

# FORUM 8

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Eighth Judicial Circuit Bar Association, Inc.

November 2013

## President's Message



### Malama

by Nancy T. Baldwin

Malama is the Hawaiian word for care. It is said that the capacity to care is the quality which gives life its deepest significance. We tend to underestimate the power of a smile, a kind word, a touch, an honest compliment, a held door, a formal name, a demonstration of respect and concern – actions/demonstrations of civility. Bruce Jacobs, Dean Emeritus of the Stetson University Law School, told a touching story of civility at the UF 50<sup>th</sup> anniversary of *Gideon v Wainwright*. He was 26 years old, a new member of a Florida law firm, and state-appointed to represent Cochran, the Superintendent of the Florida prisons. The case was later titled *Gideon v Wainwright* before the United States Supreme Court. The attorney for Mr. Gideon was Abe Fortas, a very well known and highly respected Washington attorney who later became a US Supreme Court Justice. Mr. Fortas invited his adversary, Mr. Jacobs, and his wife Ann to dinner at his Washington home on the evening preceding the Supreme Court hearing.

Civility in the workplace and in the community is a concern. It is vital to our cohesive existence. Lack of it breeds retaliatory behavior, reactionary posturing, shutting down of necessary functions of the government. Civility is a demonstration of our caring, our concern, our respect. Our various levels and divisions of government require our civility to carry out our bar oaths and our allegiance to the

state and national Constitutions. Disregard for civility is grounds for cold wars, an atmosphere of terror and fear, Hatfield and McCoy and eye for an eye mentality, and the questionable non-cooperative behavior of our nation's leaders. Psychologists say that we are becoming, or have become, an estranged society – our significant relationships are with our computers, our cellphones, our accounts on Facebook and My Space. A walk down a main street in Gainesville, Cincinnati, or New York City confirms our separateness, our lack of acknowledgement of another person – but the other person often does not even recognize that he/she is being ignored, because he/she never looks up or out at the passing being... often a passing of individuals - loud talking, un-private men/women. An infrequent question of "How are you?" does not seek or welcome a response.

In 1969 Claude Steiner wrote a short story about attitudes – the often translated story of the warm fuzzies and the cold pricklies became a lesson for school children around the world and a parable of civility for families and communities. In the story initially people were happy -warm fuzzies were free and freely given until it was rumored that the supply of warm fuzzies would run out –so they were to be rationed and no longer freely given. Cold pricklies were substituted and happiness diminished until the rumor was questioned and people again showed they cared – warm fuzzies were once again freely given.

Civility, or the lack of it, has been a concern for many years. When he was less than 16 years

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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 5<sup>th</sup> of the preceding month and can be made by email to [dvallejos-nichols@avera.com](mailto: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

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\_\_\_\_\_

Number of years in practice: \_\_\_\_\_

Are you interested in working on an EJCBA

Committee?  Yes  No

# Alternative Dispute Resolution

## Make Love, Not Gas

By Chester B. Chance and Charles B. Carter



The European Union (EU) has proposed new rules for its member countries designed to limit the damage to the environment on a battlefield due to emissions from military vehicles. The United Kingdom (UK) is opposed to the tough, new EU-wide target to limit carbon emissions from military vehicles and that opposition itself

has provoked protests from environmentalists. The European Union supports the limitation on emissions from tanks, armored personnel carriers, etc. The UK government officials suggest the standards would compromise the fighting effectiveness of their military vehicles and suggest protecting British troops should take priority over complying with the regulations. Liam Fox, former defense secretary, fears the EU rules could prevent soldiers from being able to share fuel with American allies.

Your intrepid reporters have received permission to print the transcript of a recent mediation involving this issue.

Mediator: We wish to thank the representative of The European Union and the representative of Her Majesty's Department of Defense for attending this mediation. Who would like to begin?

EU Rep: I would like to begin. The EU has proposed several new emission standards, which include vehicles of every type such as buses, sedans and trucks, and we see no reason why this should not apply to military vehicles.

Govt. Rep: I wish to remind everyone that you are trying to regulate the emission gases from the rear of a tank when the front end of that tank delivers depleted uranium shells.

EU Rep: Under the new regulations we do not believe you will be able to manufacture an acceptable Challenger tank given its fuel consumption and emission gases. That tank has a 1200 horsepower

engine and uses 1 gallon per mile. That is why we have proposed alternatives.

Govt. Rep: Sir, this is a time of ongoing terrorist activity. I quote the great British philosopher John Cleese who notes in reaction to terrorist threats and international events the British have raised their security level from "Miffed" to "Peeved." Mr. Cleese notes security levels may be raised yet again to "irritated" or even "a bit cross." From an historical prospective Mr. Cleese observes



the Brits have not been "a bit cross" since the Blitz in 1940 when tea supplies ran out. Terrorists have been re-categorized from "tiresome" to "a bloody nuisance" and Mr. Cleese says the last time the British issued a "bloody nuisance" warning level was in 1588 when threatened by the Spanish Armada.

