

# FORUM 8

Volume 75, No. 2

Eighth Judicial Circuit Bar Association, Inc.

October 2015

## President's Message

By Rob Birrenkott



### A “Ray” of Hope

Fall in our circuit is marked by new beginnings, fresh starts, and hope. Thousands of students move to our community to begin their college experience, joined by thousands more who are returning to begin a new chapter. Elementary school students, armed with

new backpacks and Beanie Boo’s (those of you with young kids know what I’m talking about) meet their new teachers and are set to tackle the upcoming school year. And speaking of “tackle,” the Gator football team always kicks off a new season this time of year. These are the markings of fall; we perceive the changing of the seasons not by temperature differentials, but rather, by these signs of hope.

Immediate Past-President Ray Brady dedicated himself to providing hope for those in our circuit who are facing significant challenges: the homeless. Whether it was his leadership on the “Ask a Lawyer” program or his idea to help challenge the doctors to a fundraising competition to open the kitchen at the GRACE Marketplace homeless shelter, he leveraged his influence on behalf of those who lacked it. In keeping with Ray’s vision, let’s continue to strive so all members of our community can experience new beginnings, fresh starts, and hope this time of year. On Friday, October 2<sup>nd</sup>, at 5:00 p.m. at Cymplify, please join the EJCBA for a family friendly social that will mark the culmination of our “Pitch In for the Kitchen” fundraising challenge with the Alachua County Medical Society. Bring your friends and families to help provide a fresh start to those most in need of one.

I hope to see you there. I hope the average high

temperature begins to dip into the high 80’s (with the wind chill factor). I hope the school year is off to a great start. I hope the Gator’s new offense flourishes. I hope the EJCBA will continue to make a difference in your life and in the lives of others in our community. I hope.

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## Florida Bar Board Of Governors Report

By Carl Schwait



I wrote to you on July 29 articulating the process for discussing the recommendations of a subcommittee on Vision 2016 (Bar Admissions) which favored reciprocity/admission by motion. The Executive Committee of the Board of Governors of The Florida Bar, on which I am a member, suggested that Board of Governors members withhold final judgment on this issue until all comments had been received in anticipation of any further action. In fact a public forum on this topic took place on September 18 in Tampa.

I have reviewed a great amount of literature on the issue of reciprocity/admission by motion and have received email communications from and have had telephone conferences with lawyers in our circuit and throughout Florida. I have now determined that my original opinion that reciprocity/admission by motion is not in the best interest of the citizens and lawyers of the Eighth Judicial Circuit and the state has not

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## Contribute to Your Newsletter!

### From The Editor

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

### About This Newsletter

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

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Any and all opinions expressed by the Editor, the President, other officers and members of the Eighth Judicial Circuit Bar Association, and authors of articles are their own and do not necessarily represent the views of the Association. News, articles, announcements, advertisements and Letters to the Editor should be submitted to the Editor or Executive Director by Email. Also please email a photograph to go with any article submission. 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**

## Trial Skills: Practice & Protocol

What: **Trial Skills: Practice & Protocol (CLE workshop series)**

Presenter: Honorable Victor L. Hulslander and other members of the bench  
Dates:

**Friday, October 2, 2015, 2:00 pm - 5:00 pm** Courtroom etiquette, motions in limine, direct and cross examination, making and meeting objections, impeachment.

**Friday, October 9, 2015, 2:00 pm - 5:00 pm** Continuation of direct and cross examination, laying foundations for introduction of physical, documentary, and pictorial evidence.

**Friday, October 16, 2015, 2:00 pm - 5:00 pm** Expert witnesses; qualifying, direct, cross, and impeachment of expert witnesses; limitations on testimony; proffers.

**Friday, October 23, 2015, 2:00 pm - 5:00 pm** Opening and closing statements (do's and don'ts); mistrial motions; making the record.

Where: **Alachua County Civil and Family Justice Center**, Courtroom TBA

CLE Credit (pending): **3 general credit hours per day for observers**

Cost: **FREE to EJCBA Members**

**Registration: Please visit [EducateThe8th.com](http://EducateThe8th.com) for more information.**

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## New Law Protects Corporate Data From Employees who Seek to Cause Harm

By Laura Gross, Donnelly + Gross



Insider threats from employees and former employees are one of the biggest risks to an employer's corporate data. Currently, civil recourse is available under Florida law only after a violator is convicted under the Florida Computer Crimes Act, Section 815.06, *Florida Statutes* (2015). Effective on October 1, a new Florida law will protect corporate data from harm or loss caused by intentional unauthorized access by employees or others. Florida's Computer Abuse and Data Recovery Act (CADRA), Sections 608.801 - 608.805, *Florida Statutes* (2015) provides a civil cause of action for businesses that are intentionally harmed by an individual who, among other things, obtains information from a "protected computer" without authorization. Remedies include actual damages, plus lost profits and economic damages, recovery of the violator's gains, recovery of the information, injunctive and other equitable relief, and attorney fees.

To be eligible to file a claim, businesses must have taken reasonable measures to protect their data whether stored on the computer, in the cloud, or otherwise online. Only a computer with a "technological access barrier" is a "protected computer" under CADRA. A "technological access barrier" is a "password, security code, token, key fob, access device, or similar measure." And, the access must be "unauthorized."

