

# FORUM 8

Volume 74, No. 6

Eighth Judicial Circuit Bar Association, Inc.

February 2015

## President's Message



### Some Mid-Term Reflections

*By Ray Brady*

As I sit down to write this column in early January, it occurs to me that I have made it half-way through my term as the EJCBA President for 2014-2015. This seems like a fitting time to take stock.

Looking back over the year, I would like to extend my deepest thanks to all of our EJCBA Officers and Directors, to all of our Committee chairs and members, to our Newsletter Editor Dawn Vallejos-Nichols, and to our Executive Director Judy Padgett, for their tireless efforts in making the EJCBA run exquisitely. Thanks to everyone's hard work, you, our members, have enjoyed a great social (chaired by Anne Rush), a memorable annual Cedar Key Dinner (chaired by Norm Fugate), and several educational and inexpensive CLE programs (chaired by Stephanie Marchman).

In addition, we all can be proud that you and your EJCBA brightened this past Christmas for more than 140 Alachua County Head Start students thanks to the Holiday Project (chaired by Anne Rush, and presented by Carl "Santa" Schwait). Our adult community has benefitted from the monthly Law in the Library educational series presented at our downtown library (chaired by Jan Bendik). And last, but not least, our "Building Bridges" luncheon series (chaired by President-Elect Rob Birrenkott), has not only presented us with interesting speakers

presenting on diverse topics of local interest, but the series also has led to meaningful collaborations between the EJCBA and local organizations. Our re-ignited relationship with the Alachua County Medical Society led to a recent joint dinner and panel discussion, and there will be similar future events with our friends in the medical community. Our luncheon presentation on the new GRACE Marketplace facility has generated our new "Ask a Lawyer" project, which is a collaboration between GRACE Marketplace, the EJCBA, Three Rivers Legal Services, and Southern Legal Counsel. The Ask a Lawyer project will give us an opportunity to provide legal advice to the homeless at GRACE, and earn pro bono hours and CLE credits at the same time.

Looking ahead at the remainder of my term, you can look forward to:

**The first annual "Spring Fling,"** our new party/social, on the grounds of the Thomas Center on the evening of Friday, March 6, 2015. Music will be provided by Bruce Brashear's band, "Squid Love."

This is a free event for EJCBA members and a guest (we said this is a party).

There will be free craft beer, wine, and other refreshments, and food may be purchased from food trucks that will be on site.

**The annual EJCBA Golf Tournament** to benefit the Guardian Ad Litem Program, on the afternoon of March 20, 2015.

On April 10<sup>th</sup>, following the EJCBA luncheon, we will offer **the Leadership Roundtable 2015**, which is a major CLE event. The title for this year's Roundtable is "A Cultural Revolution: Redefining Success in the

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## 2014-2015 EJCBA Officers

**Raymond F. Brady**  
President  
2790 NW 43rd St, Ste 200  
Gainesville, FL 32606  
(352) 373-4141  
(352) 372-0770 (fax)  
[rbrady1959@gmail.com](mailto:rbrady1959@gmail.com)

**Nancy T. Baldwin**  
Past-President  
309 NE 1st St  
Gainesville, FL 32601  
(352) 376-7034  
(352) 372-3464 (fax)  
[baldwinnt@cox.net](mailto:baldwinnt@cox.net)

**Robert M. Birrenkott, Jr.**  
President-Elect  
PO Box 117630  
Gainesville, FL 32611  
(352) 273-0860  
(352) 392-4640 (fax)  
[rbirrenkott@law.ufl.edu](mailto:rbirrenkott@law.ufl.edu)

**Stephanie Marchman**  
President-Elect Designate  
200 E University Ave, Ste 425  
Gainesville, FL 32601  
(352) 334-5011  
(352) 334-2229 (fax)  
[marchmansm@cityofgainesville.org](mailto:marchmansm@cityofgainesville.org)

**Sharon T. Sperling**  
Treasurer  
2830 NW 41 St., Ste C  
Gainesville, FL 32606-6667  
(352) 371-3117  
(352) 377-6324 (fax)  
[sharon@sharonsperling.com](mailto:sharon@sharonsperling.com)

**Leslie Smith Haswell**  
Secretary  
2830 NW 41 St, Ste K  
Gainesville, FL 32606  
(352) 377-3800  
(352) 377-8991 (fax)  
[leslie.haswell@gainesvillefamilylawyer.com](mailto:leslie.haswell@gainesvillefamilylawyer.com)

## Members at Large

**Marilyn C. Belo**  
5745 SW 75th Street #363  
Gainesville, FL 32608  
(352) 448-4500  
(352) 448-4510 (fax)  
[lynn@beloandpaul.com](mailto:lynn@beloandpaul.com)

**Jan Bendik**  
901 NW 8th Ave, Ste D5  
Gainesville, FL 32601  
(352) 372-0519  
(352) 375-1631 (fax)  
[jan.bendik@trls.org](mailto:jan.bendik@trls.org)

**Richard H. Fabiani**  
P.O. Box 5877  
Gainesville, FL 32627  
(352) 376-5226  
[rfabiani@chandlerlang.com](mailto:rfabiani@chandlerlang.com)

