# FORUI 8

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Eighth Judicial Circuit Bar Association, Inc.

December 2017

## **President's Message**

By Meshon Rawls



The hustle and bustle of the holidays has begun. For those who celebrate during this season by giving gifts, mailing holiday cards, or hosting parties, the clock is ticking. Hopefully, your list of things to do in preparation for all that goes along with celebrating is getting shorter rather than longer. As for the EJCBA, we are wrapping up the 2017 year by putting the finishing touches on two more events – the December Luncheon and the Margaret Stack Holiday Project.

For the December Luncheon, we look forward to hosting the Florida Bar President, Michael J. Higer. It has become a custom for us to add the Florida Bar President to our list of speakers, and we are grateful that Mr. Higer is able to join us. In promoting his platform this year, he committed to addressing Member Benefits & Services, Technology, Inclusiveness, Health &

Wellness, and the Constitution Revision Commission. This luncheon will be our opportunity, perhaps, to hear what he has accomplished so far, and share our concerns about issues that matter to the Eighth Judicial Circuit. Let's capitalize on the moment and show our support for the work that President Higer is doing.

For the Margaret Stack Holiday Project, we are remaining true to our commitment to give back to children in our community, and have turned up the notch on preparing. We are ready to accept your contributions and have already confirmed Santa's appearance at the designated schools. You can find the details on what to do with your contribution, and when and where you can assist in delivering the gifts. on page 5 of this edition of the Forum 8. Thank you in advance for the boxes that you will fill with toys and the books that you have selected for the classrooms, but thanks most of all for helping us add joy to the lives of children in the Head Start Program and keeping Margaret's legacy alive. (To learn more about Margaret Mitchem Stack and her contributions to the Eighth Judicial Circuit and the Florida Bar, see the articles written by Stephanie Marchman and Bill Cervone in the March 2017 edition of the Forum 8.)

That's it for 2017. The last bow has been tied and the EJCBA to-do list is complete, for now. As I take a deep breath, I would like to leave you with a few things to reflect on over the holiday. Live! There is life outside of the office. Be determined not to let work consume every ounce of what you have to give. Laugh! I am told laughter is good for the soul. Be intentional about turning off the serious and turning on the fun. Love! Someone needs to know, especially during the holidays, that they are loved. Be generous in sharing love, in both word and deed. On behalf of the EJBCA, I would like to wish you and yours a happy holiday; may this season be filled with much joy and peace.

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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 Chance and Charles Carter



## Just the Facts, Ma'am, Just the Facts

Your intrepid reporters are always scrounging through bins of reduced price books. Recently we found "1227 Quite Interesting Facts to Blow your Socks Off" by John Lloyd, John Mitchinson and James Harkin, published in 2013. It is a British book which attracted us with a 75%-off sticker.

Although the book contains 1227 facts, we selected less than that and tried to divide them into our own self-described categories, including Law. We are always aware of demographics.

With respect to Law: the United States has more lawyers per capita than any country in the world, and twice as many prisoners as lawyers; the United States has 5% of the world's population, but almost 25% of its prison population; the U.S. Tax Code is 4 times as long as the complete works of Shakespeare; in 1917 John D. Rockefeller could have paid off the whole U.S. public debt on his own. Today, Bill Gates' entire fortune would barely cover two months' interest.

To keep someone in prison in the U.K. costs £45,000 a year, which is one and a half times as much as it would take to send the prisoner to Eaton.

A special bastard in the U.K. is someone born out of wedlock whose parents later married. This word is not to be confused with a basterly gullion which is "a bastard's bastard."

Something we have spoken about in previous articles: only 3 of the original 60 clauses of Magna Carta are still in force.

In ancient Greece, democracy lasted for only 185 years.

Word play: We are aware that lawyers make their living with words. The book also provides some interesting facts concerning words, such as: nikhedonia is defined as the pleasurable anticipation of success before any actual work has been done; Poronkusema is a word used in northern Finland and is a measure of distance: it is the distance a reindeer can walk before needing to urinate.

