

# FORUM 8

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Eighth Judicial Circuit Bar Association, Inc.

March 2015

## President's Message



### Successful Community Outreach by the EJCBA

*By Ray Brady*

I am pleased to report that we had great success at our first day of providing free legal services to the homeless residents at the GRACE Marketplace here in Gainesville. You will recall that this is a new collaboration

between the EJCBA, Three Rivers Legal Services (TRLS), and Southern Legal Counsel (SLC). We have named this the "Ask a Lawyer Program," and it is modeled after similar programs being done by voluntary bar associations in other Florida circuits. Our goal, stated succinctly, is to identify and try to remove any legal problems that are causing or contributing to a person remaining homeless.

We plan to provide free legal services on the first Saturday of every month at GRACE. We already have a panel of volunteer lawyers, in all legal specialties,

from which to draw each month. More than 40 of you have generously volunteered to assist the homeless. We cannot thank you enough. And, for every hour you serve at GRACE, that will count toward your annual pro bono service requirement set by The Florida Bar (Marcie Green at TRLS will help us keep track of our hours served). If you have not contacted me to be a volunteer at GRACE, please do, at [rbrady1959@gmail.com](mailto:rbrady1959@gmail.com).

Our first session at GRACE was Saturday, February 7, 2015. Our volunteer attorneys were Wes Stanton, Leslie Haswell, Margaret Stack, and Zelda Hawk. I, along with Marcie Green (TRLS), Mark Watson (TRLS), and Kirsten Stanton (SLC), were there to direct and oversee the process. Each homeless person who sought our assistance was guided through a registration and intake process that was expertly handled by volunteer law students from the U.F. College of Law (who will help us every

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Ray Brady, Marcia Green & Wes Stanton at the first "Ask a Lawyer Program" on February 7.



Attorneys Kirsten Stanton (3rd from left) and Mark Watson (seated) are joined by law students at the first "Ask a Lawyer Program."

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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

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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**

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

month). We were presented with legal problems that related to family law, criminal law, public benefits, tax, debt issues, and accident and injuries. We were able to resolve some of their problems on the spot, while others will require ongoing legal assistance from either TRLS, SLC, and/or the volunteer attorney who reviewed the matter. Thank you again to everyone who has volunteered their time and services. The "Ask a Lawyer Program" is off and running. This is a community service that is really going to make a difference in the lives of the residents at GRACE Marketplace.

On a different topic, congratulations and kudos are owed to 8<sup>th</sup> Circuit attorneys Frank Maloney and Michelle Farkas. Frank recently was awarded the "Traditions in Excellence" award by the Florida Bar's General Practice, Solo and Small Firm Section. This is an award that honors one lawyer per year for exceptional contributions to, or an exemplary career in general, solo and/or small firm practice. Frank is in distinguished company. Prior recipients include John F. Harkness, Jr., former Chief Justice Major Harding, and former Attorney General Bob Butterworth. Michelle is the recipient this year of the Florida Bar President's Pro Bono Service Award for the 8<sup>th</sup> Judicial Circuit. Michelle was nominated by Three Rivers Legal Services for her tireless pro bono service to clients who cannot afford legal representation. Michelle's nomination for the award noted that she has not shied away from taking even the "eccentric and difficult clients." Again, congratulations Frank Maloney and Michelle Farkas for your outstanding contributions as attorneys practicing in the 8<sup>th</sup> Circuit.

Finally, a brief reminder of some of the EJCBA activities and events that are coming your way this Spring:

- The first annual "Spring Fling," our new party/social, on the grounds of the Thomas Center on the evening of Friday, March 6, 2015. Music will be provided by Bruce Brashear's band, "Squid Love." This is a free event for EJCBA members and a guest (we said this is a party). There will be craft beer, wine, and food trucks if you would like to purchase food.
- The annual EJCBA Golf Tournament to benefit the Guardian Ad Litem Program, on the afternoon of March 20, 2015.
- On April 10<sup>th</sup>, following the EJCBA luncheon, we will offer the Leadership Roundtable 2015, which is a major CLE event. The title for this year's Roundtable is "A Cultural

Revolution: Redefining Success in the Legal Profession." A reception will follow the program.

- The Annual Professionalism Seminar will be held on Friday, April 17, 2015, from 9 a.m. to noon, at the U.F. College of Law. The speaker this year will be Linda Calvert Hanson, Director of the Henry Latimer Center for Professionalism, speaking on "Professionalism: An Expectation in Florida."
- Law Day 2015 will be on May 1, 2015. The theme this year is "Magna Carta: Symbol of Freedom Under Law," to mark and celebrate the 800<sup>th</sup> anniversary of Magna Carta. Magna Carta has taken root as an international symbol of the rule of law and as an inspiration for many basic rights Americans hold dear today, including due process, habeas corpus, trial by jury, and the right to travel. The EJCBA's Law Week is chaired this year by Past President Nancy Baldwin, who is developing a number of outstanding programs to honor Magna Carta. Watch this Newsletter and your emails for more information on Law Week.
- The EJCBA Annual Dinner will be held on the evening of Thursday, June 18, 2015. We will hold the dinner again this year at the Sweetwater Branch Inn, which was a great success last year.

If you would like to volunteer to assist with any of the programs and activities that remain this year, please contact either me, or any one of the EJCBA Officers or Directors. Thank you all for your ongoing support and participation in the EJCBA activities!



Board of Bar Governors Representative Carl Schwait, Florida Bar President Greg Coleman, and EJCBA President Ray Brady following the February luncheon, at which President Coleman spoke.

# Family Law: Mecca and Prenuptial Agreements



By Cynthia Swanson

For family lawyers, Mecca is actually located in Orlando, Florida in January of each year when the American Academy of Matrimonial Lawyers and the Florida Bar Family Law Section hold the annual certification review course. Approximately 1,500 lawyers attended this year.

