

# FORUM 8

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Eighth Judicial Circuit Bar Association, Inc.

January 2014

## President's Message



### Monuments and Symbols

By Nancy T. Baldwin

Washington DC is a city of monuments. There are the elegantly designed white marble monuments to Presidents Thomas Jefferson and Abraham Lincoln, the four brown granite "rooms" representing the four terms of

President Franklin Delano Roosevelt, and the towering marble obelisk to President George Washington. The Washington Monument limits the height of other DC buildings. There is the recent monument to civil rights activist and religious leader Dr. Martin Luther King, Jr. There are the war memorials – the famous statue of the U.S. Marines raising the U.S. flag at Iwo Jima and the monuments recognizing the veterans of WWII, Vietnam, and Korea, including a special monument to the Women Veterans of Vietnam. There is a monument reminding us of the horrors of the holocaust. Parks, buildings, and a military cemetery also serve as monuments to persons who exemplify the values we hold.

The monuments encourage pride; they remind us of sacrifices made and extraordinary acts and heroic deeds. The monuments are designed to involve, to bring citizens together, to unite with an understanding of a common history, including our legal history.

Perceptions of and appreciation and respect for monuments and symbols change. The flag of the United States of America is a symbol, a form of a monument. Some years ago there were heated debates about the use and abuse of the U.S. flag. Today copies of the U.S.

flag appear on such items as beach towels, on shirts and beach bags and underwear. Many giant sized versions fly over new and used car lots. Does the multiple use of the image of the flag diminish the significance of the flag; does it lessen the pride we feel? Perhaps. A recent local letter to the editor bemoaned the lack of attention, awareness and respect paid to the passing U.S. flag during the Homecoming parade.

Monuments and symbols can become acts of reaction or defiance. Some monuments are only positive to certain individuals and/or groups. Many southern cities and towns have a statute of a confederate soldier near the government center. Some still retain and display copies of flags flown during the Civil War. A recent request by the descendents of the Union soldiers participating in the Olustee battle to erect a monument has been negatively received.

In the Old Testament books of Exodus and Deuteronomy, God through Moses gave the Israelites moral teachings and commandments signifying the bond between God and the Jews. The commandments are believed to have been written on the tablets in the 7<sup>th</sup> Century and have influenced the laws and behaviors of people and governments since that time. Wikipedia describes the Ten Commandments as a set of biblical principles relating to ethics and worship that play a fundamental role in Judaism and Christianity. Roman Catholics, Jews, and some Protestant groups have renumbered the commandments and added to and deleted material and used different translations.

Perhaps as a reaction to the perceived threat to the expression of religion in life accompanying the regulation



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**ATTENTION READERS**

**EJCBA'S LUNCHEON LOCATION HAS CHANGED!!**

Beginning with the January 10 luncheon, EJCBA's monthly lunch will be held at:

**THE WOOLY (next to The Top)**  
20 NORTH MAIN ST.  
GAINESVILLE, FL 32601

**January's Speaker:**

Honorable Robert E. Roundtree, Jr.,  
Chief Judge

**About This Newsletter**

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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**

# Minimum Flows And Levels: Part II

## What If MFLs Are Not Being Met?



By Jennifer B. Springfield and Alexander Boswell-Ebersole

The *Water Resources Act* requires Florida's Water Management Districts (WMDs), or the Florida Department of Environmental Protection (DEP), to establish minimum flows or levels (MFLs) for water bodies within the respective jurisdictions

of the WMDs. MFLs, often called "environmental flows" or "in-stream flows" in other states and outside the U.S., essentially amount to a backstop for WMDs/DEP when considering water resource decisions, such as issuing consumptive use permits. An MFL is the flow or level of a surface water, e.g., lakes and rivers, below which further water withdrawals would be significantly harmful to the ecology or water resources of the area. With increasing population and greater demand for water, these limits can play an important role in managing water supply in Florida. This article explains what WMDs/DEP must do when established MFLs are not being met.

When a WMD/DEP adopted MFL is either not being met or a violation is anticipated, the *Water Resources Act* directs the WMDs/DEP to implement either a recovery or a prevention strategy as part of a regional water supply plan.<sup>1</sup> Essentially, if current flows or levels fail to meet an applicable MFL, WMDs/DEP must implement a recovery plan in order to achieve recovery as soon as practicable.<sup>2</sup> Where flows or levels are projected to fail to meet an applicable MFL within 20 years, the Act requires implementation of a prevention strategy.<sup>3</sup> Moreover, the Act requires "expeditious" implementation of these strategies for established MFLs,<sup>4</sup> and where the flows or levels fail to meet the MFLs (or are projected to do so within 20 years) at the time of establishment or revision of a MFL, a prevention or recovery strategy must be implemented "simultaneously" with the adoption of MFLs.<sup>5</sup> Although a recovery or prevention strategy may involve a reduction in permitted water withdrawals, the strategy is also required to include water conservation measures and the development of additional water supplies.<sup>6</sup> Furthermore, such a strategy must include a phased approach or timetable to enable the "provision of sufficient water supplies for all existing and projected reasonable-beneficial uses,"<sup>7</sup> thus allowing for an orderly transition to

additional water supplies.

