

FORUM 8

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Eighth Judicial Circuit Bar Association, Inc.

December 2016

President's Message

By Stephanie M. Marchman

GIVE.



The holidays are upon us and all the traditions that accompany them. From the tree lighting and Santa Claus visit at the Thomas Center to watching the Nutcracker at the Performing Arts Center, from decorating sugar cookies to singing Silent Night with lighted candles at our neighborhood church. But by far, my favorite holiday tradition is to sit in our living room, adorned with holiday decorations and our fragrant Christmas tree, and read holiday stories to our two young children.

Given this, I eagerly pull out our holiday decorations every year on Thanksgiving weekend and swiftly decorate our living room. I exercise great care, though, when taking my glass snow globe out of its box and fuss over finding just the right place for it. I also always take a moment to think about the two happy and affectionate foster children who gave me the globe one December while I was in law school here in Gainesville.

At that time, they were only four and two and I was their Guardian ad Litem. Their parents died while the children were in foster care, and fortunately, family members from out of state came to the rescue. They were kind and hardworking people, with two older children of their own. There was never a doubt that the foster children were going to leave Florida and live

with them. And understandably, the family members wanted the children in their care as soon as possible, or at least in time for them to come home for the holidays. The problem was, out of state placements take interstate cooperation (a.k.a.: a lot of red tape) and the holidays were just three months away. However, with the diligence of all involved, especially our Court (Magistrate Stephen Pennypacker) and Guardian ad Litem Attorney (Mary K. Wimsett), we were able to accomplish just that and facilitate the best ending possible in this heartbreaking case.

So when I take out my snow globe this holiday season, I will think of these two children and the life they have been able to live because our circuit came together to do all that they could to ensure they did not languish in the system. I'll also think about how thankful I am to practice in a place where my Guardian ad Litem experience is not all that unusual. Indeed, as aptly stated by our Past President Rob Birrenkott in accepting the Chief Justice's Pro Bono Service Award on behalf of the EJCBA last spring, "our circuit may be small, but our hearts are big."

There's no doubt that many of you will give this holiday season. Perhaps by picking up extra toys or books for a three to five year old to support the EJCBA's Holiday Project (Jennifer Springfield at jennifer@springfieldlawpa.com), serving as an Attorney ad Litem in a case (Judge Monica Brasington at dunawayr@circuit8.org), speaking at a Law in the Library event (Jan Bendik at jan.bendik@trls.org), giving advice for an hour or two through Ask a Lawyer (Ray Brady at rbrady1959@gmail.com), or volunteering with Three River Legal Services (Marcia Green at marcia.green@trls.org) or Southern Legal Counsel (Jodi Siegel at jodi.siegel@southernlegal.org). Because you know, "only a life lived for others is worth while."

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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. Also please email a photograph to go with any article submission. 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

Alternative Dispute Resolution

By Chester B. Chance and Charles B. Carter



Yearly Update

Many members of our Bar Association vacation in North Carolina, and so we always provide an update on the controversy between PETA and Clay County, North Carolina residents who participate in the Annual New Year's Eve Opossum Drop. We have described the

benign attributes of said Drop in numerous past articles and so if you think an opossum is harmed you would either be wrong, or, you are reading the PETA website.

This year, thanks to the State Legislature of North Carolina, the Opossum Drop was again held, to the satisfaction of thousands of residents of Clay County. In our opinion, the PETA jihad against this innocuous little celebration was rabid and tenacious; however, ridiculous. Our goal is merely to keep you updated each year, as we always say quoting the PETA website makes for a humorous article which is easy to write.

