

# FORUM 8

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Eighth Judicial Circuit Bar Association, Inc.

March 2017

## President's Message

By Stephanie M. Marchman



Our community lost a tremendous lawyer, leader, and human being on January 23, 2017 – Margaret Mitchem Stack.

Margaret graduated from the University of Florida College of Law in 1984 and was admitted to practice the same year. She spent most of her career as an Assistant State Attorney with the State Attorney's Office for the Eighth Judicial Circuit of Florida. Following her retirement in 2008, she went into private practice specializing in criminal defense. She also immediately contacted Three Rivers Legal Services to get on its list of pro bono attorneys. Indeed, just a few months after opening her private law practice, she began to accept family law cases from Three Rivers. Her unyielding commitment to pro bono clients was recognized in 2011, when she was awarded the Florida Bar President's Pro Bono Service Award for the Eighth Judicial Circuit.

Margaret was also a leader in our legal community. She was President of the Eighth Judicial Circuit Bar Association (EJCBA) from 2008 to 2009 and the Clara Gehan Association of Women Lawyers from 2009 to 2010. She was Chair of the Florida Bar Unauthorized Practice of Law Committee for the Eighth Judicial Circuit, a Master in the Inns of Court, and served as Membership Chair of the North Central Florida Chapter of the Federal Bar Association. She taught countless law students at the University of Florida Levin College of Law as a trial advocacy lecturer and through its trial team. She became Board Certified in Criminal Trial Law in 1993 and maintained the certification for the rest of her career.

Carl Schwait remembers Margaret as a wonderful person. She was the original chairperson of the EJCBA Holiday Project established in 2003. From 2003 until

2009, she dedicated her office space to store and wrap gifts for hundreds of school children in our circuit. During her tenure, every child would receive a bag of at least \$50 in gifts. Nancy Baldwin fondly recalls that Margaret would stand in front of the auditorium and call each child by name, and her many elves would stand by searching for the correct package for Santa to deliver to the child. No doubt that due in large part to her unwavering commitment to the needy school children of this circuit, Margaret received the Eighth Judicial Circuit Bar Association President's Award in 2004, 2005, 2006, and 2007. And her legacy lives on, as this past December, Margaret's Holiday Project reached 350 needy kids in rural schools in our circuit.



In addition to the Holiday Project, Margaret encouraged the EJCBA to take its Ask A Lawyer Project to Grace Marketplace in 2014 to serve the homeless. When we did, she served as a volunteer attorney. Margaret also encouraged the EJCBA to keep its annual dinner in Cedar Key. In 2014, she told us, "I am one of the Diehard Cedar Key attendees. To me it was a long-standing tradition of our Bar and important to maintain." When the EJCBA decided to continue to host the dinner, Margaret served on the planning committee and helped

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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



## Oxytocin And Gourmet Mediation

Your two authors disagree on many things; however, food is not one of those things. Well, actually there is a lot of disagreement on food also, but we shall set aside those differences for the purpose of this article.

Topic: Does food play a role in a successful mediation?

First, the answer is “Yes.”

Our personal experience tells us people are grumpy if they are hungry, thirsty, tired, etc. Grumpy people are neither patient nor productive. Food ameliorates many physical and emotional barriers to a productive mediation process. People want and need snacks and drinks. They want meals at mealtime. “Working through lunch/dinner” because “we are making progress” may be counter-productive.

Most mediation facilities are not restaurants. You would be amazed at the requests from mediation participants for items like: grape soda, lactose free whatever, fruit, salads, herbal tea, organic whatever, soup, herbal whatever, sugar free candy, Junior Mints, etc. Hopefully, mediation facilities do their best.

But keeping participants happy with beverages, snacks and meals definitely works in a positive way. We have seen it. Sometimes, ordering lunch and sitting down and ‘breaking bread’ with a participant works wonders.

The second question is: *Why* does food play a role in a successful mediation?

And we found the answer: oxytocin.

What is oxytocin? It is a hormone produced by the hypothalamus. What does it do? If you are a woman, it signals contractions of the womb during labor. More importantly for mediation, recent studies find that oxytocin is an important chemical in our body that controls and fashions human behavior and social interaction. It is a chemical factor in the bond between a mother and a child; it plays a role in sexual arousal; it evokes feelings of trust.

Oxytocin is known as the “hug drug” or the “cuddle chemical.” Scientists say it plays a role in propagation of the human species; it facilitates resolution; heck, oxytocin has been called “the facilitator of life.” Its positive emotional, cognitive and social effects are perfect in a mediation scenario. It reduces stress and

anxiety. Studies indicate oxytocin increases empathy.

Many things increase oxytocin: hugging, touching, listening to music, laughing, soaking in a hot bath, positive olfactory sensations and odors, certain sounds and light, and eating, especially sharing when eating. One of the authors has suggested every mediator should provide expensive organic coffee, the finest sugar and cream available, lobster, steak, fine French pastries, etc.

The act of eating, in and of itself, increases oxytocin in our bodies and decreases stress, anxiety, increases our sense of generosity, etc. In fact, giving money away (showing compassion) is linked to higher levels of oxytocin. Note: suggestion to all plaintiff attorneys, please reread the last sentence.

Interestingly, there are no foods that contain oxytocin. Rather, it is the eating of food which produces oxytocin. Even smelling food increases oxytocin.