The word ambisinistrous means "no good with either hand."

We have always been aware of the word babalevante, meaning someone who makes feeble jokes.

We also like the Italian word (verb) asolare which means to pass time in a delightful but meaningless way. Sometimes we feel forflitten which means overwhelmed by an unreasonable and out of proportion scolding.

Your reporters are often accused of being ultracrepidarian, which is someone who doesn't know

what they are talking about.

If it wasn't for bad luck, your reporters would have no luck at all. Thus, we are familiar with a word zemblanity which is bad luck occurring just as expected.

We are giving you the homework assignment to use at least one of these words in a sentence during a social setting or at a deposition in the next 60 days.



We have a "miscellaneous"

category from the book which includes the following:

On average, most people have fewer friends than their friends have. This is known as the "friendship paradox."

You are 14% more likely to die on your birthday than any other day.

One in 50 Americans claims to have been abducted by aliens (including one of your reporters).

A typical microwave oven uses more electricity keeping its digital clock on standby than it does heating food.

Established writers and artists are 18 times more likely to kill themselves than the general population.

20% of the people in the U.K. believe they have a food allergy although only 2% actually do. In the United States we are guessing that 90% of the people believe they have a food allergy, but only 0.1% actually do.

Google earns \$20B a year from advertising, more than the prime time revenues of CBS, NBC, ABC and Fox combined.

Two thirds of all the people in the world who have ever lived to be 65 are still alive today.

Sitting on a toilet for 8 hours uses the same number of calories as jogging for one hour.

Sitting in a 15 minute meeting (or deposition) uses more energy than Husain Bolt expends in three one hundred meter sprints.

For those of you thinking to buy a Tesla: all the batteries on earth store just 10 minutes of the world's electricity needs.

Adog has the same ecological footprint as two Toyota Land Cruisers; the cat has the same environmental effect as a VW Golf; two hamsters the same as a plasma TV.

Remember these tidbits when you see someone in a Prius with a dog in the passenger seat.

40% of all bottled water sold in the world is bottled tap water.

Now, the difficult part. We have to tie something in this article to alternative dispute resolution. Well, here it is: people are 1% shorter in the evening than they are in the morning. Mediation participants are also 1% shorter in the evening than they are in the morning.

### **Criminal Law**

By William Cervone



Time was when victims were like little kids maybe should be: seen but not heard. If necessary, they were subpoenaed. Otherwise they were mostly ignored. That's far from the case now thanks to a variety of statutory and constitutional enactments. The Victim and Witness Protection Act, for example, which is

codified in FS 921.143, was, according to its accompanying statement of legislative intent, designed to "enhance and protect the necessary role of victims" and "assist victims and witnesses of crime without infringing on the constitutional rights of defendants."

Which leads to this month's topic, which I'll warn you in advance is another of those "how many angels can dance on the head of a pin" kind of things.

John Dickie, formerly of Sarasota and now of Santa Rosa Correctional Institution (where he will be until January of 2047), was somehow found to be in possession of thousands of pieces of child pornography. He was thoughtful enough to confess, which ultimately led to his plea of no contest (Note to non-criminal practitioners: criminal defendants often don't want to plead guilty to unseemly things like child porn, regardless of confessions or proof. No contest apparently allows some measure of self-delusion or denial) and what turned into a two day sentencing hearing. At that hearing, the State introduced several written victim impact statements, which is now common. Not liking the sounds of this, Dickie objected, and, wouldn't you know it, he thought he had an actual basis for that because the victim impact statements were not sworn to.

So what, you say. Well, the what is an annoying little phrase in FS 921.143(1) regarding victims testifying at sentencing "under oath." More annoying, there is a single appellate court case from 2008 that says, albeit in what I think is dicta, that FS 921.143(1) "requires" a victim impact statement to be under oath.