But, since we have detailed the humorous position of PETA with respect to the Opossum Drop in numerous prior articles, we wanted to mine the PETA website for other funny little items. Like:

- The Selfie Monkey: PETA recently filed suit in Federal Court claiming a monkey which accidentally took a selfie possesses a copyright to the photograph. "Why should animals have rights?" PETA asks then provides the answer: ". . . a rat is a pig is a dog is a boy." OK. PETA expressed disappointment that the judge indicated he was inclined to dismiss the case, but, again looking at the upside in yet another dismissed case is still ". . . celebrating that legal history was made." How? ". . . in our unprecedented argument that Naruto, a crested macaque monkey should be the owner of property rather than mere property himself." OK. We are afraid to show you a photo of Naruto for obvious reasons.
- Pythons have feelings too: Closer to home, PETA is asking the State of Florida to ban the decapitation of pythons during the next Everglades python round-up. PETA



argues decapitation is inhumane (root word: human) suggesting decapitated snakes ". . . writhe in agony" due to the unique characteristics of the python nervous system. Thus, one assumes PETA would argue for the return of the guillotine as more humane for, well, humans who have a more advanced nervous system. We are just trying to keep ahead of the PETA curve. Oddly, PETA engages in a very active animal euthanasia program (over 90% of animals taken-in by PETA are euthanized according to The Huffington Post) as such a program ". . . is one of many things we do to alleviate the suffering of animals." What?

- Giant Shrimp: PETA protests the eating of shrimp of any size. Why? Lots of reasons including ". . . scientists are just beginning to scratch the surface of these fascinating animals' largely unknown behavioral characteristics" and suggesting shrimp are "a cholesterol bomb." OK. Please pass the cocktail sauce.
- Milking it: PETA claims milk is a racist drink because some minorities show a greater propensity for lactose intolerance. OK. PETA suggested ice cream manufacturer Ben & Jerry's replace cow's milk with human milk in their recipes. Start with Chunky Monkey, we suppose, and we say that with no disrespect to Naruto.
- Testing means no child left behind: PETA suggests humans are better suited to laboratory testing than animals. "There are some medical problems that can probably only be cured by testing on unwilling people, but, we don't do it because we recognize that would be wrong." OK. The founder of PETA, Ingrid Newkirk, has suggested that after she dies her body should be used like an animal's. She has asked that her flesh be cooked in a human barbecue, her skin

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Criminal Law

By William Cervone



Today we will learn more about one Michael Scott Lucier than we probably wish to know. We will also learn more about burden shifting and its nuanced evils and perils than perhaps we did.

Michael is a petty drug dealer and/or user in Ft. Pierce. He is also not the brightest bulb in the box as he apparently tends to do his petty dealing and using in parking lots where he inevitably draws the attention of passing police officers. Spotting them spotting him one day, Michael tried to drive off, which was all well and good except for two things: while doing so he rolled through a stop sign, thus justifying what might otherwise have been an illegal stop, and as being stopped he tried to toss a small white square object from the window, which object bounced off of the officer's car, was recovered, and all too predictably, was full of cocaine. Off to jail and eventually trial went Michael.

Not understanding the axiom Silence Is Golden, at trial Michael decided to testify. He was, he said, in the parking lot merely to meet a friend, certainly not to deal drugs, and that when the friend didn't show up he simply drove away, all coincidental with the officer spying on and following him.

Perhaps not understanding the additional maxim Less Is More, the prosecutor immediately pounced on cross-examination. Exactly who was the friend? Michael named her. Did he give her name to the police? No, he said, because they didn't ask. Driven to embellish, he added that she wasn't there to see what happened when he was in the parking lot or arrested anyhow, but he conceded that she could at least have corroborated his story as to why he was there to begin with. In feeble rebuttal to the cross-examination, he also said that he didn't know where she currently was or what her phone number was.

Whipped into full outrage, in closing the prosecutor mentioned, perhaps forcibly so, that Michael had said all of this because he had to explain away why he was in the parking lot but that by never telling anyone about this friend he'd kept the jury from hearing from her. "Wouldn't you," he urged, "have expected her to be there to back up his story...?"

Well, at this point Michael might as well have breathed a sigh of relief as his ensuing conviction was headed for reversal, for all of this, both cross-examination and closing argument alike, constituted burden shifting. To get right to the legal point to be made, the State cannot comment on a defendant's failure

to produce evidence to refute an element of a crime because that suggests that the defendant has some obligation to put evidence on. There is an exception to this rule when the defendant voluntarily assumes some burden of proof by asserting an affirmative defense, maybe an alibi, that would rely on facts that could only come from a witness not equally available to the State. But that exception, and this is the nuance at point, does not apply when the defense being asserted is not technically an affirmative defense. Merely trying to explain things away, as Michael was doing, carries no burden of proof, is not an affirmative defense, and does not open the door to what happened in this case, either on cross-examination or in closing.