What alternatives do you have to a 62 ton Challenger tank?

EU Rep: We propose bicycles.

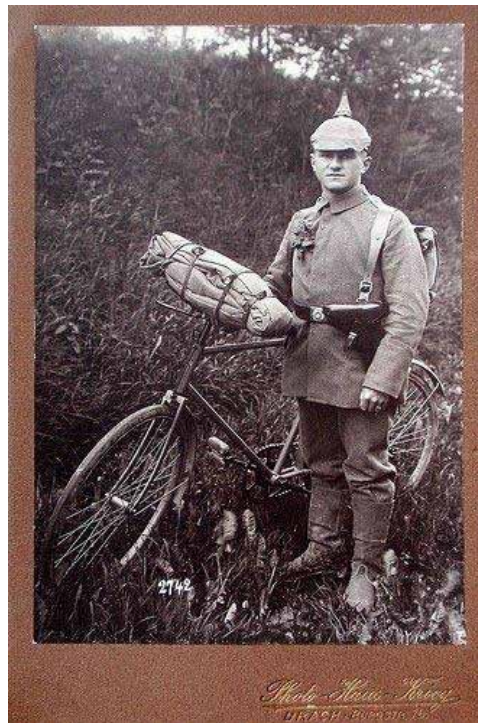
Govt. Rep: Are you out of your mind? This is the 21st century! No modern army would or could transport themselves into battle along with their equipment on bicycles.

EU Rep: The Japanese army invaded Singapore in 1942 and used bicycles quite effectively. We remind you the British lost that campaign and it was due in no

small part to the Japanese use of bicycles which provided good exercise for the troops as well as being environmentally safe.

Govt. Rep: And I would remind you that those Japanese are now driving Z cars. Besides, how would we get our troops into battle on bicycles?

EU Rep: The new regulations also call for the narrowing of all major highways including the Autobahn. The Autobahn, for example, will now be one lane in each direction and the remaining lanes



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# Basic Water Law

## Part III: Florida's Water Law Innovations



By Jennifer Burdick Springfield and Alexander Boswell-Ebersole

Like the other eastern states, Florida traditionally followed the Riparian Doctrine. Early attempts to address water management in Florida were mainly focused on surface water drainage, since Florida was wet and water was often seen as a

nuisance. However, a variety of problems began to emerge due to both the success of the surface water drainage projects and other factors like drought. After several years of activity at the state level to try to address developing water-related problems, the Legislature enacted the Florida Water Resource Act in 1972. It was largely based on a model water code (published in 1972 as [A Model Water Code](#)) developed by scholars at the University of Florida College of Law.<sup>1</sup> The Act substantially replaced Florida's common law system of water regulation and the basic structure and policy of the Act remain intact today.

The Water Resource Act created a progressive water law system in a variety of ways. One of the most significant innovations is the Act's creation of five water management districts with jurisdictions that correspond to the boundaries of the state's five main watershed basins, rather than to traditional political boundaries. This has allowed the water management districts to largely dodge problems that arise in regulating a resource that crosses traditional political boundaries and address water issues that affect the basins in their entirety. The innovations of the Act don't stop there, though.

Departing from the traditionally distinct treatment of surface water and ground water, the Act comprehensively regulates both surface and ground water by defining *water* broadly to include both types (and even includes water in the atmosphere). The Act also incorporates environmental protection, water resource planning, and the integration of water quality and quantity into the water management districts' responsibilities.

For example, the Act's consumptive use permitting (CUP) program requirements, which are implemented by the water management districts, illustrate the incorporation of these facets of water management, as well as some of the progressiveness

of the Act. When a water use comes within a certain threshold amount or type of water use, a CUP must first be obtained. In order to obtain a permit, the applicant must demonstrate compliance with three basic criteria. The proposed use must (1) be a reasonable-beneficial use of water, (2) not interfere with any existing legal use of water, and (3) be consistent with the public interest. The first criterion combines the Riparian Doctrine's "reasonable use" requirement with the Prior Appropriation Doctrine's "beneficial use" requirement. The second criterion pays homage to the "first in time, first in right" principle of the Prior Appropriation Doctrine.

The Florida Department of Environmental Protection's Office of Water Policy and all five of the state's water management districts are currently in the process of revising their CUP rules to achieve as much uniformity as possible across district boundaries in how water uses are regulated in Florida. For more information regarding this effort, visit <http://www.dep.state.fl.us/water/waterpolicy/cupcon.htm>.

- 1 A Model Water Code, Frank E. Maloney, Ausness, Richard C., Morris, J. Scott, University of Florida Press 1972.



