FORUM 8

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President's Message

The Year in Review

By Ray Brady

This is the last President's Message of my tenure as the EJCBA President. It truly has been a pleasure and great honor to serve as President. As I see it, whether my year has been a success is measured in two ways. First, did we do a good job in providing all of the usual benefits, services and events that you have come to expect from your EJCBA? Second, if we set any new goals for the year, did we achieve those goals? I hope you will agree with me that we hit it out of the park on both scores. And our successes occurred solely because of the great vision and the hard work that each of you, and the army of volunteer Board and Committee members of the EJCBA, provided. There are far too many of you to whom credit is due to name all of you. So please accept this as my deep thanks and praise to each and every one of you who this year provided me and the EJCBA with your ideas, guidance, volunteer time, and hard work. So let's survey some of the EJCBA's achievements this year, and give recognition to the chairpersons of these projects.

We reinvigorated our annual Cedar Key Dinner event (Norm Fugate, Chair); thanks to all of you who responded to my queries asking whether and how we wished to carry on this longstanding EJCBA social event/tradition. Through our "Building Bridges" theme for our monthly luncheons (Rob Birrenkott, Chair), we strengthened the Bar's bonds with business leaders, the Alachua County Medical Society, the University of Florida, Three Rivers Legal Services, and Southern Legal Counsel. Our free socials were a huge success (Anne Rush, Chair). We even added a new social, Spring Fling (Rob Birrenkott, Chair), that will live on as our Spring complement to the Cedar Key Dinner held in the Fall.

Our community service and outreach activities included the educational and informative "Law in the Library" series (Jan Bendik, Chair). To that we added this year the "Ask A Lawyer" program, where we provide free legal services to the homeless population at GRACE Marketplace. Related to that program, we are in a joint fundraiser with the ACMS to help open a commercial-grade kitchen at GRACE (Ray Brady, Chair). Other community service events included the annual Holiday Project (Anne Rush, Chair), where we donated gifts and goods to needy children in the local Head Start program, and the annual Golf Tournament (Mac McMarty, Chair), that this year raised an incredible $11,000 for our local Guardian Ad Litem program.

Your talented EJCBA Board focused hard this year on finding ways to add even more value to the benefits that you receive by being a member of the EJCBA. Know that your membership is valued and not taken for granted. Some of your member benefits are discussed above. Added to those benefits, you had numerous either free, or very inexpensive, CLE opportunities throughout the year (Stephanie Marchman, Chair), including the hugely popular annual Leadership Roundtable. Similarly, you had the opportunity to both network and earn coveted and cheap CLE credits at the annual Professionalism Seminar (Phil Kabler and Ray Brady, Co-Chairs).

Additional member benefits include the Newsletter that you are reading right now. Our hard-working and talented editor, Dawn Vallejos-Nichols, produces a newsletter each month that matches in substance and quality any newsletter that you will find of a voluntary

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Contribute to Your Newsletter!

From The Editor

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

About This Newsletter

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

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

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

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Deadline is the 5th of the preceding month

President's Message

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bar association that is five times our size! In addition, each year the EJCBA provides you with Law Week activities (Nancy Baldwin, Chair), and this year, Nancy added a special program at which we honored local judges, attorneys and law professors who have achieved long and successful tenures in their professions. Your year's worth of member benefits ends with the EJCBA's Annual Dinner, which will be held on the evening of June 18th at the Sweetwater Branch Inn, where you will be wined, dined, and entertained.

Finally, your membership has been enhanced this year in ways that are important, but also are subtle and thus perhaps go almost undetected. For example, the EJCBA has made it easier for you to register for our events by setting up online registration. We are striving to reach virtually paperless communication with you. Key to this goal is a new and improved EJCBA website, which will have been launched by the time you read this message (Sharon Sperling, Chair). And I am hoping that you noticed and enjoyed the "concierge-style service" that the EJCBA implemented at its events this year (Meshon Rawls, Chair). Meshon, and the outstanding members of her Member Services Committee, were charged this year with finding ways to enhance your experience at our events. To that end, they attended all of our events and greeted you (and especially focused on meeting and integrating new members), assisted you with check-in, and assisted the event organizers in smoothing over any wrinkles. In addition, they created event surveys for you to complete, and then analyzed your responses and suggestions for the EJCBA Board to review and implement. I am deeply grateful to the Member Services Committee for its hard work this year. And last but certainly not least, credit and thanks is due to "that woman behind the curtain" (to paraphrase the line from "The Wizard of Oz"). And that woman behind the figurative curtain who is operating all of the controls of the EJCBA is our tireless and talented Executive Director, Judy Padgett. Judy provides the grease that keeps the entire EJCBA machine running flawlessly.

In closing, thank you for entrusting the office of the President to me. It has been a great privilege to serve you. There are almost 400 EJCBA members. I feel that I have come to know virtually every one of you, and I count you as my trusted colleagues and friends. It is because of you, and your active participation in the EJCBA, that it is so rewarding and enjoyable to practice law in the finest judicial circuit in the State of Florida – the Eighth Judicial Circuit!

Spring Cleaning the Employee Handbook

by Laura Gross

A recently released report by the National Labor Relations Board targets unlawful employee handbook rules that may otherwise appear neutral. These common rules and policies, say the NLRB, must be excised from employee handbooks and replaced with NLRB-approved alternatives.

Employees have protected rights to discuss wages, hours, terms and conditions of employment with each other and third parties under the National Labor Relations Board. In compliance with this law, employee handbooks must not contain provisions that explicitly or implicitly restrict employees from exercising these rights. Employers should specifically review rules relating to its employees' confidentiality of wages, hours, terms and conditions of employment; criticism or protest of an employer's practices or policies; interaction with coworkers and third parties through social media; use of company logos, copyrights, and trademarks; ability to take photographs and make recordings; walking off the job; and activity that creates a conflict of interest with the employer.

Upon review of the NLRB's report, many employers will discover that their handbook is in need of refreshing. Some of these discoveries may be surprising. For instance, a provision prohibiting employees from being "disrespectful to management" is almost always unlawful because it inhibits protected criticism of the employer. Similarly, rules that prohibit "defamatory or discriminatory comments about the company" or "insulting, hurtful, embarrassing

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New Administrative Orders

Chief Judge Robert Roundtree, Jr. recently signed the following administrative orders, which you can review at http://circuit8.org/administrative-orders:

Administrative Order No. 5.10, Family Pretrial Orders, May 7, 2015.

