

FORUM 8

President's Message

By Meshon Rawls



Oh my, how time flies when you're having fun. The summer has officially ended, and it's time to buckle down and get to business. Well, where will we begin? I have been thinking about this since June 8th, the day I was officially sworn in to be your President, and it finally dawned on me that we will begin at the END. Two years

ago, I attended a clinical teachers' conference in Baltimore, MD and took on the challenge of enrolling in a course that was entitled, "Backwards Design." I describe this as a challenge because they cautioned that you should only enroll if you are ready to engage in the difficult task of thinking differently about the pedagogy typically used in designing a law school clinical course. The course, however, proved to be very enlightening and influenced my decision to redesign my course by first thinking about what I want my students to gain by the last day of class, and then deciding on the material I would use to accomplish the goal. This concept was not new to me. In fact, I use this approach when preparing for trial. I was taught that you start by writing your closing argument, then continue building the other aspects of your case. In both situations the approach proved to be effective, and I'm convinced that this approach will yield similar results if applied to my year as the EJCBA President.

As I considered what I wanted to accomplish by the time my term comes to an end, I was reminded of a motto of the Girl Scouts: "Leave it better than you found it." There you have it. That's what we will do. We will focus on strengthening the Eighth Judicial Circuit Bar Association. As motivation (and to stay on track), I will keep the slogan "Eighth Strong" etched in my

mind. We will strengthen the infrastructure, strengthen the membership, and strengthen the leaders.

During our retreat, the Board of Directors started processing what we did well and what we need to improve. You should know we have a dynamic board. We are fortunate to have strong leaders chairing our signature events, and they are committed to making sure EJCBA sustains a positive reputation and continues to provide top notch programs. The current Board of Directors is listed in this newsletter. Take time to get to know them and support their efforts.

We have a full schedule for this fall. For those interested in GATHERING make sure the James C. Adkins, Jr. Dinner at Cedar Key and the Fall Family-Friendly Social are on your schedule. For those interested in GIVING, we need your help with the Holiday Project, Law in the Library, and Ask-A-Lawyer. For those interested in GROWING, our Continuing Legal Education Committee will certainly continue to identify programs that will help you meet your CLE requirements.

Now let's consider what we need to improve.

To strengthen the infrastructure, experienced board members will be paired with new board members, and together they will assess the internal systems that we need to tighten up and develop more efficient systems. Katie Floyd, Chair of the Communications Team, has accepted the task of bringing us up to speed in this fast-paced age of technology and improving our social media presence.

To strengthen the membership, we will be intentional about putting members first. Monica Perez-McMillen, the Member Advancement and Retention Chair, is leading this effort and has some innovative ideas for recruiting, retaining, and reclaiming members. Our new Diversity and Inclusion

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Contribute to Your Newsletter!

From The Editor

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

About This Newsletter

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

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Any and all opinions expressed by the Editor, the President, other officers and members of the Eighth Judicial Circuit Bar Association, and authors of articles are their own and do not necessarily represent the views of the Association.

News, articles, announcements, advertisements and Letters to the Editor should be submitted to the Editor or Executive Director by Email. Also please email a photograph to go with any article submission. Files should be saved in any version of MS Word, WordPerfect or ASCII text.

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Deadline is the 5th of the preceding month

Alternative Dispute Resolution

By Chester B. Chance and Charles B. Carter



Mediation Confidentiality, Or Not

Although lawyers often speak of the confidentiality privilege associated with mediation, it is important to know such confidentiality is less sacrosanct than what is discussed in a confessional.

§44.405 of Florida Statutes addresses “confidentiality” in the context of mediation. The

statute says “all mediation communications *shall* be confidential.” The statute also states “a mediation participant *shall not* disclose a mediation communication to a person other than another mediation participant, or a participant’s counsel.”

The statute includes exceptions to confidentiality including: (1) when the confidentiality privilege has been waived by all parties; (2) a statement at mediation that is willfully used to plan, commit or attempt a crime; (3) statements offered to prove or disprove professional malpractice occurring during the mediation; (4) offered for the limited purpose of establishing or refuting legally recognized grounds for voiding or reforming a settlement agreement reached at mediation; (5) offered to report, prove or disprove professional misconduct occurring during the mediation.

The above is a paraphrased summary of the referenced statute and not a word-for-word quotation. Numerous cases have carved out exceptions to the mediation privilege and we would like to discuss *some* of those case decisions. It would take a five or six part article to discuss *all* the cases and to discuss them properly; therefore, we are just going to give some examples merely for the purpose of illustrating that confidentiality associated with mediation is not an iron clad privilege.

In *Bowdler v. State Farm Mutual Automobile Insurance Company*, 2014 WL 2003114 (Middle District of Florida, 2014) the plaintiff, who had filed a first-party insurance bad faith action against State Farm arising out of an earlier lawsuit, filed a motion to compel the insurer to produce documents listed on the insurer’s privilege log as protected by the Florida Mediation Privilege. The court determined the documents were *not* protected by the mediation privilege and were relevant to the bad faith action.

