

FORUM 8

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Eighth Judicial Circuit Bar Association, Inc.

December 2010

President's Letter



By Elizabeth Collins

Admittedly, I have wedding planning on my mind. Therefore, as I think about recent developments in the EJCBA, it may not be surprising that the old English rhyme, "Something old, something new. Something borrowed, something blue. And a silver sixpence in her shoe." comes to mind.

Something old (representing continuity with the past)... Although the EJCBA Holiday Project had a very successful run and brought holiday cheer to both the elementary school students it served and the attorneys who participated, over the last two years, member participation and interest had begun to wane... at least, temporarily. Absence does make the heart grow fonder, so the Holiday Project may return during another term.

However, as many of you may recall, for several years the EJCBA's holiday event was an auction held in December to raise money for a worthy cause. The EJCBA board thought it might be time to bring this idea back. We are planning the charity auction for the spring and more information will follow soon! So, this holiday season, we encourage you to adopt a child, an elder adult, or a family for the holidays via another organization serving our community and hope you will look forward to the return of the EJCBA's charity auction with the same enthusiasm as in years past. (In addition, we hope you will contribute to the EJCBA's holiday food drive to benefit the Bread of the Mighty Food Bank. Members who bring two canned goods to the December luncheon will receive an additional ticket to win our door prize.)



Something new (symbolizing optimism and hope for the future)... Where do I begin? New projects this year include our mentoring program, the expansion of our membership categories to include student members and retired members, and the launch of the EJCBA's facebook fan page. Additionally, a special committee is investigating the pros and cons of implementing an Eighth Judicial Circuit attorney referral service. We are considering forming a 501(c)(3) organization to enable us to serve our local community through additional charitable efforts. Moreover, the Community Service and Outreach Committee will be forming an EJCBA team to participate in the Cystic Fibrosis Foundation's Great Strides Walk, which will take place in April, and, if member interest is strong, hope to form EJCBA teams for other team-centered events in our community.

Something borrowed (symbolizing shared happiness and good fortune)... As mentioned in a previous column, the EJCBA board, together with our local judiciary, will be updating our local guidelines of professional courtesy to include provisions to address e-discovery, metadata, social networking media, and related issues. Rather than "recreating the wheel," we plan on looking to similar provisions recently adopted by our sister circuits for inspiration and guidance.

Additionally, the board is considering the possibility of revising our advertising guidelines, again borrowing from the guidelines of other voluntary bar associations, to expand the scope of permissible advertising in the *Forum 8* and on our website to increase advertising revenue. We

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Contribute to Your Newsletter!

From The Editor

I'd like to encourage all of our members to contribute to the newsletter by sending in an article, a letter to the editor about a topic of interest or current event, an amusing short story, a profile of a favorite judge, attorney or case, a cartoon, or a blurb about the good works that we do in our communities and personal lives. Submissions are due on the 5th of the preceding month and can be made by email to dvallejos-nichols@avera.com.

About This Newsletter

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

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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

Pro Bono Lawyers Do Make A Difference

By Marcia Green

"I sincerely appreciate the help of the Three Rivers Legal Services and the efforts of the attorney I was provided. The program was essential for me to attain representation that I required and I will not forget the services bestowed on my behalf. Mr. Steven Mercadante and his staff delivered knowledgeable, courteous, and prompt assistance. I would gladly recommend Mr. Mercadante to anyone requiring services of his expertise."

These comments, made by a young woman suffering from the effects of a degenerative disabling condition, clearly indicate the importance of pro bono legal assistance. Having been denied short and long term disability benefits, representation meant the difference between being denied a benefit to which she was entitled and securing an income for her future.

Individuals and families, affected by illness, job loss or a possible change in family dynamics, are often at a disadvantage in finding help when encountering a legal problem. Unfortunately, some choose to ignore the problem when they do not know where to turn. Many don't realize that an attorney may be able to help resolve the issue. Mostly, though, low income people don't believe they can find someone who will help when they have no money.

There are many ways in which attorneys can provide assistance to low income individuals and families. Direct representation in consumer and housing matters is always needed. Equally, however, is the need for attorneys who will help settle an estate to maintain safe and affordable housing; needed are attorneys who will speak to client groups about the law and help prevent future problems; needed are attorneys who will sit down with a client and sort through the problems to find out what is wrong or if a remedy exists; and, yes, needed are attorneys who will represent individuals in family law cases.

