FORUM 8

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President's Message

By Nancy T. Baldwin

On August 28 at 3 p.m., bells rang out across the USA – church bells, city bells, hand bells. The bells were rung for one minute – 50 years from the Washington, DC speech when Dr. Martin Luther King challenged let freedom reign.

Freedom

The book Wayward Puritan states society always needs one or more to test the limits. Are there times and places where freedoms from and freedoms to have reached the limit without destroying our first amendment commitment to freedom?

At our conference at Jesus College Cambridge the names of Bradley Manning and Edward Snowden are mentioned in most if not all sessions. We are queried as to our labeling. Manning, US Military, has sworn allegiance to the USA. He provided more than 700, 000 war logs and diplomatic cables to Wikipedia. His leaks were the biggest leaks of classified data in the nation's history. The court stripped him of his rank, dishonorably discharged him and sentenced him to 35 years in prison. He betrayed his oath. Now he is alleging mental and physical problems. He stated, "when I made these decisions I believed I was going to help people, not hurt people."

Edward Snowden was a former National Security Agency contractor who leaked documents and information of the PRISM program. He was young with a 6 figure income living in Hawaii and disgruntled. He fled from the USA, spent days in an airport lounge and has been rescued by an aid from Wikipedia and given temporary asylum in Russia with little or no possibility of extradition.

The behaviors of these two young men are increasing the tension and possible disharmony between the presidents -Putin and Obama- and may have threatened world security. Some have termed these two patriots - agitators for our right to know. Others say they are well-paid facilitators of whistleblowing. Others have labeled their actions "treason" and them traitors.

Each man swore allegiance - loyalty to the USA. In our Florida bar oaths we too swore allegiance to the country. Does our freedom allow us to break that bond - that trust - when the action/actions can put many persons in potential physical harm and possible destruction? Many no longer trust attorneys and courts. We must regain that trust. As attorneys we have sworn loyalty to our country, we must honor that oath. The country depends on our allegiance. Let freedom reign!

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Contribute to Your Newsletter!

From The Editor

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

About This Newsletter

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

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

News, articles, announcements, advertisements and Letters to the Editor should be submitted to the **Editor** or **Executive Director** by Email, 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

Eighth Judicial Circuit Bar Association, Inc.

Mission Statement:

The mission of the Eighth Judicial Circuit Bar Association is to assist attorneys in the practice of law and in their service to the judicial system and to their clients and the community.

To renew/apply for membership, please send a check payable to EJCBA in one of the following amounts:

- $55 For lawyers with less than 5 years experience; lawyers with the State Attorney's Office, Public Defender's Office and Legal Aid with 10 years of experience or less; retired members of the Florida Bar pursuant to Florida Bar Rule 1-3.5.
- $75 For all other lawyers and members of the Judiciary
- 1 year free membership for members in their first year of practice (in any jurisdiction). Free membership does NOT include cost of lunches.
- *(YLD members can also include their yearly dues of $25 for YLD membership if, as of July 1, 2013, you are an attorney under age 36 or a new Florida Bar member licensed to practice law for five (5) years or less)

Please send your check, along with your completed application to:

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Voting Members: This category is open to any active member in good standing of the Florida Bar who resides or regularly practices law within the Eighth Judicial Circuit of Florida.

Non Voting members: This category of membership is open to any active or inactive member in good standing of the Bar of any state or country who resides within the Eighth Judicial Circuit of Florida, or to any member of the faculty of the University of Florida College of Law.

EJCBA Renewal/Application for Membership

Membership Year: 2013-2014

Check one: Renewal __ New Membership __

First Name: _____ MI:_____

Last Name:_____

Firm Name: _____

Title: _____

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Bar Number:_____

List two (2) Areas of Practice:

_____

_____

Number of years in practice: _____

Are you interested in working on an EJCBA

Committee? ___Yes ___No

Alternative Dispute Resolution

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By Chester B. Chance and Charles B. Carter

A strange title for an article, but the point of the title is to ask that you punctuate the title so it makes sense. Check the bottom of this article for the correct punctuation.

The other day your intrepid cub reporters were on Google looking up data using the search word "mediation." Several sites popped up with some interesting data on "meditation." We assumed some people conducting a Google search write "meditation" when they mean to write "mediation" and vice versa.

