

FORUM 8

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Eighth Judicial Circuit Bar Association, Inc.

April 2013

President's Message



By Dawn M. Vallejos-Nichols

As I write this, Spring has definitely sprung in Alachua County – we already lost a precious hour of sleep (that occurrence surprised me on the weekend we were preparing for a 3-week trial) and yellow pollen blankets our vehicles, our patio furniture and even the gutters near the sidewalk after a rain.

Dogwood blossoms are already a thing of the past, as are my azalea blooms, but the trees have new leaves and the grass is beginning to green again. Allergy sufferers may be in misery, but I'm happy to have the prospect of longer, lighter and warmer days ahead.

April is a busy month in the circuit, so break away from your desk to join in – there are CLE opportunities, opportunities to network and socialize, and to be out of doors for an afternoon, get some exercise and have some fun for a good cause. The highlights of this month are:

1) The annual Professionalism Seminar starts out the month on Friday, April 5. We've been advertising this for some time because it is always a very popular seminar with a renowned keynote speaker followed by break-out discussions led by local judges and attorneys. Please don't forget that registration is free to those who paid their EJCBA dues prior to 9/30/12. Bruce Rogow, who is both an accomplished (understatement) trial and appellate attorney and Professor of Law at Nova Southeastern University's Law Center will give the keynote address before we break into small groups.

This is an excellent opportunity to get your ethics/professionalism CLE credits. If you haven't already registered, please contact Ray Brady at rbrady1959@gmail.com. The seminar is being held at a new venue – Trinity United Methodist Church on NW 53rd Avenue from 9 a.m. – 12 noon. Refreshments will be provided.

2) If you or someone you know is interested in foreclosure issues, Mac McCarty will be speaking on "Residential Foreclosure Legal Issues" at the Law in the Library public seminar series on April 8. His talk is scheduled from 6-7 p.m. at the Millhopper Branch Library on NW 43rd Street. This seminar is free and open to the public.

3) EJCBA presents its final free social of the 2012-2013 season on Thursday, April 11, 2013 at Ballyhoo on Newberry Road. Ballyhoo has been a popular venue due to the covered outside patio. We hope to have a great turn out as a way to kick-off EJCBA's next event...

4) The annual EJCBA Charity Golf Tournament benefiting the Guardian ad Litem program. This event will be held on Friday, April 12th at the Mark Bostick Golf Course at UF.

Registration and lunch begin at 11:30 with shotgun start at 1:00. There is even a post-round reception for all participants. This has become a very popular event so take the afternoon off to enjoy the spring weather and golf for a good cause. The price of \$100 per golfer includes 18 holes of golf, a riding cart, lunch, the reception, and various awards and prizes. I wish I knew how to golf.

5) At the April luncheon on April 19, Judge



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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

Clerk's Corner



By J. K. "Buddy" Irby

The Alachua County Clerk of Court's Office is working hard to ensure a smooth transition when electronic filing becomes mandatory on April 1 for attorneys filing civil cases. The eFiling requirement applies both to new cases and to documents being filed with the Clerk in existing

cases. This information will be available on the Clerk of Court's website at www.alachuaclerk.org.

The Florida Supreme Court has authorized Clerks of Court to accept documents electronically filed through the Florida ePortal. **Clerks are not authorized to accept documents for filing by e-mail.**

The **Florida ePortal** is governed by the Florida eFiling Authority Board, which provides training videos, documentation and information on eFiling at www.flclerks.com/eFiling_authority.html.

The link to the ePortal to eFile is www.myflcourtaccess.com.

The **Alachua County Clerk's Office** accepts electronic filings on new and existing cases for all civil case types: Circuit Civil, County Civil, Domestic Relations, Probate, and Dependency. To e-File in Alachua County under "**Filing Options**" **always**



select: **Existing** or **New Case** for Trial Court filings. If you select the Simple E-File option, Alachua County will not appear.

To register for an ePortal account, click on the 'ePortal' link in the 'eFiling Portal Resources' section to the right. For assistance with creating an account or with password resets, contact the FCCC Services Group at 1-850-577-4609 or email support@myflcourtaccess.com. When registering, be sure your first and last names match the records with the Florida Bar. You can verify your name and email address on file with the Florida Bar on the Florida Bar Website at www.floridabar.org/names.nsf/MESearchDK?OpenForm

Training videos provide a step by step process for filing and can be accessed here:

[Video for Filing New Cases](#)

[Video for Filing an Existing Case](#)

For technical support, including password resets, contact the Florida Association of Court Clerks' Services Group at 1-850-577-4609 or email support@myflcourtaccess.com. For assistance with a filing, such as an inquiry regarding a filing or a case, please use the Clerk's Office & Phone Directory at www.AlachuaClerk.org to contact the appropriate court division.

More eFiling information will be available on the Clerk's website.

Circuit Court Vacancy

Applications for the Circuit Court judicial vacancy as a result of Judge Lott's retirement are due Thursday, April 4, 2013 at 5:00 p.m. Applications may be downloaded from The Florida Bar website. For more information, or to submit an application, please contact: Paul Donnelly, Chair, 8th Circuit Judicial Nominating Commission, 2421 NW 41st Street, Suite A1, Gainesville, FL 32606; (352) 374-4001.

President's Message

Continued from page 1

Stephanie Ray from the First District Court of Appeal will join us to speak on "Realizing the Dream: Equality for All," which is this year's Law Day theme. Let's have a great turn out for Judge Ray – the luncheon will be held at the Paramount Plaza Hotel beginning at 11:45. The cost for members is \$17 if you pre-register; \$20 at the door.