Most importantly, though, needed are attorneys who are willing to work or fight for what a client is owed. Mr. Mercadante's pro bono assistance involved 10-15 hours of legal work; the long-term benefit to this client was priceless.

Members Only: Log-in Now to Print your EJCBA Directory

Remember, only current EJCBA members can access a printable version of the complete member directory, edit their own information online, and post additional data on their member profile, such as practice areas, photos, and a website link. Log-in to the EJCBA website at <http://www.8jcba.org> by clicking the link on the top left hand side of the home page. If you have forgotten your password, please email execdir@8jcba.org to have it resent to you. Once you have logged in, click on the "Member Directory" tab to access links to download and print a complete member directory and court directory, as well as to update your profile.



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Alternative Dispute Resolution

Follow The Star



By Chester B. Chance and Charles B. Carter

It was December. There was a chill in the air. A brilliant star appeared in the East. Also in the East were three wise sages: Mediatrah, Arbitratorix and Juryus. Each followed the star which they believed would lead them to the true dispute

resolution savior.

Juryus mocked the other two seers. "Surely the star will lead us to not one, but, six Saviors called The Holy Jury", he said. "What better way to resolve a dispute than to have six peers bring their collective experience and wisdom to discern the truth?"

Arbitratorix cleared his throat and responded: "The star will lead us to an Arbitrator who is neutral and with knowledge of the subject matter of the dispute. If juries were so sacrosanct, why must we spend so much time weeding out their bias in voir dire? The parties to a dispute can pick an Arbitrator much faster and with more confidence. The Arbitrator will then pronounce the truth for all."

Mediatrah shook her head. "In truth," she said, "the star will lead us to the great Mediator. And the great Mediator will lead the parties to their own truth. And provide lunch also. The Great Mediator knows the parties to a dispute have the most to gain or lose and thus are best motivated to find a solution which is mutually acceptable."

Mediatrah turned to Juryus and asked,

"Will a jury verdict be mutually acceptable to both sides in a dispute?"

Juryus did not answer as he was still considering the free lunch comment.

Mediatrah continued, "I will answer my own question. No, a jury verdict is always unacceptable to at least one party and often to both. An arbitrator's decision is often the same."

And so they followed the star and found the Great Mediator wrapped in a Jos. A. Bank suit (70% off) and lying on a conference room table because there was no room at the Best Western off I-75.

And they brought gifts to the Great Mediator: gifts of Publix wraps, Milano cookies and Cranraisins.



Judge Rick Smith (Ret.), Rick Knellinger and John Jopling enjoy the beautiful sunset at Cedar Key

EJCBA is on Facebook

In addition to the EJCBA website at www.8jcba.org, the EJCBA now has a facebook fan page, which contains additional information regarding upcoming events, photo galleries, discussion boards, and more! Pictures from our events from recent terms, including the 2010 James C. Adkins Cedar Key dinner, are now posted. If you have a facebook profile, take a moment to search for the "Eighth Judicial Circuit Bar Association (EJCBA)" facebook fan page and click the "like" button. Get connected!

EJCBA Holiday Food Drive

The Eighth Judicial Circuit Bar Association is conducting a holiday food drive to benefit needy families in our circuit. Please bring non-perishable food items (canned goods, boxed macaroni and cheese, peanut butter, etc.) to the Bar Luncheon at Ti Amo! on December 9th. Thank you, as always, for your generosity.

Family Law: Re-birth of Parenting Coordination?



By Cynthia Stump Swanson

My last few articles have discussed recent statutory and case law changes, and this month's article will be no different, although I'm a little delayed for this one. The Florida Legislature brushed up the law regarding parenting coordination with the adoption of a new provision in §61.125, effective October 1, 2009. The Legislature provided that, "The purpose of parenting coordination is to provide a child-focused alternative dispute resolution process whereby a parenting coordinator assists the parents in creating or implementing a parenting plan by facilitating the resolution of disputes between the parents by providing education, making recommendations, and, with the prior approval of the parents and the court, making limited decisions within the scope of the court's order of referral."