Administrative Order No. 9.01, Assignment of Alachua County Circuit and County Cases to Divisions, April 27, 2015.

Administrative Order No. 9.03(v21), General Assignments Effective June 1, 2015 through December 31, 2015, April 27, 2015.

Employee Handbook

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or abusive comments about coworkers" unlawfully restrict employees' right to honestly discuss such subjects.

The report contains "model" policies that are employee friendly and will not appeal to most employers. However, replacing old policies with the approved new ones is the best defense. Anyone can file a complaint with the NLRB, and when that happens, the NLRB will ask to review the employee handbook. Regardless of the merit of the complaint, if the handbook contains overly broad policies, the employer may be ordered to modify the handbook and post a notice informing employees of its non-compliance and commitment to uphold employee rights to engage in protected, concerted activities. To avoid the negative consequences of maintaining old unlawful polices, it is time to review and refresh the employee handbook.

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

2015 Annual Dinner and Meeting

Thursday, June 18, 2015,
6:00 pm until 8:30 pm
(Cocktails 6:00 pm – 6:30 pm)
at the
Sweetwater Branch Inn

The Cool Jazz band will entertain us again this year

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

To RSVP

You may RSVP for you and your guest(s) at http://8jcba.dev.acceleration.net/event-registration/2015-annual-dinner/

When registering, you must make a meal selection for each guest. The meal choices are beef, chicken or vegetarian.

Reservations must be received no later than June 12th

Alternative Dispute Resolution

Mediating Intolerance

By Chester B. Chance and Charles B. Carter

Usually at the end of our June article we add a sentence or two in which we thank Dawn Vallejos-Nichols for her often thankless job as Editor of the local Bar newsletter. We want to address that right at the start and say Dawn, without you the newsletter would probably be delivered by hand and be a mimeographed 1-page sheet. Thank you so much for what you do. (Ed. - And many thanks to our awesome layout guy - Darren Burgess!)

Often, during mediations, emotional positions of the parties are not susceptible to logic, reason, analysis or even monetary resolution. Such cases often involve grief, which is always present in a wrongful death action or the understandable emotional response to parents who are coping with an injury to their child, a spouse dealing with an injury to their spouse, etc.

Sometimes, emotional responses insinuate themselves in lawsuits involving political differences. Oddly, those cases and their associated mediations often require addressing feelings of intolerance.

Below is an excerpt from the March 23, 2015 edition of National Review. We ask you to review the brief article and then imagine yourself at a mediation which attempts to bring a resolution between the two perspectives described in the article. True, the article does not involve subject matter which would typically be associated in a lawsuit; however, sometimes such matters do become the subject of lawsuits arising from allegations of religious freedom, discrimination, civil rights, hate speech, etc.

It is our intention to remind you that mediation and bridging gaps occur not only in lawsuit scenarios, but in our personal lives, social scenarios and on the political stage. Family law may deal with emotional issues such as a cheating spouse, separation from children, despair, etc. In an international scenario, sometimes national or religious intolerance and history may come together and make resolution or mediation difficult in controversies such as the Falkland Islands/Malvinas dispute, the numerous issues that intertwine in the Middle East, or the long-standing history of grievances and fear in Northern Ireland. Political divides in our own country range from taxation to healthcare; from abortion to fossil fuels; from poverty to affluence.

All of these personal, international and national issues are illusive and have often evolved beyond logic and are fraught with posturing, historical grievances and with a capital E, Emotions.

Review the article and merely think about the positions of the parties, the pros and cons presented, etc. Are there two sides to the slice of bread discussed in the article? Is intolerance attempting to cloak itself with the mantle of tolerance? Is there really a need to mediate perceived competing rights? You decide.

March 23, 105 National Review, page 10:

In early February, San Francisco Archbishop Salvatore Cordileone released a statement to be included in the faculty handbook of the Bay Area's four Archdiocesan High Schools come the new school year that requires teachers to "affirm that we are an educational institution of the Catholic Church, and as such strive to present Catholic doctrine in its fullness and that we hold, believe and practice all that the Holy Catholic Church teaches, believes and proclaims to be true." That Cordileone thinks Catholic schools should be Catholic has, naturally, scandalized area residents. The San Francisco Chronicle declared that, "Cordileone could not be more out of touch with the community he has been assigned to serve." An online petition has been set up to oppose the Archbishop's effort to create a "culture of fear" and eight state lawmakers from the Bay Area wrote Cordileone a letter contending that his call "sends an alarming message of intolerance to youth." Politicians telling church leaders how to run their organizations does not send a great message about how tolerant and free societies work.

Again, we are not asking you to take sides. We merely remind you that mediation should apply to all kinds of disputes, but the most difficult may be when trying to accommodate intolerance cloaked

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Criminal Law

By William Cervone

At long last, and fittingly for the final issue of the year, we have perhaps reached the conclusion of the Great *Graham* Fiasco, alternatively referred to in past years as the *Graham* Dilemma. *Graham*, you'll perhaps recall, is a US Supreme Court case outlawing automatic life sentences for juvenile non-homicide offenders. You'll also recall, perhaps, that after years of dawdling the Florida legislature eventually enacted a statutory scheme addressing that. Unaddressed, until now, was whether a term of years sentence, as opposed to a life sentence, violates *Graham*.

For context, consider one Leigdon Henry. When 17 years old, Henry was convicted of various crimes, including most notably three counts of sexual battery with a weapon, two counts of robbery, kidnapping, carjacking, burglary of a dwelling, and, just to top the list off, possession of cannabis. Hardly Dennis the Menace behavior, and as a result Henry's conviction was as an adult. Pre-*Graham*, he was sentenced to life plus 60 years. That was changed, post-*Graham*, to a total of 90 years albeit with no one count carrying a sentence of more than 30 years. In the aggregate, though, Henry would have had to live a Methuselah-like lifespan to have a shot at release. The question, then, is whether this de facto life sentence, deserved or not, can stand.

