FORUM 8

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President's Message

By Rob Birrenkott

Beyond Membership

I have enjoyed serving with the Eighth Judicial Circuit Bar Association and hope you will consider becoming more involved and apply for a leadership position in the organization. My time on the EJCBA Board has been time well spent. It has enabled me to get out from behind my desk and work cooperatively with others to benefit our members. Over the past several years, I have enjoyed wrapping presents with Dawn Vallejos-Nichols at her office as part of the holiday project, setting up a lemonade stand with my daughters during the golf tournament, supporting a speaking series in partnership with the library, and arriving early at Cedar Key and other socials to help with the set up and watching empty rooms transform into packed venues with the sounds of laughter echoing from wall to wall.

Please do not tell everyone this secret, but this year, as President, my role is different. I am just a hood ornament. The real engine that drives the organization forward is the EJCBA Board of Directors. People like: Tee Lee, who worked with Judge Hulslander to bring about the first trial practice skills series for our members; Michele Lieberman, who integrated EJCBA participation for the first time in an E-Discovery symposium at UF Law; Meshon Rawls, who organizes yearly conferences for at-risk youth; Stephanie Marchman, who brought local, state, and national leaders to speak at our luncheons; Ray Brady, who expanded the Ask-A-Lawyer program and led our professionalism symposium; Dawn Vallejos-Nichols, who makes this newsletter possible; Jan Bendik, who organized the library legal speaking series and successfully engaged sponsors for our events; Mac McCarty, who for several years has chaired the charity golf tournament; Frank Maloney, who captures photos of all our events and documents them; Sharon Sperling, who keeps the finances in order; Courtney Johnson, who is chairing our Spring Fling (see you there on Wednesday, April 6!); Daphne Saddler, who is organizing the annual meeting; Nancy Baldwin and Peg O'Connor, who are leading our "Law Week" initiatives in our community; Anne Rush, who led our holiday project; Rick Fabiani, who has helped us partner with the local YLD; and Monica Perez-McMillen, who expanded our membership outreach. They, along with other members of the Board have worked very hard this year on behalf of the membership at-large.

Each member of the Board is an integral component of the team that works together to drive the organization forward. I ask you to consider being more than a member and join this team to bring your own unique ideas, vision, passion, leadership, and skills to the table. Here is a link to the application https://goo.gl/QVaYDI if you are interested in becoming more involved in shaping the future of the EJCBA.

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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. 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

Alternative Dispute Resolution

By Chester B. Chance and Charles B. Carter

Smartphone, but Dumb Manners

We came across a web-page by Tess Townsend entitled "Using Your Smartphone During the Meeting is Still Rude." Ms. Townsend notes:

"While the acceptable boundaries for mobile device usage keep expanding, 94% of Americans believe it's still unacceptable to fiddle with your phone during a business meeting, according to a new report by the Pew Research Center."

According to Ms. Townsend, the survey determined 96% of people found it inappropriate to use an iPhone or smartphone during a church service. 88% found it rude during a family dinner.

In summarizing the survey, Ms. Townsend observes men are more tolerant of cell phone use in meetings than women: 7% of men say it's fine compared with 4% of women. She also observes "…smart phone owners were more accommodating of cell phone use in meetings than non-owners (6% versus 4%)."

Ah, you ask: how does age affect the concept of rudeness? Well, Ms. Townsend's article states "adults under 30 (of course!) are the most lenient as 10% of those surveyed between the ages of 18-29 said cell phone use during a meeting is OK." We know that means 90% think it's rude. Of the respondents aged 30-49, only 6% say cell phone use during meetings is acceptable.

Let's move the cell phone use/rudeness issue to a restaurant setting. Only 62% of Americans, according to Ms. Townsend's article, think it is rude to use a smartphone at a restaurant. Which means 38% think it's perfectly fine.

"Frequent or even just occasional cell phone use in social settings is detrimental to a conversation according to 82% of American adults, Pew reports. And yet 89% of respondents say they used their cell during their most recent social gathering."

A mediation is an extremely important "business meeting." And yet, during the joint session, participants at mediation often spend an awful lot of time browsing their smartphones. Sometimes, we wonder if this is a tactic, i.e. attempting to fain indifference to one's adversary. Some attorneys will present an opening statement and then, as soon as the adversary begins their opening statement, they immediately start staring at their smartphone, responding to emails, or playing a game for all we know. The result? We assure you, the person who is doing this is ALWAYS thought of as being rude in the eyes of the other party and their attorney. We get complaints about it ALL the time. In summary: it's very counterproductive to resolution.