While parenting coordination has been around for a number of years, it has generally been thought of by most family law practitioners locally as ineffective, costly, and actually counter-productive. I have asked pretty much every family lawyer I know to let me know of any case they've had where they thought parenting coordination was successful. So far - no takers.

In my view, it always comes down to this: People who can't agree that the sun rises in the east will have no success with a parenting coordinator, and they really just need a judge to make a decision and not extend the agony of the parents fighting over everything. On the other hand, parents who can work successfully with a parenting coordinator probably never come to the attention of a parenting coordinator, because they already worked out everything between themselves or in mediation or in a collaborative procedure. Parenting coordination is doomed to failure because only "failing" parents get referred.

So, if parenting coordinators have no power - that is, if they can't settle disputes, but can only work to educate and help parents try to listen and all of a sudden develop respect and empathy for the other - then, really, what purpose does parenting coordination serve? It's just another layer of "bureaucracy."

In an effort to convince me and other family lawyers that parenting coordination can be very helpful to high conflict families, the Family Law Section had a well-attended meeting on October 19, 2010, and heard a presentation by Jacksonville attorney Lawrence Datz. Mr. Datz was instrumental in working with the legislature

in its enactment of F.S. §61.125. Six local parenting coordinators (PCs) also attended the meeting, and added their thoughts and insights to the discussion.

Under this section, a parenting coordinator must be a licensed attorney, a physician licensed under F.S. Ch. 458 and certified by the American Board of Psychiatry and Neurology, or a Florida Supreme Court certified mediator, or a mental health professional licensed under F.S. Ch. 490 or Ch. 491. In addition, a parenting coordinator must also complete three years of postlicensure or postcertification practice, and a family mediation training program certified by the Florida Supreme Court, and a minimum of 24 hours of parenting coordination training in parenting coordination concepts and ethics, family systems theory and application, family dynamics in separation and divorce, child and adolescent development, the parenting coordination process, parenting coordination techniques, and Florida family law and procedure, as well as a minimum of 4 hours of training in domestic violence and child abuse which is related to parenting coordination. Whew! That's a lot of training for a process that is doomed to failure!! Or is it?

The matter of confidentiality in parenting coordination sessions is one of great importance. The PCs who attended our meeting pointed out that very high conflict parents often need the threat of their unreasonableness being exposed to the court in order to persuade them to a reasonable behavior. However, they also pointed out that if the PC does testify in court as to the unreasonable behavior, communications, etc., then the parenting coordinator is no longer neutral and thus can't continue as a parenting coordinator. Thus, PCs believe that they can only appear in court in order to identify or authenticate a written agreement, or to verify compliance with a court order.

The statute actually provides a few more instances in which PCs are authorized to testify: the testimony or evidence is necessary to identify an issue for resolution by the court without otherwise disclosing communications made by any party or the parenting coordinator; to report domestic violence, child or elder abuse or that a parent is wrongfully removing a child from the court's jurisdiction; and to report that the case is no longer suitable for parenting coordination or that the parenting coordinator can no longer continue.

The statute does allow the parenting coordinator to request that the parties waive the requirements of confidentiality and if they do, then can testify. However,

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Mark Twain on Ritalin



By Stephen N. Bernstein

Remember the white washing scene in “The Adventures of Tom Sawyer”? Now do you remember the scene that’s just before it? Tom is playing hooky after having escaped from his Aunt Polly and he’s teaching himself to whistle when he spies a “newcomer” with a “citified air.”

The conversation progresses, “I can lick you.” “I’d like to see you try it.” “Well I can do it.” “Yea you can’t, either.” After that it goes to hell in a hand basket and the two boys are wrestling in the dirt. After Tom wins the fight, he returns home late and his punishment is to whitewash the famous fence.

Now I’m sure sympathies were intended to be on Tom’s side. But when I compare how my own son was thought about when he got in such a school ground tussle, that fight was not just “inappropriate behavior”, but it becomes one of the many symptoms of “oppositional defiant disorder” (ODD), a condition that Tom demonstrates throughout this book.