Over the years since *Graham* was decided, Florida's DCAs have issued many opinions on this topic. The 2nd, 4th and 5th DCAs have held that such a term of years is prohibited by *Graham*. The 1st and 3rd DCAs have taken the opposite position, at least as an absolute, instead applying more of a case-by-case analysis. Getting the last word as it almost always does, the Florida Supreme Court has now answered the question by holding that the constitutional prohibition against cruel and unusual punishment is implicated by a sentence that does not afford any "meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation," the language used in *Graham*. Courts may not, therefore, impose a sentence on a non-homicide juvenile defendant that ensures that there will be no chance of release within the defendant's natural life. In essence, the court said, it is not just the magic words "life in prison" that violate *Graham*, it is the reality of the sentence

I suppose that as with all other things legal the answer to this question leaves open the possibility of other questions. The court did not, for example, say exactly what "early release" might mean or what number of years becomes a de facto life sentence. Are we simply to use actuarial tables? Not likely, and no matter, for the bottom line is that Florida's 2014 juvenile sentencing provisions on this topic requiring individualized hearings and findings control, both going forward and backwards.

Henry, by the way, was but one of several defendants receiving essentially the same relief from the Florida Supreme Court on the same day. Shimeeka Gindine, 14 at the time of his crimes of Attempted First Degree Murder, Attempted Armed Robbery, and Aggravated Battery, originally had sentences totaling 70 years, all of which were sent back to the trial court. Similar results came in cases involving completed homicides controlled by the US Supreme Court's *Miller* decision to the same effect as *Graham* when murder has occurred. Rebecca Lee Falcon, who at 15 participated in the attempted robbery of a cabbie that resulted in the cabbie's murder, saw her life without parole sentence remanded. Anthony Horsley, at 17, joined in a convenience store robbery that ended up in the murder of the store clerk but has now seen his life plus a bunch more years remanded as well. In his case, the State's position seeking revival of the predecessor statute allowing parole was rejected. So it is largely done and I doubt that I will be able to squeeze another article out of this.

I would like to conclude the publishing year on a point of personal privilege. During the last few months we as a local Bar lost several members to death, most notably my good friend Gloria Fletcher. After her funeral, many of you reached out in ways that deeply touched me, for which I am profoundly grateful. I've overheard or been told of others who have similarly taken to heart the opportunity to say what matters to those who matter. There can be no greater tribute to Gloria or anyone else than that we all gain perspective about what really matters in our lives and how we treat each other. We are a small legal community, especially in our own areas of practice. I hope that we can remain a close and collegial one.

So until next Fall I close with wishing you all Godspeed during the summer months and always.

Bracketing As a Means of Avoiding Impasse at Mediation

By Bob Stripling

At the beginning of the mediation process the settlement positions of the parties are invariably at opposite ends of the spectrum. In the early stages, no one wants to give much ground or reveal their bottom line, for fear of being undercut. This often results in discouragement and distrust on both sides.

Typically plaintiff's opening demand is viewed as unrealistic by the defense. This causes the defense to counter with an equally unreasonable offer, designed to "send a message" to the plaintiff. As a mediator, I frequently hear both sides begin to posture, sometimes with threats that it will be a short mediation if the other side doesn't begin to get realistic. What ensues from that point is a series of minuscule moves on the part of both parties. Hours can pass with very little progress, engendering greater discouragement, and often anger. When this occurs, the mediator is put in the position of having to do all he can just to keep the parties there, and make whatever meager progress can be made.

When the parties get this bogged down, it is clear that the mediation is going nowhere unless a different approach is taken to break the impending impasse. The issue becomes how to narrow the range between these divergent positions. This is where "bracketing" can be helpful as a tool to get parties in a realistic zone where settlement may be possible. *Bracketing is a method of negotiating the ranges.* It occurs when one party proposes that he will move to a certain position, if the other party will reciprocate by moving to a different position that brings the parties closer together. For instance, let's assume that plaintiff's opening demand was $500,000, and the defendant responded with an offer of $50,000. The negotiations sputter along, with each side making several small moves which result in the plaintiff being at $480,000 and defendant at $55,000, after a couple of hours of both sides moving at a snail's pace.

At this point, the mediator might encourage the defense to propose a bracket to the plaintiff. In our example, the defendant proposes that he will move to $100,000 if the plaintiff will correspondently move to $250,000. At this point, several options are available to the plaintiff. He may choose to accept the defendant's bracket of $100,000 to $250,000. Alternatively, he can propose a new bracket or move back to demanding hard numbers. Let's assume he proposes a new bracket which would, of course, be in a range more favorable to his position. For example, he might propose he will go to $400,000 if the defense will move to $200,000.

By comparing the numbers before bracketing started with the new brackets, it is clear that the parties are already beginning to make progress by bracketing. Before bracketing, plaintiff was at $480,000 and the defense was at $55,000, making the difference between the two positions $425,000. However, after bracketing started, both sides moved substantially closer to each other, even though neither side has accepted the other's bracket. The defense bracket would put the parties $150,000 apart and the plaintiff's bracket would put them $200,000 apart.

The numbers that each side was willing to propose begin to tell the story about where they really believe the case could settle. Both the mediator and the parties may want to look at the mid-point of each party's proposed bracket. To arrive at the mid-point of the defense bracket, you would add $100,000 and $250,000, giving a total of $350,000, then divide that number by two, getting a mid-point of $175,000. The same can be done with the plaintiff's bracket by adding $200,000 and $400,000, equaling $600,000, then dividing that number by two, to arrive at a mid-point of $300,000. Now the parties' positions are much closer. When reading the numbers, each side has sent the other a signal about where he or she believes the case could really settle.

Although "mid-points" give an indication of where each side may believe the case could settle, it should not necessarily be interpreted as the number where that party would be willing to resolve the case. However, it is the best information that the parties have about where each side is willing to go. Therefore, brackets can produce very valuable information for both sides. What each side does with that information is obviously critical. The options may include continuing the bracketing

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Mediating Intolerance *Continued from page 5*

in tolerance. Somehow, that seems to be more and more common in this day and age, or maybe more noticeable given the plethora of cable news and internet sites. We think the above article is thought-provoking no matter what thoughts it provokes. Alternative Dispute Resolution is not limited to the requirement of court orders. However, sometimes we wonder if there really should be a dispute at all.

Thank You, U.F. Law Students!