What to do, what to do? Let a child porno guy off the hook? No, that's not happening because his plea is really unaffected. Cause the trial court to have to endure another two day long sentencing hearing at which the State would undoubtedly fix

the "to swear or not to swear" problem? Perish the thought. No, it is easier to, drum roll please, distinguish and therefore affirm.

And so ruled the 2nd DCA. Just because a statute addresses victim impact statements doesn't mean that that's the only way victim impact statements can be received or considered. The previous and contrary opinion - unfortunately from the 1st DCA - was wrong, per the 2nd DCA, because while it says that victims can provide sworn testimony it doesn't ever use the word "require" and thus never imposes a requirement that the testimony be sworn. It's just an alternative. Plus, the statute doesn't specifically say courts "shall not" consider unsworn victim impact testimony. Besides, the prior case was all about reversal of summary denial of a post-conviction ineffectiveness claim, and not much should be read into that. Trial courts have always had the authority to consider victim statements anyhow, even before adoption of FS 921.143(1). Courts can always get a PSI, and those almost always have victim impact statements that are unsworn in them. And from a 1949 (a year I am very fond of for personal reasons) United States Supreme Court case, "Before and since the American colonies became a nation courts in this country and in England practiced a policy under which a sentencing judge could exercise a wide discretion in the sources and types of evidence used in assisting him in determining the kind and extent of punishment to be imposed within limits fixed by law."

In any event, so ends another potential tempest in a tea pot, unless Inmate Dickie somehow manages to get higher review and more face time for his lawyers with another court. And to think, I've always kind of thought that sefntencing judges should have the benefit of as much information as possible in order to make good decisions, niceties like this notwithstanding.

As an aside, be on the lookout in the coming months for something called Marcy's Law, both as a possible constitutional amendment and a statutory change. This proposal, which is being pushed nationally by a well-funded victim advocacy group, would increase victim's rights, perhaps in contravention to other existing constitutional rights of defendants in allowing a victim to refuse a deposition and also perhaps add nothing to what Florida law already provides. But more on that some other day.

## Save the Date: Trial Skills Spring Workshop - February 23, 2018

Judge Hulslander will present another session of his popular Trial Skills Practice & Protocol series in February, 2018, so mark your calendars now. This half-day workshop will be held Friday, February 23, 2018 from 1:00 p.m. - 5:00 p.m. at the Alachua County Civil and Family and Civil Justice Center.

Topics will include:

**Direct and Cross Examination** 

Using Real and Demonstrative Evidence

Common Objections and responses and how to avoid them

Impeachment

And much more...

Up to five hours of CLE credit is anticipated. All are welcome to attend; however, as this course is sponsored by the EJCBA, you must be an EJCBA member in good standing to receive credit.

For more information visit <u>www.educatethe8th.</u> <u>com</u> and register for the mailing list to receive workshop information.

# EJCBA's Annual Margaret Stack Holiday

**Project** to benefit the Alachua County Headstart Pre-K program is in full swing! This year, we are again collecting *new* toys appropriate for 3 and 4 year olds to be distributed to the Headstart students at Kimball Wiles and Lake Forest Elementary Schools on December 18th and 19th. Additionally, we are once again providing bags of 12 books which correspond with the Headstart curriculum's monthly themes to each of the 35 Alachua County Headstart classrooms.

It is not too late to contrivbute toys or sponsor a book in the classroom bags! If you or your office would like to do so or attend the gift distribution parties, please let Dominique Lochridge-Gonzales know at <a href="mailto:dominique.lochridge-gonzales@trls.org">dominique.lochridge-gonzales@trls.org</a> or 352-415-2324. The Amazon Wish List of books for the classroom bags may be found at <a href="https://www.amazon.com/gp/registry/wishlist/1FCAQ7I3NLUYG/ref=nav\_wishlist\_lists\_1">wishlist/1FCAQ7I3NLUYG/ref=nav\_wishlist\_lists\_1</a>. Thank you for your generosity to the children of Alachua County!