Not only is this ODD, but Tom clearly has attention deficit hyperactivity disorder (ADHD) judging by his inability to concentrate during school. The harder he tries to focus on his school work, the more his mind wanders. Unable to focus (“Tom’s heart ached to be free”), he starts playing with a tick. This behavior is part of a regular pattern: a few days earlier in church (where he had to sit “as far away from the open window and the seductive outside summer scenes as possible”), Tom had been unable to pay attention to the sermon and played with a pinch bug instead.

In fact, Tom Sawyer shows many disturbing behaviors. He blames his half brother for his poor decisions, demonstrating an inability to take responsibility for his actions. (How many times have I heard that argued by a state attorney in a criminal case?) He provokes his peers, often using aggression. He deliberately ignores rules and demonstrates defiance towards adults. He is frequently dishonest, at one point pretending to be dead. He also skips school, a behavior that might lead him to be diagnosed with conduct disorder (CD), from which his friend Huck Finn clearly suffers.

All kidding aside, Twain captures my attention because he draws such fascinating portraits of children whose behavior is familiar, even if we now describe it differently. Although ADHD and ODD are often dismissed as recently “invented” disorders

(again arguments of my friends at the State Attorney’s office), they describe personality types and traits that always existed. A certain kind of boy has always had trouble paying attention in school. A certain kind of boy has always picked fights with friends, gone smoking in the woods and floated down the river on rafts.

In previous times, such behavior was just as problematic for adults as it is today. Remember Aunt Polly and think about how many times she “falls to crying and ringing her hands.” When she is seeking a name for Tom’s disorder she said he is “full of the old scratch” (meaning the devil) and searches for ways to control him (spare the rod and spoil the child).

Nevertheless, while the behavior of these children and parents are similar, today’s society is not the same. Tom Sawyer turns out fine in the end. In 19th century Missouri, there were still many opportunities for impulsive kids who were bored and fidgety in school. As a matter of fact the very qualities that make him so tiresome - curiosity, hyperactivity, recklessness - are precisely the ones that get him the girl, win him the treasure and make him a hero. Even Huck Finn is alright at the end of his story. Although he never learns how to tolerate civilization he knows he can head out to “Indian territory,” to the empty west, where even the loose rules of Missouri won’t have to be followed.

Nothing like that is available to children who don’t fit in today. Instead, our society supplies them with psychologists and prescribed medication. Unfortunately the failures of these applied psychologies end up in today’s courtrooms, unlike the days of Mark Twain. I’m afraid we are running out of options.

Attention Civil Practitioners:

On January 1, 2011, Judge Stanley H. Griffis III will rotate to Alachua County Civil Divisions J and MG (Mortgage Foreclosures). These divisions are currently assigned to Judge Robert E. Roundtree, Jr. Judge Griffis invites all civil practitioners to attend a brown bag lunch on January 7, 2011, from 12:00 to 1:00 p.m., in Courtroom 3C, Alachua County Civil Courthouse, to discuss case management and related issues for this assignment.

Criminal Law



By William Cervone

Yes, Virginia, there is a Santa Claus. There are, however, some unresolved problems with his delivery methodology. With thanks to whoever sent this to me last year, noting that the gist of what follows came from the January 1990 issue of something called SPY Magazine, and in the

hope that these acknowledgements save me from the snare of copyright infringement, I offer the following.

No known species of reindeer can fly. There are, however, an estimated 300,000 species of living organisms not yet classified, and while most are insects and germs it cannot be completely ruled out that Santa has cornered the market on flying reindeer.

There are two billion children, defined as people under 18, in the world. But since it can be assumed that Santa does not handle Muslim, Hindu, Jewish, and Buddhist children, his workload can be reduced to 15% of that total, or 378 million kids. At an average US census rate of 3.5 children per household, that's close to 92 million homes to be visited. That presumes, of course, that there is at least one good child in each home. In addition, odds are good that over the last two decades this number has shrunk a bit, unlike Santa. But more on that later.

