FORUM 8

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President's Letter

By Mac McCarty

Please pardon my use of this month's President's Letter for some soapbox yammering. Just before Christmas, I received a copy of the Florida Supreme Court's Administrative Order Number AOSC11-44 regarding the Managed Mediation Program for Residential Mortgage Foreclosure Cases. In the order, the Supreme Court terminated the program after roughly two years, finding that continuation could not be justified after review of comments received from various sources on the efficacy of the program. I am neither shocked nor surprised by this outcome. In my humble opinion, while the program had noble intentions, it had no reasonable chance of success. To discover the reasons, a little history (admittedly filtered through my perception) is warranted.

As we all know, the foreclosure crisis befell this country, and in particular Florida, in an incredibly rapid fashion following the collapse of the lending and investment structure that created the feeding frenzy of new construction, financing and refinancing of mortgage loans, and the packaging of those loans for investment purposes. Books have been written, and more will be written, about the root causes of the real estate bubble and the popping of that bubble, but when one analyzes the nature of the lending that was being generated by the banks—lending that was fundamentally unsound by any reasonable analysis—it is clear that a house of cards had been constructed that inevitably had to tumble. Unfortunately, it brought an over-hyped economy crashing down with it.

As I've previously mentioned in a number of venues, the Eighth Judicial Circuit has been very fortunate that its volume of foreclosures has been substantially less than many circuits in the state. Some circuits in southeast and southwest Florida have thousands upon thousands of foreclosure cases not just pending, *but set for trial*. In at least one circuit, a five minute non-contested motion hearing could not get on the docket for over four months.

When first proposed, the Managed Mediation Program for Residential Mortgage Foreclosure Cases seemed to me in part to be a method to keep families in their homes for a longer period of time before being forced to move out. Politically and socially, the strains put on our society by such large numbers of displaced families were unacceptable. But even without the mediation program, the grinding slowdown in the court systems in the most affected circuits caused by high foreclosure filings—and exacerbated by allegedly improper actions by certain high volume foreclosure firms—have kept many borrowers in their homes for years anyway. On paper, the program's intent was to reduce the massive number of pending cases, but it was—again in my opinion—fatally flawed from the outset.

From my personal experience, and from my

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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.

EJCBA Luncheon has Moved!

The monthly EJCBA luncheon will now be held at Jolie - 6 West University Avenue, Gainesville.

About This Newsletter

This newsletter is published monthly, except in July and August, by:
Eighth Judicial Circuit Bar Association, Inc.
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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, 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.

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Deadline is the 5th of the preceding month

The "Other Mechanic's Lien" and the Florida Motor Vehicle Repair Act

By Siegel, Hughes & Ross

Most lawyers are familiar with mechanics' liens in the context of Chapter 713, part I, which pertains to construction liens. Fewer are as familiar with part II of Chapter 713, which provides for **liens for labor or services provided on personal property. This article discusses the interplay between** section 713.58, *Florida Statutes* and the Florida Motor Vehicle Repair Act.

Chapter 713 protects motor vehicle repair shops by providing for possessory liens on customers' vehicles in order to secure the payment of debts incurred as a result of repair work that is performed. Typically, when a customer disputes the invoice amount after his or her vehicle has been repaired, the repair shop will refuse to release the vehicle until the invoice is paid. To give up possession would void the lien. In order to have a vehicle **released**, the customer would then be forced to either pay or file suit. However, the Florida Motor Vehicle Repair Act, §§559.901-559.9221, *Fla. Stat*. (the "Act"), offers another alternative. It allows a non-paying customer to have a vehicle released from a mechanic's lien by posting bond with the clerk of the court in the amount of the disputed invoice. Once a customer posts the bond, the repair shop must release the vehicle, and the burden is on the repair shop to file suit if it wishes to recover the amount it claims is owed. *See* § 559.917 (1)(a), *Fla. Stat*. Section 559.917 (sometimes referred to as the "statute") lays out the precise procedure for both the repair shop and the customer.

Florida Statute § 559.917(1)(a) states that a motor vehicle repair shop customer may obtain the

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Brent Siegel, Charles Hughes & Jack Ross

Nominees Sought for 2012 James L. Tomlinson Professionalism Award

Nominees are being sought for the recipient of the 2012 James L. Tomlinson Professionalism Award. The award will be given to the Eighth Judicial Circuit lawyer who has demonstrated consistent dedication to the pursuit and practice of the highest ideals and tenets of the legal profession. The nominee must be a member in good standing of The Florida Bar who resides or regularly practices law within this circuit. If you wish to nominate someone, please complete a nomination form describing the nominee's qualifications and achievements and submit it to Raymond F. Brady, Esq., 2790 NW 43rd Street, Suite 200, Gainesville, FL 32606. Nominations must be received in Mr. Brady's office by Monday, April 30, 2012 in order to be considered. The award recipient will be selected by a committee comprised of leaders in the local voluntary bar association and practice sections.

