

FORUM 8

Volume 70, No.10

Eighth Judicial Circuit Bar Association, Inc.

June 2011

President's Letter

By Elizabeth Collins Plummer



My last President's Letter. Until this point, I thought that I had run out of things to say. However, as I sit down to write, this last little column suddenly seems insufficient. Not because the space is too small, but because words seem too small. Too trite and cliché.

Like those who came before me, I can tell you that it has been my honor and privilege to have served as your EJCBA President. I can laud the many accomplishments of the 2010-11 Board and our members. I can remind you that the Eighth Judicial Circuit is comprised of some of the finest lawyers and judges in the state. I can express my pride that so many of you share my belief that our professional rules of responsibility merely set minimum ethical standards; our personal values and morals lead us to aspire to far more. I can let you know how fortunate I feel that, in this role, I have become acquainted with so many members that I might not have otherwise met in the scope of my practice. I can encourage you to be an active EJCBA member, at whatever level of participation you are able, and assure you that you will reap more than you sow. I can share the confidence that I feel in President-Elect Mac McCarty and President-Elect-Designate Dawn Vallejos-Nichols and the knowledge that the groundwork that we have laid this term for future growth and expansion will continue to positively impact this organization long after my term has concluded. All this is true. But, how can I adequately

convey that these sentiments are more than mere platitudes?

I suppose I'll keep it simple. At the risk of sounding like a drunk undergrad after last call, abandoning the desire to conclude my tenure with eloquent, wise, and /or inspirational words, and setting aside my usual efforts to use gender neutral terms, I will simply say...

I love you guys. Thank you for this once in a lifetime opportunity.

In closing, I hope that each of you reading this column will join me in expressing my gratitude and appreciation for all the efforts and achievements of the EJCBA's 2010-11

Board Members:

James H. "Mac" McCarty, Jr.,
President-Elect

Dawn M. Vallejos-Nichols,
President-Elect Designate

Rebecca L. O'Neill, Past
President

Audrie Harris, Secretary

Sharon Sperling, Treasurer

Frank Maloney, Historian

Judy Padgett, Executive Director

Nancy T. Baldwin

Jan Bendik

Rob Birrenkott

Ray Brady

Jeff Childers

R. Flint Crump

Deborah Cupples

Marynelle Hardee

Leslie Smith Haswell

Philip Kabler

Sheree H. Lancaster



Continued on page 9

The officers of the Eighth Judicial Circuit Bar Association for the year 2010-2011 are:

Elizabeth Collins Plummer
President
 4510 NW 6th Place, 3rd Floor
 Gainesville, FL 32607
 (352) 374-4007
 (352) 337-8340 (fax)
elizabeth@gloriafletcherpa.com

Rebecca O'Neill
Past-President
 1780 Ridgecrest Dr
 Boise, ID 83712
 (208) 493-0405
oneillr@slhs.org

James H. "Mac" McCarty
President-Elect
 926 NW 13th Street
 Gainesville, FL 32601-4140
 (352) 336-0800
 (352) 336-0505
mmccarty@nflalaw.com

MEMBERS AT LARGE:

Nancy Baldwin
 309 NE 1st St
 Gainesville, FL 32601
 (352) 376-7034
 (352) 372-3464 (fax)
baldwinnt@cox.net

Jan Bendik
 901 NW 8th Avenue, Ste. D5
 Gainesville, FL 32601
 (352) 372-0519
 (352) 375-1631 (fax)
jan_bendik@trls.org

Robert Birrenkott
 P.O. Box 117630
 Gainesville, FL 32611
 (352) 273-0860
 (352) 392-4640 (fax)
rbirrenkott@law.ufl.edu

Ray Brady
 2790 NW 43rd Street, Suite 200
 Gainesville, FL 32606
 (352) 373-4141
 (352) 372-0770 (fax)
rbrady1959@gmail.com

Jeff Childers
 1330 NW 6th St., Ste. C
 Gainesville, FL 32601
 (866) 996-6104
jchilders@smartbizlaw.com

R. Flint Crump
 4404-B NW 36th Ave
 Gainesville, FL 32606
 (352) 327-3643
 (352) 354-4475
flint@rflintcrump.com

Deborah E. Cupples
 2841 SW 13 St. G-327
 Gainesville 32608
 (352) 273-0600
 (352) 392-8727 (fax)
Cupples@law.ufl.edu

Marynelle Hardy
 PO Box 600
 Gainesville, FL 32602
 (352) 548-3710
 (352) 491-4649 (fax)
mnh@alachuaclerk.org

Leslie Haswell
 2830 NW 41st St., Ste K
 Gainesville, FL 32606
 (352) 377-3800
 (352) 377-8991 (fax)
leshaswell@aol.com

Dawn Vallejos-Nichols
President-Elect Designate/Editor
 2814 SW 13 St
 Gainesville, FL 32608
 (352) 372-9999
 (352) 375-2526 (fax)
dvallejos-nichols@avera.com

Audrie Harris
Secretary
 P.O. Box 358595
 Gainesville, FL 32635-8595
 (352) 443-0594
 (352) 226-8698 (fax)
audrie.harris@yahoo.com