While the *Water Resources Act's* provisions regarding recovery and prevention strategies give a significant amount of discretion to the WMDs in creating these strategies, the strategies require complex technical and difficult policy considerations. For example, deciding how to apportion reductions in water allocated among existing water users of a particular body of water is fraught with hard choices, particularly when conservation is already being maximized and further reductions involve implementing expensive alternatives. As a result, despite the recovery or prevention strategy requirement in the law, WMDs have not always acted to timely initiate such strategies due to pressure from industry groups with large water users, such as public supply, and the economic costs involved.

Overall, the WMDs' implementation of recovery and prevention strategies may be characterized as inconsistent. The South Florida WMD, which has recovery or prevention strategies that apply to almost all the water bodies in its jurisdiction, and the Southwest Florida WMD are the only WMDs that have adopted recovery or prevention strategies.<sup>8</sup> The St. Johns River WMD recently approved a recovery/prevention strategy for a handful of water bodies in Volusia County, while the Suwannee River WMD has yet to develop any recovery or prevention strategies, despite the fact that there are established MFLs within its jurisdiction that are currently not being met and the Northwest Florida WMD has not yet adopted any MFLs.

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1 Fla. Stat. § 373.0421(2).

2 Fla. Stat. § 373.0421(2)(a).

3 See Fla. Stat. § 373.0421(2).

4 Fla. Stat. § 373.0421(2).

5 Fla. Admin. Code R. 62-40.473(5)(a) and (b).

6 Fla. Stat. § 373.0421(2).

7 Fla. Stat. § 373.0421(2).

8 Note, the MFL statute does not require the MDs to formally adopt recovery or prevention strategies, but it does require these strategies be included as part of regional water supply plans. See, Fla. Stat. § 373.709(2)(c).

# Alternative Dispute Resolution

## Selecting the Mediator

By Chester B. Chance and Charles B. Carter



Recently there was an article on the ABA website on mediation preparation, specifically, "Selecting the Mediator."

The article notes most mediators have good people skills. Curiously enough, "not all mediators have good conflict resolution skills." The

article suggests an attorney (prior to entering a mediation conference) should put a great deal of thought into what mediator will be the best person for his client and the issues and needs in a particular case.

Would the client respond better to a man or a woman? To a mature or younger person? Someone with a southern accent or northern accent? To someone who takes the time to listen to the client or someone who is more of an authority figure?

The ABA article refers to studies suggesting mediators can assist in the negotiation aspect of mediation by providing assistance in one or more of the following ways:

1. Lowering the emotional temperature.
2. Fostering more effective communication.
3. Helping uncover less obvious interests.
4. Offering face-saving possibilities for movement.
5. Suggesting solutions the parties may have overlooked.
6. Structuring the process more efficiently.
7. Reducing the risk of sharing information.
8. Proposing fairness principles.

The article points out many lawyers believe mediators need to have background and experience in the subject matter of the mediation. The article suggests, for example, if you are involved in a patent case you want to try to work with a mediator with experience in patent law. If you are involved in class action you are probably going to want to use a mediator who is knowledgeable about class actions. Others suggest if you choose an experienced mediator then subject matter expertise will have less impact on settlement negotiations.



You do not have to be a lawyer in the State of Florida to be a certified circuit civil mediator. However, most lawyers would not think of using a non-lawyer-mediator. Usually they pick a mediator who is not only a lawyer but who has experience in the subject matter of the mediation. A non-lawyer not only lacks the legal background but also in addition often lacks the subject matter background. Of course, non-lawyer mediators often bring subject matter background, which would be of great benefit.

Some of the comments of ABA members to the blog on the topic of choosing a mediator have made suggestions, including the following:

"...It's not possible to offer meaningful evaluative input or creative solutions if you are a novice in the substantive field. I saw this the hard way as an advocate in healthcare cases that were court-referred to mediators who didn't know anything about healthcare."

Others comments to the blog include:

- If your mediator has tried a bunch of cases in which experts are necessary to meet the burden of proof, then that experience is invaluable in talking with lawyers and clients at mediation.
- With respect to facilitative and listening style, if your mediator has the skills it may settle the case because the parties will feel heard.
- Good process skills: I think many lawyers overlook how managing the process can help settle the case.