The underlying lawsuit had been mediated but the plaintiff and defendant were unable to resolve

the claim through the underlying mediation and the case went to jury trial and resulted in a very high verdict. In the bad faith action the insured/plaintiff desired to obtain six activity log notes that were withheld from a Request to Produce. State Farm described log notes as constituting an analysis of the entire mediation proceeding and included adjuster notes relating to events that occurred at mediation, and also asserted the notes were claim file notes summarizing or analyzing communications that took place at mediation. The court noted that under Florida law all mediation communications were confidential and could not be disclosed other than to another mediation participant or participant’s counsel. The court found the mediation privilege did not apply to the log notes, holding that the entirety of the log notes were not “mediation communications” as defined by the relevant statute (oral or written assertions by or to a mediation participant during the course of the mediation.) The court determined that the privilege would not apply because “plaintiff and plaintiff’s counsel were participants in the underlying mediation.” The court further held State Farm’s internal analysis of the communications that occurred at mediation were not privileged because they were not made by or to a mediation participant during the course of the mediation.



Strong v. Geico General Insurance Company, 2017 WL 1006457 (Middle District of Florida, 2017) also looked at the issue of confidentiality in the context of a subsequent bad faith action. The plaintiff and the insurer had attended two mediations in the underlying negligence action but reached an impasse both times. Plaintiff asserted in the subsequent bad faith action that the insurer was in bad faith by failing to settle within the policy limits at the mediation when “it could have or should have done so.” Both the plaintiff/insured and the plaintiff’s attorney in the underlying action were deposed and refused to answer any questions as to whether the insurer made an offer at mediation in the underlying negligence case. The insurer filed a motion to compel answers to the deposition questions. The court determined the plaintiff/insured and her attorney could not assert the mediation privilege at deposition because the insurer was a participant in the mediation

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Criminal Law

By William Cervone



I should never, never, ever say that I've heard it all. When I do (usually referring to having just heard something so totally absurd that I can't believe that anything more absurd could possibly come up later), I am almost always shocked by the next absurdity. I shouldn't be, at least not at this point in my life. Such things happen all

too often, usually beginning with the phrase "In a case of first impression..." or something like that.

Which brings me to Pedro Portillo and Florida's Rape Shield Law. Rape Shield, for those of you who might not have dealt with it, says that a rape victim's prior consensual sexual activity with someone other than the defendant is inadmissible except in very limited circumstances. Those circumstances did not apply to Pedro and he is as a result serving time for Attempted Sexual Battery. He will continue to serve his time because the 3rd DCA actually had to entertain - and deny - his claim on appeal that Rape Shield existed for his benefit as well as that of his victim.

The victim, for background, was visiting her mother, who was apparently Pedro's girlfriend. While showering, the victim said that Pedro came into the bathroom, groped her, and attempted vaginal penetration of her with his fingers, an act she was able to fend off. Seeking to prove Pedro's intent and that there was no mistaking his behavior as innocent or inadvertent, the prosecutor asked the victim if she had ever engaged in consensual digital penetration of that sort before, to which she said she had, from which experience she testified that she knew exactly what Pedro had been trying to do to her. It was that testimony that Pedro took exception to, claiming that Rape Shield should serve to protect him from testimony about her prior sexual experiences.

That, to me, is an amazingly creative perversion, also known as a case of first impression. I am, fortunately, not alone in thinking that. To quote the 3rd DCA, "... every court discussing the law has recognized the purpose of Florida's Rape Shield Law is to protect a victim's privacy from unwarranted public intrusion, to protect the complainant's reasonable expectation of privacy"

and "to avoid invasive and demeaning inquiry into a complainant's intimate behavior." This is intended to encourage reporting of sexual crimes as well as to avoid the prejudice of "distracting, confusing and inflammatory irrelevancy."

Pedro's theory, for which he gets creativity points but not much more, was that he was entitled to bar his victim's testimony about her prior sexual activity because the Rape Shield Law didn't say that he couldn't. On that point he is correct - nothing in the statute specifically says that it is for the benefit of the victim and not the defendant. As the 3rd DCA pointed out, however, since its enactment Rape Shield has never been interpreted or applied to limit a victim's testimony. Further, and beyond all of the policy considerations involved, a full reading of the statute makes it clear that it applies to victims, not defendants. Portions of the statute, for example, also address the victim's attire and the victim's acquiescence to the use of a condom, neither of which suggest (legally at least) consent.

And so ultimately I suppose I should thank Pedro, for through his ill-advised appeal there is now no question about how wrong his position and argument was. At least with regard to Rape Shield, we now know the number of angels who can dance on the head of a pin: one, and she is the victim.

A post-script of sorts: again to my amazement this opinion was not unanimous. There were actually two dissents, one nearly as long as the majority opinion. The primary thrust of that dissent was that the failure of the statute to specify that it operated only for the benefit of the victim allowed the defense to ~~pervert~~ use it as Pedro wished. Most likely, at least to me, this reasoning reflects disquiet with the nature of the victim's testimony, and whether it was inadmissible opinion, irrelevant, or something else. But I'm not a judge so I don't know about that kind of thing. I just know that for once an absurd result has been avoided.

Finally, a passing to note. The Crayola company has announced that the color Dandelion has been removed from its standard 24-pack and replaced with a new un-named crayon "in the blue family." Dandelion was predeceased by Maize, Raw Umber, and Orange Yellow, all previously booted from the box. Devastated Snowflakes of the world who grew up with Dandelion are reportedly fleeing to their safe spaces on campuses everywhere.

Peter Sleasman Honored By PILS with John J. Copelan, Jr. Award

Peter Sleasman, managing attorney of the Gainesville office of Disability Rights Florida received the John J. Copelan, Jr. Award for significant contributions in the field of public interest law. The award was presented at the Public Interest Law Section's meeting at the Florida Bar's Annual Convention on June 23.

