

FORUM 8

Volume 74, No. 5

Eighth Judicial Circuit Bar Association, Inc.

January 2015

President's Message



A New Year, and New EJCBA Activities!

By Ray Brady

I hope that each of you had a joyous and restful Holiday Season and enjoyed time spent with your family and friends. As I have done in my prior columns, I would like to use this space to promote the following upcoming

new, and some not so new, EJCBA activities:

The new "Ask a Lawyer Project": This is an opportunity for you to earn CLE credits and fulfill your annual pro bono service requirements, while helping the homeless residents in your community. The EJCBA is teaming up with Three Rivers Legal Services and Southern Legal Counsel to provide free legal advice and assistance to the homeless residents at the new GRACE Marketplace facility. Members of the EJCBA Board have toured GRACE, and we can report that this is a facility with great potential and one that will provide a perfect location for us to provide legal assistance. The plan is that we (meaning volunteer attorneys, and staff of TRLS and SLC) will periodically meet on a Saturday morning at GRACE, for a few hours, to assist their residents with their legal problems, which may include applying for public benefits or disability benefits, employment law, personal injury, criminal law, consumer law, civil rights law, debt issues, etc. The EJCBA will provide a training session at GRACE for all volunteer attorneys, which will be held on Saturday, January 10, 2015, from

10 a.m. until noon. We anticipate 2 hours of CLE (1 ethics) being awarded for this training. And when you serve as a volunteer attorney at GRACE, TRLS will keep track of the pro bono hours that you earn. If you would like to volunteer for the Ask a Lawyer Project, please email me at rbrady1959@gmail.com.

The "State of the Circuit" address: The EJCBA's January luncheon will be on Friday, January 9, 2015, at noon at The Woolly downtown. Our speaker will be Chief Judge Robert E. Roundtree, who will present his annual "State of the Circuit" address.

"View from the Bench" Free CLE: You are invited to attend a "View from the Bench" for one hour immediately following the January 9, 2015, "State of the Circuit" EJCBA luncheon at The Woolly. During this moderated panel discussion, a number of Eighth Judicial Circuit judges, including the Chief Judge, will stay after the luncheon to discuss such topics as hearings, motions, courtroom protocols, do's and don'ts, advice to young lawyers, and new standing orders. CLE credit has been approved for this event. This CLE is free for EJCBA members, \$50 for non-members. You may register for a "View from the Bench" when you register online for the January luncheon.

Law in the Library Series: We hope that you will join us on Monday, January 12, 2015 at 6 p.m., in the Downtown Library Headquarters, to hear Mac McCarty, Jr., Esq., present on the topic of "Transferring Your Property When you Pass: Avoiding Future/Past Problems." This is another installment in the EJCBA's Law in the Library series.

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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.

Judy Padgett

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Deadline is the 5th of the preceding month

Holiday Project 2014



Photos by Stacey Steinberg Photography

The Honorable Mary Day Coker Retiring

After 15 years in private practice and 16 years of dedicated public service at the State Attorney's Office and on the Alachua County Court and Circuit bench, Circuit Judge Mary Day Coker has decided it is time to retire.

Judge Coker received her bachelor's degree at Florida State University and her Juris Doctor at Georgetown University. Prior to her years on the bench, she practiced in both the public and private sectors. She was an assistant state attorney for six years in the Eighth Judicial Circuit as well as staff counsel for the U.S. Department of Agriculture for one year. Judge Coker was a sole practitioner for four years and also spent nine years at the law firm of Scruggs & Carmichael.

Judge Coker was appointed to the Alachua County Court in 2004 by Governor Bush, where she served until her appointment to the Circuit bench by Governor Crist in January of 2010. During her tenure, Judge



Coker has presided over virtually all case types in all counties of the Eighth Judicial Circuit. Her most recent assignment was Circuit Civil, Extraordinary Writs, Family, Domestic Violence, Mental Health, Probate and Guardianship cases in Gilchrist and Levy Counties. She was also assigned the Juvenile Dependency and Delinquency cases in Gilchrist County.

