

# FORUM 8

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Eighth Judicial Circuit Bar Association, Inc.

October 2017

## President's Message

By Meshon Rawls



“Why are you here? More importantly, why are each of us lawyers? *Why* is not only a critical question for each of us; why is also a critical question for the Florida Bar.” These were the words of Michael Higer, the President of the Florida Bar, as he elaborated on the mission of the Florida Bar during his swearing in speech in June. As I

considered his questions, I found myself reassessing the mission of the Eighth Judicial Circuit Bar Association (EJCBA). What is our *why*? The mission of the EJCBA is to assist attorneys in the practice of law and in their service to the judicial system and their clients and their community. Our mission statement is clear and concise, yet it provides much guidance concerning what we should be doing as an association. However, how we accomplish the *why* is determined only by the creativity, imagination, and ingenuity of those in leadership. We have much latitude in assessing and meeting the needs of our membership.

This month, I want to focus on one aspect of our *why*: assisting attorneys in the practice of law. With this in mind, I challenge members of the EJCBA to consider an area that I believe is essential to our individual and collective growth. Let’s do something practical, yet profound. Let’s commit to building relationships and getting to know our colleagues – the 1,200 lawyers who serve in the Eighth Circuit. Who are we? We are certainly more than the area of law in which we practice. When you look at my profile on the Florida Bar website, you only see a glimpse of who I am: a child advocate, a law professor, and a leader. But I am so much more than what is indicated on that

page. I am an African-American woman with a colorful life story – a story filled with experiences that have prepared me for this very moment. Unfortunately, the demands of the profession have a way of overshadowing the essence of who we are. So, what do we do? I suggest we take heed to the words of wisdom shared by Chester Chance, a retired Judge in the Eighth Circuit. In his introduction of Charlie Carter, the recipient of the 2016 Tomlinson Award, Judge Chance spoke of the times when lawyers would get together after work. As I listened, I envisioned getting to know those who I often see, but never seem to find the time to have an in-depth conversation with - to hear their stories, to acknowledge their perspective, to appreciate their similarities and differences.

To address this issue, I suggest we take advantage of two EJCBA programs: the Jimmy Adkins, Jr. Cedar Key dinner and the Fall Family Friendly Social. With both events, we can commit to making a concerted effort to meet other lawyers. The annual Jimmy Adkins, Jr. Cedar Key dinner, which is an attorneys only event, is traditionally known to bring attorneys and judges together in a casual, relaxed atmosphere to enjoy some good seafood. I remember the first time I attended; I did not know the history, and I went to Cedar Key directly from work in a full suit. I was pleasantly surprised to see everyone, even judges, in true casual (not business casual) attire. I obviously did not get the memo about the attire, but I felt the camaraderie among those who seemed to be regular attendees and was welcomed by Mac McCarty. The time that Mac took to talk with me made a lasting impression. This year, I want those who value this experience to reach out to our young lawyers, lawyers new to the area, or lawyers new to the EJCBA, and encourage them to join us. And when

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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



## Iceland: Con

Your State Attorney, William Cervone, is fascinated with Iceland. He loves Iceland. This is bizarre since he has been there *twice* yet wants to return. For him, Iceland has the same allure as the Fortress of Solitude has to Superman, with the exception the Fortress of Solitude is warmer and has better food. We know for a fact he went there for Christmas (kind of like getting coal in your stocking.) Let him tell you about holiday traditions like Þorlaksmessa Day (December 23) when Icelanders eat putrefied skate (true fact) to symbolize the end of the Christmas fast, then decide if you wish to join him for Yuletide in Iceland. Mr. Cervone actually lost three toes to frostbite while attending Midnight Mass in Reykjavik.

We have agreed with Mr. Cervone to write articles on the merits (*sic*) of Iceland. The articles are important as the ABA may schedule a meeting in Iceland or some of our readers may attend a PETA sponsored Save the Puffins convention in Reykjavik and in all honesty we adore puffins.

We got the easy part as we took the negative side. The only condition was that we had to incorporate something about Icelandic law or ADR in Iceland.

First, let's take a look at the name: Iceland. Greenland got it right. Iceland does not sound like the name of a place to which one lures travelers. Admittedly, Iceland is better than the runner-up names which included Permafrostland, Frostbiteland, and Western Siberia.

Mr. Cervone suggested if we write disparaging remarks about Iceland, we will suffer the wrath of Icelanders. He reminds us of the Icelandic saying "Rezkcrkzrekcrk" which means "may a glacier fall on your foot." Mr. Cervone forgets that every Icelandic saying involves ice, sleet or snow, including: "may your honeymoon not be interrupted by a blizzard" (traditional Icelandic wedding toast); "a day without frostbite is a day without a white-out"; and the rhetorical "do polar bears whiz in the tundra?"