Sharon Sperling
Treasurer
 2830 NW 41 St., Ste. C
 Gainesville, FL 32606-6667
 (352) 371-3117
 (352) 377-6324 (fax)
Sharon@sharonsperling.com

Philip N. Kabler
 240 NW 76th Drive, Suite D
 Gainesville, FL 32607
 (352) 332-4422
 (352) 332-4462 (fax)
pnkabler@kmcllp.com

Sheree Lancaster
 PO Box 1000
 Trenton, FL 32693
 (352) 463-1000
 (352) 463-2939 (fax)
shlpa@bellsouth.net

Frank Maloney
Historian
 445 E Macclenny Ave Ste 1
 Macclenny, FL 32063-2217
 (904) 259-3155
 (904) 259-9729 (fax)
Frank@FrankMaloney.us

Lua J. Mellman
 120 W University Ave
 Gainesville, FL 32601
 (352) 374-3670
 (352) 491-4553 (fax)
mellmanl@sao8.org

Michael D. Pierce
 PO Box 850
 Gainesville, FL 32602
 (352) 372-4381
 (352) 376-7415 (fax)
mpierce@dellgraham.com

Anne Rush
 35 N. Main Street
 Gainesville, FL 32601
 (352) 338-7370
anne.rush.1024@gmail.com

Jacob Rush
 11 SE 2nd Avenue
 Gainesville, FL 32601
 (352) 373-7566
 (352) 376-7760 (fax)
jake@rushandglassman.com

Carol Alesch Scholl
 1200 NE 55th Blvd.
 Gainesville, FL 32641
 (352) 264-8240
 (352) 264-8306 (fax)
carol_scholl@dcf.state.fl.us

Gloria Walker
 901 NW 8th Avenue
 Gainesville, FL 32601
 (352) 372-0519
gloria.walker@trls.org

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:

Eighth Judicial Circuit Bar Association, Inc.
 P.O. Box 127
 Gainesville, FL 32602-0127

Phone: (352) 380-0333 Fax: (866) 436-5944

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, or on a CD or CD-R labeled with your name. Also, please send or email a photograph with your name written on the back. Diskettes and photographs will be returned. Files should be saved in any version of MS Word, WordPerfect, or ASCII text.

Judy Padgett
Executive Director
 PO Box 127

Gainesville, FL 32602
 (352) 380-0333
 (866) 436-5944 (fax)
execdir@8jcba.org

Dawn Vallejos-Nichols
Editor
 2814 SW 13 St

Gainesville, FL 32608
 (352) 372-9999
 (352) 375-2526 (fax)
dvallejos-nichols@avera.com

Deadline is the 5th of the preceding month

Taking Strokes Toward Helping Local Children

By Lindsey Durant, UF Public Relations Intern

Members and friends of the EJCBA raised more than \$5,500 for The Guardian Foundation, Inc., a non-profit foundation which supports this Circuit's Guardian ad Litem Program at the 2011 EJCBA Charity Golf Tournament. The tournament, which was held on Friday, April 22, at the Mark Bostick Golf Course at the University of Florida, was attended by roughly fifty golfers.

The 18-hole, two-person scramble was the most successful EJCBA tournament held to date in terms of monies raised. Proceeds, which help the Program maintain normal lives for the children the Program serves and assist the Program in volunteer recruitment and training, were presented by the EJCBA Board to local representatives of the non-profit at the May 13 luncheon.

Ms. Jennifer Meiselman Titus, a local attorney representative for the Guardian ad Litem Program, attended the tournament and addressed the golfers. She spoke on behalf of the Program's nearly 27,000 state-wide beneficiaries, who she said range in age from small children to high school seniors.

Sixteen local businesses, individuals, and attorneys sponsored the tournament, accounting for the majority of proceeds raised. Zaxby's sponsored the lunch, while Dell Graham provided the post-round reception food and Capital City Bank sponsored the reception beverages. The Resolution Center provided the on-course beverages. The tournament was organized by a committee comprised of EJCBA members and student volunteers and led by EJCBA board member Michael Pierce.

The EJCBA would like to thank judges William Davis, Robert Groeb, Tom Jaworski, David Glant, David Reiman and Robert Roundtree for their participation. Please look for the announcement of the 2012 tournament date in upcoming issues of Forum 8.

About the Program

The Guardian ad Litem Program is a volunteer-based organization that provides representatives to children involved in court proceedings, primarily as a result of alleged abuse or neglect. The volunteer representative, or Guardian ad Litem, protects the rights and interests of the child by making independent recommendations to the court that focus on the minor's needs. The Program advocates for thousands of children with the help of devoted volunteers, whose unique perspectives and creative solutions are highly valued by dependency court judges.