Some retired judge mediators will from time to time suggest the parties and the attorneys at mediation put their heads down on their table for 10 minutes and think good thoughts. That is a form of mediation meditation. But, Google's failure to distinguish the spelling of mediation versus meditation caused us to ponder the status of the misuse of legal terms.

First, cursive writing has been relegated to the trash heap along with cuneiform and hieroglyphics.

Second, punctuation, according to the book *Eats, Shoots and Leaves,* has gone to hell in a hand basket. The reference to *Eats, Shoots and Leaves*: it's a treatise from about ten years ago on punctuation. A writer was trying to describe the dietary habits of the panda, which "eats shoots and leaves." Instead, by inserting a comma, the author unintentionally described a post-meal gunfight. The author, Lynne Truss, notes:

> To those who care about punctuation, a sentence such as "thank God its Friday" (without the apostrophe) rouses feelings not only of despair but of violence....getting your itses mixed up is the greatest solecism in the world of punctuation. No matter that you have a Ph.D. and have read all of Henry James twice. If you still persist in writing, "good food at it's best," you deserve to be struck by lightning, hacked up on the spot and buried in an unmarked grave.

Your authors are more plebeian: we always wonder why Publix has signs that say "apple's $2.00/lb."

Spelling is kept from being at a kindergarten level only because of spell check.

Lawyer Test

With regard to punctuation and spelling, we should not cast judgement on the legal profession only. All professions suffer from an embarrasment of mispelled words. The consensus is that we all need to be more carefull. Rountine legal terms are often the occasion for incorrect spelling. The internet site *FindLaw* notes terms such as morgage, lible, forclosure and bankrupcy are often spelled incorrectly.

Often we even write routine dates on our calender despite conscienous efforts. We defanitely need to improve despite the crutch of spell-check. We need to be independant in our spelling ability. We should try and make a noticable improvement. It is a privelege to be a lawyer and we make our living with words. We should seperate ourselves from other professions in our comitment to language, punctuation and spelling. Ocasionaly, an incorrect word will appear in relevant documents. After all, we are over 10% into a new millinium.

A couple of things: first, we have intentionally misspelled numerous words in the two paragraphs below "Lawyer Test". The words misspelled represent not only the most common misspelled legal words, but also the most commonly misspelled words in general. Can you find the 17 misspelled words in these two paragraphs?

As for the title of this article: "That that is, is. That that is not, is not. Is that it? It is."

———————————————

I found 19 misspelled words! It was very difficult to publish those 2 paragraphs looking like that! – Ed.

Basic Water Law

Part II: Eastern versus Western Water Law

By Jennifer Burdick Springfield and Alexander Boswell-Ebersole

Two traditional water law systems, which originally only addressed surface water, correspond geographically with the western and eastern United States, roughly divided along the 100th meridian (which runs north-south through states like Texas, Nebraska, and the Dakotas). In the wetter east, the Riparian doctrine derived from English common law and in the west, the Prior Appropriation doctrine developed from the practices of miners and other settlers.

Under the **Riparian Doctrine**, also known as riparianism, one's water rights are dependent on land ownership. All owners of land abutting a defined watercourse—riparian land—have an equal right to use the water. Originally, this common law right was qualified by the "natural flow rule," whereby riparian landowners had a right to an unimpaired and uninterrupted flow of water adjacent their land. Thus, this rule required "upstream" landowners to use water such that the use did not impair or interrupt the natural flow of the watercourse "downstream." However, in recognition of the limitations this rule placed on growing industrial and other uses, a new rule of "reasonable use" replaced the natural flow rule.

"Reasonable use," a term not quantified except through adjudication in a particular case, is a relative term, and what is "reasonable" varies widely from state to state. Nevertheless, riparianism requires landowners who share a watercourse to use water in a way that correlates to other landowners' needs, including sharing the benefits in times of water abundance and the burdens during scarcity. Another way to view riparianism is essentially as a tort scheme that protects landowners from harm caused by other landowners. As a ususfructory right and not a property right, the right to use water under the Riparian doctrine requires that a landowner avoid unreasonable water detention or diversion.