Alright, we made up those sayings, but, here are some real Icelandic sayings and their

meanings:

On with the butter (keep working hard).

I took him to the bakery (I told somebody off or beat them up).

I will find you at a beach (I will get my revenge).

I will show you the two worlds (a threat of violence).

That is the raisin at the end of the hot dog (a surprise ending).

Gee, Ragnar, it is freezing (gee, Ragnar, my foot is frozen to my nose).

Is it a coincidence that Anthony Bourdain left the Travel Channel after it assigned him to film an episode in Iceland? During part of the episode he was trapped in an ice cave during a blizzard and that was the highlight of the show. Last year, the Travel Channel had an entire episode involving vacations in Iceland and every single viewer thought it was a blooper reel.

Mr. Cervone desires to drive the "Ring Road" which is a two lane road which circles the entire country. The road is 827.7 miles long. It should be noted that if you drive the first mile, you've experienced the remaining 826.7 miles as the entire trip through this treeless wonderland consists of looking at barren tundra interrupted by the occasional solidified lava flow which is in turn interrupted by the occasional active volcano. In 2016 an American tourist actually got *lost* on this circular road. Here is a winning argument: Mr. Cervone was stuck in a snow drift in a *parking lot* in Reykjavik. And, we have the photo to prove it (in the photo you will notice Bill's arm is frozen to the back of the car.) Your honor, the defense moves for a directed verdict.

Google 'Iceland' and you find articles on 'things that can kill you in Iceland'. What things? Jagged rocks, riptides and sneaker waves on Reynisfjara, which is Iceland's most popular beach (imagine what the unpopular beaches are like.) Then again, swimming in a snow suit has little appeal anyway. Or, consider actual warnings like this: "Whereas snowstorms tend to mainly take place in wintertime, they have been known to take place in the middle of summer as well." Thus, be careful at the rental car lot. Here's another



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# Alternative Dispute Resolution

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warning: “while driving you can drive through snow, sun, wind and fog, all within the same hour” (assuming you do not spend that hour in a snow drift in a parking lot with your arm stuck to the car.)

Oh, yes, we have to say something about Icelandic laws. In Iceland from 1615-2015 (yes, you read that correctly) it was *legal to kill* any Basque on site. We bet you did not see *that* coming. Dogs were outlawed in Iceland from 1924-1990. Dogs are now allowed but are heavily regulated unlike Basques who can now come and go at any time although they should sleep with one eye open. It does make sense to ban dogs from a country that is treeless. It is illegal to own

	Jan.	Feb.	March	April	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
Average °C	-0.5	0.4	0.5	2.9	6.3	9.0	10.6	10.3	7.4	4.4	1.1	-0.2
Average High °C	1.9	2.8	3.2	5.7	9.4	11.7	13.3	13.0	10.1	6.8	3.4	2.2
Average Low °C	-3.0	-2.1	-2.0	0.4	3.6	6.7	8.3	7.9	5.0	2.2	-1.3	-2.6

  

	Jan.	Feb.	March	April	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
Average °F	31	33	33	37	43	48	51	51	45	40	34	32
Average High °F	35	37	38	42	49	53	56	55	50	44	38	36
Average Low °F	27	28	28	33	38	44	47	46	41	36	30	27

a snake, lizard or turtle as a pet (probably to limit competition with the fishmonger’s shark sales.) As for ADR: there is no provision in Icelandic law for mediation or arbitration (probably because hakarl (see discussion of Icelandic cuisine, below) would be served instead of Publix wraps).

Part of this article includes some weather charts for Iceland. The charts suggest that vacationing in Iceland requires survival gear and a Humvee. How does Barbados look now? How does Siberia look now? Prisoners in a Gulag often would say “it could be worse, we could be in a hotel in Reykjavik.”

Oddly, we expect Mr. Cervone to point out that tourism in Iceland has increased from 500,000 per year in 2010 to over 1.25 million in 2015. However, most of the increase is due to what journalists call “The Game of Thrones Effect” and the result in Iceland is the 330,000 inhabitants are inundated, the cost of food and services is rapidly rising, and remote tourist sites suffer with insufficient parking and few bathrooms (sort of like a UF home football game).

Mr. Cervone will no doubt tell you about the wonder of the Northern Lights. He will not tell you that they are not visible during the blizzards which occur 362 days out of the year in Iceland, nor will he tell you that the Northern Lights can be seen from other parts of the globe which do not require

Arctic survival gear and a Humvee.

Here are just a few interesting facts about Tundraland:

In 2010 Iceland banned strip clubs, if that matters to you. Iceland also banned beer until 1989. Just sayin’.

The sales tax in Iceland (VAT) is 24.5%.

Icelandic horses display two additional gaits as compared to all other breeds (we assume those gaits are ‘shivering’ and ‘frozen solid.’)

