FORUM 8

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President's Message

By Cherie Fine

Welcome to 2019-2020 with the EJCBA!

Hello and welcome back! I hope you were able to carve out some time to balance your life over this summer. Last year, I set a goal for us to work towards a healthier more balanced life – and I am still a big advocate of taking care of ourselves and each other.

I have heard the wheel of life has 8 sections:

1. Family & Friends
2. Health
3. Physical Environment
4. Significant Other/Romance
5. Career
6. Money
7. Fun & Recreation
8. Personal Growth

It may not be possible to stay in perfect harmony, but we need to find time for each part of the circle to be balanced. My challenge to us is to think about the areas we are neglecting and see if we can act to fill in the circle.

Fortunately, EJCBA is here to help, offering projects and events to help us fill in our wheels!

A look at our upcoming year reveals some excellent opportunities to achieve balance:

We have a new luncheon location, The Big Top Brewing Company http://www.bigtopbrewing.com/ – sounds fun already, right? Our first luncheon will be on September 20th and will definitely provide us with a chance to hit numerous parts of the wheel!

The Cedar Key Dinner, always a super fun event, is October 3rd! I think you could say it touches all eight parts of the wheel – depending on how well you do in the raffle and if, like me, your significant other is an EJCBA member. I mean there are stairs up to the venue, right?

November holds more fun with the Fall Family Friendly Social on the 16th and a chance for some fitness fun with the Amaze-Inn Race!

As we look forward to getting back together and working hard to promote honor, dignity, truth, and professionalism within the legal community, to promote improvements in the law and aid in the administration of justice, to enhance the delivery of and access to quality legal services, to educate the public about the legal system, to provide for an inclusive bar, and to promote camaraderie, a forum for discussion on issues pertaining to the legal system and education for our members, I wish you all a happy retour de vacances, amusant année à venir!

EJCBA's President and President Elect, Cherie Fine and Phil Kabler

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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

Criminal Law

By William Cervone

Prepare yourself for a "What I Did Over Summer Vacation" type summary of news and notes of interest from the summer as we start a new publishing year. Included will be rantings and ravings of my usual sort. You are welcome to tell me that I'm just old and cranky. I already know that.

First, and in keeping with the theoretically criminal law nature of this column, an update on the pre-arrest diversion project initiated by my office in January of 2018. Criminal practitioners know about it. For the rest of you, with the full cooperation of local law enforcement agencies, we now screen for diversion on misdemeanors in Alachua County before those cases even go to the courthouse. This addresses legitimate concerns that various people brought to me about the stigma of a court record when a case was ultimately going to be dropped without any court action, the potential impact of that with employers and others even though the case was dismissed, and so on. I was able to make a presentation to the National District Attorneys Association's summer conference on this as a part of the many innovations prosecutors across the country pursue even though we seldom get any credit for such things (consider that a preliminary and minor rant). To do so I collected data for the 18 months this project has been running, according to which we have diverted 35% of all misdemeanor cases pre-arrest or court in Alachua County. That's something approaching 1,000 people who did not clog the court dockets or end up with a criminal court case number on their record. More important to me, fully 94% of those people successfully completed the terms of their diversion agreement. I don't think I could ask for more. Well, yes, I can and that more will be that this program will expand to our five rural counties this Fall. And this is to say nothing about the 1,100 other people who have now successfully completed our DUI diversion program.

So, on to the non-legal rants. During the summer I discovered that Colorado State University has apparently published some sort of Inclusive Language Guide telling students to avoid the terms "America" and "American" because they are not inclusive and they "erase other cultures." Instead we should say "Person From The U.S." Seriously. "Freshman" is to be avoided as well because it excludes not just women but also "non-binary gender identities," whatever those are. "Straight" is not acceptable because it implies that anyone who is LGBT is crooked. "Hold Down The Fort" is a no-no because it suggests having to guard against Native American (you know, people who used to be American Indians, a now doubly bad moniker) savages. "Cakewalk" is bad because it somehow comes from racist minstrel shows a century ago.

Not to be outdone, the City of Berkeley (where else but California although I wouldn't take a bet that our Free Republic of Gainesville doesn't become enamored of this) has apparently passed an ordinance in the interest of "societal awareness" directing that manhole covers are now maintenance holes and craftsmen are artisans. "They" and "them" are to replace "he" and "she." If a single he or she has gotten large enough to become a they or them - no, I won't go there because that would be prohibited fat-ism. "Man-made" will be "human-made." There's more, but space prohibits including all of it. The council~~man~~person who crafted this has declared the "importance of non-binary gender inclusivity" and that there is power in language. As, apparently, there is insanity. I wonder if ~~he~~ they have written to the mayor of Manchester, New Hampshire, demanding that the city be re-named Personchester.