An invitation to lie? Perhaps, unless somehow the State might more artfully disprove a claimed story than by bludgeoning the defendant with its more ludicrous parts. A double standard in applying immunity from the same cross-examination a State's witness, for example, might get? No doubt. But as I've heard it said, them's the rules.

Michael, by the way, may or may not live happily and freely ever after as there is still the problem, for him, of a re-trial. With that inconveniently bouncing packet of cocaine. Would that a camera in the police cruiser had been properly focused to capture that. Perhaps a gift of enhanced photographic capacity would be in order for your favorite police officer.

Merry Christmas and a Happy New Year to all!

Judge Wm. Terrell Hodges

A Legend on the Bench

By Jessica Fernandez, UF College of Law Student



At the age of thirty-seven years old, Judge Wm. Terrell Hodges humbly accepted the grave responsibility of sitting on the bench for the United States District Court for the Middle District of Florida. On

the day of his appointment, he promised, "My singular objective will be to hold this position with dedication and objectivity." For the past forty-five years, Judge Hodges has kept his promise.

As a trial judge, Judge Hodges is known for being "... unfailingly courteous, tireless, prepared and

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Negligence Claims and the Florida Residential Landlord and Tenant Act

By Krista L.B. Collins



Gainesville is a renters' city – and not just due to UF students. Between 2009 and 2014, the share of renters between the ages of 35 and 54 increased 8.1 percent, to 38.2 percent, placing Gainesville in the top 20 percent of all metro areas in the country. Anthony Clark, *Growing Lifestyle Choice: Middle Class and Renting*, Gainesville

Sun, July 9, 2016, at <http://www.gainesville.com/news/20160709/growing-lifestyle-choice-middle-class-and-renting>. The national average is just 34.6 percent. *Id.* And Gainesville's overall homeownership rate of 38 percent is significantly below the statewide average of 67 percent. Anthony Clark, *Affordability Out of Reach for Half of City*, Gainesville Sun, Nov. 21, 2015, at <http://www.gainesville.com/news/20151121/affordability-out-of-reach-for-half-of-city>. With such a large population of renters, the issue of landlord liability for tenants' injuries is bound to crop up.

Section 83.51, *Fla. Stat.*, governs the landlord's responsibility to maintain the premises, including complying with the requirements of all applicable building, housing and health codes, or, if there is no applicable building, housing or health code, maintaining the roofs, windows, doors, floors, exterior walls and other structural components in good repair. Residential landlords are also responsible under §83.51 for making provision for extermination of pests, locks and keys, garbage removal and installation of working smoke detectors. However, the landlord is not responsible to the tenant for conditions created or caused by the tenant's own negligent or wrongful act. §83.51(4), *Fla. Stat.*

If a landlord fails to meet these statutory requirements and a tenant is injured as a result, is the landlord strictly liable? Put another way, if a tenant is injured as a result of the landlord's violation of the Florida Residential Landlord and Tenant Act, is the injury itself proof of the landlord's negligence or merely evidence of the landlord's negligence?

Generally, negligence claims connected to violations of Florida statutes can be categorized in one of three ways, depending on the statute's purpose: "(1) violation of a strict liability statute designed to protect a particular class of persons who are unable

to protect themselves, constituting negligence per se; (2) violation of a statute establishing a duty to take precautions to protect a particular class of persons from a particular type of injury, also constituting negligence per se; (3) violation of any other kind of statute, constituting mere prima facie evidence of negligence." *Kohl v. Kohl*, 149 So.3d 127, 132 (Fla. 4th DCA 2014) (quoting *Chevron U.S.A., Inc. v. Forbes*, 783 So.2d 1215, 1219 (Fla. 4th DCA 2001)).