EJCBA President-Elect Ray Brady, 2013 Professionalism Award winner Marion Radson, EJCBA President Nancy Baldwin, and EJCBA Past President Dawn Vallejos-Nichols at the October bar luncheon

## Supreme Court Cracks Down on Retaliation



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

Old discrimination claims never die; they just get reborn as retaliation claims. In the last year, the Supreme Court handed down a decision that will affect the way that Title VII retaliation claims are handled and could make it significantly more difficult for plaintiffs to prove causation in

a retaliation claim.

In *Univ. of Tex. SW Med. Center v. Nassar*, 133 S.Ct. 2517 (June 24, 2013) a physician brought a Title VII claim against a state university alleging he was constructively discharged due to racial and religious harassment, and that the university retaliated against him for complaining against the harassment.

The district court applied the mixed motive standard so that Nassar did not have to prove that retaliation was the employer's only motive, but that his employer acted, at least in part, by a desire to retaliate. *Id.* at 2524. This standard is in accord with the standard for discrimination in Title VII suits that any discrimination shown to play a role in a contested employment decision may be the subject of liability. This lower standard for causation was authorized by Congress in 1991. *Id.* at 2526.

The Supreme Court held that Title VII retaliation claims must be proved according to the traditional tort principles of but-for causation, not the more relaxed standards of "mixed motive" causation allowed in Title VII discrimination claims. The Court reasoned that retaliation is under a different statutory provision than discrimination, and as Congress did not amend the language for retaliation at the same time, retaliation claims could not use the lowered causation standard available for status-based discrimination claims. *Id.* at 2532-33.

While it wasn't necessary for the legal reasoning, the Court noted that retaliation claims under Title VII had doubled in the last fifteen years, from 16,000 claims per year in 1997 to 31,000 claims per year in 2012. *Id.* at 2531. The Court noted that "[i]t would be inconsistent with the structure and operation of Title VII to so raise the costs, both financial and reputational, on an employer whose actions were not in fact the result of any discriminatory or retaliatory intent."

## Three Rivers Legal Services Seeks New Executive Director

By Marcia Green

Three Rivers Legal Services, Inc. [TRLS] is seeking a new executive director to begin in early 2014. Long time executive director, Allison Thompson, is retiring after 17 years with the program. The Executive Director is charged with leading Three Rivers, a local non-profit dedicated to providing quality civil legal assistance to vulnerable individuals and families in 17 rural and urban counties in north Florida. The program, with offices in Gainesville, Lake City and Jacksonville, stretches from the Gulf of Mexico to the Atlantic Coast. The administrative office is in Gainesville.

The new Executive Director will lead TRLS in strategic planning to maximize efforts for progressive development in new areas of representation and expanding services for the poor in our delivery areas. The Executive Director must possess vision and a passion for serving and advocating for the poor.

Founded in 1978, Three Rivers is committed to equal access to justice, encouraging self sufficiency and empowering the lives of low income and disadvantaged families. Within the three offices, 24 advocates and 14 support staff serve an estimated poverty population of 305,000 individuals. TRLS handles cases involving shelter, income, and safety; the top areas of practice are housing/foreclosure, family, consumer/collection defense, public benefits, education rights and employment law.

Although the major funding source for TRLS is the Legal Services Corporation, funding is also received from the Florida Bar Foundation, Violence against Women Act, Victims of Crime Act, Title III, Internal Revenue Service, local city and county contracts and fees, and private foundations. Recently, TRLS began receiving funding from the State of Florida foreclosure settlement fund. With a projected revenue for 2013 of \$2.8 million, TRLS is financially sound with sufficient reserves to weather fluctuating revenues for the near term. More information and specific qualifications can be found at [www.trls.org](http://www.trls.org). Applications for the position will be accepted until it is filled. In order to receive full consideration, however, candidates are urged to submit their materials before November 15, 2013. Applications should include a cover letter

Continued on page 11

# Probate Section Report



By Larry E. Ciesla

The Probate Section continues to meet on the second Wednesday of every month beginning at 4:30 p.m. Due to construction in the civil courthouse, the location of our meetings has changed. We are now meeting in the third floor conference room in the criminal courthouse (220 South Main Street).

There is ample free parking in a parking lot on the south side of the courthouse. There is a side entrance to the courthouse available to lawyers, which is the equivalent of the rear basement door in the civil courthouse. The side entrance is directly across from the free parking lot.

After going through security, there is a door leading into the courthouse lobby. Take an elevator to the third floor and go down the hallway until you reach a locked door and a security desk. If a security guard is present, he or she will unlock the door. Otherwise, there is a phone, and you can call someone to unlock the door (my recollection is that you dial 2204). Continue down the hall a short distance to the conference room on the left.