Moreover, when established, a water right of a riparian landowner exists for an indefinite time period and non-use does not cause a landowner to lose their riparian water right. However, despite this general rule, courts have devised theories to enable them to find that a landowner has involuntarily relinquished a riparian water right; for example, "prescription," which is where another makes open use of the water for an "appropriate" period of time (similar to the real property doctrine of adverse possession). At the same time, the doctrine of riparianism has historically prohibited the voluntary transfer of a riparian water right for use by a non-riparian landowner, but this, too, has evolved to allow non-riparian uses that are "reasonable." The Riparian doctrine boils down to two main premises - riparian landownership and "reasonable use." The existence of a "reasonable use" depends on the reasonableness of the type, amount, and place of a particular use, which is often dependent on the economic, political, and/or geographic characteristics of the state, and can also change over time.

Considerably different from riparianism, the **Prior Appropriation Doctrine** developed out of traditional practices of settlers (especially miners) in the arid and vast West, where it was often necessary to transport water great distances. The Prior Appropriation doctrine requires no riparian landownership, but rather is based on the concept of "first in time, first in right." Just as it sounds, this concept gives priority to whoever is first, and thereby gives persons who have established their priority, first crack at an allotment of water during times of water shortage, i.e. before later appropriators.

More specifically, the elements of the Prior Appropriation doctrine establish priority for the first person who (1) intends to appropriate an un-appropriated natural watercourse, i.e. a body of water not yet claimed, (2) actually diverts water from the source by physically removing it, and (3) puts the water to beneficial use without waste. The rationale for the diversion requirement is that where labor and capital is invested to accomplish such use, the diverter deserves to have a superior right to that water. It also assured that the amount of a person's water right could be measured. In more modern times, this requirement is declining in importance and popularity because it does not allow for a broad enough range of uses and many western states now recognize a water right to "in-stream flow" for certain activities, such as recreation. Beneficial use is the counterpart to riparianism's "reasonable use" limitation and was previously available only for traditional industry uses, such as agriculture and mining, but now often includes other uses such as wildlife protection and recreation.

Unpaid Interns and the FLSA

By Paul Donnelly, Donnelly & Gross, P.A.

Using unpaid interns is a standard practice for many employers. Recently the Southern District of New York issued an opinion that may cause many employers to re-think their use of unpaid interns. In *Glatt v. Fox Searchlight Pictures, Inc.*, F. Supp. 2d, 2013 WL 2495140 (S.D.N.Y. June 11, 2013), the court found that the unpaid interns that worked for a production company on the film Black Swan were entitled to wages.

The court had to go through two steps to determine if the interns were entitled to wages. First, were the interns employees under the Fair Labor Standards Act (FLSA)? Second, if the interns were employees, did the interns fall under the trainee exception? Almost all interns will be considered employees under the FLSA, so the second step is usually dispositive.

For the second step the court relied on Department of Labor regulations promulgated in 2010 that identify a six-factor test under the FLSA to determine if a worker is a trainee or an employee. First, the training must be similar to that in a vocational school or educational instruction. Second, the training should be for the benefit of the trainees. Third, the trainees should not disrupt regular employees, but work under close supervision. Fourth, the employer that provides the training should derive no immediate advantage from the trainees. Fifth, trainees are not necessarily entitled to a job at the conclusion of the training period, and finally the employer and the trainees understand that the trainees are not entitled to wages for the time spent in training.

The Eleventh Circuit has also applied the Department of Labor's six-factor test for trainees in *Kaplan v. Code Blue Billing & Coding, Inc.*, 504 Fed. Appx. 831 (11th Cir. Jan 22, 2013), finding that unpaid interns who received academic credit for their work, were supervised closely, and did not displace regular employees fell under the trainee exception.

In the exceptionally litigious area of wage claims, it is best practice for an employer to have a consistent policy on unpaid internships that can be justified under the Department of Labor's guidelines.

Limitations On "Law Of The Case"

By Siegel, Hughes & Ross

Some may be under the impression that once the Court rules on an issue that ruling becomes the "law of the case" and is binding. Actually, the law of the case doctrine is more limited. The trial court has the inherent authority to reconsider and modify an interlocutory order at any time prior to entry of final judgment. *AC Holdings 2006, Inc. v. McCarty,* 985 So. 2d 1123, 1125 (Fla. 3rd DCA 2008); *Oliver v. Stone*, 940 So. 2d 526, 529 (Fla. 2nd DCA 2006). However, after entry of the final judgment, "[t]he trial court's authority to modify, amend, or vacate an order or final judgment after rendition of the final judgment is limited to the time and manner provided by rule or statute." *Francisco v. Victoria Marine Shipping, Inc.,* 486 So.2d 1386, 1388-89 (Fla. 3d DCA 1986).