Iceland was the LAST place on earth to be settled by humans (kind of says it all.)

The Icelandic term for email address is “net fang.” (OK, that sounds pretty cool.)

Of course, we should not end without describing some of the favorite national foods of Iceland. Warning: *none* of these are made-up:

Raw puffin heart. Hakarl (fermenting a shark by burying it in the ground and then urinating on it before letting it rot for several months). Surir hrutspungar (sour ram’s testicles); Svid (sheep’s



head); Slatur (blood pudding); Gellur (Cod tongues); Havalspik (blubber); and Kutmagar (fish stomach). Iceland has not a single McDonald’s restaurant and for the life of us we cannot understand why. We swear as officers of the court that Mr. Cervone told us “One of the best meals I ever ate was in Reykjavik and it was some kind of sheep.” Note to self: question his Trip Advisor comments.

It is your decision: Book your flight to Iceland now or, as Audrey Hepburn said: “Paris is always a good idea.”

# Criminal Law

By William Cervone



## Iceland: Pro

One of God's greatest gifts to mankind is the capacity for curiosity. And so this month we delve into the curiosity that is Iceland. (What has this to do with criminal law, you ask? Patience, please.) I have accepted the challenge of contributor but timid traveler Charles Carter to report on the

many plusses of Iceland.



Pingvallir National Park

Iceland is actually a misnomer. Greenland is far icier and Iceland is far greener. Legend says the name was chosen to discourage visitors, a laudable goal. The flag of Iceland is a vexillologist's (look it up) dream. A background of deep blue represents the ocean surrounding the island. Across that field of blue is a cross of white, representing the snow and ice of the north. Inset upon the white cross is a red cross, that being reflective of the volcanic fire that formed the land. This symbolic representation of the landscape of Iceland couldn't be more descriptive of the country. Good flags, according to Whitney Smith, an expert in such things, should be "simple, striking and easily recognizable," uniting people in patriotic or civic pride. This one is.

Iceland and the United States have many things in common. Here, we had witches, or at least witch hunts, in such places as Salem and other New England communities. Iceland is no different. Preserved in their largest national park, Pingvallir, for all to see is



Hiking along Solheimajokull Glacier

Drekkingarhylur, a stream where suspected witches were thrown to their drowning death. It seems that just like in the States the guilty were unable to float to safety when bound and tossed into deep water. It also seems that macabre tourist destinations are of interest everywhere, and readers who are interested in folklore or contemporary paganism would surely be interested in Drekkingarhylur. Criminal practitioners, too, would surely be interested in this aspect of criminal justice, not to mention that Pinvallir is actually



Gullfoss Waterfall

the site of Iceland's first Parliament, the Althing, established in 930AD, which makes it the world's oldest parliamentary body. The early Althing included the Law Rock, an open location from which all laws

*Continued on page 6*

were proclaimed to the people. The original Law Rock has been lost to time but is memorialized in the park. (This concludes my obligation to make all columns legally relevant.)

Pingvallir offers more than just witch ponds. For those who are geologically inclined, one can observe the splitting of the earth as the Eurasian and North American tectonic plates are actively separating there, visible as the Mid-Atlantic Ridge surfaces in long rifts and crevasses in the ground. Where else can you see Europe without leaving the comforts of North America?

Near Pingvallir you can also visit Gullfoss, the largest by volume waterfall in Europe. In the same area is a geothermal field in which the original namesake Geysir is found. Old Faithful has nothing on Geysir, which erupts every 15-20 minutes.

Interested in global warming theory? That, too, can be seen up close and personal in Iceland by simply trekking along the magnificent Solheimajokull glacier. As you hike up, the glacial vistas open before you all the way to the Atlantic Ocean in the distance, and, unfortunately, include now visible bare rocky outcrops buried under the ice only a few decades ago. For the modern history and travel buffs among you, Solheimajokull is a part of the larger Eyjafjallajokull volcano. You'll remember Eyjafjallajokull as the volcano that blew back in 2010 and brought European air traffic to a halt. Seeing massive fields of volcanic ash, both still on the surface and in some places entombed under fresh ice, is different than looking at, say, Paynes Prairie.

Travel to Iceland in the winter months and you will likely be treated to the Northern Lights, shimmering bands of red and green that illuminate the sky on many nights. They are mesmerizing and impossible to adequately describe in writing. I watched them for nearly an hour from the center of Reykjavik at Christmas one year, and it was a magical display.

The Icelandic people are charming and welcoming, and they actually like Americans. As another story goes, they still appreciate our presence with an airbase during WWII and the impact that had in keeping the Germans at bay. Icelanders are multilingual and virtually everyone speaks English. True, directions to just take Solegjargata to Vatnsmjrarvegur for the City Terminal might intimidate the fainthearted but where's your sense of adventure?