Yes, we are old and outdated when it comes to the use of new technology, but, in our defense, we cite to the August 2015 Pew survey which shows 90% of the under-30 generation find such use rude.

At a mediation, you have to use every psychological advantage you can find to assist in working out a resolution. Why would you want to do something that's counter-productive, from a psychological perspective, to resolution? Rudeness never goes over well. And, according to the Pew survey, over 90% of the people in this country look upon smartphone use during a business meeting as, well, just rude.

Why are we writing an article about it? Because we like to help people find ways to resolve cases, not un-resolve them. This is a small issue but it causes a lot of irritated responses. Take our word for it, as we have to listen to them.

In an online article by Kevin Kruse, research indicates older professionals and those with higher incomes are far more likely to think it is inappropriate. That study indicated 84% of the respondents thought it was inappropriate to write texts or emails during formal meetings and 75% thought it was inappropriate to read texts or emails during such meetings. The article by Mr. Kruse quotes Roger Lipson, an executive coach, who states "…smartphone/tablet use in meetings is one of the most frequent comments for the 'behaviors to stop doing' category." Why? According to studies, it shows lack of respect, lack of attention, lack of listening and lack of power.

A magazine, Hawaii Business, had a "modern etiquette test" as follows:

Using your smartphone in a business meeting shows that you are:

a. connected 24/7 and responding instantly to clients;
b. rude, distracting and about to get fired;
c. under 30 or working for a tech company;
d. assuming all the old fools will change.

We leave it to you to come up with the right answer.

Criminal Law

By William Cervone

This is no April Fool's Day joke. Today it is my duty to warn you of a new threat to your well-being, nay, your very existence. This is difficult as the threat level I must convey has apparently exceeded Homeland Security's reddest of reds. Nobody likes to dwell on such things but in today's world we must.

No, the problem is not radical Islam, foreign terror groups, or even domestic terrorists, although some would characterize what I must warn you of as being in that vein.

I must also, and first, warn those of you who are squeamish that what follows may upset your politically correct sensibilities. This warning is compelled by the very topic I must address.

The problem we must now face as a society is something called "trigger warnings." If you haven't heard of this scourge yet, well, you will. I can only hope you are not taken aback and traumatized. This evil seems to be taking root largely on college campuses, potentially putting those of us in Gainesville at special risk.

Exactly what is this, you ask? Rightfully so.

Trigger warnings are in essence a demand that teachers provide warnings in advance if assigned material contains anything that might trigger difficult emotional responses for students. This flows, I suppose, from the concept used by the motion picture industry with their ratings, which as far as I can tell do no more than increase interest in a possibly really over the top display of violence or perversion. The idea is that we must not offend college age students' sensibilities by introducing material that poses a challenge to their values and beliefs for fear of causing something akin to a PTSD response. That actually makes logical sense as early "trigger warning" conversations often centered on the problems returning Viet Nam vets experienced. Something that might trigger a response of some unpleasant sort is, of course, to be avoided at all costs. But it is just possible that we've again gone a step too far and fallen down the rabbit hole. Many colleges and universities have therefore begun to adopt strict policies directing the avoidance of anything, word or act, that could trigger such a response, including at Oberlin College the topics of "racism, classism, sexism, heterosexism, cissexism, ableism, and other issues of privilege and oppression." In other words, in our perpetual desire to not remotely have anything that one person in a million might possibly take offense to slip past our lips we must self-censor, well, everything.

Candidly, I don't even know what some of those -isms are. I do know that you can put me in the category of those who believe that this is among the stupidest thing I have ever heard of, especially in the college environment where we should be fostering the free exchange of thoughts and ideas and exploring solutions to problems, which seems to me to require actually examining and talking about those problems, not running away from them or pretending that they don't exist. Is this really what we've come to?

At Columbia University, there has been a push for trigger warnings before the study of classic Greek mythology and Roman poetry. Ovid's *Rape of Persephone*, for example, might be unbearably oppressive to someone because it touches on classic themes of power, lust, and grief. Hey, has anyone watched nighttime TV lately? Related to this, one professor at Washington State University has said that the use of the term "illegal aliens" will result in the deduction of points from grades, and another has banned the use of the words "male" or "female" in a Women And Popular Culture class, both apparently because these are "oppressive and hateful" expressions. I could go on with an exhaustive list of such, and yes I will say what I think about it, which is that it is utter nonsense.