For a day and a half, some of the best known family lawyers in Florida give a very intense review of all subject areas that might be tested on the certification exam. While nowhere near 1,500 lawyers take that exam, they know this is the best place on earth to get their annual updates, tips on good practice, advice on handling complex issues, opportunities to try out new software from the vendors who line the hallways, and opportunities to drink more and more expensive adult beverages than usual. At dinner one night, I gallantly told the waiter to put the third bottle of wine for the table on my tab, not realizing that the person (I won't be naming names) who picked out the wine and had put the first two bottles on his/her tab had chosen a wine which cost \$137 per bottle. Good grief! It was really good, though.

But, anyway, back to the substantive stuff – I want to discuss a case which will be argued in the Florida Supreme Court in March, and which was mentioned by three different presenters in three different topic areas at the recent certification review course: *Hahamovitch v. Hahamovitch*, 133 So. 3d 1008 (Fla. 4<sup>th</sup> DCA 2014).

This case arose in Palm Beach County, the scene of so many of our great Florida cases. Remember the Roxanne Pulitzer case from the 1980's? If only TMZ had been around then. Here's a blurb from the Palm Beach Daily News in 2011: "She was the loser in Palm Beach's most scandalous divorce. An outsider had married a Pulitzer heir nearly twice her age. Testimony of sex, drugs and the occult at their 1982 trial ended with a judge giving custody of their twin boys to the father. But now, Roxanne Pulitzer at age 60 might be the winner in the divorce after all. Her fifth husband, Tim Boberg, has loaned money to save Peter Pulitzer and their sons Mac and Zac from bankruptcy. The new husband calls the bailout a triumph for Roxanne. "It's an ironic turnaround that no one would have expected," said Boberg, who wants her to write a book about it. "Someone who was so destroyed was able to come back." "I never thought

Peter would run out of money," Roxanne said. "The pendulum swings. It's a different ending." See more at: <http://www.palmbeachdailynews.com/news/news/roxanne-pulitzers-pride-palm-beach-would-not-kick-nMDyT/#sthash.QRQbl2Zm.dpuf>.

Sorry to get sidetracked; I'm showing my age by mentioning that case. But it sure burned up the newspaper headlines back then.

So, *Hahamovitch* is a prenuptial agreement case. I believe that prenuptial agreements are going to be more important every year because of the attack on alimony in the Florida Legislature and by the judiciary. With the increasing reluctance to award any significant term of alimony, parents who make the decision to raise their own children via one parent staying home to do so while the other works MUST enter into pre- or antenuptial agreements to protect the future income of the stay-at-home parent. So, if that happens, we are likely to see an increase in litigation related to prenuptial agreements when those couples divorce.

The *Hahamovitch* decision consists of 8 pages, not counting any headnotes, which can be used as both an elementary and an advanced text related to the drafting and challenging of prenuptial agreements. You really do need a road map for these cases. A challenge to the validity of a prenuptial agreement is one of presumptions and swinging burdens of proof.

A party may challenge a prenuptial agreement in one of two ways. The first ground for setting aside an antenuptial agreement is satisfied where a spouse establishes that the agreement was the product of 'fraud, deceit, duress, coercion, misrepresentation, or overreaching.' *Casto v. Casto*, 508 So. 2d 330, 333 (Fla. 1987). Good luck in finding any appellate decision in which such fraud, deceit, coercion, etc. was found.

The second ground contains multiple elements. Initially, the challenging spouse must establish that the agreement is unfair, based upon the circumstance of the parties at the time the agreement is executed, not at the time of the divorce. *Del Vecchio v. Del Vecchio*, 143 So. 2d 17, 20 (Fla. 1962); see also *Francavilla v. Francavilla*, 969 So. 2d 522, 526 (Fla. 4<sup>th</sup> DCA 2007). Then, if the challenging spouse does show the agreement to be unfair, a presumption arises that there was either concealment by the defending spouse or a presumed lack of knowledge by the challenging spouse of the defending spouse's finances at the time the agreement was reached.

*Continued on page 5*

*Casto*, 508 So. 2d at 333. The burden then shifts to the defending spouse, who may rebut these presumptions by showing that there was either (a) a full, frank disclosure to the challenging spouse by the defending spouse before the signing of the agreement relative to the value of all the marital property and the income of the parties, or (b) a general and approximate knowledge by the challenging spouse of the character and extent of the marital property sufficient to obtain a value by reasonable means, as well as a general knowledge of the income of the parties. *Id.*; *Hahamovitch*, at 1012.

The clearest thing to do is to attach the actual “full and frank” financial disclosure to the prenuptial agreement, with the pages signed by each party to indicate they reviewed the information. *DelVecchio* holds that this disclosure does not have to be minutely detailed or exact. “The basic issue is concealment, not the absence of disclosure, and the wife may not repudiate if she is not prejudiced by lack of information.” *DelVecchio*, 143 So. 2d at 21.

In *Hahamovitch*, the trial court determined the prenuptial agreement was valid and that ruling was upheld on appeal. The standard of review is competent, substantial evidence. However, the interpretation of some of the provisions in the agreement are what make this case worth following. One issue is whether the wife waived any claim to assets titled solely in the husband’s name at the time of the divorce, even if those assets were acquired during the marriage due to the parties’ marital efforts or appreciated in value during the marriage due to the parties’ marital efforts. I’m not going to set out the actual language in the agreement here - it’s long and convoluted and cries out for clearer drafting, as do most prenuptial agreement forms. It’s available to read in the case.

The Fourth District in *Hahamovitch* certified conflict with other districts and certified a question of great public importance - which is: Where a prenuptial agreement provides that neither spouse will ever claim any interest in the other’s property, states that each spouse shall be the sole owner of property purchased or acquired in his or her name, and contains language purporting to waive and release all rights and claims that a spouse may be entitled to as a result of the marriage, do such provisions serve to waive a spouse’s right to any share of assets titled in the other spouse’s name, even if those assets were acquired during the marriage due to the parties’ marital efforts or appreciated in value during the

marriage due to the parties’ marital efforts?

