

# FORUM 8

Volume 76, No. 1

Eighth Judicial Circuit Bar Association, Inc.

September 2016

## President's Message

By Stephanie M. Marchman



### GIVE.

You're undoubtedly aware of the recent monumental event in our nation's history – the day a woman (and one-time practicing lawyer) accepted the nomination of a major political party for President of the United States. Those in attendance at the convention were moved to tears as they witnessed the occasion, overwhelmed by a woman reaching this national level of leadership after waiting nearly a century since women first gained the right to vote. While this occasion is historic, in large part, Hillary Clinton used the moment to talk about her commitment to public service. She relayed that her mother instilled in her long ago: "Do all the good you can, for all the people you can, in all the ways you can, as long as ever you can."

Locally, the picture is somewhat different, but a bit the same, too. Our bar association selected its first woman president, Clara Backus Floyd Gehan, over 70 years ago. Mrs. Gehan was the first woman to graduate from the University of Florida College of Law in 1933 and the first woman to practice law in Gainesville. Notwithstanding these accomplishments, Mrs. Gehan is best known for her dedication to public service. She helped desegregate local Gainesville businesses through her service on the Gainesville Advisory Bi-Racial Committee, create the Legal Aid and Defender Clinic at the College of Law, and establish the Storefront Legal Aid Service, the predecessor to Three Rivers Legal Services. I'm proud that many of our circuit's women lawyers have served as president of this association following Mrs. Gehan, especially in the

last 20 years, as well as dedicated their lives to public service. This speaks volumes of our circuit's heart and soul.

So it will probably come as no surprise to you that when your association's board of directors gathered this past July for our annual retreat to plan the upcoming year, public service and equality dominated our discussions. Board members pondered how we might embolden our circuit lawyers to provide free legal services to not just the jobless, but also the members in our community who may work one or two jobs, but still cannot afford to hire a lawyer. We brainstormed and came up with many ideas, including hosting training sessions on pro bono service made easy and the attorney ad litem program; pairing local lawyers with law students or experienced pro bono lawyers; hosting Ask-A-Lawyer events at farmers' markets and art festivals to reach more members of the public; and establishing a central resource center and webinar for lawyers who need assistance with providing pro bono legal services.

I am confident that Gloria Walker, your President-Elect Designate and Managing Attorney at Three Rivers Legal Services, will lead our association in bringing many of these ideas to fruition in the coming year, as well as enhance our already established opportunities to GIVE back to the community. But she and our GIVE project chairs will need your help to ensure we can do all the good we can, for all the people we can, in all the ways we can.

So please be on the lookout for our communications about opportunities to GIVE in the coming year and commit to GIVE at least once, whether it's by giving an hour or two with the Ask-

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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](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**

# Alternative Dispute Resolution

By Chester B. Chance and Charles B. Carter



## Mediation, Meditation, Whatever

When we ‘Google’ “mediation” the geniuses at Google ask us if we in fact mean to search the term “meditation.” Now, your authors have nothing against meditating. In fact, often during a mediation we ask the participants to put their heads

down on the table, close their eyes, and repeat “risk avoidance” as their mantra. We were, however, surprised when browsing the magazine section at Books A Million to find a magazine entitled “Psychic News.” Your authors have nothing against psychics and so we plunked down \$8.99 to purchase the magazine. It is published in the U.K., but things psychic have no borders and no nationality. We were, however, a bit suspect as we thought psychics would not need a magazine to learn about psychic news.

We learned the magazine has been published since 1932 and remains, apparently, vital in the age of computers and advanced technology. The magazine was originally published as the founder “. . . recognized the need for a publication that would satisfy the public’s desire for up-to-date and independent information about spiritualism and mediumship.” It appears being a psychic does not guarantee up-to-the-minute data.

From the pages of the publication we reviewed some law related articles, including:

“Psychic sued by PR firm.” Thomas John, a one-time Chicago drag queen, according to the article, was being sued for \$3046.12 for promotional services provided by ZTPR. John has made headlines, we learned, by being able to contact dead celebrities and predicted the death of Whitney Houston and the divorce of Tom Cruise and Katie Holmes. To further confuse mediation and meditation, the article concludes: “ZTPR president Zack Teperman said his lawyers were still finalizing an out-of-court settlement.” We would like to think the settlement was formulated during confidential meditation at mediation conducted by a medium-mediator.

“Psychic pays to avoid jail.” Psychic Tracey Nicholas of Staten Island who was accused last year of swindling \$185,000 from a customer, has avoided a jail sentence by pleading guilty to a misdemeanor count of petit larceny and agreed to pay her victim

\$40,000 in restitution. We bet she saw that coming.

Other articles were more scientific, including:

“D is for Dowsing.” This article explored the traditional use of a Y-shaped hazel branch or two L-shaped metal rods to find a variety of things, including: water, lost people, a medical diagnosis, missing objects, etc.

Interestingly, some folks can ‘map dowse,’ that is, find missing objects hundreds of miles away by holding a dowsing device over a map. We assume they will limit their efforts after reading about Tracey Nicholas of Staten Island.

Most interesting is an advertisement touting the “Digital Revolution,” which allows psychics to read Psychic News at anytime and anywhere on any electronic device including a phone, computer, iPad, Tablet, or Kindle. Does anyone see the irony here? Well, even more interesting is news on the psychic-global warming front. A group in California (who would have guessed) is carrying out a ‘scientific’ experiment to see if *conscious intention* – a psychokinesis, to use the parapsychological term - can influence the weather. The group says it is cautious about being seen to be interfering with nature and advises those sending out positive thoughts to bring rain must *invite* it, not demand it. Your authors invite rain by washing their cars but we do not believe that is as scientific as the approach by the California group.

But the most fascinating aspect of the magazine is the advertisements.