Others note the mediator's expertise in a field of law or with respect to evidentiary issues as well as the substantive area of the case is typically invaluable. Some observers note that

*Continued on page 9*

# Spend 2014 with Three Rivers Legal Services

By Marcia Green

As I look forward to this new year and try to find creative and inspiring avenues for attorneys to volunteer with Three Rivers Legal Services, I hope that you will take some time to see if you can help!

So many attorneys provide services in a variety of ways. I can only touch on a few of the accomplishments over the past year and certainly hope to surpass them in 2014.

Three Rivers has greatly enjoyed the services of several young attorneys who have worked with us to gain experience or while looking for the perfect job. A fabulous example is John Ciminillo, now with the Guardian Ad Litem program, who spent the past year coming to Three Rivers and working primarily in our family law unit. He recorded close to 100 *pro bono* hours and we are so grateful for his assistance, his presence and his patience. Erin Slemmens, another new attorney, volunteered more than 100 hours before becoming a part-time contract attorney under our foreclosure grant with the Attorney General's office. Catherine Tancig, prior to her employment with Wershow & Schneider, P.A., provided close to 125 hours in our domestic violence unit.

Ashley Moskowitz, another young attorney, is currently volunteering with our family law unit and has provided close to 40 *pro bono* hours in the past six months. Charlene Walsh, retiring from the teaching field, decided to explore a return to the practice of law and provided more than 40 hours of research and assistance in our housing and consumer units. For a complete list of all of our volunteers, look in the December 2013 issue of Forum 8!

These attorneys, spending time and volunteering with Three Rivers, are invaluable to our program and our clients. Regardless of whether you come to us for experience, to spend time while searching for a job, to give back to the community, to fill the void of retirement or to figure out what you want to do with the rest of your life, we need you! You can help us with a *pro se* family law clinic, you can represent a client in an unemployment hearing, you can mentor a young attorney in your area of expertise or you can help research for our staff or other *pro bono* attorneys. We always, and sometimes desperately, need attorneys willing to handle litigation and court cases in several different areas, including family law, housing, consumer and probate.

Are you willing to volunteer and join this list? I can't tell you enough how much we need you and how easy we hope to make it for you to volunteer. If you

join our volunteer panel, we will refer cases to you in your area of expertise. We will pre-screen the referred clients for financial eligibility and we can connect you with attorneys who are willing to mentor and/or discuss the case with you. We provide malpractice insurance coverage and litigation cost reimbursement (if feasible and available). As a volunteer, you can use our office to meet with your *pro bono* clients or you can participate in *pro se* clinics, advice clinics and outreach events. My job is to make your experience a positive one while you provide much needed assistance to low income residents of our community who are trying to navigate the often confusing legal system. Three Rivers' resources are stretched thin; we need you to help expand our reach and services throughout the Eighth Judicial Circuit.

Contact me at [marcia.green@trls.org](mailto:marcia.green@trls.org); complete the Volunteer Enrollment Form at [www.trls.org/VolAttorney.html](http://www.trls.org/VolAttorney.html) or call me at 352-372-0519, ext. 7327. Let me know how you can help! Not quite sure who we are or what we do? Call or review our website at [www.trls.org](http://www.trls.org).

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# Independent Contractors, Part I



By Paul Donnelly & Christopher Deem, Donnelly & Gross, P.A.

The classification of an individual who works for a company as an employee or an independent contractor can have far-reaching ramifications that affects, among other things, the payment of taxes to the Internal Revenue Service, workers'

compensation claims, legal liability in tort, and federal and state claims for wages. Despite the importance of making this determination, there is no single "correct" way to do it, and instead, the courts use a number of factors derived from common law concepts of agency to determine if the company controls the individual performing the work. Following are a list of resources to help navigate this area of the law.

For many federal claims, courts may look to what was formerly known as the IRS twenty-factor test. These non-exclusive factors are often cited by courts in cases involving taxes, and will also be cited in Employee Retirement Income Security Act, Americans with Disabilities Act, Title VII, Occupational Safety and Health, and Labor Relations Act cases. See *Hospital Resource Personnel, Inc. v. U.S.*, 68 F.3d 421,

427-428 (11th Cir. 1995) (stating that IRS factors, collectively, go to control for independent contractor status). The IRS has recently simplified this test into eleven main tests divided into three main groups, but the change is not substantive and has not been construed differently by the Eleventh Circuit Court of Appeals.