6) EJCBA is co-sponsoring, with the Clara Gehan Association of Women Lawyers, this year's annual JA Luncheon. This event is scheduled for April 26 at Cellar 12 (formerly the Sovereign, Ti Amo, etc.) from 11:30 a.m. – 1:30 p.m. EJCBA members, along with CGAWL members, enjoy a reduced registration rate for themselves and one guest (\$20). You can also nominate one of the circuit's fabulous JAs for Judicial Assistant of the Year. For more information, contact Diana Johnson at djohnson@clayton-johnston.com.

From start to finish April is packed with both educational and fun activities to help pull you out of the winter doldrums. Hope to see you out and about this month!

Alternative Dispute Resolution

Grab Your Briefcase and Bushmaster

By Chester B. Chance and Charles B. Carter



Had a bad day in court lately? Did you go back to your office and reach for an ax or AR-15? Why are we asking this?

A recent news item reported on the website www.wisdomofpsychopaths.com. The website said although most people think of Hannibal Lecter when they hear the term psychopath, “being psychopathic doesn’t

necessarily mean you are a serial killer, or even that you will break the law.” The website explains, within the framework of clinical psychology, a psychopath is someone with a distinct cluster of personality traits including charm, charisma, fearlessness, ruthlessness, narcissism, persuasiveness, and lack of conscience.

The website goes on to say that these described traits come in handy if you want to become an ax murderer, but, they are also handy in the courtroom, on the trading floor, or operating a business as a C.E.O.

Notice the reference to a courtroom. The authors went to this site because the news article noted the #2 occupation with the most psychopaths are “lawyers” according to a study in Britain. Of course, the website notes psychopathy lies on a spectrum (just like someone’s height, weight and I.Q.). “All of us have our place at some point on the continuum.”

In fact, on the website, you can take a test to determine where you fall on that spectrum.

Kevin Dutton is the Webmaster and is also the author of a book “The Wisdom of Psychopaths.” The book addresses lessons in life from “saints, spies and serial killers.” Mr. Dutton has a Ph.D. in psychology and is a research psychologist and member of the Calleva Research Center for Evolution in Human Sciences, Magdalene College, University of Oxford. In his book, Kevin explores the “positive side of being a psychopath.”

By noting the occupation of lawyer involves the second highest number of “psychopaths,” Mr. Dutton may be telling you something you already knew.

Are you worried you are a psychopath? Well, according to Mr. Dutton, psychopaths are the ultimate optimists. They always think things will work out. In fact, Dutton suggests society needs its share of psychopaths in order to survive and even suggests

the right number is 10% of the population. Superficial charm, egocentricity, independence and restricted focus are attributes that work in the boardroom, as well as the padded cell, according to Dutton. “The key difference was that MBA’s and CEO’s were encouraged to exhibit these qualities in a social rather than anti-social context.”

Need an example?

As an anecdote, while attending her mother’s funeral a woman meets a man she’s never seen before. She quickly is intrigued and is attracted to him. However, she forgets to ask for his number and when the funeral is over she can’t track him down. Four days later she murders her sister. Why?

If your answer involves jealousy such as she discovers her sister has been seeing the man behind her back, then you are probably not a psychopath. But if your answer is “because she was hoping the man would turn up to her sister’s funeral as well,” then you may have some of the qualities of a cold-blooded killer, or a captain of industry or a commission-rich salesman, or, a winning lawyer.

Lessons for mediation? Well, if opposing counsel orders fava beans and Chianti for lunch at your next mediation, stay on guard.



Classified Ads

FT Paralegal w/experience in Elder Law, to work for Miller & Brasington in Gainesville. Computer savvy, strong drafting and editing skills, attention to detail, team player. Email resume to hrrmb1204@yahoo.com. No walk-ins or calls, please.

FOR SALE ONE HALF SHARE HISTORIC WALDO HOUSE, 719 Northeast First Street, completely refurbished. Contact Ted C. Curtis at 378-1405 or 316-2859.

Probate Section

By Larry E. Ciesla

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. In no particular order, the following are some of the matters discussed by the section during recent meetings.

The big news is that effective January 1, 2013, all Alachua County probate, guardianship and mortgage foreclosure cases have been segregated into their own division with the Honorable Mary Day Coker presiding (Judge Silverman will continue as magistrate for foreclosure cases). This means that Judge Coker will be the only judge hearing probate and guardianship cases in Alachua County. Judge Coker was kind enough to attend some recent probate section meetings and here is what I take away from our discussions. Most importantly, Judge Coker has fully recovered from her recent serious medical issues and is extremely happy to be back at work with a full caseload. She indicated that she maintains an open door policy and any practitioner is welcome to stop by her office at any time in order to discuss any difficulties he or she may be experiencing, or to just say hello.

On a procedural level, Judge Coker requests that all papers be e-filed and that service by her Judicial Assistant, Karen Brake, likewise be prepared for e-service. Paper copies may be added for pro se parties. Judge Coker stated that she will do her best to see that all orders are signed and e-served expeditiously. The early returns on this issue are now in and it is safe to say that the turnaround timeframe for receiving signed orders is as short as anyone could reasonably expect.