One can contact the apostle Paul through the trance mediumship of Ray Brown and treat conditions including neck pain, hernias, sinus problems, eye disorders and arthritis. Or, contact Organic Mind and undergo a multitude of healing options including: Cranio Osteopathy, Aquavibe Sensory Saturation Experience, Kirlian Aura Photography, and Chakra Re-balancing (of one’s checking account we presume).

Contact Maggie Vigar-Smith if you need yourself or your animal healed. Call James who will do telephone readings for you (we are aware of telephone attendance at mediation, but, also now at meditation.) And if you have some extra time you would not believe how many people need sitters.

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# Criminal Law

By William Cervone



As the proverbial long, hot summer drags slowly to an inevitable end, several things come to mind.

First, it's been a long, hot summer and will continue to be for a while yet.

Second, long, hot summers seem to produce absurdities.

Therefore, to catch up on some of the summer's absurdities since last we wrote/read, I offer the following items you might have missed.

So as to satisfy our criminal law element, I should mention that a fellow on the east coast received a probationary sentence when he claimed that, in addition to being criminal, throwing a live alligator through the window of a drive through restaurant was bad judgement on his part. His apology notwithstanding, it would appear that live gators, at least four legged ones, do constitute deadly weapons for purposes of Aggravated Assault. Hey, Seattle has its Pike Street Market and Florida has this.

Moving next to civil rights, a field that is expanding to even vaster reaches than the universe we live in, litigation is underway in south Florida over the due process and equal protection rights of vegetables. It seems that the town of Miami Shores passed an ordinance prohibiting front yard vegetable gardens, thus forcing a couple that had grown produce in their front yard for decades into action. Either uproot the veggies or be fined \$50 a day. Or sue, which they did, claiming through their attorneys from the Virginia-based Institute For Justice various constitutional violations because vegetables were being singled out as opposed to other plants. Miami Springs says that there is no fundamental right to grow tomatoes and bell peppers in your front yard and "aesthetics and uniformity" in vegetation are legitimate governmental purposes. No word on the decision of the beet-faced judge as of yet.

And combining criminal law and civil rights, it appears that we have solved crime. I say this because according to the Attorney General of the United States we no longer have criminals. A Department of Justice directive phases that word out in favor of the term "justice involved individual." All these years and I thought that I and my various peers working various positions in the criminal justice system were justice involved individuals. Little did I know that the

people we arrested, prosecuted, defended, or judged were the real justice involved individuals. Certainly, it now seems, they are not criminals. I suppose felons and convicts are terms to be avoided as well. Delinquents, by the way, are justice involved youth now. We wouldn't want to offend anyone's sensibilities or stigmatize a crook by saying that he's a crook.

Flowing from this, some additional suggestions I've seen from some wag on some blog include re-naming murderers "life ending specialists," property crimes as "need based borrowing," rioting as a "block party," and vandals as "artists," which seems particularly apt given the minor fuss over the summer concerning the art (or not) painted at public expense on various buildings and walls around downtown Gainesville.

I'm awaiting word on what we can call crimes in the future. Perhaps events. Or occasions. With no crimes and no criminals it would appear that my work here is done. I am considering declaring victory and going to the house.

## The North Central Florida Chapter of the Federal Bar Association

### Upcoming Chapter Events

#### **Annual Chapter Meeting**

*Elections and Reception*

*Wednesday, September 21, 2016*

*5:00 PM to 7:00 PM*

*The Hippodrome State Theatre*

*New/Interested Members Welcome*

#### **Civility Matters Program**

*CLE and Reception*

*Friday, October 7, 2016*

*1:00 PM to 5:00 PM*

*The Woolly – Downtown Gainesville*

*Following the 8-Bar Luncheon*

*Co-sponsored by ABOTA*

Please direct any inquiries to Elliott Welker, [elliottw@salterlaw.net](mailto:elliottw@salterlaw.net),

352/416-0754

Legal Assistant to Robert Griscti

# Probate Section Report

By Larry E. Ciesla



The Probate Section continued to meet over the summer months. Following are some items of interest discussed during recent meetings, in no particular order.

Staff Attorney Theresa Murphy's last day on the job was August 5, 2016. She has taken a new position as staff attorney for the Chief Judge of the First

District Court of Appeal in Tallahassee. Members of the Probate Section wish to express their thanks to Theresa for all of her help while serving as staff attorney and wish her the best in her new position.

The recent Supreme Court of Florida opinion in the case of *JBK Associates, Inc. v. Sill Bros., Inc.*, issued on April 28, 2016, was discussed at length during the July meeting. There, the Court approved and expanded upon their opinion in the 1962 case of *Orange Brevard Plumbing & Heating Co. v. La Croix*, 137 So.2d 201 (Fla. 1962). These opinions stand for the proposition that proceeds of sale of homestead real property are exempt from the reach of the creditors of the seller, assuming compliance with the following rules: (1) there must be a good faith intention to reinvest the proceeds in another homestead within a reasonable time; (2) the funds must not be commingled with other monies; (3) the proceeds must be segregated and held for the sole purpose of acquiring another homestead; and (4) any surplus over and above the amount intended to be reinvested shall be treated as general assets subject to the reach of creditors.

Fortunately for Mr. Sill, he received excellent legal advice. He deposited the proceeds into an account at Wells Fargo and titled the account, "FL Homestead Account." He then split the account into three subaccounts, one containing cash and two which were invested in mutual funds. The creditor argued that the funds used to purchase mutual funds lost their homestead protection, as being contrary to an intention to reinvest in a new homestead within a reasonable time. In upholding the exemption, the Supreme Court ruled that debtors are not required to place homestead proceeds in non-interest-bearing accounts or in, "... a jar under one's bed ..."