For federal claims brought under the Fair Labor Standards Act, Agricultural Worker Protection Act, Equal Pay Act, and the Family and Medical Leave Act, courts will instead look to the economic reality test. See *Scantland v. Jeffrey Knight, Inc.*, 721 F.3d 1308 (11th Cir. 2013).

Under Florida law, there are two alternate ways of determining independent contractor status. For workers' compensation claims, the factors are listed in the statute. See Florida Workers' Compensation Act, Fla. Stat. § 440.02 (2013). For other claims, courts will look to the laws of agency but "the primary one is the exercise or right to exercise direction and control over the employee, or the right to direct what shall be done and how and when it shall be done." *Herman v. Roche*, 533 So.2d 824, 825 (Fla. 1st DCA 1988).

**President's Message**  
See *Hospital Resource Personnel, Inc. v. U.S.*, 68 F.3d 421,

of prayers in the schools and public functions, individuals and groups have elected to place slabs of stone inscribed with a version of the Ten Commandments in public places. The State Capital at Austin, Texas displays a non-numbered edition of the commandments.

Two stone slabs with the Ten Commandments have been placed at the entrance to the Dixie County Courthouse, Cross City, Florida. The monuments are paid for by a private individual. Although there have been some protests allegedly from people outside the state concerning the stone slabs, the commandments have not been removed. Query – are the stone slabs representing religious documents or legal documents or both? If they are representing a particular religious belief, have opportunities been provided to those of other religious beliefs to place a monument, symbol, or plaque at the entry way? If the commandments are representations of legal documents or legal history, has there been any movement toward the inclusion of other documents of our legal history – perhaps a panorama including the Code of Hammurabi, the Magna Carta, the Declaration of Independence, the Bill of Rights of The United States

Constitution? Or is the placement of the commandments at the courthouse door an act of defiance, a defiance similar to that of the Alabama governor some decades ago or the Berlin Wall?

Bradford County, Florida made national news in June 2013 as Bradford County became the first and only place in the United States to have an atheist monument. An organization called the Community Men's Fellowship had placed a monument – two concrete slabs with the commandments inscribed in the concrete area between the wings of the Bradford County Courthouse. The action was contested by the National Atheist Association; removal of the concrete slabs was requested. The Bradford County group refused to remove their monument. As a mediated alternative, the Atheist group was permitted to install a monument in the same concrete area – an area termed "the free speech area." Although the result was not met with approval by all members of the group, the Atheist organization commissioned construction of a bench and a pillar inscribed with quotations from Benjamin Franklin, Thomas Jefferson, John Adams, and

Continued on page 9

# Probate Section Report



By Larry E. Ciesla

The Probate Section continues to meet on the second Wednesday of every month beginning at 4:30 p.m. in the third floor conference room in the criminal courthouse (220 South Main Street).

Following, in no particular order, are some topics discussed at recent meetings.

The biggest recent item of interest is that, for the first time in the Section's history, a member of the group has been elevated to the local bench. Long-time Section member Monica Brasington was recently appointed to the Eighth Circuit bench by Governor Scott. Judge Brasington starts her judicial labors on December 16th in the Family Division, taking over Judge Groeb's caseload. Due to ongoing construction work in the civil courthouse, as of this time Judge Brasington is not sure where her office will be located. The Section wishes to thank Susan Mikolaitis for her work in enlarging and framing a photo of the old Alachua County Courthouse that was presented to Judge Brasington during the Section's November meeting.

Another item of major significance for Section members is the new Order on Judicial Assignments signed by Judge Roundtree on November 15th, effective for the period November 18, 2013 through January 5, 2014. Judge Coker has been transferred to Gilchrist and Levy Counties for civil cases (including probate and guardianship). Alachua County probate and guardianship will revert back to the old system whereby the cases are split between Judges Monaco and Hulslander. Alachua County foreclosures will be handled by Judge Griffis. The Order is posted on the circuit's website ([circuit8.org](http://circuit8.org)) and is found in Order number 9.03(v7).

Also during the November meeting Richard Withers announced that UF Law School is putting together a program for an annual tax conference to take place in February, beginning in 2014, similar to the Heckerling Institute for estate planning held annually in Miami.

Jane Hendricks announced that, contrary to the prior experiences of some Section members, she was recently successful in e-filing a 58-page annual accounting (in a Marion County case). Jane reported that there were no glitches and that the portal internally divided the document into three parts.

Katherine Mockler led a brief discussion regarding a new checklist for the procedures to be followed for the purchase of an annuity for a minor, which has been created based on substantial input from Judge Rosier. I will be following up with the guardianship staff attorney, David Altman, for more information and clarification.