**Norm Fugate**  
PO Box 98  
Williston, FL 32696  
(352) 528-0019  
(352) 528-4919 (fax)  
[norm@normdfugatepa.com](mailto:norm@normdfugatepa.com)

**Courtney Johnson**  
115 NW 34th St  
Gainesville, FL 32607  
(352) 372-1282  
(352) 375-9960 (fax)  
[courtney@foldsandwalker.com](mailto:courtney@foldsandwalker.com)

**Diana M. Johnson**  
18 NW 33rd Ct  
Gainesville, FL 32607  
(352) 376-4694  
(352) 371-7366 (fax)  
[djohnson@clayton-johnston.com](mailto:djohnson@clayton-johnston.com)

**Philip Kabler**  
2700 NW 43rd Street, Ste C  
Gainesville, FL 32608  
(352) 332-7688  
(352) 332-7692 (fax)  
[pkabler@boginmunns.com](mailto:pkabler@boginmunns.com)

**Hoa T. Lee**  
2830 NW 41st Street, Bldg M  
Gainesville, FL 32627  
(352) 375-5602  
(352) 373-7292 (fax)  
[tee.lee@swansonlawcenter.com](mailto:tee.lee@swansonlawcenter.com)

**Frank Maloney – Historian**  
445 E Macclenny Ave Ste 1  
Macclenny, FL 32063-2217  
(904) 259-3155  
(904) 259-9729 (fax)  
[Frank@FrankMaloney.us](mailto:Frank@FrankMaloney.us)

**James H. (Mac) McCarty, Jr.**  
4131 NW 28th Ln, Ste 7  
Gainesville, FL 32606  
(352) 240-1226  
(352) 240-1228 (fax)  
[mac@lawgators.com](mailto:mac@lawgators.com)

**Peg O'Connor**  
102 NW 2d Avenue  
Gainesville, FL 32601  
(352) 372-4263  
(352) 375-5365 (fax)  
[peg@turnerlawpartners.com](mailto:peg@turnerlawpartners.com)

**Monica Perez- McMillen**  
101 NW 75th St, Ste 1  
Gainesville, FL 32607  
(352) 335-2393  
(352) 375-0104 (fax)  
[m.perez@foryourlaw.com](mailto:m.perez@foryourlaw.com)

**Meshon Trinette Rawls**  
PO Box 117626  
Gainesville, FL 32611-7626  
(352) 273-0800  
(352) 392-0414 (fax)  
[rawls@law.ufl.edu](mailto:rawls@law.ufl.edu)

**Anthony Salzman**  
500 E. University Ave, Ste A  
Gainesville, FL 32601  
(352) 373-6791  
(352) 377-2861 (fax)  
[tony@moodysalzman.com](mailto:tony@moodysalzman.com)

**Margaret M. Stack**  
PO Box 552  
Alachua, FL 32616  
(352) 222-3220  
[mmstack@att.net](mailto:mmstack@att.net)

**Dawn M. Vallejos-Nichols**  
Editor  
2814 SW 13 St  
Gainesville, FL 32608  
(352) 372-9999  
(352) 375-2526 (fax)  
[dvallejos-nichols@avera.com](mailto:dvallejos-nichols@avera.com)

**Gloria Walker**  
901 NW 8 Ave, Ste D5  
Gainesville, FL 32601  
(352) 372-0519  
(352) 375-1631 (fax)  
[Gloria.walker@trls.org](mailto:Gloria.walker@trls.org)

## 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:

Eighth Judicial Circuit Bar Association, Inc.  
P.O. Box 13924  
Gainesville, FL 32604  
Phone: (352) 380-0333 Fax: (866) 436-5944

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.

### Judy Padgett

*Executive Director*  
P.O. Box 13924  
Gainesville, FL 32604  
(352) 380-0333  
(866) 436-5944 (fax)  
[execdir@8jcba.org](mailto:execdir@8jcba.org)

### Dawn Vallejos-Nichols

*Editor*  
2814 SW 13 St  
Gainesville, FL 32608  
(352) 372-9999  
(352) 375-2526 (fax)  
[dvallejos-nichols@avera.com](mailto:dvallejos-nichols@avera.com)

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

# 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 4th Floor Meeting Room of the Alachua County Family and Civil Justice Center at 201 East University Avenue. Following are

some issues discussed during recent meetings, in no particular order.

Nancy Baldwin led a discussion regarding a new project of our local bar association whereby bar members will volunteer their time at the local homeless shelter, known as Grace Marketplace, to answer questions on topics such as powers of attorney, living wills, and health care surrogate designations. On a related note, Judy Paul indicated she has been volunteering on a once-per-month basis to cook at Grace Marketplace.

Katherine Mockler indicated she is no longer working as staff attorney on Alachua County guardianship cases. She is now devoting all of her time to her assignment handling family law, adoption and writ cases. Theresa Murphy, who formerly served as Judge McDonald's JA, is now serving as staff attorney for Alachua County guardianships. David Altman will continue handling Alachua County probate cases, as well as probate and guardianship cases in Levy and Gilchrist Counties.