While it is easy to establish that an outside hacker's access is unauthorized, it can be tricky when an insider, employee or former employee has exceeded authorization. For this reason, employers need to have written policies that clearly delineate who can access what information and how that authorization is revoked. Passwords and access to data should be individualized to each employee. Passwords must not be shared. Employee compliance should be confirmed through routine monitoring. The policies should include a warning that unauthorized access is grounds for discipline, including immediate termination, and a notice that access terminates upon separation from employment.



# Alternative Dispute Resolution

By Chester B. Chance and Charles B. Carter



## Do Clothes Make The Lawyer?

We were reviewing an article in Wikipedia on international attire for judges and lawyers. The article has a number of fascinating pictures of Supreme Court justices, appellate judges, circuit judges, lawyers, solicitors, barristers, etc., from a variety of countries.

The article also focused on the history of legal attire in the U.S.A.

According to the article, in the early history of the United States, judges and practicing lawyers dressed the same way as their colleagues in England in the 1700s: lawyers and judges wore white powdered wigs and black robes in the lower courts while judges would wear red robes with black markings in higher appellate courts. This trend gradually dwindled out in the mid-1800s. The article notes the modern judicial courtroom attire with which most of us are familiar developed in the early to mid-eighteenth century: a plain black robe, and female judges sometimes adding a plain white collar or lace jabot.

With respect to the Supreme Court of the United States, initially all justices wore red robes with ermine trim and wigs. However, Chief Justice John Marshall did not like this formality and began wearing a black silk robe *sans* wig.

William Rehnquist added four gold bars to each sleeve of his robe but Chief Justice John G. Roberts went back to wearing a plain black robe.

The article points out some justices will sometimes wear large black skullcaps when outdoors in cold weather such as a presidential inauguration in mid-winter. The photograph (to the left) shows Justice Scalia at President Obama's inauguration wearing a hat which is a custom-made replica of the hat depicted in Holbein's portrait of Saint/Sir Thomas More. The hat was a gift from the St. Thomas More Society of Richmond, Virginia and was presented to him in November of 2010 as a memento of his participation in the 27<sup>th</sup> Annual Red Mass and Dinner.



Apparently Maryland Supreme Court justices

have the most unique attire: all judges wear red with British-style tab collars. (See photograph below.) Delaware Superior Court judges wear red sashes or "baldrics" on ceremonial occasions.



Until the 1970s, morning dress

was required of all attorneys appearing before the United States Supreme Court. This is no longer a requirement but the Office of the Solicitor General still wears morning dress for appearances before the United States Supreme Court. There is a feminine form of

morning dress which is often worn by female deputies of the Office of the Solicitor General although Elena Kagan was the only female to be Solicitor General who wore pantsuits instead of morning dress.

The article is actually fascinating both with respect to judicial and lawyer attire worldwide and in the United States. Obviously, we have become more casual and often attorneys appear casually for depositions, mediations, etc. Perhaps this more casual approach, which is often extremely casual, allows us to strike a rapport with our clients or makes us somehow more approachable (See photograph right.) Or, perhaps it makes us less professional. One article we reviewed suggested in the past people dressed up because things were more important. Even things like going out to dinner or boarding an airplane. One commentator suggested, "I don't think that the social principles that you should dress up for what is important to you has changed since the 1950s; I think there are some things that are not that important to us anymore." Perhaps professionalism is not as important as it once was. Are depositions not as important? Mediations? Meeting with a client?

Certainly your two authors are never going to appear in GQ. However, we rarely appear in jeans for legal proceedings. We recognize that currently there is no venue that you can attend and not see someone

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# Criminal Law

By William Cervone



October is the month by which most new laws, especially those changing criminal statutes, go into effect. Here it is October, so it seems appropriate to pass on to those of you having an interest in such things some highlights, loosely speaking, of last spring's legislative session.

In so doing, let me make the observation as a starting point that anything you saw in media coverage about the session, and the special sessions that followed, suggesting dysfunctional, arrogant, unproductive, and generally embarrassing behavior, including at the top levels of the process, was probably understated. But that's for another day, which unfortunately will be upon us all too soon as the 2016 session starts early in order to not inconvenience the legislators in their various campaigns for re-election. After all, they aren't allowed to raise money while in session.

The list that follows is by no means complete or exhaustive. And anything that piques your interest should be looked at in its entirety, so I've included the session law number to help you find it.

Chapter Law 2015-44 amends FS 790.01 to exempt from criminal penalties the carrying of concealed weapons or firearms when evacuating pursuant to a mandatory order during a declared state of emergency. This is, surprisingly, all the gun lobby managed to pass in 2015, try as they might. Bills aimed at specifically allowing guns on college campuses somehow failed, although they will be back in 2016. What did pass ensures that looters and other unsavory elements running amuck during, say, the next Hurricane Andrew, and those who they might loot, can all pack heat with wild abandon and the poor law enforcement people trying to maintain order will have no clue who has what weaponry where. So be it in the Gunshine State.

Chapter Law 2015-26 amends FS 934.50 to prohibit anyone, including law enforcement, from using a drone for surveillance where a reasonable expectation of privacy exists. This means no using a drone to watch the neighbor who tends to sunbathe in the buff, and no random checking for pot patches. It doesn't mean that the drone I saw news coverage of that was built to carry a mounted and remote control fireable gun or the drones that have become a menace to aircraft are any more under control.

They aren't.