The Probate Section welcomes Jamie Shideler, a UF law graduate who is the new staff attorney for probate and guardianship cases in Baker, Union and Bradford counties. Jamie previously clerked for the federal court in Ocala, was a clerk for Larry Turner, and was a paralegal for several years prior to attending law school.

Following, in no particular order, are some topics discussed at recent meetings.

A question was raised as to whether there is a procedure available to have someone's driver's license involuntarily removed, as in the case of a parent or other senior who presents a danger to the public and should not be driving. The answer is yes. The procedure is outlined in Section 322.126, Florida Statutes. The state has promulgated a form, known as HSMV Form 72190, to initiate the process.

Ideally, the elder's doctor would sign the form certifying the person should not be driving. If the doctor won't sign, any person with knowledge may sign. DMV will follow up with a letter to the driver advising that the driver's license will be revoked unless the driver can prove the ability to drive, either by taking the driving test or otherwise providing satisfactory proof via doctor's evidence.

Florida's new Land Trust Law was discussed. The new go-to statute for Land Trusts is Section 689.073, Florida Statutes. The new law has been enacted partially to clarify the distinction between a Florida Land Trust and taking title as a trustee under a garden-variety revocable living trust, and partially to address potential conflicts between Ch. 736, Florida Statutes, the Florida Trust Code, and the Florida Land Trust Law, created pursuant to the opinion in the case of *Brigham v. Brigham*, 11 So.3d 374 (Fla. 3d DCA 2009), *rev. denied* 34 So.3d 1 (Fla. 2010), dealing with the extent of the fiduciary duties of a trustee owner of real property.

Practitioners should review new 689.073, Florida Statutes; amended 689.071, Florida Statutes (the old Florida Land Trust statute); the *Brigham* opinion; and the discussion of the new law contained in the August 2013 issue of The Fund Concept Newsletter. Richard White indicated that many practitioners have started adding the following wording in the grantee clause in deeds conveying title to trustees of revocable living trusts, after setting forth the standard language describing the trust by name: "A revocable trust as described in Chapter 736, Florida Statutes, and not a Florida Land Trust under Chapter 689, Florida Statutes."

Kris Lier, who works with Richard White, led a discussion regarding the use of the decanting provisions contained in Section 736.04117, Florida Statutes. In the case discussed, there was an irrevocable trust that owned a home occupied by a beneficiary but which did not contain sufficient language for the beneficiary to obtain a homestead tax exemption. Kris and Richard created a new trust with the same terms, adding homestead tax language. The trustee then transferred all of the assets from the old trust to the new trust. No court involvement was required.

A discussion was also held regarding clients who indicate an intention to name two or more personal representatives or trustees. The consensus among the group was to try to talk the clients out of this intention, as it typically leads to problems down the road, usually due to the co-fiduciaries' inability to effectively communicate with each other and/or the inability to agree on a single course of action. The same goes for clients who wish to leave real property to multiple heirs as tenants-in-common.

If you are interested in being added to the email list to receive notice of future section meetings, please send me an e-mail at [lciesla@larryciesla-law.com](mailto:lciesla@larryciesla-law.com).

# Criminal Law



*By William Cervone*

At last the Florida Supreme Court has resolved one of the burning questions of law that has given me sleepless nights for decades. Well, maybe not sleepless nights but at least some occasional confusion. Or annoyance. And perhaps most importantly they have given me

a topic for this month that is actually on point with a criminal law column in a lawyer's newsletter: thieves and sub-sets of thieves.

Our story, involving one Melvin Williams of Hillsborough County, begins in 2008. Melvin broke into a home one evening in August of that year. Not being a novice at criminal behavior, he surprisingly made the mistake of leaving his fingerprints at the point of entry. Once inside, he stole a video game system and some games as well as a digital camera and some DVDs. Perhaps not being entertained by them, the next afternoon he pawned the game system and games, again thoughtfully leaving behind his thumbprint on the pawn papers. Armed with the clue of those fingerprints, law enforcement arrested Melvin and he was tried and convicted for Burglary, Grand Theft and Dealing In Stolen Property.

And now for the legal part. Melvin (or more likely his lawyer as one can probably assume that Melvin was and remains clueless about the following nuances) took exception to his convictions for both Grand Theft and Dealing In Stolen Property. The trial judge didn't have any such qualms and, following what is the long standing and general practice in Florida, simply merged those two offenses into one to avoid a double jeopardy issue. The problem, however, is an annoying statute, FS 812.025, that says that while the State can properly charge both of those crimes, the jury can only convict for one or the other. [Civil practitioners: prosecutors do this to get two shots at a conviction, especially a Dealing conviction because it's more serious than just Theft. But you probably suspected that was so.] More to the point, the trial judge refused to tell the jury about that statute because there was no standard jury instruction addressing it, only cases that are somewhat arcane and confusing if not contradictory and the practice of fixing the problem if a jury convicts of both by merging them

for sentencing. That, thanks to Melvin and his enterprising attorney, is no longer the case.