Ideally, the better the food, the drinks, the snacks at a mediation, the more oxytocin is produced and as more oxytocin is produced, the result is decreased stress, increased generosity, decreased anxiety, increased positive feelings. If you feel that people trust you, your oxytocin level rises. Let us say that



again: building a feeling of trust increases your oxytocin as well as increasing oxytocin in others. Who would have ever thought

that trust would be a successful ingredient to negotiation?

In all honesty, we don’t have to talk about oxytocin or hypothalamus glands. Isn’t it just common sense that keeping people comfortable, enhancing positive feelings, and just good old fashion “breaking bread” improves the resolution environment? In fact, that common sense is the basis of another legal activity, Inns of Court: there is just something positive about sharing a meal.

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# Criminal Law

By William Cervone



Judge Alberto Milian of Miami-Dade County is not someone that I think any of us here in the 8th Circuit know. All I can tell you about him is that he is (or at least used to be) assigned to a criminal division in the 11th Circuit, and that he has run afoul of the dreaded DCA Shout Out. You know what that is, I'm sure.

Bad enough that your case gets appealed and worse that it gets reversed, but most certainly worst of all that you get called out by name in a published opinion. That's to be avoided at all possible costs. Oh, one other thing I can tell you about Judge Milian: he doesn't like defendants to curse in his courtroom. Who would?

In any event, twice on the same day a few months ago the 3rd DCA published opinions on direct contempt sentences issued by Judge Milian. In the first, some poor soul named Chakariss Twine was evidently unhappy with the failure of his bond reduction motion to gain him either an ROR or at least a reduction in bond; his response to the judge's ruling from the bench was a succinct "This is a bunch of bullshit." In the immediately following contempt proceedings he apologized and said that he needed to be home to help an ailing mother and so on. Nonetheless, he got 180 days, the maximum allowed for direct criminal contempt unless a jury trial has been held.

In the second case, one Thomas Gems was before Judge Milian for a plea hearing on some drug charges. There were apparently acrimonious discussions between all involved, the result being the State's refusal to offer county jail and insisting on a scoresheet DOC sentence. When asked what he wanted to do, Gems said "I'm going to accept the fucking 18 months, excuse my language." When asked to repeat himself Gems merely said "Sorry." Off we go to contempt-land again, during which defense counsel tried to offer his client's frustration as mitigation. No deal, 180 days. In a nice touch, when Gems took the 18 months on the original drug charge, that sentence was made to run consecutive to the contempt sentence.

And now we get to the DCA. Upholding both contempt sentences because proper procedures had been followed and because the use of profanity "may" constitute direct criminal contempt of court and because "the authority to punish contumacious conduct

is essential to the proper administration of justice," the DCA went on to say that the power to summarily punish contempt should be used "cautiously and sparingly." Further, the court noted that using profanity in speaking to a judge is "undoubtedly improper and unacceptable" but that "we cannot say it was contumacious." What? Contumacious means stubbornly perverse or rebellious, willful and obstinately disobedient. I know this because Webster tells me so. What I don't know now is why the words of Twine and Gems, if not contumacious (I assume because they probably were more rash and improvident than stubborn or obstinate), still constitute punishable contempt. I guess this is a strict liability thing.

Anyhow, in both cases, the DCA concluded that the outbursts involved were contemptuous if not contumacious and warranted punishment. However, in both cases, the DCA also said in no uncertain terms that 180 days seemed to be excessive. And in both cases they affirmed, finding no authority to alter the sentences. Their concern, they footnoted in one case, was "amplified" by these two cases having occurred within a couple of months of each other in front of the same judge.

So I suppose the lesson to be learned is that some degree of restraint is to be expected of all of us who deal with human emotion. Prosecutors often try to temper the reactions of cops on the street who quite rightfully get their fill of how some defendants treat them and load up a mittimus with as many counts as possible. Defense lawyers occasionally show pique at snarky comments by prosecutors about their clients. Judges just might temper over-enthusiastic prosecutors when they sentence in a case involving a dozen or so counts where one or two might have sufficed. And so should they and all of us I suppose when defendants, many of whom are intellectually and emotionally way out of their depth in the courtroom, react badly.

On a different level than a mere curse word or two, I well remember many years ago when a now long gone judge who I admired but who was notoriously tough was sentencing an habitual thief. As the judge was announcing the many years of prison time that were being leveled on the defendant, she (the defendant) grabbed something (an ashtray I think, which it may surprise many of you to know were once common in our courtrooms) and hurled it at the judge. He simply ducked and continued reciting how long it

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# Probate Section Report

By Larry E. Ciesla



The Probate Section continues to meet on a monthly basis. Matters of interest, including those specifically discussed during recent meetings, are set forth below (in no particular order).

**Corey King (352-264-7061)** recently accepted a position as Staff Attorney for the Eighth Judicial Circuit. Her current

assignments include Alachua County guardianships, as well as probates and guardianships in Gilchrist, Baker and Bradford Counties. Corey served as a staff attorney here once before, ending in 2007. She also served as a staff attorney in Broward County after leaving this area. The Probate Section welcomes Corey back to our area, and we look forward to working with her again.

**Katherine Mockler (352-264-6895)** indicated she will be serving as Staff Attorney for Alachua County probates until further notice.

**Mirelis Torres-Rodriguez (352-264-7025)** is a recent addition to the ranks of staff attorneys and has been a member of The Florida Bar since 2012. She will be in charge of probate and guardianship cases in Levy and Union Counties. The Section welcomes Ms. Torres-Rodriguez, and we look forward to working with her in the future.