In other courthouse assignment news, Judge Pena is taking over for Judge Rosier in Bradford and Baker Counties; Ted McFetridge retired as court administrator and has been replaced by Paul Silverman; and Kristine Van Vorst has replaced Paul as foreclosure magistrate.

A discussion was held concerning how to deal with the sending of formal notice via certified mail in probate cases when the certified mail is "refused" by the recipient. This issue is currently being worked on by the probate rules subcommittee of the RPPTL Section of The Florida Bar. FPR 5.040(a)(1) provides that service of formal notice via certified mail is complete upon receipt, which does not work if the letter is "refused." One possible solution has been suggested by Rohan Kelley, who thinks we could borrow from F.S. 48.194, currently applicable for out-of-state defendants in foreclosure cases, providing for service via regular first class U.S. Mail when a registered letter is "refused." Part of the problem is the question of whether failure to claim a certified letter is the same as "refusal," which

is discussed in F.R. 48.194(3). It is anticipated that a solution will be forthcoming from the RPPTL Section in the near future.

A discussion was held regarding the recent case of *Corya v. Sanders*, \_\_\_\_\_ So.3rd \_\_\_\_\_, (Fla. 4th DCA Nov. 5, 2014) (2014 WL 5617045). That case involved a dispute between a beneficiary and a trustee over the issue of how many years of accountings the trustee should be required to provide to the beneficiary where no accountings had ever been provided. The beneficiary successfully argued to the trial court that accountings should be given going back to the start of the trust. The 4th DCA reversed, holding that, where the beneficiary had knowledge of the existence of the trust and had knowledge that the trustee was not providing him with annual accountings, F.S. 95.11(6) (statutory laches) applies to limit the beneficiary to

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## President's Message

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Legal Profession." A reception will follow the program.

**The Annual Professionalism Seminar** will be held on Friday, April 17, 2015, from 9 a.m. to noon, at the U.F. College of Law. The speaker this year will be Linda Calvert Hanson, Director of the Henry Latimer Center for Professionalism, speaking on "Professionalism: An Expectation in Florida."

**Law Day 2015** will be on May 1, 2015. The theme this year is "Magna Carta: Symbol of Freedom Under Law," to mark and celebrate the 800<sup>th</sup> anniversary of Magna Carta. Magna Carta has taken root as an international symbol of the rule of law and as an inspiration for many basic rights Americans hold dear today, including due process, habeas corpus, trial by jury, and the right to travel. The EJCBA's Law Week is chaired this year by Past President Nancy Baldwin, who is developing a number of outstanding programs to honor Magna Carta. Watch this Newsletter and your emails for more information on Law Week.

**The EJCBA Annual Dinner** will be held on the evening of Thursday, June 18, 2015. We will hold the dinner again this year at the Sweetwater Branch Inn, which was a great success last year.

If you would like to volunteer to assist with any of the programs and activities that remain this year, please contact either me, or any one of the EJCBA Officers or Directors. Thank you all for your ongoing support and participation in the EJCBA activities!

## New Year, New Laws on Wages



By Laura Gross

### Florida's Minimum Wage Increases

Florida's minimum wage rate increased 12 cents to \$8.05 per hour and \$5.03 for tipped employees, effective January 1, 2015. One of only nine states with a regular minimum wage adjustment, Florida recalculates its minimum wage each year on September 30 based upon the Consumer Price Index. The increased wage applies to all employees who are covered by the federal minimum wage. The impact on Florida wages in 2015 is expected to be about \$61.1 million.

In contrast, federal minimum wage rate has not increased since 2007 and remains at \$7.25 per hour and \$2.13 for tipped employees. Florida is one of twenty states with minimum wages above the federal minimum wage.

### Federal Contractor Minimum Wage Increases

Also effective January 1, 2015 is the new minimum wage for federal contractors with contracts formed after January 1, 2015. The new rate is \$10.10 for hourly workers and \$4.90 for certain tipped workers.

### Federal Employees Receive 1% Pay Raise

Federal employees received a 1% pay raise in 2015 as a result of Executive Order 13686, signed by President Obama on December 19, 2014. While the 1% pay raise also applies to uniformed military service members, it does not apply to Congress, political appointees, the Vice President, and the President.

### Stricken: Rule Extending FLSA Wages to Home Care Workers

Just ten days before it was expected to take effect, the Department of Labor's rule to extend minimum wage and overtime provisions of the Fair Labor Standards Act (FLSA) to most home care workers effective January 1, 2015 was struck down by the U.S. District Court for the District of Columbia. The rule had been issued despite a 40 year congressional exemption and more recent U.S. Supreme Court decision that found employees paid by third parties were within the companionship services exemption from the FLSA. The court found that the DOL had overstepped its authority and "amazingly decided to try to do administratively what others had failed to achieve in the judiciary or Congress."