On the subject of scheduling hearings, Judge Coker would like practitioners to first explain the situation to the appropriate staff attorney. In some cases the staff attorney may be able to consult with Judge Coker and process the matter without a hearing. If a hearing is required, the staff attorney will direct the practitioner to email Ms. Brake to obtain a hearing time. Ms. Brake prefers to be contacted via email, as telephone communication tends to be more inefficient and time consuming. As of the present time, contact Staff Attorney Katherine Mockler for probate matters and Erin Hunt for guardianship matters.

Judge Coker will be following the usual rules for telephone appearances by counsel and for telephone testimony. A motion and an order are required for an attorney to appear by phone. A motion and an order

are required for testimony by phone. The witness must be sworn in by a notary who is in the witness's physical presence. Telephone testimony may only be taken by consent of all parties. See Rule 2.071, Florida Rules of Judicial Administration.

The section welcomes new members Adam Towers and Richard Withers. Adam practices with the firm of Bogin, Munns and Munns in Gainesville and concentrates on real estate litigation and commercial litigation with a heavy concentration on quiet title lawsuits. Richard Withers practices with the firm of Dean Mead in Gainesville and specializes in tax matters.

I recently had the opportunity to look into the current state of affairs regarding the insurability of Ladybird Deeds. According to information obtained by Carl Johnson and relayed to me, Old Republic/The Fund will insure Ladybird Deeds without requiring the joinder of the contingent remainder holders, so long as the sale is to a bona fide purchaser for value. On gift transactions, joinder is required. First American will insure all Ladybird Deeds without any joinder requirements. Many thanks to Carl for sharing this information.

Jane Hendricks initiated a discussion regarding the recent opinion in the case of *Brennan v. Honsberger*, 101 So.3d 415, (Fla. 5th DCA 2012) regarding the legal requirements to prove a lost will. This involves a two-step process. Initially, the will proponent must introduce competent, substantial evidence to overcome the presumption that the will was intentionally destroyed with the intent of revocation. Secondly, the proponent must establish the full and precise terms of the lost will were discussed in detail. The testimony of two disinterested witnesses is required to establish the terms of the will, except in cases where a "correct" copy showing the terms as well as all signatures is provided, in which event only one disinterested witness is required. In this case the proponent presented a "correct" copy of the will, as well as the testimony of two disinterested witnesses, who both testified as to the formalities of execution of the will, but failed to testify as to the actual content of the will. Accordingly, the trial court's order admitting the will to probate was reversed. The moral of the story is next time, have the drafting lawyer and/or the legal assistant who typed the will serve as the disinterested witnesses and make sure they testify

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Proposals For Settlement: Joint Proposal or Condition Of Settlement

By Siegel, Hughes & Ross

The legislature enacted the Proposal for Settlement Statute, Fla. Stat., §768.79, in 1986 in order to sanction litigants for unreasonably refusing good faith offers of settlement and prolonging litigation. *Diamond Aircraft Industries, Inc. v. Horowitz*, 2013 WL 105328 (Fla. 2013); *Southeast Floating Docks, Inc. v. Auto-Owners Ins. Co.*, 82 So.3d 73 (Fla. 2012). The intent was to encourage early settlement and termination of litigation. *Tiara Condominium Ass'n, Inc. v. Marsh USA, Inc.*, 697 F. Supp. 2d 1349 (S.D. Fla. 2010); *JES Properties, Inc. v. USA Equestrian, Inc.*, 432 F. Supp. 2d 1283 (M.D. Fla. 2006).

In 1989 the Supreme Court adopted Rule 1.442, *Fla. R. Civ. P.*, to establish a uniform procedure for implementation of Fla. Stat., §768.79, and all comparable statutes regardless of the language used. Rule 1.442(a), *Fla. R. Civ. P.* However, the procedural requirements of the rule have been construed by the courts, including the Florida Supreme Court, in ways that hinder, rather than promote, the purpose of the statute. A perfect example of such construction is the decision of the First District Court of Appeal in *Arnold v. Audiffred*, 98 So.3d 746 (Fla. 1st DCA 2012).

Arnold was a common claim for personal injury resulting from an automobile accident. Ms. Audiffred sued for personal injury, and Mr. Kimmons, her husband, claimed damages for loss of consortium. Both were represented by the same counsel. During the course of the litigation Ms. Audiffred served a Proposal for Settlement for \$17,500.00. The proposal specifically stated the offeror to be Ms. Audiffred and the offeree to be Mr. Arnold. However, under Ms. Audiffred's offer the defendant got a bonus. As a "relevant condition" of the offer Ms. Audiffred stated that on acceptance of the offer, "Both

Plaintiffs will dismiss this lawsuit, with prejudice, as to the Defendant."

Audiffred recovered \$26,055.54, more than 25% in excess of the amount offered. Mr. Kimmons received nothing on his claim for loss of consortium. It appears Ms. Audiffred's attorney evaluated the case precisely. Ms. Audiffred received more than 25% above her offer, and the consortium case which would have been dismissed for nothing was worth exactly that. That seems like the type of case evaluation and settlement proposal the statute was designed to reward and the refusal seems the type of "unreasonable refusal" the statute was designed to sanction. So thought the trial judge who awarded Ms. Audiffred her attorneys' fees.

The First District, however, thought differently. The First District held that although the proposal stated explicitly that the party making the offer was solely Ms. Audiffred, the offer to dismiss the consortium claim as a "relevant condition" of the proposal transformed the offer into a joint offer which had to be apportioned between the plaintiffs.