The question thus becomes: what kind of statute is the Florida Residential Landlord and Tenant Act? Is it a strict liability statute designed to protect a particular class of persons unable to protect themselves? Is it a type of statute establishing a duty to take precautions to protect a particular class of persons from a particular type of injury? Or does it simply fall into the "any other kind of statute" catch-all? The First District Court of Appeal has repeatedly reached the conclusion that violation of the Florida Residential Landlord and Tenant Act falls into the third category: a landlord's violation of the Act is merely evidence of negligence. In *Paterson v. Deeb*, 472 So.2d 1210, 1220 (Fla. 1st DCA 1985), the First District Court of Appeal stated, "We do not consider [§83.51(2)(a) 2 and 3] to be a 'strict liability statute' in the sense that it protects a particular class of persons from their inability to protect themselves...nor is it a penal statute designed to protect a particular class of persons from a particular injury or type of injury... since no criminal penalties are imposed for violating section 83.51" [internal citations omitted]. Similarly, in *Bennett v. Mattison*, 382 So.2d 873, 875 (Fla. 1st DCA 1980), the Court held that violation of the statutory duty imposed by §83.51(2)(a)3 is evidence of negligence. *Also see Langbehn v. Pub. Health Trust of Miami-Dade County*, 661 F.Supp.2d 1326, 1343 (S.D. Fla. 2009) (noting that although the Florida Residential Landlord and Tenant Act imposes numerous obligations on the landlord, it is not the sort of legislation that supports a negligence per se claim).

This determination is not limited to the First District Court of Appeal. In *Bennett M. Lifter, Inc. v. Varnado By & Through Varnado*, 480 So.2d 1336, 1337 (Fla. 3rd DCA 1985), four year old Louis Varnado suffered serious burns when he collided with his grandmother while she was carrying boiling water from the kitchen to the bathroom. The electric water heater for the house the Varnados leased from the

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Professor Teresa Drake and Dr. Nancy Hardt to Speak at the December Luncheon



Professor Drake and Dr. Hardt will join us for lunch on December 16, 2016. They will discuss the value in developing a trauma responsive community and how we can identify local community-based trauma initiatives that effect clients and the courts, both civilly and criminally.

Teresa Drake is co-founder and Director of the Intimate Partner Violence Assistance Clinic (IPVAC) at the University of Florida Levin College of Law. This first-of-its-kind domestic violence clinic is a collaboration between U.F.'s College of Law, College of Medicine, Shands Teaching Hospital and the local non-profit Peaceful Paths Domestic Abuse Network. Prior to IPVAC, Professor Drake worked for Florida's Eighth Judicial Circuit Office of the State Attorney for 13 years: first as a Child Welfare Attorney; then as a domestic violence prosecutor; and finally as the Division Chief of County Court. Professor Drake is a nationally recognized expert in intimate partner violence. As such she has provided training for the National District Attorneys Association, the Battered Women's Justice Project, US Department of Justice Office on Violence Against Women and Aequitas. Passionate about her work, she stays connected to the community and has received numerous awards. Most recently Professor Drake received the Three Rivers Legal Services Champions of Justice Award. She is also the recipient of the Martha V. Varnes Award for Outstanding Achievement in the Area of Violence Against Women, Peaceful Paths Domestic Abuse Network Community Advocate of the Year, and the Ellen Foster Award for Outstanding Commitment to the Betterment of Children.

Dr. Nancy Hardt retired in 2015 after 34 years of service to the University of Florida's College of Medicine. During her tenure she served as the Director of Health Disparities and Service Learning Programs, a Professor of Obstetrics and Gynecology, and a Professor of Pathology in the College of

Medicine at the University of Florida. Dr. Hardt has dedicated decades to teaching medical students, political leaders and the community about the causes and solutions to health care disparities for children and families. In 2010, Dr. Hardt founded UF's Mobile Outreach Clinic. The clinic provides primary health care services for women, men and children in underserved areas of Gainesville and Alachua County. She also co-founded the Source Clinic at the Levin College of law, which serves legal needs of those in domestic violence situations and the Safety Net Collaborative, a group of health care providers who together fill the gaps in our health care system. She has been recognized locally by the Gainesville Sun (Spirit of Gainesville), statewide by the Blue Foundation (Sapphire Award), and nationally by Loyola University (Damen Award) for her work with the establishment of an early learning center in SWAG, the southwest Gainesville hot spot identified for health disparities.