The Section welcomed a new member during the December meeting. Jolee Farinacci has been a Florida Bar member since 1997. She has relocated to Gainesville after caring for her elderly parents in California for several years. Jolee intends to focus her new practice in the areas of probate and elder law. The Section wishes her much success going forward.

New judicial assignments effective January 1, 2017 were discussed. Of primary interest to the Section is Judge David Kreider's move to Levy County, where he will be in charge of all circuit court cases, including all probate and guardianship cases. Judge Stan Griffis has moved to the Bradford County Courthouse, where he will handle all circuit court cases for Bradford County, as well as those in Baker County, including all probate and guardianship cases.

Don Davis, recently retired from Capital City Bank, attended the January meeting. Don has a lengthy background in the financial services business and is widely respected for his honesty and integrity. He has indicated his willingness to serve as a trustee

(or other fiduciary) in situations where there may not be sufficient funds involved to attract the services of an institutional trustee and use of a family member or other individual is not feasible. Interested practitioners may contact Don Davis at 352-215-1392.

Three appellate decisions involving local practitioners have recently been published:

In *Hampton v. Estate of Allen*, \_\_\_\_\_ So.3d \_\_\_\_\_, (Fla. 5th DCA August 5, 2016), the Fifth DCA reversed a trial court ruling in St. Johns County which denied a request for an award of attorney's fees from an estate submitted by Gainesville lawyer Robert W. Bauer. In that case, a suit was filed in St. Johns County by a purchaser under a real estate sales contract that had not closed prior to the death of the owner/seller. Decedent's will left the property to Hampton, and she obtained an order from the probate court allowing her to defend the civil suit under the authority contained in § 733.705(3), F.S. Attorney Bauer successfully defeated the civil suit and applied to the probate court for an award of fees from the estate pursuant to the provisions of §733.106(3), F.S. (attorney who has rendered services to an estate).

Case law under §733.106(3) has established the rule that the attorney's services must benefit the estate. This requirement has, in turn, been interpreted to include both services that enhance the value of the estate and those which successfully give effect to the testamentary intentions set forth in the will. The probate judge denied the fee request based on the ground that the services rendered did not enhance or increase the assets of the estate.

The Fifth DCA reversed and directed that fees be awarded to Attorney Bauer upon the ground that his services were successful in giving effect to the intent of the testator as embodied in the will. Congratulations to Attorney Bauer for a job well done and for obtaining an addition to the published case law supporting payment to lawyers who provide a benefit to an estate.

In *Cason v. Ross*, \_\_\_\_\_ So.3d \_\_\_\_\_, (Fla. 1st DCA January 10, 2017), an appeal was taken by Gainesville attorneys Jennifer Lester and Shannon Miller seeking a writ of mandamus to compel the trial court to issue letters of guardianship. The First DCA denied the requested relief. According to the published opinion, petitions to determine incapacity and for appointment of a guardian were filed in December 2015; hearings were held in March, April

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# New Year Brings Management-Friendly Perspectives To Labor And Employment Arena

By Laura Gross



Four key players are expected to create a management-friendly atmosphere in the labor and employment law arena, assuming their positions are confirmed.

Andrew Puzder, a fast food executive who runs the parent company of Carl's Jr. and Hardees, is the nominee for Secretary of Labor. His perspective is indeed different from former Secretary of Labor Thomas Perez who was a civil rights lawyer and consumer advocate. Puzder's past statements against minimum wage and his companies' history of labor law violations have fomented Democratic opposition to his appointment. While he has said, "I am fully committed to becoming secretary of labor and I am looking forward to my hearing," the Senate Committee announced that his hearing has been postponed for a fourth time.

Phillip Miscamara, a former management attorney and the sole Republican on the National Labor Relations Board, was appointed Acting Chairman. He took over from Democrat Mark Pearce, a union and plaintiff-side lawyer who had served as chairman since August 2011. As a Commissioner, Miscamara has frequently disagreed with the Board's Democratic members, issuing dissents on labor-friendly majority opinions which allowed workers to more easily organize into micro-units and relaxed the test for determining joint employer liability for labor violations.

Victoria Lipnic was appointed as Acting Chairman of the Equal Employment Opportunity Commission. As a Commissioner, she voted against the EEOC's July 2015 decision that sexual orientation discrimination is a form of sex discrimination prohibited by Title VII and she voted against the majority's pregnancy discrimination guidance issued in July 2014.

Judge Neil Gorsuch, if confirmed to fill the open seat on the U.S. Supreme Court, with his originalist approach, is expected to disfavor Obama-era regulations issued by the NLRB and EEOC which would bode well for employers. His decisions have favored arbitration and criticized undue judicial deference to administrative agencies, namely the DOL's Administrative Review Board and the NLRB.

# In Memory Of Margaret Stack

By William Cervone



Her formal obituary started with the phrase "The planet lost one of its stellar inhabitants..." I've never seen that, although nowadays there is an art to writing obits, which are no longer the dry biographical recitals they once were. Fittingly and in the same style, the obituary ended with information about the Celebration of Life that was

planned, not a funeral.

Margaret Mitchem Stack, Assistant State Attorney, defense attorney, member of the EJCBA, and much more, died on January 23rd. Her wit could be acerbic, and her glare piercing. Indeed, you always knew where you stood with Margaret. My professional association with her started in the mid-80s when she joined the State Attorney's Office as a prosecutor, the law being something that came later in life to her than most of us. She had the benefit of missing the callow youthfulness many of us suffered from when we first became lawyers, substituting instead a wealth of life experiences that honed her perception and judgment. Our professional association quickly became a friendship, as happened with most people Margaret met.