Perhaps I should propose that my prosecutors must provide appropriate warnings to defendants so as not to unfairly traumatize them. Don't read that Indictment, for example, as the language suggesting that you brutally and intentionally killed someone might upset you. Certainly don't study the police reports and, heaven forbid, crime scene photos. Those aren't nice. And be aware that the prosecutor's comments about you and what you did to the jury and sentencing judge could well offend your delicate sensibilities.

On the plus side, for our young scholars still in school it will apparently no longer be necessary to claim that the dog ate your homework when you have a valid psychologically endorsed defense that you weren't warned that the homework would upset you and you therefore are not accountable for not doing it.

Employee Handbook Revision: Employment Discrimination

By Laura Gross

This year is expected to bring expanded employer liability for employment discrimination with the Equal Employment Opportunity Commission's higher focus on LGBT rights, pregnancy discrimination, and hiring practices.

LGBT Discrimination. For the first time, the EEOC has filed suit against two private employers on behalf of employees alleging sexual orientation discrimination. While Title VII prohibits employment discrimination on the basis of sex, race, color, national origin and religion, sexual orientation is not identified as prohibited. The lawsuits, filed in Baltimore and Pittsburgh, allege that discrimination against a person because of that person's LGBT status constitutes discrimination based on sex under Title VII.

Employers in Gainesville and Alachua County are already subject to local ordinances which prohibit discrimination in employment based on sexual orientation and gender identity (and gender expression under the county ordinance). More than 30 states prohibit some version of sexual orientation and gender identity discrimination. And, many companies have voluntarily adopted similar policies. Still, without a federal statute specifically providing comprehensive coverage, protection is uneven and often absent. As part of its national strategic plan, the EEOC now promises heightened scrutiny. If they have not done so already, employers should consider updating their employment discrimination policies to protect lesbian, gay, bisexual, and transgender employees consistent with the EEOC's position.

Pregnancy Discrimination. With the expansion of pregnancy discrimination claims to include women whose pregnancies make them temporarily disabled under the Americans with Disabilities Act, enforcing the rights of pregnant women is another top priority. It's fairly simple in application: disabilities caused by pregnancy should be treated the same as other temporary disabilities under an employer's health, disability, or sick leave plan. This means that modified work schedules, light duty assignments, and time off offered to temporarily disabled employees are equally available to pregnant employees who need such accommodations.

Hiring Considerations. An employer's consideration of prior criminal convictions, credit reports, medical screening, social media, tests, and other assessments, and constant changes in the law, make the hiring process a legal danger zone. These practices can constitute employment discrimination based on race, gender, and disability. Many employers are moving away from some of this background investigation as a best practice due to increased restrictions aimed at preventing unlawful discrimination.

For more information about federal employment discrimination enforcement, the EEOC website at http://www.eeoc.gov/ is very helpful.

Nominees Sought For 2016 James L. Tomlinson Professionalism Award

Nominees are being sought for the recipient of the 2016 James L. Tomlinson Professionalism Award. The award will be given to the Eighth Judicial Circuit lawyer who has demonstrated consistent dedication to the pursuit and practice of the highest ideals and tenets of the legal profession. The nominee must be a member in good standing of The Florida Bar who resides or regularly practices law within this circuit. If you wish to nominate someone, please complete a nomination form describing the nominee's qualifications and achievements and submit it to Raymond F. Brady, Esq., 2790 NW 43rd Street, Suite 200, Gainesville, FL 32606. Nominations must be received in Mr. Brady's office by Friday, April 29, 2016 in order to be considered. The award recipient will be selected by a committee comprised of leaders in the local voluntary bar association and practice sections. Link to the Professionalism Award nomination form: http://www.8jcba.org/wp-content/uploads/2016/03/2016-Professionalism-Award.pdf

Former Florida Bar President Greg Coleman was the keynote speaker at the 2016 EJCBA Professionalism Seminar

Does a Landlord Have a Duty to Protect a Tenant From a Third Party Criminal Attack?