In doing so, the Court distinguished an Arizona bankruptcy case where the debtor used the proceeds for "speculative put and call option trading of up to

302 transactions per month," and referred to Mr. Sills' investments as a "safe investment account." Also of import is the fact noted by the Court that the money was, in fact, used to purchase a new homestead within a reasonable time (although the Court did not specify exactly how much time had elapsed between the sale and the subsequent purchase).

Also discussed during the July meeting was the form for designation of health care surrogate for minor contained in Section 765.2038, *Florida Statutes*. The wording of the suggested form contained in the statute limits the designation to, "medical treatment and surgical and diagnostic procedures." Peter Ward, always thinking outside the box, indicated that it is his practice to add "dental treatment" to the designation. So far as he is aware, there has never been any problem or issue in using the designation for dental purposes.

An interesting opinion was issued by the First District Court of Appeal on July 18, 2016, in the case of *Steele v. Brown*. There, an order determining homestead status of real property was entered in 2007. In 2015, one of the heirs sought to vacate the 2007 order due to an alleged error in the amount of the share awarded to the heir (she alleged her share should have been increased by 1/15th). The probate judge agreed and vacated the 2007 order.

The First District reversed on the ground that the applicable rules do not provide a basis for setting aside an order that became final in 2007 when not appealed. At issue is Rule 1.540, Florida Rules of Civil Procedure. Under Rule 1.540(a), an order or judgment may only be amended to correct a clerical error. In this case, the alleged error was not clerical but, rather, substantive, which is governed by Rule 1.540(b).

Under Rule 1.540(b), there are several grounds for relief from a judgment: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence; (3) fraud; (4) the judgment is void; or (5) the judgment has been satisfied or released or it is inequitable to continue to enforce the judgment. A motion under (1) through (3) must be filed within one year. Since the motion was not filed for eight years, (1) through (3) were not available. The Court found (4) not applicable due to the fact that the probate court properly had jurisdiction of the estate in 2007.

The Court first noted that Rule 1.540(b)(5) is usually predicated on new evidence and then held

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# Livestreaming Pokemon At Work

By Laura Gross



With the rapid changes in social media and the addition of livestreaming video, it seems impossible to keep workplace policies up to date. But, that doesn't mean you should not try.

Consider Facebook Live which launched in April 2016 with an aggressive push to get regular users to watch and broadcast live videos. This allows Facebook to access and feature live breaking news, secret stories, and even intimate personal moments from just about anywhere, something television cannot do. It recently gained wide awareness for its use in the shootings in Minnesota and Dallas which demonstrated the power of livestream video to draw attention to important issues and breaking news.

What will you do if employees broadcast live from your office? What if they claim the livestreaming is "protected concerted activity?" How should an employer respond when the broadcast is going live and occurring in real time? Hopefully, with thoughtful advance consideration and an established written policy.

Another app, Pokemon Go, launched in July 2016, is a free-to-play, location based mobile game with social media capabilities. Players can join a team and locate, capture, battle, and train monsters, called Pokemon, who appear on the cell phone screen as if they were in the same world as the player. It has created controversy for causing accidents (like walking into moving vehicles or falling down the stairs while chasing imaginary Pokemon) and becoming both a workplace and public nuisance in some locations. Privacy, too, has been an issue.

Limiting employee access to Pokemon Go is much easier because it is clearly a game – not "protected concerted activity."

While most social media and electronics policies allow employers wide discretion to monitor and block employees' internet use on company-owned computers and devices, both of these new apps are typically found on employees' personal cell phones. This means that use is not easily discovered and controlled by the employer. If your policy hasn't been updated in a few years, these new apps would be a good excuse to do so.

## ADR

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No, not babysitters. Rather, as one article points out, "Sitters for trance and physical circles are not what they used to be." Why? Apparently many older sitters are now ill (they obviously need Chakra Re-balancing). Numerous ads expressed a need for 'seriously dedicated sitters for a seriously dedicated circle.' As seriously dedicated couch potatoes we are ready to place several couches and televisions in a circle and do some serious watching of some HBO serials.

We do not have the time or space to scare you with all the articles and advertisements in this wonderful magazine but you can subscribe by going to the website at [www.psychicnews.org.uk](http://www.psychicnews.org.uk). If you are inclined to do that we also have some sites we can provide featuring homeopathy, crystal curing, pyramid power, astrology and acupuncture.

Why is this important for us as lawyers, or, at a minimum for those of us who think other people are, well, not living in the 14<sup>th</sup> century? Because: you may have a serious sitter as a client, or, a serious sitter sitting on your jury. Your success at trial may depend on your case being viewed by a juror after the juror consults with the spirit of Learned Hand. Your injured plaintiff may be viewed as not mitigating his/her damages by refusing to undergo Aquavibe Sensory Saturation Experience. Or, at a minimum, you may get an article subject for just \$8.99.

## Celebrating Fifty (Yes, that's 50!) Years

Congratulations to the following members of the Class of 1966 – now part of The Florida Bar's 50-year-Members. The EJCBA celebrates your service to the profession and to the Eighth Judicial Circuit:

Edward Devere Bunn  
Nath Culpepper Doughtie  
Allison E. Folds, Jr.  
Dudley Price Hardy  
Stephen A. Rappenecker  
Gerald David Schackow  
Robert Olin Stripling, Jr.  
Stuart Harvey Ziegler



# NFAREA invites local real estate lawyers to join

by Philip N. Kabler, NFAREA President

The North Florida Association of Real Estate Attorneys is a voluntary bar association serving the real estate practitioner community throughout (and even beyond) the Eighth Judicial Circuit. NFAREA was formed in 2005, and is comprised of over 30 attorneys self-identified as practicing extensively in real estate law and affiliated practice areas.