James L. Tomlinson Professionalism Award Nomination Form

Name of Nominee:_____

Nominee's Business Address:_____

_____

_____

County in which Nominee Resides:_____

The above named nominee exemplifies the ideals and goals of professionalism in the practice of law, reverence for the law, and adherence to honor, integrity, and fairness, as follows (attach additional pages as necessary):

_____

_____

_____

_____

Name of Nominator:_____

Signature:_____

Mechanic's Lien

Continued from page 3

release of his or her vehicle from a mechanic's lien claimed by a repair shop for repair work that was performed under a written repair estimate. In order to obtain the release of a vehicle, a customer must file a cash or surety bond with the clerk of the court in the circuit in which the disputed transaction occurred. § 559.917(1)(a), *Fla. Stat*. The bond must be payable to the repair shop in the amount stated on the invoice, plus any accrued storage charges, and must be conditioned for the payment of any judgment which may be entered on the lien. *Id.*

After a customer posts bond, the clerk will issue a certificate, notifying the repair shop of the bond and directing the repair shop to release the vehicle. *Id*. On receipt of the certificate, the repair shop must release the vehicle. The obligation to institute a judicial proceeding is then on the repair shop. The repair shop must file suit to recover the bond within sixty (60) days after it has been posted. § 559.917(1)(b), *Fla. Stat*. If the repair shop does not file suit within the allotted time, then the bond will be discharged. *Id*. Of course, if the bond is discharged, then the repair shop may still sue on the contract, but the bond will not be available to secure a judgment. An additional positive of filing suit pursuant to section 559.917 is that this section contains a provision which provides for prevailing party damages, plus costs and reasonable attorneys' fees. *See id.*

If the repair shop files suit to recover the bond, it must be careful in drafting the complaint to make sure the complaint contains an express count to enforce the lien against the bond that was filed by the customer/lienee. In *Sheltee, Inc. v. Davis*, 472 So.2d 831, 831-32 (Fla. 4th DCA 1985), a repair shop brought suit to recover the bond that was posted, but the court found that the complaint did not state a cause of action to enforce the claim against the bond. While the complaint for breach of contract did contain a request for attorney fees and costs pursuant to §559.917, *Fla. Stat*., it did not contain an express count to enforce the lien against the bond that the customer filed. *Id.* Accordingly, the complaint was held to be insufficient. *Id.*

It is worth mentioning that the Act does not apply to all motor vehicle repair shops. The Act applies to all motor vehicle repair shops in Florida except: (1) any government motor vehicle repair shop that carries out government functions; (2) a person who solely repairs either his/her own vehicles or for-hire vehicles that are rented for thirty (30) days or less; (3) a person who repairs motor vehicles that are operated principally for agricultural or horticultural purposes; (4) motor vehicle auctions or persons performing motor vehicle repairs for auctions; or (5) repair shops located in public schools or charter technical career centers. § 559.902, *Fla. Stat*.

The Act specifically defines "motor vehicle repair shop" as "any person who, for compensation, engages or attempts to engage in the repair of motor vehicles owned by other persons and includes, but is not limited to: mobile motor vehicle repair shops, motor vehicle and recreational vehicle dealers; garages; service stations; self-employed individuals; truck stops; paint and body shops; brake, muffler, or transmission shops; and shops doing glass work." § 559.903(6), *Fla. Stat*.

If the Act does apply to a specific repair shop, then the repair shop must release the vehicle upon receiving the certificate from the clerk of the court directing it to do so. The Act lays out heavy consequences for wrongful retention of a vehicle. Failure to release a vehicle may result in both civil damages and criminal charges. *See* § 559.917(2)-(3), *Fla. Stat*. If a repair shop refuses to release a vehicle, then a customer may bring suit to compel the repair shop's compliance with the certificate from the clerk of the court. § 559.917(2), *Fla. Stat*. In an action regarding a repair shop's wrongful retention of a vehicle pursuant to section 559.917, a customer may be entitled to damages, plus court costs and reasonable attorney's fees. *Id*. Conversely, if a judgment is entered in favor of the repair shop, the repair shop may be entitled to its reasonable attorney's fees. *Id*. Also, the statute states that the repair shop, or any agent who is authorized to release the vehicle, is guilty of a misdemeanor of the second degree, should it fail to release the vehicle as required by law. § 559.917(3), *Fla. Stat*.

The statute is designed to accommodate both the customer and the repair shop. It is designed to allow the vehicle owner to use his or her vehicle during litigation, while still protecting the interest of the motor vehicle repair shop by allowing a bond to be substituted as security for the lien instead of the vehicle itself. *Associates Commercial Corp. v. Ross*, 465 So. 2d 663, 664 (Fla. 4th DCA. 1985). As long as customers and motor vehicle repair shops comply with the statutory requirements of Florida Statute § 559.917, the purpose of a mechanic's lien is not defeated, and a successful litigant has the added bonus of being able to recover attorneys' fees.

President's Letter *Continued from page 1*

discussions with attorneys, parties, and mediators involved in the process (as an aside, I am also certified as a foreclosure mediator), the only possible way that these mediations were going to reduce the case numbers in any significant way was if the lenders agreed in the mediations to principal and interest rate reductions in order to reduce the payments to a level affordable to the distressed homeowners, many of whom had suffered extreme reductions in income due to the failing economy. Lenders were not willing to do this. All too often the mediations became information sessions for the borrowers to be informed of the most recent initiative from the federal government. Typically, the borrowers couldn't qualify for the plans anyway, although by applying they bought themselves yet more time before finalization of the foreclosure.