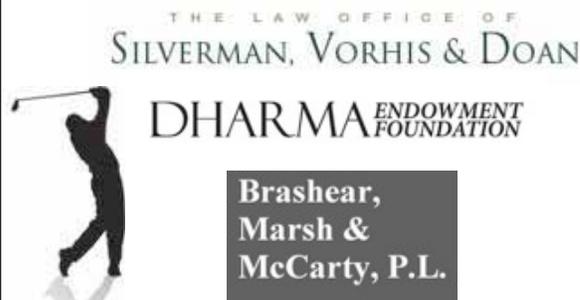


Judges Roundtree, Groeb, Davis and Jaworski on the golf course to raise money for the Guardian Ad Litem program.



EJCBA 2011 Golf Tournament Committee members, from L-R: Audrie Harris, Lindsey Durant, UF PR Intern; Dylan Shea, UF law student; Lua Mellman, Mac McCarty, Jamie Goble, Michael Pierce, and Laura West

THANK YOU TO THE
SIGNATURE SPONSORS OF THE
2011 EJCBA CHARITY GOLF TOURNAMENT:



Your contributions and support are much appreciated by the Guardian ad Litem Program and the members of the EJCBA.

Alternative Dispute Resolution

Collaborative Divorce



By Pamela A. Schneider

Collaborative divorce – is it an oxymoron? No, just a relatively new form of alternative dispute resolution which has become something of a cult movement throughout the world. Madonna has done it. Robin Williams has done it. And thousands of less famous people have obtained collaborative divorces, too.

In the early 1990s, Stu Webb, an attorney in Minnesota, came to the same realization that many other family lawyers have reached; courtrooms are not healthy places for families. Instead of just griping about it, Stu took action. He and several other attorneys decided they would handle their cases in a collaborative manner, striving to assist their clients in resolving their divorces amicably without involving the court until they had reached agreement. The radical aspect of their approach was that if they could not agree, the attorneys would withdraw and the parties would have to start again with new, trial counsel.

Why would they do that? Clearly, this put a significant price on failure to settle. As such, it was a serious motivator. It also enabled the parties and counsel to work in concert, as a team, attempting to reach the best possible result for all members of the family, without fear of revealing themselves to opposing counsel in ways that could be used against them later in court. Further, in collaborative practice counsel usually establish relationships with the parties which are not conducive to proceeding in a traditional, adversarial context.

To protect the integrity of the process, the parties initially enter into a participation agreement outlining each person's responsibilities, providing for full and voluntary disclosure of all relevant financial and other information, agreeing that information will be shared among the team members and for confidentiality as to anyone not part of the team. This agreement also provides the circumstances under which the process may be terminated and how that must be handled.

Since its beginning in Minnesota, the collaborative process has evolved into a worldwide phenomenon which functions through an interdisciplinary team approach. Canada, England, Ireland, Australia..., all have active collaborative practice bars. It is also expanding beyond the family law arena into probate,

medical malpractice and other areas of law.

In collaborative divorce the team always consists of both parties (working together instead of against each other!) and a lawyer for each party. In most cases there are also one or two mental health professionals (divorce coaches), a financial neutral and sometimes another mental health professional known as a child specialist. While each lawyer's place on the team is obvious, the other professional members of the team may seem superfluous to the uninitiated. But, they are crucial to success.

Instead of each attorney working with his/her client to gather, analyze and compile financial disclosure, the parties meet with their chosen financial neutral. CPA's and financial planners generally fulfill this role. Instead of paying two attorneys to compile and dissect all of the financial data, often in concert with forensic accountants, the parties pay one neutral financial expert to review and analyze the material. Meeting with the neutral, at times together and at other times individually, the parties gather and provide all relevant financial information. It becomes the responsibility of the neutral to compile it into a form usable by the team to determine equitable distribution, child support, alimony and any other financial matters present in the case.

Mental health professionals are not engaged for counseling or therapy. Rather, as Steve Spurrier used to tell us about his role with the Gators, they are employed to "coach 'em up!" As coaches they help the parties navigate the often tumultuous road to agreement, assisting with communication difficulties and with drafting the parenting plan. In the latter capacity, the coaches are often aided by a child specialist. His/her job is to meet with the parents and the children, sometimes together and sometimes individually, to help the parents determine the children's needs relative to time sharing.

Together the team attends meetings at which they resolve the matters at issue. Meetings may include all members of the team or may include different groups of team members depending on the subject of the particular meeting. Although the issues are often contentious, in their participation agreement the parties agree to treat all team members, especially one another, with respect and dignity, using interest based negotiation. Generally, they abide by these terms, assisted by the professional team's

Continued on page 5

Collaborative Divorce *Continued from page 4*

intervention, and the meetings are successful.

How does it work? At the initial meeting the participation agreement is signed and the parties are asked to express their goals for the process. These are aspirational – not about how much money one will have but perhaps about each being able to live comfortably at approximately the same level they enjoyed during the marriage. What sort of relationship do they want to share in the future? What do they want for their children, in terms of financial security and relationships with the parties? Are there concerns about relationships with extended family and what do they want those relationships to be like? Does someone want to change careers? Surprisingly, the parties often find themselves agreeing on goals despite their differing needs. Throughout the process, the professional team reminds the parties of their goals, often questioning how particular negotiating positions coincide with those goals. They become a form of anchor for the process.