Margaret and the late Gloria Fletcher, gone too soon as well, were great friends and enjoyed trying to see who could "out-witch" the other. They would exchange stereotypical gifts and cards focused on witches, sometimes the good ones and sometimes the bad ones. You could hear each of them laugh about what they got or sent, especially around Halloween. Or maybe cackle. The witch imagery, however, covered the very real heart of gold that each had. For years Margaret labored over our Christmas gifts for underprivileged kids holiday project. Like everything else she did, she was relentless about that. In her practice of the law, she was equally relentless in pursuing justice as she saw it. I often saw that, and I often saw the compassion, wisdom, and persistence she displayed in dealing with victims, witnesses, and defendants. There is no telling how many people she touched because so many were marginalized citizens who simply come and go with our cases. They all ended up the better for it, however, because no matter what else was going on during their interactions with Margaret they were treated respectfully. She didn't

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# The Florida Bar Board of Governors Report

By Carl Schwait



The Florida Bar Board of Governors met on January 20, 2017. The major actions of the Board and reports received included:

A new [website for Lawyers Advising Lawyers](#), a no-cost peer-to-peer program giving members access to veteran attorneys to help answer procedural and substantive

legal questions in 50 practice areas, was launched and the Board approved one hour of CLE credit for volunteer advisors who accept referrals with a maximum of five credits per year. Advisors must have a minimum of five years of experience in the respective area(s) of advice and must be a member of The Florida Bar in good standing. To become an advisor or to request advice, enroll online at <http://lawyersadvisinglawyers.com/>. The [February 1 issue of The Florida Bar News](#) provides more details.

Two new Florida Bar legislative positions were approved: opposing any amendment to the Florida Constitution that restricts or overturns the court's authority to review the constitutional validity of legislation; and opposing any amendment to the United States Constitution that restricts or overturns the courts' authority to review the constitutional validity of legislation. Also approved was reinstatement of six legislative positions from the Code and Rules of Evidence Committee. [All current Florida Bar, Section and Committee legislative positions are posted here](#)

During the upcoming legislative session, beginning March 7, The Florida Bar will be monitoring constitutional amendments filed in the Florida House and Senate focusing on judicial term limits and other Article V issues. A Senate Joint Resolution, [SJR 482](#), would limit Supreme Court justices to two six-year terms, DCA judges to three terms, require lawyers to be at least 50 years old to serve on Florida's appellate courts and require Supreme Court appointees to have served at least one prior year as a judge. The House Joint Resolution, [HJR 1](#), would limit the number of years Supreme Court justices and DCA judges may hold the same office to 12 consecutive years and prohibit appellate judges from being reappointed for one year after leaving office; appellate judges

in office on January 9, 2019, and future appointees would be subject to the proposed term limits. The Florida Bar will oppose any proposed legislation or amendments that would limit the independence of the judicial branch or the authority of the judiciary through this and other legislative positions: The Florida Bar opposes term limits for judges at any level of Florida's state court system. For information on legislation of interest to the legal profession, the session schedule, links to contact legislators and other information sources, how The Florida Bar may advocate issues and all legislative positions, please visit [www.floridabar.org/legislativeactivity](http://www.floridabar.org/legislativeactivity).

Florida Supreme Court Chief Justice Jorge Labarga gave an update on the state of the judiciary. An [Overview of State Courts System's Legislative Budget Request for FY 2017-18](#) and an [Overview of Judicial Branch Priority Issue on Staff Pay](#) are posted at [www.flcourts.org](http://www.flcourts.org). Through work groups, the Court is evaluating security procedures, practices and perceptions at Florida's courthouses [to improve security provided at trial courts around the state](#) and [studying the way guardianship works in the state courts system](#). The now-permanent [Florida Commission on Access to Civil Justice](#) will continue its work at a meeting on February 3 in Tallahassee. Members of the Court in attendance were also provided with an update on [Florida Bar strategic plan](#) objectives and priorities by President William J. Schifino, Jr. and members of the Board of Governors.

An amendment to the [Rules Regulating The Florida Bar Rule 4-1.2](#) and a new Rule 4-6.6 were approved, which, if approved by the Supreme Court, would streamline conflict of interest procedures to make it easier for lawyers to render limited legal advice to Floridians through call-in lines, booths, or other venues sponsored by law schools, voluntary bars, legal aid clinics and similar entities. The proposed rule changes will be officially noticed in the February 15 Florida Bar News and will be filed with the Court on March 17.

Jack Harkness, Executive Director of the Florida Bar for 37 years, announced his retirement plans at the conclusion of the meeting. I am honored to have been chosen as the only elected member of the Board of Governors, other than the President and President-Elect, to the search committee for his replacement. I will continue to update you on this important selection process.

# The Real Job of an Attorney

By Krista Collins



Usually when I write this column, I think about a point of law that I find interesting or an issue that I've had to deal with that I think maybe others might have to deal with too. And so there are case cites and sometimes fairly technical discussions of the law. But this month, I'm going in a different direction. Lately I've been thinking about what it is that

we lawyers *really* do. I recently read that the job of a journalist is to speak truth to power. While this is certainly true, this particular job belongs to attorneys as well. We have the duty—and the honor—to speak truth to power. Whether the power in question is a judge or jury, legislature or Supreme Court, opposing party who thinks the law doesn't apply to them or just a client who isn't used to being told “no,” we have the obligation to present the facts and the law, to stand up both for our clients and for what is right. We speak truth to power.