Susan Mikolaitis initiated a discussion as to whether or not there exists a good estate planning technique for a single person with a minor child who is interested in avoiding ownership of his or her homestead passing to the minor in the event of the untimely death of the single parent. The following were suggested: (1) recording a "Ladybird" deed, which would serve to convey title at the parent's death to the trustee of a trust for the benefit of the minor child; and (2) creation of a joint tenancy with right of survivorship using a sibling or a parent of the grantor as the joint tenant. Additional input for other ideas will be solicited during future section meetings.

During the October meeting, a peculiarity of the e-filing portal in guardianship cases was pointed out. The portal automatically "closes" guardianship files when Letters are issued. When an attorney attempts to e-file a document after Letters are issued, a message is displayed indicating the file is closed and that a \$50.00 reopen fee is required. The way to handle this is to simply ignore the request for the \$50.00 and continue to file your document. The request for the additional filing fee will then disappear.

I recently came across an interesting opinion of the 1st DCA in the case of *Cody v. Cody* (Nov. 26, 2013; Case No. 1D12-5550), which can be accessed through the 1st DCA's website. The opinion answers the question of what happens when a will contains a bequest to the individual named as personal representative with a direction that he or she is to divide the property, "as he (or she) sees fit and proper." In *Cody*, the testator's will first identified his three children as the objects of his bounty, and then continued with two such bequests, one for the testator's 12.5-acre homestead, and one for the residue of the testator's estate. One of the testator's three children was designated as personal representative. The two children who were not named as personal representative filed various petitions and, among other things, requested and obtained an order dividing the homestead parcel into two parcels of 6.25

*Continued on page 11*

# Criminal Law



By William Cervone

Happy New Year to all and welcome back from the holidays, although it might be premature to say that since it seems to me that the holidays now stretch well into January before anyone is really interested in getting any of the work that's been stalled since Thanksgiving

done. But that's another story. What the new year brings is often the same thing as what the old year left behind anyhow. Yes, it's another column on the continuing saga of the Great Graham Fiasco. At least for 2014 I can move to a new heading in dealing with this bit of tomfoolery about juvenile murderers and what they can be sentenced to.

When last I wrote about this, the 2013 legislature had done nothing despite actually edging to the very precipice of action. The courts had continued to issue conflicting and confusing opinions, sometimes wringing their collective hands and sometimes dancing on the head of a pin as to how many years equal a de facto life sentence, if that matters, which it might except that they haven't really said so. The big Supreme Court, after starting the whole mess without guiding anyone to a solution, had remained silent. And there we sat and continue to sit.

Now (last Fall to be technical but this mess has gone on so long that a few months doesn't seem to matter) entering the fray is yet another opinion, this from the 5th DCA that had not previously weighed in. Contrary to the 1st, 2nd and 3rd Districts, the 5th has now opted to go for the theory of statutory revival that has been argued by the State.

The facts don't matter anymore but briefly, Anthony Horsley is, among other things, a murderer and a robber who got life for those crimes even though he was 17 when he committed them. All too common, unfortunately. His sentencing judge gave him the hearing the law now requires, and apparently rejected the notion that his imperfectly formed and incomplete adolescent brain warranted anything less.

Enter the 5th DCA. Statutory revival, remember, is a theory under which when some statute or other is hopelessly impossible to follow you simply go back in time to previous versions of that statute until you find one that does work. In this instance, because Florida's current law only

allows a life without parole sentence for a murderer, and because SCOTUS says we can't automatically do that to Horsley because of his age when he murdered, we have an impossible to apply statute. Therefore, we use our imaginary time machine to get a statute that does work. Welcome back to 1993 and life with no parole for the first 25 years. Ignore the abolition of the Parole Commission that implicitly happened when we got rid of parole - it's still there anyhow dealing with all those old timers sentenced when we did have parole. Thus sayeth the 5th DCA.

So *Horsley* (121 So.3d 1130 (Fla. 5th DCA 2013)) has given us yet another variety of sentence, one which other DCAs refused to impose in similar cases because doing so was "legislating from the bench," as dissenting opinions calling for exactly that solution noted. But if the legislature won't get around to legislating a solution, who will? And as the 5th DCA pointed out in its opinion, the beauty of this solution is that the court really isn't legislating, it's just going back to something the legislature itself did once upon a time.

And so, with yet another conflict certified to the Florida Supreme Court, the wheel turns, inevitably grinding logic and common sense into fine powder. Implicit in all of these opinions is the undercurrent of a message to the legislature that they really, really need to do something. Bills addressing this have been filed for the 2014 session. Debate is underway even now before the session formally starts. Maybe this Spring the legislature will actually legislate. As much as I will regret having the fertile ground of ideas for columns that the Great Graham Fiasco provides, I really hope to tell you the final chapter by the end of this publishing year.