After the initial meeting, the task is to gather information. This is accomplished through meetings with the parties and one or more of the professional team members. Sometimes the attorneys are involved at this time; sometimes they are not. Of course, they always remain available to their clients for questions and other input.

Once the information is gathered, the team meets to determine options regarding how to resolve the various issues. These meetings again may include some or all members of the professional team, depending on the specific issues being discussed and the emotional needs of the parties. This is a time for simply outlining possibilities. Frequently, the parties will meet with their individual attorneys, sometimes with other members of the professional team, to analyze the various options. At other times this is done with both parties and their attorneys present.

Finally, decisions are made and appropriate documents drafted. The ultimate product is a Marital Settlement Agreement with a Parenting Plan, if needed, incorporated. After the documents are signed, a Joint Petition is filed, an uncontested hearing is scheduled and final judgment obtained, usually very quickly.

The vast majority of collaborative cases resolve by agreement. But it is not a process for everyone. All practitioners of collaborative law attend an interdisciplinary two day training at which they learn how to approach their cases from this new perspective. They also learn how to screen parties.

When there are severe mental health issues or domestic violence is involved, collaborative divorce is not appropriate. In cases where there is little or no trust regarding parenting ability or financial honesty by one or both parties, the collaborative method will not work. In most other cases, however, it can provide divorcing families with a far less traumatic experience than a traditional, adversary divorce.

By working with an interdisciplinary team, the parties have the benefit of expert advice throughout. Expenses are generally lower than in traditional cases because they are not paying attorneys to handle matters better and more cheaply handled by mental health and financial professionals. Ultimately, the parties are able to obtain dissolution of their marriage in a manner which restructures their family rather than destroying it, enabling them to meet the outcome desired by all: To be able to enjoy dancing together at their children's weddings!

EJCBA Annual Reception June 2

Invitations to EJCBA's *Annual Reception* have gone out and we look forward to seeing you all on Thursday evening, June 2, beginning at 6:00 p.m. at the Historic Thomas Center. The cost is \$40 per person and nonmembers are welcome. Please RSVP by May 27 to execdir@ejcba.org, by fax at 866-436-5944 or by mail at P.O. Box 127, Gainesville, FL 32602. Cocktails and heavy hors d'oeuvres will be served. Entertainment will be provided by the Stardust Quintet.

Attention Family Law Section Members:

Please note that the Family Law Section will **not** meet in June, July and August. The next meeting will be on September 20, 2011 – please calendar it now.

The Right to a Trial By Jury: Waiver and Revival

By Siegel, Hughes & Ross

I. Introduction

Pursuant to Florida Rule of Civil Procedure 1.430(b), a party is entitled to demand a trial by jury of any issue triable of right by a jury by serving upon the other party a demand in writing no more than ten (10) days after the service of the last pleading directed to that issue. In other words, if an issue that is triable by jury is pled, a party waives its right to a trial by jury on that issue if it does not demand a jury trial within ten (10) days after the service of the pleading that was directed to that issue. See *Fla.R.Civ.P.* 1.430(b).

However, in certain instances, a party may revive its time to demand a jury trial by amending its pleading. When a party amends a pleading to add a triable by jury issue and demands a jury trial, the court should determine two things:

- 1) whether the amended complaint injects a “new issue” into the case, and if so, then the time to demand a jury trial is revived; and

- 2) if no new issue is injected into the case, the court must consider whether the party demanding the jury trial has demonstrated that a jury trial would neither impose an injustice upon the non-moving party nor be an unreasonable inconvenience upon the court in the performance of its duties.

Dr. Phillips, Inc. v. L & W Supply Corp., 790 So.2d 539, 545 (Fla. 5th DCA 2001).

II. Did the Amended Pleading Inject a “New Issue?”

“Whether there is a ‘new issue’ depends on whether the amended pleadings contain new issues of fact, rather than new theories of recovery.” *Id.* If the new issue that is pled in an amended pleading contains a new issue of fact, then the time to demand a jury trial is revived. *Id.*

In *Adler v. Seligman of Florida, Inc.*, 492 So.2d 730, 733 (Fla. 4th DCA 1986), a great deal of time passed between the original complaint and the amended complaint, and an entirely new, yet related, factual dispute arose between the parties. This necessitated an amended complaint, which was found to revive the time to demand a jury trial. *Id.* *Adler* involved a claim by a contractor who brought a mechanic’s lien foreclosure action against the owner of a condominium housing development who, in turn, filed a counterclaim

for compensatory and punitive damages. *Id.* at 731. Subsequent to the *Adler* suit, a separate suit was brought by the individual unit owners of the condominium housing development against the owner for damages arising out of defective construction. *Id.* In the *Adler* suit, the owner then amended his counterclaim to request that the contractor indemnify him from the damages in the unit owner’s suit. *Id.* The contractor argued that this new claim injected new issues into the case and requested a jury trial, which was denied. *Id.* On appeal, the court found that a new issue was in fact injected into the case because the owner’s new claim of damages arose from events subsequent to the initial pleadings and claims and raised an entirely new cause of action for indemnity. *Id.* at 733-734. The time to demand a jury trial was therefore revived. *Id.* See also *Magram v. Raffel*, 443 So.2d 396, 397 (Fla. 3d DCA 1984) (holding that the time to demand a jury trial was revived when the amended complaint added a count for breach of an agency relationship and the original complaint had been for legal malpractice).