These two women, who have both been named Women of Distinction, came together with several others in the community to develop Peace4Gainesville. Peace4Gainesville is an initiative which informs organizations how their services can be trauma informed, and how to build resilience in their employees and clients. Since the first meeting, this initiative has grown and our community is embracing the ideas behind the mission.

Sources: Biography provided by Professor Teresa Drake, www.girlscouts-gateway.org/en/about-our-council/Women-Who-Make-a-Difference.html, and www.bobgrahamcenter.ufl.edu/content/dr-nancy-hardt.

The following speakers have been confirmed for 2017:

January 20: The Honorable Toby S. Monaco, Eighth Judicial Circuit of Florida

March 17: Dr. Jackson Sasser, President of Santa Fe College

April 21: The Honorable Peggy A. Quince, Florida Supreme Court

May 19 : UF Basketball Head Coach Michael White

To register for the EJCBA Luncheon visit www.8jcb.org. Luncheon prices for 2016-2017 are: \$17 for EJCBA Members, \$25 for Members who do not register by the deadline, and \$25 for Non-Members.

What's New For 2017?

By Laura Gross



1.State minimum wage increases. Florida's minimum wage increases on January 1, 2017, to \$8.10 per hour and tipped minimum wage increases to \$5.08 per hour. Both the federal and the state minimum wages are required to be posted at work in an area for employees to easily see. Additionally, employers should

notify tipped employees in writing of the hourly wage amount the employer will pay the tipped employees.

2.Social security tax hits higher income.

The maximum amount of earnings subject to social security tax climbs from \$118,500 to \$127,200 effective January 1, 2017. Employers should make the appropriate adjustments to their payroll systems and notify affected employees.

3.The EEOC has new enforcement priorities.

The US Equal Employment Opportunity Commission has announced its new enforcement priorities for 2017. Of these priorities, several are particularly notable, including: 21st century employment relationships; the discriminatory backlash against those of Middle Eastern descent and those who practice associated religions; the use of data-centered hiring mechanisms by the high-tech industry; and the concept of equal pay.

4.The EEOC has issued a new EEO-1 Report to capture 2017 pay data. The EEOC's Employer Information Report known as the EEO-1 Report has been revised to collect summary pay data as well as the information currently collected about the number of employees by job category and by sex, race and ethnicity. This compensation data will be collected beginning January 1, 2017; to be reported by March 31, 2018.

5.OSHA requires electronic reporting for large employers. Effective January 1, 2017, the US Department of Labor Occupational Safety and Health Administration will implement a new rule requiring employers with 250 or more employees in certain industries to electronically submit information regarding workplace injuries and illnesses. This data will be made public on OSHA's website.

6.Federal contractors must provide employees paid sick leave. The US Department of Labor issued a Final Rule on Establishing Paid Sick Leave for Federal Contractors which also becomes

effective on January 1, 2017. It requires contractors entering new contracts for services, construction or concessions provide covered employees the ability to earn, accrue and use up to 56 hours or 7 days of paid sick leave per year. Some exceptions apply. The sick leave can be earned and accrued at a rate not less than 1 hour of sick leave per 30 hours of work on the federal contract, or can be dropped in a bank in whole at the beginning of the year to avoid the administrative headache of tracking employee accrual. Employees are entitled to regular written notice of their leave balance and to rollover accrued leave from year to year, though accrual can be capped at 56 hours.

The Honorable Robert E. Roundtree, Jr. Retiring



After 15 years of service on the Eighth Judicial Circuit Court, which includes Alachua, Baker, Bradford, Gilchrist, Levy, and Union counties, the Honorable Robert E. Roundtree, Jr. will retire on June 30, 2017.

Judge Roundtree graduated from the University of Florida with a Bachelor's of Building Construction in 1975

and from the Florida State University College of Law in 1979. Before taking the bench, he clerked for the First District Court of Appeal in Tallahassee and then was employed as a civil attorney in Gainesville for 20 years.