I've been to Iceland twice, winter and summer, and I hope to go back a third time. Maybe more. It's possible to circumnavigate the island in an easy

week and see unspoiled fjords and life as it was in simpler times. That is an appealing thought. The non-adventurous can stick with the same old same old, which Iceland definitely is not.

Charles, you don't know what you're missing.

## Professionalism Panel

Pursuant to Eighth Judicial Circuit Administrative Order 10.02 and Florida Supreme Court Opinion No. SC13-688, In Re: Code for Resolving Professionalism Complaints; Chief Judge Toby S. Monaco has appointed the following individuals to the Eighth Judicial Circuit's Local Professionalism Panel:

Raymond F. Brady, Esq. (Chair) – Perry, Vloedman & Brady

Honorable, Robert K. Groeb, Circuit Judge, Eighth Judicial Circuit

Honorable Walter M. Green, Alachua County Judge, Eighth Judicial Circuit

Honorable Sheree H. Lancaster, Gilchrist County Judge, Eighth Judicial Circuit

Phil C. Beverly, Jr., Esq. – Law Office of Phil C. Beverly, Jr.

William "Bill" Miller, Esq. – Assistant Public Defender, Office of the Public Defender, Eighth Judicial Circuit

Philip N. Kabler, Esq. – Bogin, Munns & Munns, P.A.

Teresa Reid, Professor – University of Florida Levin College of Law

Meshon T. Rawls, Esq. – Gator Team Child

Jeanne M. Singer, Esq. – Chief Assistant State Attorney, Office of the State Attorney, Eighth Judicial Circuit

Stephanie Marchman, Esq. – City of Gainesville City Attorney & Eighth Judicial Circuit Representative to the Florida Bar

Also, pursuant to Eighth Judicial Circuit Administrative Order 10.03 and 10.02(1) (A), the above listed members shall also act and serve as members of the Bench/Bar Committee and the Eighth Judicial Circuit Professionalism Committee.

## Upcoming Free Family Law CLEs

**Tuesday, October 17, 2017** at 4pm, Chief Judge's Conference Room, Alachua County Family & Civil Justice Center – **Pam Schneider, Esq.** of Wershow and Schneider, PA will present on administrative establishment of paternity and support. 1 CLE credit pending

**Tuesday, November 28, 2017** at 4pm, Chief Judge's Conference Room, Alachua County Family & Civil Justice Center – Attorneys from **Children's Legal Services** will discuss the procedure and important things to know about dependency cases. We will discuss dependency cases when they are related to pending paternity and dissolution of marriage cases. 1 CLE credit pending

## Save The Date

### For The Investiture Of Alachua County Court Judge Kristine Van Vorst

Please save the below date for the investiture of the newly appointed Alachua County Court Judge, Kristine Van Vorst:

**Alachua County Court Judge Kristine Van Vorst**

October 20<sup>th</sup> at 2:00 p.m. (reception following)  
Alachua County Criminal Justice Center

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

**WHEN:** Thursday, October 5, 2017 beginning at 6:00pm  
**WHERE:** Steamers: 420 Dock Street, Cedar Key, Florida  
**COST:** \$40.00\*  
**DEADLINE:** Please register on or before **Thursday, September 28, 2017**  
**REGISTER:** <http://www.8jcba.org/event-registration/cedar-key-dinner-2017/>

\*\$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/join/>

**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 Courtney Johnson at [courtney@foldsandwalker.com](mailto:courtney@foldsandwalker.com). Space is limited and is first come first served. Hope to see you there!



**The Fund**

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!

# 2017 Hurricane Season: Legal Implications for Employers

By Laura Gross



The National Oceanic and Atmospheric Administration has announced that the 2017 hurricane season will be even worse than predicted. An employer's navigation of hurricane fallout can have a lasting impact on its business operations, reputation, and employees. In preparation, the following legal implications

should be considered.

**Wages.** Wage and hour laws remain in effect during a natural disaster. Employee absences due to the disaster's interference with transportation are considered voluntary and personal, not subject to compensation. Nonexempt employees are entitled to be paid only for hours actually worked. However, both nonexempt employees who are paid on the fluctuating workweek method and exempt employees must be compensated for the entire workweek if they perform any work at all, at home or at work, during a week during which the business is closed. In doing so, the employer can deduct from the employee's paid time off or vacation leave. If paychecks are handed out at work, an alternative method of distribution should be arranged to avoid delay in the event of a natural disaster.