Chapter Law 2015-46 addresses lots of procedural statutes to basically expand the civil citation process for juvenile misdemeanants so that police can just warn kids, or send them directly to diversion programs outside of the court system, or can tell their parents on them. Now that's novel. Would that many of them had parents who were interested in being told. This is also now allowed repeatedly, not just for first offenders. In part the impetus for this was the belief that too many kids were getting in trouble and ending up in court. Now we will reduce the number of kids in court and be able to declare that we must have solved juvenile crime because those numbers are down. And when kids are in court we'll be sure that the court doesn't get the full story on their background behavioral problems and issues, thus almost guaranteeing an inadequate treatment plan.

Chapter law 2015-41 creates an exemption under FS 119.071 for public records for law enforcement body camera recordings where someone has an expectation of privacy. This is the tip of the body cam iceberg. No one knows how to deal with the unmanageable amount of data they will generate, all of which must be stored, accessed, provided in discovery, reviewed for relevance, and so on. Picture, if you will, the usual scenario where five or ten officers show up at some crime scene and hang around for a few hours, all with body cams running even if all but one of those officers did nothing but kill time. Now multiply that by the number of calls law enforcement responds to. There was no meaningful talk about how that's all going to get handled and who's going to pay for it, mostly because no one knows how to do it. Expect a lot more on this over the next couple of years as the explosion of the camera-everywhere world we live in continues.

Chapter Law 2015-15 amends FS 316.640 and 316.660 to prohibit counties and municipalities from establishing traffic citation quotas and creates a reporting requirement if revenues from traffic citations exceed 33%. Can you see the ghost of the Waldo Police Department?

Chapter Law 2015-178 amends FS 910.035 to allow transfers from county to county of cases assigned to "problem solving courts." That would be a new euphemism for things like Drug Court and all of the other specialty court dockets we now have - I guess so as not to stigmatize or offend anyone by

*Continued on page 6*

# Courthouse Gallery Project

By Diana Johnson

Have you noticed the once blank walls of the Alachua County Family and Civil Justice Center are being adorned with artwork by local artists? The Courthouse Gallery Project has been made possible through the efforts of Clayton-Johnston, P.A., the Clerk of Court, and Chief Judge Roundtree.

We need your help!! Many of the pieces are on loan from the artists. To make the art have a forever home in the courthouse we are asking firms and attorneys to purchase ("sponsor") a piece. A plaque is placed next to each piece of art to recognize the generosity of the sponsor. A thank you to *Jeff Childers* and *Glassman & Zissimoplus* for taking the lead in sponsoring pieces. This is a great opportunity for artists and attorneys to join together to add value and beauty to such an important building. Please take time to stroll the halls of the courthouse to view the Courthouse Gallery and choose a piece to sponsor. For more information please call Clayton-Johnston, PA at 376-4694.



## Criminal Law

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suggesting that they have a drug problem.

Chapter 2015-138 creates FS 256.041, the All-American Flag Act. All United States or state flags and all material in them purchased for public use after January 1, 2016, must be American made.

Chapter 2015-12 amends FS 536.06 to permit growlers, those large containers for craft beer brewers and enthusiasts, to be used. This includes up to 128 ounce sizes. Trust me, the traditional brewers were not happy about this.

See, the legislature did do something helpful to the common man!

# Recognition Ceremony

By Nancy T. Baldwin



As the key function of the 2015 Magna Carta Law Week, the Eighth Judicial Circuit Bar Association and the Levin College of Law celebrated attorneys, judges, and professors for their historical contributions to "The Rule of Law." Honored at the Levin Courtroom were attorneys who had practiced for more than fifty years, judges who had ruled

for more than twenty- five years, and law professors who had taught for more than fifty years.

The attorneys honored included: P. Ause Brown, Bennett Brummer, Fletcher Baldwin, James Clayton, Allison Folds, Dudley Hardy, Charles Holden, Richard Jones, Michael Minerva, James Salter, Gerald Schackow, and Ernest Sellers.

The Jurists honored included: The Honorable Chester B. Chance, The Honorable Stephan Mickle, The Honorable Stan Morris, and The Honorable Elzie Sanders.

The Professors honored included Fletcher N. Baldwin, E. L. Roy Hunt, and the late Mandell Glicksburg.

Chief Judge Robert Roundtree, Acting Law Dean George Dawson and then-EJCBA President Ray Brady gifted the Honorees. Each Honoree provided a moment of his legal history; Adriane Isenberg provided fifties music; Nell Page presented a reading. Historic slides and composites were provided by the Legal Information Center and The Matheson Center.

A reception followed. Sponsoring the event were the following law firms:

Gold: The Allen Law Firm; Avera & Smith; Nancy T. Baldwin; Dell Graham; Tom Edwards; Fine, Farkash, and Parlapiano; Hertz and Kearns; Perry, Vloedman, and Brady; Robert Rush; Gilbert Schaffnit; Springfield Law; The Resolution Center; and Turner, O'Connor, and Kozlowski

Silver: James Gray; Stephen Miller

## Free CLE

On October 20, 2015 at 4 p.m., the Family Law Section and FLAG will have a joint free CLE with guest speaker Teresa Drake. She will be focusing on attorneys discussing vicarious trauma, "burn out", and mindfulness. This will be in the Family/Civil Justice Center, courtroom 3B.