For more than 30 years, Peter has been committed to representing the most vulnerable and disenfranchised residents through his legal aid practice. As an attorney for Florida Institutional Legal Services for more than a dozen years, Peter litigated civil rights and criminal post-conviction cases in both state and federal court. In 1996, Peter joined Southern Legal Counsel, where for a decade he worked extensively on fair housing issues and advocacy on behalf of the homeless. Peter has transformed the lives of hundreds, if not thousands, of low-income individuals through his direct representation and impact litigation.

Peter additionally served as chair of the Disability Law Committee of PILS from 1991-93; was appointed a member of the Florida Supreme Court's Committee on Court Related Needs of the Elderly and Persons with Disabilities from 1993-94; served as a member of the Protection and Advocacy for Individuals with Mental Illness organization's Advisory Council for Disability Rights Florida from 2011-15; and currently serves as a member of the FSC's Substance Abuse and Mental Health Taskforce as the representative for Disability Rights Florida.

Gainesville Area Paralegal Association, Inc. is Coming Soon!

Gainesville Area Paralegal Association, Inc. (GAPA), a Florida not-for-profit corporation, was formed in 2017 to meet a growing need for a local professional association for paralegals/legal assistants in the Gainesville area. In July 2017, the Association became an affiliate of the National Association of Legal Assistants, Inc. (NALA).

GAPA promotes the highest levels of professionalism through its quarterly meetings (formal and informal) at which speakers on topics of legal interest are featured guests, through GAPA officers speaking at area paralegal educational classes, and through its promotion of the NALA certification programs (CLA/CP) and Advanced Paralegal Certification (formerly CLA Specialty). GAPA has several levels of membership including active and student memberships for paralegals and legal assistants in the Eighth Judicial Circuit.

GAPA will be holding meetings at least quarterly and the first meeting will take place in early September. If you wish to join the mailing list or receive more information concerning the association, please visit <http://www.gapa.wildapricot.org>.



Meet & Greet New Family Law Judge

On Tuesday, September 19, 2017 at 4:00 pm in the Family and Civil Justice Center, the Family Law Section will meet for our monthly meeting. We will have an informal meet and greet to welcome our newest family law judge to the division – the Honorable Susanne Wilson Bullard. Please join us.

Why Size Matters In Employment Law

By Laura Gross



Most employment laws apply only to employers with at least a minimum number of employees. For instance, the Family and Medical Leave Act (FMLA) applies to employers with at least 50 employees. The Age Discrimination in Employment Act (ADEA) applies to employers with at least 20 employees.

The Americans with Disabilities

Act, Title VII of the Civil Rights Act of 1964, and the Florida Civil Rights Act of 1992 all apply to employers with at least 15 employees. Locally, we have city and county anti-discrimination ordinances which apply to employers with 5 or more employees.

In many instances, local ordinances subject employers of between 5 and 19 employees to the same standards as the larger employers who qualify under the federal and state laws. But, that is not true in all cases.

Some aspects of the federal laws are not captured in our local ordinances. For instance, the city ordinance does not prohibit an employer's retaliation against a person for opposing a discriminatory practice. That is

a big deal given the frequency with which retaliation claims are filed under federal and state law.

Another example is the ADEA's requirement that employers comply with cumbersome provisions when using a separation agreement to waive the right to sue for age discrimination. Such agreements must provide the employee 21 days to consider the release and 7 days to revoke the release, among other things. While local employers with 5 or more employees cannot discriminate based on age, those employers with less than 20 employees are not covered by the ADEA and are not required to include these provisions in their separation agreements.

It is not just the size of the local employer that matters. The size of the employer's local office matters, too. For instance, the FMLA generally applies to employers with 50 or more employees. However, there is a second often forgotten component that requires the employee requesting leave to be located in an office that has at least 50 employees within a 75 mile radius. If not, the FMLA does not apply, and leave under the FMLA is not required.

Thus, employers need to look at all size-related requirements to determine whether they are covered by these employment laws and how.

Senior Medical Legal Partnership

By Marcia Green



An exciting new Senior Medical Legal Partnership [SMLP] is gearing up at Three Rivers Legal Services with the generous support of the Florida Department of Elder Affairs. The project envisions forming a partnership with a senior healthcare provider for the benefit of patients throughout Three Rivers' 17-county, north

Florida service area.

The purpose of the SMLP is to promote increased and enhanced access to legal services for elderly patients (age 60 and up) who are at risk of abuse, neglect or exploitation. The objective is to address legal needs that result in vulnerability and contribute to poor health outcomes. The project will be embedded with a local healthcare provider and will accept referrals from that provider.

Legal assistance will be provided to those who are identified as having social, financial, or environmental problems that have a deleterious impact on their health. Using a holistic approach, healthcare providers will identify patients with chronic conditions or "health harming" issues to which there may be a civil legal remedy.

The two-year project will initially reach out to and collaborate with a local healthcare provider, develop medical and legal screening tools, train the medical professionals, and look at civil legal remedies that may alleviate the medical concerns. Volunteer attorneys will also be crucial to expand the legal expertise and improve potential outcomes.

Local attorney Nancy Wright, who specializes in advocacy for persons with disabilities, is the part-time lead attorney and will work with staff Paralegal/Social Worker Mark Watson. Three Rivers' Board Chair Ray Brady has been instrumental in working with the medical community toward this goal.