By Brad McVay, Siegel Hughes & Ross

Gainesville is well known for being home to the University of Florida and a very large student population. The large student population makes Gainesville an ideal place to be a landlord of an apartment complex catering to students. As each graduating class of students leaves town, a new class of students replaces them. For an apartment complex this represents a never ending stream of potential tenants, which means that at any given time in Gainesville there are a very large number of landlord-tenant relationships. This article briefly examines the landlord-tenant relationship in the context of whether a landlord has a duty to protect a tenant from a third party criminal attack occurring in or around the rental unit. This is meant to be a brief overview/discussion of some of the cases that address the above issue and is by no means exhaustive.

Generally, a person or entity has no duty to take precautions to protect another against criminal acts of third parties. *T.W. v. Regal Trace, Ltd*., 908 So.2d 499, 503 (Fla. 4th DCA 2005). However, there is an exception to this rule where a special relationship, such as that between a landlord and tenant exists. *Id*. "The rule in Florida is well established that a landlord has a duty to protect a tenant from reasonably foreseeable criminal conduct." *Id*. (*citing Salerno v. Hart Fin. Corp*., 521 So.2d 234, 235 (Fla. 4th DCA 1998)). "However, for the duty regarding third party criminal acts to arise, it must be proven that the landlord has knowledge of prior similar criminal conduct." *T.W. v. Regal Trace, Ltd*., at 505 (holding, "[B]ecause of Regal Trace's knowledge that some sort of sexual assault had occurred against K.G. on its premises, likely by a tenant, and because it had a landlord-tenant relationship with T.W. and K.W., it had a duty to protect against the foreseeable criminal acts of third parties within the course of that special relationship, in this case by warning tenants about those foreseeable acts."). *See also Menendez v. Palms W. Condo. Ass'n*, 736 So.2d 58, 61 (Fla. 1st DCA 1999) (finding, "there is no evidence that any specific person had any actual or constructive knowledge of any fact that arguably would make the incident described in the complaint reasonably foreseeable.").

The prior similar conduct rule is based on the idea that a landlord cannot fix or guard against something he or she has no knowledge of (as was the case in *Menendez*). Alternatively, if evidence is presented that suggests a landlord was aware of similar acts of the same nature that caused the injury to the tenant, then a duty to protect the tenant against those foreseeable acts would likely attach. The case law suggests that the prior similar conduct rule has only a limited application to those claims arising out of the common law duty to exercise reasonable care to keep the premises safe. *See Vazquez v. Lago Grande Homeowners Ass'n*, 900 So.2d 587, 592 (Fla. 3rd DCA 2004); *see also Paterson v. Deeb*, 472 So.2d 1210, 1219 (Fla. 1st DCA 1985) ("In view of the obvious purpose of the statutory duty to provide locks and security to prevent potential damages caused by the acts of unwarranted trespassers on the leased premises, we expressly decline to require as the essential predicate to liability allegation and proof that the landlord had actual or constructive knowledge of prior similar criminal acts committed on the premises.").

As explained in more detail below, in cases involving a statutory duty from an express provision of the Residential Landlord Tenant Act (hereinafter: RFTA), not merely a common law duty, the prior similar act requirement is not applicable.

In 1973 the Legislature enacted the RLTA. See Ch. 73-330, Laws of Florida (1973), now codified in Fla. Stat. § 83.40 to § 83.61. RLTA imposed a number of obligations upon landlords that did not exist at common law. The *Paterson* case was the first case to consider the legal impact of the RLTA on a tenant's right to recover damages in tort for a criminal attack. 472 So.2d at 1216. The *Paterson* case involved a female tenant who was forcibly raped at knifepoint by an unknown man in her apartment building. The allegation was that the man had gained access by way of a common hallway under the sole control of the landlord. On numerous occasions plaintiff brought to defendant's attention that her front door lock was broken and that the rear door of the building had no lock or security device. *Id*.

The court focused its attention on Section 83.51, F.S., which specifies the extent of the landlord's

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The Rise of Civil Investigative Demands in White Collar Investigations

by Robert S. Griscti & Jake Huxtable

With the Department of Justice's newly amended policies and emphasis on combating white-collar crime, Civil Investigative Demands ("CIDs") have emerged as a powerful tool frequently used by federal prosecutors. Since January 2009, the United States Justice Department has recovered more than $26.7 billion through False Claims Act cases, with more than $16.8 billion of that amount recovered in cases involving fraud against health care programs.[1] The Middle District of Florida has been particularly recognized as a hot spot, where U.S. Attorney Lee Bentley and his team have recovered over $500 million over the last two years.[2]

CIDs frequently are used to initiate these investigations. Receipt of a CID triggers immediate and often broad discovery obligations, including a duty to preserve information, the complete production of documents, and possible deposition discovery, absent a valid claim of privilege or narrowing by the recipient. Hence, corporate officers, executives and in house counsel must understand the contours of CIDs and should seek experienced legal counsel to help ensure a proper response.