As attorneys, we're the butt of many jokes – who amongst us hasn't heard someone jokingly reference the line from Henry VI, “the first thing we do, let's kill all the lawyers”? I always correct (sometimes quite indignantly, I must admit) the would-be comedian. Shakespeare was showing his respect for lawyers with that line! The speaker is a cutthroat and rebel, aiding the overthrow of the government. The best way to accomplish that? Killing the lawyers who stand in the way. We speak truth to power.

That is what we do. We stand in the way when someone wants to trample the rights of others. We stand in the way when criminals refuse to comply with the law. We stand in the way when the government overreaches. We stand in the way when people or companies refuse to honor their contracted word. We stand in the way. We speak truth to power.

In England, not far from Windsor Castle, there is a field ringed by trees. It's a little muddy and seems very unremarkable. But just off the main field of Runnymede is a memorial, placed there by the American Bar Association to commemorate the location where the Magna Carta was sealed. The site where the English barons spoke truth to power and told King John enough. It's quiet there, and I don't expect it always sees a lot of visitors. Certainly, the day I visited, there was no one else at the monument and only dog walkers in the field. But I was proud

that the monument had been placed there, not just by Americans, but by American lawyers. Magna Carta was the first small step on the long road toward democracy and equality; a road that we continue to walk. We speak truth to power.

I'm not going to lie, it's hard. And of course, I don't have to tell you that – you know it is! This is not a profession for the faint of heart. Standing up for the rights of others, whether those rights come from the Constitution or common law, whether from statutes or contracts, can be a difficult thing to do. There is no room for wilting flowers here. And in some ways, the lawyer's duty to speak truth to power is more difficult than the journalist's version of the same duty – we not only have to speak truth to power, but oftentimes, we are trying to convince that power to agree with us, to agree with the truth they may not want to hear. We may have to persuade a judge that a previous ruling was in error or prove to a jury that the facts as presented by the opposing side aren't the whole story. We speak truth to power.

So the next time someone asks you what you do, instead of your standard answer—I'm a prosecutor, I do corporate law, I'm a defense attorney, I do family law, I'm a litigator—tell them what you really do. Tell them the real job of an attorney: we speak truth to power.

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## Nominees Sought For 2017 James L. Tomlinson Professionalism Award

Nominees are being sought for the recipient of the 2017 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 43<sup>rd</sup> Street, Suite 200, Gainesville, FL 32606. Nominations must be received in Mr. Brady's office by Monday, May 1, 2017 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.



# “THE GLORIA”

## In Memoriam of Gloria Fletcher Benefiting the Guardian ad Litem Foundation

Player’s Choice: Two-person or Four-Person Scramble

Mark Bostick Golf Course Friday, March 3, 2017

\$130/golfer (\$115/golfer early registration)



2800 SW 2nd Avenue  
Gainesville, FL 32607  
Phone: 352-375-4866

Cost: \$130 per golfer  
\$115 Early Registration  
Registration/Lunch: 11:30 AM  
Tee Time: 12:30 PM  
Reception following

To register online:  
[www.guardian8foundation.org/  
2017-ejcba-charity-golf-  
tournament-registration/](http://www.guardian8foundation.org/2017-ejcba-charity-golf-tournament-registration/)

OR, please return this form  
with payment to :

The Guardian Foundation, Inc.  
3919 W. Newberry Rd, Ste 3  
Gainesville, FL 32607



SIGN –UP  
DEADLINE FOR  
EARLY DISCOUNT  
FEBRUARY 17, 2017



The cost of this event is **\$130 per golfer with an early registration discount of \$115 per golfer** for those who register and pay by February 17, 2017. This price includes 18 holes of golf, riding cart, lunch, reception, and various awards and/or prizes. All net proceeds of this charity tournament benefit the Guardian ad Litem Program of the

8th Judicial Circuit through the Guardian Foundation, Inc.

The EJCBA Charity Golf Tournament benefitting The Guardian Foundation, Inc. has been named in honor of the late Gloria Fletcher. While the names of Professional Golf Association tournaments, such as “The Masters,” are synonymous with the best in the field, Gloria Fletcher’s name, and her legacy, represent the pinnacle for children’s advocacy. Gloria was a dedicated champion for vulnerable children in the 8th circuit and across Florida. The EJCBA tournament bears Gloria’s name to ensure her example, passion, and work on behalf of abused, neglected, and abandoned children will continue.

To register, please click [here](#) or return this form with payment. All checks must be made payable to the Guardian Foundation, Inc. Please fill out the corresponding number of spaces below and check the appropriate box indicating whether you wish to play as a 2-person or 4-person scramble.

**Entry Fee: \$130 per golfer (\$115 if registered & paid by February 17, 2017)**

_____	_____
Name (Golfer 1)	Name (Golfer 2)
_____	_____
Email	Email
_____	_____
Phone	Phone
_____	_____
Name (Golfer 3)	Name (Golfer 4)
_____	_____
Email	Email
_____	_____
Phone	Phone

**NFAREA is *already* having an active year. EJCBA real estate and other interested lawyers are *always* invited to join.**

*by Philip N. Kabler, NFAREA President*

The North Florida Association of Real Estate Attorneys is already “in full swing.”