#### **New Administrative Orders**

Below please find new Administrative Orders for the 8th Circuit:

Administrative Order 1.32, Order Appointing Katherine L. Floyd as General Magistrate - Effective November 15, 2017 - Administrative Order 1.32

Administrative Order 5.11(v1), Screening for Certain Diseases Transmitted Through a Significant Exposure - Effective November 9, 2017 - Administrative Order 5.11

Administrative Order 9.03(v2018-1), General Assignments Effective January 1, 2018 through December 31, 2018 - Administrative Order 9.03. Additionally, here is a link to the Summary of General Assignments.

These Administrative Orders can be found in their entirety at <u>circuit8.org/administrative-orders</u> along with a comprehensive list of all effective Administrative Orders

## 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, April 20, 2018 from 9:00 a.m. (registration begins at 8:30 a.m.) until Noon at the Trinity United Methodist Church on NW 53rd Avenue. Our speaker will be Mayanne Downs, past President of The Florida Bar (topic TBD).

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 your email and the *Forum 8* newsletter for reservation information in early February. Questions may be directed to the EJCBA Professionalism Committee chairman, Ray Brady, Esq., at 373-4141.

## When Does A Workplace Issue Require Legal Advice?

By Laura Gross



Both businesses and employees ask us at times to take the lead in workplace intercommunications. Their thought is that if we just "send a letter," are mentioned in or copied on a letter or email, or make an appearance at the workplace, the employment conflict will evaporate. That hopeful thought is

understandable. Yet, in my experience, bringing lawyers into the workplace as an act of bravado is often unhelpful. As a rule, we advise these clients to keep us on the sidelines where we can provide good counsel and strategic support to strengthen their message and position. Employers' and employees' ability to talk with each other up and down the chain of command is necessary for workplace efficiency, productivity, morale, and loyalty. Without direct communication, the relationship just won't work.

Experienced human relations managers at large companies know this and can effectively deal with most day-to-day issues on their own. Smaller operations without a human resource expert may need legal advice by telephone more frequently. Most individual employees will never need to seek legal advice on employment issues. However, there are some workplace matters that are best handled with legal advice or representation from an employment lawyer to save time, energy and money by avoiding litigation altogether or strengthening your position should litigation develop:

- Complaints, threats of complaints, or demands from lawyers on behalf of an employee, applicant or employer on employment-related matters.
- Employer-employee disputes over compensation or contract.
- Notices of a pending employment-related claim or investigation from a third party governmental agency.
- Internal investigations, especially of claims involving discrimination, harassment, or wage and hour issues that are more appropriately kept privileged and confidential.

- Complicated day-to-day employment questions where the answer is unclear, like medical leave due to an on the job injury which creates employer responsibilities under the Workers Compensation Act, Family Medical Leave Act and Americans with Disabilities Act.
- Conciliation of longstanding deep-seated disputes between employees as a last chance effort to work out differences and continue employment.

### Florida Pro Bono Matters

By Marcie Green



There is now an answer to your sleepless nights and that time you spend pondering how you can best make use of your license to practice law and your unique legal skills. Three Rivers Legal Services has partnered with the Florida Bar Foundation to list pro bono opportunities at floridaprobonomatters.org.

Finding and accepting a pro bono case is now easy with a simple set of clicks on the computer.

Just scroll through the <u>floridaprobonomatters</u>. org website. Enter your county, case type and/or local legal services program into the Search bar and you will find a list of cases in need of placement. A brief description of the case is provided and the MORE INFO button will provide the legal services office name. The INTERESTED button will allow you to enter your contact information and, if the case is from Three Rivers Legal Services, will notify me of your interest. What can be easier?

Whether you are a litigator or a transactional attorney, a new or experienced attorney, or an attorney with limited time to volunteer, there is a pro bono project that is right for you.