In contrast, an amended pleading that contains only new theories of recovery does not inject a “new issue” into the case or revive the time to demand a jury trial. *Bank of Miami v. Greene*, 240 So.2d 162, 162 (Fla.3d DCA 1970). Accordingly, an amended pleading that touches on “the same general issue of damages” that are already before the court, does not revive the right to a jury trial. *Id.* *Dr. Phillips*, 290 So.2d at 545, is illustrative of a case in which the time to demand a jury trial is not revived by amending a pleading. In *Dr. Phillips*, a servient estate owner brought suit against a dominant estate owner and its tenant regarding the use of an easement. *Id.* at 540. The servient estate owner amended its complaint and, based upon the same facts, added three new counts and requested a jury trial. *Id.* at 541. In denying the request for a jury trial, the court found that there was no new, yet related, factual dispute that had arisen between the parties since the initial complaint that justified reviving the time to demand a jury trial. *Id.* at 545. Instead, the amended complaint merely “presented the trial court with the same basic complaint, dressed-up with more counts.” *Id.*

Continued on page 7

III. A “New Issue” Revives the Time to Demand a Jury Trial, but what Happens to the “Old Issues”?

If it is determined that an amended pleading does inject a new issue of fact into a case, thereby reviving the time to demand a jury trial, the question then becomes whether a jury trial will be held on the new issue of fact only or on the entire case, including the issues for which a jury trial have been waived. *Quality Coffee Service, Inc. v. Tallahassee Coca-Cola Bottling Co.*, 474 So.2d 427, 429 (Fla. 1st DCA 1985). Where there are issues in an initial pleading as to which a jury trial have been waived, as well as new issues in an amended pleading as to which a right to a jury trial exist, and there are factual elements that are common to both the waived and non-waived issues, there is a right to trial by jury on all issues. *Id.*

In *Quality Coffee*, the Defendants’ initial counterclaim contained counts for breach of contract and warranty. *Id.* at 428. The Defendants amended their counterclaim to add counts for fraud and civil theft and demanded a jury trial, and the court found that the fraud and civil theft counts injected new issues of fact into the case, reviving the time to demand a jury trial. *Id.* at 428-429. The court then turned to the question of whether a jury trial should be granted on the counts in the original counterclaim, to which the Defendants waived their rights by failing to make a timely demand. *Id.* at 429. The court held that although the counts in the initial and amended pleadings were different legal issues, there were many factual elements common to both, and the Defendants were therefore entitled to a jury trial on all issues presented. *Id.* See also *Magram v. Raffel*, 443 So.2d 396, 397 (Fla. 3d DCA 1984) (ruling that “where one is entitled to a jury trial on issues sufficiently similar or related to the issues not triable to a jury, and where a determination by the first fact finder would necessarily bind the later fact finder, such issues may not be tried non-jury by the court because to do so would deprive the litigant of his constitutional right to trial by jury”).

IV. If There is no “New Issue,” may a Request for a Jury Trial Still be Granted?

When a party amends a pleading, but the court determines that no new issue was injected into the case, a party requesting a jury trial still has a chance of receiving one. It is within the

discretion of the court to decide whether the party demanding the jury trial has demonstrated that a jury trial would neither impose an injustice upon the non-moving party nor be an unreasonable inconvenience upon the court in the performance of its duties. *Dr. Phillips*, 290 So.2d at 545. However, In *Dr. Phillips*, where the party came forth with only one reason to convey why it would not be unjust or inconvenient to have a trial by jury and that reason was that a date had not yet been set for a non-jury trial, the court held that the trial court did not abuse its discretion in denying the request. *Id.* This is because “[w]hen a party has a change of heart at such a late date, it is incumbent on that party to demonstrate not only the desire for a jury trial but also that such procedure would impose neither an injustice upon the adversary nor an unreasonable inconvenience upon the court in the performance of its duties.” *Id.*, citing *Altamonte Hitch & Trailer Service, Inc. v. U-Haul Company of Eastern Florida*, 468 So.2d 492 (Fla. 5th DCA 1985).

V. Conclusion

Although the original period for a jury demand has expired, a party may still be entitled to a trial by jury. A new period may be created by filing an amended pleading, if it introduces a new issue of fact into the case. However, merely adding new theories of recovery based on existing facts will not revive the time to demand a jury trial. Still, if the moving party shows that a jury trial would neither impose an injustice upon the non-moving party nor be an unreasonable inconvenience upon the court in the performance of its duties, the court may grant the request.



Brent Siegel, Charles Hughes & Jack Ross

Probate Section Report

By Larry E. Ciesla



The Probate Section continues to meet on the second Wednesday of each month at 4:30 in the civil courthouse. Following are some recent topics of interest.