We hold 10 monthly meetings a year. Our meetings consist of a “*Happy Half Hour*” followed by a guest speaker, who talks about developing topics in real estate law, regulation, and economic trends, particularly as those developments relate to north Florida. Each October we host our annual “*First Holiday Party of the Season.*”

In addition to our meetings, NFAREA organizes continuing education presentations for the local real estate community, including for the Gainesville-Alachua County Association of Realtors<sup>®</sup>. We are *always* open to creating new programs to benefit our area’s brokerage, construction, lender, and affiliated services provider colleagues.

NFAREA’s current leadership consists of Phil Kabler - President (Bogin, Munns & Munns, P.A.), Julie Naim – Vice President (McCarty, Naim, Focks & Keeter, P.A.), Judy Paul – Secretary (Law Office of Judith B. Paul, LLC), Ryan Curtis – Treasurer (Curtis Law Firm LLC), and Ramona Chance – Founder & Emeritus Board Member (Law Office of Ramona M. Chance).

NFAREA is one of twenty local real estate councils affiliated with the Attorney’s Real Estate Councils of Florida (also known as the “Florida ARECS”) (<http://flarecs.com/>), which is a Strategic Partner of Attorneys’ Title Fund Services (better known as “The Fund”). Florida ARECS provides educational opportunities and resources for consumers, Realtors<sup>®</sup>, and real estate attorneys, and promotes understanding among real estate professionals of the important role attorneys play in real estate transactions.

*We always welcome new members.* To join NAFREA, please visit our website (<http://flarecs.com/local-recs/north-florida-association-of-real-estate-attorneys>) and click on the “Become a Member” button (<http://flarecs.com/become-a-member>), or contact any of our officers.

# September Luncheon Speaker: Kamal Latham, VP of Public Policy Gainesville Area Chamber of Commerce



We begin the 2016-2017 luncheon series with Kamal Latham, who will speak to us about public leadership. Kamal is a chamber executive with experience as an entrepreneur, U.S. Diplomat, and Wall Street financial analyst. He has led regional initiatives, managed coalitions, supervised teams, secured program financing, and

facilitated job creation.

Kamal serves as Vice President of Public Policy at the Gainesville Area Chamber of Commerce. The business climate improvement program he leads facilitated over 70 policy recommendations being adopted by Alachua County and the City of Gainesville. Kamal led Chamber efforts to secure over \$9 million in public funds for a vital multimodal road project. He manages the Business Community Coalition and directs the Public Leadership Institute, a non-partisan program educating professionals interested in public office.

Siemens retained Kamal to train managers and engineers in Charlotte, NC and Orlando, FL on communicating effectively with Chinese business partners. As president of Diplomatic Treatment, a U.S. based China business development and destination management company with a Beijing office, he advised major companies and supervised best-in-class service providers in China. Overseas Kamal also served as Deputy Executive Director of the Beijing-based U.S. China Aviation Cooperation Program and led staff efforts that secured \$200,000 in public funds to finance a U.S. export promotion program. He was appointed by the President of the United States as a U.S. Diplomat with the State Department and helped negotiate a trade deal with China estimated to stimulate \$5 billion in new business. Prior to becoming a diplomat, Kamal was a financial analyst with the investment bank Salomon Smith Barney in New York City. He assisted in raising approximately \$1 billion in debt and equity and recruited a client with \$13 billion in business.

Kamal earned a Masters in Public Policy from the John F. Kennedy School of Government at

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# Boxed in by the Four Corners? Not Necessarily...

By Krista Collins, Siegel Hughes & Ross



Every civil litigator knows the four corners rule: when ruling on a motion to dismiss, the court cannot look beyond the four corners of the complaint and its incorporated attachments. *City of Gainesville v. State, Dept. of Transp.*, 778 So.2d 519, 522 (Fla. 1<sup>st</sup> DCA 2001). The application of this rule can be frustrating at times. Fortunately, as attorneys,

we also know that there is no rule that does not have exceptions – and the four corners rule is, well, no exception.

In *Steiner Transocean Ltd. v. Efremova*, 109 So.3d 871, 873 (Fla. 3<sup>rd</sup> DCA 2013), the Court stated that there are exceptions to the general four corners rule and, as an example, stated that “a court is permitted to consider evidence outside the four corners of the complaint where the motion to dismiss challenges subject matter jurisdiction or personal jurisdiction, or where the motion to dismiss is based upon *forum non conveniens* or improper venue.” The Court noted that a motion to dismiss based on a contractual forum selection clause “is similar, in many respects, to a motion to dismiss for improper venue.” *Id.* The Court stated it could see no reason to treat them differently for purposes of applying the exception to the four corners rule. *Id.* The Court went on to note that federal courts allow the trial court to look beyond the four corners of the complaint in determining a motion to dismiss based upon a forum selection clause because “otherwise, ‘the court would be unable to discern the actual basis, in fact, of a party’s challenge to the bare allegation in the complaint that venue is proper to that court.’” *Id.* at n. 7 (quoting *Horberg v. Kerzner Inter. Hotels Ltd.*, 744 F.Supp.2d 1284, 1288 (S.D.Fla.2007)).