## Professionalism Seminar

### SAVE THE DATE

#### Inexpensive (CHEAP) CLE Credits

By Ray Brady

Mark your calendars now for the annual Professionalism Seminar. This year the seminar will be held on Friday, April 17, 2015 from 8:30 AM until Noon at the UF Levin College of Law. Our speaker will be Linda Calvert Hanson, Director of the Henry Latimer Center for Professionalism at The Florida Bar, speaking on "Professionalism: An Expectation in Florida."

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

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

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### Probate Section

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accountings for the four-year period immediately prior to his filing suit. The DCA specifically rejected the beneficiary's testimony that he was not aware of his right to receive accountings until he consulted with a lawyer, which occurred fairly late in the game. As we have often heard, "Ignorance of the law is no excuse."

Finally, certain rules adopted by the federal government under the Dodd-Frank Act were discussed. These rules, effective January 1, 2014, prohibit an individual from serving as a mortgagee in certain residential transactions, except where the mortgagee is also the seller and is providing owner financing. By coincidence, I had just at that time been contacted by a client to provide representation in a transaction whereby the client wanted to provide mortgage financing for a friend who was buying a home from a third party. Upon further research, the options I came up with are: (1) Buyer retains a licensed mortgage broker to search for financing [and the broker then finds financing through my client]; or (2) The seller could provide the mortgage at closing and then immediately sell the mortgage to my client.

All interested parties are invited to participate in Probate Section meetings. There are no dues and no obligations to attend future meetings. Please contact Jackie Hall (jhall@larryciesla-law.com) if you wish to be added to the e-mail list to receive advance notice of the monthly meetings.



You are cordially invited to attend the investiture of the Honorable

## **Susan Miller-Jones**

Alachua County Court Judge  
Friday, February 6, 2015 3:00 p.m.  
Alachua County Criminal Justice Center  
Courtroom 1B  
220 South Main Street  
Gainesville, Florida 32601  
Reception immediately following

## **Save the Date**

Please calendar now the EJCBA First Annual Spring Fling – our new party/social, for Friday evening, March 6, 2015. The event will be held on the grounds of the Thomas Center and will be free for EJCBA members and a guest. Craft beer, wine and other drinks will be free and food will be available for purchase from food trucks on site. Music will be provided by Bruce Brashear's band, "Squid Love." SEE YOU THERE!!



EJCBA President Ray Brady speaks at the January 10, 2015 CLE at Grace Marketplace



New Baker County Clerk of Court Stacy Harvey is sworn in by Judge Joe Williams

# Alternative Dispute Resolution

## Dovetail

By Chester B. Chance and Charles B. Carter



We were talking to local attorney Susan Seigle about mediation, timing of mediations, mediations and proposals for settlement, etc. Susan brought to our attention some interesting observations which we attribute to her keen legal brain and common sense.

All judges order all cases to mediation. Susan pointed out that some judges specify the precise time frame for mediation in relation to trial, and noted some judges require mediation to take place between 30 days and 15 days prior to trial. Susan realized that timing eliminated the ability of a party to file a proposal for settlement after mediation as the time frame for filing a PFS is more than 45 days prior to trial. That 45 day deadline has passed if the mediation occurs 2-4 weeks prior to trial.

As we all are aware, if a case does not settle at mediation, either side or both sides often file a proposal for settlement the very next day. These PFS filings put pressure on the opposing side, enough pressure that a party can now purchase PFS insurance.

The scheduling of a mediation should contemplate the interplay between mediation and the filing of a PFS, and the interplay between

the two could be lost given the timing situation Susan was facing.

Some judges, given such timing, allow the parties to schedule an early mediation, but often still require the second mediation closer to trial if the first was not successful.

First, kudos to Susan Seigle for noting the disparity just discussed. Further kudos for her ability to explain it to a judge in a reasoned, professional manner.

We suggest this is proof that that each Rule of Civil Procedure does not exist in a vacuum. Sometimes the whole of two rules is greater than the sum of the parts.

We bring this to your attention because this series of articles is supposed to be about ADR (although, we admit, we sometimes digress a bit). Alternative dispute resolution is something all lawyers can be passionate about, and, at a minimum, utilize to their best advantage. Sometimes that means dovetailing the Rules dealing with mediation with another resolution device, i.e., a proposal for settlement. Makes sense, but, sometimes it takes some common sense to make sure all the Rules are working in unison with one another.



## Brown Bag Lunch With Judge Denise Ferrero

The Eighth Judicial Circuit Bar Association will host a "Brown Bag Lunch" with Judge Denise Ferrero, Administrative Judge for Alachua County Court, on Wednesday, February 25, 2015 at 12:00 Noon until 1:15 p.m. in the Jury Room of the Alachua County Criminal Justice Center. Feel free to bring a sandwich and eat while you learn. Clayton-Johnston, PA will sponsor the drinks.

You are cordially invited to attend the investiture of the Honorable

## **Susanne Wilson Bullard**

Alachua County Court Judge  
Friday, February 20, 2015 3:30 p.m.  
Alachua County Criminal Justice Center  
Courtroom 1B  
220 South Main Street  
Gainesville, Florida 32601  
Reception immediately following

# Criminal Law



By William Cervone

Today we enter the theater of the absurd, the realm of the bizarre, and the wonderful world of physical evidence in the criminal courts.