To rectify what had happened to Melvin, a 15 year sentence for the Dealing count, the Supreme Court noted that the linchpin of FS 812.025 is "the defendant's intended use of the stolen property." In other words, one may be a mere thief, intending to use one's ill gotten goods for oneself, or one may be more enterprising and intend to fence them, perhaps for some more useful or gratifying item such as drugs. Melvin appears to have been both as it can be assumed from him having only pawned the video games and system and not the camera and DVDs that he did want to keep the latter items, but no matter. The Supreme Court further decided that the statute means what it says, that a jury cannot convict of both crimes, and that Melvin's lawyer was absolutely right in asking that the jury be told all about that. While the original trial judge had specifically found that the defense's proposed instruction was "woefully inadequate," despite coming largely from case law, that there was "no way" a jury could deal with the question of what kind of thief Melvin was without being confused, and that there was also "no way humanly possible" for the court to craft an adequate instruction, the Supreme Court had no such hesitation and, immediately after reversing Melvin's Dealing conviction, issued on its own motion an interim instruction on fencing that nicely if verbosely tells juries all about FS 812.025 and its requirements.

So ends what really has been decades of confusion about how to deal with this not uncommon problem, and so begins a new era in which we will distinguish between common, garden variety thieves and their more entrepreneurial brethren. For those who need it, Melvin's story is currently cited at 38 FLW S605, and the new instruction is at 38 FLW S609, both released on August 29<sup>th</sup>.

A postscript: I suspect that none of this really matters to Melvin. His 15 years for the now reversed Dealing conviction was imposed concurrently with 15 years for his Burglary conviction, he got 5 more years consecutive for another charge, and both the Burglary sentence and the additional 5 year sentence stand. If Melvin is a man of principal, which the facts would not seem to support, he can bask in his appellate win until his scheduled release date of August 24, 2026.



# The North Central Florida Chapter of the Federal Bar Association Honors North Central Florida's Newest Federal Judges

By: *Dustin Mauser-Claassen and Marla Spector, UF Law Student Representatives*

On September 16, 2013, the North Central Florida Chapter of the Federal Bar Association ("FBA") successfully hosted their annual meeting and a reception honoring the newest members of the federal bench. The reception was held at the historic Hippodrome Theatre in downtown Gainesville. Taking part in the festivities were over 100 attendees, including distinguished federal and state court judges, local practitioners, and students from the University of Florida Levin College of Law.

The reception celebrated the region's newly appointed federal judges. UF Law's Dean Robert Jerry kicked off the event by thanking the FBA for its efforts to engage the law school in federal practice. Next, President-Elect, Ron Kozlowski, announced the honorees which included: Mark E. Walker, United States District Judge, Northern District of Florida; Karen K. Specie, Chief United States Bankruptcy Judge, Northern District of Florida; Gary R. Jones, United States Magistrate Judge, Northern District of Florida, Gainesville Division; and Philip R. Lammens, United States Magistrate Judge, Middle District of Florida, Ocala Division. The region is truly fortunate to have such accomplished and well-respected individuals serving on the bench.

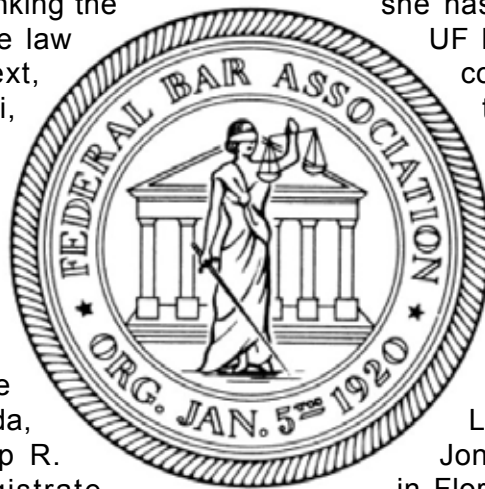
District Court Judge Mark E. Walker is a double Gator, receiving both his undergraduate and Juris Doctor from the University of Florida. Judge Walker's judicial experience includes clerking for Judge Emmett Ripley Cox of the U.S. Court of Appeals for the Eleventh Circuit, Justice Stephen H. Grimes of the Florida Supreme Court, and Judge Robert Lewis Hinkle of the U.S. District Court for the Northern District of Florida. After clerking, Judge Walker spent several years as an Assistant Public Defender for Florida's Second Judicial Circuit and worked in private practice for a decade. In 2009, Judge Walker took the bench as a Florida Circuit Judge in Tallahassee before being appointed to

the Federal bench by President Obama in 2012. Furthermore, it is no small accomplishment that in today's political climate Judge Walker's nomination was confirmed by a unanimous 94-0 vote of approval from the United States Senate.

