's Office and Legal Aid with 10 years of experience or less.
- $75 For all other lawyers and members of the Judiciary
- 1 year free membership for members in their first year of practice (in any jurisdiction). Free membership does NOT include cost of lunches.

Please send your check, along with your completed application to:

Eighth Judicial Circuit
Bar Association, Inc.
P. O. Box 127
Gainesville, FL 32602-0127
Email: execdir@8jcba.org;
padgej@shands.ufl.edu

Voting Members: This category is open to any active member in good standing of the Florida Bar who resides or regularly practices law within the Eighth Judicial Circuit of Florida.

Non Voting members: This category of membership is open to any active or inactive member in good standing of the Bar of any state or country who resides within the Eighth Judicial Circuit of Florida, or to any member of the faculty of the University of Florida College of Law.

Renewal/Application for Membership

Membership Year: 2010 - 2011

Check one: Renewal __ New Membership __

First Name: _____ MI:_____

Last: _____

Firm Name: _____

Title: _____

Mailing Address: _____

Street Address: _____

City, State, Zip: _____

Eighth Judicial Circuit Bar Association, Inc.

Telephone No: (_____)_____-_____

Fax No: (_____)_____-_____

Email Address: _____

Bar Number: _____

List two (2) Areas of Practice: _____

_____

Number of years in practice: _____

Are you interested in working on an EJCBA Committee? Yes / No

"Gotcha Jurisdiction"

Continued from page 16

ease of application, jurisdiction based on in-state service of process remains an often overlooked tool in the civil trial attorney's arsenal of jurisdictional weapons. In fact, only a handful of Florida courts have applied the "gotcha" jurisdiction rule discussed in *Burnham*. *See*, *e.g., Durkee*. Nonetheless, attorneys should not overlook the fact that merely finding (and serving) a defendant within Florida is enough to establish jurisdiction over him for any cause of action that can be brought in a Florida court. *See Burnam*; *see also Durkee.*

FORUM 8

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

September 2010 Calendar

1 EJCBA Board of Directors Meeting; Ayers Medical Plaza, 720 SW 2d Avenue, North Tower, Third Floor – 5:30 p.m.
2 CGAWL meeting, Flying Biscuit Café, NW 43rd Street & 16th Ave., 7:45 a.m.
3 Deadline for submission to October Forum 8
4 UF Football v. Miami, 12 noon
6 Labor Day Holiday, County and Federal Courthouses closed
8 Probate Section Meeting, 4:30 p.m., 4th Floor, Family & Civil Courthouse
9 Rosh Hashanah, County Courthouses closed
11 UF Football v. USF, 12:21 p.m.
16 County Court Judge Robert K. Groeb's Alachua County Investiture, 4:00 p.m., Criminal Justice Center, Courtroom 1B
17 EJCBA Luncheon, Justice R. Fred Lewis, Florida Supreme Court, Ti Amo!, 11:45 a.m.
18 UF Football at Tennessee, 3:30 p.m.
21 Family Law Section Meeting, 4:00 p.m., Chief Judge's Conference Room, Alachua County Family & Civil Justice Center
23 North Florida Area Real Estate Attorneys meeting, Jeff Dollinger, Esq., "How to Properly Correct Title Defects," Scruggs & Carmichael Millhopper location, 5:30 p.m.
24 County Court Judge David P. Kreider's Alachua County Investiture, 4:00 p.m., Criminal Justice Center, Courtroom 1B
25 UF Football v. Kentucky, TBA
30 NDBBA 2010 Annual Seminar, Tallahassee, FL

October 2010 Calendar

1 NDBBA 2010 Annual Seminar, Tallahassee, FL
2 UF Football at Alabama, TBA
5 Deadline for submission to November Forum 8
6 EJCBA Board of Directors Meeting; Ayers Medical Plaza, 720 SW 2d Avenue, North Tower, Third Floor – 5:30 p.m.
7 CGAWL meeting, Flying Biscuit Café, NW 43rd Street & 16th Ave., 7:45 a.m.
8 EJCBA Luncheon, Ti Amo!, 11:45 a.m.
9 UF Football v. LSU, TBA
11 Columbus Day, Federal Courthouse closed
13 Probate Section Meeting, 4:30 p.m., 4th Floor, Family & Civil Courthouse
14 James C. Adkins Cedar Key Dinner at Frog's Landing, Cedar Key, 6:00 p,m.
16 UF Football v. Mississippi State (Homecoming), TBA
19 Family Law Section Meeting, 4:00 p.m., Chief Judge's Conference Room, Alachua County Family & Civil Justice Center
21 North Florida Area Real Estate Attorneys meeting, "Videos from Fund Assembly re Red Flags in Real Estate Transactions," Law Office of Ramona Chance, 4703 NW 53rd Avenue, Suite A-3, 5:30 p.m.
30 UF Football v. Georgia, Jacksonville, 3:30 p.m.

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.