Our story starts with one Mark Anthony Poole. In 2001, Poole, then of Polk County, broke into the home of Loretta White and her family during the night. She awoke to find him straddling her while wielding a tire iron. Despite her resistance, and using the tire iron to beat her into submission, he raped her. At one point she tried to defend herself by raising her hand to protect her head, but the tire iron severed part of one of her fingers. At some point a male houseguest came into the room and tried to rescue her, but Poole beat him about the head with the tire iron, ultimately killing him. Poole is no longer of Polk County. He is now of Union County, where he resides on Death Row at UCI, but that is not a part of this tale.

No, the story is really about the fate of White's severed fingertip. Apparently recovered at the crime scene and preserved in a jar of formalin, it became an exhibit at the penalty phase of Poole's trial. One assumes that it still resides in some court or clerk's evidence room. Its admission as a piece of macabre evidence is where we start with a discussion of relevance as it pertains to the admissibility of evidence.

The defense, of course, objected to the fingertip becoming an exhibit, relying on the tried and true "probative value outweighed by prejudicial impact" argument. The prosecution, best as can be determined from the appellate opinion, offered little reason to support admissibility. One assumes they knew better than to state the obvious "this will really gross out the jury and help us" basis. No matter as the trial judge, stating that the fingertip was "really not difficult to look at. It's not unpleasant. There's not blood on it. It just shows what appears to be a large chunk of skin and the end of a finger," over-ruled the objection and into evidence it came.

Next came the inevitable conviction and appellate opinion. Cutting to the chase, the Florida Supreme Court found no abuse of discretion in the admission of the preserved fingertip. Recognizing the broad discretion trial courts have in determining evidentiary issues, the Court also noted that relevant evidence is not automatically admissible. Rather, it

must be relevant for a specific purpose – i.e., have probative value - and that specific purpose must be weighed against the possibility that it will be unfairly prejudicial, confuse or mislead the jury, or needlessly present evidence already before the jury. [Author's Note: Please re-read this paragraph. It's the point of the whole article. You must understand that every single thing you want to put into evidence is not coming in. There must be a decent point to it.] In the Court's opinion, the fingertip was relevant to the amount of force used by Poole as it related to the charge that he tried to kill White and did kill her houseguest.

Not being persuaded by that position, or just being squeamish, there is a dissent. The dissent says that the majority failed to analyze whether less graphic methods were available to illustrate the same point, and while unimpressed with it, adds that the State also argued that people see this kind of thing in a biology class anyhow. The dissent quotes language from another murder case dealing with autopsy photographs that requires trial courts to scrutinize gruesome evidence "particularly when less graphic photos are available to illustrate the same point." Relevancy "is the starting point, not the ending point." [Author's Note: Re-read that sentence too. After all, I have an obligation to make these articles legally informative, not just opinionated.]

This debate, although maybe novel as to a severed and preserved fingertip, is nothing new. Decades ago there were cases that basically disallowed gruesome photos altogether, some turning on the willingness of the defense to stipulate to the point the prosecution was making regardless of the State wishing to accept such a stipulation rather than prove its case as it chooses. Courts rather quickly backed off on what sounded like an absolutist position and retreated to a safer stance that required only some probative value such as aiding a medical examiner in explaining his testimony. Thus, I once introduced the deceased's rib because it bore striations from being cut by the murder weapon and another bone that still held chemical residue from a passing bullet even years later when discovered.

Perhaps one point to be taken from this is that while courts are the guardian of the gate through which evidence comes in they should, at least in my view, not substitute their own judgment as to when a party has introduced enough evidence to

*Continued on page 8*



# Florida Eminent Domain Law

## Condemnation Procedure



*By Jennifer B. Springfield and Alexander Boswell-Ebersole*

The government exercises its eminent domain authority by civil action, and the procedure for the exercise of this authority is generally called either a taking or a condemnation action.<sup>1</sup> In addition to the substantive law of eminent domain in Florida, Chapters 73 and 74, *Fla. Stat.*, contain several requirements concerning the procedural aspects of condemnation actions.<sup>2</sup> Although the procedures governing all other civil actions still apply to condemnation actions where Chapters 73 or 74 do not prescribe a particular procedure,<sup>3</sup> many of the Chapter 73 and 74 procedural requirements are significant and designed to protect property owners. Consistent with the others in this series, this article only discusses the intentional voluntary use of eminent domain, and not regulatory takings or “inverse condemnation.”

A proceeding initiated under Chapter 73 is often called a “slow take” action and a proceeding under Chapter 74 is often called a “quick take” action. In Chapter 73 proceedings, title of the property does not pass to the condemning authority until after a final judgment assessing the compensation due.<sup>4</sup> Most eminent domain actions are filed as “quick take” actions, which are supplemental to Chapter 73<sup>5</sup> and allow the condemning authority to deposit security funds into the court registry in order to take possession and title of the property prior to final judgment.<sup>6</sup> However, unless specifically afforded the ability to do so in one of the several other statutes providing eminent domain authority to particular entities, only those entities listed in 74.011, *Fla. Stat.*, may use the quick take action. A disadvantage of this quick take procedure is that once the petition is filed, the funds are deposited by the condemning authority into the court registry and are available to the landowner, the court issues an order of taking and the condemnor may not abandon the project unless the landowner/defendant agrees. On the other hand, compensation is not due until after the final judgment in a slow take proceeding, and thus the condemnor is free to abandon or change the project if it receives an unfavorable judgment.

