

# FORUM 8

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Eighth Judicial Circuit Bar Association, Inc.

June 2014

## President's Message



### Private Lives Or Everyone's Business

By Nancy T. Baldwin

Long, long ago elementary school children had a morning recess and an afternoon recess. Many games were played, including box hockey. There were no physical fights; there

were numerous verbal allegations and admonitions. The arrogant response chanted went this way:

Sticks and stones may break my bones,  
but words will never hurt me.

The children were wrong, very wrong. Bones are set and mend with seldom a vestige of a scar. Words in a technological society are like pebbles casually tossed in a fountain or a pond - they cause a ripple, another ripple, and another ripple, reaching more and more listeners and exacerbating the hurt. Words assume permanence.

In the 21st century many access Facebook and Twitter and various other social media, telling all to their many, many "friends" and those within hearing range of their blackberry and iPhone, sharing even the most intimate details. There appears to be little desire or expectation of privacy.

And yet, each one continues to function as if privacy were a given human right.

I shudder when I think that words exchanged in the privacy of one's own living room or study to and with a person believed to be a friend or significant acquaintance could quickly reverberate

around the world, enabling almost instant findings of guilt and scandal and massive punishments and consequences for what were deemed "hateful opinions." The opinions were not infant or youthful, but of long standing and public knowledge. This time the words were recorded - perhaps without consent and illegal in California - and released, or sold to an enterprising entrepreneur. The confessed seller/giver, after an interview with a prominent TV interviewer, retreated to a theatrical anonymity with multicolored welder's type masks, seeming to expect the applause due an earnest whistleblower.

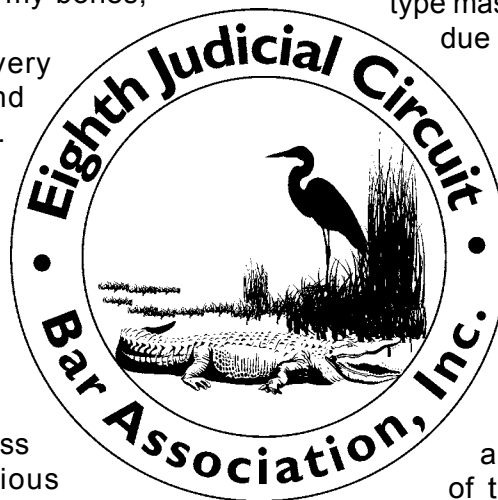
"Abhorrent," "hateful," "detestable." People so eager to condemn, to damage, to destroy, to assume the role and characteristics of David in his bout with Goliath.

Political correctness can anesthetize and diminish dialogue between those of different political persuasions and those of varying educational backgrounds and value systems. One is reminded of the power exerted by the German government to create spy and reporting behavior - in families, in businesses, and in social groups.

Americans seem to be eager to evaluate teachers and employees and to rank teams and schools. In a list of violations where would Sterling's words and actions be ranked? Will the punishment influence and contribute to the change of behaviors in a positive direction?

Approximately 50% of those questioned

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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 5<sup>th</sup> of the preceding month and can be made by email to [dvallejos-nichols@avera.com](mailto:dvallejos-nichols@avera.com).

**About This Newsletter**

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

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Any and all opinions expressed by the Editor, the President, other officers and members of the Eighth Judicial Circuit Bar Association, and authors of articles are their own and do not necessarily represent the views of the Association.

News, articles, announcements, advertisements and Letters to the Editor should be submitted to the **Editor** or **Executive Director** by Email, or on a CD or CD-R labeled with your name. Also, please send or email a photograph with your name written on the back. Diskettes and photographs will be returned. Files should be saved in any version of MS Word, WordPerfect, or ASCII text.

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**Deadline is the 5th of the preceding month**

# Pro Bono Assistance to Community Non-Profit Organizations

By Marcia Green

Blue Oven Kitchens came to Three Rivers Legal Services in 2010 for help in setting up their non-profit organization, assistance with their 501(c)(3) application as well as business and board structure advice. Local attorney Phil Kabler, specializing in business law, had recently signed up to become a pro bono attorney with Three Rivers under the Florida Bar ONE Campaign. The match couldn't have been a more perfect fit!