**Leave.** Employees are not entitled to leave simply due to a natural disaster. However, employees are entitled to leave under the Family and Medical Leave Act (FMLA) to care for a child, spouse, or parent with a serious health condition caused by the disaster. For instance, an employee may be called during a power outage to care for a child, spouse or parent whose serious health condition and care depend on power for refrigeration of medication or to run medical equipment. Or, a disaster may exacerbate an employee's own anxiety, depression, or blood pressure causing inability to perform the job. In these cases, the employee is entitled to up to 12 weeks of leave under the FMLA. When an employer suspends its operations for one or more weeks, that time cannot be counted against the employee's FMLA leave. Where the employee's impairments rise to the level of a disability, reasonable accommodations, which may include longer leave, are required by the Americans with Disabilities Act and similar state and local laws. Leave is also required for employee members of the National Guard or Reserve unit who may be called to service.

**Safety.** Employers are required to protect employees from unreasonable danger in the workplace, including imminent natural phenomena and resulting hazards. Correspondingly, employees have the right to refuse to work in conditions they reasonably believe are unsafe. If the employer needs employees to remain at the worksite during a natural disaster, the employer should arrange for food, shelter and the evacuation, if necessary, of those employees.

**Unemployment.** Employees separated from employment due to a natural disaster are entitled to unemployment benefits. Such benefits are not charged to the employer.

**Governmental response.** Employers should watch for governmental agencies to modify and relax rules in response to natural disasters. For Hurricane Harvey, deadlines have been extended for employer's tax returns and tax deposits. And, the IRS has announced that 401(k) and similar employer sponsored retirement plans can expedite loans and hardship distributions to hurricane victims who may use such money to pay for necessities like food and shelter which is not normally permitted.



## **FAMILY LAW ADVISORY GROUP (FLAG) FALL KICKOFF**

**When:** October 3, 2017, 4:00 – 5:00 p.m.

**Where:** Jury Assembly Room, Criminal Justice Center

**What:** Panel Discussion – Domestic Violence

**Who:** FLAG is a group of justice system stakeholders involved in marital and family law. FLAG's goal is promoting effective communication among stakeholders and addressing subjects of concern including procedural issues, interagency conflicts, and family court policies.

**WE HOPE TO SEE YOU THERE**



# FOURTH Annual Amaze-Inn Race

November 16, 2017

Mark your calendars to join the Fourth Annual Amaze-Inn Race on November 16, 2017. Registration starts at 5:30 p.m., with the race beginning at 6:00 p.m. The Amaze-Inn Race is a legal-themed scavenger hunt where judges, lawyers, and law students are paired into teams to participate in activities challenging the body, mind, and taste buds throughout downtown Gainesville. Participants must solve clues to determine the locations of various challenges. Past challenges have included taking an immigration quiz, eating goat, scoring points on a pinball machine, and singing in Bo Diddley Plaza; there are challenges for every skill level and ability. The event is a collaborative effort among the EJCBA, Adkins Inn, and Bennett Inn and is a fundraiser for the EJCBA's Holiday Project. A reception and award ceremony will follow the event. Cost of admission is two NEW unwrapped books or toys (each valued at \$10 or above) for the EJCBA's Holiday Project. Please email Kristine Van Vorst, [vanvorstk@circuit8.org](mailto:vanvorstk@circuit8.org), if you are interested in participating.

# Florida Bar Opens Nominations For Pro Bono Service Awards

The Florida Bar has issued a call for nominations for the annual pro bono awards, which honor lawyers, judges, law firms and associations that have contributed extraordinary pro bono service. The deadline for most nominations is Nov. 8, 2017, while nominations for The Florida Bar Young Lawyers Division Pro Bono Service Award is Aug. 31. Nomination forms are available at [www.floridabar.org/ProBonoAwards](http://www.floridabar.org/ProBonoAwards) for the following award categories: (1) The Tobias Simon Pro Bono Service Award, (2) The Florida Bar President's Pro Bono Service Award, (3) The Law Firm Commendation, (4) The Voluntary Bar Association Pro Bono Service Award, (5) The Florida Bar Young Lawyers Division Pro Bono Service Award, (6) The Distinguished Judicial Service Award, and (7) Distinguished Federal Judicial Service Award. Nominees' pro bono service contributions may be cumulative. Consideration is not limited to the events of the immediate past year. For additional information, contact public information coordinator Mark Hohmeister at The Florida Bar, (850) 561-5764, or [mhohmeister@floridabar.org](mailto:mhohmeister@floridabar.org).

## Reserve Now for the EJCBA October 2017 Luncheon



**WHEN:** Friday, October 13, 2017 – 11:45 a.m.  
**WHERE:** The Woolly – 20 N. Main Street, Gainesville, FL 32601  
**PROGRAM:** Investigative Journalist Keith Long - What happens when social media tries to define American Jurisprudence: An enlightening perspective on the 2 iconic jury verdicts in the Casey Anthony and O.J. Simpson trials (Approved for 1 CLE credit)  
**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, October 9<sup>th</sup> at Noon at** <http://www.8jcba.org/event-registration/oct-2017-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.