Owners of property sought for condemnation generally hear from the condemning authority

well before the actual initiation of a condemnation proceeding. In fact, before a condemning authority officially files a petition for condemnation, Chapter 73 requires that the condemning authority provide notice of a variety of statutorily required matters (e.g., that the property is necessary for a public project), and also requires the condemnor to both engage in good faith negotiations with the landowner and provide a written offer.<sup>7</sup> Moreover, if the landowner requests, the condemning authority must furnish a copy of the appraisal upon which the offer is based.<sup>8</sup> After receipt of the notice, the landowner has 30 days to respond before the condemning authority may initiate a condemnation proceeding.<sup>9</sup> Where the landowner is a business owner, however, the condemning authority need only make a good faith effort to notify, and is not required to wait 30 days or to engage in good faith negotiations.<sup>10</sup>

In filing a petition for a condemnation proceeding, the condemnor must file in the circuit court of the

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## Criminal Law

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win. Especially now, when juries think they know it all from having watched TV and movies, we should never assume that there is no need for some more evidence. Yes, “cumulative” remains a valid objection but a judicial determination that the jury has heard enough invades the right of the parties to present what they want to present. So long as it’s relevant.

The *Poole* opinion, by the way, also let the prosecutor get away with referring to the defendant’s family’s testimony as “all that crap” because that inappropriate phrase was not objected to and was not fundamental error. I’d think there would be a gentler, more appropriate way to disparage unbelievable testimony but that’s a story for another day.

## Save The Date

Please note and calendar the date of March 20, 2015 for the EJCBA Annual Charity Golf Tournament to benefit the Guardian Ad Litem program. Watch this newsletter for future announcements and registration information.



# Frank Maloney Receives Recognition from the Legal Services Corporation

By Marcia Green

Frank E. Maloney, Jr. received recognition for his commitment to pro bono services from James J. Sandman, President of the Legal Services Corporation, at a reception held Friday evening, January 23 at the University of Miami Law School. Three Rivers receives the majority of our funding from LSC and is thrilled that this recognition showcases Maloney's years of volunteer legal assistance in rural north Florida.

Maloney, who works along with his wife and office manager, Barbara, provides much-needed legal counsel to the residents of his Baker County community. Together, they have accepted the challenge of helping those whose options are limited by poverty and location. A long-time member and officer of the Eighth Judicial Circuit Bar Association, Maloney serves the small rural Florida county with a population of less than 30,000 persons, located along the Georgia border at the northernmost edge of the Circuit. Fewer than twenty attorneys practice in Baker County and less than six are in private practice. Of those, Maloney stands out for his commitment to the legal needs of his community.

Throughout his forty-year legal career covering such matters as family, probate, elder, real estate, criminal, and municipal law, Maloney has shown his dedication to pro bono service through his work with Three Rivers Legal Services and with Jacksonville Area Legal Aid. When Three Rivers began providing services to Baker County in 2004, Maloney readily volunteered to accept referrals. When a client comes to his office needing help but unable to afford legal fees, he and his staff determine whether the client meets the eligibility guidelines and priorities of Three Rivers. If so, they have the client complete a Three Rivers application for services and agree to assist the client on a pro bono basis. Maloney once stated "It was pretty easy to see the need for legal services in Baker County. No other attorneys were meeting that need, so I tried to fill that particular void."

"There's just so much personal satisfaction to be found in this type of work," Maloney noted. Since 2004, Maloney has provided close to 500 hours of pro bono legal services to qualified, eligible clients. He does not back down from complicated legal issues or

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## Circuit Notes

Attorney Frank Maloney was awarded the Tradition in Excellence Award from The General Practice, Solo, and Small Firm Section at the Midyear Bar Meeting in Orlando on January 23.

**Eminent Domain Law** *Continued from page 8*  
county where the property is located.<sup>11</sup> The contents of the petition must include all the information required in 73.021, *Fla. Stat.*, as well as a proper resolution issued by the condemning authority that authorizes the condemnation.<sup>12</sup> Once the petition is filed, there are essentially two phases of a condemnation proceeding. First, the court must assess the validity of the taking (i.e. whether the condemnor has the right and whether the nature and scope of the taking is appropriate). The court makes this determination in a hearing in limine or, in the case of a quick take action, at the request of a defendant pursuant to 74.051(1), *Fla. Stat.*<sup>13</sup> As for the second part of a condemnation proceeding, a jury determines the amount of compensation due. Thus, the court plays a rather limited role in condemnation proceedings.