Finally and locally, a group that includes some fine people who I know and respect want to grant legal rights to the Santa Fe River. They propose a ballot item establishing the river's Bill of Rights. This is born from environmental concerns, of course, and would bring us, I suppose, to Santa Fe River vs Polluters in court. I'm curious about many things here, like how the river will appear at mediation (perhaps our friend Mr. Carter can address that) or for trial. Thinking more globally, is the river a they or a them? Is the White River in Arkansas racist? Must ~~it~~ they be re-named? What about the Black River in Michigan? If ~~its~~ their headwaters cross into ~~American Person~~ River From The U. S. territory from another country is ~~it~~ [are] they an illegal immigrant subject to whatever? Or eligible for sanctuary river status although federal benefits may then be withheld?

OK, I'm done now. Suffice it to say that a lot of this stuff is just stupid and indicates to me that many of us have way too much time on our hands. What I'd really like is for some of these folks (it that's a permitted term) to spend their time fixing the growing and aging pothole in the road behind my office.

Forum Non Conveniens

A Difficult Burden to Meet

By Krista L.B. Collins

At first glance, forum non conveniens sounds like a fairly amorphous doctrine; a few factors to be considered, but really just looking at what is the most convenient location for the lawsuit. But upon closer examination it becomes clear that the doctrine of forum non conveniens not only has very specific requirements but presents a difficult burden for a defendant to meet, especially if the plaintiff is suing in the plaintiff's own home forum.[1]

Rule 1.061(a), *Fla. R. Civ. P.*, sets forth the four-prong test for dismissal for forum non conveniens:

Grounds for Dismissal. An action may be dismissed on the ground that a satisfactory remedy may be more conveniently sought in a jurisdiction other than Florida when:

(1) the trial court finds that an adequate alternate forum exists which possesses jurisdiction over the whole case, including all of the parties;

(2) the trial court finds that all relevant factors of private interest favor the alternate forum, weighing in the balance a strong presumption against disturbing plaintiffs' initial forum choice;

(3) if the balance of private interests is at or near equipoise, the court further finds that factors of public interest tip the balance in favor of trial in the alternate forum; and

(4) the trial judge ensures that plaintiffs can reinstate their suit in the alternate forum without undue inconvenience or prejudice.

The defendant who seeks dismissal under Rule 1.061 must move for dismissal within 60 days of service of process and bears the burden of persuasion as to each of the four factors. Rule 1.061(g), *Fla. R. Civ. P.*; *Woods v. Nova Companies Belize Ltd.*, 739 So.2d 617, 621 (Fla. 4th DCA 1999). However, "[t]he presumption in favor of a plaintiff's initial choice of forum is always entitled to great deference." *Cortez v. Palace Resorts, Inc.*, 123 So.3d 1085, 1096 (Fla. 2013). This means that the defendant has a greater hurdle to overcome than it might seem on first blush.

If the alternative forum is another state, then the first factor is a bit of a "gimme" to the defendant, as this requirement is generally satisfied if the defendant is amenable to process in the alternative forum. *Kinney Sys., Inc. v. Cont'l Ins. Co.*, 674 So.2d 86, 90 (Fla. 1996). The alternative forum is inadequate "only if the remedy available there clearly amounts to no remedy at all." *Id.* at 91. Even a delay of "many, many years" or the unavailability of certain litigation procedures (such as class actions) does not render an alternative forum inadequate. *Abeid-Saba v. Carnival Corp.*, 184 So.3d 593, 600-601 (Fla. 3d DCA 2016).

The second prong deals with "private interest factors," such as access to evidence, access to witnesses, enforcement of judgments, and the practicalities and expenses associated with the lawsuit. *Cortez* at 1092. The strong presumption in favor of the plaintiff's forum choice is "key to this second prong." *Id.* The most important of the private interest factors is access to evidence. *Abeid-Saba* at 602. However, the location of certain types of evidence, such as documents and records, is less vital due to the ease with which such records may be transmitted electronically. *Publicidad Vepaco, C.A. v. Mezerhane*, 176 So.3d 273, 279 (Fla. 3d DCA 2015). The defendant must present evidence of these factors, and not simply make conclusory assertions and generalized statements about witnesses' locations and availability. *J.I. Kislak Mortg. Corp. v. Connecticut Bank & Tr. Co., N.A.*, 604 F.Supp. 346 (S.D. Fla. 1985).