Until recently, only the United States Attorney General could authorize the issuance of a CID. With the 2009 passage of the Federal Enforcement and Recovery Act, the Assistant Attorney General for the Civil Division and individual U.S. Attorneys all now have the power to issue CIDs.[3] This expansion of authority within the DOJ has coincided with changes in CID authority among the states. For example, state attorneys in Florida have been granted the authority to issue CIDs after the Florida Attorney General has consented in writing.[4]

The government has greater flexibility in requesting the production of information pursuant to CIDs than via criminal grand jury subpoena. Prosecutors use this to the government's advantage in deciding whether civil enforcement or criminal prosecution is more appropriate.

CIDs can be served only before a civil or criminal action is instituted. While CIDs may not be used to investigate violations that impose solely criminal penalties, they can be used to determine whether the suspected conduct violates criminal law. In those cases where criminal prosecution is more appropriate, further investigation should proceed by the federal grand jury process.

The False Claims Act empowers the Justice Department to issue a CID where there exists "reason to believe that any person may be in possession, custody, or control of any documentary material or information relevant to a false claims law investigation . . . ."[5] CIDs may be served on any natural or juridical person, including suspected violators, potentially injured persons, witnesses, and record custodians. Additionally, a valid CID must contain several items to assist the recipient of a CID to prepare an adequate response and production:

- a reasonable description of the materials or testimony to be produced with such a definiteness and certainty as to permit such material to be fairly identified;
- a return date for producing the documents or providing the testimony; and
- the identification of the specific custodians to whom the materials will be made available or who will conduct the deposition.[6]

In the Eleventh Circuit, which includes federal districts in Florida, Georgia and Alabama, the courts have made it clear that the government must have more than mere intuition that illegal activity is afoot before issuing a CID. In other words, the government is prohibited from conducting baseless investigations. Although the Eleventh Circuit does not require absolute proof of a violation prior to commencing an investigation, Florida law and the Fourth Amendment do require the government to have "reason to believe" a violation has occurred.[7] Hence, there are valid defenses available to CID recipients which, if asserted, could ultimately limit the scope and overall costs of responding to a CID.

1 See Department of Justice Press Release, *21st Century Oncology To Pay $19.75 Million To Settle Alleged False Claims For Unnecessary Laboratory* Tests, December 18, 2015, available at http://www.justice.gov/usao-mdfl/pr/21st-century-oncology-pay-1975-million-settle-alleged-false-claims-unnecessary.

2 See Department of Justice Press Release, *U.S. Attor-*

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Lawyers Make a Difference!

By Marcia Green

At the February EJCBA luncheon, Chief Judge Robert Roundtree, Florida Bar Foundation Executive Director Bruce Blackwell and Three Rivers Legal Services took the opportunity to recognize and thank our many volunteers and donors. If you haven't seen the Honor Roll, let me know and I will send you a copy.

The staff of Three Rivers Legal Services is limited. We can only help a small percentage of our low income residents who encounter civil legal problems. With the help of our volunteers, we are able to do so much more.

Here are some examples of the impact that volunteer attorneys have made in the past year.

Recently I received a phone call from a woman who was helped at our twice-monthly Small Claims Clinic. She had moved out of her apartment, left it cleaned and returned the key. The landlord had not returned her security deposit and she came to our clinic for help. The security deposit was just $300. That's not much to some people, and possibly less than your hourly fee. To a disabled woman with little income, it is huge. Our volunteer attorney, Lucy Goddard-Teel, advised the client about her rights, assisted her in completing the complaint and explained to her the procedure for small claims. The court filing fees were waived because her income was so low. She filed the papers and counsel for the apartment management entered into a settlement with the client. She received her $300 security deposit and called to thank us for our help!

During an Ask-A-Lawyer event, attorney John Bonner met a disabled woman staying at Grace Marketplace; she was unemployed, suffering mental and physical impairments, and hadn't worked in several years. She was a beneficiary of her mother's estate but because of her impairments, she had not been able to obtain her share of the estate. With an attorney on her side, she finally received her $9,000 inheritance. Now she is able to secure housing and obtain much needed medical care.