This prenuptial agreement was executed before the effective date of Fla. Stat. §61.075(5)(a)(2). The Husband claimed that to apply this statute would be an unconstitutional impairment of a preexisting contract. The court rejected this claim, holding that the enactment of that statute was really only a codification of case law which already existed at that time. “Furthermore, even before the enactment of section 61.075, the case law provided that the increased value of assets solely owned by one spouse prior to the marriage should be considered marital assets subject to equitable distribution to the extent their increased value was the result of either one or both spouses’ work efforts, or the expenditure of marital funds or earnings of the parties.” *Hahamovitch* at 1013.

The Fourth District has previously held that “[w]here a prenuptial agreement does not address the right to enhanced value of a non-marital asset, that value is subject to equitable distribution.” *Weymouth v. Weymouth*, 87 So. 3d 30, 34 (Fla. 4th DCA 2012). In that case, the prenuptial agreement contained language that the wife waived any and all claims which she might have to the property owned by the husband prior to the marriage. The *Weymouth* court held that such language did not constitute an express waiver of growth or appreciation of pre-marital or non-marital assets.

The *Hahamovitch* court went on to compare cases from other districts on this issue, which construed agreements which were more or less specific in providing that even active appreciation in value during the marriage of a non-marital asset will remain non-marital, and, as I mentioned, certified conflict with decisions from both the Second and the Third Districts.

This case is a cautionary tale about the drafting of these agreements, and not only as to property distributions. This agreement also contained a provision for a certain amount of alimony, and the trial court construed that to mean the Wife could not seek a modification of that provision based upon changed circumstances. The Fourth District, however, held that a general waiver of alimony “except as otherwise provided” in the agreement was not specific enough to waive the wife’s right to seek judicial modification of the alimony provided in the agreement.

Oral arguments before the Florida Supreme Court are presently scheduled for March 5, 2015, so look for an opinion after that.

# Florida And DOL Sign Pact to Target Independent Contractor Misclassification



By Laura Gross

In January 2015, Florida became the 19<sup>th</sup> state to join the United States Department of Labor's Misclassification Initiative with the execution of a memorandum of understanding (MOU) by Florida's Department of Revenue. Misclassification of workers as independent

contractors has been a key initiative of the Department of Labor since 2011 when it signed a MOU with the Internal Revenue Service to work together to reduce worker misclassification, level the playing field for responsible employers, and reduce the tax gap (maybe not in this order). This was followed by a succession of MOUs between the Department of Labor and state labor departments.

The recent MOU with Florida recognizes that the Department of Labor enforces a wide range of federal labor laws dealing with wage and hour issues and that Florida's Department of Revenue is responsible for ensuring that employers correctly report all of their employees and wages. Now, the departments will refer complaints to each other, conduct joint investigations, and share information regarding settlements and disposition. This may mean that an investigation that begins in response to a claim for state reemployment assistance by a worker who was never reported as an employee, will trigger a referral to the Department of Labor for failure to pay overtime wages required by federal law (which can lead to personal liability for business owners and managers).

Reliance on independent contractors rather than employees is not inherently unlawful. However, the determination of whether a worker qualifies as an independent contractor under federal and state law is based on a factual analysis of the particular situation. There is no easy mechanical answer. Given the current targeting of independent contractors and the expected increase in investigations and related litigation, employers should reassess their independent contractor relationships to ensure they are consistent with state and federal laws.

# Persuasion by Framing

By Siegel Hughes & Ross

We have been doing some interesting reading in behavioral economics and want to share some of what we have learned. Behavioral economics is a branch of economics that applies psychological insights into human behavior to understand how people make decisions. Since trial lawyers are in the business of influencing decisions, it seems that understanding how people make decisions is important information. One of the things that can impact decisions is the framing within which a choice is offered. Research indicates that the way an issue is presented or implemented can affect the ultimate decision. Would you rather have \$10,000.00 today or \$11,000.00 two years from now? Most people say they would rather have the money now. Would you rather receive \$11,000.00 two years from now or pay a \$1000.00 penalty and receive \$10,000.00 now. Most people say they would wait. The money is the same; the time is the same; yet, a substantial number of people would make a different decision depending on how the question is framed.

There are, at least, three types of framing: value framing, temporal framing, and goal framing. As an example of value framing, consumers will purchase more ground beef labeled 90% lean than that labeled 10% fat. Of course, the meat is the same. Studies have shown that subjects report beef labeled 90% lean even tastes better than beef labeled 10% fat. The meat is the same, so the different perception of taste can come only from the difference in the label.

Temporal framing, of course, involves recasting the timing of decisions. The choice of payment options, above, is an example of

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# Alternative Dispute Resolution

## Stew on This

By Chester B. Chance and Charles B. Carter



Every year we write an article about the Brasstown, North Carolina, New Year's Eve Possum Drop. If you recall, although New York drops a Waterford Crystal ball at Times Square, the folks at Brasstown lower a possum in a plexi-glass container about 12-15 feet from the roof of the local general store/convenience store. The possum is released unharmed, and scampers off into the woods. The festivities include reciting the Pledge of Allegiance, country music, entertainment and contests. The event, which is extremely well attended, is nothing if not wholesome, and good ol' fashioned fun.

The Possum Drop itself involves a small amount of time given the overall length of the New Year's Eve events.

Brasstown is, oh, how shall we say, a rather small place. It only has about a dozen buildings and no traffic signal light.

The famous Possum Drop occurs at "Clay's Corner" which is a local general store.