Unfortunately, Judge Coker experienced health issues the past few years. These issues prevent her from performing at the level she demands of herself to properly serve the public. Therefore, she felt it appropriate that she retire. Her retirement will allow her to focus her full attention to improving her health and spending time with family and friends. We all wish Judge Coker the very best in her retirement, and we will all miss the hard work and

dedication she has shown as a member of the Eighth Judicial Circuit Bench.

Justices Host Interactive Discussion

On Monday, October 27th the Gerald T. Bennett Inn of Court and the North Florida Chapter of the American Board of Trial Advocates presented an interactive discussion with Florida Supreme Court Justice Barbara Pariente and former Iowa Supreme Court Chief Justice Marcia Ternus. A discussion between the justices and the audience at the law school was moderated by Carl Schwait, former president of the Bennett Inn. Justice Ternus lost her retention election in 2010 while Justice Pariente won her retention election in 2012. Their presentation was part of the ongoing campaign called Informed Voters Fair Judges through the Association of Women Judges, which has been established to educate the public as to the judicial system and to insure that justice is free from special interests and that there are fair courts and equal justice for all.

Also in the audience that evening who made comments was Martin Dyckman, former columnist for the St. Petersburg Times and recipient of the Florida Bar Foundation Medal of Honor Award for his articles on judicial reform that led to Florida's adoption of the Judicial Merit Retention System.

On Tuesday, October 28th, a second forum was held at the University of Florida's Levin College of Law about attempts to increase the politicization of Florida's judicial retention election system. Two of the sponsors

of that particular event were the Bennett Inn of Court and the North Florida Chapter of the American Board of Trial Advocates. ABOTA specifically sponsored the appearance of Mr. Dyckman. The current president of the Bennett Inn of Court is Judge Monica Brasington while the current president of the North Florida Chapter of the American Board of Trial Advocates is Jack Fine.



Judge Monica Brasington, Former Iowa Chief Justice Marsha Ternus, Justice Barbara Pariente, Jack Fine and Carl Schwait

President's Message *Continued from page 1*

Winter Social: It is anticipated that the EJCBA will hold its Winter Social, which is free to all EJCBA members, on Tuesday, January 13, 2014. Please watch your emails for an announcement of the time and location of this festive free member event.

Finally, here are a few other dates that you should save on your calendar for special events provided to you by your EJCBA: On the evening of Friday, March 6th, we will have **the first annual "Spring Fling,"** our new party/social, on the grounds of the Thomas Center. Music will be provided by Bruce Brashear's band, "Squid Love." On the afternoon of March 20th, there will be **the annual EJCBA Golf Tournament** to benefit the Guardian Ad Litem Program. On April 10th, following the EJCBA luncheon, we will offer **the Leadership Roundtable 2015**, which is a major CLE event that will focus on issues of inclusion and diversity, with a reception to follow. **The Annual Professionalism Seminar** will be held on Friday, April 17, 2015, from 9 a.m. to noon, at the UF College of Law. And we are exploring Thursday, June 18, 2015, as a possible date to hold **the EJCBA Annual Dinner**, which will be held again this year at the Sweetwater Branch Inn.

Professionalism Seminar – Save The Date

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 17, 2015 from 8:30 AM until Noon at the UF Levin College of Law. Our speaker will be Linda Calvert Hanson, Director of the Henry Latimer Center for Professionalism at The Florida Bar, speaking on "Professionalism: An Expectation in Florida."

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

Watch the newsletter for further information and 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.

Florida Legislative Preview: Will the LGBT Employment Discrimination Ban Pass in 2015?



By Laura Gross

On December 1, 2014, a bipartisan bill was proposed in the Florida House and Senate to end LGBT discrimination in employment. With no federal statute addressing employment discrimination based on sexual orientation or gender identity, passage of the legislation, known as the Florida Competitive Workforce Act (FCWA), would be a fundamental change.

Significantly, some major employers are already speaking out in favor of the law. Disney, Darden, Wells Fargo, Florida Blue, and CSX, among others, have rallied together as the Florida Business Coalition for a Competitive Workplace to "modernize state law to include anti-discrimination protection based on sexual orientation and gender identity or expression." The Coalition has announced that it understands:

Florida employers must attract qualified and diverse applicants who reflect the diverse population of the state. The link between strong anti-discrimination laws and the ability to draw the best and brightest is the reason that 84% of the nation's largest companies have adopted comprehensive anti-discrimination policies that include sexual orientation and gender identity.