It was obvious from the beginning that the lenders weren't—and couldn't—reduce principal on these defaulted loans. To do so would have been to invite anyone and everyone paying on a mortgage for a home "underwater" to default on the loan and seek a writedown of the principal amount. In other words, almost total mortgage anarchy in a number of jurisdictions. To borrowers, a lender offering only a minor reduction in interest rate combined with rolling overdue payments to the back of the loan, and perhaps extending the term of the loan, really wasn't going to bring down the payment to a level the borrower could pay. Time and again, I saw the governmental program *du jour* result in a payment effectively the same as it currently existed. What good was that to the distressed borrower and why should the borrower waste time and effort trying to comply when the property may well be valued at fifty percent or less of the current loan balance?

What might have had a chance at success? Who knows for sure, but without principal reductions nothing was going to work. And for something to think about for the future, query why lenders should be allowed to report mortgage loan defaults to credit reporting agencies resulting in an adverse impact to a borrower's credit score. A mortgage loan is not a typical consumer credit loan for consumable or depreciable goods, but a contract based upon the analysis of the lender that it is fully secured by the mortgaged real estate. Where is the *quid pro quo* "punishment" for the lender after a failed mortgage loan results in a foreclosure? I haven't heard of any parallel organizations that have the same impact on lenders as the credit bureaus have on individuals. Just a thought….or two.

2011 EJCBA Holiday Project Builds Upon Tradition of Giving

By Rob Birrenkott

The holiday season is a time when time honored traditions are carried out. Our bar association has a rich tradition of giving back to our community and this year was no exception. Thanks to the generous contributions of EJCBA members, we were able to provide hundreds of toys to children enrolled in the Head Start program in addition to collecting food items for the Bread of the Mighty Food Bank. We would like to thank the following participants for their support of this year's project:

Avera & Smith
Bogin, Munns & Munns
Brashear, Marsh & McCarty, PL
Chester Chance
Chelsey Clements
Eighth Judicial Circuit Judges, Magistrates & Hearing Officers
Eighth Judicial Circuit Law Student Association
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Pamela Glover
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Phil Kabler
Three Rivers Legal Services
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University of Florida Levin College of Law
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RESERVE NOW FOR THE 2012 PROFESSIONALISM SEMINAR!

WHEN:	Friday, April 6, 2012 – 9:00 a.m. – 12:00 NOON
WHERE:	J. Wayne Reitz Union on UF Campus (Rion Ballroom)
PROGRAM:	Our keynote speaker is Rob E. Atkinson, Jr., Ruden McClosky Professor of Law at the Florida State University College of Law, speaking on "The Amended Oath of Admission to the Bar: Why its New Civility Clause is Far Less Radical Than its Classical Republican Core"
COST:	$70.00 (Make checks payable to EJCBA) (3.5 Hours of CLE is expected)
REMIT TO:	EIGHTH JUDICIAL CIRCUIT BAR ASSOCIATION, INC. c/o Raymond F. Brady, Esquire 2790 NW43rd Street, Suite 200 Gainesville, FL 32606
RESERVE:	**By Monday, April 2, 2012 – Remit payment with reservation to Raymond F. Brady, Esquire**

Please identify first and second choices for your area of specialty for small group discussions.

_____ Civil/Tort Law
_____ Family/Domestic Relations Law
_____ Criminal Law
_____ Estates & Trusts Law
_____ Business Law
_____ Government Lawyers
_____ Real Estate & Land Use Law

NAME(s): _____

_____

NOTE: Please send a separate card with specialty areas for each attorney attending. Thank you.

Free parking will be provided at the Reitz Union Parking Garage. Spaces are limited, so **arrive early**.

Professionalism Seminar

Inexpensive (CHEAP) CLE Credits

By Ray Brady

Mark your calendars now for the annual Professionalism Seminar. This year the seminar will be held on Friday, April 6, 2012 from 9:00 AM until Noon, at the University of Florida. Check-in/ registration begins at 8:30 AM. The keynote address will be given by Rob E. Atkinson, Jr., who is the Ruden McClosky Professor of Law at the Florida State University College of Law. Professor Atkinson's address is titled, "The Amended Oath of Admission to the Bar: Why its New Civility Clause is Far Less Radical than its Classical Republican Core."

We expect to be approved, once again, for 3.5 General CLE hours, which includes 2.0 ethics hours and 1.5 professionalism hours.

Fill out the EJCBA reservation card included in this newsletter or look in your mail for an EJCBA reservation card in early March. Questions may be directed to the EJCBA Professionalism Committee chairman, Ray Brady, Esq., at 373-4141.

Save the Date

Senior Status Reception and
Unveiling of Official Portrait of
The Honorable Stephan P. Mickle

_____

March 19, 2012
4:00 p.m. to 7:00 p.m.

_____

University of Florida
President's House
2151 West University Avenue
Gainesville, Florida 32603

Additional Details to Follow

Alternative Dispute Resolution

Free Willy!