Judge Karen K. Specie earned her Juris Doctor at Florida State University and subsequently entered private practice in both New York and Tampa. After moving to Gainesville, Judge Specie represented business and individual debtors and served as a Chapter 7 panel trustee for the Northern District of Florida Bankruptcy Court for five years. In addition to re-entering private practice in 2011, she has served as an adjunct professor at UF Law for the past four years teaching courses in bankruptcy law and secured transactions. Judge Specie plans to continue teaching a bankruptcy seminar each spring at UF Law during her tenure in the Bankruptcy Court.

Magistrate Judge Gary R. Jones graduated with his Juris Doctor from the University of Miami and earned his LL.M in International Law from New York University. Judge Jones has practiced commercial litigation in Florida for eighteen years. He achieved partner status in a large firm and was a named partner in a small commercial litigation firm in Miami before taking the bench as a Magistrate Judge in the Middle District in 2000. Further, he was the first Magistrate Judge to be appointed to the Financial Disclosure Committee of the Judicial Conference of the United States. After ten years of serving as a Magistrate Judge in the Middle District, Judge Jones was appointed as a Magistrate Judge in the Northern District of Florida.

Magistrate Judge Philip R. Lammens is a double Gator, earning both an undergraduate degree and a Juris Doctor at the University of Florida. Judge Lammens' prior experience includes clerking for Judge William Terrell Hodges in the U.S. District Court of the Middle District of Florida and Judge Joel F. Dubina in the Eleventh Circuit of the



*Continued on page 13*

# EJCBA Holiday Toy Drive

(November and December luncheons)

## Alachua County Public Schools Head Start Program

The EJCBA Community Outreach Committee invites you to join us in participating in our 2013 Holiday Toy Drive. We are sponsoring the Head Start Program of the Alachua County Public School system. The funds for the Head Start Program were cut nationwide as part of the sequester earlier this year, so they are even more in need of our support than prior years.

Donation boxes will be available at the October and November luncheons. However, you do not need one of our donation boxes to participate. Feel free to provide your own box for you or your firm (decorating your box is completely optional), bring individual toys to the November or December luncheons, or drop toys off at either the civil or criminal courthouses in Gainesville. Boxes of toys can be returned at the November or December luncheons or by special arrangement with the Community Outreach Committee. Please contact Anne Rush ([anne.rush.1024@gmail.com](mailto:anne.rush.1024@gmail.com)) for more information, to request a box, or to arrange box pickup.

Head Start is an early childhood development program providing comprehensive developmental services for low-income, preschool children ages 3 to 5. There are approximately 600 children in the Head Start program in Alachua County. Though we have not pledged to provide a specific number of gifts, it is our joint goal with the Head Start staff to assist 200-300 children, specifically targeting those from homeless families, foster care families, public assistance families, and families with non-parents as guardians. This year Head Start is stressing early

literacy and has specifically requested books as part of the holiday drive.

Financial donations are also appreciated. Checks can be sent to EJCBA; Attn: Judy Padgett; PO Box 13924; Gainesville, FL 32604.

Thank you in advance for helping us make the holiday season brighter for those in need in our community.

### **Toy Drive Guidelines**

ALL TOYS SHOULD BE UNWRAPPED

Toys should be for ages 3-5

Head Start has requested books as the focus for this year's drive

Please, no weapon type toys or toys that might be choking hazards to small children

If toys require batteries, please include batteries and attach them to the toy package



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## 2014 Pro Bono Service Awards Nominations Due By Nov. 12

Each year, the Supreme Court of Florida and The Florida Bar give special recognition to lawyers, legal groups and a member of the judiciary who have freely given their time and expertise in making legal services available to the poor. The pro bono service awards ceremony will be held at the Florida Supreme Court at 3:30 p.m., Thursday, Jan. 30, 2014.

**Nominations must be received by Nov. 12, 2013.**

Nomination forms are available at [www.floridabar.org](http://www.floridabar.org) for these [award categories](#):

**1. The Tobias Simon Pro Bono Service Award** is presented annually by the chief justice to an attorney to recognize extraordinary contributions in assuring the availability of legal services to the poor. Named for the late Miami civil rights lawyer Tobias Simon, the award represents the Supreme Court's highest recognition of a private lawyer for pro bono service. All current recipients of The Florida Bar President's Pro Bono Awards are considered for this award as are direct nominees who have demonstrated exemplary pro bono service over the course of their careers.