So, what are the changes this bill would bring? The bill would amend the Florida Civil Rights Act of 1992, which prohibits employment discrimination based on race, color, religion, sex, national origin, age, handicap, or marital status to also include sexual orientation and gender identity and expression. If the FCWA passes next year, Florida would join twenty-one states, the District of Columbia, and 140 cities and counties enacting some sort of LGBT ban against employment discrimination.

Alternative Dispute Resolution

All I Wanted For Christmas Was...

By Chester B. Chance and Charles B. Carter



Your cub reporters spent time between Christmas and New Year's Day interviewing various people about their favorite Christmas presents this year. We were amazed at the number of legal-themed and mediation-themed gifts that people received and seemed to really enjoy.

The following is a list of some folks and the gifts they received and it appears they intend to keep.

A local paralegal: received a Christmas card which when opened is a frameable certificate acknowledging all the work which the paralegal did in a variety of cases that the supervising attorney took credit for.

Insurance claims adjuster: received a \$1,000 gift certificate to cover the entire cost of a future mediation.

Local plaintiff attorney: spoke fondly of a 10% Policy Limits Increase Gift Certificate which can be used anytime in 2015.

An assistant state attorney: received the Jameis Winston Official Dismissal Gift Set of matching Heisman Trophy seafood forks.

A local real estate attorney: seemed very happy to receive a set of three closings, where all the documents arrive two days before each closing.

A judicial assistant: was found wearing her new Bose sound-reducing headset, Attorney Model.

A Gainesville defense attorney: found, under her Christmas tree, a notebook of generic medical records showing a variety of pre-existing medical conditions and the ability to fill in the name of various plaintiffs.

The spouse of an injured plaintiff: can't wait to use the "Consortium Claim Questions Avoidance Card" at an upcoming deposition.

An Alachua County expert witness: received two packages containing forms for reports allowing the expert to quickly check a variety of opinions. One package applies if the expert is hired by the plaintiff side, and, the other package is used when hired by the defense side.

A Gainesville court reporter: is already using her IV-bag and stand so that she can obtain nourishment during depositions while the lawyers

order in lunch for themselves.

Criminal defendant: told us he was trying to decide whether he was going to use his "one-for-two" drink card which apparently allows him to reduce his alcohol composition by half the amount he actually consumed.

Plaintiff in personal injury case: was proudly wearing a tie which had upside down writing so the individual could look down and see a list of reasons why the pre-accident medical record showing prior similar complaints and treatment are all mistakes, forgeries, etc.

Unnamed mediator: was eagerly waiting to use the Craftsman sterling silver hammer the next time one side says "make the other side take this offer."

Circuit Judges: received a gift card entitling them to a lifetime appointment. The card can be used two months prior to any election cycle.

A local attorney at the Public Defender's office: very proud to be wearing the O.J. Simpson "Acquit Edition" leather gloves during a chilly New Year's Eve party.

We are amazed at the number of legal-oriented gifts that are available and thank all the people we interviewed for sharing their holiday gift stories.



Save the Date!

Please note and calendar the date of March 20, 2015 for the EJCBA Annual Charity Golf Tournament to benefit the Guardian Ad Litem program. Watch this newsletter for future announcements and registration information.

EJCBA CLE Credit for Sept. 2013- Jan. 2015

If you attended any of the CLEs put on by the EJCBA listed below between September, 2013 and October 14, 2014, and if you attend the View From the Bench CLE offered this month, don't forget to record your CLE hours with The Florida Bar. All of the information you need is below:

September 13, 2013, Luncheon Speaker David Guest, Legal Framework of Protecting Lakes, Streams & Springs of Florida, Course Number 1308018N, 1.5 Credits

February 21, 2014, Luncheon Speaker Mike Foley, Dealing with the Media, Course Number 1401865N, .5 Credits

March 14, 2014, Luncheon Speaker Jon Mills, National Security and the Media vs. Individual Privacy: Who's Winning?, Course Number 1401866N, .5 Credits