Blue Oven Kitchens, located on South Main Street in Gainesville, works with North Central Florida small farmers and low-income food entrepreneurs. It connects local farmers with consumers and the food service industry and provides education and resources that benefit local food producers as well as the community. Small farmers can create after-market products in the state-of-the-art certified kitchen. Cooking classes are held to promote locally grown foods. Blue Oven Kitchens is a food "incubator" to the local food industry similar in concept to a business incubator by focusing on startup and early stage companies. According to Val Leitner, president, Blue Oven Kitchens now supports 12 entrepreneurs at the facility. They are local food businesses that include catering companies, chocolatiers, and sauce and seasoning producers.

"We could not have done this without the pro bono legal help we have been provided," says Leitner. "The assistance allowed us to start up! We could never have afforded the legal fees and, most likely, would have gotten into trouble if the legal help hadn't been available."

Phil Kabler continues to work with Blue Oven Kitchens and has involved other local volunteer attorneys as well. Attorney Sven Hanson provided legal help with Blue Oven's trademark and Robert Butts worked on lease agreements. "Everyone has been so fabulous ... so kind and so helpful," raves Leitner.

The Hawthorne Life Enrichment Center is another organization that has benefitted from the assistance of Three Rivers' Volunteer Attorney Program. Gainesville attorney Tracy Jayne "TJ" Smith Frasier began working with HLEC in January 2013 initially to assist the organization with a memorandum of understanding with the City of Hawthorne. The City owns property and the organization hopes to eventually build a center on this property for use by senior members of the local community.

Organized in 2008 with direction from the

Department of Elder Affairs' Communities for a Lifetime Initiative, the Hawthorne Life Enrichment Center began meeting "to enrich the lives of seniors with social activities, classes and luncheons." HLEC provides meals and snacks, resource and medical information, computer classes, field trips, safety information and guest speakers. Residents, young and old, living in greatly under-served eastern Alachua County come from Hawthorne, Grove Park, Campville and Johnson, and are involved with and benefit from HLEC.

Organization Chairperson, Deloris Roberts, spoke highly of TJ's commitment and legal work, which included attending City of Hawthorne Commission meetings, assisting with the 501(c)(3) application and working with the organization in numerous ways. A 99-year lease was negotiated and, according to TJ, "HLEC is one step closer to securing a multigenerational facility for the people of Hawthorne."

These are two examples of the pro bono services provided by members of our local legal community. An organization is eligible for pro bono assistance and referral from Three Rivers if it is primarily composed of persons eligible under the federal poverty guidelines or if the group's primary purpose is serving the interest of poor persons. The organization must provide information showing that it lacks, and has no practical means of obtaining, funds to retain private counsel.

Interested in helping with similar organizations or becoming a volunteer with Three Rivers Legal Services? Contact Marcia Green at 352-372-0519 or [marcia.green@trls.org](mailto:marcia.green@trls.org). Visit our website at [www.trls.org](http://www.trls.org) and find out how you can become involved under the tab "How You Can Help Your Community."



Attorney Kristine Van Vorst and tournament sponsor Anne Aulisio (Gainesville Dermatology) enjoy an afternoon of golf to benefit the Guardian Ad Litem Foundation

# Alternative Dispute Resolution

## 5 Reasons Not to Eat Crustaceans

By Chester B. Chance and Charles B. Carter



Everyone knows mediators often serve shrimp, lobster and crab cakes at mediation. Indeed, many lawyers suggest such culinary delights lead to a successful mediation. A visit to the PETA website always provides a column each year. This year we are trying to focus on crustaceans and mediation.

Our attention was drawn to the PETA "Feature": "5 Reasons Not to Eat Crustaceans." From reviewing the website we have learned lobsters, crabs and other crustaceans can "feel pain, make decisions and forge relationships." In fact, your authors often consult with crustaceans when making decisions about stock market investments, and suggest consulting with a crustacean prior to marriage.

What are the 5 reasons? Taken exactly from the PETA website are the five reasons and the information which supports each reason as follows:

1. "They're fascinating animals." (Crustaceans include shrimp, crabs, lobster and barnacles) This is a compelling statement especially when one considers the reasons listed on the website to support this statement:

- a. Not all lobsters have claws; (however, weakens the pro-crab argument)
- b. Lobsters and crabs can be many different colors – even bright blue! (compelling indeed)
- c. Lobsters travel up to a hundred miles a year; (most lobsters drive a Prius)
- d. When it's time to grow, they shed their shell – then eat it? (truly fascinating)

Comment: These are compelling reasons why crustaceans are fascinating animals. We would eat our shell, too, especially if it was bright blue. Now that we have learned some lobsters do not have claws we will not have to take our nutcrackers and mallets to our next lobster roast.