- 1 Note that the power of eminent domain can be delegated to entities other than the traditional governmental units. Utilities and, in certain limited cases, private corporations have been delegated the eminent domain power. In any case, all these entities are collectively referred to as "condemnors" or "condemning authorities."
- 2 Chapters 127, 163, and 166, for example, all contain procedural provisions relating to eminent domain.
- 3 See Fla. Stat. § 73.012 (2014).
- 4 See Fla. Stat. § 73.111 (2014).
- 5 Although a condemning authority might avail itself to the quick take procedure under Chapter 74, Chapter 73 applies generally to all eminent domain proceedings, and thus the Chapter 73 requirements still apply to the quick take action.
- 6 See Fla. Stats. § 74.021 and § 74.061 (2014).
- 7 Fla. Stat. § 73.015(1) (2014).
- 8 *Id.*
- 9 Fla. Stat § 73.015(1) (2014).
- 10 See Fla. Stat. § 73.015(2) (2014).
- 11 Fla. Stat. § 73.021 (2014).
- 12 See, e.g., *City of Clearwater v. Janet Land Corp.*, 343 So. 2d 853 (Fla. 2d DCA 1976).
- 13 See Fla. Stat. § 73.061(1) (2014) (relating to pretrial hearings in limine).

cases involving domestic violence. Maloney and his staff are willing to handle family law matters, which are always difficult cases to refer to pro bono advocates, as well as other areas of law when the need exists. In a memorable case, he represented “a woman who had been paralyzed from the neck down due to a car accident. Of course, your heart goes out to someone who has lost so much. And, while it’s always a nice feeling to make a difference in most people’s lives, it just really meant a lot to me to make a difference in this particular person’s life.”

In 2003, Maloney was awarded the Jacksonville Area Legal Aid Pro Bono Award for his tireless representation of indigent clients. In 2007, he received the Florida Bar President’s Pro Bono Service Award, nominated by Three Rivers Legal Services in recognition for his work in the Eighth Judicial Circuit. In 2010, the Eighth Judicial Circuit Bar Association awarded him the James L. Tomlinson Professionalism Award for his “consistent dedication to the pursuit and practice of the highest ideals and tenets of the legal profession.” In June of that same year, he was again recognized by the Jacksonville Bar Association as the Pro Bono Attorney of the Month.

In addition to his support of the Volunteer Attorney Program, Maloney has been a member of the EJCBA Board of Directors since 1983, served as president in 1999-2000 and is currently the EJCBA’s historian. He is also a member of the Municipal Attorney’s Association and the James C. Adkins Inns of Court. He has chaired joint symposiums with the English Bar (2012), the Irish Bar (2007) and the Canadian Bar (2008). A member of the Florida Bar General Practice Solo and Small Firm Executive Council since 2004 (Chair from January 2011 to June 2012), he is a strong supporter of the Section’s annual award and recognition of pro bono projects by legal services programs.

Maloney is involved in many community activities, such as the Great Northern District of Florida Boy Scouts, the Governor’s Task Force Advisory Board for Transportation in the Northeast Florida Region, the Adult and Vo-Tech Education Advisory Board, and the local Chamber of Commerce. He was recognized for the largest net increase the year he chaired the Regional Ducks Unlimited, and was the Sertoman of the Year in the Sertoma Club, Charter member of the Olustee Battlefield Citizens Support Organization, and Charter Member of the Baker County Rotary Club.

After receiving his BS degree from Georgetown University, Maloney earned his J.D. with honors

from the Florida State University College of Law in 1972. He attended the College of Advocacy at the Hastings College of Law in San Francisco in 1976. A Vietnam Veteran, Maloney served with the U.S. Army Intelligence in Washington, D.C. and Quang Ngai, Vietnam where he was awarded the Medal First Class Honor by the Vietnamese Government. Prior to opening his Baker County solo practice in 1982, he practiced for ten years in a large South Florida insurance defense firm.

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## **Michelle Farkas Receives the 2015 Florida Bar President’s Pro Bono Service Award for the Eighth Judicial Circuit**

*By Marcia Green*

Michelle L. Farkas received recognition for her pro bono work at the Florida Supreme Court in Tallahassee on January 29, 2015. Nominated by Three Rivers Legal Services, Ms. Farkas was awarded the Florida Bar President’s Pro Bono Service Award representing the Eighth Judicial Circuit.

Ms. Farkas began volunteering with Three Rivers in 2007, shortly after being admitted to the Florida Bar. A graduate of the University of Florida Levin College of Law, she recognized her ability to give back to the community by providing much needed legal services to the poor.

Many of Ms. Farkas’ referrals have been rather eccentric and/or difficult clients, but she has not shied away from helping. As stated in her nomination, “she puts her whole heart into the needs of her clients, recognizing that their situations and poverty put them at a strong disadvantage in negotiating the legal system.” Ms. Farkas recognizes the “satisfaction” she experiences in seeing to the completion of her client’s needs and appreciates her own “tenacity” in working on some of their unusual situations.