April 4, 2014, Professionalism Symposium, Course Number 1401349N, 3.5 Credits

April 11, 2014, Luncheon and Leadership Roundtable, Course Number 1402635N, 6 Credits

October 10, 2014, Gainesville – The Place Where Innovation Makes a Difference (Luncheon Speaker and Post-Luncheon Panel Discussion), Course Number 1409059N, 2.5 Credits

October 14, 2014, Navigating the Current

Malpractice Environment and Tort System (EJCBA Alachua County Medical Society Dinner and Panel Discussion), Course Number 1409043N, 1.5 Credits

January 9, 2015, View from the Bench (Luncheon Speaker and Post-Luncheon Panel Discussion), Course Number 1409593N, 2.5 Credits

A View from the Bench: A Free CLE following the January EJCBA Luncheon

You're invited to attend a "View from the Bench" for one hour immediately following the January 9, 2015 "State of the Circuit" Eighth Judicial Circuit Bar Association Luncheon. During this moderated panel discussion, a number of Eighth Judicial Circuit judges, including the Chief Judge, will stay after the luncheon to discuss such topics as hearings, motions, courtroom protocols, do's and don'ts, advice to young lawyers, and new standing orders. CLE credit has been approved for this event. This CLE is free for EJCBA members and \$50 for non-members. You may register for a "View from the Bench" when you register online for the January luncheon.

Reserve Now for the EJCBA January 2015 Luncheon & CLE

WHEN: Friday, January 9, 2015 – 11:45 a.m.

WHERE: The Woolly – 20 N. Main Street, Gainesville, FL 32601

PROGRAM: Chief Judge Robert E. Roundtree, Jr.—State of the Circuit Address

COST: **Members: \$17.00, Non-Members: \$25.00***
Chef's choice luncheon buffet, including meat or vegetarian entrees, seasonal sides, and dessert

DEADLINE: Register on or before **Monday, January 5th at Noon at**
<http://8jcba.dev.acceleration.net/event-registration/january-2015-luncheon-cle/>

***\$20.00 for members and \$25.00 for non-members, not having made prior reservations.** If you are reserving at the last minute, or need to change your reservation, email Judy Padgett at execdir@8jcba.org or call **(352) 380-0333**. Note, however, that after the deadline, EJCBA is obligated to pay for your reserved meal and we make the same obligation of you. Thank you for your support.

Mark Your Calendars for Upcoming Events

EJCBA Spring Fling Party/Social—Evening of Friday, March 6, 2015 at The Thomas Center grounds (a new EJCBA event!)

EJCBA Charity Golf Tournament benefiting the Guardian ad Litem Program—Friday March 20, 2015



Free CLE after the January EJCBA Luncheon

You're invited to attend a "View from the Bench" following the luncheon. During this moderated panel discussion, Eighth Judicial Circuit judges, including the Chief Judge, will stay to discuss such topics as hearings, motions, courtroom protocols, do's and don'ts, advice to young lawyers, and new standing orders. 2.5 hours of CLE have been approved. The CLE is free for EJCBA members, \$50 for non-members. You may register for the CLE when you register online for the luncheon.

Criminal Law



By William Cervone

Being bored today, I decided to look at some advance sheets. That usually annoys me, and when it doesn't annoy me it usually depresses me. Today, surprisingly, it amused me because even as I await the revelation of the 2015 Word of the Year I stumbled on a potential

entrant: "quashal." As in, and I am quoting the 3rd DCA here, "The State of Florida seeks quashal of the trial court's order..."

Now, quash I am familiar with. Quashal, not so much. So my first recourse was Merriam-Webster, the traditionally final authority on all things linguistic. Frustratingly, my query to the great Merriam-Webster (who I was once shocked to learn was actually two men, not an individual woman) in the sky was answered thus: "The word you've entered isn't in the dictionary." Being thoughtful, Merriam-Webster suggested some alternatives that might, in its, his or their opinion, be what I was looking for. These ranged from quassia and quotha to quesadilla, none of which made even as much sense as quashal if substituted in the quote from the 3rd DCA. You remember, of course, the tried and true admonition of teachers and spelling bee judges to "use it in a sentence." That doesn't seem to work with most of these possible quashal substitutes.