2. "They're a lot like us."

How so, you ask?

- a. Lobsters can live to be a hundred years old (please see reason #1 as this also makes them fascinating)
- b. When they are teenagers, they are awkward, too; (crustaceans also play video games too much and text incessantly)
- c. They sometimes walk claw-in-claw; (unless they are a lobster without claws who, thus, are not like us)
- d. Lobsters carry their young for nine months; (and hold baby showers)
- e. They can be right-handed, left-handed or ambidextrous; (but can they juggle?)
- f. Individual crabs will help neighboring crabs fight off intruders;
- g. Crabs are neat freaks.



Comment: By golly, they are a lot like us. This is why they should have constitutional rights.

3. "They feel pain."

How do we know this? The reasons are listed:

- a. Crustaceans limp after being hurt; (especially if their leg is missing)
- b. Crustaceans make decisions based on past painful events; (they will never get involved in another land war in Asia)
- c. They release adrenaline-like hormones when in pain;
- d. They are smart, sensitive beings (although this seems to be more of a hope than a reason, but, still, it's more than we can say about our Uncle Ed)

*Continued on page 11*

# EJCBA Golf Tournament Benefits Guardian Ad Litem Foundation

By Mac McCarty and Amber O'Connell

The Eighth Judicial Circuit Bar Association hosted its annual Charity Golf Tournament on UF's Mark Bostick Golf Course Friday, March 28, 2014, benefitting the foundation supporting the Guardian ad Litem Program in our Circuit. The Guardian ad Litem program is a volunteer-based organization that provides representatives to children involved in court proceedings, primarily as a result of alleged abuse or neglect. With the help of all of the golfers in this two-person scramble tournament and incredible sponsors, the EJCBA was able to donate more than \$10,000 to the program, making this the most successful tournament yet. Our association was honored to have the proceeds check presented to The Guardian Foundation, Inc.'s President, Susan Faulkner-O'Neal, by Florida Bar President Eugene Pettis and EJCBA President, Nancy Baldwin, at the April EJCBA Luncheon. Event sponsors and contributors included the following:

Dharma Endowment Foundation, Inc.  
McCarty & Naim, P.A.  
Zaxby's  
Alter Ego Fitness  
Gainesville Dermatology Aesthetic Center  
Capital City Bank Investments  
Gainesville House of Beer  
Shaun C. Borden Financial Services  
Roberts Insurance, Inc. - Scott Roberts  
Folds & Walker, LLC

Affordable Chiropractic Care Center  
Steve Rappenecker, Esq.  
The Dobbins Group, LLC  
Community State Bank  
Frederick D. Smith: The Resolution Center  
Robert Stripling, Esq.  
Renaissance Printing  
Mark Bostick Golf Course  
Fluid Lounge  
101 Downtown  
Gainesville Country Club  
Sid Wilson  
Guardian Foundation: Board Member  
Gainesville Liquor & Wine Shoppes

Following a catered lunch by Zaxby's, the tournament golfers of ALL skill levels began with a shotgun start at 1 p.m. Avoiding a 70% chance of rain that held off, a light drizzle near the end of the day didn't deter more than 90 golfers – fellow lawyers along with community members who support the Guardian Ad Litem Program's effort – from competing for gross, net and hole prizes along with a multitude of door prizes. The post round reception provided abundant food prepared by the tournament committee and adult beverages provided by our gracious sponsors. Most importantly the EJCBA and all of the participants were able to benefit children within our community.

P.S. The Guardian ad Lemonade stand raised \$179 !!!



EJCBA Board member Rob Birrenkott and his adorable daughters at the Guardian ad Lemonade stand at the Golf Tournament to benefit the Guardian Ad Litem Foundation

# Criminal Law



By William Cervone

As we end the publishing year I am stunned to be able to report that the sun has risen in the west, the moon is indeed made of cheese, defendants have pled guilty and gone to prison with narry a whimper, and the Great *Graham* Fiasco is over. At long last, meaning since 2010 when the United States

Supreme Court issued its *Graham* and *Miller* decisions on juvenile mandatory life sentences, the Florida legislature has passed legislation addressing the problem. I hesitate to use the word “solving” because picky legal questions remain about things like retroactivity, because the Governor has not, as I write this, actually signed the bill (although it is all but certain that he will), and because there will no doubt be appeals and challenges for years to come. But it seems likely that the problem has been fixed.