Another important exception to the normal understanding of the four corners rule is that documents do not necessarily have to be physically attached to the complaint as an exhibit in order to be considered as an incorporated document for purposes of the rule. Where the terms of a legal document have been impliedly incorporated by reference in a complaint, the court can consider the contents of the documents even though it was not attached to the complaint. *One Call Property Services, Inc. v. Security First Ins. Co.*, 165 So.3d 749, 751 (Fla. 4<sup>th</sup> DCA 2015). In *One Call*, the plaintiff filed suit, alleging it was the assignee of an insured on a homeowners’ insurance policy. *Id.*

The plaintiff attached a copy of the assignment, but not the policy. *Id.* The defendant moved to dismiss the complaint, alleging that the plaintiff lacked standing and arguing that the assignment was invalid under the terms of the policy and Florida law. *Id.* The defendant attached a copy of the policy to its motion. *Id.* The Court held that the trial court properly considered the contents of the insurance policy attached to the motion to dismiss, even though it had not been attached to the complaint. *Id.* at 752. The Court stated that “the trial court did not err in considering the contents of the insurance policy that was filed in connection with the insurer’s motion to dismiss. The complaint refers to the policy, and One Call’s standing to bring suit is premised on an assignment of the policy.” *Id.* In *Veal v. Voyager Prop. & Cas. Ins. Co.*, 51 So.3d 1246, 1249-1250 (Fla. 2<sup>nd</sup> DCA 2011), the Second District Court of Appeals similarly held that “the complaint refers to the settlement agreement, and in fact, Veal’s standing to bring suit is premised on the terms of that agreement. Accordingly, since the complaint impliedly incorporates the terms of the agreement by reference, the trial court was entitled to review the terms of that agreement to determine the nature of the claim being alleged.”

Federal trial courts are likewise allowed to consider evidence outside the pleadings when it is “undisputedly authentic” and has been “specifically relied [upon] in the complaint.” *Bruhl v. Price Waterhousecoopers Intern.*, 03-23044-CIV-MARRA, 2007 WL 997362, at \*4, n. 7 (S.D. Fla. 2007); also see *Aronson v. Celebrity Cruises, Inc.*, 30 F.Supp.3d 1379, 1397 (S.D. Fla. 2014) (stating that an exception to the four corners rule exists “where the Plaintiff refers to a document in its complaint, the document is central to Plaintiff’s claim, its contents are not in dispute, and the Defendant attaches the document to its motion to dismiss”). In certain cases, federal courts also have another exception at their disposal. Federal courts may go beyond the four corners of the complaint in securities fraud claims by taking judicial notice of relevant public documents required to be—and actually—filed with the Securities and Exchange Commission, for the purpose of determining what statements the documents contain. *In re Faro Technologies Securities Litigation*, 534 F.Supp.2d 1248, 1255 (M.D. Fla. 2007).

Finally, some Florida courts have gone even farther in extending the exception to the four corners

*Continued on page 12*



# Representing Victims of Domestic Violence

By Marcia Green

Representing victims of domestic violence requires a special skill set that combines legal expertise with a great deal of compassion, patience and counseling. Most victims have experienced some form of fear or trauma that affects them in a way that can be far outside the norm of our “regular” clients.

Three Rivers Legal Services is fortunate to have attorney Merise Jalali, a 2012 graduate of the Levin College of Law, whose practice focuses almost entirely on victims of domestic violence. Her clients are seeking civil protection in cases of stalking, intimate partner violence, dating violence and sexual assault. Unlike other clients of Three Rivers, Jalali’s clients are not limited by economic status and come from many different parts of the community. Further, victims are not limited by physical abuse, but are often victimized by coercive control and other forms of imbalance in power and emotional manipulation.

Jalali and other advocates of victims of domestic violence must learn to balance their clients’ needs and emotions with the availability of a legal remedy. In a presentation for attorneys participating in the Ask-A-Lawyer outreach for the homeless, Iris Burke, retired professor at UF’s Levin College of Law, and Anju Kaduvetoor Davidson, former Assistant Director of the Center for the Study of Race and Race Relations, discussed the neuroscience of the brain’s response to threats and fear. They pointed out that in addition to commonly understood responses such as anxiety, depression and PTSD, trauma affects the victim’s ability to make decisions and plan, creates digestive issues and other physical disabilities and can lead to chronic issues such as poverty and untreated illness.

Interviewing a victim of domestic violence can be difficult and time consuming. When working with individuals in crisis, Burke and Davidson stressed that attorneys and advocates must be non-judgmental, patient, open, empathetic and caring, flexible and tolerant. They must listen with empathy and build trust. At the same time, however, they must determine how to best advise and/or represent the client in a manner in which the victim does not experience further victimization within the legal system.

According to “Everything Counselors and Supervisors Need to Know about Treating Trauma,” a paper by Lindsay Bicknell-Hentges and John J. Lynch presented at the 2009 American Counseling Association Annual Conference, “An individual’s reaction to emotional trauma is complex and difficult to predict.” The writers note that “following exposure

to a traumatic event, most individuals experience temporary preoccupation and some involuntary intrusive memories.” Many clients are unable to focus on long-term planning and future goals because the immediate concerns overshadow all else.

The American Bar Association’s Standards of Practice for lawyers representing victims reminds advocates of the numerous related issues to keep in mind, including disabilities, limited English proficiency, economic concerns, elder abuse, immigration status, LGBT relationships, mental health, substance abuse, military concerns and the victimization of minors or Native Americans.

In addition to assisting with injunctions for protection, Three Rivers is able to assist immigrant victims with U-Visas and Violence Against Women Act [VAWA] self-petitions. As a battered spouse, child and/or parent, an immigrant who may not have lawful status is able to seek certain protections and immigration remedies through VAWA. U-Visas provide a change in immigration status for victims of certain serious crimes, often domestic violence. Jalali, who came to Three Rivers with a background in immigration law and representation of victims of domestic violence, finds these cases particularly gratifying because immigrant victims “often stay in abusive relationships because they are dependent upon their abusers since they are without status, cannot work, etc. VAWA takes the control away from the abuser by allowing immigrant victims ... to adjust their status independently.”

Three Rivers Legal Services advocates are required to engage in special training in order to work with this client population and our law student externs and volunteers are trained as well to understand this special area of practice.