The doctrine of the law of the case, like *res judicata*, is a doctrine of judicial estoppel and applies only after an issue has been decided by the appellate court. It applies in both the trial and appellate courts. "The doctrine of the law of the case is ... a principle of judicial estoppel." *Fla. Dep't of Transp. v. Juliano,* 801 So.2d 101, 102 (Fla. 2001). It applies when "successive appeals are taken in the same case." *Id.* It requires that questions of law actually decided on appeal must govern the case in the appellate court and in the lower tribunal in all subsequent stages of the proceeding. *Id.* Its purpose is "to lend stability to judicial decisions and the jurisprudence of the state, as well as to avoid 'piecemeal' appeals and to bring litigation to an end as expeditiously as possible." *Strazzulla v. Hendrick,* 177 So.2d 1, 3 (Fla.1965).

However, the doctrine is not absolute.

Continued on page 10

Florida Bar Board of Governors Report

By Carl Schwait

I want to thank you for allowing me to begin my fifth term as your representative to the Florida Bar Board of Governors. President Pettis has appointed me to serve for my third term as chair of the Board Review Committee on Professional Ethics, which oversees issues of ethics, professionalism and lawyer advertising. The members of the Board of Governors has elected me to now serve on its Executive Committee.

I am grateful for your confidence in my service on the Board. Please contact me with any comments or questions.

The Florida Bar Board of Governors met on July 26, 2013. Major actions of the board and reports received include:

In response to a notice of intent to file a petition to amend Rule 1-3.1 of the Rules Regulating The Florida Bar to specify that no one who has complied with requirements for Bar admission be disqualified from membership solely because he or she is not a U.S. citizen, the board voted to respond to the petition after its filing by indicating that the board supports the concept contained in the petition, but that the board believes that the amendment is more appropriately placed in the Rules of the Supreme Court Relating to Admissions to the Bar, and that the board recommends to the Supreme Court of Florida that it seek input from the Board of Bar Examiners on the issue. The notice of intent to file the petition was submitted as per Rule 1-12.1(f) and (g). The Florida Bar has not taken a position on the case of Jose Godinez-Samperio, an undocumented immigrant seeking to become a member of the Bar.

An ethics advisory opinion on cloud computing came before my committee and was approved. The opinion concludes that lawyers may use cloud computing if they take reasonable precautions to ensure that confidentiality of client information is maintained as well as other steps to ensure adequate security and access to the information and to back up the data.

On the recommendation of the board's Program Evaluation Committee (PEC), a new Senior Lawyers Committee was approved. The committee's mission will be to serve the interests and needs of the profession by fostering an interchange of ideas, sharing the accumulated knowledge and experience of its members and addressing issues that are of particular significance to senior lawyers. For information about joining the committee, please watch for a website announcement and an article in an upcoming issue of The Florida Bar News. In the current bar year, 2013-2014, the Program Evaluation Committee will consider: whether the PEC chair should be an automatic member of the Executive Committee; changing the name of the Legislation Committee to the Governmental Affairs Committee; variations in certification criteria for different areas of law and evaluating a new anti-trust and trade regulation certification; evaluating the Bar's Law Office Management Assistance Service (LOMAS); conducting the mandatory three-year review of the Alternative Dispute Resolution Section; and whether there should be an additional charge beyond the initial $150 fee when an ad submitted for Bar review is subsequently revised and must be re-reviewed.

Based on a recommendation of the Citizens Forum and the Communications Committee, the board approved that upon receipt of an order of suspension or disbarment by the Florida Supreme Court that The Florida Bar change the status posted on the member's website profile to: Member in Good Standing/Suspension or Disbarment Pending and that a link be placed to the court order. This change would provide consumers with a notice during the 30-day period between the court order and the effective date of the suspension or disbarment.