Criminal practitioners, of course, know that the basic issue is the Supreme Court’s declaration that mandatory life sentences for juveniles cannot and do not pass constitutional muster. They and readers of this column know that the result has been an endless spiral of conflicting Florida decisions trying to address the absence of a sentencing alternative that comports with the Supreme Court’s directions. Rather than belabor the problem, I’ll settle for outlining the solution.

First, juveniles who commit capital murder can still be sentenced to mandatory life. Under the Supreme Court’s rulings, however, before that can happen the sentencing judge must hold a hearing and find that such a sentence is appropriate and necessary. It cannot be automatic. Various factors related to the crime and the juvenile defendant must be considered so that this decision is individualized. Only if mandatory life is not the sentence the judge opts for do Florida’s new procedures come into play.

Should mandatory life not be the sentence, the juvenile must receive a minimum 40 year sentence. For an actual killer, as opposed to an accomplice, a judicial review hearing must then be held after 25 years to determine rehabilitation and potential suitability for release. For an accomplice, as opposed to the actual killer, the review hearing is held after 15 years. Ten specific factors are to be considered, including things like the maturity level and background of the defendant, the nature of the crime, the impact on the community, demonstrated rehabilitation or prospects therefore, and similar matters. A juvenile who had committed previous violent crimes - perhaps another murder, a robbery, or a sexual assault - would not be entitled to any review of the sentence.

Similarly, juveniles convicted of non-homicide crimes would have their sentence reviewed at 20 years and, if they remain in prison, again at 30 years.

In other words, welcome back parole hearings! True, the Parole Commission is not in this loop but if it walks like a duck and quacks like a duck it’s probably a duck. And instead of an administrative hearing of the sort that the Parole Commission still holds for the dwindling number of parole eligible inmates in Florida’s prisons, these review hearings will be full court proceedings, probably contested and fought over by people (other than those victims who have stuck it out) who had no involvement in or firsthand knowledge of the original case. I mean, what are the odds that the original prosecutor, defense attorney and trial judge will still be around?

But at least it’s done. And you don’t have to suffer through any more Great *Graham* Fiasco columns.

And on that happy note I wish you a wonderful summer!

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## Bennett Inn Of Court Accepting Applications

The Gerald T. Bennett American Inn of Court is accepting applications for its September 2014 – March 2015 session. Applications can be downloaded online at <http://bennettinn.org/>. The Bennett Inn of Court was established in 2011 to foster a cooperative learning environment between law students, attorneys, and judges, with a strong emphasis on exploring cutting-edge legal issues, mentoring, and interactive learning. The Inn is part of the American Inns of Court, America’s oldest, largest and fastest growing legal mentoring organization. For over twenty years, American Inns of Court have provided judges, lawyers, and law students an opportunity to participate actively in developing a deeper sense of professionalism, achieving higher levels of excellence and furthering the practice of law with dignity and integrity. Meetings are held monthly at the Levin College of Law, with dinner provided. Continuing legal education credits are available via participation in each meeting. Applications are due by June 20, 2014 for returning members and by June 27, 2014 for new members. For additional information, contact Norman Bledsoe c/o Folds & Walker, LLC at (352)372-1282 or [norm@foldsandwalker.com](mailto:norm@foldsandwalker.com).

# Women, The Law, and Leaning Into Leadership: A Leadership Roundtable

By Kate Artman

On April 11, 2014, attorneys from all over the state of Florida came together to discuss an issue that affects us all: women, the law, and the female leadership gap in the legal profession. The idea for the event was born when Stephanie Marchman, Chair of the Roundtable Planning Committee, was given a copy of Sheryl Sandberg's book *Lean In* for Mother's Day 2013 and attended a panel discussion on women in the law last fall. The numbers are staggering: approximately half of all law students have been women since the early 1990's, but women lawyers make up only 4% of managing partners, 15% of equity partners, and 24% of federal district judges. Struck by the disparity between female representation and female leadership in the legal profession, Stephanie Marchman began to talk about the issue. First she spoke with members of the North Central Florida Chapter of the Federal Bar Association. The response was overwhelmingly positive; nearly half the board joined the planning committee for a CLE on the topic. Next, Stephanie spoke to members of the federal and state judiciaries, the Eighth Judicial Circuit Bar Association, the Josiah T. Walls Bar Association, the University of Florida Levin College of Law, the Clara Gehan Association for Women Lawyers, and the Florida Association for Women Lawyers. Attorneys everywhere agreed: this was a serious problem that deserved serious discussion. With each organization's generous contributions, attorneys, judges, and other legal professionals came to the table for one afternoon to discuss the female leadership gap in the legal profession.