There are 31 hours of Christmas in Santa's workday, thanks to the world's different time zones. Santa therefore has to make 822.6 visits per second, more or less. In other words, he has about 1/1000th of a second to park on the roof, hop out and shimmy down the chimney, fill stockings and distribute gifts, eat whatever cookies have been left, and move on to the next house. Assuming that all of the households involved are equally distributed around the Earth, which we know isn't true but which we must accept, Santa has to cover about 3/4 of a mile per household or a total of over 75 million miles, not counting, ahem, rest stops, which might be more frequent for people his age than for others. To do so, his sleigh must move at roughly 650 miles per second, some 3000 times the speed of sound. Man's fastest invention, the Ulysses space probe, pokes along at 27.4 mph, but we're still way under the unattainable speed of light. Ignore the fact that the fastest known reindeer runs, tops, 15 mph, on the assumption that Santa's flying reindeer do better.

The sleigh's payload raises additional questions.

Assuming that each child gets only a modest toy, say a Lego set weighing about two pounds, the total load is still way over federal limits, coming in at over 321 tons. That's not including Santa himself, who is inevitably described as being somewhat overweight. The likelihood of the traditional number of reindeer in harness being able to manage this is small. Ordinary reindeer can pull no more than 300 pounds, so even if Santa's perhaps genetically altered ones can do significantly better it is more likely that at least 214,200 reindeer would be needed. This, of course, only complicates the payload problems as the weight of the entire entourage would now exceed 350 tons.

That much tonnage traveling at 650 miles per second creates an enormous amount of air resistance friction, meaning heat. This is just like a spacecraft re-entering the atmosphere. Rudolph, as the lead reindeer, would be subjected to 14.3 quintillion joules of energy each second. In short, he would burst into flame almost instantaneously, as would each pair of reindeer behind him as they were exposed, all vaporizing in about 4.26 thousandths of a second to the tune of a deafening sonic boom. Santa, meanwhile, would endure centrifugal forces of up to 17,500 times greater than gravity. A 250 pound Santa (which seems ludicrously slim given historical descriptions) would be slammed into the back of his sleigh by 4,315,015 pounds of force before being incinerated himself, along with the legos.

In sum, if Santa ever did deliver presents on Christmas Eve you couldn't prove it by Albert Einstein. Speaking of Einstein, he once said "There are two ways to live your life. One is as though nothing is a miracle. The other is as though everything is a miracle." I suppose some things just have to be taken on faith and therefore choose the latter. Merry Christmas to all and to all a good night!

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Probate Section Report



By *Larry E. Ciesla*

The Probate Section continues to meet on the second Wednesday of each month, beginning at 4:30 p.m. in the fourth floor meeting room in the civil courthouse. Following are some topics discussed at recent meetings.

Staff Attorney Amy Tully indicated she has been working with Chief Judge Lott on an update of Administrative Order 6.961 to include a new and expanded list of persons qualified to serve on the examining committee for incapacity cases. Amy has at least ten new people for the list. The updated list is expected to be finalized shortly.

The recent amendment to Rule 2.420, Florida Rules of Judicial Administration, regarding confidentiality of information in court filings, was the subject of discussion by various section members. The new rule became effective on October 1, 2010. There is a Florida Supreme Court opinion on the rule, dated March 18, 2010 (Case No. SC07-2050), which should be read. There is also a free Florida Bar Online CLE on the new rule. The primary purpose of the new rule is to prepare for the day in the near future when court filings will become available online to the general public. It will primarily be the clerk's job to ensure that confidential information is protected from public view. This rule is a way for the clerk to shift some of that burden to the lawyers at the time a filing is made, so that the clerk is not required to expend the resources which would otherwise be necessary in order for the clerk to read and digest every page of every document filed in every case in the system. Under the new rule, the attorney filing the document must determine whether there is any confidential information contained within the document. There is a list of many common types of confidential information set forth in the rule. In those instances, the attorney files a "Notice of Confidential Information Within Court Filing". This is a "check the box" form which is set forth in the rule. The clerk then reviews the information. If the clerk agrees it is confidential, it treats the information as such. If it disagrees, it provides notice to counsel, which requires counsel to file a "Motion to Determine Confidentiality of Court Records".

If the information is not one of the types listed in the rule, but counsel nevertheless believes it should be treated as confidential, counsel must likewise file a "Motion to Determine Confidentiality of Court Records". In addition to notifying opposing counsel,

a separate notice is required if the data relates to an "affected non-party".