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# FBA – North Central Florida Chapter Update

The North Central Florida Chapter of the Federal Bar Association was hard at work over the holidays on 2014 event planning on the heels of receiving the national organization's Chapter Activity Presidential Citation for programming. Chapter President Ron Kozlowski and Membership Chair Stephanie Marchman accepted the award on behalf of the Chapter at the FBA annual meeting and convention in San Juan, Puerto Rico.

The annual meeting also featured one of the best CLE programs of the year, including sessions on a range of topics beneficial to both federal and state practitioners. They included presentations on the *Daubert* standard, gun laws, re-entry courts for recently released offenders, and women in the law.

*"The programs on women in the law, dealing with issues of equality in the legal profession, particularly the female leadership gap, were eye opening for me. The data presented was especially alarming – while women have made up about half the law school classes for 20 years, they only account for 15% of equity law partners and 25% of judges today,"* Marchman said of the event. *"In response, our local Chapter is planning to explore this gap and potential solutions with local judges, lawyers, and law students through panel and roundtable discussions in the spring."*

The first major federal bar event of 2014 in

Florida will be in Orlando and coincide with the Florida Bar Association mid-year meetings on January 24. The national board of the FBA will be holding its meeting in Orlando with an attendant CLE and receptions. The North Central Florida Chapter will participate and sponsor the event in conjunction with other chapters throughout the state. University of Florida law professor Sharon Rush is scheduled to present on Acceptable Judicial Bias at the CLE, which also will include other prominent national figures and federal judges. Contact the Orlando FBA chapter for more information and registration instructions.

Local members also plan to journey to Washington, D.C. again in April to participate in the national Capitol Hill Day. A cadre of FBA members will fan out across the legislative offices to lobby on issues of interest to the federal bar. Last year the FBA was instrumental in prodding Congress to confirm new federal judges. All FBA members are invited to join the effort if possible.

To learn more about both national and local federal bar initiatives, visit [Fedbar.org](http://Fedbar.org) or the North Central Florida Chapter Facebook page. Better yet, join the FBA to supplement your 8-Bar membership! Take advantage of all the FBA programs, and keep a lookout for upcoming events, including CLEs and judicial luncheons.

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## Selecting a Mediator *Continued from page 4*

some cases may be fact intensive and others legally complex and thus subject matter expertise versus legal expertise may be more relevant to one type of case than the other.

Another comment, "One of the most important characteristics of successful mediators is having the right set of people skills. Communication and problem solving are crucial to arriving at win-win situations."

Others note that a mediator who establishes rapport from the start increases the chances of a resolution.

"When" and "where" of mediation are easily addressed. Often, the "who," "what," and "why" requires some analysis.

Mediation thoughts from the Art of War:

- Who wishes to fight must first count the cost.
- The greatest victory is that which requires no battle.

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## President's Message *Continued from page 9*

Madelyn Murray O'Hair. The bench was placed adjacent to the monument of the commandments. Dedication of the bench brought supporters and vocal protesters and one man who spit tobacco juice on the bench and sent a picture of his action to the National Atheist Association. The actions of Bradford County were seen as a positive step in dispute resolution.

November and December brought the question of placement of temporary monuments or religious symbols on government property. During the days of Hanukkah, a local rabbi placed a menorah in front of the Civil Courthouse on Didley Plaza; he came each night to light the menorah. It is appropriate that a symbol of the Christian holiday of Christmas - not a reindeer or a Christmas tree- be placed in a similar position for the days of Christmas. The symbols were not designed to recruit, but to recognize values held by some citizens. In Tallahassee a nativity scene was placed in the rotunda of the Florida State capital; school children gather to sing

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# Our Very Own “Rosie the Riveter”

By Frank McCoy\*

In the mid-40s, the 8<sup>th</sup> Judicial Circuit Bar Association went to war on both active duty and the home front. Thirteen of the assemblage received waiver of dues in observance of their active military duty. Men of the bar served in all theaters of the world war, leaving the bar's home contingent sorely depleted. Like many male dominated professions of the day the Bar Association had its own 'Rosie the Riveters' who stepped up and filled their masculine counterparts' shoes.

The 'Rosies' were Clara Floyd (later Clara Gehan) and Ila Pridgen. Clara Floyd served as the second President of the Bar, and as the association's delegate to the State Bar Convention 1943–1945. She also chaired the committee to give voluntary legal services to military men and women in the circuit area which includes Camp Blanding and the Alachua Army Air Base (now seeing a different kind of air traffic as Gainesville Municipal Airport [n/k/a Gainesville Regional Airport]). Ila Pridgen was the Librarian at the College of Law and stepped forward to serve as the Secretary ...and the Treasurer. During the war she also served as “Executive Director.” The lady had so many titles she could conduct parliamentary procedure with herself. She practically ran the bar single-handedly during the war years, managing all correspondence and communication with the state Bar Association, and the legislature.