The third prong, the public interest factors, is only reached if the balance of the private interest factors is in equipoise or weighs in favor of dismissal. *Archibald v. Burke*, 213 So.3d 996, 997-998 (Fla. 1st DCA 2016).[2] The public interest factors focus on "whether the case has a general nexus with the forum sufficient to justify the forum's commitment of judicial time and resources." *Kinney* at 92. Florida courts, both state and federal, have held that Florida has an interest in protecting its citizens and providing them with a forum for redress of their injuries. *Telemundo Network Group, LLC v. Azteca Intern. Corp.*, 957 So.2d 705, 713 (Fla. 3d DCA 2007); *Bank v. Sun Int'l Hotels, Ltd.*, 184 F.Supp.2d 1246, 1266 (S.D. Fla. 2001).

The final factor to be considered is whether the plaintiff can reinstate the lawsuit in the alternate forum without undue inconvenience or prejudice. Cases in which courts find there is little or no inconvenience or prejudice to the plaintiff in using the alternative forum are often cases in which the plaintiff is not a resident of the forum it chose or where the plaintiff does business in the alternative forum. *Telemundo* at 713. This factor again

Continued on page 5

Florida medical marijuana cards

Free pass on workplace drug tests?

By Laura A. Gross

Florida has the fastest-growing medical marijuana program in the nation. Three years after voters passed Amendment 2 legalizing medical marijuana and despite governmental efforts to limit that right, a new dispensary or two open every week somewhere in the state. Getting a Florida medical marijuana card is relatively fast and simple. Over 337,000 Florida residents are qualified patients, with over 251,000 holding cards, according to the Office of Medical Marijuana Use's most recent update. All bets are on an exponential increase in the coming months and years.

Meanwhile, Florida employers who implement a drug free workplace program are eligible to receive up to a 5% workers compensation premium credit. If an employee with a medical marijuana prescription tests positive pursuant to a drug-free workplace program, what should the employer do? On the one hand, the employee has a constitutional and statutory right to receive medical marijuana treatment. On the other, an employer who knowingly allows the use of medical marijuana may no longer qualify as a drug free workplace if the matter is brought to the carrier's attention; loss of premium credit can be a significant blow for large employers.

The Legislature has attempted to answer this question in § 381.986, *Fla. Stat.,* "Medical use of marijuana," the legislative effort to implement Amendment 2. § 381.986(15) provides the law does not limit an employer's ability to benefit from a drug free workplace. In other words, the employer can enforce the drug free workplace program to hold accountable and discharge employees with marijuana prescriptions who use or test positive. The same section provides the law does not require an employer to accommodate the medical use of marijuana in any workplace or otherwise create a cause of action against an employer for wrongful discharge or discrimination.

It is true, for now, that an employer, at least a private employer, can terminate an employee with a medical prescription who uses or tests positive. There is no repercussion under state or federal law. However, given the continuing rise of medical marijuana in Florida, greater acceptance of medical marijuana in the workplace seems like a logical next step.

Forum Non-Conveniens

Continued from page 4

requires evidence from the parties of the prejudice or inconvenience – or lack thereof.

While there are certainly cases in which defendants have successfully obtained dismissal for forum non conveniens, the burden required to obtain that dismissal is a tough one to meet.

Endnotes

1 To be clear, this analysis is to be used when a defendant seeks to transfer to a different forum, i.e., from Florida to another state or country. If a defendant seeks to transfer venue from one Florida county to another under §47.122, Fla. Stat., the analysis set forth herein does not apply. See *E.I. DuPont De Nemours & Co. v. Fuzzell*, 681 So.2d 1195 (Fla. 2d DCA 1996).

2 In *Abeid-Saba*, the Third District Court of Appeal stated that the public interest factors must always be considered, citing to *Cortez*. See *Abeid-Saba* at 603. However, *Abeid-Saba* appears to have misinterpreted *Cortez*, where the Florida Supreme Court specified that the public interest factors should be considered even when the private interest factors weigh more heavily in favor of the alternate forum. The Third District Court of Appeal got it right in *Publicidad Vepaco, supra,* 176 So.3d at 280-281, referring to *Cortez* and stating "if the private interest factors are at or near equipoise or weigh more heavily in favor of the alternative forum, the court should still consider the public interest factors, which may nonetheless prevent dismissal of an action. To warrant dismissal of an action, both the private and the public interest factors must favor the alternative forum."

CIRCUIT NOTES

The EJCBA congratulates local practitioner and former Eighth Circuit Judge Larry Turner on his receipt of the Criminal Law Section's Selig I. Goldin Award at the Florida Bar's Annual Convention this past June.