Merriam-Webster having failed me, I moved next to the source of all things legally linguistic: Black's Law Dictionary. Nary a quashal was to be found, at least not in the 1990 6th Edition left to me years ago by a departing Assistant State Attorney and friend, Kirstin Stinson. Thank you, Kirstin, and, yes, I still have and still refer to that book. Just not, in its own words as, "the standard authority for legal definitions since 1891," at least not for the apparently new legal word quashal.

To be sure, Black's provided other food for thought. Right there on the page where I'd expected to find quashal there was "quare," Latin for wherefore and used in several common law writs, at least according to Black's. Further down the page, for example, were quare impedit, quare non permitti, and quare obstruxit, all arcane but apparently more valid than quashal. I know some lawyers who are quarrelous obstructionists, by the way, which I assume is what quare obstruxit refers to. The others I leave to your imagination. Quare itself is similar in spelling but not to be confused with "quaere," which allows a point that is being made to remain open to question. Or "quaerens," which is Latin for a plaintiff.

Then there was "quadruplatores," which in Roman law were informers. Always, it seems, you will have informers among you. And lest you think that only Latin words work for Black's, I also found "quack." Finally something

understandable, meaning as we all know and as approved by Black's, a medical fake. Also in the plain English range was quibble, defined in non-plain English as a cavilling objection.

Also included was "Q-TIP trust," which is not something related to determining the comfort level with how far you can safely insert a cotton swab into an orifice, but a qualified terminal interest property trust, whatever that is.

Philosophically speaking, Black's points us to "qui male agit odit lucem" - he who acts badly hates the light. I plan to use this in my next closing argument, at least the next one with some UF professor types on the jury.

Clearly Q is a much underused letter in our legal and real world, full of these and other rich possibilities. Let me end with, first, thanks to the 3rd DCA for its inventive creation of an apparently new word, and, second, "quota," as in I have reached my quota of words for this month's column. Remember as you go forth into a bright new 2015 that we make our living with words. Use them wisely. Even quashal.

By the way, in the case that started this whole dissertation, *State v Roberts*, 39 FLW D917 (Fla. 3d DCA 2014), the State was successful in its efforts and obtained quashal of a trial court order improperly prohibiting the introduction of prior recorded testimony. But that's another story for another column.

Happy New Year!

Do We Think Like "Deke" Deloach?

By Siegel Hughes & Ross

FBI Special Agent Cartha "Deke" Deloach was a leader of the investigation into the assassination of Martin Luther King. The FBI was able to identify the alias used by James Earl Ray in the months prior to the assassination (John Galt), but could not determine his real identity. The FBI also had fingerprints, but in pre-computer 1968 identifying a suspect by fingerprints required a visual comparison of the print with the suspect's fingerprint card in the FBI files. Since there were 82 million fingerprint cards in the FBI files, it was improbable the assassin would be identified that way.

However, the FBI was able to trace "Galt's" activity in the months before the assassination. Analyzing the evidence, Deloach recognized a pattern. In "Galt's" activity Deloach recognized the behavior of a fugitive from justice. (Ray had escaped

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Thank You from Three Rivers Legal Services! Happy New Year!

By Marcia Green

As we begin a new year, I want to recognize and thank those attorneys and other advocates in our community who have provided services, made donations and otherwise supported Three Rivers Legal Services in the past year. I am so often humbled by the staff with whom I work, the volunteers who help us in accomplishing so much more than we could do on our own and the good deeds of our legal community. It is such a pleasure to share with you this somewhat magical list of people. Please take the opportunity to show your appreciation as well!

The following attorneys (and other professionals in the community) have volunteered their time, shared their expertise and/or made donations to our program in the past year. Also listed are the Three Rivers staff attorneys whose dedication and commitment over the years keep Three Rivers afloat! The low income residents of our community need access to our civil legal system and these attorneys recognize this and help make so much possible.