# Probate Section Report

By Larry E. Ciesla



The Probate Section continues to meet on the second Wednesday of every month 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:

Richard White introduced Cathy Mitchell, who recently relocated to Gainesville. Cathy is a 1988 UF law graduate and is pursuing an LLM on a part-time basis while continuing her practice in the areas of corporate and intellectual property law. Cathy is somewhat of an expert in social media aspects of the practice of law and has promised (threatened) to give a presentation to the Probate Section in this regard. We welcome Cathy and wish her the best of luck in her endeavors in Gainesville.

Katie Floyd indicated she is leaving (by this publication date, she has already left) Salter Feiber and joining a firm which will be rebranded as Ossi, Withers and Harrison, P.A. Katie plans on continuing her practice in the areas of estate planning, probate, landlord-tenant, and fiduciary relations. She anticipates expanding into litigation, as well.

Nick Harvey will be joining Katie to become the firm's litigator. Nick has been practicing as an associate in the area of commercial litigation with Siegel Hughes and Ross for several years.

Several newly revised Eighth Circuit Administrative Orders were discussed:

The newest version of **Administrative Order 7.04 (v6)** became effective July 1, 2015. The primary changes to this Order deal with compensation to examining committee members in incapacity cases. The Order has been clarified to indicate that the recently adopted caps of \$400.00 for doctors and \$300.00 for all others applies only in cases of indigent-alleged wards. The list of approved examining committee members has been updated, as several persons have been removed from the list (either voluntarily or involuntarily for failure to comply with the continuing education requirement).

**Administrative Order 1.30** (replacing Order 5.11) was also effective July 1, 2015. This Order is aimed at preventing limited appearances by lawyers who provide "coverage" for foreclosure mills. Under the Order, limited appearances are authorized only in probate and family law cases, in accord with the provisions of Rule

5.030, Florida Probate Rules, and Rule 12.040, Florida Family Law Rules of Procedure. All other appearances must be general appearances (except when contesting jurisdiction).

**Administrative Order 7.10 (v2)**, replacing Order 7.10 (v1), also is dated and effective July 1, 2015. This Order deals with guardianship reports and makes it clear that locally the courts will require filing reports on a fiscal year basis. Filing on a calendar year basis will be only allowed in limited cases upon filing a motion and showing good cause. The Order provides the following guidance with respect to guardianship reports:

1. The fiscal year for accountings will begin on the first day of the month following the month in which letters were issued and will end on the last day of the month (except for the first annual accounting, which will begin on the date letters were issued);

2. The annual plan of the person must have the same due date as the annual accounting; and

3. Reports will be due on the first day of the fourth month following the end of the fiscal year.

**Administrative Order 7.02 (v3)**, replacing Order 7.02 (v2), became effective August 2, 2015. This Order deals with settlement of claims of minors. The main new feature is the requirement that a full guardianship of the property be established – and a guardian appointed – in cases where the settlement is effectuated by purchase of a structured settlement annuity having a cost of \$15,000.00 or more for the benefit of the minor, even though there are no funds in the guardianship. This requirement was enacted pursuant to the opinion in the case of *Hancock v. Share*, 67 So.3d 1075 (Fla. 5th DCA 2011), wherein the 5th DCA discussed the requirement that such an annuity must be "turned over" to the minor upon attaining the age of 18. A guardian must be appointed so that there will be someone who can accomplish the "turnover" at age 18.

Judy Paul gave a presentation regarding the Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 (ABLE Act). There are both federal and state components to this law.

The federal law is contained in Public Law 113-295, effective December 19, 2014, and authorizes the creation of ABLE accounts for disabled individuals similar to IRC Section 529 educational accounts. These accounts will be referred to as "Section 529A accounts" or "ABLE accounts." The gist of the law is that disabled persons owning ABLE accounts up to \$100,000.00 will not be disqualified from receipt of

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# TRLS has a Disaster Preparedness Plan. Do you?

By Marcia Green

Does your office have a plan? Three Rivers Legal Services does! I'm not entirely sure if our plan is because we receive federal funding or as a requirement of one of our other grant sources. We may have a plan because we have incredibly mindful management, or maybe because our Executive Director, Chris Larson, survived several devastating hurricanes that completely destroyed one of her former offices and greatly impacted her co-workers and communities. For whatever reason, Three Rivers now has a plan.

In August, when Gainesville was in the "cone of uncertainty" extending ahead of former Tropical Storm Ericka, our staff gathered together to discuss our newly updated "Disaster Preparedness and Response Plan." The eleven-page document sets out how our employees and management will prepare for a disaster, the steps to be taken to secure the offices, files and equipment, and our individual responsibilities. Then, very importantly, the plan sets out how we will address the needs of our existing clients and provide services to the victims if a disaster occurs. We serve 17 counties with clients and employees living throughout, near both coasts of the state and in low lying areas near our beautiful rivers and springs.

Boring topics are included, such as the annual reviews of insurance policies to make sure coverage is adequate, directions to have up-to-date inventories of all equipment and to make sure our electronic files are backed up daily to a server that is stored offsite. The plan sets out instructions to secure our computers and all peripherals in heavy-duty plastic bags and to store them in windowless rooms and discusses where to store documents, such as client files and the office insurance policies, if we know a storm is headed our way.