Susan Mikolaitis, Mary K Wimsett, Lynn Belo, Bruce Hoffman, Ron Stevens, and Judith Paul, *just to name a few*, drafted wills, advance directives and deeds for clients. Sam Boone helped a family obtain a qualified income trust for their elderly father. Parker Lawrence, Erny Sellers, Ted Burt and Tom Copeland all assisted clients with the probate of estates to secure ownership of their homestead, to reduce their property taxes, to allow for low cost home repairs, or to save the home from foreclosure.

Virginia Griffis represented a mother in the guardian advocacy of her now adult disabled daughter. Shannon Miller assisted a woman who needed to change guardian advocacy from her elderly mother who was no longer able to perform the care-giving duties for her disabled sister.

Frank Maloney helped a woman dismiss the dissolution of marriage her husband filed in Florida even though both parties lived in Georgia. Tee Lee is representing a client in a contested custody case. Kathleen Fox is representing a victim of domestic violence in her dissolution of marriage.

Carl Schwait assisted and mentored our staff attorney in a trial. Cynthia Swanson spoke to grandparents raising their grandchildren, providing advice about their rights regarding custody and other issues.

These are but a few. I can't list everyone and I ask that you review the Honor Roll to see all of the wonderful attorneys who recognize that they have the opportunity to help in a way that only attorneys can. Whether you accept referrals of pro bono cases, participate in Ask-A-Lawyer for the homeless, advise clients at our Small Claims Clinic, make presentations, mentor a new attorney or financially support Three Rivers, thank you!

Often the representation and assistance of the pro bono attorney can have a significant outcome for the client; sometimes it is relatively simple. Regardless of the ultimate result, whether it is giving an individual the opportunity to speak with an attorney, get advice and/or representation, pro bono attorneys make a big difference!

FREE CLE from the Family Law Section & FLAG

Topic: Guardian ad Litem Training
When: April 19, 2016 at 4:00 p.m.
Location: Family and Civil Courthouse, courtroom 3B

On April 19 at 4:00 p.m., the Family Law Section and FLAG will provide a free CLE training opportunity for attorneys to volunteer as guardians ad litem. The 8th Judicial Circuit has been utilizing volunteer attorneys to fill the role of guardians ad litem in contested family law cases.

Author Nathan Whitaker to Speak at April 15, 2016 Luncheon

Our featured speaker for our April 15, 2016 EJCBA Luncheon is lawyer and author, Nathan Whitaker.

Voted by his peers as "The Person Most Likely to be Standing Alone, Lost and Awkward, at a Cocktail Party," Nathan Whitaker is the co-author of the #1 New York Times bestseller Quiet Strength, and the founder of Whitaker Partners, LLC, a firm specializing in the representation of coaches and front office personnel.

A two-sport athlete (baseball and football) at Duke University, he played for Steve Spurrier on Duke's most recent ACC Championship football team and graduated cum laude with a degree in English and Political Science in 1991. Following that, he graduated cum laude from the Harvard Law School in 1994, at which point he began his varied professional journey. He spent two years as a law clerk for United States District Judge William Terrell Hodges before practicing general business litigation and employment law with Smith, Helms, Mulliss & Moore, LLP in Greensboro, NC.

Whitaker left the firm in 1998 to join the Jacksonville Jaguars, where he was responsible for the club's football operations and budgeting, as well as working with the salary cap and player contract negotiations. After two seasons with the Jaguars, he switched conferences and Florida coasts to work for the Tampa Bay Buccaneers. It was in Tampa, while working on legal, salary cap and scouting matters that he worked alongside Tony Dungy.

In 2004, he embarked on a three-year journey to write a book, a portion of which time he also was employed as the Director of Community at Van Dyke United Methodist Church in Lutz, Florida. During this time he also founded Whitaker Partners, LLC, in which he and his father, a Gainesville attorney, assist coaches and administrators with the professional and personal matters of their lives.

The book-writing journey finally culminated with the July 2007 release of Quiet Strength, Tony Dungy's memoir. Since its release, it has become one of the best-selling hardcover sports autobiographies ever, is the longest-tenured sports-related book in the top ten of the NYT hardcover, nonfiction list, and has over a million and a half copies in print. He has also co-authored the New York Times bestsellers "Uncommon" (NYT hardcover, advice list at #2), "The Mentor Leader" (NYT hardcover, advice list at #2), "You Can Do It!" (NYT children's list at #1), "You Can Be a Friend" (NYT children's list at #2), "Through My Eyes" with Tim Tebow (NYT hardcover, nonfiction list at #6) as well as co-authoring "Role of a Lifetime" with James Brown of CBS Sports.