The Florida Bar Board of Governors Report

By Stephanie Marchman



The Florida Bar Board of Governors met on July 21, 2017. The major actions of the Board and reports received included:

Three new special committees were approved: the **Special Committee on Mental Health** will spend two years looking at Florida's mental health laws and educating judges and lawyers on the best practices of dealing with mental health issues; the **Special Committee on Child and Parent Representation** will spend the next year looking at issues related to dependency representation; and the Special Committee on Health and Wellness of Florida Lawyers will look at mental health and practice issues facing lawyers. The lawyer's health and wellness committee will be chaired by Board of Governors member Dori Foster-Morales, will include a judge, a mental health professional, and a member of the Young Lawyers Division Board of Governors, and is already considering input, programs, and solutions. Watch for more details on these special committees in upcoming issues of [The Florida Bar News](#).

The [Standing Committee on Technology](#) recently issued, through the Practice Resource Institute, a **Quick Start Guide on Cloud Computing** answering basic questions, such as what cloud computing means and where information is stored, and providing questions to ask of a potential provider. The committee also annotated a longer, more detailed, list of standards for cloud computing in its **Due Diligence Considerations for Lawyers Evaluating Cloud Computing Service Providers** incorporating information from the Legal Cloud Computing Association. The committee continues to focus on protecting data and client confidences for lawyers, including security for laptops and protecting electronic communications with clients.

The board approved drafting an opinion to reply to a Bar member's inquiry about the propriety of participating in a referral service that would charge a varying fee based on the type of case referred, which would also be a fee-per-case referral. The [Board Review Committee on Professional Ethics](#) will publish an official notice seeking input from Bar members and work to have the draft ready for the Board's review at its December or January meeting. The Bar has

rejected referral services that charge by the case or had different charges for different types of cases, but some other states have taken other positions on those issues.

The [Special Committee on the 2017 Constitution Revision](#) will launch the public education program "**Protect Florida Democracy: Our Constitution, Our Rights, Our Courts**" at a September 7 news conference in Tallahassee. The program's [ProtectFLDemocracy.org](#) is now available and more information is being added, including "toolkits" for lawyers who want to get involved in the education effort. The program highlights topics such as the separation and balance of powers, why the Constitution works best as a limited document, and the importance of a fair and impartial judiciary. The [July 1 Florida Bar News](#) story [FloridaBarNews.TV](#) segment and future issues will include more details. The special committee is also monitoring the activities of the Constitution Revision Commission (CRC), offering technical assistance and legal education to the commissioners.

Two new technology-related services were approved to add to the Bar's [Member Benefits Program](#). Zola Media Website Design and Maintenance will help lawyers with their websites, and Cyber Security Insurance Product and Service will help lawyers with cybersecurity issues. The services will soon be added to the list of discounted and free products and services for members posted at [floridabar.org/memberbenefits](#).

A proposed contract to enhance and modernize the online operations of the [Bar's Lawyer Referral Service](#) was approved, but terms have not yet been finalized. Working with [Legal.io](#), a San Francisco-based legal technology company, a new online platform will be designed that would modernize the Bar's existing legal referral service and allow it to utilize the most cutting edge technology. The goal is an improved member benefit with better functionality for potential clients that should result in more referrals being made to participating Bar members. **The Bar's Lawyer Referral Service will continue to only operate in those counties where a Voluntary Bar does not already operate a lawyer referral service.** Any modernization of the Florida Bar's online operations will not affect any Voluntary Bar Association Lawyer Referral Services as they will continue to operate as they have in the past. The Bar will continue to work with the Voluntary Bar

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Southern Legal Counsel (SLC) Celebrates 40 Years!

By Kirsten Anderson

Southern Legal Counsel, Inc. (SLC) celebrates its 40th anniversary this year. SLC is a Gainesville-based non-profit public interest law firm dedicated to the ideal of equal justice for all and the attainment of basic civil and human rights. We will celebrate 40 Years of Impact at an event open to the public on October 21. Morris Dees, pioneering civil rights lawyer and co-founder of Southern Poverty Law Center, will be the keynote speaker. Known for innovative lawsuits that crippled some of America's most notorious white supremacist hate groups, Dees will speak about the importance of public interest law firms, like SLC, that focus on impact litigation. The event will begin at 6:30 pm with music, a Silent Auction, drinks, and hors d'oeuvres, with Dees tentatively scheduled for 7:30 p.m. For more information, check out our Facebook page or website, southernlegal.org.

Incorporated in 1977, SLC was created to fulfill a special role in the justice system. SLC uses the power of the law to make positive social change. We represent individuals who otherwise would not have access to the justice system with the goal of fixing the underlying problem not only for our clients but also for all other persons who have experienced similar injustices. This systemic approach allows us to make a big impact as we seek to reform systems and institutions, strike down laws and policies, and hold government accountable to the people.

In 1977, Jon Mills was Director of the newly formed Center for Governmental Responsibility, which performed public interest research that occasionally made its way into politically controversial cases. Some were becoming concerned that the College of Law was developing a litigation profile. With the support of the late law school Dean, Joseph R. "Dick" Julin, and Chesterfield Smith, Mills formed SLC with Albert J. Hadeed who became SLC's first Executive Director, leaving his position with Mahoney, Hadlow, Chambers & Adams, one of Jacksonville's premier law firms.