In the case at hand the proposal for settlement stated at the outset that it was submitted by only one party, Audiffred. However, when read as a whole, the proposal clearly expressed a promise that the two appellees would dismiss with prejudice each of their individual claims against appellant upon acceptance. Their shared attorney, an individual who had the apparent authority to make this proposal for settlement, submitted this proposal. Therefore, reading the proposal as a whole, it was a joint proposal. *Id.* at 748.

One would think the condition that the husband's consortium claim would be dismissed made the proposal more, not less, attractive to the defendant. Yet the court refused to enforce the proposal because of this favorable provision. In order to serve an enforceable proposal, under this decision, the plaintiff would have had to serve the less attractive proposal, making it less, not more, likely that the defendant would accept the proposal and accomplish the statutory purpose of encouraging settlement of litigation.

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Eighth Judicial Circuit of Florida: The Honorable Martha Ann Lott Announces Retirement

The Honorable Martha Ann Lott has announced her retirement from the bench effective May 31, 2013. Judge Lott has served as Circuit Judge, County Court Judge and Chief Judge. With over 22 years on the bench (after several years with the Public Defender's Office and the Department of Children and Families) she is currently the most senior judge in the circuit.

Judge Lott began her legal career in 1981 with the public defender's office; went into private practice as a sole practitioner; was elected first to the County Court Bench, then to the Circuit Bench, and finally as Chief Judge. She currently presides over an Alachua County felony division, the felony forensic court, half of the drug court docket and the Jimmy Ryce docket. During her tenure with the court, Judge Lott has been instrumental in local and statewide efforts to pass resolutions and legislation to improve the justice system where it involves persons with mental illness. Her interest in cases involving psychological issues stems from her degree in psychology and her work in institutions prior to attending law school.

Highlights of Martha Lott's legal career include handling everything from juvenile cases through death penalty cases with the public defender's office; being awarded the Pro Bono Award while in private practice; teaching throughout her judicial career at the New Judges College, the Advanced Judicial Studies Program, both County and Circuit Educational Conferences, the Levin College of Law and the National Judicial College. Judge Lott has published in the area of family law: a chapter in the book *Relocation in Child Custody Cases* published in 2006. She has served on numerous Supreme Court Committees and multiple local workgroups and committees on everything from the design of the Criminal Justice building to the Criminal Justice, Mental Health, Substance Abuse Grant Committee, which was awarded \$1,000,000.00 in state grant funding. As Chief Judge, she created the Foreclosure Program by magistrate which has proven to be the most effective in the state.

Judge Lott says she looks forward to a writing career postponed since college, to riding her horse competitively in dressage, and to spending time with family... including anticipated grandchildren. Judge Lott says she is not giving up her commitment to helping others and has not eliminated the possibility of continuing her career in some different capacity after her retirement from the bench.

"I appreciate the opportunity to have made public service through the justice system my primary career. Serving the public with so many great people over the years has been very rewarding. Being a judge has perhaps been the most important phase of my professional career. We are lucky to live in this society of opportunity and self-determination, each free to create our own playbook and follow individual dreams. At 60, I still have dreams to follow. Time will tell whether I can make them come true."



Florida Bar Board of Governors Report



By Carl Schwait

Please find below The Top 12 List of Services The Florida Bar Provides to Members:

1. Low cost, high quality continuing legal education programs including 24/7 online access and a growing selection of free credit courses on key topics like the discipline system, how to comply with new rule 2.420/redacting confidential information and, coming soon, foreclosure filing. Plus, more than 40 Florida specific law practice manuals and publications priced below industry standards.

2. A confidential ethics hotline (800-235-8619) exclusively for members to call when faced with ethical dilemmas, confidentiality questions, trust accounting measures and other ethical problems unique to the profession. A professional staff of ethics attorneys is trained to respond to inquiries from members asking about their own contemplated conduct. Members may also request a written opinion. One of the first of its kind in the nation, and one of only a few in operation, there is no fee for the hotline or ethics opinions.

3. Legislative monitoring and advocacy on issues affecting the administration of justice.

4. Member benefits including free online legal research for Florida case law through Fastcase and a free Career Center Network for job seekers, as well as significant discounts on more than 25 products and services including car rentals, office supplies, shipping services and insurance and retirement programs.

5. Law office management tips and information on The Florida Bar website and by telephone, an online "starting your own practice" resource center, and consultation services provided by The Florida Bar Law Office Management Assistance Service (LOMAS).

6. The Florida Bar Journal, a premier source of practical articles on substantive law and ethical practice, and The Florida Bar News, a twice-monthly publication produced by a staff of professional journalists with news, columns and other information to advance the knowledge, competence, ethical practice and public responsibility of Florida lawyers and increase awareness of official and information activities of their profession.

7. A website with a current directory of all members and many online transactional services including fee payment, CLE course registration and payment, CLE credit posting and membership record changes. The website also provides members with the opportunity to add additional information to their profiles including firm and practice information, education, languages spoken and court admissions. The website provides the Rules Regulating The Florida Bar, ethics opinions, an advertising handbook and other many other sources and links to assist practicing lawyers.

8. Public and media relations including providing reporters with expert sources for legal information, editorial board visits by leadership and monitoring media coverage on the profession and legal issues to determine if further public relations efforts are needed. An annual reporters' workshop provides intensive training on covering the courts and the legal system.

9. Protection of the public from unethical lawyers through the grievance system and from non-lawyers through the prosecution of the unlicensed practice of law. In addition, the Bar has a Clients' Security Fund to compensate clients suffering from financial losses due to the misappropriation of funds or lack of useful services rendered.