You might be chuckling to yourself and thinking, yes, of course, everyone has an emergency plan or maybe this is over-kill. In the 35+ years I have worked here, I wasn't aware of a plan. I never considered the need to know the name and contact information of the office insurance agent or who to contact about our phone system or case management system. I am now aware that our personal items are not covered by the office insurance policy, something I never previously considered. The plan addresses needs prior to an event and then what steps to take after, if needed. For instance, do we need to provide support to staff affected by a storm? What needs to be done

if an office is damaged? If everyone knows a storm has hit, are we responsible to go to the office? What if there is no phone service? What happens if a court hearing is scheduled?

We set up a phone tree, of sorts, and made sure we all had lists of contact information and current addresses for our co-workers. We have a checklist to address annually and a designated disaster team. In 2004, when the effects of three storms created problems in north Florida, we were able to come into work. I didn't have power at home for about 10 days and a few employees couldn't get out of their flooded neighborhoods, but the offices were open and we were able to work.

Of great importance, our plan sets out the need to address the issues facing our clients and the victims of the disaster. The damage needs to be surveyed and we need to connect with other service providers, pro bono attorneys, community volunteers and groups to coordinate our efforts for maximum impact.

Prior to becoming Executive Director at Three Rivers in 2014, Chris Larson worked at Florida Rural Legal Services in Ft Myers. Along with our family law attorney, Jenny Seltzer, she experienced the devastation left by the series of hurricanes that hit the State in 2004 and 2005. Florida Rural's Ft Pierce office was totally destroyed by Hurricanes Frances and Jeanne; Hurricane Charley left the Ft Myers office without power for a week and the Punta Gorda office for more than two weeks. As the staff assessed their damages, they discovered that Jenny and another employee were unaccounted for and unreachable. So many considerations were put into play, including the health and safety of the staff members, the security of the offices, equipment and client files and how to reach out to the community to assess the emergency legal needs of the victims. Without power, there was no way to fill up cars with gas which limited the ability to travel to regular intake sites, etc. New office space had to be secured but little space was available in the devastated communities and employees had to commute greater distances. Staff and client emotions had to be addressed as well as those of members in the community.

When the communities served by Florida Rural suffered so much damage, the attorneys and local bar associations stepped in to help. The Lee County

*Continued on page 9*



**Disaster Preparedness** *Continued from page 8*  
Bar Association, along with others, sent volunteers to the local FEMA sites and held clinics to meet with refugees of the storms. Pro bono attorneys became even more important than ever in the efforts to rebuild the communities. Somehow I feel certain that the attorneys in the Eighth Judicial Circuit will be ready as well!

Now it all seems so long ago, but I am glad that Three Rivers has a very specific plan and I hope you do too. Most of all, I hope we never have to use it for ourselves or for the benefit of our clients.

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## **Probate Section** *Continued from page 7*

SSI and Medicaid benefits. The accounts are capped at \$418,000.00; however, in the event an account exceeds \$100,000.00, receipt of further SSI benefits would be suspended until the account drops below \$100,000.00. Allowable expenditures would cover a wide variety of items, including rent, utilities, real estate taxes, mortgage payments, educational and transportation expenses, and legal fees.

Enabling legislation was passed in Florida and signed by the Governor on July 14, 2015; however, it is estimated that it will take up to a year to put Florida's ABLE program into place. Florida will have special rules for ABLE accounts, the main one being an annual aggregate contribution limit of \$14,000.00. The program will be administered by the Florida Prepaid College Board, which will appoint individuals to review and approve or reject distribution requests.

Each disabled individual is limited to one ABLE account. Earnings on funds in the account will not count as taxable income. To qualify, the individual must be deemed disabled by the SSA prior to attaining age 25. Upon the death of the account-holder, Medicaid payback applies.

The initial reaction of the Probate Section is that the ABLE law will be of limited utility, as a special needs pooled trust could more easily deal with many of these same issues, without dollar limitations.

The Probate Section thanks Judy for this most informative presentation.

All interested parties are invited to participate in Probate Section meetings. There are no dues, and there is never an 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.

**ADR** *Continued from page 4*  
wearing jeans: theaters, churches, three-star Michelin restaurants, funerals, the opera, even a courtroom.

Perhaps we have taken the "clothes don't make the man/woman" concept too far. Does the idea that people should accept us for who we are rather than what we wear lead to a culture where individuals do not know how to show respect for the occasion, for other people, or for even themselves?

One commentator noted that nothing puts a damper on an anniversary dinner like dressing up in your best suit with your wife in her best dress and paying an incredible price for a wine-paired meal while sitting between tables with people who look like they randomly chose to drop in for dinner after jogging.

Clothes don't make the professional, but perhaps something is lost when professionals look like tourists on vacation. What an attorney wears does not affect their legal knowledge or courtroom skills. Some would say what a professional wears is irrelevant. Some would say that.

We have now reached a point where wearing socks is dressing up. People used to call a room full of lawyers "a bunch of suits." Not so much anymore.

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## **Riparian Water Rights**

*By Jennifer B. Springfield*



You've probably heard the term and know that it relates to water, but what precisely are "riparian rights," who has these rights, and what is the nature of these rights? Riparian rights are those rights which are *incident* to lands that border upon "navigable waters." Riparian rights include such things as the right to ingress and egress the waters, and to boat, bathe and fish in the waters. Riparian rights are not proprietary in nature; they inure to the benefit of the upland owner, but they are not *owned*.