This year's Possum Drop was the 21<sup>st</sup> annual and like all others was extremely well attended. The attendees included protesters from PETA who somehow think the Possum Drop is monstrous cruelty. PETA objects to the possum being subjected to the "terrifying sound of fireworks, musket fire, noisy crowds and loud music, as well as, the blinding glare

of floodlights." PETA claims that even though the possum is released it may die later of "capture myopathy" which PETA describes as "a cascading series of catastrophic physical reactions to stress or trauma," or, playing possum.

This delightful event, a true slice of Americana, is referred to by PETA as "a zone of lawlessness."

Well, this year, there was no live possum dropped at the Possum Drop. PETA suggests this is a tremendous victory. We note, however, that instead of a live possum being dropped, the organizers of the event placed a pot of possum stew in the plexi-glass container and lowered it from the one-story rooftop.

It has surprised us that PETA's reaction to the substitution was considered a victory. We thought the switch would just give them something else to stew about.

The organizer of the event, Mr. Clay Logan, should be applauded for his patience, wit, and gentlemanly approach to PETA's single-minded obsession with this event.

Right now, for those of you keeping score: Possum Drop - 21, PETA - 0.

Oh, as for ADR: perhaps someone should consider mediating, arbitrating, or simply dismissing the matter.



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## Persuasion by Framing *Continued from page 6*

temporal framing. Goal framing is not goal setting. It involves presenting an issue so that multiple decisions over time will be made in a way to maximize the probability of reaching the goal that has been set. A program that cautions parents that children who are not taught good financial habits are less likely to save sufficient money for a comfortable retirement will motivate better than one that communicates that children who are taught good financial habits are more likely to save sufficient money for a comfortable retirement. Research shows that when goals are specific and concrete negative framing is more effective.

Trial lawyers, in the business of influencing decisions, can use this science. We all know that lump sum settlements can be substantially less than time payments. As an additional example, research shows that juries respond more favorably if the issue is framed as holding the Defendant responsible for his/her actions than if framed as compensating the Plaintiff for his/her loss. Also, people are more motivated to avoid loss than to seek gain. So we are more likely to get the desired decision if we can phrase the alternative to the desired decision as a loss than if we frame the desired decision as a gain. We will share more as we learn more.

# Criminal Law



By William Cervone

This one makes my head hurt. For reference, please see your archived copy of this newsletter from November of 2012, and the article I wrote then about Florida's new hearsay exception, FS 90.804(2)(f), generally referred to as forfeiture

by wrongdoing. For new members/readers (since I assume that all old members/readers have and often refer to their archived copies of the newsletter), forfeiture by wrongdoing holds that an otherwise hearsay statement is not excluded when the declarant is unavailable because of the actions of the party against whom it is offered. In other words, if you kill the witness who fingered you to prevent him from testifying, then his statement to the police that you told him you did it is coming in.

So, a chronology:

Ancient Times: Common Law recognizes the doctrine of forfeiture by wrongdoing, and uses it, I assume, in place of things like trial by combat and various truth-seeking devices such as hurling a person weighted down with stones into a river on the theory that an innocent person will survive regardless while a guilty one will perish.

More Or Less Modern Times: various states codify the doctrine.

1997: The Feds adopt it.

2004: The United States Supreme Court issues the now (in)famous *Crawford v Washington* case on testimonial versus non-testimonial hearsay with little guidance as to which is what.

2008: The United States Supreme Court issues *Giles v California*, holding that *Crawford's* constitutional bar to unconfounded, out of court testimonial statements does not apply to the forfeiture by wrongdoing doctrine. *Giles* notes that *Crawford* "acknowledged that two forms of testimonial statements were admitted at common law even though they were unconfounded," one of which was the common law doctrine of forfeiture by wrongdoing. *Giles* goes on to note the sound policy reason behind this is that "[T]he absence of such a rule would create an intolerable incentive for defendants to bribe, intimidate, or even kill witnesses against them." No doubt.

April 27, 2012: Gov. Scott signs into law what is now FS 90.804(2)(f), adopting forfeiture by wrongdoing in Florida.

August 29, 2012: Saying that it was "almost

certain" that the Florida Supreme Court would approve the new rule because of *Giles*, in *State v Mortimer* the 4th DCA upholds a conviction in which it was applied.

November 2012: I write that "there won't be an annoying *Crawford* problem" with all of this.

December 12, 2013: The Florida Supreme Court declines to adopt the new rule "in light of constitutional concerns," citing *Crawford*. Apparently no one thought to mention *Giles*.

July 9, 2014: The 4th DCA reverses itself in *Mortimer* because of the Florida Supreme Court's December 2013 refusal to adopt the rule.

July 10, 2014: The Florida Supreme Court does an about face and adopts the new rule "to the extent that the provision is procedural," a fairly stock caveat. Apparently someone found out about *Giles*.

August 5, 2014: Prof. Charles Ehrhardt, Florida's pre-eminent expert on evidence, addresses the Florida Prosecuting Attorneys Association's summer education conference and opines thusly: "Forfeiture by wrongdoing is alive and well since the Florida Supreme Court has now adopted the rule." As to *Crawford* in general and its impact on this and other such hearsay concerns, he further opines as follows: "It's all screwed up."

But that is for another day. Today is just to fully brief you on the state of affairs with forfeiture by wrongdoing.

## New Administrative Orders

Administrative Order 1.27 (v1), Order Appointing Lindsey Brown as General Magistrate, was signed by Chief Judge Roundtree on January 30, 2015. You can view this Order at <http://circuit8.org/administrative-orders>.

Also on January 30, 2015 Judge Roundtree signed Administrative Order 7.02(v2) Procedures for Settlements Requiring Court Approval. This Administrative Order replaces AO 7.02(v1) entered on October 5, 2012. This Order is also viewable at <http://circuit8.org/administrative-orders>.