It was noted that probate practitioners will be required to deal with the rule on a daily basis, as a death certificate is one of the items set forth in the rule as confidential. It was suggested that it may be a good idea for probate practitioners to develop a form for the required notice and the optional motion, to be tailored to the recurring types of data appearing in all probate cases.

On a related point, Virginia Griffis pointed out (and provided a copy of) a form promulgated by Buddy Irby's office, entitled "Request Form For Number(s) Redaction". This is a form to be used to request the clerk to redact social security numbers; bank account numbers; and credit card numbers from documents which have already been recorded in the Public Records.

Also related is Section 119.0714(2)(a), Florida Statutes, which provides that prior to January 1, 2012, social security numbers; credit card numbers; and bank account numbers in court filings will not be protected/redacted, unless specifically requested by counsel. Thereafter, by statute, such information will be protected/redacted by the clerk, without a request by counsel.

All practitioners are urged to review the Supreme Court opinion; the rule; the forms; and the applicable statutes, so as to become more familiar with the new confidentiality procedures.

All interested practitioners are invited to attend the Probate Section meetings. There are no dues and attendance is not taken. Please contact me if you would like to be added to the email list for meeting notices.

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President's Letter

Continued from page 1

are exploring this option, as well as other revenue generating possibilities, so we can continue to provide additional member benefits to you while keeping your membership dues low.

Something blue (standing for purity, love, and fidelity)... and, just maybe, red, black, and white, as well! Soon, we will be providing an opportunity for EJCBA members to purchase polo shirts and mugs bearing the EJCBA logo. We hope to see our members proudly wearing their EJCBA shirts, as they participate in our pro bono efforts, community service and outreach projects, the EJCBA golf tournament, social events, or anywhere else that courtroom attire is not required... *and where all activities are legal.*

And a silver sixpence in her shoe (a wish for good fortune and prosperity)... As the holidays and the new year approach, on behalf the EJCBA board, I wish all of our members continued happiness, success, and prosperity. We look forward to serving you in 2011.

Thank you: James C. Adkins Cedar Key Dinner Sponsors

The EJCBA would like to thank its 2010 James C. Adkins Cedar Key Dinner sponsors for their generous support:

Advanced Skin and Laser Care
Amelia's
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Haagen-Dazs
The Hippodrome Theatre
Mode Salon
Peach Valley Restaurant
Renaissance Printing
Romano's Macaroni Grill
Salon La Di Da
Spa Royale
Sunflower Health Foods

Also, a special thank you from all members, once again, to our generous drink sponsor, Attorneys' Title Fund Service, LLC and Elizabeth Shade, its local Fund Account Executive, who joined in the festivities at Cedar Key. Thank you all so much for continuing to made Cedar Key such a special event!

Professionalism Seminar

Inexpensive (CHEAP) CLE Credits

By Ray Brady

Mark your calendars now for the annual Professionalism Seminar. This year the seminar will be held on Friday, April 1, 2011 from 8:30 AM until Noon, at the University of Florida Levin College of Law. The keynote speaker and topic are to be announced.

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

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

We Want You (Or Your Colleagues)

for the EJCBA's In-House Counsel Section

Did you know there are many in-house counsel practicing throughout the Eighth Judicial Circuit? Like every other group of attorneys, in-house counsel have their own particular areas of interest. Unlike other attorneys, however, in-house counsel often interact primarily with their companies' business professionals, as opposed to other attorneys. In an effort to support our Circuit's in-house attorneys, the EJCBA created the In-House Counsel Section.

The In-House Counsel Section conducts most of its activities on-line, although we do occasionally get together for live meetings, and hope to develop social events and CLEs for the Section's members.

There are no dues to join the In-House Counsel Section, although Section members must be EJCBA members.

If you want to join the In-House Counsel Section, please send an e-mail to Phil Kabler at pnkabler@kmcllp.com.

Florida Bar Board of Governors Report



By Carl Schwait

At its October 1 meeting, The Florida Bar Board of Governors:

- Recommended approval of Rule of Judicial Administration 2.516 dealing with electronic service of case documents. The rule will be filed in the Supreme Court and there will be a comment period. It will be

posted on the website when the petition is filed.