Amy Tully announced she will be going on maternity leave for six months beginning in mid-May. Amy's duties as staff attorney for Alachua County probate cases will be handled by Jennifer Kerkhoff (kerkhoffj@circuit8.org). Jennifer will continue to handle Levy and Gilchrist probates and plans on handling Alachua probates remotely from her office in Bronson. Chessie Ferrell (ferrellc@circuit8.org) will continue to handle Alachua County guardianships. Nathan Hall (halln@circuit8.org) has been hired to handle Bradford and Baker probates and guardianships.

Amy Tully also announced that an updated list of persons qualified to serve on an incapacity examining committee has been adopted under Administrative Order No. 6.961(A), dated May 8, 2011. A copy of the order and attached list can be obtained from the circuit8.org website.

Richard White initiated a discussion of the recent decision in *Habeeb v Linder*, ___So.3d___, (Fla. 3rd DCA Feb. 9, 2011), which is of interest to estate planners in the context of waiver of homestead. The case involved a husband signing a "RAMCO" form warranty deed in favor of his wife to their homestead condominium. The deed was signed many years after the marriage, and contained no reference to a waiver of homestead or other spousal rights. The wife subsequently devised the homestead to her husband for life, with remainder to her sister. The husband and the sister both survived the wife, however, the husband died shortly thereafter and his personal representative initiated litigation against the wife's estate to obtain fee simple title to the homestead, on the theory that the deed did not constitute a waiver of spousal rights as described in Section 732.702 Florida Statutes. Most notably, it was argued that there was an absence of a "fair disclosure" of each spouse's assets as is expressly required by Subsection (2) of the statute if the waiver is executed after the marriage. The trial court and the DCA both indicated that the required fair disclosure could be inferred from the circumstances of the case (long-term marriage; deed prepared by attorney; subsequent estate planning documents executed based on the assumed validity

of the deed). It is interesting to note that there is no doubt that the husband intended to waive his homestead rights, as the petition for administration he signed to open the wife's estate (under oath) and the petition to determine homestead filed in the wife's estate (also under oath), stated the wife was the sole owner of the home. It was only after the husband died, shortly after opening the wife's estate, that the husband's children initiated the claim for the fee simple title to the homestead.

Although the waiver of homestead contained in the deed was ultimately upheld by the courts, considering the time, effort, energy and expense involved in doing so, clients are probably better advised to invest in a traditional postnuptial agreement which strictly complies with the provisions of Section 732.702, Florida Statutes.

As long as we are on the subject of recent DCA opinions, I thought I would point out the interesting decision in the case of *In re: Estate of Ann Dunn Aldrich (Basile vs Aldrich)*, ___So.3d___, (Fla. 1st DCA April 21, 2011), wherein the First DCA held that a will without a residuary clause could convey the decedent's residuary assets to the beneficiary named to receive specific assets. As pointed out by the dissent, this could be viewed as a judicial rewriting of decedent's will as, "The trial court had no business supplying a residuary clause where none exists...". The facts reflect that the decedent, a Clay County resident, using an "E-Z Legal Forms" will, made a number of specific bequests (house, contents, IRA, life insurance, automobile and bank accounts) to her sister Mary Jane Eaton, and if she predeceases, to her brother, James Michael Aldrich. The sister predeceased, leaving her estate to decedent, consisting primarily of real estate located in Putnam County. Upon decedent's death her intestate heirs were her brother, James Michael Aldrich (50%) and two nieces, children of a predeceased brother, (25% each). The nieces asserted they were entitled to receive 50% of the decedent's residuary estate on the basis that the Putnam County real estate was not among the list of specific bequests and the will contained no residuary clause. The trial court and the DCA rejected this argument, based on the theory that the decedent's intent was to give everything to her surviving brother (notwithstanding the fact that there was no evidence of decedent's intent other than the

Continued on page 9

Probate Section

Continued from page 8

will itself). The DCA went through a lengthy analysis of the law in order to reach its conclusion, discussing such rules of construction as the intention of the testatrix being the polestar by which all courts are to be guided; the theory of after-acquired property; and the presumption against partial intestacy.

Here's another tip for clients: instead of relying on this decision, invest in a good estate planning lawyer who believes in use of a residuary clause. It will be much cheaper and more efficient than a lawsuit and an appeal.

All interested practitioners (including paralegals and trust officers) are invited to attend meetings of the Probate Section. Please contact me if you would like to be added to the email list for meeting notices.

Spring Cleaning For A Cause

By Stacy Scott

The Eighth Judicial Circuit Public Defender's Office handles thousands of cases each year for indigent individuals charged with crimes in Alachua, Baker, Bradford, Gilchrist, Levy and Union Counties. These cases result in numerous trials and on occasion trial cases involve jailed clients with no money or family to provide court appropriate clothing. There is a tremendous negative stigma for a client to be seen by a jury in jail attire. The ideal put forward by the justice system might be the presumption of innocence, but the public is much more likely to instead have a presumption of guilt, especially if a defendant appears at trial in jail garb.