# The Environmental Protection Act

## “Citizen Suits” for the Environment



By Jennifer B. Springfield and Alexander Boswell-Ebersole

In 1971, the Florida Legislature passed the *Florida Environmental Protection Act*. This Act, codified as section 403.412, *Florida Statutes*, authorizes Florida citizens, subdivisions and municipalities of the state, as well as the

Department of Legal Affairs, as well as private citizens who meet the standing requirements under the Act, to bring suit in the name of environmental protection. More particularly, section 403.412 allows these entities to initiate actions for injunctive relief in order to either compel enforcement by an agency charged with enforcing laws, rules, or regulations that protect the “air, water, and other natural resources of Florida,” or to prohibit any person, corporation, or government agency or authority from violating such laws, rules, or regulations.<sup>1</sup> Moreover, in addition to providing the authority to *initiate judicial proceedings*, the legislation enables these same entities to *intervene in ongoing administrative hearings* under sections 120.569 or 120.70, *Florida Statutes*, where the hearings are related to the protection of the “air, water, and other natural resources of the state.”<sup>2</sup>

Finally, the Act also expressly gives not-for-profit corporations organized for the purpose of protecting the environment or natural resources the authority to initiate section 120.569 or 120.70 administrative hearings. The only restrictions are that: 1) the not-for-profit must consist of at least 25 current members who reside in the county where the activity is proposed, and 2) the not-for-profit must have been formed at least one year before the government agency’s initiation of the activity.<sup>3</sup>

Adopted at the height of the environmental movement, the *Florida Environmental Protection Act* makes up part of the legislative response to Article II, Section 7 of the Florida Constitution, which was added to the state constitution in the late 1960’s.<sup>4</sup> In addition to aspirational language regarding protection and conservation of the state’s natural resources and scenic beauty, Article II, Section 7 requires the Florida Legislature to make “[a]dequate provision . . . by law” to carry out these goals.<sup>5</sup> As a result, the Legislature responded by adopting a variety of laws pertaining to the environment, including the *Florida Environmental*

*Protection Act*.

Since the Act gives private citizens standing to bring suit to enforce the law, actions brought under it are often referred to as “citizen suits.” Some champion the benefits of the expanded role of citizens in environmental governance that citizen suit provisions can offer. Several states have statutes authorizing citizen suits and virtually all major federal environmental statutes contain citizen suit provisions.<sup>6</sup>

Florida’s citizen suit provision prescribes its use for judicial proceedings in a variety of different ways. For example, it requires, as a condition precedent to instituting a suit, the petitioner to file a “verified complaint” with the agency in question in order to give that agency 30 days to attempt to remedy the matter.<sup>7</sup> Section 403.412 also provides for costs and attorney’s fees to be paid to the prevailing party,<sup>8</sup> and restricts venue to the county or counties where the alleged transgression occurs.<sup>9</sup>

Like other types of petitioners, citizens bringing suit under 403.412 must be appropriately situated so as to properly claim standing. That said, among the states with citizen suit provisions, Florida’s standing requirement is relatively lenient because Florida’s 403.412 citizen suit provision does not require a party to prove a *special injury*, which is typically required

*Continued on page 16*

### Free CLE Opportunity

The Family Law Section will present a free CLE on tax implications in family law matters including alimony, assets/liabilities, dependency exemptions, and deductibility of attorney’s fees.

What: Taxes in Family Law Cases by Jeff Traynham

When: Tuesday, March 17 at 4:00 p.m.

Where: Courtroom TBD, Alachua County Civil and Family Justice Center

CLE Credit: 1 general credit hour

Cost: FREE

# Lawyers and Law Students come together for the Law and Justice Youth Conference

By Meshon Rawls

On Saturday, February 7, 2015, approximately 70 lawyers and law students came together to host over 100 young people at the University of Florida Levin College of Law at the Fourth Annual Law and Justice Youth Conference. The Josiah T. Walls Bar Association and the North Central Florida Federal Bar Association were awarded a Florida Bar Diversity Grant to assist in funding the conference. The theme of the conference was "Community Works." The goal was to provide more positive interactions between at-risk youth and legal and non-legal professionals in their community in hope that the dialogue would prevent future negative interactions with the legal system and inspire the youth to be active and positive leaders in their community. Several members of the Eighth Judicial Circuit Bar Association led workshops and talked with students about their experience in the legal profession. In addition to making a positive impact on the youth, the collaboration also served as a vehicle for law students to work with lawyers in various capacities and develop relationships that will continue for years to come.



The image shows a promotional graphic for HSW Engineering, Inc. At the top is the company logo, which features a stylized green and blue graphic of a person or a plant next to the letters "HSW" in a bold, blue, sans-serif font. Below the logo, the text "Engineering, Inc." is written in a smaller, blue, sans-serif font. Underneath that, the tagline "Engineering and scientific solutions within your reach..." is written in a green, italicized, sans-serif font. In the center, the words "ENVIRONMENTAL ENGINEERING WATER RESOURCES QUALITY ASSURANCE" are stacked in a bold, blue, sans-serif font. At the bottom, the text "For more info: (813) 968-7722 Phone" is written in a green, sans-serif font, followed by the website address "www.hsweng.com" in a blue, sans-serif font. The entire graphic is enclosed in a thin blue border.



Some of the lawyers who participated in the 4th Annual Law & Justice Youth Conference on Saturday, February 7, 2015.

# Mark Your Calendars Now for the Next Leadership Roundtable On April 10, 2015

By Stephanie Marchman

The Leadership Roundtable is a program sponsored by a number of local bar associations, including the Clara Gehan Association for Women Lawyers, Eighth Judicial Circuit Bar Association, Florida Association for Women Lawyers, Florida Bar, Josiah T. Walls Bar Association, and North Central Florida Chapter of the Federal Bar Association, as well as the University of Florida Levin College of Law.