To learn more about members' needs for technology education and information, the board approved including questions on the upcoming Bar membership survey on use of technology and also approved conducting a separate electronic member survey on technology use in law practices. In addition, the board approved posting a weekly technology tip on the website homepage, a pilot project by the Leadership Academy to use Facebook and LinkedIn and a Facebook page and Twitter feed for The Florida Bar President.

Criminal Law

By William Cervone

Hi ho, hi ho, it's off to *Daubert* we go.

As the Seven Dwarfs merrily marched off to work, so do we now merrily march to the beat of the *Daubert* rather than the *Frye* drum of expert testimony. Actually, given that the legislative action over this was among the more persistent, acrimonious and contentious debates that I've seen in recent years in Tallahassee, merrily might not be quite the right word. But nonetheless and as I assume everyone knows, Florida made the move from decades of reliance on *Frye* to the *Daubert* standard effective July 1st thanks to the work of the legislature this past spring.

Some global legal stuff first, although I assume that everyone is at least passingly familiar with and understands this. *Frye*, which Florida had followed since 1923, allowed for the admission of expert testimony if the subject matter was generally accepted within the relevant scientific community. *Daubert*, which became the federal standard in 1993 and which is followed by about half of the states, balances several factors, one of which is general acceptance, to be used to decide if the opinion is the product of reliable principles and methods. Now here's the rub: tucked neatly away in *Frye* was an exception for "pure opinion," meaning that an expert could testify about his own opinion based on personal experience and training alone, regardless of general acceptance. Under *Daubert*, this would be disallowed as mere *ipse dixit* (literally, he himself said it) opinion with no support anywhere. No peer reviewed reliable testing or methodology, in other words, equals not much chance of admission.

And from this difference flowed much angst in Tallahassee about switching standards. This debate raged for literally years as proponents of *Daubert* decried *Frye* as too loose a standard, one which allowed no end of junk science or rank opinion with no basis behind it. True Believers in the *Frye* camp, in turn, saw the sky falling with an unnecessary change causing upheaval in all that we have followed and practiced for decades. Fascinating theories as to who was pushing the change and why abounded. Among them were that business interests, meaning in general civil defendants, had the deep pockets to fight protracted and expensive litigation with real experts under *Daubert* and that poor plaintiffs would be literally spent into submission. Or that civil plaintiffs were bleeding the system dry with all manner of unwarranted and unsubstantiated false expert opinions designed to do nothing but force settlements that would eventually bankrupt the country.

In the end, *Daubert* proponents won and the change was passed, but not without some amazing legislative sleight of hand. Without more detail than space permits, and as I witnessed it happen myself, *Daubert* was defeated in committee, and essentially dead, as it had been for several years running. The people had spoken through their elected legislators. Leadership, however (and I am surmising this as it will never be admitted) issued orders that *Daubert* would pass regardless or else nothing else would. Nothing gets the attention of legislators like a threat to kill their pet bill or take away their window office or covered parking spot. In any event, by hook or by crook, *Daubert* magically re-appeared, quickly and quietly passed, and became law with the signature of the Governor. Deus Ex Machina!!!

And so what does all of this mean? Apparently nothing. Sound and fury signifying nothing. I say this because as I write I have heard not one word bearing out the voices of doom that predicted expensive and long pre-trial proceedings testing admissibility under *Daubert*. Not a whisper. Of course, not much time has passed and no doubt there will be such hearings, but there were hearings on admissibility of expert testimony under *Frye* too. I heard complaints that judges would now have to decide on scientific issues, a burden that they were ill equipped to do. But one way or the other they've always had to be the gatekeeper of evidence - it's what we pay them to do. Might they get it wrong? Of course. Like they might not have under *Frye*? That's why we pay appellate judges anyhow. Perhaps most importantly, there exists a large body of case law in the federal system and from other states that already accepts or rejects various things under *Daubert*. Fingerprint, DNA, and ballistics evidence is still coming in. Polygraph and child abuse syndrome evidence still isn't.

All of this is a grossly over-simplified version. Suffice it to say that I once was a staunch *Frye*-ist. Now I don't think I really care. The sun, after all, has continued to come up.

Classified Ads

Law Office sharing-in the Meridien Centre, 2750 Northwest 43rd Street; for further information contact Scott Krueger at 376-3090, or email: Scott@SDKrueger.com.