By Chester B. Chance and Charles B. Carter

News articles during October 2011 focused on the story detailing how P.E.T.A. is suing SeaWorld to establish constitutional rights for Orcas. The lawsuit claims Orcas are "enslaved" at SeaWorld facilities in violation of the 13th Amendment in that the Orcas have been forcibly taken from the ocean and held in captivity, denied their natural environment, subjected to sperm collection and forced to perform tasks for profit. The P.E.T.A. spokesperson stated "slavery is slavery and it does not depend on the species of the slaves anymore than it depends on gender, race or religion."

The Plaintiffs in the lawsuit include Corky the Orca. Corky and other Orcas are represented by "Next Friends," including Ingrid Visser, a killer whale expert. P.E.T.A. points out some killer whales have suffered "mental issues" as a result of their enslavement.

P.E.T.A suggests the Orcas have been deprived of the opportunity to make conscious choices and to practice their cultural vocal, social and foraging traditions; rather, they are compelled to perform meaningless tricks for a reward of dead fish (much like a first-year associate in a law firm).

In related news, a few years ago, Whole Foods stopped selling live lobsters based upon a concern for the lobsters' health and well being as they are sent through the stages of shipping from capture to holding tanks in stores. The company was attempting to find new distribution methods to ensure the lobsters "quality of life," and were also reviewing the living conditions of mussels and oysters.

A mediation of this controversy may go something along the following lines:

[**Warning:** Some of the material you will read contain references to violence, nude lobsters and heavy sauces.]

Attorney I.M. Moby: I represent Corky and other Orca plaintiffs in this action against SeaWorld. Of course it is impossible for Corky to be present at this mediation and therefore, he will be appearing by sonar.

Mediator: I need to explain to Corky and the other killer whales that this mediation is confidential, and they are not to discuss it with other members of their pod.

Attorney I.M. Moby: We've explained that to Corky and after throwing him a mackerel he nodded his head that he understood.

Mediator: I've read the P.E.T.A. press releases and I've reviewed your constitutional argument. What damages are you seeking?

Attorney I.M. Moby: Clearly Corky and the other Orcas are suffering from post-traumatic stress disorder. Corky experiences flashbacks, which result in prolonged distress and he experiences severe psychological episodes when riding in elevators. He gets very upset when he sees a can of tuna. Corky has a sense of a foreshortened future and does not expect to have a real career, does not expect to have a lasting marriage, and will never have a normal lifespan. Corky flunked out of community college as a result of his depression.

Mediator: Are there any other damages you wish to explain or discuss.

Attorney I.M. Moby: Corky suffers from chronic fatigue and irritable bowel syndrome. He no longer dines at sushi restaurants. We've also brought an action for false imprisonment, intentional infliction of emotional distress, and raised a claim in admiralty law.

Mediator: Thank you for your summary. I would like to hear from the attorney for SeaWorld.

Attorney Ahab: I do not want to focus on damages. This is a liability case. Corky's claims are barred by the impact rule. However, to comment briefly on the damages, we believe Corky's psychological problems pre-existed his employment at SeaWorld. There were several prior incidents affecting Corky's psychological well-being including his run-in, literally, with a Japanese trawler. Corky started drinking heavily after he lost the lead role in *Free Willy*. However, case precedent is in our favor. We reference the case of Rin-Tin-Tin v. Warner Bros. and the case of Lassie v. Jeff, et al. The first case resolved on a motion to dismiss and the second case involved a summary judgment in the defendant's favor.

Mediator: I see. I must disclose that this office is providing lunch today and I regret to say it is steak and lobster day. I feel bad about that, but, since no one submitted a mediation statement I was unaware

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Family Law

Florida's Alimony Laws are Not Antiquated

By Cynthia Stump Swanson

There is a movement gaining some press, and a bill beginning to move through the 2012 Florida Legislature, both of which tout Florida's alimony laws as being outdated and an intolerable burden on payors. I am one who does not believe that to be true.

An article published on the marketwatch.com website published on December 7, 2011 cites the testimony of three people before the legislative committee considering HB 549. No names were mentioned, and there is no way from that story to check the facts that were stated. The same is true for every story I have ever read in blogs, news reports, and so on from the group called Florida Alimony Reform. In fact, the stories they use to support the need for reform do sound egregious. That's why I have to keep wondering what part of the story is being omitted.

The stories specifically cited were the following

> Among the speakers in support of HB 549 were a dentist paying permanent alimony to his ex-wife, who is also a working dentist; a Tampa man with throat cancer paying over 80% of his income in permanent alimony; a woman who wants to marry her partner of 12 years but fears her assets could be included in revised alimony payments; a Broward County man who began paying lifetime alimony to a healthy 33-year-old woman ten years ago, as he raises their three children and she cohabits with another man; a Pensacola man who has been bankrupted once and is on the verge of a second bankruptcy; a pediatrician who hopes to retire at 66 but knows he might have to spend upwards of $50,000 on legal fees, with no guarantee that alimony will end; and a Miami man paying $4000 a month who has no money with which to help his grown children.

Source: MarketWatch.com - http://tinyurl.com/73wd35l

Let's try to take these one at a time and point out the facts that are missing from the story. First, a dentist paying permanent alimony to his ex-wife who is also a dentist. Missing is any description of the comparative incomes of the two; the assets and liabilities distributed to the two at the time of the divorce; and any child-caring responsibilities of either spouse. If both dentists were earning the same income and had similar living expenses, then there would not have been any alimony award. Alimony can only be awarded where there are <u>both</u> a need and an ability to pay. The fact that there was an alimony award leads me to believe the husband may have been a long established dentist or the owner of a dental practice employing several dentists, while his wife may have been just starting out or an employee in somebody else's practice. The wife might have been disabled and thus her earning ability decreased; or she might have had substantial child caring responsibilities, or student loans which she must repay. As you can see - many facts are missing from this picture.