Judge Roundtree was appointed to the circuit court in 2002. He presided over family, dependency, delinquency, civil, probate, and guardianship cases throughout the Eighth Judicial Circuit, serving as the Circuit Civil Administrative Judge in 2010. Judge Roundtree was elected Chief Judge in April 2012 and re-elected for a second two-year term on July 1, 2015.

Judge Roundtree's tenure as a circuit judge and Chief Judge has certainly left its mark. He has positively impacted the statewide court system through his work on the Trial Court Budget Commission (TCBC), which he currently chairs. The TCBC oversees the preparation and implementation of the statewide trial court budget, and is responsible for setting budgeting and funding policies and procedures for the trial courts.

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Alternative Dispute Resolution

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made into leather products, her feet made into umbrella stands, and one of her eyes be delivered to the administrator of the U.S. Environmental Protection Agency. We need more information: 1. What kind of Barbeque sauce are we talking about? 2. What size are her feet as umbrella stands are pretty, pretty big. 3. Would a wallet made out of Ms. Newkirk prevent electronic identity theft? Otherwise, go for it.

- Pest control: PETA believes even though cockroaches have tiny brains, they have consciousness and “. . . animals with bigger brains are not necessarily more intelligent.” We acknowledge PETA spokespersons have large brains. We are pleased to hear cockroaches “. . . live in close-knit groups and make collective decisions – about where to seek shelters, for instance – that will benefit the entire clan.” Cockroaches also “. . . have individual personalities.” Please do not eat cockroaches or wear clothing made from cockroaches, and remember: April 1 is “Take your Cockroach Clan to Work Day.”

We could go on and on with silly PETA positions, but, hey, we need to write future articles which write themselves by once again merely quoting the PETA website. We are not picking on PETA, rather, we rely on their website and press releases. We are not crazy enough to take on a group which represents about 0.4% of the population. Most of all, we sort of take sides with the wonderful folks in Clay County who don't have any silly positions other than to celebrate New Year's Eve.

Save The Date -- Event With The Alachua County Medical Society

The EJCBA and the Alachua County Medical Society are participating in a joint dinner and panel discussion to be held on the evening of Tuesday, March 14, 2017, from approximately 6 to 8:30 p.m. The anticipated topic for the evening is:

“Collaborating to Meet the Legal and Medical Needs of Our Local Under-Served Populations”

Watch the *Forum 8* and your email for further information. Questions may be directed to the EJCBA Medical-Legal Committee chairman, Ray Brady, at 373-4141.

Professionalism Seminar – Save The Date

Inexpensive & Enlightening CLE Credits

By Ray Brady

Mark your calendars now for the annual Professionalism Seminar. This year the seminar will be held on Friday, February 10, 2017 from 8:30 AM until Noon at the Trinity United Methodist Church on NW 53rd Avenue. Our speaker will be Henry M. Coxe, III of Bedell, Dittmar, Devault, Pillans & Coxe, past President of The Florida Bar, speaking on “Civility, the Legal Profession and Public Perception – The Stakes are High.”

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 January. Questions may be directed to the EJCBA Professionalism Committee chairman, Ray Brady, Esq., at 373-4141.

Robert E. Roundtree, Jr. Retiring

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Judge Roundtree championed innovation throughout his judicial career. Through his leadership, individuals without an attorney can now seek legal assistance in family law matters at the new John A. H. Murphree Law Library and Self Help Center, which opened October 28, 2016. He led the Eighth Circuit's transition to a paperless court and he supported the continued development of the Eighth Circuit's “homegrown” software systems, ICMS and OpenCourt, which resulted in great savings to taxpayers statewide. OpenCourt is now used in 330 courtrooms across 10 circuits and 36 counties. ICMS is used as the judicial viewer and case management system in 5 circuits and 23 counties.

He also worked in collaboration with the Alachua County Clerk of Court J.K. “Buddy” Irby, Public Defender Stacy A. Scott, and State Attorney William P. Cervone to fund and construct the new Public Defender's Office in Alachua County.