The North Central Florida Chapter of the Federal Bar Association Receives the 2013 Chapter Activity Presidential Citation for "A Toast to Judge Hodges"

By: Jamie Lynn Shideler, Chapter Secretary and Stephanie M. Marchman, Chapter Membership Chair

The Honorable Wm. Terrell Hodges, United States District Judge in and for the Middle District of Florida, celebrated 40 years on the bench in 2011. The North Central Florida Chapter of the Federal Bar Association ("Chapter") celebrated this milestone by hosting a reception and program entitled "A Toast to Judge Hodges" on November 2, 2012.

"A Toast to Judge Hodges" honored the Honorable Wm. Terrell Hodges' 40 years (and counting) of federal judicial service. Approximately 185 guests attended the program, including members of the federal judiciary from the Middle and Northern Districts of Florida; Chapter members; members of the Tampa, Orlando, Jacksonville, and Tallahassee Chapters; members of the local bar associations in Marion County and the Eighth Judicial Circuit; faculty and student representatives from UF Law; and Judge Hodges' family, current and former law clerks, and courthouse staff. The three-hour event was hosted at the Historic Thomas Center in downtown Gainesville. During the reception portion of the event, guests were invited to mix and mingle, taste wines and complimentary food pairings at four different stations, and "vote" on the station that they believed Judge Hodges would like best by placing their raffle tickets (sold by UF law students) in the bowl at that station. After mixing and mingling, Judge Hodges was "roasted and toasted" by his colleagues, including the Honorable Gerald Bard Tjoflat, Circuit Judge for the United States Court of Appeals and longtime friend of Judge Hodges; longtime federal practitioners who frequently appeared before Judge Hodges; and former law clerks. It was evident that Judge Hodges was moved by all of the stories and kind words shared during the course of the evening. In addition, through sponsorship and the raffle, the Chapter was able to fully cover the cost of the event and raise additional revenues for the Chapter to host future events.

As a result of the Chapter's efforts, it was selected by the National Federal Bar Association as a recipient of the 2013 Chapter Activity Presidential Citation. The Chapter President-Elect, Ronald Kozlowski, and the Membership Chair, Stephanie Marchman, will attend the Federal Bar Association's Annual Meeting and Convention on Saturday, September 28, 2013 in San Juan, Puerto Rico to receive the award on behalf of the Chapter.

The Honorable Wm. Terrell Hodges, United States District Judge in and for the Middle District of Florida, right, enjoys a good natured roasting from his friend, the Honorable Gerald Bard Tjoflat, Circuit Judge for the United States Court of Appeals, 11th Circuit

Law of the Case

Continued from page 6

"Under the law of the case doctrine, a trial court is bound to follow prior rulings of the appellate court as long as the facts on which such decisions are based continue to be the facts of the case." *Id.; Tiede v. Satterfield,* 870 So.2d 225 (Fla. 2nd DCA 2004). Under *Strazzulla* the appellate court has the authority to reconsider a prior decision although that authority should seldom be used even though the prior ruling may appear to be erroneous. *Strazzulla*, 177 So.2d at 3.

"We think it should be made clear, however, that an appellate court should reconsider a point of law previously decided on a former appeal only as a matter of grace, and not as a matter of right; and that an exception to the general rule binding the parties to 'the law of the case' at the retrial and at all subsequent proceedings should not be made except in unusual circumstances and for the most cogent reasons-and always, of course, only where 'manifest injustice' will result from a strict and rigid adherence to the rule. But the exception to the rule should never be allowed when it would amount to nothing more than a second appeal on a question determined on the first appeal." *Id.* at 4.

Appellate courts have decided to change the law of the case in certain circumstances. These include:

When the original decision was made in a "cursory manner" and a subsequent Supreme Court decision had changed the applicable law. *Tiede v. Satterfield,* 870 So.2d 225 (Fla. 2nd DCA 2004);

There has been a change in the evidence presented such that the facts are "arguably" different. *Metropolitan Dade County v. Martino*, 710 So.2d 20 (Fla. 3rd DCA 1998);

An intervening decision of a higher court would have required a different outcome. *R.J. Reynolds Tobacco Co. v. Townsend*, 2013 WL 2631879 (Fla. 1st DCA 2013).