Amy Abernethy
Bob Ackerman
Najah Adams
Nery Alonso***
Margaret Anderson
Nancy Baldwin
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Norm D Fugate
William B Galione
Ellen Gershow

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Deke Deloach

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from prison approximately a year earlier.) With that insight Deloach ordered the fingerprint team to start comparing the assassin's fingerprints with the fingerprints of fugitives, narrowing the field from millions to 53,000. A little luck helps too; Ray's was the 16th card they compared. Once identified, Ray was captured at Heathrow Airport as he was about to board a flight for Rhodesia, a country from which no extradition would have been possible at that time.

That is the kind of thinking our clients deserve. Do we give them the benefit of our intelligence, education and experience in analyzing each case, or do we simply plow through the same fingerprint cards we examine in every case?

The information on the search for James Earl Ray comes from a marvelous book: [Hellhound on His Trail: The Stalking of Martin Luther King, Jr. and the International Hunt for His Assassin](#), by Hampton Sides.

Three Rivers

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Lucy Goddard-Teel
Susan G Goffman
Virginia E Griffis
Gary D Grunder
Nicholas Hamm
Linda S Calvert-Hanson
Sven W Hanson
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Doris Hargrave
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Three Rivers

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Maria Perez Youngblood
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Nick G Zissimopulos

* *designates attorneys who have received the Florida Bar President's Pro Bono Service Award*

** *designates attorneys who have received the Florida Supreme Court's Law Firm Commendation*

*** *designates staff members at Three Rivers Legal Services, Inc.*

My sincerest apologies to any names omitted in error or enrolled or donated after publication deadline.

Are you interested in joining this list? We can make it easy for you!!

If you become a volunteer, we only refer cases to you in your area of expertise. We pre-screen the clients for financial eligibility and we can connect you with attorneys who are willing to mentor and/or discuss the case with you to share their legal expertise. We provide malpractice insurance coverage and litigation cost reimbursement (if feasible and available). As a volunteer, you can use our office to meet with your pro bono clients. We will try to make your experience positive while recognizing that our clients are often needy and confused with

the legal system.

For those who donate money, we thank you for your kindness and generosity. As you are aware, funding for Three Rivers Legal Services is a constant challenge. Our federal funding fluctuates dramatically and we have had significant decreases in our support from the Florida Bar Foundation. Smaller grants from local and State agencies continue to shrink. Our program survives with good management, dedicated staff, generous donors and volunteers, and new grants from new sources. Recent grants from the Veterans Administration in collaboration with Meridian Behavioral HealthCare and Volunteers of America allows us to work closely with homeless veterans and a technology grant from the Legal Services Corporation supports a statewide project to enable greater public access to legal resources through the libraries.

Please check out www.FloridaProBono.org, a statewide website that seeks to encourage lawyers to take on pro bono cases, where you will find resources and training materials. Check us out at www.TRLS.org.

We look forward to working with you in 2015. Feel free to contact me if you would like to volunteer your services and time or make a donation to support our program. I can be reached at marcia.green@trls.org or 352-372-0519, ext.

Stu's Views

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Florida Eminent Domain Law



“Public Purpose” and “Just Compensation” Requirements

By Jennifer B. Springfield and Alexander Boswell-Ebersole

In Florida, governmental entities may take privately-owned real property for a “public purpose,” provided the owner receives “full compensation.” Under the Florida Constitution,¹ the public purpose and full compensation requirements generally result in greater protection for private landowners than under federal law,² and the precise meanings of these two terms have been fleshed out by the State Legislature and Florida courts. While this article’s focus is on intentional eminent domain situations, many of the same principles apply to inverse condemnation proceedings.

What is a public purpose/use? Under the U.S. Constitution and federal law, “public use” has been interpreted broadly to include projects ranging from the more traditional eminent domain purposes, such as transportation or military defense, to projects that provide a “public benefit” or fulfill an “economic development” purpose, such as clearing an area of blight or slum. Florida courts often use the two terms interchangeably and also interpreted public purpose/use rather broadly until a 2005 U.S. Supreme Court case prompted new legislation and an amendment to the Florida Constitution.³

Determining whether a particular use amounts to a public use or is for a public purpose⁴ is typically a legal question to be determined by the court on a case-by-case basis.⁵ Public use has been defined by the Florida Supreme Court as follows:

*A use to be public must be fixed and definite. It must be one in which the public, as such, has an interest, and the terms and manner of its enjoyment must be within the control of the State, independent of the rights of the private owner of the property appropriated to the use. The use of property cannot be said to be public if it can be gainsaid, denied, or withdrawn by the owner. The public interest must dominate the private gain.*⁶

In accordance with this, condemned property must be available to the public, though not all members of the public must directly enjoy the benefits of it.⁷ Moreover, property taken by eminent domain may result in private gain, so long as the taking is clearly and predominantly for a public purpose and the private gain is merely incidental.⁸ In practice, this principle has often proven difficult to apply.