**James C. Adkins  
Cedar Key Dinner**

**October 5, 2017  
Beginning at 6:00pm  
at  
Steamers  
420 Dock Street  
Cedar Key**

**Register at:  
<http://www.8jcba.org/event-registration/cedar-key-dinner-2017/>**

### 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/join/>**

# The In-Between Category of Alimony

By Cynthia Swanson



Several laws have been passed by the Florida Legislature to limit the award of alimony in divorce cases. Most recently, the Legislature added a new type of alimony, durational alimony, in order to limit the number of cases in which permanent alimony might be awarded.

Briefly, permanent alimony may be provided after long term marriages (17+ years) where there is a need and ability to pay alimony, and where there is no other type of alimony that is appropriate. To make an award of permanent alimony, even in a long term marriage, the trial court must make a finding of fact that no other type of alimony is appropriate under the circumstances of the case.

Another type of alimony which has been around in Florida for a long time is rehabilitative alimony. This category of alimony presupposes that the payee spouse has or can develop the capacity to be self supporting. He or she may need to obtain or extend some education, obtain or renew a license, certificate, or degree. It is expected that, after this additional help, the spouse will then be able to enter or re-enter the workplace and earn a sufficient income to be self-supporting.

Here are two cases where the award of a rehabilitative alimony was reversed. It's hard to imagine what the argument was that won the day with the trial court:

\* *Lash v. Lash*, 307 So. 2d 241 (Fla. 2d DCA 1975). The parties had been married 26 years and had one adult daughter. The Wife had only worked for a short part of the marriage in joint employment with the Husband; had had foot surgery that left her with pain and needing additional surgery; and she only had a high school education. The trial court awarded very short term rehabilitative alimony. The appellate court reversed, noting that rehabilitative alimony presupposes the potential for self-support and that where there is no such capacity, there is nothing to which one can be rehabilitated.

\* *G'Sell v. G'Sell*, 390 So. 2d 1196 (Fla. 5th DCA 1980). Here, the parties had been married 20 years and had three children, two of whom were still minors. The wife was 21 years old when they got married, had left school after the seventh grade at

age 13, and had never been employed either before or during the marriage. She had no training for any type of employment and there was no evidence that she was employable. The trial court awarded her rehabilitative alimony for a period of two years. The appellate court reversed and remanded for an award of permanent periodic alimony because the wife did not have the actual or potential capacity for self-support.

As I said, it's hard to imagine in these cases what the reasoning was that supported the award of rehabilitative alimony. But these cases were decided before the Legislature added the "in-between" category of durational alimony in 2010.

Durational alimony may be awarded when permanent periodic alimony is inappropriate. The purpose of durational alimony is to provide a party with economic assistance for a set period of time following a marriage of short or moderate duration or following a marriage of long duration if there is no ongoing need for support on a permanent basis. An award of durational alimony terminates upon the death of either party or upon the remarriage of the party receiving alimony. The amount of an award of durational alimony may be modified or terminated based upon a substantial change in circumstances. However, the length of an award of durational alimony may not be modified except under exceptional circumstances and may not exceed the length of the marriage. Fla. Stat. § 61.08(7).

After the 2010 amendments, the statutory framework now divides the decision-making process for alimony into essentially four steps. The trial court is to determine: (1) a party's need for support; (2) the other party's ability to pay; (3) the type(s) of alimony appropriate in the case; and (4) the amount of alimony to award. *Taylor v. Taylor*, 177 So.3d 1000, 1002 (Fla. 2d DCA 2015). Specific written findings of fact are needed, and if permanent alimony is awarded in a less than long term marriage, such an award must be based upon clear and convincing evidence.

Because we often learn more about when a certain award is appropriate by reading about cases where it was not, here are some cases where an award of durational alimony was reversed:

*Kruse v. Levesque*, 192 So. 3d 1263 (Fla. 2d DCA 2016). The parties had been married only 11 years and had no children. The Husband was employed in the computer industry and earned approximately

*Continued on page 11*

\$120,000 per year. The Wife had been employed as a counselor, earning approximately \$25,000 per year until she became disabled and at the time of the final hearing, she was receiving \$880 per month in disability benefits. At trial, the wife's physician testified (a miracle in itself) that her medical issues rendered her incapable of regular employment. The Wife also presented the testimony of a vocational rehabilitation counselor who opined that she was "currently not able to work in any capacity."

The trial court noted that rehabilitative alimony could not be considered because the evidence established that she was completely unable to return to work. The appellate court ruled, "Undeniably, the Former Wife's expenses exceeded her income from the disability payments. The Former Wife's inability to return to work left her with no prospects for additional income. Thus an award of permanent instead of durational alimony was appropriate because the Former Wife demonstrated by clear and convincing evidence that she lacked the financial ability to meet her needs and the necessities of life following the dissolution of the marriage. The trial court abused its discretion in awarding alimony that would terminate within a limited period of time when the record and the trial court's findings showed that the Former Wife lacked either the actual capacity for self-support or the potential to develop that capacity." *Id.* at 1267.