SLC's mission has led it to litigate in federal and state courts and administrative agencies across a range of substantive legal areas that seek systemic reform. From the beginning, SLC litigated on many fronts, resulting in landmark legal victories reforming institutions for persons with disabilities, challenging discrimination and ensuring government accountability and transparency. SLC's efforts on behalf of the environment led to the creation of 1000 Friends of Florida, with SLC serving as its first general counsel. SLC received grants for many years

to litigate on behalf of the Governor's Commission on Advocacy for Persons with Disabilities (now Disability Rights Florida), and continues to collaborate and co-counsel cases with the organization. Our current work includes statewide litigation against the State of Florida to force compliance with the government's paramount duty set forth in our constitution—to provide a high quality system of public education to all children. The case, filed in 1999, culminated in a four-week trial last year. Last month, SLC was at the First District Court of Appeal in Tallahassee for oral argument which focused on



SLC Executive Director Jodi Siegel addresses reporters outside of the courtroom on July 18 at the First District Court of Appeal in Tallahassee where a three judge panel heard oral argument in SLC's statewide suit alleging failures by the State to comply with its constitutional duty to provide a quality education to all children.

whether or not the State's education clause in its constitution is justiciable. This case will have wide-ranging impacts in determining the enforceability of this constitutional mandate.

We will continue to litigate on behalf of some of the most vulnerable persons in our state, while constantly innovating new ways to bridge the justice gap. We are leading a statewide Transgender Identification Initiative to assist trans individuals with changing their names and gender markers on government-issued documents. More than 2/3 of transgender individuals have not updated their identification documents, and this project aims to provide a critically needed legal service. We launched the project in Gainesville in January 2017 and are now hosting community workshops and clinics across the state.

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Calendar Your EJCBA Luncheons Now!

The following dates have been set for the monthly EJCBA luncheons at The Woolly for the 2017-18 season:

September 15
October 13
November 17
December 15
January 19
February 16
March 16
April 13
May 11

To register for the EJCBA luncheons each month, visit www.8jcba.org. Luncheon prices for 2017-2018 are: \$17 for EJCBA Members, \$25 for Members who do not register by the deadline, and \$25 for Non-Members.

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, if you are interested in participating.

Carl Schwait Receives Florida Bar's G. Kirk Haas Humanitarian Award



Carl Schwait received The Florida Bar's G. Kirk Haas Humanitarian Award at the Bar's annual convention, held in June in Boca Raton.

Carl, who recently retired from active litigation, was a senior and managing partner for Dell Graham, P.A. in Gainesville, and has served on The Florida Bar's Board of Governors since 2005.

William J. Schifino, Jr., the outgoing president of the Bar, who presented the award, praised Carl's "unending commitment to the legal profession, our system of justice and the citizens of our state." Carl served on four Board of Governors committees this year: as chair of the Board Review Committee on Professional Ethics – a position he has held six times – and on the Executive Committee, the Communications Committee and the Strategic Planning Committee.

Carl also is a professor at the University of Florida Levin College of Law and a state-wide mediator with the Upchurch Watson White & Max group.

Kirk Haas, who practiced law in Miami, was recognized for his humanity, legal ethics, skill and professionalism. The G. Kirk Haas award was established in 1998 by then-Bar President Edward R. Blumberg, to recognize a Florida Bar member for meritorious service to the legal profession.

The award recipient is selected by the president of The Florida Bar. The recipient then selects a Florida law school, and a scholarship is awarded to a second-year student who demonstrates an exceptionally high degree of integrity, ethics, professionalism and concern for others.

SLC 40 Years

Continued from page 8

Gainesville attorneys Peg O'Connor (Board Chair), Robert Rush, Bennett Brummer, Philip Kabler, Dr. Harry Krop, and Berta Hernández-Truyol currently serve on the Board. Many other prestigious persons have served on the Board, including six former Presidents of The Florida Bar, three from the American Bar Association, two Governors, a U.S. Eleventh Circuit Court of Appeals justice, a First District Court of Appeal justice, two Florida Supreme Court justices and an IRS Commissioner. SLC has had three Executive Directors: Albert J. Hadeed (1977-1988); Alice K. Nelson (1988-2004); and Jodi Siegel (2004-present).

Prejudgment Interest: A Solution that Adds Up

By Krista Collins



In civil litigation, a money judgment can include multiple components: damages, prejudgment interest, court costs, and, sometimes, attorneys' fees. Depending on the length of time the lawsuit continues and the interest rate charged, the prejudgment interest can be a significant amount. But does it have to be? Is it possible for

a defendant to cut off the accrual of prejudgment interest while continuing to defend the action? It is possible: the defendant can place the disputed funds in the court registry.

It has long been established in Florida that a party can abate the accrual of prejudgment interest by depositing the disputed funds in the registry of the court. As far back as 1884, the Florida Supreme Court stated that, "Should the mortgagee, after tender and refusal, demand his money and find the mortgagor not ready to pay in accordance with his previous tender, interest will run on as if no tender had been made, until the money is paid or brought into court." *Matthews v. Lindsay*, 20 Fla. 962, 974 (1884) (emphasis added).