10. A lawyer referral program to introduce clients to member participants. This service, which currently covers the 47 Florida counties not handled by local bar referral programs, makes in excess of 100,000 client referrals to Bar members each year.

11. Public service programs and statewide recognition of pro bono service by Florida's attorneys with an annual ceremony at the Florida Supreme Court. Among its public education activities, The Florida Bar coordinates a speakers bureau for attorneys to present legal topics to civic and community organizations, publishes consumer informational pamphlets on legal topics, and distributes the "Legal Guide for New Adults" to more than 172,000 high school seniors.

12. Opportunities to be a member of 23 practice-area specific sections and two divisions for education, networking, leadership and committee service.

I appreciate your allowing me to continue to serve as your representative on The Florida Bar Board of Governors.

as to the precise terms of the will.

Richard White pointed out to the section the recent decision in the case of *Morey vs. Everbank*, 93 So.3d 482, (Fla. 1st DCA 2012), wherein the First District held that life insurance proceeds payable to the trustee of decedent's revocable living trust were not exempt from the claims of creditors of decedent's estate. In doing so the court examined Section 222.13(1), Florida Statutes, which provides an exemption from decedent's creditors for life insurance proceeds left to the beneficiary stated in the policy. The Court also examined Section 733.808, Florida Statutes, which allows a decedent to leave life insurance proceeds to the trustee of a revocable trust. The court found the two statutes not to be in conflict, holding that by making the proceeds payable to his revocable trust, and including language to use the trust assets to pay all of decedent's legal debts, the decedent had simply waived the exemption otherwise available to him. The moral of this story is to be more precise in the estate planning process. In this case the decedent had actually created a separate, sub-trust within his revocable trust, for the benefit of his three children. All he had to do to preserve the exemption was name the trustee of the children's trust as the beneficiary of the policy. Richard indicated that the RPPTL Section is considering proposing legislation to address this issue.

If you are interested in being added to the email list to receive notice of future section meetings, please send an email to me at lciesla@larryciesla-law.com.

Administrative Order 7.08

Chief Judge Robert Roundtree signed Administrative Order No. 7.08, Approval of Guardianship Education Course Pursuant of the Florida Guardianship Law §744.3145, Florida Statutes, on February 26, 2013.

Administrative Order 7.08 and all current administrative orders can be found on the circuit's website at <http://circuit8.org/administrative-orders>. If you have any questions or concerns about this administrative order, please contact Karen Jordan at (352) 258-1244 or Jordank@circuit8.org.

Compare *Arnold* with *Andrews v. Frey*, 66 So.3d 376 (Fla. 5th DCA 2011) and *Alioto-Alexander v. Toll Bros., Inc.*, 12 So.2d 3d 915 (Fla. 4th DCA 2009). Both of those cases involved two defendants. In both of those cases one defendant served a proposal for settlement which, as in *Arnold*, purported, on its face, to be an individual offer but required, as a condition of the settlement, that the case be dismissed against both defendants. In both cases the plaintiffs opposed an award of attorneys' fees arguing that, in spite of the fact that the proposal stated it was made by a single defendant, the fact that it required dismissal of both defendants made it a joint proposal which had to apportion the amount paid by each defendant. Both courts rejected that argument and held that the requirement that the second defendant be dismissed was "simply a condition of the proposal and did not serve to transform the proposal for settlement into one made by multiple offerors." *Alioto-Alexander v. Toll Bros., Inc.*, at 917.

What is intriguing about the comparison of these cases is that while the First District in *Arnold* found impermissible a condition that made the settlement proposal more attractive to the offeree, both the *Alioto-Alexander* and the *Andrews v. Frey* courts found the same condition permissible when it made the proposal less attractive to the offeree. It is suggested that these three decisions all got it exactly backwards. The purpose of the statute and rule is to promote settlement, not make it more difficult; a condition that makes a proposal more attractive to the offeree should be approved and one which makes the proposal less attractive should receive stricter scrutiny. In *Andrews v. Frey*, Judge Cohen wrote:

In *Nichols v. State Farm Mutual*, this court stated that a "proposal for settlement is intended to end judicial labor, not create more." This case is but another example demonstrating that the authorizing statute and implementing rule encourage just the opposite. *Andrews v. Frey*, 66 So.3d 376, 377 (Fla. 5th DCA 2011) (Citations omitted).

These three decisions certainly do "encourage just the opposite." However, there is nothing in the language of the rule or the statute which requires this result. It is the construction given the rule and statute by the courts that is making settlement more difficult.

Nominees Sought for 2013 James L. Tomlinson Professionalism Award

Nominees are being sought for the recipient of the 2013 James L. Tomlinson Professionalism Award. The award will be given to the Eighth Judicial Circuit lawyer who has demonstrated consistent dedication to the pursuit and practice of the highest ideals and tenets of the legal profession. The nominee must be a member in good standing of The Florida Bar who resides or regularly practices law within this circuit. If you wish to nominate someone, please complete a nomination form describing the nominee's qualifications and achievements and submit it to Raymond F. Brady, Esq., 2790 NW 43rd Street, Suite 200, Gainesville, FL 32606. Nominations must be received in Mr. Brady's office by Monday, April 29, 2013 in order to be considered. The award recipient will be selected by a committee comprised of leaders in the local voluntary bar association and practice sections.