EJCBA's Annual Holiday Toy and Book Drive

to benefit Alachua County School's Headstart Pre-K program is underway! If you or your office would like to fill a box or donate a classroom bag of 12 books ("The 12 Days of Christmas"), please let Jennifer Springfield (boxes) or Anne Rush (classroom bags) know and they will make it easy and convenient for you to participate in this wonderful EJCBA tradition – jennifer@springfieldlawpa.com or 352-562-9557 or anne.rush.1024@gmail.com.

If you do not particularly enjoy shopping, sponsoring a classroom bag can be completed with a click or 2 at your computer and then by sending a check to the EJCBA Holiday Project. To sponsor a classroom bag of books, here is the link to what is available with instructions: https://docs.google.com/document/d/1ryoIzPGGiCxMue6tWDYqGKLC71X3gkw5B2_J7Ax88ow/edit?usp=sharing

This year your gifts will be distributed to the Headstart Pre-K programs at Irby Elementary in Alachua at 1:30 p.m. on December 14, and at Newberry Elementary at 12:30 p.m. on December 15. We'd love to have you join the fun!

You have all been amazingly generous in past years and we hope that we can once again provide these children with a Christmas to remember! The children who will receive the toys are 3 and 4 years old. Age appropriate educational toys are preferred. Thank you.

Tenant Act

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defendant, Bennett M. Lifter, Inc., had been inoperable for three days at the time, despite the fact that the grandmother had reported the problem to an employee of the defendant. *Id.* The plaintiff alleged that the defendant violated a section of the Metropolitan Dade County Code by failing to provide hot water, thereby leading to the injuries at issue. *Id.* The Third District Court of Appeals affirmed the trial court's "implicit determination" that the minimum housing standards set forth in the Metropolitan Dade County Code imposed a duty upon the landlord to provide hot running water and stated that the trial court's jury instruction that violation of the code could be considered as *evidence* of negligence was proper. *Id.* at 1338. In so stating, the Court held that the questions of whether a plaintiff is within the class which the ordinance or statute is meant to protect, whether the injury suffered was of the type the statute was intended to prevent and whether violation of the code was the proximate cause of the injury are questions of fact to be determined by the trier of fact. *Id.*

Clearly, it is well-established in Florida that the violation of the landlord's duties under §83.51, *Fla. Stat.*, while evidence of negligence on the part of the landlord, is not in and of itself negligence per se.

Reserve Now for the EJCBA December 2016 Luncheon



WHEN:	Friday, December 16, 2016 – 11:45 a.m.
WHERE:	The Woolly – 20 N. Main Street, Gainesville, FL 32601
PROGRAM:	Professor Teresa Drake and Dr. Nancy Hardt, Co-Founders of Peace4Gainesville—"Lawyering from a Trauma Responsive Perspective"
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, December 12th at Noon at: http://www.8jcba.org/event-registration/dec-2016-luncheon/
<p>*\$25.00 for members and 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.</p>	

Holiday Toy Drive
You may contact Jennifer Springfield (jennifer@springfieldlawpa.com) or Gloria Walker (gloria.walker@trls.org) to have an EJCBA Holiday Project box delivered to you. Alternatively, boxes may be picked up at Three Rivers Legal Services, located at 901 NW 8th Avenue, Suite D5, Gainesville, 32601 between the hours of 8:30 and 5:00 (Monday-Friday). Boxes may be returned to Three Rivers Legal Services or pickup may be scheduled with Jennifer or Gloria.

Mark Your Calendars for Upcoming Events

EJCBA Annual Professionalism Seminar—Friday, February 10, 2017
EJCBA Charity Golf Tournament benefiting the Guardian ad Litem Program—Friday, March 3, 2017

Judge Hodges

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astonishingly knowledgeable about virtually everything.” His mastery of the rules of procedure and evidence is legendary. Chief Justice Emeritus Gerald Bard Tjoflat of the Eleventh Circuit has written, “The record on appeal in a Terry Hodges case displays a master at work, a judge who leaves no stone unturned and treats the lowliest of lawyers and litigants with utmost dignity and respect.” These sentiments span beyond the courtroom, and into Judge Hodges’ chambers, where he has taught and become a role model for the many young lawyers who have been his law clerks.