The event opened with a presentation by Professor Jason Nance on gender diversity in the legal profession. Data from Professor Nance's recent empirical study showed that women are vastly underrepresented in top-level jobs in the legal profession, especially in large metropolitan areas of the South. Further, the data showed that minority women were especially underrepresented among law firm partners. As recently as 2011, female representation was high among law firm associates at 45.4%, but as low as 19.5% among law partners.

Following Professor Nance's presentation, distinguished lawyer leaders - including Hank Coxe, Mayanne Downs, Fred Franklin, Nancy Hess, Tracey Jaensch, Kevin Johnson, John Jopling, Nicolle

Shalley and Jeanne Singer - took turns sharing their personal experience with the leadership gap in the legal profession. A federal judicial panel sparked the next round of discussion, including the Honorable Patricia D. Barksdale, the Honorable Sheri Polster Chappell, the Honorable Anne C. Conway, the Honorable Wm. Terrell Hodges, the Honorable Marcia Morales Howard, the Honorable Gary R. Jones, the Honorable Philip R. Lammens, the Honorable M. Casey Rodgers, and the Honorable Karen K. Specie. Following each panel, the honored speakers joined discussion groups - each a combined mix of experienced lawyers, new lawyers, law students, and other legal professionals - to address the leadership gap. At the end of each discussion round, table moderators shared their table's discussion with all attendees.

Discussion topics varied at each table, as did solutions. On the topic of professional confidence, Table Moderator Erin Jackson noted that women are often the harshest critics of other women, particularly in the work place. Rather than criticize, she encouraged women to pull each other up to foster open dialogue in the workplace about having children, career plans, and accommodations. Similarly, Table Moderator Cherie Fine encouraged women to be brave and request the accommodations they need - and in the process, make the workplace a better environment for everyone. By contrast, Table Moderator Lea Johnston opined that employers - not employees - should carry the burden of discussing accommodations for men and women alike who struggle to balance work and family.

On the topic of law firms as businesses, Table Moderator Meshon Rawls called for a shift away from traditional billable hours - a notoriously burdensome system for women balancing motherhood and careers - and refocusing on other ways that female attorneys bring value to firms. Table Moderator Susanne Bullard proposed an alternative solution to the billable hour predicament: institutional flexibility, so that women can work remotely when needed and still fulfill their required hours. Table Moderator Dawn Vallejos-Nichols provided yet another alternative: restructuring private firms to be more like government practice, accompanied with flexible hours.

Other attendees opined that the problem will solve itself with time. In the words of Table Moderator

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# Notice Of Solicitation: Request for Proposals (RFP) for Special Magistrate Services

Notice is hereby given that the City of Gainesville, Florida will receive Request for Proposals for Special Magistrate Services. RFP #CODE-140041-PJ.

The City of Gainesville, Florida, through its Municipal Code of Ordinances and Zoning and Land Development Regulations, requires property owners within the City to maintain certain minimum standards for their property. When an owner violates one or more provisions of the City's code or zoning regulations, Code Enforcement Officers are authorized by Florida Statutes Chapter 162, and the City of Gainesville Code of Ordinances, to bring the matter before a Special Magistrate for adjudication. The Special Magistrate presides over Code Enforcement hearings, listens to testimony, reviews evidence presented, and makes a determination as to whether or not the property owner has violated the code, as alleged by the Code Enforcement Officer. The Special Magistrate is authorized to order a property owner to comply with the Code by a certain date or face the imposition of fines for noncompliance. A Special Magistrate's order

may become a lien on the property if the property owner fails to bring the violation(s) into compliance with the Code within a certain timeframe. The Special Magistrate is also authorized to extend the time for compliance with prior orders, approve settlements, and authorize collection of code enforcement liens.