Whitaker currently lives in Florida with his wife, two daughters, and two deranged dogs that were rescued.

Source: http://nathanwhitaker.com/about/

Civil Investigative Demands

Continued from page 7

ney's Office Collects More Than $136 Million For U.S. Taxpayers in Fiscal Year 2015. December 4, 2015, available at http://www.justice.gov/usao-mdfl/pr/us-attorney-s-office-collects-more-136-million-us-taxpayers-fiscal-year-2015. See also Department of Justice Press Release, *U.S. Attorney's Office Collects More Than $367 Million In Civil and Criminal Actions For U.S. Taxpayers In Fiscal Year 2014*, November 19, 2014, available at http://www.justice.gov/usao-mdfl/pr/us-attorney-s-office-collects-more-367-million-civil-and-criminal-actions-us-taxpayers.

3 Geoff Murphy, *Civil Investigative Demands Part I: What Are They and Why Do I Care*, Prime: Government Contracting Law Blog, January 5, 2015, available at http://www.primewatchgovernmentcontracting.com/civil-investigative-demands-part-one/.

4 Fla. Stat. § 542.28(1).

5 31 U.S.C. § 3733(a)(1).

6 12 C.F.R. § 1080.2.

7 See *Major League Baseball v. Crist*, 331 F.3d 1177 (11th Cir. May 27, 2003) (limited the scope of Attorney General's authority to issue investigative demands by holding that the Florida Attorney General's investigation of professional baseball association, which was based solely upon the proposed contraction of number of teams in leagues, violated Fourth Amendment and Florida law because such investigation was baseless).

It's that time again! The Eighth Judicial Circuit Bar Association Nominations Committee is seeking members for EJCBA Board positions for 2016-2017. Consider giving a little time back to your bar association. Please complete the online application at https://goo.gl/QVaYDI. The deadline for completed applications is May 6, 2016.

Landlord Obligations

Continued from page 6

statutory obligation to maintain the leased premises. In pertinent part, subsection (2)(a) states that the "landlord of a dwelling unit…shall, at all times during the tenancy, make reasonable provision for…locks and keys and the clean and safe condition of common areas. See Fla. Stat. § 83.51. The court in *Paterson* held that the landlord had a duty to protect the tenant based on the requirements in the statute. This is clearly different that the general duty to protect the tenant from a criminal attack discussed previously. As explained by the court in a later decision, the landlord in *Paterson* had a specific duty to provide the tenant with a working lock. The breach of this duty exposed the landlord to civil liability. *Menendez*, 736 So.2d at 62. The *Paterson* court also made it very clear that with respect to the statutory duty to provide locks and security the prior similar acts rule is not applicable. *Paterson*, 472 So.2d at 1219 ("We are not willing to give the landlord one free ride, as it were, and sacrifice the first victim's right to safety upon the alter of foreseeability by slavishly adhering to the now-discredited notion that at least one criminal assault must have occurred on the premises before the landlord can be held liable.").

Finally, a duty to guard against crime has been imposed upon a landlord where the landlord has undertaken the duty of providing security or protection to the tenants. "A landlord, who as in this case recognizes and assumes the duty to protect his tenants from foreseeable criminal conduct, is required to take reasonable precautions to prevent injury from such conduct." *Lambert v. Doe*, 453 So.2d 844 (Fla. 1st DCA 1984).

A case that discusses this final concept nicely is *Holley v. Mt. Zion Terrace Apartments*, Inc., 382 So.2d 98 (Fla. 3d DCA 1980). In *Holley*, the decedent was raped and murdered inside her apartment while a tenant in the defendant's apartment complex. The crime was committed by an intruder, thought to have been a co-tenant, who apparently gained access into the tenant's apartment through a window which fronted a common outside walkway. *Id*. at 99. The decedent's estate brought an action against the apartment complex alleging negligence in that the complex failed to provide reasonable security measures in the building's common areas. *Id*. The court found that two particular features of this case made the plaintiff's position even more convincing than in most, if not all, of the prior precedents:

Mt. Zion's prior practice of providing armed guards constitutes an admissible indication of the defendant's own "knowledge of the risk and the precautions necessary to meet it." W. Prosser, *Law of Torts*, s 33 at 168 (4th ed. 1971); and

The showing that part of Ms. Bryant's rent may have been expressly for security creates a genuine issue concerning the landlord's contractual responsibility to provide that protection. *See Cooper v. IBI Security Service of Florida, Inc*., *supra*

Id. at 100. These practices clearly showed that the landlord had recognized the dangerous nature of the premises. The fact that Mt. Zion had taken significant steps to safeguard the property and suddenly abandoned the security measures in what appeared to be an effort to save money was obviously not a reasonable measure. *See id*. at 99. The duty to guard against crime founded upon particular undertakings is an entirely separate basis of liability, different from the common law duty, and as such prior-offense evidence is not necessary. *Vazquez*, 900 So. 2d 593.

In sum, the duty of a landlord to protect a tenant against third party criminal attacks can originate based on: 1) particular undertakings; 2) express provisions contained in the RLTA; or 3) common law.

Second Annual Spring Fling Set For April 6

The Eighth Judicial Circuit Bar Association invites you and a guest to join us for our

2nd Annual Spring Fling
Wednesday, April 6, 2016
6:00 pm until 8:00 pm
at the Thomas Center

This is our second year hosting our members for a fun event that will feature live music, food, and craft beer and wine at the beautiful outdoor garden adjacent to the Thomas Center. We look forward to seeing you there!

This event is free for EJCBA members and their guest.

Reservations are required.

The event is limited to current EJCBA members, who may bring one guest (provided the guest is not eligible for EJCBA membership)

Reservations must be received no later than March 31st at: http://www.8jcba.org/event-registration/spring-fling-2016/

Reserve Now for the EJCBA *April 2016* Luncheon

WHEN:	Friday, April 15, 2016 – 11:45 a.m.
WHERE:	The Wooly – 20 N. Main Street, Gainesville, FL 32601
PROGRAM:	Nathan Whitaker — Lawyer and co-author of the New York Times bestsellers *Quiet Strength*, Tony Dungy's memoir, and *Through My Eyes*, with Tim Tebow
COST:	**Members: $17.00**, **Non-Members**: **$25.00***
	Chef's choice luncheon buffet, including meat or vegetarian entrees, seasonal sides, and dessert
DEADLINE:	Register on or before **Monday, April 11th at Noon at http://www.8jcba.org/event-registration/apr-2016-luncheon/**

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

Thank You!

Thank you to everyone who participated in the 2016 EJCBA Golf Tournament.

YOUR participation made this year's event another big success.

2nd Annual Spring Fling

Wednesday, April 6, 2016
6:00 pm until 8:00 pm at the Thomas Center

This event is free for current EJCBA members and their guest (provided the guest is not eligible for EJCBA membership)

Reservations must be received no later than March 31st at http://www.8jcba.org/event-registration/spring-fling-2016/

April 2016 Calendar

5 Deadline for submission of articles for May Forum 8
6 EJCBA Board of Directors Meeting – 5:00 p.m., Thomas Center
6 Second Annual EJCBA Spring Fling Social – Members Only + Guest – 6:00 p.m. – 8:00 p.m., Thomas Center
13 Probate Section Meeting, 4:30 p.m., Chief Judge's Conference Room, 4th Floor, Alachua County Family & Civil Justice Center
15 EJCBA Luncheon, Nathan Whitaker, Lawyer and Co-Author of Through My Eyes by Tim Tebow and The Mentor Leader, Quiet Strength, and Uncommon by Tony Dungy, The Wooly, 11:45 a.m.
19 Family Law Section Meeting, 4:00 p.m., Chief Judge's Conference Room, Alachua County Family & Civil Justice Center

May 2016 Calendar

4 EJCBA Board of Directors Meeting – 5:30 p.m., Law School, Rare Book Room
5 Deadline for submission of articles for June Forum 8
11 Probate Section Meeting, 4:30 p.m., Chief Judge's Conference Room, 4th Floor, Alachua County Family & Civil Justice Center
13 EJCBA Luncheon, Ramon Abadin, President, The Florida Bar, The Wooly, 11:45 a.m.
17 Family Law Section Meeting, 4:00 p.m., Chief Judge's Conference Room, Alachua County Family & Civil Justice Center
30 Memorial Day, County & Federal Courthouses closed

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.