Florida’s eminent domain law changed significantly in response to a 2005 U.S. Supreme Court case, *Kelo v. City of New London*.⁹ The *Kelo* Court ruled that the City of New London’s use of its eminent domain authority to take property and give it to a private developer in the name of economic redevelopment was an appropriate public use. The Florida Legislature reacted by adopting legislation in 2006 intended to protect against such a scenario. This legislation strengthened the public purpose restriction by forbidding the transfer of condemned property to a private party within 10 years of the property’s condemnation.¹⁰ The new legislation also specifically prohibits the use of eminent domain to either abate or eliminate a public nuisance,¹¹ or to prevent or eliminate slum or blight conditions.¹² In addition, the Legislature proposed an amendment to the state’s constitution that similarly prohibited the transfer of condemned property to private parties.¹³ The amendment, which was soundly passed by the Florida voters, only allows exceptions to be made via a three-fifths majority vote of both legislative houses.

What is full compensation? The purpose of the constitutional guarantee of full compensation is, as far as possible and practicable, to make a property owner, who is deprived of his or her property, whole.¹⁴ Although full compensation normally equates to the fair market value of the property at the time of the taking, this is not the exclusive standard used, and the method used to determine compensation depends on the particular circumstances of each case.¹⁵ When fair market value is used to determine full compensation, all factors that would reasonably be contemplated in negotiations between a willing seller and buyer should be considered.¹⁶ Moreover, the value of the property should be based on the highest and best use to which the property is being put or reasonably may be put.¹⁷ Moving costs, appraisal costs, expert witness fees, attorney’s fees, severance damages,¹⁸ and other reasonable costs should all be considered as part of

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the valuation of full compensation.¹⁹ Furthermore, the property owner is entitled to interest from the date of the taking until the condemning authority pays the compensation.²⁰

- 1 See Fla. Const., Art X, § 6(a).
- 2 See U.S. Const. Amend. V.
- 3 But see Scott J. Kennelly, Florida's Eminent Domain Overhaul: Creating More Problems Than It Solved, 60 Fla. L. Rev. 471 (2008) (arguing that Florida case law prior to 2005 generally disapproved the use of eminent domain for economic redevelopment purposes).
- 4 See Grubenstein v. Urban Renewal Agency of City of Tampa, 115 So. 2d 745 (Fla. 1959) (providing a discussion of the distinction between "public use" and "public purpose").
- 5 Adams v. Hous. Auth. of City of Daytona Beach, 60 So. 2d 663 (Fla. 1952).
- 6 Demeter Land Co. v. Florida Pub. Serv. Co., 128 So. 402 (1930).
- 7 See id; Wilton v. St. Johns Cnty., 123 So. 527 (1929).
- 8 Baycol, Inc. v. Downtown Redevelopment Authority of City of Fort Lauderdale, 315 So. 2d 451 (Fla. 1975).
- 9 545 U.S. 469 (2005).
- 10 Fla. Stat. § 73.013.
- 11 Fla. Stat. § 73.014(1).
- 12 Fla. Stat. § 73.014(2).
- 13 See Fla. Const., Art X, § 6(c). But see also Fla. Const., Art. X, § 6(b) and Fla. Stat. § 73.013 (carving out particular exceptions to the restriction on transfer to private parties).
- 14 Dade Cnty. v. Brigham, 47 So.2d 602 (Fla. 1950).
- 15 Jacksonville Expressway Auth. v. Henry G. Du Pree Co., 108 So. 2d 289 (Fla. 1958).
- 16 Bd. of Comm'rs of State Institutions v. Tallahassee Bank & Trust Co., 100 So. 2d 67 (Fla. 1st DCA 1958).
- 17 State Rd. Dep't v. Chicone, 158 So. 2d 753 (Fla. 1963).
- 18 Severance damages refer to any damages to the remaining portion of a property where the condemning authority seeks to appropriate less than the entire piece of property.
- 19 Jacksonville Expressway Auth. v. Henry G. Du Pree Co., 108 So. 2d 289 (Fla. 1958). See also Fla. Stat. §§ 73.015, 73.032(6), 73.071, and 73.091-92.
- 20 See W. v. Sunbelt Enterprises, 530 So. 2d 433 (Fla. 1st DCA 1988).