Our January meeting featured *Gainesville’s own* Melissa Murphy, now the General Counsel of the Attorneys’ Title Fund Services, LLC, who spoke about cybersecurity risks and defensive measures. The nationwide data and trends involving “hacking,” “spoofing,” “phishing,” and identity theft, particularly concerning attorney trust accounts and wire transfers, is quite disconcerting, and Ms. Murphy offered a variety of techniques to better protect clients’ interests and the attorneys’ ethical duties.

New Alachua County Clerk of the Court and Comptroller J. K. “Jess” Irby was NFAREA’s February speaker. Mr. Irby’s topics included his plans for the Clerk’s office, legislative and other initiatives, and methods of the transactional and litigation Bar’s working well with his office.

There is *always* an “open invitation” for all EJCBA members to join NFAREA. To join NFAREA, please visit our website ([flarecs.com/local-recs/north-florida-association-of-real-estate-attorneys](http://flarecs.com/local-recs/north-florida-association-of-real-estate-attorneys)) and click on the “Become a Member” button ([flarecs.com/become-a-member](http://flarecs.com/become-a-member)), or contact any of our officers (Phil Kabler, Julie Naim, Judy Paul, Ryan Curtis, and Ramona Chance).

## Free CLE

### Alternatives to Incarceration for People with Mental Illness

Please join us in Courtroom 4A of the Civil Courthouse on March 15, 2017 from 10:15am – 11:30am as Judge Steven Leifman from Miami-Dade, FL and Mr. Leon Evans from San Antonio, TX speak on alternatives to incarceration for those with mental illnesses. You will learn about the mental health system, the legal and medical history that led to America’s mental health crisis, and the essential elements necessary to create an effective system of care that ultimately will transform the mental health and criminal justice systems – making jail the last option for people with serious mental illnesses, not the first. Attendants will be awarded CLE credit.

## Dr. Jackson Sasser speaks on “Santa Fe College in Pursuit of Justice” at the March Luncheon



Dr. Jackson Sasser, the President of Santa Fe College, will give remarks at the luncheon on March 17, 2017. Dr. Sasser has been an innovator at Santa Fe College since becoming president in January 2002. Under his leadership, Santa Fe was named the number one community college in the nation by winning the 2015 Aspen

Prize for Community College Excellence. The college has been in the top 10 of U.S. community colleges since 2012.

During his presidency the college has built four new campuses and a construction institute. Fifteen years ago he began addressing diversity needs, which led to his creating My Brother’s Keeper, a college support program to increase retention of African-American males; Navigating the College Experience, a college-wide success initiative with early alert and progressive advisement; and the East Gainesville Initiative, a comprehensive outreach effort with faith-based partners that serves a disadvantaged region of the community. Under his direction, the University of Florida has become the college’s best partner with a series of educational collaborations that include pre-selected UF College of Engineering freshman applicants beginning their coursework at Santa Fe. He contributed to the region’s innovation economy by establishing Santa Fe’s Center for Innovation and Economic Development, which includes an incubator to provide training and resources to entrepreneurs. His commitment to the arts and sciences led to completion of a planetarium and a fine arts hall on campus and the college’s designation as an All-Steinway School. At the college’s Institute of Public Safety he secured funding to construct a fully-operational replica of a small-town “Main Street” to be used for scenario-based training exercises. One of Dr. Sasser’s first acts as president was implementing Internationalizing the College Initiative, which weaves a global perspective into every course and program. Since then the college has launched an international studies certificate, hosted four Fulbright Scholars, and served as a lead community college partner for

*Continued on page 12*



You are invited to attend the  
Investiture Ceremony of

*The Honorable  
D. Tatum Davis*

*as Bradford County Court Judge  
in the Eighth Judicial Circuit of Florida*

*Friday, March 3rd, 2017  
at 3:30 p.m.*

Bradford County Courthouse  
945 N. Temple Avenue  
Starke, Florida 32091

*Reception to follow at the  
Starke Golf and Country Club  
15501 NE 14<sup>th</sup> Avenue  
Starke, Florida 32091*

## Congratulations, Stacy Scott!

Congratulations to our Public Defender, Stacy Scott, on the grand opening January 27, 2017 of the new Alachua County Public Defender's Building, located at 151 SW 2d Avenue. Speaking at the event, which was open to the public, Ms. Scott said "This building is so much more than brick and mortar...it's proof of this county's commitment to equal justice for all."

Planning for the new building has been in the works for nearly 15 years. The need for a new Public Defenders building originated in the Alachua County Downtown Master Space-Needs Plan completed in 2002. The previous building has been in need of major structural renovations and repairs.

Phases I and II of the plan were completed in 2004 with the construction and opening of the Criminal Courthouse and renovation of the Civil Courthouse. In 2007, the design of a 20,000 sq.ft. Court Support Building (Phase III) was approved, but in 2008 the economy collapsed and the project was deferred. When Article 5 funds became available in 2014, Ms. Scott suggested that the funds be used to construct the new 21,733 sq. ft. building on the north west side of

the judicial complex; the County Commission approved the project.

The project, costing \$5,289,682, was completed on time and under budget. The new Public Defender's Building completes Phase III of the Master Space-Needs Plan and serves as a major accomplishment toward creating a Unified Courts Complex.