However, even when there has been an intervening decision which changes the law, the appellate court still has the authority to decline to change the law of the case. *Department of Health and Rehabilitative Services v. Shatto*, 538 So.2d 938 (Fla. 1st DCA 1989)

Even if the law has changed since the original ruling, the law of the case should be followed unless it results in "manifest injustice." *Allstate Ins. Co. v. Perez*, 817 So.2d 945 (Fla. 3rd DCA 2002).

David Guest, Esq. of Earthjustice, speaks at the September 20 EJCBA luncheon

Chief Judge Roundtree swears in Nancy Baldwin as the 2013-14 EJCBA President

RESERVE NOW FOR THE ANNUAL EJCBA JIMMY C. ADKINS CEDAR KEY DINNER

WHEN: **Thursday, November 7, 2013 beginning at 6:00 p.m.**

WHERE: Steamers: 420 Dock Street, Cedar Key, Florida

COST: $40.00*

DEADLINE: Please register on or before **Thursday, October 31, 2013**

REMIT TO: EIGHTH JUDICIAL CIRCUIT BAR ASSOCIATION, INC.
P .O. Box 13924
Gainesville, FL 32604

*$45.00 at the door for attendees not having made prior reservations. If you are reserving at the last minute, or need to change your reservation, please contact Judy via fax at **(866) 436-5944**, email execdir@8jcba.org or call **(352) 380-0333.**

NAME(s): _____ Buffet or Vegetarian Meal

_____ Buffet or Vegetarian Meal

_____ Buffet or Vegetarian Meal

PAID: Dinner: _____ Dues: _____ TOTAL: _____

The Fund®

Cocktail hour sponsored by Attorneys' Title Fund Services, LLC
Many thanks for its continued generosity

NOTE: Attendance is limited to current members of the EJCBA and attorneys who are members' guests, but only if the guest attorney(s) would not otherwise be eligible for membership in the EJCBA. Visit http://www.8jcba.org/join.aspx for dues information and **include your current dues, if not yet paid.**

General Practice Solo and Small Firm Section board members Frank Maloney, Gene Shuey, Erny Sellers and Hearing Officer Jennifer Kuyrkendall join EJCBA board member Rob Birrenkott on 9/25 to speak to a classroom of law students at UF promoting bar activities, the EJCBA and the local YLD

FORUM 8

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

October 2013 Calendar

2 EJCBA Board of Directors Meeting – 5:30 p.m.
4 Deadline for submission to November Forum 8
5 UF Football v. Arkansas
9 Probate Section Meeting, 4:30 p.m., 4th Floor, Family & Civil Courthouse
12 UF Football at LSU (Baton Rouge, LA)
14 Columbus Day Holiday – Federal Courthouse closed
15 Family Law Section Meeting, 4:00 p.m., Chief Judge's Conference Room, Alachua County Family & Civil Justice Center
18 EJCBA Luncheon, Marion Radson – 2013 Professionalism Award Winner, Cellar 12, 11:45 a.m.
19 UF Football at Missouri (Columbia, MO)

November 2013 Calendar

2 UF Football v. Georgia at Jacksonville – 3:30 p.m.
5 Deadline for submission to December Forum 8
6 EJCBA Board of Directors Meeting – 5:30 p.m.
7 James C. Adkins Annual Cedar Key Dinner at Steamers, Cedar Key – 6:00 p.m.
9 UF Football v. Vanderbilt (Homecoming) – TBA
11 Veteran's Day – County and Federal Courthouses closed
13 Probate Section Meeting, 4:30 p.m., 4th Floor, Family & Civil Courthouse
15 EJCBA Luncheon, UF Volleyball Coach Mary Wise, "Believing in the Next Generation of Girls," Cellar 12, 11:45 a.m.
16 UF Football at South Carolina, Columbia – TBA
19 Family Law Section Meeting, 4:00 p.m., Chief Judge's Conference Room, Alachua County Family & Civil Justice Center
23 UF Football v. Georgia Southern – TBA
28 THANKSGIVING DAY – County and Federal Courthouses closed
29 Friday after Thanksgiving – County Courthouses closed
30 UF Football v. FSU - TBA

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.