FREE CLE from the Family Law Section & FLAG

Topic: A Minor Child's Psychotherapist-Privilege

When: January 20, 2015 at 4:00 p.m.

Location: Family and Civil Courthouse, courtroom TBA

Description: On January 20 at 4:00 p.m., the Family Law Section and FLAG will have a free Ethics CLE on the topic of minor children's psychotherapist-privilege with their therapists. Guest speakers will include local mental health professionals.

Notice Of Circuit Court Vacancy

The Eighth Judicial Circuit Nominating Commission announces a Circuit Court vacancy due to the retirement of Judge Mary Day Coker.

Applicants must have been a member of the Florida Bar for the preceding five (5) years, a registered voter, and a resident of the territorial jurisdiction of the court at the time he or she assumes office.

All persons interested in applying must deliver a complete application and one copy to:

Hand Delivery:

Marcia Davis, Chair

8th Judicial Nominating Commission
Bice Cole Law Firm, P.L.

P.O. Box 1860

Alachua, FL 32616

Mail:

Marcia Davis, Chair

8th Judicial Nominating Commission
Bice Cole Law Firm, P.L.

15316 NW 140th Street

Alachua, FL 32615

YOU MUST ALSO SUBMIT A COPY OF YOUR APPLICATION VIA EMAIL TO davis@bicecolelaw.com. The deadline for submitting an application is Wednesday, January 14, 2015 by 3:00 p.m. Applications submitted after the deadline will not be considered. Incomplete applications will not be considered. Applications may be downloaded from The Florida Bar's website. Please note that the revised application form should be used. The inclusion of a photograph is encouraged. Please do not submit three-ring binders.

A list of the members of the Eighth Circuit Judicial Nominating Commission is available from The Florida Bar's website.

January 2015 Calendar

- 1 New Year's Day – County and Federal Courthouses closed
- 5 Deadline for submission to February Forum 8
- 7 EJCBA Board of Directors Meeting – 5:30 p.m., Gaineswood Clubhouse
- 9 EJCBA Luncheon, Chief Judge Robert E. Roundtree, Jr., “The State of the Circuit,” The Woolly, 11:45 a.m.
- 9 EJCBA CLE Panel Discussion, “View From the Bench,” The Woolly, 1:00 p.m.
- 13 EJCBA Winter Social, 5-7 pm, Location TBD
- 14 Probate Section Meeting, 4:30 p.m., Chief Judge's Conference Room, 4th Floor, Alachua County Family & Civil Justice Center
- 19 Birthday of Martin Luther King, Jr. observed, County and Federal Courthouses closed
- 20 Family Law Section Meeting, 4:00 p.m., Chief Judge's Conference Room, Alachua County Family & Civil Justice Center

February 2015 Calendar

- 4 EJCBA Board of Directors Meeting – 5:30 p.m., Gaineswood Clubhouse
- 5 Deadline for submission to March Forum 8
- 11 Probate Section Meeting, 4:30 p.m., Chief Judge's Conference Room, 4th Floor, Alachua County Family & Civil Justice Center
- 13 EJCBA Luncheon, The Florida Bar President Gregory W. Coleman, The Woolly, 11:45 a.m.
- 14 *Valentine's Day – show the love!*
- 16 President's Day Holiday – Federal Courthouse closed
- 17 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 to let us know the particulars, so we can include it in the monthly calendar. Please let us know (quickly) the name of your group, the date and day (i.e. last Wednesday of the month), time and location of the meeting. Email to Dawn Vallejos-Nichols at dvallejos-nichols@avera.com.