The EJCBA extends its deep appreciation to the law students from the U.F. College of Law who volunteered during their Spring semester to help make our “Ask A Lawyer” project at the GRACE Marketplace a great success. The law students took time from their busy schedules to arrive at 8 a.m. on one Saturday a month, to help us set up the tables and chairs, put up signs, organize our forms, and to assist with the provision of free legal services to the homeless population at GRACE Marketplace. The law students would work with the lawyers from 8:30 a.m. to 10:30 a.m., completing intake with the clients and assisting the volunteer lawyers as they conferred with the clients to resolve their legal problems. They never left until everything was broken down and put back into storage at GRACE for the next Saturday event.

The U.F. law students are an indispensable part of this project. They will continue to assist us during the summer and fall. Special thanks for coordinating the students go out to Kirsten Clanton, a lawyer with Southern Legal Counsel, and U.F. law student LaShaunda Hayes, who has been the point person for scheduling the students.

Following is a list of the Spring 2015 “Ask a Lawyer” U.F. law student volunteers:

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Ask A Lawyer Project

By LaShaunda Hayes
Juris Doctor Candidate 2017, University of Florida Levin College of Law
Student Volunteer Coordinator Spring 2015, Ask a Lawyer Project

For someone who is dedicated to the public interest and is always looking for a way to get involved, the Ask A Lawyer Project was the perfect fit.

There are so many things one can learn from volunteering with nonprofits and the homeless community. The unique thing I learned about homelessness this semester is that it can bring people together. Working on the Ask A Lawyer Project has brought together the Eighth Judicial Circuit Bar Association, Southern Legal Counsel, Three Rivers Legal Services, and students like me, from the University of Florida Levin College of Law. We joined efforts to work with the homeless community of Gainesville to ensure legal services are available to those who cannot afford them.

The Ask A Lawyer project takes place once a month on a Saturday at the GRACE Marketplace One Stop Center in Gainesville. My experience with Ask A Lawyer has been very rewarding. Watching it grow from an idea, to a test run, and now to an event that people

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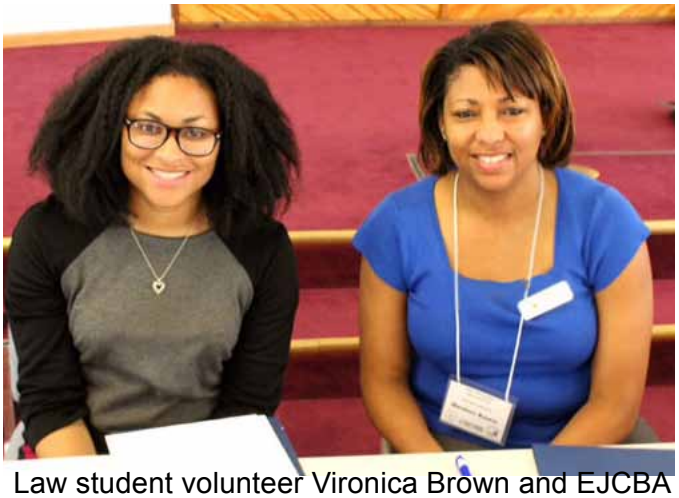
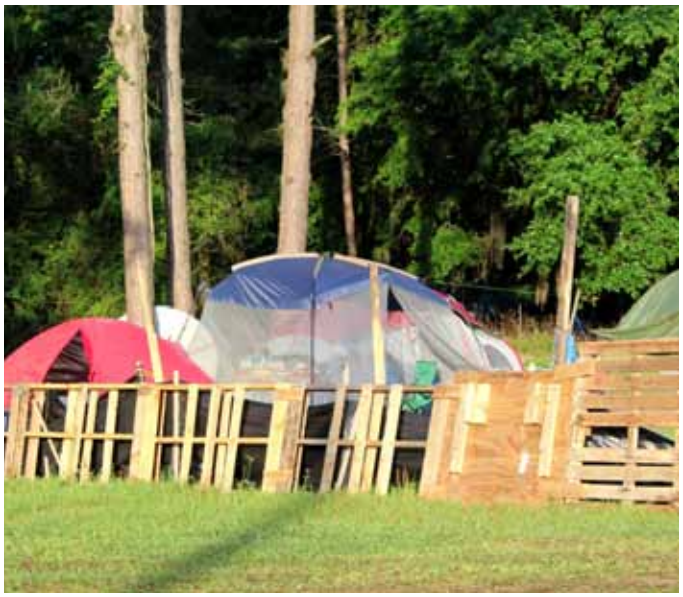
EJCBA President Ray Brady (left) with UF College of Law volunteers assisting the "Ask a Lawyer" project at GRACE Marketplace



Law student volunteer Vironica Brown and EJCBA Board Member Meshon Rawls volunteering their time at GRACE Marketplace

UF College of Law Students volunteering at the Ask a Lawyer project at GRACE Marketplace



Tent living at GRACE Marketplace

Ask a Lawyer Project

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expect to happen every month has been fascinating. What I enjoy most about the project is getting to see the leaders of the Gainesville legal community interact with individuals who, without the assistance of this event would not have the opportunity to have their issues heard. Private attorneys, public defenders, legal aid, and attorneys in training (law students), are all working toward the same goal, helping the homeless achieve access to legal services. The best part about the project is that it is not a onetime event. Our Saturday event is the initial meeting between the lawyers and the homeless clients. If a client needs more than advice and counsel, lawyers have chosen to take them on as clients and continue to work on their issues until they are resolved. Working on this project as a student has provided an unparalleled experience for my classmates and me. We have the opportunity to observe situations that apply the concepts and applications of law that we have learned about in class. During each event we build stronger connections with each other and the community. I am honored to be a part of a program that promotes access to justice for those living in poverty. My goal is to see similar projects like this one in counties all over the state of Florida.

"A dream doesn't become reality through magic; it takes sweat, determination and hard work."
-Colin Powell

U.F. Law Students

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Valentin Arenas -1L
Katie Borello- 1L
Vironica Brown-1L
Emily Calvin-2L
Connor Furlong-1L
Vaughn Glinton-1L
Randall Harper-3L
LaShaunda Hayes-1L
Mallorie Head-1L
Laura Hernandez-3L
Elise Holtzman-1L
Kaizad Irani-1L
Lauren Levy-1L
Melissa Milford-1L
Ali Mirghahari-1L
Kelsey Peña -1L
Hunter Phillips-1L
Reina Saco-1L
Dylan Schott-1L
Farhan Zarou-1L

New Project Needs Your Help!