Much more recently, in *Wyatt v. Milner Document Products, Inc.*, 932 So.2d 487, 489 (Fla. 4th DCA 2006), abrogated on other grounds by *Westgate Miami Beach, LTD. v. Newport Operating Corp.*, 55 So.3d 567 (Fla. 2010), a case involving an attorneys' fees dispute in a personal injury action, the Court stated that "prejudgment interest does not run on court-controlled, escrowed funds. A party can avoid liability for interest after placing the payment into the registry of the court." In *Wyatt*, pursuant to an agreed order, the disputed amount of \$121,419.34, plus five days' interest, was deposited in an attorney's trust account, which the Fourth District held was "analogous to the funds having been placed in the registry of the court, as no party had use of the funds and the court was in control of the escrowed funds." *Id.* The Court held that the running of the prejudgment interest should have stopped on the day of the agreed order depositing the funds into the escrow account. *Id.*

However, there is an important caveat for the party who chooses this route: the party cannot just choose the amount he or she believes is at issue and deposit that amount in the court registry. The amount to be deposited, as in *Wyatt*, must first be determined by the court. In *Morton v. Ansin*, 129 So.2d

177, 182 (Fla. 3rd DCA 1961), a case that involved determination of the parties' rights and responsibilities under a promissory note, the plaintiff made several different deposits into the court registry. The Court then held that the tender by the plaintiff into the court registry on June 1, 1960, of an amount that was not based upon any determination by the court was inadequate and would not stop the subsequent accrual of interest. *Id.* However, the Court held that compliance with the court's partial summary judgment dated July 14, 1960, by payment on July 21, 1960, into the registry of the additional sum required by the order would relieve the plaintiff from any subsequent accrual of interest. *Id.* The Court stated that the trial court's "summary partial judgment entered on July 14, 1960, was a determination by the court of the amount adequate to cover the indebtedness due the defendant." *Id.*

Depositing funds into the court registry to stop the accrual of prejudgment interest is a solution that takes money to save money, as it only benefits those parties who actually have the funds available to deposit in the registry. It also requires a case where the disputed amount is liquidated, so a precise amount that is at issue can be determined and ordered placed in the registry. However, in the right circumstances, it could be very helpful indeed.

CELEBRATING FIFTY (Yes, that's 50!) YEARS

Congratulations to the following members of the Class of 1967 – now part of The Florida Bar's 50-year-Members. The EJCBA celebrates your service to the profession and to the Eighth Judicial Circuit:

Charles G. Felder

E. William Hoppe, Jr.

Leonard E. Ireland, Jr.

Eugene E. Shuey

in the underlying action. The court specifically stated “Thus, the mediation privilege...protects disclosure of communications that were made during mediation from those who were not participants in the mediation process. As plaintiff admits, the underlying mediations involved “the very same parties as plaintiff’s case.” The court went on to cite numerous cases refusing to apply the mediation privilege when both parties in the subsequent case were mediation participants. The same result was reached in *Trujillo v. USAA Casual Insurance Company*, 2012 WL 12855429 (Southern District of Florida, 2012) where the court determined the plaintiff in a bad faith action cannot assert the mediation privilege “because they were all participants to the mediation in the underlying case.”

Also see *Carlas Construction, Inc. v. Travelers Casualty & Surety Company*, 58 F. Supp. 3rd 1259 (S.D. Fla. 2014) which held the mediation confidentiality applies to communications between *opposing* parties at a mediation when there is an issue involving alleged conflict of interest between an insurer and its insured.

In *DR Lakes, Inc. v. Brand Smart USA of West Palm Beach*, 819 So.2d 971 (Fla. 4th DCA 2002) a party attempted to enforce a settlement agreement reached at mediation based on a clerical error. The court opined that once the parties in mediation have signed an agreement “...the reasons for confidentiality are not as compelling.” The court also determined that there is no confidentiality as to an executed settlement agreement reached during the mediation. Confidentiality would not apply when the argument is based on mutual mistake.

In *Yacht Club Southeastern, Inc. v. Sunset Harbor North Condo Assoc., Inc.*, 843 So.2d 917 (Fla. 3rd DCA 2003) the court held a developer of a condominium project did not breach confidentiality by disclosing mediation communications to the real parties in interest of a litigation, i.e. the unit holders of the condominium.

Obviously, there are times when mediation confidentiality doesn’t apply. One big red flag is when there is a subsequent bad faith action by an insured against the insurer. Another exception addresses, as the mediation confidentiality statute contemplates, the enforceability of an agreement reached at mediation, e.g. whether there was a mutual mistake, whether there was coercion, etc.

As stated above, this article is not meant to encompass every case on every mediation confidentiality issue; rather, the intent is to illustrate that there are exceptions to statutory confidentiality at mediation.

Associations in an effort to coordinate, secure and enhance their own lawyer referral services. [More details are included in the August 15 Florida Bar News](#) which will be posted approximately one week before the publication date.

The Communications Committee presented to the Board the new templates for all official Florida Bar emails which [apply the new website colors and styles](#). **As part of the Bar’s effort to assist members in identifying legitimate emails from The Florida Bar, please remember that emails from The Florida Bar to members will always: be from a sender email address@floridabar.org; if the notice is for a payment, ask members to first log in to the MyFloridaBar Members Portal with their user name and password; and include contact information for a Bar department if members have questions. If you have any question about whether an email is a legitimate Florida Bar email, please call the Bar before opening any attachments or clicking any links.** The [Practice Resource Institute \(PRI\)](#) lists tips and links to other resources for Florida Bar members to protect their computers from malware at pri.floridabar.org, and members may also call, email or chat with a PRI practice management adviser about cybersecurity).

IMPORTANT LINKS

The latest segment of [FloridaBarNews.TV](#) spotlights The Florida Bar’s increased awareness and efforts to stamp out gender inequality in the legal profession.

[FloridaBarNews.TV](#) provides top news in weekly 60-80 second video [posted on YouTube](#) at floridabarnews.tv.

One of the new features of the redesigned Florida Bar website is a Bar Blog. The [latest blog post features a new column on mindfulness](#), part of President Michael Higer’s efforts to raise awareness of mental health issues in the legal profession.