Navigable waters consist of freshwater lakes, rivers and streams, surveyed and owned by the State of Florida. They typically do not include *non-meandered lakes*, ponds, swamps or overflowed lands - the land under which has been conveyed to a private person without a reservation of any public rights. The State also owns the submerged lands

*Continued on page 10*

## Foreclosure Sales Go Online



Alachua County Clerk of Court, J. K. Irby, has moved the sale of foreclosed property out of the courthouse and onto the Internet. Irby said, "Foreclosure sales information is posted on-line and bidders will bid online in much the same way as E-bay works." To bid, bidders will set up an account and make a deposit sufficient to

cover the required deposit of the maximum amount they want to bid. Bidders are not required to disclose their maximum bids. Other safeguards are built into the system to ensure a fair and open auction. The successful bidder's account must contain, before the conclusion of the sale, a "good faith" deposit equal to 5% of the final bid. The balance of the bid is then due by the close of business on the first regular business day following the sale. Other bidders can request their deposit be returned or leave it on deposit so that they can bid on additional properties.

This service can be accessed at [www.alachua.realforeclose.com](http://www.alachua.realforeclose.com). The first on-line auction took place on September 1, 2015. At the web site there is a "Site Guided Tour." Also, the clerk's office will offer webinar or on-line bidder training classes via the internet on a regular schedule. Those classes generally last about one hour and specifically cover the use of the software. Attendance is by registration only. To register for a class interested persons should call toll free 877-361-7325.

Mr. Irby said, "This new process will take the sale of property from the courthouse steps to the internet and will thereby make the process more accessible to bidders. The online sale web site at [www.alachua.realforeclosure.com](http://www.alachua.realforeclosure.com) is open 24 hours per day, 7 days per week. This site offers bidders the opportunity to review property information, make deposits, place bids, and view auction results all from the comfort of their home or office and at times that are convenient for them." However, Irby also cautioned potential bidders, "The old trading doctrine, of caveat emptor, or let the buyer beware, is a good policy for those who are not familiar with the ins and outs of purchasing foreclosed properties. I would urge potential bidders to spend some time studying about foreclosures because these properties are sold without a warranty and the buyer takes the risk."

## Riparian Water Rights Continued from page 9

under its navigable waters, as well as any islands, sandbars, and shallow banks within them. Although the State *owns* these lands and waters, they are considered to be held in trust for all of its citizens under what is known as the Public Trust Doctrine.

Under the Public Trust Doctrine, the State also owns coastal waters and lands within the Atlantic Ocean and the Gulf of Mexico. The State is said to own everything below the *mean high water line* and the upland landowner bordering the coastal waters owns everything above the mean high water line. Coastal upland owners have what is referred to as "littoral rights." Littoral rights are very similar to riparian rights. Littoral rights include navigation, bathing and fishing, and also the rights of access to the water, reasonable use of the water, and an unobstructed view of the water. Further, coastal upland owners are subject to the natural forces of *accretion and reliction*, under the principles of which an upland owner and/or the State may gain and/or lose land area over time depending upon whether sand is deposited on the coast or eroded from the coastline. And you thought riparian rights had something to do with reptiles?

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## CLE Opportunity for EJCBA Members

On Thursday, October 8, 2015, from 4 to 7 p.m., there will be a symposium on "**The Florida Constitution at 50 Years: Looking Ahead to the 2017-8 Revision Commission**" at UF Law, Room 180, Holland Hall. This symposium will feature moderated panel discussions with former Florida Governors and Revision Commissioners, including:

Martha Barnett, Partner, Holland & Knight, Tallahassee; former President, American Bar Association (1998 Commissioner)

Robert A. Butterworth, Buchanan Ingersoll & Rooney PC (of counsel), Ft. Lauderdale; former Florida Attorney General (1998 Commissioner)

Bob Graham, Moderator, former U.S. Senator and former Florida Governor

Clay Henderson, Executive Director, Stetson Institute for Water & Environmental Resilience; Holland & Knight (of counsel), Orlando (1998 Commissioner)

Kenneth H. (Buddy) MacKay, former Florida Governor

Jon Mills, Dean Emeritus, Professor of Law & Director, Center for Governmental Responsibility; Boies, Schiller & Flexner LLP (of counsel), Miami;

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## CLE Opportunity

*Continued from page 10*

former Speaker, Florida House of Representatives (1998 Commissioner)

James A. Scott, Chairman and Founding Director, Tripp Scott, Ft. Lauderdale; former Florida Senate President (1998 Commissioner)

Stephen N. Zack, Partner, Boies, Schiller & Flexner LLP, Miami; Past President, American Bar Association (1998 Commissioner)

The symposium is sponsored by UF Law's Center for Governmental Responsibility, the Bob Graham Center for Public Service, the Eighth Judicial Circuit Bar Association, Santa Fe College Office of Civic Engagement and Service, and the League of Women Voters Alachua County/Gainesville.

Parking restrictions will be lifted in the green lots surrounding UF Law during the CLE (the orange lots are only available after 3:30 pm). 3.6 CLE credits are anticipated for this symposium. Please contact CLE Chair Stephanie Marchman at [marchmansm@cityofgainesville.org](mailto:marchmansm@cityofgainesville.org) with questions.

## Board Of Governors

*Continued from page 1*

changed over these last two months.

I will not go into the details in this communication of the pros and cons of reciprocity/admission by motion. I can confidently state, however, that allowing out of state lawyers to practice in our community without taking the Florida Bar examination is particularly harmful to the citizens in the less urban Eighth Circuit and to the lawyers who practice in our circuit.