*Continued on page 12*



You are cordially invited to attend  
the investiture of the  
Honorable

## James M. Colaw

Eighth Judicial Circuit Judge

Friday, December 6, 2013 at 3:30 p.m.  
Alachua County Courthouse Criminal  
Justice Center  
Courtroom 1B  
220 South Main Street  
Gainesville, Florida 32601

*Reception immediately following*

## Circuit Notes

Dean, Mead & Bovay, a Florida-based corporate law firm, announced that attorneys Robert Griscti and Jennifer Lester have joined the firm's Gainesville office. Griscti and Lester each serve as Of Counsel, mutually overseeing the office's business litigation practice. Griscti's practice focuses on the areas of appellate law, professional licensing, government investigations, civil litigation and regulatory compliance, while Lester's practice involves commercial litigation, personal injury, wrongful death and fiduciary proceedings.

The Court now has a Twitter account: <https://twitter.com/8CircuitFlorida> - information about court closings, administrative orders, investitures, and other items of interest to the local Bar will be tweeted here!

## Classified Ads

Law Office sharing-in the Meridien Centre, 2750 Northwest 43<sup>rd</sup> Street; for further information contact Scott Krueger at 376-3090, or email: [Scott@SDKrueger.com](mailto:Scott@SDKrueger.com).

## President's Message *Continued from page 1*

old George Washington hand copied 110 rules of civility and decent behavior. These 110 rules were based on a set of rules composed by French Jesuits in the Sixteenth Century; they became a 1971 book entitled Rules of Civility and Decent Behavior. The 110 rules focused on the treatment of other people, and required that each one treat everyone else with respect and consideration. They also included some rules similar to those of Emily Post, Dear Abby, and Ann Landers. The Speakers at the 2013 UF Poucher lecture series reiterated the sense of an uncaring environment of fear, suspicion, and terror and the need for intelligence and vigilance; the importance of civility was stressed. Civility-Caring may not be the all-solving purple pill for the country or the world, but civility is the first step in the resolution of suspicion, fear, and rigidity on our planet. Bring on the warm fuzzies – malama malama.

## TRLS Director *Continued from page 6*

explaining the candidate's interest and qualifications for the position and detailing what they believe they can contribute to the future of the organization along with a resume and contact information for three references. Applications, including preferred contact information, should be emailed to [EDSearch@trls.org](mailto:EDSearch@trls.org) in Word or PDF format. While electronic submissions are preferred, mailed submissions will be accepted at Three Rivers Legal Services, Attn: Executive Director Search Committee, 901 NW 8th Avenue, Ste D5, Gainesville, Florida 32601.

If you have questions about the position, please direct them to Eric Mittelstadt, Search Consultant, Management Information Exchange, at 801-573-3636 or [eric@utahlegalservices.org](mailto:eric@utahlegalservices.org). All information and accompanying materials will remain confidential until a candidate is notified that serious consideration of an application necessitates disclosure of the candidacy.

**2. The Florida Bar President’s Pro Bono Service Award**

is given to an outstanding attorney residing in each of the state’s 20 judicial circuits and to an outstanding attorney among the out-of-state Florida Bar members.

**3. The Florida Bar’s Young Lawyers Division Pro Bono Service Award**

is given to the division member who best exemplifies the highest ideals of public service. With nearly 26,000 members, the Young Lawyers Division includes all lawyers in good standing under age 36 and all new Florida Bar members of any age for their first five years in practice.

**4. The Chief Justice’s Law Firm Commendation**

is a statewide award given to a law firm that has shown an extraordinary commitment to provide access to the courts for all Floridians.

**5. The Chief Justice’s Voluntary Bar Association Pro Bono Service Award**

recognizes a voluntary bar association that has demonstrated a significant contribution in providing legal services on a pro bono basis to individuals or groups that cannot otherwise afford them.

**6. The Distinguished Judicial Service Award** is given for outstanding and sustained service to the public, especially as it relates to support of pro bono legal services.

**Nominees’ pro bono service contribution may be cumulative. Consideration is not limited to the events of the immediate past year.**

For additional information, contact public information coordinator Dorohn A. Frazier at The Florida Bar, (850) 561-5764 or [dfrazier@flabar.org](mailto:dfrazier@flabar.org).



EJBCA Past President Dawn Vallejos-Nichols presents the 2013 James L. Tomlinson Professionalism Award to Marion Radson

will be for pedestrians, bicycles, and rapid bus transport.

Govt. Rep: But the Autobahn was designed for the rapid movement of troops. You can’t turn it into one lane in each direction. Who has ever heard of such a thing?

EU Rep: Well, it is occurring all the time. Our consultant believes if we make it impossible for internal combustion vehicles to utilize roads due to the congestion and potholes, then everyone, including the military, will turn to bicycles and pedestrian walkways.

Govt. Rep: I assure you that every officer in the British Army would resign under such circumstances. You would be throwing our entire military back to Napoleonic standards.