Not comfortable with <u>floridaprobonomatters</u>. <u>org?</u> Visit the Three Rivers Legal Services website at <u>www.trls.org/volunteer/</u>. Call me at 352-415-2327 or email <u>marcia.green@trls.org</u> for opportunities to become involved.

We greatly appreciate the donation of your time and your expertise to help those in need of pro bono assistance in our community.

#### Who Had It Worse?

By Michael Alvarez



"I walked barefoot uphill both ways in the snow." It is the age-old debate. Which generation had it harder? Do young attorneys (dare I say the dreaded word, "millennials") have it easier than the generations before them? There is a sense of pride in believing you or your generation had it harder than others because it means you are tougher; it means you are

better. More importantly, it gives you a reason to ignore the other generation's complaints. Partners like to remind associates how much easier they have it with computers and the internet. No more long days and nights with a stack of books, flipping through page after page to find the right case. Nevertheless, starting in the legal profession in the 2010s is just as difficult as years past. Over the last 30+ years the legal field has seen a substantial increase in competition, and a rise in tuition and debt for young lawyers.

Young lawyers now enter a highly competitive legal market, saturated with lawvers, all competing for less and less work. There is no question that the size of the legal profession has exploded over the last 30 years. The number of law schools has grown significantly and the number of lawyers has nearly tripled. 1 But add to that increase "LegalZoom" and legal outsourcing, and we see a smaller and smaller market of clients looking for lawyers. Technology, as always, is a double-edged sword. While it becomes easier and easier for lawyers to research using the internet, it also becomes easier and easier for non-lawyers to research their own legal issues. As a result, young lawyers enter a legal market where more and more lawyers are fighting for fewer and fewer clients. This fight for clients pushes young lawyers into lower paying jobs or even jobs outside the legal field, only making it harder to pay off their crushing student debt.

Every year the cost of law school increases, and the resulting debt is overwhelming. The cost of post-secondary education has far out-grown the rate of inflation in this country. Even when adjusted for inflation, the cost of post-secondary education has more than doubled.<sup>2</sup> According to the American Bar Association, the average amount borrowed by law students for law school almost doubled from 2001 to 2012.<sup>3</sup> This massive debt creates greater stress on young lawyers to obtain any job they can without thought to where or what they will be doing. Unfortunately, it means they must work more for less pay.<sup>4</sup> Life as a young attorney can be stressful enough, but add to that the burden of

spending over 1/3 of your paycheck towards paying off student debt and things can get suffocating. One of the best qualities of the legal field is the diversity of specialties. However, the overwhelming debt that young lawyers now face makes it harder for them to have a choice, which leads to a lower quality of work satisfaction.

At the end of the day it may not matter who had it harder. What does matter is empathy and compassion for your fellow lawyer. It is important for lawyers of all generations to hear the concerns of others and to realize that while young lawyers may have it easier in some regards it does not mean their concerns or worries are invalid. While experienced lawyers may have had to "walk barefoot uphill both ways in the snow," remember that even though young lawyers may have shoes and it may not be snowing, they do have to "race uphill both ways dragging a weight."

- 1 Jeff Jacoby, *US Legal Bubble Can't Pop Soon Enough*, Boston Globe (May 9, 2014), <a href="https://www.boston-globe.com/opinion/2014/05/09/the-lawyer-bubble-pops-not-moment-too-soon/gAYzQ823gpfi4GQl2OiPZM/story.html">https://www.boston-globe.com/opinion/2014/05/09/the-lawyer-bubble-pops-not-moment-too-soon/gAYzQ823gpfi4GQl2OiPZM/story.html</a>.
- 2 U.S. Department of Education, National Center for Education Statistics. (2016). *Digest of Education Statistics*, 2015 (NCES 2016-014), Chapter 3.
- 3 Section of Legal Education and Admissions to the Bar, American Bar Association, <a href="https://www.americanbar.org/content/dam/aba/administrative/legal\_education\_and\_admissions\_to\_the\_bar/statistics/avg\_amnt\_brwd.authcheckdam.pdf">https://www.americanbar.org/content/dam/aba/administrative/legal\_education\_and\_admissions\_to\_the\_bar/statistics/avg\_amnt\_brwd.authcheckdam.pdf</a> (last visited Nov. 6, 2017).
- 4 Sam Favate, Survey: *Median Starting Salaries Plunge for New Law Grads*, The Wall Street Journal (July 12, 2012), <a href="https://blogs.wsj.com/law/2012/07/12/survey-median-starting-salaries-plunge-for-new-law-grads/">https://blogs.wsj.com/law/2012/07/12/survey-median-starting-salaries-plunge-for-new-law-grads/</a>.