## March Event With Alachua County Medical Society

The EJCBA and the Alachua County Medical Society are participating in a dinner and moderated panel discussion to be held on Tuesday evening, March 14, 2017, from 6-8 p.m. at the Hilton UF Conference Center, 1714 SW 34<sup>th</sup> Street. The topic for the evening is:

"Collaborating to Meet the Legal and Medical Needs of Our Local Under-Served Populations"

The panelists for this discussion led by moderator David Winchester, M.D., are:

Mustafa Ahmed, M.D., Founder of the RAHMA Mercy Clinic in Gainesville

Tony Campo, Director of We Care Physician Referral Network, ACMS

Marina Cecchini, Administrator of UF Health Shands Psychiatric & Rehab Hospitals

Robert "Hutch" Hutchinson, Alachua County Commissioner

Chris Larson, Executive Director of Three Rivers Legal Services

6-7 p.m.: Social Hour

7-8 p.m.: Dinner and Discussion

Approved for 1 hour of CLE credit

\$40 Members; \$50 Non-members  
(appetizers & dinner); Cash Bar

DEADLINE: Register no later than  
Wednesday, March 8, 2017, at 5 p.m., at:  
[http://www.8jcb.org/event-registration/  
ejcb-acms-dinner-2017/](http://www.8jcb.org/event-registration/ejcb-acms-dinner-2017/)

For questions or more information, contact  
Ray Brady, Esq., at [rbrady1959@gmail.com](mailto:rbrady1959@gmail.com)

# Probate Section Report

*Continued from page 5*

and June 2016; an order determining partial incapacity was entered on August 29, 2016; an order vacating same was entered on October 5, 2016; and an order setting non-jury trial for January 4, 2017 was also entered on October 5, 2016.

Appellant argued that an incapacitated person has a clear right to appointment of a guardian to protect the rights of the incapacitated person. The DCA semi-agreed but ruled that there is no authority for a specific deadline for issuance of an order appointing a guardian. In addition, the DCA seemingly was persuaded by the fact that the appellant's only real complaint was with regard to the issue of delay. Although not expressly stated by the DCA, it appears that the absence of a specific harm to the incapacitated person may have been the dispositive point on which the decision turned.

Finally, former Gainesville attorney Steve Chamberlain, now in Ocala, represented local realtor Betty Hilgendorf as appellant in *Hilgendorf v. Estate of Coleman*, \_\_\_\_\_ So.3d \_\_\_\_\_, (Fla. 4th DCA October 26, 2016). The issue on appeal was whether Hilgendorf, as a beneficiary of decedent's revocable trust and as co-personal representative of decedent's estate, had the right to compel accountings by the trustee (who had been named by decedent to administer the trust during decedent's lifetime) for transactions occurring prior to death.

The trial court dismissed Hilgendorf's claim for accountings as a matter of law pursuant to the authority of §736.0603(1), F.S., which provides that, during the lifetime of the grantor, the duties of a trustee are owed exclusively to the grantor. Stated differently, during the lifetime of the grantor, the trustee owes no duty to a remainder trust beneficiary. As pointed out by the DCA, this rule does not prevent a beneficiary from suing a trustee for a breach of duty that occurred during the grantor's lifetime and which affects the interests of the beneficiary.

In affirming the trial court, the DCA expressly pointed to the fact that Hilgendorf made no claim that the trustee committed a breach of trust during the grantor's lifetime and sought only to enforce a (non-existent) general right to obtain an accounting for a period of time prior to the trust becoming irrevocable (at which point a beneficiary has a clear right to an accounting).

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 4th floor of the Alachua County Family and Civil Justice Center, 201

East University Avenue, and all interested parties are invited to attend. Please contact Jackie Hall (352-378-5603 or [jhall@larryciesla-law.com](mailto:jhall@larryciesla-law.com)) to be included in the e-mail list for notices of future meetings.

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## Dr. Jackson Sasser at the March Luncheon

*Continued from page 10*

two U.S. Department of State Community College Administrator Program grants.

Before arriving at Santa Fe, Dr. Sasser was president of Lee College in Baytown, Texas, and interim president at Calhoun Community College in Decatur, Alabama. He serves on the board of the American Association of Community Colleges. He was 2008-2009 chair of the Board of Directors of the League for Innovation in the Community College, 2007-2008 chair of the Florida Community College Council of Presidents, 2006-2007 president of the Florida Association of Colleges and Universities, and 2003-2004 chair and still a member of the American Association of Community Colleges Presidents Academy. He is a past member of the board of the Institute for Community College Development at Cornell University. He conducted post-graduate work at Harvard University and upon invitation participated in a University of Oxford Round Table on higher education. He was tapped as a member of Florida Blue Key, the University of Florida's prestigious leadership honorary, in April 2015.

*Source:* Biography provided by Santa Fe College President's Office

To register for the EJCBA 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.

### It's that time again!

The Eighth Judicial Circuit Bar Association Nominations Committee is seeking members for EJCBA Board positions for 2017-2018. Consider giving a little time back to your bar association. Please complete the online application at <https://goo.gl/forms/fTwMzr0QbaRncwHs2>. The deadline for completed applications is May 5, 2017.

## President's Message

*Continued from page 1*

foster a renewed sense of commitment to this annual tradition.

Margaret was a role model for what it means to be a lawyer. She was devoted to serving her clients with excellence and training future lawyers how to do the same. She gave freely of her time and talent to those who needed it most. She was a resolute voice for our bar when we needed one. But she was more than a voice; she rolled up her sleeves and got to work once a decision was made. In the words of Ray Brady, "Margaret was a tireless servant to the EJCBA and her clients." She will be missed deeply.