In those trying times the war brought hardship to the association with thirteen members serving on active duty and as aforementioned, not paying dues. The United States Office of Defense Transportation limited the Annual State Bar Convention to one day and allowed only two delegates from each local bar association. The bar went to a shoe string budget where before they were operating on the whole high-polished wingtip.

As always seems to be the rule, when times are tight financially, inevitably you are called on to give more than ever. Despite leanness the home front members were glad to serve when called on to help the men and women on active duty. The Red Cross and the Commander of the Alachua Army Air Field both approached the bar for free legal services for G. I.s. As the war neared its conclusion, Veteran's Affairs also came asking for help. Each time the bar graciously answered with assistance, and even recommended that such help be state-wide through the State Bar Association.

The programs at the bar lunches, which continued at the Primrose Grill, were also often on the war, or war related topics: Professor Lairdd on “Civil Rights in War Time”; Lt. Charles Yancy (law school grad) on Navy

recruitment; Commander from the Alachua Army Air Field, Major Garlin Powell on legal needs of service personnel; Prof. “Pop” Crandall on military justice; Lt. Col. Henry Gray, member and returning veteran on his war experiences; and a representative from the Office of Veteran's Affairs on the needs of returning GIs both as students at the University and citizens of our circuit. While the record shows keen interest on behalf of the bar members and that the guest speakers were qualified scholars and officers of note, there is little doubt that attendees were quite sick of war and the talk of war.

Despite the anxiety and gloom armed conflict always brings, life did go on. The Bar was concerned with pending legislation that affected the practice of law, and voiced its concern to members who served in the Legislature: Ira Carter and Joe Jenkins. Of note, the Bar supported: Women serving on juries for the first time; An Integrated Bar Association (not passed until 1956); Amendments to the Wrongful Death Act to protect orphans; continued diploma privilege for Florida Graduates' admission to the Supreme Court; and by a squeaky vote (7 to 5) supported the new Rule of Civil Procedure patterned after the Federal Rules. Of note, a resolution opposing suspension of driver's licenses after a DWI conviction failed, and was 'laid upon the Table.' Years later, after many victims of drunk driving were 'laid on the table' to stir no more sentiment the bar changed on that particular point.

The State Bar Association polled the local Bar Association then as now. The lawyers' biggest gripe was mandatory free legal service to the State Welfare Board (now the Department of Children and Family Services). On questions regarding fraud in residency requirements in divorce cases, they were determined not a problem in our circuit; nor were the segregation of trust accounts funds. Time records were rarely used for setting fees here. Of interest, records reflect that our lawyers during that time period felt that the prestige of lawyers as a professional class was actually increasing during those years....The jury is still out on that one.

A big concern locally was the Alachua County Courthouse being inadequate, and a fire trap. Some feared that during a heated exchange between rival litigating counsels a rampant spark could burn the whole place to the ground. Concern spread like...well...like wildfire. By unanimous vote a resolution was sent in 1944 to the Alachua County Commission requesting renovation of the courthouse with protection against fire for important official documents and court records (not to mention the

*Continued on page 11*

lawyers). The commission was asked to consider joining the facilities of both the state and federal courts (now the Hippodrome), in a single building.

Life as I said, did go on. The bar continued to make the same earth shattering policy and decisions that would affect the organization for many years to come. For instance: the Bar Association voted to 'pop' for two quarts of champagne for the 1942 New Year's Eve party and purchased a "suitable wedding gift" for Mr. and Mrs. S. L. Scruggs. The record makes no mention of said gift but no doubt it was indeed 'suitable.' Surely if the body of keen legal minds making up the bar routinely interpreted and clarified the law, they could pick out a pair of candle sticks or a china pattern. The Bar Association also held a B-B-Q at the Elks Club on West University. This location was selected over the usual Primrose Grill for its capacity, décor, proximity to anticipated guests' residences... oh, who am I kidding, it was held there because of the desire for certain liquid refreshments unavailable at the Primrose Grill.

Finally, to the relief and pleasure of the Bar and America as a whole, the war ended. The bar's resident 'Rosie the Riveter' (a.k.a. Ila Pridgen) resigned her temporary bar office to return to the law school and G. I. Bill students; while the members volunteered their services to returning veterans. The Bar Association was building a bridge to the 1950s with the war behind them and it seemed, bright times ahead.