Three Rivers provides emergency legal assistance to victims of domestic violence under a Victims of Crime Grant from the Florida Attorney General’s Office and our VAWA contract with the Florida Coalition Against Domestic Violence. Our help is primarily limited to assisting victims in obtaining injunctions for protection. We are hoping that recent changes in the regulations from the U.S. Department of Justice will allow us to represent victims in other legal proceedings, such as divorce, custody, evictions, etc., but we must wait to see if the Florida Attorney General adopts the new rules for our 2016-17 grant cycle. This would allow us to use a more holistic approach with these clients and address many of their other legal needs.

# Report from The Florida Bar Board of Governors

By Carl Schwait



The Florida Bar Board of Governors met on July 29, 2016. The major actions of the Board and the reports received included: The Florida Bar Board of Governors approved [amendments to rules regulating for-profit lawyer referral services](#) that, if approved by the Florida Supreme Court, will:

- Change the terminology from “lawyer referral service” to “qualifying provider” throughout.
- Subject any referral or matching service as well as any group or pooled advertising program to the rules (Voluntary Bar Lawyer Referral Services are non-profit and are covered under a different rule – [Chapter 8](#)).
- Delete the requirement that participating lawyers have malpractice insurance, as most Florida Bar members are not required to carry it.
- Include new explicit prohibitions against requiring or pressuring participating lawyers to make cross referrals, and additional language against stating or implying that the provider is a law firm, can practice law or directly provide legal services.
- Require services to provide participating lawyers with documentation of compliance with Florida Bar rules.
- Keep the following requirements: providers must comply with lawyer advertising rules, are prohibited from sharing in legal fees, must refer or match consumers only to those authorized to provide services, must respond to official bar inquiries within 15 days, and are prohibited from stating or implying Florida Bar endorsement.

Enforcement would occur through the Bar’s regulation of the participating lawyers. Developed by the Board of Governors [Board Review Committee on Professional Ethics](#) and [Technology Committee](#), the amendments: broaden the application of the rule to cover all referring and matching services to provide the rule more long-term effectiveness; make it easier for Bar members to understand when they can and cannot participate with a provider; include a takedown provision so that participating lawyers can stop participation with a noncomplying provider within 30

days of Florida Bar notice of its noncompliance without fear of sanction; and assist the public by assuring that providers that comply with Bar rules can continue to operate, thereby expanding access to justice. The amendments will be filed with the court on August 15.

The [2016-19 Florida Bar Strategic Plan](#) was approved with specific priorities for the 2016-17 Bar year. Those include using technology to improve the availability of Bar resources and information to Bar members and the public, simplifying the rulemaking process, finding new services and benefits for Bar members, [educating Bar members and the public about the upcoming Constitution Revision Commission](#), improving diversity on [judicial nominating commissions](#) with the goal of improving diversity on the bench, and effectively delivering the Bar’s message to its members, the public, and targeted groups.

Amendments to Family Law Rules and to The Rules Regulating The Florida Bar [necessary to implement a new state statute on collaborative law](#) were approved. The statute allows divorcing parties to hire attorneys and necessary experts and engage in collaboration to resolve their case. If the collaborative effort fails, the parties would have to retain new attorneys before going to litigation. The procedural and Bar rules now go to the Supreme Court for approval. The law, [HB 967](#), became Chap. 2016-93, Laws of Florida, and provides that parts of [F.S. §§61.55-61.58](#) will not become effective until 30 days after the Supreme Court procedural and Bar professional conduct rules are adopted.

Changes allowing inactive lawyers, retired judges, and current or former full-time law professors to register as emeritus attorneys solely for the purpose of handling pro bono cases were approved. The amendments to [Chapter 12](#) and conforming amendments to Rules [1-3.2](#) and [1-7.5](#) were recommended by the [Florida Commission on Access to Civil Justice](#) and could increase the number of emeritus attorneys from around 46 up to 3,500. The amendments go to the Supreme Court in October.

A proposed new Chapter 21 to Bar rules that would allow lawyer spouses of military personnel stationed in Florida to practice in Florida was discussed. [The Florida Bar Military Affairs Committee](#) has outlined in the proposal that those spouses would have to be licensed in another U.S. jurisdiction, take required Basic Skills Courses, and have a clear disciplinary

*Continued on page 11*

## Florida Bar Board of Governors

*Continued from page 10*

record in other jurisdictions where they are licensed, among other requirements. For more information, check the Aug. 15 [Florida Bar News](#).

The [Board Disciplinary Procedures Committee](#) approved unanimously an amendment to Bar Rule [5-1.1](#) that would allow lawyers to hold IOTA trust accounts in federally insured credit unions, if approved by the Florida Supreme Court. [Current rules regulating trust accounts are posted here](#).

A new committee is looking at developing free automatic trust accounting software for Bar members to help them avoid technical violations of [trust accounting rules](#) and resulting disciplinary action. The committee is aiming to have a solution by June 2017. At present, [trust accounting and monthly reconciliation forms using Microsoft Excel are available free from The Florida Bar Practice Resource Institute](#) as well as the required compliance notice, FAQs and forms to open IOTA accounts.

A [Special Committee on Gender Bias/Diversity](#) has been appointed to make recommendations for strategies to meet the challenges highlighted in the recent [Young Lawyers Division Women in the Legal Profession survey](#). The committee includes board and

non-board members and will hear from educators and other experts on the issue and plans to make recommendations to Board of Governors.

The [Diversity and Inclusion Committee](#) and the [Rules of Judicial Administration Committee](#) have been asked to form a special task force to look at the issue of granting extensions in court cases for parental leave. The Diversity and Inclusion Committee passed a resolution saying extensions should be granted unless there are exceptional circumstances, but the [Rules of Judicial Administration Committee has twice voted to refer the issue](#) to the circuit and county court judicial conferences to be addressed as a policy rather than a rule.