By Marcia Green

This first half of 2015 has been so very inspiring! Most exciting is the Ask-A-Lawyer project at GRACE Marketplace. I can't tell you how much I enjoy working with Ray Brady, volunteers of the Eighth Judicial Circuit Bar Association, an amazing group of volunteer law students and Kirsten Clanton of Southern Legal Counsel. To say that I am having fun providing legal advice and assistance on a Saturday morning to people who are in the worst of situations might not be appropriate, but that's the word that comes to mind. I so admire the commitment and compassion I am experiencing from the volunteers and I'm proud to be a part of this project!

Would you be willing to become a part of another new project with Three Rivers Legal Services? Our innovative pilot plan could appeal to tech savvy young attorneys as well as retired or semi-retired experts and those who want to help but have had difficulty fitting into our needs with your daily responsibilities.

Our Legal Help Line [LHL] provides legal advice to eligible clients by telephone. The clients are screened for eligibility and given a phone appointment. Our phone system is such that our advocates can be in any one of our three offices or at home in their pajamas! If the client has paperwork related to their legal issue, they are asked to fax, email or hand deliver the paperwork for review by the advocate. All of the information is entered into a sophisticated and secure case management system that, with appropriate permissions, can be accessed in our office or remotely. Our case management system is so advanced that it prompts the advocates with questions that address the caller's particular legal issue.

Would you be willing to commit to speak with and advise two (or more) eligible clients via telephone each month about their civil legal problem? Twice a month would be even better! You can do this remotely at your office, home or you can come to Three Rivers and use one of our small interview rooms on weekdays.

Not sure if you have the expertise? We will provide training and backup assistance; our LHL Managing Attorney and other staff attorneys are available by phone or instant messaging to help with your random questions on weekdays between 8:30 a.m. and 5:00 p.m. We will attempt to schedule your appointments in your comfort zone, but we're very aware that many of the issues facing our clients are not the issues you have encountered in your day-to-day legal practice.

Your appointments can be scheduled at a time that works best for you, although our immediate backup-expertise will only be available when Three Rivers is open. Maybe you can take a long lunch to speak with clients on the phone; sit at your desk and eat your sandwich while you provide pro bono services. Need a late afternoon break from your regular work? Prefer to speak with your clients on Saturday mornings? You will log into the case management system and view your appointments, call the client and enter the information into the system.

If the case is advice only, you provide the advice on the phone and then send a followup letter on TRLS stationary to memorialize the advice and provide additional information, pamphlets, links to websites, etc. Our LHL Managing Attorney will determine which cases require additional assistance and will forward them to the appropriate office for further review and assignment. She will work closely to make sure you are comfortable with the advice you are providing and to provide input as needed.

How will this help? If we are able to recruit 20 volunteer attorneys willing to speak with two clients a month, we could address the legal issues of 40 additional clients. With more volunteers or a commitment to handle four calls a month, we might be able to transfer one of our LHL advocates to a full-time staff attorney position.

Rest assured ... we will provide training on the use of our case management system, create secure remote access and make sure you feel comfortable with the legal issues presented by our clients. We will run conflict checks prior to your interview with the client. This pilot plan is an effort to expand services to the low income community while making volunteering a possibility for more members of our legal community.

Not familiar with Three Rivers? Please review our website at www.trls.org to see the types of cases we handle. Interested? Contact me at marcia.green@trls.org and let me know. Feel free to call to schedule a time to meet and review our system. My phone is 352-372-0519, ext. 7327.

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/ Civil Justice Center at 201 East University Avenue. Following are some issues discussed during recent meetings, in no particular order.

The new judicial assignments reported last month have changed. The revised administrative orders for judicial assignments are available on the circuit8.org website (Administrative Order 9.3 Interim (04/20/2015) and General (06/01/2015-12/31/2015). Following are the highlights of the new orders:

Judge Hulslander will be handling Alachua County probate and guardianship cases (replacing Judge Keim).

As of June 1, 2015, Judge Brasington will take over for Judge Hulslander in Circuit Civil.

As there have been no Probate Section meetings since last month, the remainder of this article will be devoted to a brief review of recent cases that may be of interest to practitioners.

On April 24, 2015, the Second DCA issued its opinion in the case of *Brandon-Thomas v. Brandon-Thomas*, Case No. 2D14-761. The court therein reversed the trial court's dismissal of a divorce action filed by a same-sex couple who were legally married to each other in 2012 in Massachusetts. They then relocated to Florida and had a child. A divorce action was filed in Lee County in 2013. Ultimately, the trial court dismissed the action based on the provisions of Section 741.212, *Florida Statutes*, Florida's Defense of Marriage Act (providing that Florida does not recognize for any purpose a same-sex marriage entered into in any other jurisdiction).

In its lengthy opinion (20 pages from my printer), which is well worth reading, the Second DCA held that the trial court must hear and decide the divorce case for a number of reasons, primary among them being the State's interest in maintaining the free flow of capital and property. The court reasoned, in part, that without access to the Florida courts, the title to the parties' real estate would be indefinitely held in limbo. The need for determination of the issues of custody, visitation, and best interests of the child were also cited. It should be noted that a perhaps-crucial fact was that the Commonwealth of Massachusetts has a one-year residency requirement for divorces and, perhaps more importantly, the Commonwealth also has a provision that jurisdiction for a divorce will be refused if it is shown that a party moved to Massachusetts for the purpose of obtaining a divorce. Thanks to Richard White and Jeff Dollinger for forwarding this decision.

The Fourth DCA issued a very interesting opinion in November 2014 regarding the interpretation of the term "interested person" as applied to guardianship cases in general, and guardianship accountings in particular. The case of *Rudolph v. Rosecan,* _____ So.3d _____ (Fla. 4th DCA 2014) is, to say the least, surprising. The ultimate holding is that the mother of an incapacitated 22-year-old autistic son has no standing to object to the guardian's annual accountings. The guardian is the child's father. The parents were divorced, and there was in effect a parenting and timesharing plan. The father had been appointed plenary guardian of the son's person and property, and the parenting plan had been incorporated into the father's order of appointment.

This case can be viewed as an example of the axiom that "bad facts make bad law." The facts cited in the opinion included the father "voluntarily" providing the mother with copies of the annual accountings for "a few years." According to the motion of the father/guardian to deem the mother as not an "interested person" for purposes of future accountings, it was alleged that the mother had "consistently served frivolous objections to accountings and sought the father's personal financial or estate planning information," an allegation with which the trial court apparently agreed.