Next is mentioned a man with throat cancer paying 80% of his income in permanent alimony. While I'm sorry to hear about this fellow's medical problems, a cancer diagnosis in itself is not dispositive in regard to an award of alimony. If he has much greater income than his wife and if she cannot support herself, then an award of alimony might still be appropriate. There are many cases in which courts have held that an alimony award which leaves the payor in such bad financial straits is not allowed – that is, if he is not able to support himself on the remaining 20% of his income. So, you have to wonder if the facts are being reported correctly. Or have the facts changed? If the trial judge required this fellow to pay 80% of his income as alimony and there was no justification for it (and I'll admit, that's pretty hard to justify), then he should have appealed the judgment - I can't imagine how that judgment would not have been reversed by an appellate court.

As to the woman who doesn't want to marry her "partner" of 12 years because she doesn't want her assets included in any modified alimony award against her partner - there's a law for that! Florida law is clear that the income of a subsequent spouse cannot be included in determining a payor's ability to pay alimony. The only caveat is if she is financially supporting her "partner," so that the partner is not working or is underemployed - then income can be imputed to the underemployed or unemployed partner for determining his or her ability to pay. But that would

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be true, whether or not the woman married her un- or under-employed partner.

Now, as to the Broward County man paying permanent alimony to a healthy 33 year old woman, while he apparently has custody of their kids, and she lives with another man - again, these facts seem pretty egregious. I really have to wonder what facts are missing. If this really is a fair representation of his judgment, then he should have appealed it. I wonder if he had an attorney represent him? Or if he represented himself? But - since no names are included - we can't really check the actual facts of his case. He still ought to consider seeking a modification of the award. Florida law provides that alimony may be modified or terminated when the receiving spouse is living in a supportive relationship with another man. I wonder if this payor has been to see an experienced family lawyer to ask about this?

As to the Pensacola man who is going to file a second bankruptcy, apparently because of his alimony award - again, I have to question this. It sounds more like he was living beyond his means, possibly running up credit card debt rather than changing his lifestyle any in order to accommodate his alimony obligation. It is often the case that both spouses have to adjust their lifestyles after a divorce. Usually, the ones who file bankruptcy weren't facing facts and weren't willing to make that adjustment. Or, perhaps some other bad circumstances, such as a medical problem, befell this fellow, and it was a need to discharge large medical bills that prompted his bankruptcy filing. Again, there are not enough facts provided to leap to the conclusion that it was a "bad" alimony award that caused these financial problems. And, of course, there is no information provided about his ex-wife and her need for alimony.

Next, the article mentions a pediatrician who hopes to retire at 66 but knows he might have to spend upwards of $50,000 on legal fees, with no guarantee that alimony will end. This is a valid concern. Legal fees can be very high where both parties are entrenched in their positions, and can't find any common ground. But there is significant case law which provides for the reduction in alimony at the time of retirement. If you equate this with an older couple who are still married - they know their income (and their needs, hopefully) will reduce upon their retirement. I would encourage this pediatrician to reach out to a family lawyer who is experienced in collaborative law, in order to find a collaborative solution that both parties can live with and to allow him to retire with some confidence that his (as well as his ex-wife's) needs can be met. Hopefully, they have both done some good retirement planning.

Finally, for the fellow who can't afford to help his adult children because of his alimony payments to his ex-wife, this is a matter of legal priorities. Florida law does not require any parent, married or divorced, to provide financial help to adult children who are capable of supporting themselves. But Florida law does provide that people, who are financially able, must support their ex-spouses who are financially needy. What lesson does it teach your young, able-bodied children, that you let their parent suffer financially, if you are able to help that parent? I recently had a case where a husband's position was that he could not afford to pay his very needy wife any support, because he was paying their large credit card debts (which were incurred substantially to pay criminal defense attorney's fees for their adult son). Similarly, while the Husband's desire to pay their credit card debts is laudable, not so at the expense of the financial support of his needy wife. It's a matter of legal priorities.

For further example about the appropriateness of Florida's alimony law, I have handled some cases recently where I think almost anybody would agree a permanent alimony award was appropriate. How about the 35 year marriage where the husband was in the U.S. Army for a full career, and his wife followed him and moved 12 times, raising two sons, and otherwise being a good "Army wife." When he retired, the Husband decided he preferred to leave the marriage, and move in with a younger woman. The wife has no college education, only worked part time intermittently, and has no career and no retirement savings of her own. This is a situation which calls for an award of permanent alimony. Now, I know for a fact the husband does not think he should have to pay alimony. Do you?

I also handled a case where the parties divorced after a 25 year marriage. The husband is a very successful surgeon. The wife was a stay at home mother, raising a child who is now in college. She never worked during the marriage, her partial college credits are more than 25 years old, and she has no career, and no real ability to support herself. Do we expect her to live on welfare and have the tax payers support her? Or do we expect her husband, who decided to end the marriage, to have some responsibility for her support? In this case, I represented the husband, and told him from the first day that he would have to pay

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Family Law

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some alimony. He understood and agreed, although we still had to figure out the amount.