The purpose of the Leadership Roundtable is to bring together leaders from the local legal community, both lawyers and judges, with younger lawyers and law students to discuss topics and solutions related to diversity and inclusion in the legal profession. At the conclusion of each Leadership Roundtable, information about the program is widely disseminated to other bar associations in the state and nation to encourage others to replicate the program in their local legal communities, as well as share our lessons learned. Indeed, we recently received word that the Tampa Bay Chapter of the Federal Bar Association hosted a program patterned after our first Leadership Roundtable on “Staying in the Game: Women, Leadership, and the Law.”

Last year’s Leadership Roundtable involved ten federal judges, the Florida Bar President and two past Florida Bar Presidents, ten different professional organizations, managing partners of major and small law firms, bar leaders, young lawyers, and law students, all who came together to discuss the female leadership gap in the legal profession, guided in large part by Sheryl Sandberg’s book, *Lean In*.

This year’s Leadership Roundtable will follow a similar format as last year – approximately 150 participants will meet at the Woolly in downtown Gainesville for the Eighth Judicial Circuit Bar Luncheon and speaker. After the luncheon, there will be two moderated panel discussions, each of which will be followed by moderated small group discussions. A networking cocktail reception will immediately follow.

This year’s Leadership Roundtable topic is: A Cultural Revolution: Redefining Success in the Legal Profession. Traditionally, success has been measured by money and power, but studies show that this traditional definition of success has left many of us burnt out and unhappy, especially in the legal profession. Perhaps if there is a cultural revolution by redesigning how we work in the legal profession

(e.g., by changing where we work, how we work, and how we value our work) and we add an element to the definition of success to include well-being (such as valuing disconnecting from work and technology, sleeping more, exercising more, meditating, spending time with family and on passions, giving back), all of us – young and old, men and women, all races and all backgrounds – will be able to thrive in life and the practice of law. The impetus for this discussion is the book, “Thrive”, by Arianna Huffington, and a Federal Lawyer Magazine article, “Is the Third Metric Key?” by Annie Rogaski. To that end, we plan to host two panels of lawyers and judges to discuss how they define success and what has made them happiest in their careers, as well as how they have bucked traditional notions of how to practice law and promoted wellness in their own lives. Please watch your email for registration information, as space will be limited.

## Submit Your Nominations Now For Leadership Roundtable Diversity Award

This year’s Leadership Roundtable Planning Committee would like to recognize a member of our legal community who advances diversity, inclusion, and equality in the legal profession. **Please send your nominations for the Diversity Award with a short statement of support to Stephanie Marchman at [marchmansm@cityofgainesville.org](mailto:marchmansm@cityofgainesville.org) by March 30, 2015.** The Diversity Award will be awarded at the Leadership Roundtable on April 10, 2015.



Frank Maloney, Jr. (2d from right) is presented with the Legal Services Corporation Pro Bono Service Award on January 23, 2015.

# Who Will Speak for You?

By Sheri Kittelson, MD, Assistant Professor and Medical Director, Palliative Care & Timothy Flynn, MD, Professor, Department of Surgery

UF Health invites the Eighth Judicial Circuit Bar Association to join the Alachua County Medical Society in an important community-wide initiative to raise awareness about advance directives. The primary goal of the “Who Will Speak For You?” initiative is to encourage every Alachua County adult to designate a health-care surrogate who knows their medical preferences before the adult becomes a patient unable to speak for him- or herself. These conversations and documented wishes are a future gift to us and our families, carrying the quiet hope of our death being a peaceful celebration of life.

UF Health began this campaign two years ago in conjunction with National Healthcare Decisions Day, observed annually on April 16. This year, we ask you to consider whether, within your own law practices, you might have the opportunity to encourage your clients to consider engaging in these important conversations with their loved ones and legally documenting their medical preferences. Our goal is to normalize these conversations and help patients carefully consider and document health-care preferences prior to entering crisis situations. Unfortunately, it is often too late to have these vital discussions with patients upon arrival at hospital emergency departments which is why we ask for your help. Completion of advance directives enables individuals to maintain their wishes for care, even during a period of incapacity, which can occur after unexpected illness, accident, or during the end of life. By contemplating our values, we can actively communicate our goals of care to others and plan our final days.

Several barriers may exist to completion of advance directives including limited provider-time, institutional support, reimbursement, topic discomfort, lack of interest, cultural, and language barriers. Advance directives are intended to direct future medical treatments for adults who become incapacitated and may need medical interventions.

Please consider completion of your own Advance Directive, developing a system of collection in your practice, and participating in community efforts to raise Gainesville to the next national leader in Advance Directives.

For more information about “Who Will Speak For You?” visit our website at <https://ufhealth.org/advance-directives/overview>

# Nominees Sought for 2015 James L. Tomlinson Professionalism Award

Nominees are being sought for the recipient of the 2015 James L. Tomlinson Professionalism Award. The award will be given to the Eighth Judicial Circuit lawyer who has demonstrated consistent dedication to the pursuit and practice of the highest ideals and tenets of the legal profession. The nominee must be a member in good standing of The Florida Bar who resides or regularly practices law within this circuit. If you wish to nominate someone, please complete a nomination form describing the nominee’s qualifications and achievements and submit it to Raymond F. Brady, Esq., 2790 NW 43<sup>rd</sup> Street, Suite 200, Gainesville, FL 32606. Nominations must be received in Mr. Brady’s office by Friday, May 8, 2015 in order to be considered. The award recipient will be selected by a committee comprised of leaders in the local voluntary bar association and practice sections.