The 4th DCA affirmed the trial court's ruling that the mother was not considered to be an "interested person" for purposes of receiving or objecting to annual guardianship accountings. In its opinion, which should be carefully read by guardianship practitioners, the court made several important points, summarized as follows:

1. The mother's status as the ward's next-of-kin, alone, does not confer upon her "interested person" status.
2. The mother's rights under the parenting plan, alone or coupled with her next-of-kin status, is likewise insufficient to confer upon her "interested person" status.
3. Determination of "interested person" status is dependent upon the specific facts of each case, citing *Hayes v. Guardianship of Thompson,* 952

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So.2d 498 (Fla. 2006), holding that the ward's estate's heirs lacked standing to challenge guardian's fees, notwithstanding prior receipt of courtesy copies of prior fee petitions, and *Bivins v. Rogers,* 147 So.3d 549 (Fla. 4th DCA 2014), holding that the ward's son, as next-of-kin, lacked standing to petition for change of residence of the ward.

4. A person can be considered an "interested person" for some purposes but not for others, citing *Bivins,* wherein the court held that the ward's son was entitled to notice of the petition to determine incapacity and to appoint a guardian; was entitled to file objections to guardianship reports; and was entitled to notice of a petition to perform actions requiring a court order.
5. A person's status as an "interested person" in a particular guardianship proceeding is dependent upon whether or not the person would be directly affected by the outcome of the proceeding. In the present case, the mother was granted no financial rights by the parenting plan and had no personal financial responsibility for the ward's support. In short, according to the court, she would in no way be affected by the financial transactions of the guardian.
6. The determination of "interested person" status in a guardianship proceeding is of a "fluid nature."
7. In support of its holding, the court pointed to Section 744.3701, *Florida Statutes*, which provides that the right to inspect an annual report is limited to the court, the clerk, the guardian, the guardian's attorney, and, in some cases, the ward.

The bottom line is that there is now ample ammunition for strict interpretation of "interested person" status, with the same being limited to a person who is directly affected by the outcome of the particular proceeding. A generalized interest in the wellbeing of the ward, such as a parent for a child or vice-versa, may no longer be sufficient in many circumstances.

The opinion in the case of *Kritchman v. Wolk,* _____ So.3d _____, (Fla. 3d DCA 2014) is a very interesting breach of trust case involving the refusal of an institutional co-trustee to pay the balance of a beneficiary's college education expenses, after paying for two years and one semester, where the refusal was apparently at the behest of an individual (disgruntled) co-trustee. The trial court (affirmed by the DCA) found in favor of the beneficiary and ordered the trustees to reimburse the beneficiary for the unpaid college expenses.

Of additional importance to trust practitioners, the court ordered the trustees to disgorge amounts paid from trust funds for the trustees' attorney's fees and costs for failure to comply with Section 736.0802(10), *Florida Statutes*, which contains the procedures that must be followed in breach of trust cases. In summary, the statute provides as follows:

1. When sued for breach of trust, the trustee must provide an initial notice to qualified beneficiaries of the trustee's intention to pay attorney's fees and costs from the trust.
2. The initial notice must advise the beneficiary of his or her right to apply to the court for an order prohibiting payment of attorney's fees and costs from the trust.
3. Upon receipt of a motion to prohibit payment of fees and costs, the trustee must cease paying fees and costs from trust assets.
4. The burden is on the beneficiary to make a "reasonable showing by evidence" that provides a basis for the court to conclude that a breach of trust has likely been committed.
5. The court has the discretion to defer ruling pending discovery.
6. The court is required to enter an order prohibiting payment of fees and costs from trust assets if it finds that there is a reasonable basis to conclude that a breach of trust has been committed, unless the court finds that good cause exists not to do so.
7. The entire issue may be revisited by the court once the claim has been adjudicated.

It is interesting to note that the institutional co-trustee in *Kritchman v. Wolk* was Wells Fargo, N.A., which (one would think) could afford counsel with at least passing familiarity with the above requirements.

All interested parties[1] are invited to participate in Probate Section meetings. There are no dues, and there is no obligation 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.

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1 For attendance-at-meeting purposes, a direct personal interest in the proceeding is not required, unlike the decision in *Rudolph v. Rosecan.*

Redefining Success in the Legal Profession: A Leadership Roundtable

By Kate Artman

Happiness and success are concepts that are much desired, but difficult to define. Historically, success might have been defined by money and prestige, but with diversification of the legal profession comes new perspectives of what it means to be a "happy" lawyer: modern themes include achieving work-life balance, helping others, and professional autonomy. On April 10, 2015, judges, lawyers, and law students came together to discuss how concrete changes in promoting happiness could give a new definition to what success means within the legal profession, as well as promote diversity.

The event followed on the heels of the 2014 Leadership Roundtable "Women, The Law, and Leaning into Leadership," which addressed the female leadership gap in the legal profession. From the success of the 2014 Leadership Roundtable came the goal of the 2015 event: concrete suggestions for improving happiness and diversity in the legal profession. Stephanie Marchman, Chair of the Roundtable Planning Committee, worked closely with a number of local bar associations, including the Clara Gehan Association for Women Lawyers, Eighth Judicial Circuit Bar Association, Josiah T. Walls Bar Association, and North Central Florida Chapter of the Federal Bar Association, as well as the University of Florida Levin College of Law, to organize and host this event. The program would not have been possible without the efforts and resources of these sponsors and the Federal Bar Association Activity Chapter Grant and the Florida Bar Voluntary Bar Association Diversity Leadership Grant.

The 2015 Roundtable opened with a presentation by Lawrence Krieger, Clinical Professor and Director of Clinical Externship Programs at the Florida State University College of Law, on the results of his study that correlated responses from 7,800 lawyers in four diverse states to determine what makes lawyers happy. Professor Krieger's presentation began with a separation of objective success factors - including affluence, prestige, and status - from subjective factors, like human needs, internal motivation, intrinsic values, and supportive supervision. The study's results show that the greatest indicators of happiness in lawyers are directly linked to specific subjective, internal needs, including autonomy, relatedness, competence, internal motivation, autonomy support, and intrinsic values. The happiest lawyers are those who can make their own choices, who feel well-connected with others, feel competent in their tasks, and have support from their supervisors – thus explaining why many public service lawyers report greater happiness and professional fulfillment than their higher-paid, private sector counterparts.