EU Rep: And I remind you, you defeated Napoleon moving your armies on foot. However, you might consider designing a Prius tank.

Govt. Rep: We are now designing armored vehicles as part of a design plan called Future Rapid Effect System (FRES) which will incorporate defenses against roadside bombs and rocket-propelled grenades. What design do you have for bicycles, which would protect against roadside bombs and rocket-propelled grenades?

EU Rep: Pedal faster, or, use rapid transit buses, because we have observed most have few if any passengers and could accommodate a large number of troops, and, you could buy a weekly bus pass and save money.

Govt. Rep: That is not an army; that is something from Monty Python.

Mediator: I appreciate the give and take discussion in this joint session. I look forward to meeting with you in private caucuses to discuss a resolution.

(Note: the parties did work out a resolution and the British army and the European Union abandoned their use of tanks, armored vehicles, jet bombers, etc., and issued bicycles to all of their troops. A war did break out. The troops utilized the now one-lane Autobahn and were promptly surrounded by attacking Russian forces. It took them three months to pedal back to England.)

FYI: the EU is actually proposing such restrictions as described in this article and the Department of Defense of the UK is actually opposing such restrictions. Some of the other items in this article may or may not be accurate, depending where you reside.

## New Federal Judges *Continued from page 9*

U.S. Court of Appeals. Before his appointment, Judge Lammens worked in the Torts Branch of the Civil Division of the U.S. Department of Justice, was an Assistant General Counsel for the City of Jacksonville, and an Assistant U.S. Attorney in Middle District of Florida.

The reception was a great opportunity for the local legal community to mix and mingle while getting better acquainted with the newly appointed judges outside of the courtroom. Many young members of the legal community from the UF Levin College of Law also took advantage of this opportunity by introducing themselves to members of the Federal Bar and other distinguished members of the legal community.

Judge Lammens remarked, "The FBA event was a wonderful opportunity to meet and talk with lawyers and local judges from our North Florida community." The meeting also allowed some of the newly appointed judges to meet each other for the first time while connecting with old friends. Judge Lammens said, "It was also a great opportunity for me to meet U.S. District Judge Walker and U.S. Bankruptcy Judge Specie. I hadn't met them prior to the event and I was delighted to have some time to speak with both of them. And, of course, it is always nice to have a chance to talk with U.S. Magistrate Judge Jones, who I have known for several years." Judge Jones commented that he "would like to thank the Board of the North Central Florida Chapter of the Federal Bar Association for hosting the event" and stated, "The turnout and

support from the members of the Gainesville and Ocala legal communities was really outstanding."

Throughout the reception, many of the honored judges spoke about goals they have set for themselves during their tenure and expressed a deep commitment to the community. Judge Walker paid homage to the Gainesville bar stating that "I work in all four divisions" of the Northern District "and I find the highest quality of advocacy in Gainesville making it a pleasure to work there." Judge Jones expressed a similar affinity to the Gainesville community stating, "The strong support by local Federal practitioners for an event like this demonstrates that the greater Gainesville legal community has a vibrant and very able-bodied group of lawyers engaged in federal practice." Judge Walker also expressed his dedication to the region by vowing to conduct himself "in the tradition of Judge Paul and Judge Mickle" and recognized that he has "big shoes to fill." Judge Lammens expressed that he was particularly glad to see practitioners from Ocala and further discussed that he hopes that ". . . more local lawyers will handle the federal cases pending in the Ocala Division." All of the Judges expressed gratitude to the FBA for hosting this event.

To close out the evening, the FBA held its Annual Meeting to elect its officers and general board members. The FBA thanks everyone for their attendance at the annual meeting and reception, and welcomes the region's newly appointed federal judges.



Chief Bankruptcy Judge Karen Specie with law students at the 9/16/13 event honoring North Central Florida's newest federal judges



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

### 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., Alachua County Criminal Justice Center, 3rd floor conference room
- 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

### December 2013 Calendar

- 4 EJCBA Board of Directors Meeting – 5:30 p.m., Room 350, Levin College of Law
- 5 Deadline for submission to December Forum 8
- 6 Investiture of Circuit Judge James M. Colaw, 3:30 p.m., Courtroom 1B, Alachua County Criminal Justice Center
- 11 Probate Section Meeting, 4:30 p.m., Alachua County Criminal Justice Center, 3<sup>rd</sup> Floor conference room
- 13 EJCBA Luncheon, Jack Levine, Founder of 4Generations Institute, "Serving Justice Across the Generations," Cellar 12, 11:45 a.m.
- 17 Family Law Section Meeting, 4:00 p.m., Chief Judge's Conference Room, Alachua County Family & Civil Justice Center
- 24 Day before Christmas Day – County Courthouses closed
- 25 Christmas Day – County and Federal Courthouses closed

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](mailto:dvallejos-nichols@avera.com).