- Discussed ways to continue to promote diversity in the profession beyond the Bar's new program to encourage local bars to pursue diversity. President Mayanne Downs and President-elect Scott Hawkins said they have talked with sections and committees about bringing in younger and diverse lawyers and putting them on leadership tracks. President Downs has now appointed a Special Committee on Diversity and Inclusion. Kevin McNeill of Gainesville has been appointed to this committee.

- Voted to temporarily suspend Standing Board Policy 2.20 on campaigning for president-elect pending later confirmation of qualified candidates and further review of the ground rules for these elections.

- Approved an amendment to Rule 4-3.4, which would allow paying a reasonable fee for someone who is retired for being a witness in a case.

- Heard that the Rules Committee is considering

an amendment eliminating Bylaw 2-5.2, which allows any Bar member to propose a resolution to be considered at the General Assembly of the Bar's Annual Convention.

- Heard that in addition to its other efforts, the Program Evaluation Committee is studying what the Bar can do to help members hard hit by the current economic recession.

- Heard that the Disciplinary Procedure Committee, in addition to working on forms and instructions to accurately reflect who in the law firm is responsible for properly maintaining trust account records, is considering computer software to help attorneys comply with the rules regulating trust accounts.

- Received a report on the New Rule 2.420 Seminar. It was the most downloaded/accessed program on LegalSpan in September. It explains the new rule on what information must be redacted in court filings as of October 1, 2010.

- Heard my report on the progress of the Board Review Committee on Professional Ethics which is in the process of restructuring the rules of advertising. It is the goal of the committee to present the Board of Governors with a draft of the reworked rules by its December meeting.

I appreciate the opportunity to serve as your representative on the Board of Governors.

Family Law

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that would not seem to assuage the concern of PCs that the act of testifying, in and of itself, removes the PC's neutrality and thus the ability to continue as the PC.

The Florida Supreme Court has adopted new Fla.R.Fam.L.P. 12.742 and Forms 12.984 and 12.998 to carry out the intentions of F.S. 61.125. That opinion is *In re Amendments to the Fla. Family Law Rules of Procedure*, 27 So. 3d 650 (Fla. 2010).

An order of referral must set forth the role, responsibilities, and authority of the parenting coordinator. Rule 12.742 also sets forth a number of powers a parenting coordinator may have if the parties consent. If the order of referral does not clearly specify the duties and authority of the parenting coordinator, but the parties later agree to certain areas of authority, then it seems likely that the court will consider any agreed decision-making authority of the coordinator and, if the court approves the agreement, either include the authority in its original order of referral or in an addendum to that order.

The statute provides that PCs may make limited decisions within the scope of the court's order of referral if the parties and court give their prior approval to such authority. However, the new rule prohibits a parenting coordinator from making decisions concerning substantive disputes between the parties. A "substantive dispute" under the Rule is one whose resolution would significantly change the quantity or decrease the quality of time a child spends with either parent or would modify parental responsibility. Accordingly, the only type of decision making authority that the Rule allows parties to confer on a parenting coordinator is temporary authority to resolve "specific, nonsubstantive" disputes between the parties. The temporary decision of a parenting coordinator stands unless and until a court enters an order modifying the PC's decision.

There is a conflict between the statute and the rule

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This Month's Collection of Random Thoughts from a Florida Bar Foundation Board Member



By Philip Kabler

As lawyers, we share an understanding of how our court system operates, how judges are selected and elected, how the practice of law is regulated, and other basic tenets of the legal system. We take this knowledge for granted, and yet we realize the general public often lacks an appreciation of our profession and its institutions.

Perhaps the most important way to increase public understanding of law and the courts is through the media. However, only when reporters and editors truly understand the finer points of our legal system can we expect their coverage to provide the kind of insight the public needs.

One of the principal means to accomplish that objective has been the annual Reporters' Workshop, which the Foundation helps fund with a \$10,000 Improvements in the Administration of Justice grant.

This year's Workshop, which is presented by The Florida Bar's Media and Communications Law Committee, was held in Tallahassee on September 20 and 21, and was attended by 23 broadcast and print journalists. Local attendees and presenters included Judge Stan Morris, Rachael Wilson of WUFT-FM, Prof. Clay Calvert of UF's College of Journalism and Communications, and Sandra Chance of UF's Brechner Center for Freedom of Information. They were joined

by several Florida Supreme Court Justices, statewide newspaper and broadcast editors and reporters, and state agency officials, plus Florida Bar President Mayanne Downs, Foundation First Vice President Maria Henderson, and Foundation Director of Communications Nancy Kinnally.