In *Valente v. Barion*, 146 So. 3d 1247 (Fla. 2d DCA 2014), an award of permanent alimony after a 12-year marriage was reversed because there was not clear and convincing evidence that permanent alimony was needed. The Wife suffered from some physical and psychological problems, but the appellate court viewed the evidence at trial as suggesting that her health concerns would improve within about two years, and that she would likely be able to return to work after that time. The appellate court remanded the case to the trial court to reconsider whether durational or permanent alimony was the appropriate type. Interestingly, the appellate court noted that, with the extensions granted, it had at that point been more than two years since the trial date, and so it ought to be clear whether the Wife's problems had cleared up.

The availability of an award of durational alimony can also be useful when the parties' resources are somewhat limited, where one or both spouses are somewhat close to retirement age so that Social Security or other retirement assets can be accessed to provide income when the durational alimony is set to terminate.

While alimony "reformers" continue to lobby for an end to all alimony, or at least to an end to all permanent alimony, this in-between category of alimony seems to be the present compromise.

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## EJCBA's Luncheon Speakers 2017-2018

**October 13, 2017** - investigative journalist Keith Long, speaking about "What happens when social media tries to define American Jurisprudence: An enlightening perspective on the 2 iconic jury verdicts in the Casey Anthony and O.J. Simpson trials."

**November 17, 2017** - Professor Mary E. Adkins, speaking about the history of the Constitution and the Constitution Revision Commission (CRC).

**December 15, 2017** - Florida Bar President, Michael Higer, speaking about his goals as new President of the Florida Bar.

**January 19, 2018** - Chief Judge Toby Monaco, addressing the "State of our Circuit."

**February 16, 2018** - (tentative) - ABA President Hilarie Bass, who will speak about being the President of the ABA and the importance of pro-bono services.

**March 16, 2018** - (tentative) - Professor Scott Rogers, who will speak on the Theory of Mindfulness.

**April 13, 2018** - Chief Justice Labarga, speaking on Access to Justice.

**May 11, 2018** - Supervisor of Elections, Kim Barton, who will speak on mid-term elections and the importance of "your vote."

### Three Rivers Legal Services, Inc. IS MOVING

as of October 31, 2017  
our new address will be:  
1000 NE 16th Avenue  
Building I, Suite B  
Gainesville, FL 32601

Our phone numbers will remain the same.

[www.trls.org](http://www.trls.org)

# Strategic Thinking<sup>1</sup>

By Jack Ross



We spend so much time “doing:” drafting, researching, conferencing, deposing. We get paid for “doing.” How much time do we spend “thinking?” How would a client respond if she got a bill showing \$225.00 for .75 hours, “thinking about the case?” Many years ago my torts professor opined that some of the most valuable

time an attorney spends is the time he spends with his feet on his desk thinking about the case.

Far from simple musing, strategic thinking is goal directed. It is utilizing tools of analysis to determine which course of action will give the best possible chance of achieving the desired objective. Perhaps no area of law benefits more from “strategic thinking” than business and financial litigation. There are no satisfactory form interrogatories, no standard deposition outline, no standard jury instructions. What are the elements of strategic thinking?

The first step is to determine the goal, the “strategic intent.” The knee jerk reaction will be that the ultimate goal is to “win” the case. But that may not be the best goal for the client. When we think strategically, the goal may be to resolve the dispute quickly and inexpensively for the client. The goal may be simply to minimize the damages, or it may be to establish a principle of law that benefits the client’s business.

The next step in strategic thinking is to determine a strategy. Which actions are most likely to result in the desired goal? However, that will require intermediate goals: develop a legal and provable cause of action; impeach a specific witness; explain an unfavorable document. Legal discovery offers a wide variety of actions that can take months and require thousands of dollars. Focused thinking at the outset can eliminate some, if not much, of the wasted effort and money.

The next element of strategic thinking is flexibility. Strategic thinking requires anticipating the actions of other people and adjusting the plan when met with unexpected results. The advocate should constantly reevaluate both her goals and her strategy in light of new information and new developments.

It is often said that the definition of insanity is doing the same thing over and over again and expecting a different result. It is also true that insanity could be

doing the same thing over and over and expecting the same result when representing clients with different needs, goals, expectations, and/or facts. Each case needs to be approached strategically.

<sup>1</sup>Much of the substance of this article was drawn from the course “Strategic Thinking Skills” offered by Professor Stanley K. Ridgley of Drexel University. It is available for download on audible.com.

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## President's Message

*Continued from page 1*

they come, let’s take the time to get to know them.