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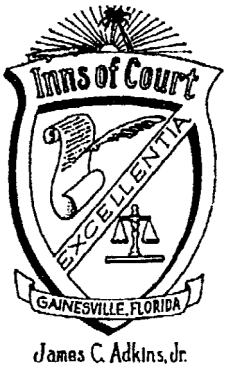

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The Ocala "Chambers Luncheon" Series

Chambers Luncheon
Senior District Judge John Antoon II

Friday, September 27, 2019, starting at noon

United States District Court, Middle District of Florida
Ocala Division

Golden-Collum Memorial Federal Building and U.S. Courthouse

207 N.W. Second Street, Ocala, Florida 34475

$20.00 for members, North Central Florida Chapter, FBA
$30.00 for non-members
(lunch included)

For more information and to RSVP, please contact
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Alternative Dispute Resolution

Mediation Complacency - Going Through The Motions…

By Deborah C. Drylie

The State of Florida was at the forefront of court ordered mediations. As practitioners, we should be proud of the role Florida lawyers and judges played in developing the framework for the way in which mediations are handled. Now that we are 30-plus years into the widespread use of mediation as a meaningful mediation tool, is the current state of the mediation process what the founders hoped for?

It was in 1988 that civil trial judges were given the statutory authority to refer cases to mediation. As the mediated settlement rate grew, the decision was made that all Circuit Civil cases must undergo mediation. For those of you whose days of practice preceded the widespread use of mediation, settlement discussions occurred "the old-fashioned way" – a series of mailed letters were exchanged between the attorneys, or actual phone calls (on land lines no less!) took place. That was a cumbersome way to resolve disputes, and frequently that process caused the case to go on far longer and at greater cost to the clients than is currently the norm. As mediation became not only accepted but required, both practitioners and mediators became better at it – finding that sweet spot between sharing enough information to highlight the strengths of your case while, hopefully, being receptive to the weaknesses pointed out by the other side.

While mediation is still widely used and the success rate hovers around 85%, it seems that a certain level of complacency has found its way into the mediation process. So, how can we all find that level of enthusiasm that propelled the mediation process not only into a requirement for our own State, but also as a model for the country?

One way to recapture that enthusiasm is to read about the mediation programs in other states, and see how time and time again, other states looked to the Florida mediation model to set up their own state programs. For example, I recently read about the mediation program in North Carolina. There, just as the various concepts of ADR were being discussed, a retired Florida lawyer who relocated to North Carolina spoke to an ADR sub-committee about how the various ADR concepts were utilized in our state. While North Carolina's ADR models were originally focused on arbitration, the fact that lawyers in Florida preferred mediation over arbitration convinced the sub-committee to explore just what the Florida mediation system was all about. After a contingency of North Carolina practitioners and judges came to our fair state and observed mediations, they were "on fire" and embraced our mediation model.

It is hard to believe that anyone would feel "on fire" over the way in which mediations are handled. But, 30 years ago, people were: people who were simply observers of our established mediation protocol and program. As a 30-year practitioner and newly minted mediator, I want to have that same level of enthusiasm for mediation that our legal forebearers believed was critical to its success. For me, whether I am wearing my advocate hat or mediator's hat, I am committed to bringing to each mediation a sense of pride in what Florida's legal system has implemented, and the guiding light it has provided to other states. This renewed sense of pride has replaced any feelings of complacency, such as: Do I really need or have time to send a mediation statement to the mediator? Can I go through the motions of attending a mediation and simply hope for the best? Do I think a better "deal" can be reached after mediation so what is the point of bringing my "A" game?

Complacency does a disservice to all participants in the process and derails the mediation before it even begins. Unfortunately, for many, the bloom of mediation may be off the rose. So, think back to when you were just starting your career. Whether you were practicing in "the good old days" and saw the advent of mediation take hold, or never knew there was any other way to resolve a case, find whatever it takes to make our legal forebearers proud that 30-plus years later, we are all still "on fire" about mediation.

Southern Legal Counsel (SLC)
Welcomes New Pro Bono Director

By Kirsten Anderson

Southern Legal Counsel (SLC), a Gainesville based statewide non-profit public interest law firm, hired its first Pro Bono Director, Samantha Howell, in June 2019. Samantha comes to SLC from Albany, NY, where she developed a statewide pro bono program for Prisoners' Legal Services of New York, a non-profit public interest law firm that represented and advocated on behalf of incarcerated New Yorkers.