Over the years it has been the duty and honor of the Public Defender's Office to provide such clients with court appropriate attire for their appearances in front of a jury. The means to provide this service have come from clothing donations from members of the Public Defender's Office, contributions from local attorneys and members of the bar, and sometimes financially borne out of pocket by individual Assistant Public Defenders.

The stock in our "client closet" has dwindled these past years - who can ask a freshly acquitted client to return to the custody of detention officers, go back to jail, and change back in to the clothes he wore at his arrest rather than permitting him to walk out the front doors of the courthouse a free person? As one of my first projects as Public Defender for the Eighth Judicial Circuit I am hosting a clothing drive to collect court appropriate attire

Continued on page 11

Notably Brief Remarks from a Florida Bar Foundation Board Member



By Phil Kabler

As we head out to the summer hiatus of *Forum 8*, I simply ask you, the members of the Eighth Judicial Circuit, to "check off" a voluntary contribution to the Lawyers Challenge for Children on the 2011-2012 Florida Bar annual renewal form. While I could describe in great detail the nature of the Children's Legal Grant Services which are funded by Lawyers Challenge, instead – and in the interest of brevity – I offer the following link to President-Elect Scott Hawkins' invitation to participate: <http://tinyurl.com/3go2lxx>

Please be so kind as to take a minute to read this article, and then another minute to contribute to the Lawyers Challenge for Children. Thank you for permitting me to make this brief appeal for the Lawyers Challenge.

[Of course I also continue my "one person" Florida Bar Foundation Fellow's Campaign in the Eighth Judicial Circuit, and I welcome your joining during the summer.]

If you have questions about The Florida Bar Foundation or the Lawyers Challenge for Children (...or the Fellows Campaign), please feel free to call me at (352) 332-4422. To get the latest news about the Foundation and its grantees, please become a "Fan" on Facebook by visiting www.facebook.com/TheFloridaBarFoundation.

President's Letter

Continued from page 1

Lua J. Mellman
Michael Pierce
Anne Rush
Jacob A. Rush
Carol Alesch-Scholl
Gloria R. Walker

Wishing each of you continued happiness and success, today, tomorrow, and always,
Elizabeth Collins Plummer

Criminal Law



By William Cervone

As we come to the end of another publishing year I thought it would be good to give some of you some tips on how to use that high school creative writing class you took to good advantage in your pleadings. Perhaps you can use the summer months to consider what follows. So, with thanks to colleague Steve Scott for spotting the following fine examples of how much fun you really can have in drafting legal documents, I offer the following. They are, I assure you, apparently real.

First, from the United States Bankruptcy Court in San Antonio, Texas, we have a very nice offering styled Order Denying Motion For Incomprehensibility. The body of the order is short and includes a finding that “The Court cannot determine the substance, if any, of the Defendant’s legal argument, nor can the Court even ascertain the relief that the Defendant is requesting. The Defendant’s motion is accordingly denied for being incomprehensible.” The motion in question, probably predictably, was styled Defendant’s Motion to Discharge Response To Plaintiff’s Response to Defendant’s Response Opposing Objection To Discharge. Even better, as a footnote to its finding the Court observed that “In the words of the competition judge to Adam Sandler’s title character in the movie ‘Billy Madison,’ after Billy Madison had responded to a question with an answer that sounded superficially reasonable but lacked any substance, ‘Mr. Madison, what you’ve just said is one of the most insanely idiotic things I’ve ever heard. At no point in your rambling, incoherent response was there anything that could even be considered a rational thought. Everyone in this room is now dumber for having listened to it. I award you no points, and may God have mercy on your soul.’ Deciphering motions like the one presented here wastes valuable chamber staff time and invites this sort of footnote.”

Who among us hasn’t thought exactly the same thing at some point while listening to some pointless something? And in the same vein I offer from the United States District Court for the District of Columbia the following, entered as a Memorandum Order in some sort of civil case that apparently was anything but:

“The recent heated exchange between plaintiffs and intervenor on the subject of [Editor’s Note: the subject was something arcane and irrelevant to me that I won’t bother repeating for you] betrays a startling lack of sense of humor, or sense of proportion, or both, especially since it appears to be agreed that the facts relevant to this case are all in the administrative record.” After so finding, the Court entered its order, which is again not especially germane. What is germane is the Court’s parting shot: “And it is FURTHER ORDERED that the parties lighten up.”

Now, in a world where we all seem to take everything far too seriously far too often, isn’t that indisputably appropriate?

I had intended to counterpoint these judicial works with the equally creative works of creative lawyers, but alas, space precludes that, at least this month. So an erudite discussion of the merits of a Plaintiff’s Motion To Compel Acceptance Of Lunch Invitation as contrasted to a criminal defendant’s Motion for Fist Fight will have to wait for the Fall.

To all, a good and restful summer.