How about the case of a marriage ending after 40 years, where the husband retired from a long career with a good employer, the wife was a stay at home mother, raising the children and working only part time every now and then? The husband's monthly retirement is not very much, because he took a partial lump sum pay out. While the wife is entitled to half of the monthly payment, it's not enough for anybody to live on. The wife worked as a hair dresser 35 years ago, but is now 65 years old. The husband has substantial assets he inherited from his family, so he is living in a fine lifestyle, while half of his retirement check is all the wife would receive without an award of alimony. Shouldn't she be able to live in a decent lifestyle - pretty much the same as the husband?

I also represented a wife in a divorce after a shorter marriage - only about 20 years. She had no college education, and had developed some significant medical problems during the marriage, which prohibited her from many occupations. She decided to go back to college and obtain a counseling degree, which was a non-physically demanding job which she could handle. She agreed to an award of rehabilitative alimony for a few years which would allow her to get through college. Unfortunately, her medical problems increased and she became disabled and was not able to finish her college courses nor become employed. She went back to court asking to convert her rehabilitative alimony to permanent. Do you think her ex-husband - assuming he has the ability to pay - should pay her alimony, or do you think she should be living only from tax payer funded welfare-type programs?

That's the basic question in every case - whose responsibility is it to provide for the welfare of an ex-spouse? When both spouses have similar incomes and ability to support themselves, well, then, let them each support themselves individually. But where there has been a long term marriage, and one spouse has little or no financial ability to support himself or herself, and the other spouse does have the ability – then where should the obligation fall? On the parties' adult children? Aging and ailing parents? The taxpayers? Or on the financially able ex-spouse?

The Family Law Section continues to meet on the third Tuesday of each month from September through May at 4:00 pm in the Chief Judge's Conference Room in the Alachua County Civil and Family Judicial Center. Hope to see you there.

ADR: Free Willy!

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of the potential conflict. I will order something else for lunch and at this time ask the Defense Attorneys to remove their lobster bibs.

Attorney Ahab: Will clarified butter still be available?

Attorney I.M. Moby: That's an insensitive remark. I do not know how Corky can attend this mediation if he must be subjected to such comments.

Mediator: I think we can work this out. Nothing is either all black or all white.

Attorney I.M. Moby: Is that a remark about the color pattern on my client?

Mediator: No, merely an unfortunate choice of words.

Attorney Ahab: My client is prepared to file a counter-claim for the lost revenue while Corky has refused to perform.

Attorney I.M. Moby: Perform?! You mean work as a slave?

Mediator: Perhaps if Corky compromised and agreed to perform during matinees until this matter can be resolved. I hear some squeaks and whistles from Corky over the phone. Do we need an interpreter?

Attorney I.M. Moby: No, Corky is reminding me he has applied for Social Security disability and is asking if SeaWorld will pay the entire cost of this mediation.

I also represent lobsters that have been confined in tanks in a variety of restaurants and supermarkets. We intend to file an amended complaint with a variety of causes of action including: invasion of the lobsters' right of privacy through constant exposure to the public; intentional infliction of emotional distress; discrimination; and negligence. Numerous corporate defendants will be added to this action.

Mediator: Could you explain some of the facts supporting these actions.

Attorney I.M. Moby: The lobsters are displayed in glass cases. Anyone can see them. Patrons, when eating the lobsters, are given bibs but the lobsters aren't given anything. They're naked. We have several photographs showing nude lobsters in restaurants and supermarkets in full view of the public.

In restaurants lobsters often see another lobster plucked from the tank, cooked and then eaten by restaurant patrons. Can you imagine the emotional distress suffered by these intelligent and loving crustaceans?

Numerous lobsters do not survive the distribution process from traps in Maine to supermarkets all over

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Criminal Law

By William Cervone

Civility among lawyers is something I've written about before. It's certainly a topic that merits some thought, especially from the perspective of a long time practitioner who has seen a general degradation in the way we treat each other, in and out of the courtroom. Rather than take to the pulpit myself, however, let me share with you the following order that I assume is real, apparently entered in a federal civil case in Texas last Fall:

Order

BE IT REMEMBERED on this day the Court reviewed the files in the above-styled causes, and now enters the following opinion and orders.

Non-parties Lance Langford, Erik Hoover, and Brigham Oil & Gas, L.P. invite the Court to quash subpoenas issued to them on behalf of Jonathan L. Woods, in relation to a matter currently pending in the United States District Court for the Western District of Louisiana, Lafayette-Opelousas Divisions, because the subpoenas were not properly served, are overly broad and unduly burdensome, and seek privileged information. In response, the Court issues the following invitation of its own:

Greetings and Salutations!

You are invited to a kindergarten party on **THURSDAY, SEPTEMBER 1, 2011, at 10:00am** in Courtroom 2 of the United States Courthouse, 200 W. Eighth Street, Austin, Texas.