SLC received a Pro Bono Transformation grant from the Florida Bar Foundation to develop a Pro Bono Program to expand its ability to help individuals who cannot readily access the justice system. SLC's program will provide volunteers three routes for participation via its hybrid-model. The first, and primary focus, is through high-impact, systems-changing litigation, which will frequently include SLC as co-counsel.

The second is through traditional pro bono referrals to volunteer counsel, utilizing both personal outreach and the Florida Pro Bono Matters website. Some of these referrals will be from our Healthy Kids Medical-Legal Partnership, addressing the health harming legal needs of pediatric patients in UF Health's Severe Asthma Clinic.

Finally, attorneys and law students can participate in a number of Access to Justice events, including SLC's clinics, litigation and policy-related research projects, and drafting amici or responses to proposed laws/regulations.

With her prior experience in developing statewide pro bono, Samantha brings unique and desirable experience to SLC and Florida. She has been involved in the public interest sector for more than a decade, and remains an active member of the national pro bono community. Samantha is an active member of the National Association of Pro Bono Professionals.

She is a 2010 graduate of Albany Law School, where she received the Edward M. Cameron, Jr. Memorial Prize for Public Interest Law for her work on redeveloping the school's pro bono program. Samantha is admitted in New York State and the Southern District of New York. She regularly presents on pro bono program development and growth, prisoners' rights, the criminalization of poverty, and professional development, at conferences throughout the country.

Samantha recently joined the Florida Bar

Pro Bono Coordinators Association and will be engaged in outreach over the next several months as she learns about the legal landscape in Florida and starts recruiting volunteers. Any lawyer interested in discussing volunteer opportunities should reach out to Samantha at Samantha.howell@southernlegal.org.

Michael and Stephanie Hines at the EJCBA Annual Dinner in June

Public Defender Stacy Scott and EJCBA Board Member Jan Bendik

Invitation To Renew / Join The 2019-20 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 : www.8jcba.org 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, 2019, you are an attorney in your first year licensed to practice law following law school graduation.

$70.00 - If, as of July 1, 2019, 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, 2019, 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.

$90.00 - 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, 2019, 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: 2019-2020

Check one: Renewal ☐ New Membership ☐

First Name: _____ MI:_____

Last Name:_____

Firm Name: _____

Title: _____

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List two (2) Areas of Practice:

_____

_____

Number of years in practice: _____

Are you interested in working on an EJCBA

Committee?

Yes ☐

No ☐

The Eighth Judicial Circuit's newest Judge, Craig DeThomasis

Former Chief Judge Toby Monaco and Chief Judge James Nilon at the EJCBA Annual Dinner

September 2019 Calendar

2 Labor Day Holiday - County and Federal Courthouses closed
4 EJCBA Board of Directors Meeting, Three Rivers Legal Services, 1000 NE 16th Ave., Bldg. I, Ste. B, 5:30 p.m.
5 Deadline for submission to October Forum 8
7 UF Football v. UT Martin, 7:30 p.m.
11 Probate Section Meeting, 4:30 p.m., 4th Floor Meeting Room of the Alachua County Family/Civil Justice Center
14 UF Football at Kentucky, 7:00 p.m.
17 Family Law Section Meeting, 4:00 p.m., Chief Judge's Conference Room, Alachua County Family & Civil Justice Center
20 EJCBA Luncheon, Dr. Barbara "Basia" Andraka-Christou, Assistant Professor at the University of Central Florida, "Medications for Opioid Use Disorder: Busting the Myths," The Big Top Brewing Company, 11:45 a.m.
21 UF Football v. Tennessee, TBA
28 UF Football v. Mississippi State, TBA
30 Rosh Hashanah Holiday – County Courthouses closed

October 2019 Calendar

2 EJCBA Board of Directors Meeting, Three Rivers Legal Services, 1000 NE 16th Ave., Bldg. I, Ste. B, 5:30 p.m.
3 Annual James C. Adkins, Jr. Cedar Key Dinner, sunset
4 Deadline for submission to November Forum 8
5 UF Football v. Auburn, TBA
9 Yom Kippur – County Courthouses closed
9 Probate Section Meeting, 4:30 p.m., 4th Floor Meeting Room of the Alachua County Family/Civil Justice Center - CANCELLED
12 UF Football at LSU, TBA
14 Columbus Day Holiday – Federal Courthouse closed
15 Family Law Section Meeting, 4:00 p.m., Chief Judge's Conference Room, Alachua County Family & Civil Justice Center
18 EJCBA Luncheon, Speaker TBD, The Big Top Brewing Company, 11:45 a.m.
19 UF Football at South Carolina, TBA

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.