Examples of some of the assistance provided by Ms. Farkas include helping a rural resident regarding a pre-nuptial agreement and options related to age-related planning on the couple’s very limited income, dissolution of marriage involving children born of different fathers, and estate planning for an elderly couple with a special needs adult daughter. Ms. Farkas continues to provide a variety of legal help to

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## Reserve Now for the EJCBA February 2015 Luncheon



**WHEN:** Friday, February 13, 2015 – 11:45 a.m.

**WHERE:** The Woolly – 20 N. Main Street, Gainesville, FL 32601

**PROGRAM:** Gregory W. Coleman, President of The Florida Bar— “Technology and Access to Justice”

**COST:** **Members: \$17.00, Non-Members: \$25.00\***  
 Chef’s choice luncheon buffet, including meat or vegetarian entrees, seasonal sides, and dessert

**DEADLINE:** Register on or before **Monday, February 9<sup>th</sup> at Noon at <http://8jcba.dev.acceleration.net/event-registration/february-2015-luncheon/>**

**\*\$20.00 for members and \$25.00 for non-members, not having made prior reservations.** If you are reserving at the last minute, or need to change your reservation, email Judy Padgett at [execdir@8jcba.org](mailto:execdir@8jcba.org) or call **(352) 380-0333**. Note, however, that after the deadline, EJCBA is obligated to pay for your reserved meal and we make the same obligation of you. Thank you for your support.

### Save the Dates

EJCBA Charity Golf Tournament Benefiting the Guardian ad Litem Program for the 8th Judicial Circuit  
 Friday, March 20, 2015  
 Lunch beginning at 11:30am

Professionalism Seminar  
 Program: Speaker Linda Calvert Hanson, speaking on “Professionalism: An Expectation in Florida”  
 Friday, April 17, 2015  
 9:00am – 12:00pm  
 Registration begins at 8:30am

### Mark Your Calendar for the 1st Annual Spring Fling!

Save the date and invite a friend, colleague, client, or significant other to join you for a fun new event that will feature live music, food trucks, and craft beer and wine at the beautiful outdoor garden adjacent to the Thomas Center. We look forward to seeing you there on Friday, March 6 from 6-8pm! Invitations will be emailed soon!



Chief Judge Robert E. Roundtree, Jr. gives the “State of the Circuit” address at the January EJCBA luncheon

### Michelle Farkas

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a family raising their deceased daughter’s children who are caught in the cycle of poverty compounded by poor health, family trauma and mental illness. Extending close to 100 hours on her pro bono cases over the past several years, Ms. Farkas is keenly aware of the unique ability that lawyers have to offer.

Ms. Farkas is a member of the Elder Law and Real Property & Probate Law Sections of the Florida Bar and is a member of The Florida Bar, The American Bar Association, the EJCBA, the Probate Section of the EJCBA and the Rotary Club of Gainesville. She also serves on the Board of Directors for the Mid-Florida Division of the Children’s Home Society. She attended the University of Florida and the University of Leiden, The Netherlands for her undergraduate studies.

Ms. Farkas’ support of the Volunteer Attorney Program, her commitment to assisting and representing low income clients, her understanding of the needs of those who are trying to get out of the cycle of poverty, and her recognition that as a lawyer she has a unique expertise to offer, make her a valuable asset to the community overall.



## February 2015 Calendar

- 4 EJCBA Board of Directors Meeting – 5:30 p.m., Gaineswood Clubhouse
- 5 Deadline for submission to March Forum 8
- 6 Investiture of Alachua County Court Judge Susan Miller-Jones, 3:00 pm, Courtroom 1B, Alachua County Criminal Justice Center
- 11 Probate Section Meeting, 4:30 p.m., Chief Judge’s Conference Room, 4<sup>th</sup> Floor, Alachua County Family & Civil Justice Center
- 13 EJCBA Luncheon, The Florida Bar President Gregory W. Coleman, “Technology and Access to Justice,” The Woolly, 11:45 a.m.
- 14 Valentine’s Day – show the love!
- 16 President’s Day Holiday – Federal Courthouse closed
- 17 Family Law Section Meeting, 4:00 p.m., Chief Judge’s Conference Room, Alachua County Family & Civil Justice Center
- 20 Investiture of Alachua County Court Judge Susanne Wilson Bullard, 3:30 pm, Courtroom 1B, Alachua County Criminal Justice Center
- 25 Brown Bag Lunch with Judge Denise Ferrero, Administrative Judge, Alachua County Court, 12 Noon, Jury Room, Alachua County Criminal Justice Center

## March 2015 Calendar

- 4 EJCBA Board of Directors Meeting – 5:30 p.m., Gaineswood Clubhouse
- 5 Deadline for submission to April Forum 8
- 6 First Annual EJCBA Spring Fling (Member & Guest only), The Thomas Center, 6-8 pm
- 11 Probate Section Meeting, 4:30 p.m., Chief Judge’s Conference Room, 4<sup>th</sup> Floor, Alachua County Family & Civil Justice Center
- 13 EJCBA Luncheon, Dr. David Denslow, “Economic Futures for the Gainesville Area: Our Land Development Choices,” The Woolly, 11:45 a.m.
- 17 Family Law Section Meeting, 4:00 p.m., Chief Judge’s Conference Room, Alachua County Family & Civil Justice Center
- 20 EJCBA Annual Charity Golf Tournament benefiting the Guardian ad Litem Program

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).