Therefore, you can rely on me to vote NO on the issue of reciprocity/admission by motion and to urge that the issue be presented for a vote at the October Board of Governors meeting in order to end the debate and to move on to issues that truly help, and do not hurt, the lawyers of our circuit in their daily legal practice and that will protect and aid the citizens of the Eighth Judicial Circuit in their involvement in the legal process.

I look forward to your comments. As always, I am grateful for your allowing me to serve as your representative on the Board of Governors of The Florida Bar.

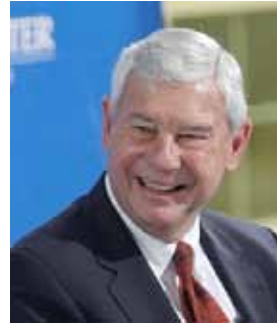
### Value Adjustment Board Attorney Position Available

The Alachua County Value Adjustment Board invites qualified attorneys to review the following ad: <http://www.alachuacounty.us/Depts/Clerk/VAB/Pages/ValueAdjustmentBoard.aspx>

For further information contact Deanne Williams, Deputy Clerk, Clerk of the Circuit Court's Office, at (352) 374-3605 or [dmw@alachuaclerk.org](mailto:dmw@alachuaclerk.org).

## Senator Bob Graham is October Luncheon Speaker

**On October 9, 2015, Senator Bob Graham will be our featured luncheon speaker.**



Bob Graham was raised on a cattle and dairy farm in the deep Everglades of what is now Miami-Dade County. He was a standout student, winning the title of Dade County's "Best All-Around Boy" from the Miami Herald and serving as president of Miami High's student body.

At the University of Florida, he was involved in many different clubs and organizations and served as chancellor of the student honor court and president of his fraternity. A political science major, he also won some of the school's most prestigious awards. He was inducted into the University of Florida Hall of Fame and was a member of Florida Blue Key. After graduating from Harvard Law School, he returned to his native Miami Lakes and began his political career.

Senator Graham is a former two-term governor of Florida and served for 18 years in the United States Senate. He also served for 12 years in the Florida legislature for a total of 38 years of public service. Senator Graham is recognized for his leadership on issues ranging from healthcare and environmental preservation to his 10 years of service on the Senate Select Committee on Intelligence – including serving as Chairman in 2001-2002.

Profiling Graham in The Washington Post in 2003, reporter Michael Grunwald wrote: "Today, Graham is one of the most popular politicians in Florida history. He's known as a successful governor, an excellent consensus-builder, an unusually nice man for a politician. He's never lost an election. He's never been embroiled in a scandal. He's enjoyed support from environmentalists and sugar barons, Cubans and Jews, retirees and college students. Michael Dukakis, Bill Clinton and Al Gore all considered him as a running mate."

After retiring from public life, Senator Graham served for a year as a senior fellow at the Harvard Kennedy School of Government. In May of 2010, Senator Graham was appointed by the President to serve as Co-Chair of the National Commission on

*Continued on page 14*



# ANNUAL EJCBA JIMMY C. ADKINS, JR CEDAR KEY DINNER



**WHEN:** Thursday, November 5, 2015 beginning at 6:00pm  
**WHERE:** Steamers: 420 Dock Street, Cedar Key, Florida  
**COST:** \$40.00\*  
**DEADLINE:** Please register on or before **Thursday, October 29, 2015**  
**REGISTER:** <http://www.8jcba.org/event-registration/cedar-key-dinner-2015/>

\*\$45.00 at the door for attendees not having made prior reservations. For questions or if you need to change your reservation, please contact Judy via email at [execdir@8jcba.org](mailto:execdir@8jcba.org) or call (352) 380-0333.

**NOTE:** Attendance is limited to current members of the EJCBA and attorneys who are members' guests, but only if the guest attorney(s) would not otherwise be eligible for membership in the EJCBA.

You may join/renew your dues online at <http://8jcba.dev.acceleration.net/pay-dues/>



Cocktail hour sponsored by Attorneys' Title Fund Services, LLC

*Many thanks for its continued generosity*

**Bring a Dessert to Share**

Please feel free to bring a dessert to share at the event. Your colleagues will thank you!



September guest lunch speaker Dr. Owen Roberts



Judge Hulslander speaks at the September bar lunch

# Invitation to Renew / Join the 2015-16 EJCBA

The Eighth Judicial Circuit Bar Association (EJCBA) cordially invites you to either renew your membership or join the EJCBA as a new member.

To join, please visit : <http://8jcba.dev.acceleration.net/pay-dues/> to pay online or return the below application, along with payment, to the EJCBA at PO Box 13924, Gainesville, FL 32604. The EJCBA is a voluntary association open to any Florida Bar member who lives in or regularly practices in Alachua, Baker, Bradford, Gilchrist, Levy or Union counties.

Remember, only current EJCBA members can access a printable version of the complete member directory, edit their own information online, post photos and a website link, and be listed on results for searches by areas of practice. Additionally, our Forum 8 Newsletter, event invitations, and updates are all sent electronically, so please ensure we have your current email address on file and add [execdir@8jcba.org](mailto:execdir@8jcba.org) to your email address book and/or safe senders list.

## EJCBA Membership Dues:

Free - If, as of July 1, 2015, you are an attorney in your first year licensed to practice law following law school graduation.