The [Practice Resource Institute \(PRI\)](#) provides guidance, resources and assistance to Bar members and staff, including technology, finance, marketing, management and new practice, plus free CLEs!

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 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. Space is limited and is first come first served. Hope to see you there!



Cocktail hour sponsored by Attorneys' Title Fund Services, LLC

Many thanks for its continued generosity

Bring a Dessert to Share

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

Reserve Now for the EJCBA September 2017 Luncheon



WHEN: Friday, September 15, 2017 – 11:45 a.m.

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

PROGRAM: Anthony Lyons, Gainesville City Manager

COST: **Members: \$17.00, Non-Members: \$25.00***

Chef's choice luncheon buffet, including meat or vegetarian entrees, seasonal sides, and dessert

DEADLINE: Register on or before **Monday, September 11th at Noon at <http://www.8jcba.org/event-registration/sept-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 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.

Mark Your Calendars Now!
2017-18 Luncheon Dates

- September 15, 2017
- October 13, 2017
- November 17, 2017
- December 15, 2017
- January 19, 2018
- February 16, 2018
- March 16, 2018
- April 13, 2018
- May 11, 2018

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/>

Jimmy C. Adkins Cedar Key Dinner

October 5, 2017 Beginning at 6:00 p.m.—Additional Details Coming Soon!

Gainesville City Manager Anthony Lyons Is September's Luncheon Speaker



According to Gainesville Magazine, the EJCBA September luncheon speaker, City Manager Anthony Lyons, hopes to make Gainesville the most “citizen-centered” city in the world.

According to Mr. Lyons, its “the whole front door idea.” No matter where citizens enter into the city orbit, they will be treated with care, much like you may be treated when you go to a great hotel. His work experience with hotels and studying what the best hotels do is what guides and motivates him. Lyons says the Thomas Center, which is scheduled to be renovated, will be a test run for a future City Hall front door redesign. Fast Company, the

entrepreneurial magazine which profiled Gainesville's citizen-centered plan last fall, said Lyons “is on a mission to remake civic experience using a few tricks from Silicon Valley. His goal? Make Gainesville the best place to live and work, courtesy of human-centered design.”

Mr. Lyons is a native of Portsmouth, New Hampshire, and an art history graduate of Indiana University. He has lived, studied and worked in Vermont, Rhode Island, Chicago, Boston, New Mexico and South Carolina, as well as the Netherlands and Greece. He met his wife of 23 years while studying in Athens, Greece and has an 11-year-old son.

To register for the EJCBA Luncheon visit www.8jcba.org. Luncheon prices for 2017-2018 are: \$17 for EJCBA Members, \$25 for Members who do not register by the deadline, and \$25 for Non-Members.

Circuit Notes

The EJCBA was deeply saddened by the passing of three local attorneys over the summer – Thomas G. “Tom” DePeter, Robert A. “Bob” Keeter and Janet Parker Ailstock.

Tom DePeter, an attorney for Three Rivers Legal Services, passed away after a long illness on May 21, 2017. Tom served in the United States Air Force from 1981 to 1988 as a Chinese Linguist and also previously served the city of High Springs as a former commissioner, mayor, and city attorney.

Bob Keeter passed away on June 28, 2017 after a brave battle with ALS (Lou Gehrig's disease) since 2011. He was a well-known and respected workers' compensation defense attorney with a statewide reputation for excellence and ethics in the profession.

Janet Ailstock, who passed away suddenly on July 8, 2017, was a well-respected and accomplished tax attorney. Janet attended the London School of Economics in the late 1970s before attending law school at UF and serving as Senior Tax Editor for the Law Review. During her career, Janet practiced in Miami and then Gainesville. Janet, Bob and Tom will be missed, and our thoughts and prayers go out to their families and friends.

Governor Appoints Kristine Van Vorst to the Alachua County Court

Governor Rick Scott has appointed Kristine Van Vorst to the Alachua County Court. Ms. Van Vorst is currently a General Magistrate and Judicial Hearing Officer for the Eighth Judicial Circuit. She has previous experience as a solo practitioner in private practice. She received her bachelor's and law degrees from the University of Florida. Van Vorst fills the vacancy created by the elevation of Judge Susanne Wilson Bullard to the Eighth Judicial Circuit Court.



Does Facebook Make You Feel Better or Worse?

By Cynthia Stump Swanson



I think there are four main categories of Facebook users (not including advertisers), and I think the answer to this question depends upon which category the user fits into. First, there are people who make significant use of “Groups,” and connect with others for their neighborhoods, hobbies and interests, and politics. For all time periods up

to say, summer of 2016, Facebook was probably a positive force in all these groups-users’ lives. Being able to easily tell others in your neighborhood that your cat is missing, that your teenager will be having a large party so expect a lot of cars parked all over, or asking for a recommendation for a plumber are all community-enhancing things. Likewise, getting information on where to join an adult kickball league, what size pump is good for a 750 gallon koi pond, or reading that the police arrested the guy who was breaking into cars at the tennis center similarly increases our feelings of community, helps us learn from other hobbyists, and hear about local news.

Up to about a year ago, I would have said the same thing about political news postings. Generally, getting information from those with similar political views makes you feel better. However, the current political stuff on Facebook has become so vitriolic that lots of my friends have severely limited their Facebook use, de-friended dozens of people, and even closed their Facebook accounts because of the political rhetoric, trolling, and fake news. These people clearly feel worse! It’s sort of like the proverbial train wreck - you can’t take your eyes off of it, but you are sickened by the tragedy. So, some choose to completely get off the tracks!