### Important Links

Follow the progress of The Wm. Reece Smith, Jr. Leadership Academy's 2016-17 Fellows at [www.floridabar.org/leadershipacademy](http://www.floridabar.org/leadershipacademy) The Practice Resource Institute (PRI) provides guidance, resources and assistance to Bar members and staff: [www.floridabar.org/PRI](http://www.floridabar.org/PRI) Receive important Florida Bar announcements and news on the profession via social media at [www.floridabar.org/socialmedia](http://www.floridabar.org/socialmedia)

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## Boxed in by Four Corners?

*Continued from page 8*

rule. Rather than limiting the exception to particular bases of the motion to dismiss, the Fourth District Court of Appeal has stated that where the facts are undisputed and the motion to dismiss only raises a question of pure law, a trial court is not bound by the four corners of the complaint. *Donovan v. Florida Peninsula Ins. Co.*, 147 So.3d 566, 568 (Fla. 4<sup>th</sup> DCA 2014). The Fifth District Court of Appeals has also held that the four corners rule does not apply where a motion to dismiss only raises a question of law. In *Metropolitan Cas. Ins. Co. v. Tepper*, 969 So.2d 403, 405 (Fla. 5<sup>th</sup> DCA 2007), Metropolitan, who was the plaintiff, Tepper's insurer as well as a party defendant, appealed the granting of the other defendant, Lucas's motion to dismiss Tepper's complaint. The motion was based upon a letter from Metropolitan to Tepper preserving its subrogation rights. *Id.* Lucas moved to dismiss the count of the complaint directed to Lucas and argued that the plaintiff, Tepper, had constructively or actually assigned his rights against Lucas to Metropolitan, and so Metropolitan was the only party with the right to sue Lucas. *Id.* The Court noted that Metropolitan did not dispute the facts that were relevant to Lucas's motion to dismiss, and held that "[a] trial court is not bound by the four corners of the complaint where the facts are undisputed and the motion to dismiss raises only a pure question of law." *Id.* (The Court also held that Metropolitan had waived the argument by failing to present it to the trial court. *Id.*)

The four corners rule, like so many others, is not the hard and fast limitation it appears to be. Under certain circumstances, a defendant may be able to have a trial court consider documents and information other than that contained in the four corners of the plaintiff's complaint and its attachments.

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## Luncheon Speaker

*Continued from page 7*

Harvard University and a Bachelor of Arts from Temple University. He speaks Mandarin Chinese, enjoys chess, coaching youth sports and jogging. Kamal and his wife, Jonnel reside in Alachua, FL with their two young children and bulldogs.

To register for the EJCBA September 16, 2016 Luncheon visit [www.8jcba.org](http://www.8jcba.org). Luncheon prices for 2016-2017 are: \$17 for EJCBA Members, \$25 for Members who do not register by the deadline, and \$25 for Non-Members.

## THE LAW OFFICE OF ALBA & YOCHIM, P.A.

is pleased to announce that

**Kevin M. Conner**

has joined the firm.

Kevin will focus his practice on

- Probate • Family Law •
- Business Formation •
- Small Business Consulting •

BY PHONE  
(352) 372-3643

BY ELECTRONIC MAIL  
[Kevin@mygainesvillelawyer.com](mailto:Kevin@mygainesvillelawyer.com)

- ON THE WEB -  
[WWW.MYGAINESVILLELAWYER.COM](http://WWW.MYGAINESVILLELAWYER.COM)

THE LAW OFFICE OF



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## President's Message

*Continued from page 1*

A-Lawyer Project (Ray Brady, [rbrady1959@gmail.com](mailto:rbrady1959@gmail.com)), giving a donation to children in need through the Holiday Project (Dominique Lochridge-Gonzales, [Dominique.lochridge-gonzales@trls.org](mailto:Dominique.lochridge-gonzales@trls.org); Jennifer Springfield, [Jennifer@springfieldlaw.com](mailto:Jennifer@springfieldlaw.com)), speaking at a Law in the Library program (Jan Bendik, [jan.bendik@trls.com](mailto:jan.bendik@trls.com)), playing in the Golf Tournament to support the Guardian ad Litem Foundation (Rob Birrenkott, [rbirrenkott@law.ufl.edu](mailto:rbirrenkott@law.ufl.edu)), or volunteering at the Law and Justice Conference (Meshon Rawls, [rawls@law.ufl.edu](mailto:rawls@law.ufl.edu)) or for a Law Week activity (Michele Lieberman, [mlieberman@alachuacounty.us](mailto:mlieberman@alachuacounty.us)). And if these projects are not what you are looking for, connect with Gloria Walker at [gloria.walker@trls.org](mailto:gloria.walker@trls.org) to volunteer at Three Rivers Legal Services or offer other ideas on how we might GIVE back.

As Margaret Mead once said: "Never doubt that a small group of thoughtful, committed citizens can change the world. Indeed, it is the only thing that ever has." I'm positive that with our GIVE project chairs and your help, we will change our community for the better and advance equal access to justice in the year ahead.

## Reserve Now for the EJCBA September 2016 Luncheon



**WHEN:** Friday, September 16, 2016 – 11:45 a.m.

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

**PROGRAM:** Kamal Latham, Gainesville Area Chamber of Commerce Vice President of Public Policy — “Public Leadership Matters ”

**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, September 12<sup>th</sup> at Noon at** <http://www.8jcba.org/event-registration/sept-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](mailto:execdir@8jcba.org) or call **(352) 380-0333**. Note, however, that after the deadline, EJCBA is obligated to pay for your reserved meal and we make the same obligation of you. Thank you for your support.