\$55.00 - If, as of July 1, 2015, you are an attorney licensed to practice law for five (5) years or less following graduation from law school;

or

If, as of July 1, 2015, you are a public service attorney licensed to practice law for less than ten (10) years following graduation from law school. A "public service attorney" is defined as an attorney employed as an Assistant State Attorney, or a n Assistant Public Defender, or a full-time staff attorney with a legal aid or community legal services organization; or you are a Retired Member of the Florida Bar pursuant to Florida Bar Rule 1-3.5 (or any successor Rule), who resides within the Eighth Judicial Circuit.

\$75.00 - All other attorneys and judiciary.

Optional – YLD Membership Dues (in addition to your EJCBA dues above):

\$25.00 - EJCBA Young Lawyers Division

(eligible if, as of July 1, 2015, you are an attorney under age 36 or a new Florida Bar member licensed to practice law for five (5) years or less)

\* EJCBA voting membership is limited to Florida Bar members in good standing who reside or regularly practice law within the Eighth Judicial Circuit of Florida. EJCBA non-voting membership is limited to active and inactive members in good standing of the bar of any state or country who resides in the Eighth Judicial Circuit of Florida, and to UF College of Law faculty.

## EJCBA

# Renewal/Application for Membership

## Membership Year: 2015-2016

Check one: Renewal  New Membership

First Name: \_\_\_\_\_ MI: \_\_\_\_\_

Last Name: \_\_\_\_\_

Firm Name: \_\_\_\_\_

Title: \_\_\_\_\_

Street Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Eighth Judicial Circuit Bar Association, Inc.

Telephone No: (\_\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

Fax No: (\_\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

Email Address: \_\_\_\_\_

Bar Number: \_\_\_\_\_

List two (2) Areas of Practice:

\_\_\_\_\_

\_\_\_\_\_

Number of years in practice: \_\_\_\_\_

Are you interested in working on an EJCBA

Committee?  Yes  No

the BP Deepwater Horizon Oil Spill and Offshore Drilling. This followed his service as a Commissioner on the Financial Crisis Inquiry Commission and as the Chairman of the Commission on the Prevention of Weapons of Mass Destruction Proliferation and Terrorism. Currently, he serves as Chairman of the WMD Center, a not for profit research organization

which continues the work of the Commission. Senator Graham also serves as a member of the CIA External Advisory Board, as a member of the board of directors of several companies, and as the Chair of the Board of Overseers of the Bob Graham Center for Public Service at the University Florida. Source: <http://bobgrahamcenter.ufl.edu/>.

## October 2015 Calendar

- 2 "Trial Skills: Practice and Protocol" CLE, 2-5 p.m., Alachua County Family/Civil Justice Center
- 2 EJCBA Social – Cymplify, 5-8:45 p.m.
- 3 UF Football v. Ole Miss Rebels, TBA
- 5 Deadline for submission to November Forum 8
- 7 EJCBA Board of Directors Meeting, Rm. 285D, UF Law School, 5:30 p.m.
- 8 Florida Constitution Revision Committee Symposium (CLE) at UF Law, 4-7 p.m.
- 9 EJCBA Luncheon - Senator Bob Graham, The Woolly, 11:45 a.m.
- 9 "Trial Skills: Practice and Protocol" CLE, 2-5 p.m., Alachua County Family/Civil Justice Center
- 10 UF Football at Missouri Tigers, TBA
- 12 Columbus Day Holiday – Federal Courthouse closed
- 14 Probate Section Meeting, 4:30 p.m., 4th Floor Meeting Room of the Alachua County Family/Civil Justice Center
- 16 "Trial Skills: Practice and Protocol" CLE, 2-5 p.m., Alachua County Family/Civil Justice Center
- 17 UF Football at LSU Tigers, TBA
- 20 Family Law Section Meeting, 4:00 p.m., Chief Judge's Conference Room, Alachua County Family & Civil Justice Center
- 23 "Trial Skills: Practice and Protocol" CLE, 2-5 p.m., Alachua County Family/Civil Justice Center
- 31 UF Football v. Georgia Bulldogs (Jacksonville), 3:30 p.m.

## November 2015 Calendar

- 4 EJCBA Board of Directors Meeting – 5:30 p.m., UF Law, Room 285D
- 5 Deadline for submission to December Forum 8
- 5 Annual James C. Adkins, Jr. Cedar Key Dinner
- 7 UF Football v. Vanderbilt, TBA
- 9 Ben Overton Lectures in Florida Constitutional Law, Justice Barbara Pariente, "Merit Retention & Selection of Florida Appellate Judges and Supreme Court Justices," 3:00 p.m., Martin H. Levin Advocacy Center Courtroom
- 11 Veteran's Day Holiday – County & Federal Courthouses closed
- 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, Laura Rosenbury, Dean, UF Levin College of Law, The Woolly, 11:45 a.m.
- 14 UF Football at South Carolina (Columbia), TBA
- 16 Ben Overton Lectures in Florida Constitutional Law, Justice Charles Canady, "The Role of Precedent and Stare Decisis, 3:00 p.m., Martin H. Levin Advocacy Center Courtroom
- 17 Family Law Section Meeting, 4:00 p.m., Chief Judge's Conference Room, Alachua County Family & Civil Justice Center
- 21 UF Football v. Florida Atlantic, TBA
- 26 Thanksgiving Day – County & Federal Courthouses closed
- 27 Friday after Thanksgiving Holiday – County Courthouses closed
- 28 UF Football v. FSU, TBA

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).