Following Professor Krieger's presentation, distinguished lawyer leaders, including Sara Alpert, Mac McCarty, Martha Peters, Stacey Steinberg, Gloria Walker and Mary K. Wimsett, participated in a panel discussion on professional and personal fulfillment and what it means to be a "happy lawyer." Following the first panel, the speakers joined small discussion groups – each a combined mix of experienced lawyers, new lawyers, law students and other legal professionals – to address what changes could be made in the workplace and among the local bar associations to promote a happier and more diverse legal profession. At the end of the discussion, table moderators reported back to the larger group on their small group's discussion. Then, a second panel of judiciary members, including the Honorable Monica J. Brasington, Gary R. Jones, Philip R. Lammens, Sheree H. Lancaster, Mary S. Scriven, and Mark E. Walker, took up the topic of diversity in the legal profession and how each of their career paths indicate a change in the definition of "success."

Several major themes emerged as a result of the panel and table discussions. Chief among them was the importance and value of mentorships. Roundtable panelist Gloria Walker encouraged young attorneys to actively seek relationships with more experienced lawyers, and then later "pay it forward" and act as mentors themselves for newer attorneys. Indeed, the vast majority of the Roundtable attendees' concrete, specific suggestions for change related to mentoring, including the creation of a program to mentor and provide scholarships to at-risk minority high school students, the provision of free or reduced price memberships to local bar associations for young and government lawyers, and the development of a diversity mentoring event for minority law students, local lawyers, and judges.

Attorney wellness was another topic of focus during the panel and table discussions. During the judicial panelist discussion, Judge Scriven urged lawyers to take care of themselves and their physical

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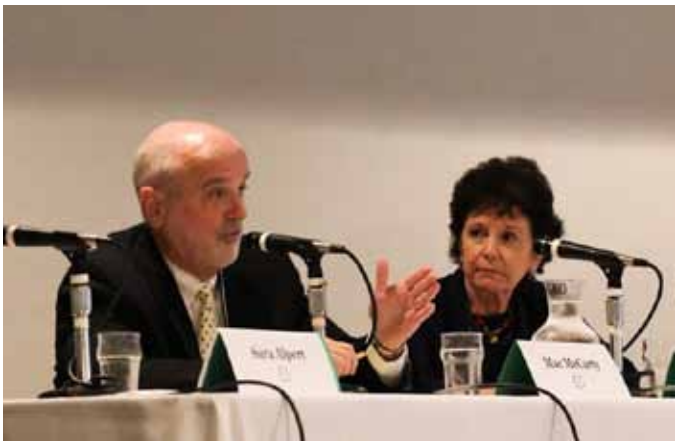
Judge Mary S. Scriven speaks at the Leadership Roundtable as Judge Mark Walker looks on



Happy Lawyer panelists Mac McCarty and Martha Peters at the Leadership Roundtable

Bracketing

Continued from page 7

process, in an attempt to close the gap. Alternatively, the parities could revert to hard numbers.

In most cases, the defense has evaluated the case before it comes to mediation, and has a firm idea about how much it is willing to pay in order to settle the case. It is the task of the plaintiff to find out what that number is by continuing to negotiate towards that point. Sooner or later, each side will invariably discover where his opponent is willing to go. From there, the parties need to see if they can bridge the gap through continued negotiations, or simply walk away. Most often, with the help of the mediator, the parties are able to reach a resolution.

Bracketing has proven to be a very effective tool for getting the parties into a range of numbers where settlement can be achieved. Through negotiating the ranges, the parties are often able to ultimately reach a settlement during the mediation process.

Happy Lawyers Gloria Walker and Mary K. Wimsett help redefine success at the Leadership Roundtable

Redefining Success

Continued from page 13

health, to commit to jobs they love and wealth will follow. She also advised the women lawyers in the room to invest in a good pair of flats to promote their happiness, as well as encouraged lawyers to never say yes right away when someone asks them to commit to something (unless it's the President, of course, then they should say yes!).

Judges and attorneys present at the event were also interested in balancing a demanding career with their family commitments. In fact, many of the participants suggested that family friendly workplace and bar association policies were critical to happiness and diversity. They suggested hosting family-friendly bar meetings and socials, limiting work demands during family times, allowing attorneys more flexibility by working remotely, creating more generous maternity and paternity leave policies, and developing child-friendly spaces in offices and courthouses.

Finally, the panelists and small groups discussed happiness for minorities and diverse communities within the legal profession. Women and people of color are entering the legal profession at higher rates than ever before, yet too few seem to stay. To this end, participants emphasized the importance of giving young minority lawyers client control on legal matters, thus increasing their professional autonomy, and to continue work on bridging the female leadership gap in the legal profession by appointing more women to leadership positions in law firms.

However individualized the definitions of happiness and success might be, the 2015 Leadership Roundtable discussion demonstrated that most lawyers are not that different. As a group, we want to feel like our decisions matter, that our opinions have been heard, and that we have support from those closest to us – an experience created and shared during the Roundtable itself.

Hydraulic Fracturing: Laws and Legal Maneuvers

By Jennifer B. Springfield

What is *hydraulic fracturing,* aka *fracking,* or *high-pressure well stimulation*? A simple definition is the extraction of natural gas and oil deposits (difficult to access because they are trapped within tight pores of rocks deep underground) by injecting water, sand and chemicals into drilled holes or wells which serves to fracture the rock and allow these resources to be recovered. A more technical definition is *all stages of a well intervention performed by injecting more than 100,000 gallons total of fluid into a rock formation at high pressure that exceeds the fracture gradient of the rock formation in order to propagate fractures in such formation to increase production at an oil or gas well by improving the flow of hydrocarbons from the formation into the wellbore.*[1] The rock/resources from which oil and natural gas are recovered using fracking technology are referred to as *coalbed methane, shale gas and oil, and tight sandstones or tight gas and oil.*

Why is this technology controversial in the U.S.? In the U.S., the use of hydraulic fracturing contributes to energy independence and provides many jobs. It also poses a number of environmental risks, such as contamination of ground and surface water from leaking wells or surface spills, air pollution from the escape of methane gas, use of limited water supplies, and increased seismic activity (rare).