### Time to Join/Renew

**We invite you to become a new member or renew your membership today!**

**Pay your dues now at <http://www.8jcba.org/pay-dues/>**

**Jimmy C. Adkins Cedar Key Dinner**

**October 13, 2016 Beginning at 6:00 p.m.—Additional Details Coming Soon!**

### 2016-17 Luncheon Dates

September 16, 2016  
 October 7, 2016  
 November 4, 2016  
 December 16, 2016  
 January 20, 2017  
 February 17, 2017  
 March 17, 2017  
 April 21, 2017  
 May 19, 2017

### Upcoming Fall Social

Fall Family Friendly Social  
 November 19th  
 Details Coming Soon!

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



**WHEN:** Thursday, October 13, 2016 beginning at 6:00pm

**WHERE:** Steamers: 420 Dock Street, Cedar Key, Florida

**COST:** \$40.00\*

**DEADLINE:** Please register on or before **Thursday, October 6, 2016**

**REGISTER:** <http://www.8jcba.org/event-registration/cedar-key-dinner-2016/>

**\*\$45.00 at the door for attendees not having made prior reservations.** If you are reserving at the last minute, or need to change your reservation, email Judy Padgett at [execdir@8jcba.org](mailto:execdir@8jcba.org) or call **(352) 380-0333**. Note, however, that after the deadline, EJCBA is obligated to pay for your reserved meal and we make the same obligation of you. Thank you for your support.

**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 EJCBA membership online at <http://www.8jcba.org/pay-dues/>

**Get on board the Bus!** EJCBA is providing free transportation to and from Cedar Key. Come mingle and relax with your fellow members. For more information or to register please contact Michael Hines at [michael@galiganilaw.com](mailto:michael@galiganilaw.com). Space is limited and is first come first served. Hope to see you there!



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!

# Invitation To Renew / Join The 2016-17 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.org/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, 2016, you are an attorney in your first year licensed to practice law following law school graduation.

**\$55.00** - If, as of July 1, 2016, 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, 2016, 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 an 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, 2016, 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: 2016-2017**

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



## Probate Report

Continued from page 5

the evidence presented in 2015 was not new and was available in 2007. Finally, the Court explained that, if the case involved a non-final order, the probate court would have had authority to set the order aside. However, an order determining homestead status of real property is a final order as it finally determines the interests of the heirs and boundaries of the property.

Effective July 1, 2016, the legislature enacted amendments to Section 497.607, *Florida Statutes*, pertaining to cremation. Section 497.607(2), *Florida Statutes*, now expressly provides that cremated remains – a/k/a cremains or ashes – are not “property” and are not subject to partition for purposes of distribution under Section 733.814, *Florida Statutes*.

Under the new statute, only the “legally authorized person” (as defined in Section 497.005(23), *Florida*

*Statutes*) may authorize division of cremains. Any dispute regarding division shall be resolved by the court. See also the related opinion in the case of *Wilson v. Wilson*, 138 So.3d 1176 (Fla. 4th DCA 2014), where the court held that cremains are not property subject to partition (codified above). There, the court ordered the divorced parents of the decedent, as co-personal representatives, to properly dispose of the cremains within 30 days or face appointment of a curator to do so.

The Probate Section continues to meet on the second Wednesday of each month at 4:30 p.m. in the Chief Judge’s Conference Room on the fourth floor of the Alachua County Family and Civil Justice Center, 201 East University Avenue. All interested parties are invited to attend.

### September 2016 Calendar

- 3 UF Football v. Massachusetts, 7:30 p.m.
- 5 Deadline for submission to October Forum 8
- 5 Labor Day Holiday - County and Federal Courthouses closed
- 7 EJCBA Board of Directors Meeting, Faculty Dining Room, UF Law, 5:30 p.m.
- 10 UF Football v. Kentucky Wildcats, 3:30 p.m.
- 14 Probate Section Meeting, 4:30 p.m., 4th Floor Meeting Room of the Alachua County Family/Civil Justice Center
- 16 EJCBA Luncheon, Kamal Latham, Vice President of Public Policy, Gainesville Area Chamber of Commerce, The Woolly, 11:45 a.m.
- 17 UF Football v. North Texas, 7:30 p.m.
- 20 Family Law Section Meeting, 4:00 p.m., Chief Judge’s Conference Room, Alachua County Family & Civil Justice Center
- 21 The North Central Florida Chapter of the Federal Bar Association Annual Chapter Meeting – Elections and Reception, 5-7 p.m., The Hippodrome State Theatre
- 24 UF Football at Tennessee, TBA

### October 2016 Calendar

- 1 UF Football at Vanderbilt, TBA
- 3 Rosh Hashanah Holiday – County Courthouses closed
- 5 Deadline for submission to November Forum 8
- 5 EJCBA Board of Directors Meeting, Faculty Dining Room, UF Law, 5:30 p.m.
- 7 EJCBA Luncheon, William Schifino, President, Florida Bar, The Woolly, 11:45 a.m.
- 7 The North Central Florida Chapter of the Federal Bar Association, Civility Matters Program, CLE and Reception, 1-5 p.m., The Woolly
- 8 UF Football v. LSU Tigers, TBA
- 13 Annual James C. Adkins, Jr. CEDAR KEY DINNER, sundown, Cedar Key
- 15 UF Football v. Missouri Tigers, TBA
- 10 Columbus Day Holiday – Federal Courthouse closed
- 12 Yom Kippur – County Courthouses closed
- 12 Probate Section Meeting, 4:30 p.m., 4th Floor Meeting Room of the Alachua County Family/Civil Justice Center
- 18 Family Law Section Meeting, 4:00 p.m., Chief Judge’s Conference Room, Alachua County Family & Civil Justice Center
- 29 UF Football v. Georgia Bulldogs (Jacksonville), 3:30 p.m.

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).