The party will feature many exciting and informative lessons, including:

- How to telephone and communicate with a lawyer
- How to enter into reasonable agreements about deposition dates
- How to limit depositions to reasonable subject matter
- Why it is neither cute nor clever to attempt to quash a subpoena for technical failures of service when notice is reasonably given
- An advanced seminar on not wasting the time of a busy federal judge and his staff because you are unable to practice law at the level of a first year law student.

Invitation to this exclusive event is not RSVP. Please remember to bring a snack lunch! The United States Marshalls have beds available if necessary, so you may wish to bring a toothbrush in case the party runs late.

Accordingly,

IT IS ORDERED that defense counsel Jonathan L. Woods, and movants' attorney Travis Barton, shall appear in Courtroom 2 of the United States Courthouse, 200 W. Eighth Street, Austin, Texas, on **THURSDAY, SEPTEMBER 1, 2011, at 10:00am,** for a memorable and exciting event.

Now, it could just be me, but I'm thinking that there is more to this story than is reflected in just this one order. Surely, the judge who signed the order wasn't just having a bad day or playing a prank. Regardless, I'm pretty sure that if I were on the invitation list I'd be trying my best not to have to actually attend the party, maybe even by putting aside whatever personal issues might exist between me and opposing counsel.

One hopes that nothing of this sort is ever occasioned here.

ADR: Free Willy!

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the United States. This is due to the negligence in failing to provide proper comforts and toilet facilities for the lobsters during the distribution.

Lobsters are discriminated against. The defendants claim the lobsters are given separate but equal tanks, however, mussels and oysters are kept in tanks that often include better filtering mechanisms and decorations such as a Sponge Bob Squarepants house.

We are demanding an injunction on the sale of lobsters until the abuses can be corrected and are seeking damages equal to the gross national product of the United States.

Attorney Ahab: The defense is here in good faith. I've been involved in numerous culinary class actions which have resolved at mediation. We are willing to make concessions. We are willing to combine lobsters and mussels in the same tank. We're willing to shield the side of the tank that faces the pot where the lobsters are boiled. We're willing to provide towels or robes to lobsters that are on public view.

Attorney I.M. Moby: That's a good start, but it's not enough. I think, mediation may be premature. We're going to amend the complaint to also include actions by clams, mussels, oysters and stone crabs.

Mediator: It appears this mediation may be anti-clamactic.

The Florida Bar Board Of Governors Report

By Carl Schwait

The Florida Bar Board of Governors met in Ponte Vedra on December 9, 2011. Major actions of the board and reports received included:

Charles Trippe, General Counsel for the Executive Office of The Governor, spoke to the board and answered questions about Gov. Rick Scott's criteria when appointing judges and members of judicial nominating commissions (JNC). Trippe told the board that Gov. Scott considers: professional reputation; temperament; geographics and type of practice; racial, ethnic and gender diversity; and judicial restraint. In response to questions, Trippe said that the governor looks to appoint JNC members who will treat judicial applicants with respect. When appointing judges, the governor values candidates with the character not to abuse their office and who will practice judicial restraint.

The chair of the Alternative Dispute Resolution Section reported on behalf of the Bar's newest section -- currently at 742 members -- and expressed concern about a recent Supreme Court-approved mediation rule that requires parties attending a mediation be empowered to fully settle a case. For more information on this rule and the section's concerns, please see the January 1 issue of The Florida Bar News.

The Trial Lawyers Section donated $75,000 from its reserves to The Florida Bar Foundation to maintain funding for an existing children's legal services attorney who otherwise would be laid off because of funding cuts.

The Board's Program Evaluation Committee Chair reported that the committee is continuing to study having a nonvoting representative of government lawyers on the board. He said the issue was discussed with the Council of Sections, which raised several new issues that are being vetted by the committee.

The Special Committee on Decline of Jury Trials submitted a report of its findings and recommendations. The mission of the committee was to research and analyze the trend of declining jury trials in both civil and criminal matters, in state and federal courts; determine the reasons for the decline and the impact that it has upon the justice system, the citizens of the state of Florida and Florida lawyers; report to the Board of Governors on any issues of concern; and, if appropriate, recommend action. The board will consider the report at its January 27 meeting.

Board Audit Committee Chair reported that the Bar received a clean audit with "no difficulties and no issues" for the 2010-11 fiscal year.

Bar President Scott Hawkins and Annual Convention Committee Co-Chair, and 11th Circuit board member, Juliet Roulhac announced that retired U.S. Supreme Court Justice Sandra Day O'Connor will attend the Bar's June Annual Convention and participate in a program on judicial campaigns and merit selection and retention on June 22, from 2-4 p.m., in Orlando. The program is being arranged by the Constitutional Judicial Committee.

Board Legislation Committee Co-Chair and Chief Legislative Consultant reported that the Legislature will concentrate on reapportionment in the upcoming session and although attempts to change the court system are not expected, the Bar will be vigilant in monitoring all filed bills. Weekly updates for Bar members outlining the progress of any bills that implicate The Florida Bar's legislative platform will be posted beginning Jan. 13 on the website at www.floridabar.org/2012legislativesession. They also praised Gov. Rick Scott for increasing general revenue support for the courts in his proposed budget and for not proposing any cuts for the courts despite proposing an overall $2 billion reduction in state spending.