Judge Hodges has left his mark not only in the judicial system in which he has worked, but also on the federal judiciary nationally. He has served with distinction on many committees and assignments in the federal judicial system, including as Chair of the District Judges Representatives of Judicial Conference of the United States; Chair of the Judicial Conference’s Executive Committee; Co-Chair of the Committee on Pattern Jury Instructions of the District Judges Association of the Fifth Circuit; Chair of the Committee on Pattern Jury Instructions of the Eleventh Circuit; Chair of the United States Judicial Panel on Multidistrict Litigation; and currently, Chair of the Judicial Conference Committee

on Court Administration and Court Management. Among many recognitions, Judge Hodges has received The William M. Hoever Judicial Professionalism Award of The Florida Bar and the American Judicature Society’s Edward J. Devitt Distinguished Service to Justice Award.

A resident of Gainesville, Judge Hodges continues to manage a full trial docket in the Ocala Division of the Middle District of Florida.

Judge Hodges was nominated, confirmed and commissioned as a federal judge in December 1971. To commemorate his service, the North Central Florida Chapter of the Federal Bar Association and the University of Florida Levin College of Law will host a reception in his honor on December 10 at the F-Club Room at Ben Hill Griffin Football Stadium, “a place of Honor, Distinction and Gator Pride,” and thus a perfect place to celebrate the Judge, who is the truest of Gator fans! Practitioners from the bench and bar, along with law students, will be raising a glass to honor Judge Hodges.

If you wish to attend, please contact Rob Griscti, FBA Chapter President or his assistant Elliott Welker at 352/375-4460. Attendance is limited and telephone RSVP’s are required.

December 2016 Calendar

- 3 SEC Championship Game, Atlanta, GA – 4:00 p.m.
- 5 Deadline for submission to January Forum 8
- 7 EJCBA Board of Directors Meeting, Faculty Dining Room, UF Law, 5:30 p.m.
- 10 Reception for Judge Wm. Terrell Hodges, F-Club Room, Ben Hill Griffin Stadium, *(Telephone RSVP required at 375-4460)*; time TBA
- 14 EJCBA holiday gift distribution to Irby Elementary Headstart Pre-K program, Alachua, 1:30 p.m.
- 14 Probate Section Meeting, 4:30 p.m., Chief Judge’s Conference Room, 4th Floor, Alachua County Family & Civil Justice Center
- 15 EJCBA holiday gift distribution to Newberry Elementary Headstart Pre-K program, Newberry, 12:30 p.m.
- 16 EJCBA Luncheon, Teresa Drake, UF Levin College of Law Professor and Dr. Nancy Hardt, UF College of Medicine, Co-Founders of Peace4Gainesville, The Woolly, 11:45 a.m.
- 20 Family Law Section Meeting, 4:00 p.m., Chief Judge’s Conference Room, Alachua County Family & Civil Justice Center
- 23 Friday before Christmas – County Courthouses closed
- 26 Christmas Day (Observed) – County and Federal Courthouses closed

January 2017 Calendar

- 2 New Year’s Day observed – County and Federal Courthouses closed
- 4 EJCBA Board of Directors Meeting, Faculty Dining Room, UF Law, 5:30 p.m.
- 5 Deadline for submission to February Forum 8
- 11 Probate Section Meeting, 4:30 p.m., Chief Judge’s Conference Room, 4th Floor, Alachua County Family & Civil Justice Center
- 16 Birthday of Martin Luther King, Jr. observed, County and Federal Courthouses closed
- 17 Family Law Section Meeting, 4:00 p.m., Chief Judge’s Conference Room, Alachua County Family & Civil Justice Center
- 20 EJCBA Luncheon, Chief Judge Toby S. Monaco, “The State of the Circuit,” The Woolly, 11:45 a.m.
- 20 EJCBA CLE Panel Discussion, “View From the Bench,” The Woolly, 1:00 p.m.

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.