Edith Richman will retire before long and wants another attorney to take over her law office. Call 352-495-9123 or email <a href="mailto:erichman@cox.net">erichman@cox.net</a> for more info.

#### Reserve Now for the EJCBA December 2017 Luncheon

WHEN: Friday, December 15, 2017 – 11:45 a.m.

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

PROGRAM: Michael Higer, Florida Bar President — "State of The Florida Bar"

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 11**th at **Noon at** 

http://www.8jcba.org/event-registration/dec-2017-luncheon/

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

#### **Mark Your Calendars for Upcoming Events**

EJCBA Charity Golf Tournament benefitting the Guardian ad Litem—Friday, March 2, 2018

EJCBA Spring Fling—Wednesday, April 4, 2018

EJCBA Leadership Roundtable—Friday, April 13, 2018

EJCBA Professionalism Seminar—Friday, April 20, 2018



#### Annual Margaret Stack Holiday Project Benefitting Alachua County Headstart Pre-K Program

If you would like to fill a box with <a href="mailto:new">new</a> toys or sponsor a book for the classroom bags, please contact Dominique Lochridge-Gonzales (Dominique.lochridge-gonzales@trls.org). Dominique can arrange to have a box delivered to you. Boxes will be picked up between November 30th and December 8th.

#### **December 2017 Calendar**

- 2 SEC Championship Game, Atlanta, GA 4:00 p.m.
- 5 Deadline for submission to January Forum 8
- 6 EJCBA Board of Directors Meeting, Blue Gill Restaurant, 5:30 p.m.
- Probate Section Meeting, 4:30 p.m., Chief Judge's Conference Room, 4th Floor, Alachua County Family & Civil Justice Center
- 13 Hanukah begins
- 15 EJCBA Luncheon, Florida Bar President Michael Higer, "The State of the Florida Bar," The Wooly, 11:45 a.m.
- 18 EJCBA holiday gift distribution, Kimball Wiles Elementary (4601 SW 75th St.), 9-11 am
- 19 EJCBA holiday gift distribution, Lake Forest Elementary (4401 SE 4th Ave.), 11-noon
- 19 Family Law Section Meeting, 4:00 p.m., Chief Judge's Conference Room, Alachua County Family & Civil Justice Center
- 25 Christmas Day County and Federal Courthouses closed

## January 2018 Calendar

- 1 New Year's Day observed County and Federal Courthouses closed
- 3 EJCBA Board of Directors Meeting, Room 355D, UF Law, 5:30 p.m.
- 5 Deadline for submission to February Forum 8
- 10 Probate Section Meeting, 4:30 p.m., Chief Judge's Conference Room, 4<sup>th</sup> Floor, Alachua County Family & Civil Justice Center
- 15 Birthday of Martin Luther King, Jr. observed, County and Federal Courthouses closed
- Family Law Section Meeting, 4:00 p.m., Chief Judge's Conference Room, Alachua County Family & Civil Justice Center
- 19 EJCBA Luncheon, Chief Judge Toby S. Monaco, "The State of the Circuit," The Wooly, 11:45 a.m.
- 19 EJCBA CLE Panel Discussion on judicial elections and campaigns immediately following the lunch, The Wooly, 1:00 p.m.