Professionalism Seminar – Register Now

Inexpensive (CHEAP) CLE Credits

By Ray Brady

Register now for the annual Professionalism Seminar. This year the seminar will be held on Friday, April 5, 2013 from 9:00 AM until Noon, at the Trinity United Methodist Church at 4000 NW 53rd Avenue. The keynote speaker this year will be renowned Ft. Lauderdale litigator Bruce S. Rogow. Mr. Rogow will address issues of professionalism, including issues that arise in his profile cases, such as those he has litigated throughout his career, in both the civil and criminal arena.

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

A reservation card is included on page 11 of this newsletter or watch in your mail for an EJCBA reservation card. Questions may be directed to the EJCBA Professionalism Committee chairman, Ray Brady, Esq., at 373-4141.

James L. Tomlinson Professionalism Award Nomination Form

Name of Nominee: _____

Nominee's Business Address: _____

County in which Nominee Resides: _____

The above named nominee exemplifies the ideals and goals of professionalism in the practice of law, reverence for the law, and adherence to honor, integrity, and fairness, as follows (attach additional pages as necessary):

Name of Nominator: _____

Signature: _____



Dawn Vallejos-Nichols and Judge Lancaster during presentation of her robe at her investiture on March 15

RESERVE NOW FOR THE 2013 PROFESSIONALISM SEMINAR!

WHEN: Friday, April 5, 2013 – 9:00 a.m. – 12:00 NOON

WHERE: Trinity United Methodist Church, 4000 NW 53rd Avenue, Gainesville

PROGRAM: Our keynote speaker is Bruce Rogow, a distinguished Florida trial/appellate lawyer and professor of law at Nova Southeastern University Law Center, speaking on the topic of "Lawyers: Unlikely Heroes"

COST: \$70.00 (Make checks payable to EJCBA) (or FREE if you renewed your EJCBA membership prior to 9/30/12) (3.5 Hours of CLE is expected)

REMIT TO: EIGHTH JUDICIAL CIRCUIT BAR ASSOCIATION, INC.
c/o Raymond F. Brady, Esquire
2790 NW 43rd Street, Suite 200
Gainesville, FL 32606

RESERVE: **By Monday, April 1, 2013 – Remit payment with reservation to Raymond F. Brady, Esquire**

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

- _____ **Civil/Tort Law**
- _____ **Family/Domestic Relations Law**
- _____ **Criminal Law**
- _____ **Estates & Trusts Law**
- _____ **Business Law**
- _____ **Government Lawyers**
- _____ **Real Estate & Land Use Law**

NAME: _____

EMAIL (required): _____

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

Free parking is available

ARRIVE EARLY

Foreclosure Assistance Through Three Rivers Legal Services

By Marcia Green

Three Rivers Legal Services is part of a statewide effort to assist low- to moderate-income homeowners concerned about their mortgages and/or foreclosure. As part of the Attorney General's federal settlement with some of the country's largest mortgage companies, legal services programs throughout the state have started hotlines, advice clinics, and outreach events to provide information to homeowners.

Three Rivers received a grant of up to \$216,000 to provide assistance in our 17-county, predominantly rural service area. Services include advice, assistance with loan modifications and/or representation in foreclosure lawsuits.

Free legal advice to homeowners who are at risk of losing their homes is available to individuals and families who exceed our traditional financial guidelines, including those with incomes up to 275% of poverty. Advice options for homeowners to avoid foreclosure and informational materials have been developed for the statewide project. Potential clients include those who are "upside-down" in their homeownership, those who are already behind in their payments or those who just have general questions related to their mortgages. Also included are those who have

foreclosure questions or problems with their condo or neighborhood association fees.

The project is an effort to provide some relief to Florida residents, who have faced some of the highest foreclosure rates in the nation. While foreclosure filings nationwide have decreased, Florida's foreclosure activity continues to increase.

"Three Rivers is happy to have an opportunity to extend our services at this time to a greater number of homeowners in dire straits and those who are continuing to struggle during this economic downturn and recovery," said Allison Thompson, Executive Director of Three Rivers Legal Services. "We are grateful to be a part of the solution."

Three Rivers has hired contract attorneys to participate in the grant-funded project. Funding ends in June 2013.

Thank you to Gainesville attorney Eugene "Gene" Shuey for his webinar "Ethical Practice in the Real World". This webinar is available on our website at www.trls.org/calendar.html and is intended as free ethics CLE for volunteer attorneys with Three Rivers Legal Services.

EJCBA Charity Golf Tournament

Benefiting the Guardian ad Litem Program



**Mark Bostick Golf Course
at the University of Florida**
2800 SW 2nd Avenue
Gainesville, FL 32607
Phone: 352-375-4866

Friday, April 12, 2013
Cost: \$100 per player
Register & Eat: 11:30am
Tee-time: 1:00pm
Reception following round

To help us properly plan for this event, please pre-register by going to <http://8jcba.org/events.aspx> or return this form with payment.

- Longest Putt Contest
- Men and Women Longest Drive
- Closest to the Pin Challenge
- "Mulligans for Kids" for sale

2-Person Scramble



This year's event will be held **Friday, April 12th, 2013**, at the beautiful Mark Bostick Golf Course at the University of Florida in Gainesville, Florida. Registration and lunch begin at 11:30am, with shotgun start at 1:00pm. Post-round reception immediately following golf.