Is hydraulic fracturing being used in Florida to recover oil and gas? Historically, it has rarely been used, but there exists within the industry an interest in exploring the greater use of hydraulic fracturing in two areas of the state where oil and gas deposits have already been removed using conventional methods. One is an area located in the western panhandle known as the *Jay Trend* and the other is an area in southwest Florida known as the *Sunniland Trend,* where standard production peaked in the 1970's.[2]

How are state and local governments in the U.S. addressing the use of high-pressure well stimulation to extract oil and gas resources from the ground? At least one state, New York, has banned hydraulic fracturing.[3] In other places where its use is fairly widespread, both state and local government regulations are common, but there are several states that have preempted its regulation to their executive branch.[4] Under current law in Florida,[5] an "operator" using hydraulic fracturing must notify the Department of Environmental Protection (FDEP) before beginning any "workover" on an oil or gas well, but no permit and, therefore, no inspection is required. Several local governments have also gone on record as being opposed to hydraulic fracturing,[6] but none have attempted to *regulate* the activity.

Several bills were filed during the 2015 Legislative Session to either ban[7] hydraulic fracturing or regulate[8] it. The House and Senate bills proposing to ban hydraulic fracturing were each filed, referred to a committee and introduced in committee, but no action was taken. The House bill proposing greater regulation of hydraulic fracturing, which also contained a local government preemption clause, became engrossed and was headed to a final vote by the full chamber. The Senate, which substituted the House's third committee substitute for its version, was read a second time and debated on the Senate floor. If passed, the changes made to existing law would have included the following:[9]

- A permit from FDEP would be required prior to performing high-pressure well stimulation to increase production at an oil or gas well.
- Past violations could be considered by FDEP and used as a basis for denial of the application or the imposition of additional, special conditions.
- Inspections by FDEP would be required.
- The national chemical registry known as FracFocus would be designated as the state's registry for recording and tracking chemicals used.
- Permit holders would be required to report the chemicals used.
- FDEP would be required to conduct a study on the potential effects of hydraulic fracturing.
- Local governments would be prohibited from adopting or establishing programs to issue permits for any activity related to oil and gas drilling, exploration or production.

Hydraulic fracturing will continue to be controversial in Florida and elected officials will be required to address its use or nonuse in the near time. Those persons living nearby these sites who fear the effects are likely to continue to demand that regulators

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Environmental Law *Continued from page 15*

and well operators comply with any applicable laws in effect.

1 CS/CS/CS/HB 1205, Engrossed 1, Florida House of Representatives 2015 Legislative Session.
2 Industry Perspectives on Laws and Regulations Governing Oil and Natural Gas Production in Florida, Timothy Riley, UF PIEC , February 13, 2015.
3 Role of State and Local Regulation: Local Government/Environmental Perspective, Ralf Brooks, UF PIEC, February 13, 2015.
4 An Introduction to Unconventional Oil and Gas Technologies, Risks and Regulations, Hannah Wiseman, UF PIEC, February 13, 2015
5 Chapter 377, Part I, Florida Statutes and rule chapters 62C-25 through 62C-30, Florida Administrative Code.
6 These include Alachua County, Miami-Dade County, Hallandale Beach, Coconut Creek, and the Leon Soil and Water Conservation District.
7 Senate Bill 166 and House Bill 169.
8 Senate Bill 1468 and House Bill 1205.
9 House of Representatives Staff Analysis dated April 15, 2015.

Applications Being Accepted For James C. Adkins, Jr. American Inn Of Court

James C. Adkins, Jr.. American Inn of Court is a group of lawyers from all areas of practice, who meet monthly from September till May to have dinner together and discuss topics designed to help attorneys improve their skills and professionalism. We invite you to apply by completing the following application and sending it to:

James C. Adkins, Jr. Inn of Court
c/o Diana M. Johnson
18 NW 33rd Court, Gainesville, FL 32607
diana@clayton-johnston.com

Application- James C. Adkins, Jr. Inn of Court

Name:
Business Address:
Phone:
Email:
Education:
FL Bar Admission Date:
Current Employment:
Position:
Type of Litigation:
Sponsor:

Applications are due by June 1, 2015. Dues for 2015-2016 are $325.Current members will be receiving a renewal membership application by email.

Thank you to our student volunteers at the "Ask a Lawyer" project!

June 2015 Calendar

10 Probate Section Meeting, 4:30 p.m., 3rd Floor Conference Room, Alachua County Criminal Justice Center
18 EJCBA Annual Dinner and Meeting, 6-8:30 p.m., Sweetwater Branch Inn
24-27 65th Annual Florida Bar Convention, Boca Raton Resort & Club

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.

Something To Consider

By Bill Hoppe

Do you know the name of the most recent attorney from the Eighth Judicial Circuit to sit in the First District Court of Appeals? Are there judges and attorneys in the Eighth Judicial Circuit who should be considered for the First District Court of Appeals? If, like me, your answer to question one is NO and to question two is YES, this article/letter is directed to you.

First the numbers. According to recent Florida Bar membership rolls 11,054 attorneys practice in the jurisdiction of the First District (circuits 1, 2, 3, 4, 8, 14); 1133 of those in our Eighth Circuit. Roughly 12% of First District attorneys are in the Eighth Judicial Circuit. There are 15 members of the First District Court; none of whom previously practiced in the Eighth Circuit.

Appellate Judges are appointed by the Governor from a list of three candidates. Those candidates are selected by a Judicial Nominating Commission (JNC). To become a member of a JNC, it is necessary to apply to the Board of Governors of the Florida Bar. During the most recent application term 340 Florida lawyers applied to be on a JNC; 24 of those filed to be on the JNC for the First District. Of the 24 Bar members who applied, 18 practiced in Tallahassee. No one applied from the Eighth Circuit.

No one knows the training, experience and ability of our local bench and bar better than we do. Next time, let's take the initiative to apply for the First District JNC, so that the other members can be told about the talent in the Eighth Circuit.

Applications Being Accepted For Gerald T. Bennett American Inn Of Court

The Gerald T. Bennett American Inn of Court is accepting applications for its September 2015 – March 2016 session. Applications can be downloaded online at http://bennettinn.org/ and are due on or before June 30, 2015. 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. To submit applications or request additional information, contact the Membership Chair, Norman Bledsoe, c/o Folds & Walker, LLC at (352) 372-1282 or norm@foldsandwalker.com. You may also follow the Bennett Inn on Facebook.