### **James L. Tomlinson Professionalism Award Nomination Form**

Name of Nominee: \_\_\_\_\_

Nominee’s Business Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

County in which Nominee Resides: \_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Name of Nominator: \_\_\_\_\_

Signature: \_\_\_\_\_

# EJCBA Charity Golf Tournament

## Benefiting the Guardian ad Litem Program



Mark Bostick Golf Course  
at the University of Florida  
2800 SW 2<sup>nd</sup> Avenue  
Gainesville, FL 32607  
Phone: 352-375-4866

**Friday, March 20, 2015**

Cost: \$100 per player  
Register & Eat: 11:30am  
Tee-time: 1:00pm  
Reception following round

To register, please return this form with payment. Visit [www.ejcbacharitygolf.com](http://www.ejcbacharitygolf.com) for more information

- Longest Putt Contest
- Men and Women Longest Drive
- Closest to the Pin Challenge
- "Mulligans for Kids" for sale

### Two Person Scramble Format



This year's two person scramble event will be held **Friday, March 20th, 2015**, at the beautiful Mark Bostick Golf Course at the University of Florida in Gainesville, Florida. Registration and lunch begin at 11:30am, with shotgun start at 1:00pm and post-round reception immediately following golf.

The cost for this event is **\$100** per golfer. This price includes 18 holes of golf, riding cart, lunch, reception and various awards and/or prizes. All net proceeds of this charity tournament will benefit the Guardian ad Litem Program of the 8<sup>th</sup> Circuit through the Guardian Foundation, Inc.

A Guardian ad Litem is a volunteer appointed by the court to protect the rights and advocate the best interests of a child involved in a court proceeding. Currently, the Florida GAL Program represents close to 27,000 abused and neglected children, but more than 4,600 children are still in need of a voice in court. Additional funding to the GAL Program provides invaluable financial support for the volunteers.

ENTRY FEE: \$100 per golfer

**SIGN-UP DEADLINE**  
**MARCH 13<sup>th</sup>, 2015**

**FOR MORE INFORMATION,**  
**CONTACT MAC MCCARTY**

MCCARTY, NAIM & KEETER, P.A.  
4131 NW 28<sup>th</sup> Lane, Suite 7  
Gainesville, FL 32606  
Phone: 352.240.1226  
Fax: 352.240.1228

[mac@lawgators.com](mailto:mac@lawgators.com)

\_\_\_\_\_  
Name

\_\_\_\_\_  
Partner's Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Partner's Address

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Phone Number

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Partner's Phone Number

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Email Address

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Partner's Email Address

**Make checks payable to:**  
**McCarty, Naim & Keeter, P.A., Trust Account**

# It's that time again!

The Eighth Judicial Circuit Bar Association Nominations Committee is seeking members for EJCBA Board positions for 2015-2016. Please consider giving a little time back to your bar association. Please complete the application below and return the completed application to EJCBA. The deadline for completed applications is May 8, 2015.

## Application for EJCBA Board Membership

Name: \_\_\_\_\_ Bar No. \_\_\_\_\_

Office Address: \_\_\_\_\_  
\_\_\_\_\_

Telephone Numbers: (Home) \_\_\_\_\_ (Office) \_\_\_\_\_  
(Fax) \_\_\_\_\_ (Cellular) \_\_\_\_\_  
(E-Mail) \_\_\_\_\_

Area of practice: \_\_\_\_\_ Years in practice: \_\_\_\_\_

Office of Interest: (Check all that apply)

Secretary  Treasurer   
Board member  Committee Member

Preferred Committee Interest: (Check all that apply)

<input type="checkbox"/> Advertising	<input type="checkbox"/> Annual James C. Adkins Dinner	<input type="checkbox"/> Annual Reception
<input type="checkbox"/> "Ask A Lawyer" Project	<input type="checkbox"/> CLE	<input type="checkbox"/> Community Service/Diversity
<input type="checkbox"/> Continuity & Transition	<input type="checkbox"/> Golf Tournament	<input type="checkbox"/> Judicial Poll
<input type="checkbox"/> Law Week	<input type="checkbox"/> Medical - Legal	<input type="checkbox"/> Member Services
<input type="checkbox"/> Mentorship	<input type="checkbox"/> Oral History Project	<input type="checkbox"/> Policies & Bylaws
<input type="checkbox"/> Pro Bono	<input type="checkbox"/> Professionalism	<input type="checkbox"/> Social
<input type="checkbox"/> Sponsorships	<input type="checkbox"/> Website/Social Media	<input type="checkbox"/> Other (Describe Below)

Briefly describe your contributions, if any, to date to EJCBA.

What new goals would you like to explore for our association?

How many hours per week can you devote to your EJCBA goals?


Return to: EJCBA – Nominations Committee  
P.O. Box 13924  
Gainesville, FL 32604

Or email completed application to: [execdir@8jcba.org](mailto:execdir@8jcba.org)

## Reserve Now for the 2015 Professionalism Seminar

<p><b>WHEN:</b> Friday, April 17, 2015 – 9:00 a.m. – 12:00 NOON</p> <p><b>WHERE:</b> UF College of Law—Chesterfield Smith Ceremonial Classroom</p> <p><b>PROGRAM:</b> Linda Calvert Hanson, Director of the Henry Latimer Center for Professionalism at The Florida Bar, speaking on “Professionalism: An Expectation in Florida”</p> <p><b>COST:</b> EJCBA paid members: \$40, Non-Members: \$75</p> <p><b>CLE:</b> 3.5 Hours of CLE is expected</p> <p><b>DEADLINE:</b> Register on or before <b>Monday, April 13, 2015 at:</b></p> <p><a href="http://8jcba.dev.acceleration.net/event-registration/2015-professionalism-seminar/">http://8jcba.dev.acceleration.net/event-registration/2015-professionalism-seminar/</a></p>	<p>When registering online, you will need to select your first and second choices for your area of specialty for your area of specialty for small group discussions from the following options:</p> <p style="text-align: center;">Civil/Tort Law</p> <p>Family/Domestic Relations Law</p> <p style="text-align: center;">Criminal Law</p> <p style="text-align: center;">Estates &amp; Trusts Law</p> <p style="text-align: center;">Business Law</p> <p style="text-align: center;">Government Lawyers</p> <p style="text-align: center;">Real Estate &amp; Land Use Law</p>
<p><b>Parking:</b></p> <p>Decal requirements for <b>Commuter</b> parking will be waived.</p> <p>Spaces are limited, so <b>arrive early</b>.</p>	