Ms. Henderson participated in a session concerning the new Florida Innocence Commission (which was discussed in Forum 8's September 2010 issue, <http://www.8jcb.org/archives/2010Sept.PDF>). Ms. Kinnally presented an overview of the Foundation and its recent activities.

Other topics addressed during the Workshop included "Judges Selection & Election," "Covering High-Profile Court Cases," "Public Records," and "Covering the Courts." (There were many other sessions, as well.) Principal speakers throughout the Workshop were George H. Sheldon (Secretary of Department of Children and Families), Chief Justice Charles T. Canady and Justice Barbara Pariente, and Barry Richard (who represented President Bush in Bush v. Gore before the Florida Supreme Court).

If you have questions about The Florida Bar Foundation, please feel free to call me at (352) 332-4422. And to get the latest news about the Foundation and its grantees, please become a "Fan" on Facebook by visiting www.facebook.com/TheFloridaBarFoundation.

Family Law

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as to whether PCs may make recommendations to the court. In a case decided prior to the 2009 enactment of §61.125 and the adoption of Rule 12.742, a parenting coordinator submitted a report and recommendations to a trial court, which ordered that custody of the parties' child be modified, based primarily on the parenting coordinator's submissions. The appeals court reversed, holding in part that a trial court may not delegate its fact finding duties or otherwise allow a parenting coordinator to perform judicial functions by effectively "rubber-stamping" the coordinator's report. *Hastings v. Rigsbee*, 875 So. 2d 772, 777 (Fla. 2d DCA 2004). The new Rule 12.742 expressly prohibits a parenting coordinator from making recommendations to the court unless the parties consent.

So, to sum up - PCs must be highly educated and trained, but they have no authority to make any decisions

except as to a non-substantive dispute, and then only if the court and parties have agreed to provide that authority to the PC. Additionally, the PCs may not testify in court about anything the parties do or say, and may not make any recommendations to the court.

So - I'm not sure if that qualifies as a re-birth?? What do you think?

Many thanks to Ruth Anagaran, Myrna Neims, Susan Marcus, Heather Damron, Bhakti Cohen, and Bill Farley - the parenting coordinators who came to our meeting, engaged in very useful conversation with us, and who provided brownies!!

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



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

December 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 Avenue, 7:45 a.m.
- 2 First Day of Hanukah
- 6 Deadline for submission to January Forum 8
- 8 Probate Section Meeting, 4:30 p.m., 4th Floor, Family & Civil Courthouse
- 9 EJCBA Luncheon, Ti Amo!, Gwen Roache, Division of Victims' Services, 11:45 a.m.
- 21 Family Law Section Meeting, 4:00 p.m., Chief Judge's Conference Room, Alachua County Family & Civil Justice Center
- 24 Christmas Holiday, County and Federal Courthouses closed
- 27 Monday after Christmas Holiday, Alachua County Courthouses closed
- 31 New years Day 2011 (observed), Alachua County Courthouses closed

January 2011 Calendar

- 5 EJCBA Board of Directors Meeting; Ayers Medical Plaza, 720 SW 2d Avenue, North Tower, Third Floor – 5:30 p.m.
- 5 Deadline for submission to February Forum 8
- 6 CGAWL meeting, Flying Biscuit Café, NW 43rd Street & 16th Avenue, 7:45 a.m.
- 7 Brown bag lunch for civil practitioners with Judge Griffis, 12-1 pm, Courtroom 3C, Alachua County Family & Civil Courthouse
- 12 Probate Section Meeting, 4:30 p.m., 4th Floor, Family & Civil Courthouse
- 14 EJCBA Luncheon, Ti Amo!, Chief Judge Martha Lott on the State of the Circuit, 11:45 a.m.
- 17 Martin Luther King, Jr. Holiday, County and Federal Courthouses closed
- 18 Family Law Section Meeting, 4:00 p.m., Chief Judge's Conference Room, Alachua County Family & Civil Justice Center

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