The attorney(s) selected will be expected to attend Code Enforcement hearings which are currently held on the second Thursday of each month at City Hall, 200 E. University Avenue, Gainesville, Florida, beginning at 9:00 a.m. The frequency of hearings may be increased to accommodate above normal volume of cases. Hearings generally last from one to three hours (or longer on rare occasions). The attorneys selected must be current members in good standing with the Florida Bar Association and have at least five (5) years experience in the practice of law. Knowledge of and experience with municipal, state, or county government and land use laws are preferred. Selected

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*The Eighth Judicial Circuit Bar Association  
invites you and your guests to join us for our*

**2014 Annual Dinner and Meeting**  
**Thursday, June 12, 2014,**  
**6:00 pm until 8:30 pm**  
*at the*  
**Sweetwater Branch Inn**

**Speaker:**

**Dean Robert Jerry - "Lawyers, Leadership,  
and Followership: Some Lessons from the  
Last Three Decades"**

**Reservations required**  
**\$40 for members and non-lawyer guests**  
**\$50 for non-members**

**RSVP**

*Yes, I will be attending  
I will be bringing \_\_\_\_\_ guests.*

*The following individuals will be  
attending (please include yourself  
and select meals for each):*

*Mr./Ms. \_\_\_\_\_*

*Meal: Beef \_\_ Chicken \_\_ Vegetarian \_\_*

*Mr./Ms. \_\_\_\_\_*

*Meal: Beef \_\_ Chicken \_\_ Vegetarian \_\_*

*I have enclosed \$\_\_\_\_\_.*

*I will pay at the door.*

*Please RSVP by email to [execdir@8jcb.org](mailto:execdir@8jcb.org),  
by fax to 866-436-5944 or mail to EJCBA,  
P. O. Box 13924, Gainesville, FL 32604.  
**Must be received no later than June 6<sup>th</sup>***



# Administrative Challenges to Agency Action

By Jennifer B. Springfield and Alexander Boswell-Ebersole



The Florida Legislature enacts laws, some of which delegate authority to the state's executive branch agencies, allowing these agencies to implement certain state laws. Agencies implement these laws by engaging in rulemaking and by carrying out other actions, such as issuing permits and licenses. Florida's Administrative Procedure Act (APA), codified as *Fla. Stat., Chapter 120*, prescribes certain procedures for challenging both agency rulemaking and other types of agency action (often referred to as "proposed or final orders").<sup>1</sup> This article provides a brief overview of how challenges to these other types of agency action<sup>2</sup>—specifically, requests for formal and informal hearings pursuant to *Fla. Stat. § 120.569* and *Fla. Stat. § 120.57*—operate under the APA.

In contrast to agency rulemaking, these other types of agency action—many of which relate to natural resources and the environment—involve actions that affect a particular person, e.g., issuing or denying an application for a consumptive water use permit. Although other potential avenues to challenge exist and may be applicable when an agency acts,<sup>3</sup> when it comes to this sort of agency action, requests for administrative hearings are the most common form of challenge seen.

When intending to take agency action, an agency must first properly give notice of its proposed action and of the right to challenge to all persons who may have standing to challenge the action—also known as "substantially affected persons."<sup>4</sup> This notice is deemed to provide the persons with a "clear point of entry,"<sup>5</sup> and if a "substantially affected person" does not act upon the "clear point of entry" within 21 days, i.e. file a request for a hearing, the right to challenge is waived and the agency's intended action becomes final agency action.<sup>6</sup>

On the other hand, where a "substantially affected person" requests a hearing within the appropriate 21-day time period, *Chapter 120* provides for formal and informal hearings. *Fla. Stat. § 120.569* sets forth the procedures generally applicable to both formal and informal hearings. *Fla. Stat. § 120.57(1)* and *Fla. Stat. § 120.57(2)* provide additional procedures that apply specifically to formal hearings and informal hearings, respectively. Uniform rules of procedure also apply

and are adopted as *chapter 28-106, Fla. Admin. Code*, as well as some provisions of the Florida Rules of Civil Procedure. Whether a hearing is formal or informal depends on whether it involves one or more disputed issues of material fact. Challenges involving disputed issues of material fact lead to a formal hearing and challenges without disputed issues give rise to an informal hearing.

A "substantially affected person" requesting either a formal or informal hearing must file a petition with the agency which intends to take the action<sup>7</sup> and the petition must include certain information.<sup>8</sup> If the petition contains a request for a hearing involving disputed issues of material fact, the agency will most often forward the petition to the Division of Administrative Hearings and an Administrative Law Judge (ALJ) will hear it, whereas agency personnel are more often assigned to act as hearing officers to hear informal petitions. In either case, the ALJ or agency hearing officer will issue findings of fact and conclusions of law through a recommended order. ALJs and agency personnel acting as hearing officers issue recommended orders at the conclusion of the hearing process. These are then sent to the appropriate agency where the agency head usually issues the final order.<sup>9</sup>