The cost for this event is **\$100** per golfer. This price includes 18 holes of golf, riding cart, lunch, reception and various awards and/or prizes. All net proceeds of this charity tournament will benefit the Guardian ad Litem Program of the 8th Circuit through the Guardian Foundation, Inc.

A Guardian ad Litem is a volunteer appointed by the court to protect the rights and advocate the best interests of a child involved in a court proceeding. Currently, the Florida GAL Program represents close to 27,000 abused and neglected children, but more than 4,600 children are still in need of a voice in court. Additional funding to the GAL Program provides invaluable financial support for the volunteers.

ENTRY FEE: \$100 per golfer

SIGN-UP DEADLINE
APRIL 5TH

**FOR MORE INFORMATION,
CONTACT MIKE PIERCE**

DELL GRAHAM
203 N.E. 1st Street
Gainesville, FL 32601
Phone: 352.372.4381
Fax: 352.376.7415
mpierce@dellgraham.com

Name	Partner's Name
Address	Partner's Address
Phone Number	Partner's Phone Number
Email Address	Partner's Email Address

Make checks payable to McCarty & Naim, P.A., Trust Account

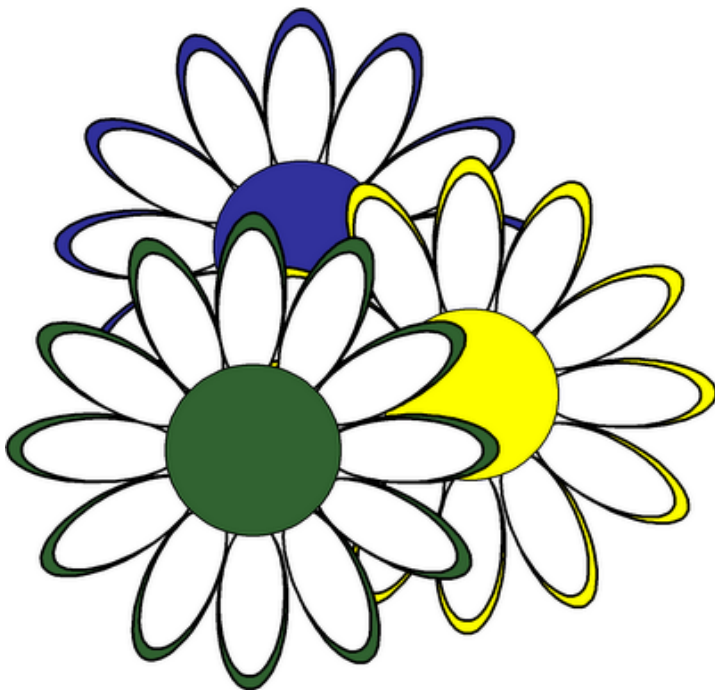
Clara Gehan Association for Women Lawyers & Eighth Judicial Circuit Bar Association
Invite you to join us for the 2013

Judicial Assistants Appreciation Luncheon

Friday, April 26, 2013
11:30am-1:30pm

Cellar 12
12 Southeast 2nd Avenue
Gainesville, FL 32601

Appreciation is a wonderful thing. It makes what is excellent in others belong to us as well. ~Voltaire



CGAWL or EJCBA members and one guest: \$20 each
Non-members and/or additional guests: \$30 each
Complimentary for JAs

Your Name: _____

Guest(s): _____

_____ Chicken _____ Vegetarian

Amount Enclosed: _____ (payable to "CGAWL")

Please RSVP to **Diana Johnson** at
Clayton—Johnston, P.A.
18 NW 33rd Court
Gainesville, FL 32607

Or by email at djohnson@clayton-johnston.com by
April 17, 2013.

For questions, please contact **Anne Rush** at
arush@rtix.com.

Criminal Law



By William Cervone

Judges. To borrow an old saying, you can't live with them and you can't live without them.

First, let me say that I was stumped for a topic this month. Truly out of ideas and without inspiration. Scratch it up to having been in court way too much during

the first part of the year. Even worse, I was with our Editor on the eve of this month's deadline and she reminded me that she had not yet gotten this month's column, which was true and which sent me into a minor panic. Many of you, I'm sure, would be just as glad if I passed a month or two, but, Catholic guilt about obligations and responsibilities pretty much preclude that.

Second, and fortunately for me, I was with our Editor at the investiture of new Union County Court Judge Bo Bayer when she gave me that little nudge and that event was followed almost before it was even over by Judge Martha Ann Lott's announcement of her retirement from the bench. And from those events was born this commentary. I understand that it may be risky, but here goes with some thoughts on the judiciary and what is now a regular occurrence in our Circuit: changes to our judiciary.

I remember when I was a new lawyer. Yes, it was a long time ago and no, you don't need to remind me of that. We had fewer judges then, and fewer lawyers. I held the judiciary in awe. Surely they were the best and the brightest among us, almost all knowing. I was afraid of one judge, who made even a prosecutor feel like he was getting about five years in prison just because he was in the courtroom when some poor defendant was being skewered and sentenced. I was kept on my toes by another who expected only that the lawyers be prepared and had an amazing way of conveying his disappointment and displeasure when you weren't without saying a word. And I was dismayed at yet another who made rulings that seemed totally inconsistent with logic, much less the law.

Over the years something obvious has happened. Judges became my contemporaries. Lawyers I practiced with and against, lawyers I mentored and was mentored by, lawyers my age and now younger became judges. And I realized that judges were just us in another role. Some I would like or respect or trust or rely on. Others, well, maybe not quite so much. None were all knowing. And most of all I came to realize because I knew these people that they are us. Maybe from this

hindsight I can also say that they are trying to do their best. All of them. And they have their own perspectives, strengths, and weaknesses. All of them. Above all, they all hold an office that should - no, must be respected as the capstone of our legal system.