The second major category of Facebook users are the younger folks who feel compelled to document and share every waking moment. These are the people who post selfies every day, who post photos of every meal they have, check in at the gym, restaurant, and movie theater. They post photos of themselves at parties, making duck lips, sticking out their tongues (or worse). These are the ones who over-share, and who are offended by things every day. You know, the ones who post negative reviews when their pizza toppings were wrong and act like it was a personal insult. Did you read about the guy who, his relatives said, was so obsessed with finding fame that he badgered his

girlfriend into shooting him while he held a book over his chest - he was sure the book would stop the bullet. Unfortunately, he was wrong. Now, granted, this was a YouTube stunt, not Facebook. Still, I think there are plenty of stories about Facebook “stars” broadcasting their robberies and other crimes. These postings have a terrible effect on those who view them, as well as on those who post them. Of course, there’s a big difference between mentally ill persons or criminals and your average egotistical, selfish, insecure twenty-somethings. A common thread, however, would seem to be that these Facebook users have not developed an ability to have meaningful, real life relationships.

And then there is what I think of as the third and well-adjusted category of Facebook users. These are the ones who share a small number of photos of their trips, vacations, and family fun, and the ones who really enjoy reading those posts and seeing those photos. Will I ever have a chance to go on a bike tour through Ireland? Am I likely to spend summers in Maine? Probably not, but some of my friends have done. Grandparents who live hundreds or thousands of miles away from their grandchildren love to see pictures of those kids’ soccer games posted. Heck, I love to see the photos of my LOCAL friends’ grandkids. I love to see my local tennis team rivals playing at sectional tournaments (and not just when they lose, hee hee hee).

Sometimes the humble braggarts fit into this category and sometimes they fit into the second one. I guess it depends upon whether the reader likes the person and is happy for their success. You know, whether they have a well-adjusted real life relationship.

For myself, I have a relatively small group of friends on Facebook, and I don’t even check it every day. Still, I love to see fun stuff my real friends and out of town family does and I even find myself downloading some of the family photos to send to my other family members who aren’t on Facebook. Reading my brother’s political and music industry rants (because I love him) are a highlight. I have downloaded some of my friends’ great travel photos to use as my wallpaper on my phone or as inspiration for planning my next journey. I think this is the best thing about Facebook. And if you use it like that, it definitely makes you feel better.

The fourth category of Facebook users are already or soon will be lawyers, looking for evidence to use in a lawsuit. social-evidence.com Be aware of this when you post!

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 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 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

President's Message

Continued from page 1

Committee, under the leadership of our Immediate Past President Stephanie Marchman, will focus on promoting diversity and inclusion in the Eighth Circuit through new and exciting programs and initiatives.

To strengthen the leaders, we will provide opportunities for new board members and general members to become fully engaged in the organization and equip them with the knowledge and training needed to assume leadership roles. The Mentorship Committee, under the leadership of Courtney Johnson, is already developing ideas for connecting with law students and young lawyers who are

interested in sitting under the tutelage of experienced lawyers, and I am committed to collaborating with the leaders of the other voluntary bar associations in the Eighth Circuit.

As you see, there is much for us to do, but I see the END, and I'm excited about the journey and the people we will meet along the way. I will conclude with one of my favorite quotes, penned by Maya Angelou: "People may not remember what you said, people may not remember what you did, but people will always remember how you made them feel." Eighth Strong!

September 2017 Calendar

- 2 UF Football v. Michigan at Arlington, TX, 3:30 p.m.
- 4 Labor Day Holiday - County and Federal Courthouses closed
- 5 Deadline for submission to October Forum 8
- 6 EJCBA Board of Directors Meeting, Holland Hall, Room 355D, UF Law, 5:30 p.m.
- 9 UF Football v. Northern Colorado, TBA
- 13 Probate Section Meeting, 4:30 p.m., 4th Floor Meeting Room of the Alachua County Family/Civil Justice Center
- 15 EJCBA Luncheon, Gainesville City Manager Anthony Lyons, The Woolly, 11:45 a.m.
- 16 UF Football v. Tennessee, 3:30 p.m.
- 19 Family Law Section Meeting, 4:00 p.m., Chief Judge's Conference Room, Alachua County Family & Civil Justice Center
- 19 The North Central Florida Chapter of the Federal Bar Association Annual Chapter Meeting – Elections and Reception, 6 p.m., The Hippodrome State Theatre
- 21 Rosh Hashanah Holiday – County Courthouses closed
- 23 UF Football at Kentucky, TBA
- 30 UF Football v. Vanderbilt, TBA

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, TBA
- 9 Columbus Day Holiday – Federal Courthouse closed
- 11 Probate Section Meeting, 4:30 p.m., 4th Floor Meeting Room of the Alachua County Family/Civil Justice Center
- 13 EJCBA Luncheon, Speaker TBD, The Woolly, 11:45 a.m.
- 14 UF Football v. Texas A&M, TBA
- 17 Family Law Section Meeting, 4:00 p.m., Chief Judge's Conference Room, Alachua County Family & Civil Justice Center
- 28 UF Football v. Georgia Bulldogs (Jacksonville), 3:30 p.m.

Have an event coming up? Does your section or association hold monthly meetings? If so, please fax or email your meeting schedule to let us know the particulars, so we can include it in the monthly calendar. Please let us know (quickly) the name of your group, the date and day (i.e. last Wednesday of the month), time and location of the meeting. Email to Dawn Vallejos-Nichols at dvallejos-nichols@avera.com.