THE LAW FIRM OF
STRIPLING & STRIPLING, PA
IS PLEASED TO ANNOUNCE THAT

—**BOB STRIPLING**—
FLORIDA SUPREME COURT CERTIFIED
CIRCUIT CIVIL MEDIATOR
BOARD CERTIFIED CIVIL TRIAL LAWYER

&

—**SYLVIA STRIPLING**—
FLORIDA SUPREME COURT CERTIFIED
CIRCUIT CIVIL MEDIATOR
CIVIL TRIAL LAWYER AND FORMER R.N.

ARE AVAILABLE AS CERTIFIED CIRCUIT CIVIL
MEDIATORS TO HELP RESOLVE YOUR CLIENTS’ CASE

**** MEDIATION FACILITIES AVAILABLE ****

ADDRESS: 102 NW 2ND AVE., GAINESVILLE, FL 32601
PHONE: 352.376.8888 FAX: 352.376.4645
EMAIL: ATTYS@STRIPLINGLAWFIRM.COM

Three Rivers Legal Services Announces Upcoming Consumer Training

Thank you to our Volunteers and Check out TRLS on Facebook©

By Marcia Green

Three Rivers Legal Services will host a Basic Consumer Law Training on June 15 at Santa Fe College (main campus). This full-day training will cover Basic Rights as Consumer Debtors, including Motor Vehicle Sales and Financing (Spot Delivery, Distinctions in Defenses with Dealer Sales, Buy Here/Pay Here), Title Loans, Water Softener Sales, Credit Card debts, Post Judgment Garnishment, Collection Protection, and Repossession and Deficiencies. Speakers will include consumer experts Lynn Drysdale, Jacksonville Area Legal Aid, and Judy Collins, Three Rivers Legal Services, along with Three Rivers attorney Najah Adams and Alachua County Court Judge Thomas Jaworski with a view from the bench. Space is limited; please reserve as soon as possible by emailing jennifer.cox@trls.org or call (386) 7525960. This training, funded through a Pro Bono Pilot Project grant from the Florida Bar Foundation, is free to attorneys in the 8th and 3rd Judicial Circuits; however, we are asking for \$10 to cover the costs of lunch. We have applied for CLE credits, including ethics.

As the bar newsletter takes its annual summer break, I want to thank all of the volunteer attorneys who are willing and able to assist the low income members of our community. In the past several months, Three Rivers Legal Services has added eight new attorneys to our panel of about 170 pro bono volunteers from the 8th Circuit. Often, however, our volunteers are unable to take a referral when needed because of their own case load, schedule or the issues involved. With close to 1000 attorneys practicing in the 8th Judicial Circuit, we could certainly use more volunteers to assist in services ranging from advice and brief services to full representation in disputes such as foreclosure, consumer, unemployment benefits and family law. Thank you to those of you who are volunteers and, to those who are not already on our panel, please consider your availability to make a difference in this community.

Check out our website at www.trls.org and find out how you can help the community; sign up to be a volunteer on-line or make a donation through the website. You will find announcements and links to our webinars and information about upcoming training sessions, and now you can also find Three Rivers on Facebook© at www.facebook.com/ThreeRiversLegalServices!

Spring Cleaning

Continued from page 9

for such indigent clients.

You may have received an email or flyer about this **Spring Cleaning for a Cause** in early May. I wanted to take this opportunity to thank those of you who have already donated and encourage others to participate. The drive runs through the end of June. Donations of clean, used or new men's, women's or young adults' business clothing and shoes may be dropped off at the reception area of any of the Public Defender's Offices. All sizes are welcome. Donation receipts are available upon request. For additional information or to arrange pick up of items, please contact Anne Rush at rusha@pdo8.org.

Thank you again for assisting us in ensuring equal justice for the people of our circuit.

Drop off locations:

- Alachua County: 35 N. Main Street, Gainesville
- Baker County: 81 N. 3rd St., MacClenny
- Bradford & Union Counties: 945 N. Temple Avenue, Starke
- Levy & Gilchrist Counties: 353 S. Court Street, Bronson



Guitar autographed by members of Sister Hazel, Edwin McCain and Darius Rucker up for auction at the May luncheon



Eighth Judicial Circuit Bar Association, Inc.
Post Office Box 127
Gainesville, FL 32602-0127

June 2011 Calendar

- 2 CGAWL meeting, Flying Biscuit Café, NW 43rd Street & 16th Avenue, 7:45 a.m.
- 2 EJCBA Annual Reception at *The Historic Thomas Center*, 6:00 p.m.
- 8 Probate Section Meeting, 4:30 p.m., 4th Floor, Family & Civil Courthouse

Have an event coming up? Does your section or association hold monthly meetings? If so, please fax or email your meeting schedule 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.

Gerald T. Bennett American Inn of Court

The Gerald T. Bennett American Inn of Court is dedicated to improving the skills, professionalism and ethics of the bench and bar through the assessment of cutting edge legal trends, innovation and technology. This organization, formed in conjunction with UF's Levin College of Law will meet 5 -6 times a year at the law school for dinner and legal presentations. If you are interested in actively participating in this exciting collaboration of the judges, lawyers, law professors and law students, we invite you to visit our website: bennettinn.org. Applications are available on the website. The deadline for Applications is June 15, 2011.