So why do I say this? Because as we say hello to new judges and goodbye to others, which is increasingly common for us, we must all realize that they are us and it is up to us to find them from our midst. People complain about their elected government officials all the time, yet most don't bother participating in elections. We must be different than that, and better at it. Is there a JNC convening? Well, then, encourage someone who you think would make a good judge to apply. Tired of something I hear a lot, that there are too many former prosecutors on the bench? Then think about who from the civil Bar should join the Bench and push them. Or do it yourself. Apply to be on the JNC instead of criticizing its nominations. Is there an election looming? Stop being reluctant to openly support whoever you think would be a better judge because the other guy might win. And don't give that support because you think one candidate might rule for or against you more often; do it because you really do think one candidate is better equipped for the job. In other words, put your money where your mouth is.

This would not be popular with a public that holds lawyers in such disregard (something that is largely of our own doing) but the reality is that as a group we should know best who our judges should be. And we should be above petty politics in choosing them. If not, we have only ourselves to blame for who ends up on the Bench.



Judge Bo Bayer takes the oath as Union County Court Judge from his mentor and retired Union County Court Judge David L. Reiman on March 1, 2013. Photo Credit: William Cervone

It's that time again!

The Eighth Judicial Circuit Bar Association Nominations Committee is seeking members for EJCBA Board positions for 2013-2014. Please consider giving a little time back to your bar association. Please complete the application below and return the completed application to EJCBA. The deadline for completed applications is May 7, 2013.

Application for EJCBA Board Membership

Name: _____ Bar No. _____

Office Address: _____

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

Area of practice: _____ Years in practice: _____

Office of Interest: (Check all that apply)

Secretary Treasurer
Board member Committee Member

Preferred Committee Interest: (Check all that apply)

<input type="checkbox"/> Advertising	<input type="checkbox"/> Lawyer Referral Services	<input type="checkbox"/> Publicity/Public Relations
<input type="checkbox"/> Annual James C. Adkins Dinner	<input type="checkbox"/> Luncheon/Speakers	<input type="checkbox"/> Social
<input type="checkbox"/> Annual Reception	<input type="checkbox"/> Member Survey	<input type="checkbox"/> Sponsorships
<input type="checkbox"/> CLE	<input type="checkbox"/> Membership	<input type="checkbox"/> UF Law Liaison
<input type="checkbox"/> Community Service	<input type="checkbox"/> Mentorship	<input type="checkbox"/> Website
<input type="checkbox"/> Golf Tournament	<input type="checkbox"/> Policies and Bylaws	<input type="checkbox"/> Young Lawyers Division Liaison
<input type="checkbox"/> Judicial Poll	<input type="checkbox"/> Pro Bono	<input type="checkbox"/> Other (Describe Below)
<input type="checkbox"/> Law Week	<input type="checkbox"/> Professionalism	_____

Briefly describe your contributions, if any, to date to EJCBA.

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

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

Return to: EJCBA – Nominations Committee
P.O. Box 13924
Gainesville, FL 32604

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



Eighth Judicial Circuit Bar Association, Inc.
Post Office Box 13924
Gainesville, FL 32604

April 2013 Calendar

- 3 EJCBA Board of Directors Meeting; Ayers Medical Plaza, 720 SW 2d Avenue, North Tower, Third Floor – 5:30 p.m.
- 5 Deadline for submission of articles for May Forum 8
- 5 EJCBA Professionalism Seminar w/keynote speaker Bruce Rogow, “Lawyers: Unlikely Heroes,” 9-12 Noon, Trinity United Methodist Church
- 8 Law in the Library, Millhopper Branch, Residential Foreclosure Legal Issues, 6-7:00 p.m.
- 10 Probate Section Meeting, 4:30 p.m., 4th Floor, Family & Civil Courthouse
- 11 EJCBA Spring Social, Ballyhoo, 5:30-7 p.m.
- 12 EJCBA Annual Charity Golf Tournament benefiting Guardian Ad Litem, UF Golf Course
- 16 Family Law Section Meeting, 4:00 p.m., Chief Judge’s Conference Room, Alachua County Family & Civil Justice Center
- 19 EJCBA Luncheon, Paramount Plaza, Judge Stephanie Ray, First District Court of Appeal, Paramount Plaza Hotel, 11:45 a.m.
- 26 CGAWL’s JA Luncheon, Cellar 12, 11:30-1:30
- 29 Nominations Due for 2013 James L. Tomlinson Professionalism Award

May 2013 Calendar

- 1 EJCBA Board of Directors Meeting; Avera & Smith, LLP, 5:30 p.m.
- 6 Deadline for submission of articles for June Forum 8
- 8 Probate Section Meeting, 4:30 p.m., 4th Floor, Family & Civil Courthouse
- 13 Law in the Library, Downtown Headquarters, Bankruptcy, 6-7:00 p.m.
- 17 EJCBA Luncheon, Paramount Plaza, Speaker TBA, Paramount Plaza Hotel, 11:45 a.m.
- 21 Family Law Section Meeting, 4:00 p.m., Chief Judge’s Conference Room, Alachua County Family & Civil Justice Center
- 27 Memorial Day, County & Federal Courthouses closed

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.