Once an agency issues a final order, it may be appealed pursuant to *Fla. Stat. § 120.68* to the appropriate district court of appeal. Only a party may file an appeal,<sup>10</sup> the notice of appeal must be filed within 30 days of the rendition of the final order,<sup>11</sup> and the appropriate court within which to file an appeal is the court "in the appellate district where the agency maintains its headquarters or where a party resides or as otherwise provided by law."<sup>12</sup>

- 1 Note that, in addition to the APA's requirements, provisions published in the Florida Administrative Code, some of which are generally applicable to the executive branch as a whole and others that are specific to particular agencies, also provide procedural requirements.
- 2 See *Fla. Stat. § 120.52(2)* (providing the APA's definition of "agency action").
- 3 See, e.g., *Fla. Stat. § 120.565* (authorizing a substantially affected person to seek a declaratory statement from an agency that explains the agency's opinion as to the applicability of a statutory provision or of a rule or order).

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## President's Message *Continued from page 1*

in the week following the release of the tapes were not in favor of the mandate for Sterling to sell the Clippers. Many Americans expressed hesitation about punishing people based on private conversations that are later made public.

Jeff Jacobs of The Boston Globe, quoted in The Week, stated:

Sterling deserves no sympathy for his “odious” comments, but on occasion, I have yielded to impulses in private that I would be loath to be judged by in public. Haven’t you? What concerns me most is not the ranting’s of “an 80 year old plutocrat” but “the rapidly disappearing presumption that things we say in our personal lives will stay personal. Racism is ugly, but allowing modern technology to make our private lives everyone’s business is even uglier. You could be next. (May 9, 2014)

What is there that makes Americans so eager to find out everyone else’s business? So eager to write sensationally about one’s employer, mother, or former lover, to violate the privacy, the trust, and the confidentiality?

What is in her files, her phone? Germany’s Angela Merkel was and is so vexed and annoyed at the USA for NSA’s hacking into her information that she is unwilling to cooperate with and support President Obama in his plans to work with the government of Ukraine. She cites a disappointment, a lack of trust in the former positive relationship. Her privacy and the privacy of her country have been invaded; she reports feelings of being violated, of finding the snooping unacceptable and destructive of friendship.

There is no mention of the right of privacy in the United States Constitution. The Bill of Rights – especially the First, Third and Fourth Amendments are determined to be the foundation/ basis for privacy for Americans in various arenas and venues. Privacy and speech become kin and also partners in conflict.

The negative vocal student and faculty response to the opinions and actions of Condoleezza Rice, Stanford Professor, musician, and former Secretary of State, have contributed to her recent withdrawal from the graduation ceremony at Rutgers University, New Jersey. The President

of Rutgers did not withdraw the University’s invitation and groups of students encouraged her participation. However, she stated that she withdrew because she did not want the graduation ceremony to become a disruption. A university is historically the site of questioning, of challenging, of developing well thought-out opinions and value systems. The attempt to deny an invited guest the opportunity, the freedom, to speak because of her history, particularly at a university, is an indicating of threat, of closed thinking.

The exposé of Sterling’s so called plantation mentality is parallel to that of the vocal ranting’s of rancher Cliven Bundy. One is forced to confront the reality that racism remains. Individuals and groups must assist the government in the search for justice. The responsibility to be shouldered by attorneys and judges is very great. It is essential for our democracy that we support the Constitution and the Bill of Rights.

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## Leadership Roundtable *Continued from page 7*

AuBroncee Martin, this is not a revolution; it is an evolution. Large numbers of female law students continue to enroll in school around the country and new attorneys have stronger mentor-mentee relationships, with male and female attorneys alike, than those that existed just a decade ago. Many attorneys are optimistic that the legal profession is changing, albeit slowly, and female leadership will soon be on the rise.

The most important lesson discussed at the Leadership Roundtable is the power of conversation. In one afternoon, dozens of attorneys, judges, and legal professionals came to the table to address a topic of utmost concern. And while no one identified a single solution to the problem, conversations started at discussion roundtables raised awareness of topics infrequently discussed. Now that the conversation has begun, we encourage everyone to continue the conversation in their workplace: partners, talk to your associates about the quality of their work and the value they bring to your firm. Associates, talk to your bosses about accommodations you need to succeed in the legal profession. Students, talk to potential employers about your work and life goals; do not leave before you leave. The more we talk, the closer we come to finding a solution.

## Crustacean Mediation *Continued from page 4*

4. "They are killed in horrific ways."