## In Memory Of Margaret Stack

*Continued from page 6*

know how to do things otherwise, and perhaps that is her legacy to all of us. In a day when civility in our profession sometimes seems to be ebbing, Margaret leaves us as an example of how to be strong about your position without being combative, how to be candid without being offensive, how a smile or a gentle reminder can go far in finding resolution of a problem.

There was only one Margaret and in her way she was indeed a shining star, a stellar inhabitant of our community. Rest In Peace.

## Criminal Law

*Continued from page 4*

would be that the defendant would be gone from our presence, never missing a word or seeming the least bit fazed.

I liked that. I also like the word contumacious. Hence this article.

And now for this month's Absurdity of the Month. Because a parent in Accomack County, Virginia, complained that *To Kill A Mockingbird* and *The Adventures Of Huckleberry Finn* contained racial slurs and other offensive wording, both have been removed from classrooms and school libraries while a committee studies the matter. Custom, morality and language change and our history certainly has its flaws but how much of it are we going to try to pretend out of existence instead of learning from and improving on it?

## ADR

*Continued from page 3*

An article from "Psychology Today" a few years ago acknowledged that giving a gift and sharing a meal are ways to boost oxytocin. In fact, the article suggests you can increase the effect by making the meal you share a gift. That's what happens at mediation when all of a sudden a layman/party receives a free meal. We don't think it takes reading Psychology Today to intuit that effect.

## Reserve Now for the EJCBA March 2017 Luncheon



**WHEN:** Friday, March 17, 2017 – 11:45 a.m.

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

**PROGRAM:** Dr. Jackson N. Sasser, President of Santa Fe College—"Santa Fe College in Pursuit of Justice"

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

**DEADLINE:** Register on or before **Monday, March 13<sup>th</sup> at Noon at**  
<http://www.8jcba.org/event-registration/mar-2017-luncheon/>

### Reserve for Upcoming Events

**EJCBA Charity Golf Tournament**  
 benefiting the Guardian ad Litem Program—Friday March 3, 2017.  
 Lunch and Registration at 11:30am  
 and Tee Time at 12:30pm  
 (http://  
[www.guardian8foundation.org/2017-ejcba-charity-golf-tournament-registration/](http://www.guardian8foundation.org/2017-ejcba-charity-golf-tournament-registration/))

**CLE & Dinner Event with Alachua County Medical Society**  
 Tuesday, March 14, 2017 at 6:00pm  
<http://www.8jcba.org/event-registration/ejcba-acms-dinner-2017/>

**\*\$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.

# Judge Joe Williams, President Of The Conference Of County Court Judges



Baker County Court Judge Joseph M. Williams is presently serving as President of the Conference of County Court Judges. He has previously served as Conference Treasurer, Legislative Chair, First District Vice President and Eighth Circuit Representative.

The stated purpose of the Conference of County Court Judges is to provide continuing judicial education and to conduct forums in which County Court Judges can meet to discuss mutual problems and solutions, to develop programs for the improvement of the administration of justice throughout Florida, and to provide a unified voice for the judges in dealings with the legislature, executive branch, supreme court, state agencies and the citizenry of Florida.

Judge Williams, who has been on the county court bench for twenty-five years (1992-present) has the most seniority of any of the judges – county or circuit – in our judicial circuit. Congratulations, Judge Williams.

**Brad Randall - Account Executive**

[Brad.Randall@lexisnexis.com](mailto:Brad.Randall@lexisnexis.com)

Direct: 904.537.2618

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## March 2017 Calendar

- 2 EJCBA Board of Directors Meeting – Faculty Dining Room, UF Law, 5:30 p.m.
- 3 EJCBA Annual Charity Golf Tournament – “The Gloria,” benefiting the Guardian ad Litem Program, UF Golf Course
- 3 Investiture Ceremony of The Honorable D. Tatum Davis, Bradford County Court Judge, 3:30 p.m., Bradford County Courthouse
- 6 Deadline for submission to April Forum 8
- 8 Probate Section Meeting, 4:30 p.m., Chief Judge’s Conference Room, 4th Floor, Alachua County Family & Civil Justice Center
- 14 EJCBA/Alachua County Medical Society Dinner/Panel, “Collaborating to Meet the Legal and Medical Needs of Our Local Under-Served Population,” 6:00 p.m., Hilton UF Conference Center
- 15 “Alternatives to Incarceration for People with Mental Illness,” CLE, 10:15 a.m.-11:30 a.m., Courtroom 4A, Alachua County Family & Civil Justice Center
- 17 EJCBA Luncheon, Dr. Jackson Sasser, President of Santa Fe College, The Woolly, 11:45 a.m.
- 21 Family Law Section Meeting, 4:00 p.m., Chief Judge’s Conference Room, Alachua County Family & Civil Justice Center

## April 2017 Calendar

- 5 Deadline for submission of articles for May Forum 8
- 5 EJCBA Board of Directors Meeting – Faculty Dining Room, UF Law, 5:30 p.m.
- 12 Probate Section Meeting, 4:30 p.m., Chief Judge’s Conference Room, 4th Floor, 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
- 21 EJCBA Luncheon, Speaker TBA, “Racial Disparities in the Criminal Justice System,” The Woolly, 11:45 a.m.
- 21 EJCBA Leadership Roundtable: Moderated Panel Discussion & Workshop on Racial Disparities in the Criminal Justice System with networking reception (CLE), The Woolly, 1-5 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).