## Reserve Now for the EJCBA March 2015 Luncheon

<p><b>WHEN:</b> Friday, March 13, 2015 – 11:45 a.m.</p> <p><b>WHERE:</b> The Woolly – 20 N. Main Street, Gainesville, FL 32601</p> <p><b>PROGRAM:</b> Dr. David Denslow, Professor in the UF Department of Economics — “Economic Futures for the Gainesville Area: Our Land Development Choices ”</p> <p><b>COST:</b> <b>Members: \$17.00, Non-Members: \$25.00*</b></p> <p style="padding-left: 20px;">Chef’s choice luncheon buffet, including meat or vegetarian entrees, seasonal sides, and dessert</p> <p><b>DEADLINE:</b> Register on or before <b>Monday, March 9<sup>th</sup> at Noon at</b>  <a href="http://8jcba.dev.acceleration.net/event-registration/march-2015-luncheon/">http://8jcba.dev.acceleration.net/event-registration/march-2015-luncheon/</a></p> <p><small>*\$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 <a href="mailto:execdir@8jcba.org">execdir@8jcba.org</a> or call <b>(352) 380-0333</b>. 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.</small></p>	<div style="text-align: center;">  </div>
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### Upcoming Events

EJCBA Charity Golf  
Tournament Benefiting the  
Guardian ad Litem Program for  
the 8th Judicial Circuit  
Friday, March 20, 2015  
Lunch beginning at 11:30am

Professionalism Seminar  
Program: Speaker Linda  
Calvert Hanson, speaking on  
“Professionalism: An  
Expectation in Florida”  
Friday, April 17, 2015  
9:00am – 12:00pm  
Registration begins at 8:30am

### Register for the 1st Annual Spring Fling!

Save the date and invite a friend, colleague, client, or significant other to join you for a fun new event that will feature live music, food trucks, and craft beer and wine at the beautiful outdoor garden adjacent to the Thomas Center. We look forward to seeing you there on Friday, March 6 from 6-8pm! Reserve at <http://8jcba.dev.acceleration.net/event-registration/spring-fling/>

to show standing in other lawsuits. In other words, standing under section 403.412 does not require the party to incur an injury “different both in kind and degree” from injury suffered by the general public.<sup>10</sup> This less restrictive standing requirement could be an important consideration when, for example, an activity requires both a state and federal permit, thus giving a challenger the option to challenge in either state or federal court. Yet, despite its lenient standing requirement, very few citizen suits have actually been brought under the *Florida Environmental Protection Act*.<sup>11</sup>

- 1 Fla. Stat. § 403.412(2)(a) (2014).
- 2 Fla. Stat. § 403.412(5) (2014).
- 3 Fla. Stat. § 403.412(6) (2014).

- 4 In addition to a 1996 amendment related specifically to the Everglades, Art II, § 7 of the Constitution was amended in 1998 to include additional language applicable throughout the state that requires certain legislative efforts in connection with “the conservation and protection of natural resources.”
- 5 Fla. Const. Art II, § 7(a).
- 6 *See, e.g.*, 42 U.S.C. § 7604 (providing Congress’ first citizen suit provision as part of the Clean Air Act of 1970).
- 7 Fla. Stat. § 403.412(2)(c) (2014).
- 8 Fla. Stat. § 403.412(2)(f) (2014).
- 9 Fla. Stat. § 403.412(8) (2014).
- 10 *Florida Wildlife Federation v. State Dept. of Environmental Protection*, 390 So.2d 64 (Fla. 1980).
- 11 Certainly, many different considerations go into deciding whether, when, and in what forum to file suit.

### March 2015 Calendar

- 4 EJCBA Board of Directors Meeting – 5:30 p.m., Gaineswood Clubhouse
- 5 Deadline for submission to April Forum 8
- 6 First Annual EJCBA Spring Fling (Member & Guest only), The Thomas Center, 6-8 pm
- 11 Probate Section Meeting, 4:30 p.m., Chief Judge’s Conference Room, 4<sup>th</sup> Floor, Alachua County Family & Civil Justice Center
- 13 EJCBA Luncheon, Dr. David Denslow, “Economic Futures for the Gainesville Area: Our Land Development Choices,” The Woolly, 11:45 a.m.
- 17 Family Law Section Meeting, 4:00 p.m., Chief Judge’s Conference Room, Alachua County Family & Civil Justice Center
- 20 EJCBA Annual Charity Golf Tournament benefiting the Guardian ad Litem Program

### April 2015 Calendar

- 1 EJCBA Board of Directors Meeting – 5:30 p.m., Gaineswood Clubhouse
- 6 Deadline for submission of articles for May Forum 8
- 8 Probate Section Meeting, 4:30 p.m., Chief Judge’s Conference Room, 4<sup>th</sup> Floor, Alachua County Family & Civil Justice Center
- 10 EJCBA Luncheon, FSU Law Professor Larry Krieger, "What Makes Lawyers Happy," The Woolly, 11:45 a.m.
- 10 EJCBA Leadership Roundtable: “A Cultural Revolution: Redefining Success in the Legal Profession” (CLE), The Woolly, 1-5 p.m.; reception immediately following
- 17 EJCBA Professionalism Seminar: Linda Calvert Hanson, Director of the Henry Latimer Center for Professionalism at The Florida Bar, speaking on “Professionalism: An Expectation in Florida,” UF Levin College of Law, 8:30-Noon
- 21 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](mailto:dvallejos-nichols@avera.com).