*\*This article was recently located by our historian, Frank Maloney. He believes it to have been written by former Bar Secretary/Treasurer (and UF law professor) Frank McCoy more than 20 years ago.*

**President's Message***Continued from page 9*

Christmas carols. The lighting of the plaza and City Hall and the hanging of golden bows on the light posts have created a festive atmosphere – a temporary monument to the winter holiday – to be enjoyed by many.

Monuments are important visual reminders of our history, our laws, our values, beliefs, and goals. It is important that they facilitate recognition of individual differences and beliefs and draw us together.

The Josiah T. Walls Bar Association, the Young Lawyers Section, and the Eighth Judicial Circuit Bar Association are sponsoring a leadership workshop during the winter semester to encourage and promote sensitivity, respect and understanding.

May our monuments and symbols reflect inclusion, not exclusion, understanding and cooperation, honor and pride.

acres each, directing the PR to distribute one parcel to the daughter of one of the children, with the other parcel to be distributed to the three children, in equal shares, "at the discretion of the PR ..."

The 1st DCA reversed, holding that the wording employed by the testator has the legal effect of an absolute devise to the individual who is named as PR, and that individual then has the discretion to either honor or ignore the testator's request. According to the 1st DCA, the testator granted the one son the discretion to divide the property in any way he saw "fit," including the right to make no division at all.

Finally, I also came across the opinion in the 4th DCA in the case of *Golden v. Jones* (Oct. 20, 2013), which discusses at length the conflict within the DCA's as to the proper procedure to be followed when a creditor who was not provided with a copy of the Notice to Creditors files a claim in an estate after the three-month deadline has passed (but before expiration of the two-year deadline which bars all claims.) The 4th DCA certified the conflict on this issue. The procedure in the 1st DCA is governed by *Morgenthau v. Estate of Andzel*, 26 So.3d 628 (Fla. 1st DCA 2009), which was cited with approval by the 2nd DCA in *Lubee v. Adams*, 77 So.3d 882 (Fla. 2nd DCA 2012). Thus, in the 1st DCA (and the 2nd), a creditor in such circumstances is required to file along with its claim a petition for extension of time to (late) file the claim. If such a petition is not filed, the attorney for the estate has several options, including: (1) do nothing and assume the claim is barred; (2) file a motion to strike the claim and schedule a hearing; or (3) file and serve a notice to the creditor that it must file a petition for extension of time or the claim will be barred (this is the option I always use).

In the 4th DCA, under the *Golden v. Jones* opinion, the claim is deemed timely, notwithstanding the fact that it was filed after the expiration of the three-month deadline (assuming it was filed prior to the two-year bar). The 4th DCA cited to Rohan Kelley's criticism of the 1st and 2nd DCA opinions (contained in the *Practice Under Florida Probate Code* CLE book) which, he argues, deny the creditor's due process rights by assuming the claim is untimely. The conflict is likely to be resolved by legislation being prepared by the RPPTL Section for the 2014 legislative session.

All interested practitioners are welcome to attend all Probate Section meetings. Contact my office if you wish to be added to the e-mail list to receive notice a day or two prior to each meeting (lciesla@larryciesla-law.com).



Eighth Judicial Circuit Bar Association, Inc.  
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## January 2014 Calendar

- 1 New Year's Day – County and Federal Courthouses closed
- 6 Deadline for submission to February Forum 8
- 8 EJCBA Board of Directors Meeting – 5:30 p.m., Room 350, Levin College of Law
- 8 Probate Section Meeting, 4:30 p.m., 3<sup>rd</sup> Floor Conference Room, Alachua County Criminal Justice Center
- 10 EJCBA Luncheon, Chief Judge Robert E. Roundtree, Jr., "The State of the Circuit," The Woolly (20 North Main Street), 11:45 a.m.
- 20 Birthday of Martin Luther King, Jr. observed, County and Federal Courthouses closed
- 21 Family Law Section Meeting, 4:00 p.m., Chief Judge's Conference Room, Alachua County Family & Civil Justice Center

## February 2014 Calendar

- 5 Deadline for submission to March Forum 8
- 5 EJCBA Board of Directors Meeting – 5:30 p.m., Room 350, Levin College of Law
- 12 Probate Section Meeting, 4:30 p.m., 3<sup>rd</sup> Floor Conference Room, Alachua County Criminal Justice Center
- 14 *Valentine's Day – show the love!*
- 17 President's Day Holiday – Federal Courthouse closed
- 18 Family Law Section Meeting, 4:00 p.m., Chief Judge's Conference Room, Alachua County Family & Civil Justice Center
- 21 EJCBA Luncheon, Professor Mike Foley, UF Journalism, The Woolly (20 North Main St.), 11:45 a.m.

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