President-elect Gwynne Young reported that during the Bar's annual strategic planning retreat in November, a recommendation was considered to add diversity as a fifth primary strategic goal for the Bar. The revised strategic plan will be reviewed by the board at its January meeting. The strategic plan is posted on the website.

Member Benefits Committee Chair requested board approval for four new services for the Bar's Member Benefits program. They are: Association Benefits International, which will help Bar members with their online marketing; US Legal's Formspass, which offers more than 7,000 legal forms – for both Florida and multi-state use; AtHomeNet, which offers website design, hosting, and maintenance services; and FTD Flowers Online which will provide discounts similar to the ABA's FTD program. The board approved the additions.

Bar President Scott Hawkins has sent several video messages to the membership to keep Bar members informed and engaged. The messages are sent by email and are posted with the texts on the President's Page on the website.

I look forward to continuing to report to you on Bar actions in writing and at our Bar luncheons.

Ongoing Thoughts from a Florida Bar Foundation Board Member

By Philip N. Kabler

One of the most impactful outcomes that grants from The Florida Bar Foundation can produce is the long-term pursuit of social justice in our communities. A high return-on-investment method for creating longitudinal outcomes (as well as many collateral benefits) is by involving Florida's young lawyers in pro bono public service. Towards that end, the Foundation has regularly funded Young Lawyers Division of the Florida Bar's "downstream" subgrants to local young lawyer organizations which, in turn, benefit their home communities.

In the Eighth Judicial Circuit (as well as parts of the Third and Fifth Circuits), a Foundation-to-YLD grant has been used to fund the Josiah T. Walls Bar Association YLD's *Restoration of Civil Rights Expansion Project: "Stepping Stone to Employment."* In Florida, certain business licenses are barred to people with felony convictions until their rights are restored. The *Stepping Stone to Employment* project has helped former convicts become productively employed by training local lawyers to conduct "Restoration of Civil Rights" empowerment workshops, by conducting those workshops, and then by assisting the participants on a one-on-one basis.

While "RCR" workshops and related activities were successfully conducted in the Alachua County area (through partnerships with the MLK Commission of Florida, Inc., the University of Florida Levin College of Law's Virgil Hawkins Civil Clinic, and Three Rivers Legal Services, Inc.), surrounding areas requested an expansion of the program to their rural communities. Through the use of $3,360 of Foundation funds, in 2011 two additional *Stepping Stone to Employment* empowerment workshops were conducted, training approximately 20 new volunteers to assist end-user participants.

Sadly I point out that due to a material reduction of IOTA revenues in the current economic environment, the Foundation's provision of grants for community-based programs like *Stepping Stone to Employment* have been suspended until the economy turns upwards. Hopefully, to benefit the children, adults, and families served by the Foundation's grantees, including the YLD and its subgrantees, this situation will improve sooner rather than later.

If you have questions about The Florida Bar Foundation's grant programs or the Foundation in general, please feel free to call me at (352) 332-4422. And to get the latest news about the Foundation and its grantees, please become a fan on Facebook by visiting www.facebook.com/TheFloridaBarFoundation.

Chief Judge Lott presents the "State of the Circuit" address to EJCBA members at the January luncheon

Public Defender Stacy Scott, Judge Nilon and Judge Groeb at the January 20 EJCBA lunch

FORUM 8

Eighth Judicial Circuit Bar Association, Inc.
Post Office Box 13924
Gainesville, FL 32604

February 2012 Calendar

1 EJCBA Board of Directors Meeting; Ayers Medical Plaza, 720 SW 2d Avenue, North Tower, Third Floor – Mid-Year Retreat 3-7 p.m.
2 CGAWL meeting, Manuel's Vintage Room, 5:45 p.m.
5 Deadline for submission of articles for March Forum 8
8 Probate Section Meeting, 4:30 p.m., 4th Floor, Family & Civil Courthouse
9 North Florida Area Real Estate Attorneys meeting, 5:30 p.m., TBA
10 EJCBA Luncheon, Lora Levett, Ph.D., "Psychology of Jury Selection: From Research to Practice", Jolie, 11:45 a.m.
15 CGAWL lunch/business meeting, Fat Tuscan, 11:45 a.m.
20 President's Day, Federal Courthouse closed
28 Family Law Section Meeting, 4:00 p.m., Chief Judge's Conference Room, Alachua County Family & Civil Justice Center

March 2012 Calendar

1 CGAWL meeting, Manuel's Vintage Room, 5:45 p.m.
5 Deadline for submission of articles for April Forum 8
7 EJCBA Board of Directors Meeting; Ayers Medical Plaza, 720 SW 2d Avenue, North Tower, Third Floor – 5:30 p.m.
8 North Florida Area Real Estate Attorneys meeting, 5:30 p.m., TBA
14 Probate Section Meeting, 4:30 p.m., 4th Floor, Family & Civil Courthouse
16 EJCBA Luncheon, Justice Barbara Pariente, Florida Supreme Court, Jolie, 11:45 a.m.
19 Senior Status Reception & Unveiling of Official Portrait of the Honorable Stephan P. Mickle, 4-7 p.m., UF President's House
21 CGAWL lunch/business meeting, Fat Tuscan, 11:45 a.m.
27 Family Law Section Meeting, 4:00 p.m., Chief Judge's Conference Room, Alachua County Family & Civil Justice Center

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