The second opportunity to get together is the Fall Family Friendly Social. We have been chomping at this bit for the past two years. In 2015, we met at Cymplify for our GRACE Marketplace fundraising challenge; in 2016 we met at UF Law School for a tailgate; and this year, we plan to meet at Depot Park for a few hours of fun. I am very excited about this event which provides a space for us to include our families. We are also teaming up with the Young Lawyers Division, and they have some creative ideas for entertaining the younger children. This event has all sorts of possibilities, but it will definitely provide the perfect setting for us to get to know law students and allow them to see us from a different perspective. And if we are really ambitious, perhaps we can begin to build a relationship with someone who would not have normally crossed our paths.

In addition to these programs, the EJCBA Board of Directors voted to establish a Diversity and Inclusion committee. I believe this committee will be the catalyst for a continuous effort in identifying ways to bring the lawyers in the circuit together. Since 2014, we have had several leadership roundtables to discuss the lack of diversity in the legal profession, and each of the roundtables shed light on things that we could do to effect change. However, we did not have a way to move beyond the discussion. I look forward to seeing the results of the efforts made by this committee.

In closing, I will simply reiterate the challenge. Let’s commit to building relationships, and getting to know our colleagues – the 1,200 lawyers who serve in the Eighth Circuit. Who are we? We are more than lawyers.

# Invitation To Renew / Join The 2017-18 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: [8jcba.org/join](http://8jcba.org/join) 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, 2017, you are an attorney in your first year licensed to practice law following law school graduation.

**\$60.00** - If, as of July 1, 2017, 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, 2017, 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.

**\$80.00** - All other attorneys and judiciary.

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

**\$35.00** - EJCBA Young Lawyers Division (eligible if, as of July 1, 2017, 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: 2017-2018

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

## October 2017 Calendar

- 4 EJCBA Board of Directors Meeting, Holland Hall, Room 355D, UF Law, 5:30 p.m.
- 5 Deadline for submission to November Forum 8
- 5 Annual James C. Adkins, Jr. CEDAR KEY DINNER, sundown, Cedar Key
- 7 UF Football v. LSU Tigers, 3:30 p.m.
- 9 Columbus Day Holiday – Federal Courthouse closed
- 10 Ben Overton Lectures in Florida Constitutional Law, Chief Justice Jorge Labarga, 9:00 a.m., UF Levin College of Law, Room 180
- 11 Probate Section Meeting, 4:30 p.m., 4th Floor Meeting Room of the Alachua County Family/Civil Justice Center
- 13 EJCBA Luncheon, Investigative Journalist Keith Long, The Woolly, 11:45 a.m.
- 14 UF Football v. Texas A&M, TBA
- 17 Family Law Section Meeting & CLE, 4:00 p.m., Pam Schneider, Esq. presenting on administrative establishment of paternity and support, Chief Judge's Conference Room, Alachua County Family & Civil Justice Center
- 23 Ben Overton Lectures in Florida Constitutional Law, Joshua Pariente Koehler, 9:00 a.m., UF Levin College of Law, Room 180
- 24 Ben Overton Lectures in Florida Constitutional Law, Justice Barbara Pariente, 9:00 a.m., UF Levin College of Law, Room 180
- 28 UF Football v. Georgia Bulldogs (Jacksonville), 3:30 p.m.

## November 2017 Calendar

- 1 EJCBA Board of Directors Meeting, Holland Hall, Room 355D, UF Law, 5:30 p.m.
- 4 UF Football at Missouri, TBA
- 5 Deadline for submission to December Forum 8
- 8 Probate Section Meeting, 4:30 p.m., Chief Judge's Conference Room, 4<sup>th</sup> Floor, Alachua County Family & Civil Justice Center
- 10 Veteran's Day Holiday (observed) – County & Federal Courthouses closed
- 11 UF Football at South Carolina, TBA
- 12 EJCBA Fall Family-Friendly Social, Depot Park, 3-5 p.m.
- 14 Ben Overton Lectures in Florida Constitutional Law, Justice Charles T. Canady, 9:00 a.m., UF Levin College of Law, Room 180
- 16 Fourth Annual Amaze-Inn Race, 5:30 p.m.
- 17 EJCBA Luncheon, UF Law Professor Mary E. Adkins, speaking on the history of the Constitution and the Constitution Revision Commission (CRC), The Woolly, 11:45 a.m.
- 18 UF Football v. University of Alabama, Birmingham, TBA
- 23 Thanksgiving Day – County & Federal Courthouses closed
- 24 Friday after Thanksgiving Holiday – County Courthouses closed
- 25 UF Football v. FSU, TBA
- 28 Family Law Section Meeting, 4:00 p.m., Attorneys from Children's Legal Services presenting on Dependency Cases, Chief Judge's Conference Room, Alachua County Family & Civil Justice Center

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).