How do we know this? The reasons, again, are listed:

"Experts agree, lobsters' and crabs' final minutes are excruciatingly painful." Boiling is "unnecessary torture." (This is why we steam our lobsters.) Some lawyers have suggested they be hired to talk a lobster to death, but this also seems cruel and unusual. "Splitting" puts a crustacean into a state of shock and it probably (within a reasonable degree of crustacean certainty) feels itself being cut. (Crustaceans have been known to go into a coma at the mere sight of clarified butter.)

5. "The tide is turning."

What does that mean? It means, "As people learn more about lobsters they are getting more protection."

Comment: The people or the lobster?

Well, those are 5 reasons not to eat crustaceans. Truly, crustaceans are fascinating, however, they are also delicious. Therefore, we think it is okay if they walk claw-in-claw, especially if it's a 2-for-1-lobster feast night.

We are now convinced and regret that lobsters are killed in horrific ways such as boiling, dismembering and splitting. Therefore, when using any of these methods, please remember the fork goes on the left and the knife on the right at the table setting.

Because of convincing arguments such as the ones listed above, truly the tide is turning and the website also lists organizations, which are providing crustaceans with more protection. Those organizations include: the European Food Safety Authority, New Zealand, German grocery store chains and the city of Reggio Emilia, Italy. (Well, actually, we understand Reggio Emilia's protection was requiring Italian diners to only eat crustaceans while sipping a white wine, preferably, Vernaccia.

Once again, we thank PETA for allowing us to write a column by merely quoting its website. If you think we made any portion of this up (other than the part about Uncle Ed) please look up this "feature" on the website. We acknowledge PETA does some amazing work, but in the meantime please pass the crab cakes.

## Environmental Law *Continued from page 9*

- 4 See Fla. Stat. § 120.569(1) and Fla. Admin. Code R. 28-106.111.
- 5 See *Manasota-88, Inc. v. State, Dept. of Environmental Regulation*, 417 So.2d 846 (Fla. 1st DCA 1982).
- 6 See Fla. Admin. Code R. 28-106.111(2).
- 7 Fla. Stat. § 120.569(2)(a). Also, compare this requirement to the requirement that persons wishing to challenge proposed or existing rules must file the petition directly with DOAH.
- 8 See Fla. Stat. §§ 120.569(2)(c) and 120.54(5)(b) (4). See also Fla. Admin. Code R. 28-106.201 (enumerating requirements applicable to requests for formal hearings) and 28-106.301 (enumerating requirements applicable to requests for informal hearings).
- 9 Fla. Stat. § 120.57(1)(k).
- 10 See Fla. Stat. § 120.68(1).
- 11 Fla. Stat. § 120.68(2)(a).
- 12 *Id.*

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## Special Magistrate *Continued from page 8*

Sealed RFP's will be received by the City of Gainesville until 3:00 p.m. (local time), on June 19, 2014 at which time proposals will be publicly opened.

The City utilizes Demandstar.com to perform bid notification and document fulfillment. They can be reached at 1-800-711-1712 or [www.demandstar.com](http://www.demandstar.com)<<http://www.demandstar.com/>>. For additional information please contact the Purchasing Division at (352) 334-5021, Patti Jo Davis Senior Buyer.

The City of Gainesville reserves the right to reject any and all proposals received in response to the Request for Proposal as determined to be in the best interest of the City of Gainesville.



The Guardian Foundation, Inc.'s President, Susan Faulkner-O'Neal, EJCBA President Nancy Baldwin, golf tournament committee intern and law student Amber O'Connell and Florida Bar President Eugene Pettis at the presentation of the check for \$10,000 from the proceeds of the EJCBA's annual golf tournament to benefit the 8th Judicial Circuit's Guardian ad Litem program.



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

## June 2014 Calendar

- 11 Probate Section Meeting, 4:30 p.m., 3<sup>rd</sup> Floor Conference Room, Alachua County Criminal Justice Center
- 12 EJCBA Annual Dinner and Meeting, Keynote Speaker Dean Robert Jerry, "Lawyers, Leadership and Followership: Some Lessons from the Last Three Decades," 6-8:30 p.m., Sweetwater Branch Inn
- 25-2 64<sup>th</sup> Annual Florida Bar Convention, Gaylord Palms Resort & Convention Center, Orlando

## HAVE A GREAT SUMMER!

Have an event coming up? Does your section or association hold monthly meetings? If so, please fax or email your meeting schedule to 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).