

FORUM 8

Volume 76, No. 9

Eighth Judicial Circuit Bar Association, Inc.

May 2017

President's Message

By Stephanie M. Marchman



Exciting Developments Between our Town and Gown

There is a lot of excitement in the air due to the University of Florida's recent focus on its relationship with the local community. UF's Senior Vice

President and Chief Operating Officer, Charlie Lane, says "UF wants to be a pre-eminent university. Gainesville wants to be a pre-eminent city. Neither can get there without the other." See Ron Cunningham, "Embracing the Big Idea," Gainesville Magazine, April-May 2017, at 35.

In recognition of this belief, UF's new strategic development plan provides that it will "prepare UF and the surrounding community for the future, identifying optimal initiatives related to growth, intensity/density, economic vitality and livability – a framework for the university and its host community to achieve pre-eminence." *Id.*

The strategic development plan focuses on four initiatives for UF and the community, including the New American City, Proximity, Strong Neighborhoods, and Stewardship. Of note, UF is committed to concentrating future development in the eastern third of campus and coordinating with the City to encourage development between downtown and campus, preserving the City's historic neighborhoods,

promoting culture and arts in the downtown area, improving the identity of the SW 13th Street Corridor, and partnering with the City on large-scale open space projects to improve outdoor spaces and recreation. To support these initiatives, UF has committed \$250,000 in community research awards to help connect UF's talent to community issues, \$50,000 to a College of Arts/City Arts initiative, and \$50,000 to identify issues that will address environmental issues. See <http://strategicdevelopment.ufl.edu/2016/12/uf-reveals-strategic-development-plan/> (last visited April 5, 2017).

No doubt, these initiatives bode well for the bar. As our community reaches pre-eminence, lawyers will represent developers and start-ups, enjoy the arts and parks, and perhaps decide to locate offices and residences in the downtown area. We will continue to support our university by mentoring and teaching law students, participating in university programs, and attending Gator sporting events. We will be engaged citizens in our town as it works with UF to achieve greatness.

Given all of this excitement and our clear affinity for the Gators (see our bar association logo as evidence!), it is fitting that our last bar luncheon of the year will feature pre-eminent Gator Basketball Coach, Mike White. I encourage you to wear orange and blue attire, casual or business, and bring your Rowdy Reptile shakers to show Coach White the bar's support of our university and the great things it is doing in our town. Go Gators!



2016 - 2017 Board Officers

Stephanie M. Marchman
President
200 E University Ave, Ste 425
Gainesville, FL 32601
(352) 334-5011
(352) 334-2229 (fax)
marchmansm@cityofgainesville.org

Robert M. Birrenkott, Jr.
Past-President
PO Box 117630
Gainesville, FL 32611
(352) 273-0860
(352) 392-4640 (fax)
rbirrenkott@law.ufl.edu

Meshon Trinette Rawls
President-Elect
P.O. Box 117626
Gainesville, FL 32611-7626
(352) 273-0800
(352) 392-0414 (fax)
rawls@law.ufl.edu

Gloria Walker
President-Elect Designate
901 NW 8 Ave, Ste D5
Gainesville, FL 32601
(352) 372-0519
(352) 375-1631 (fax)
Gloria.walker@trls.org

Sharon T. Sperling
Treasurer
2830 NW 41 St., Ste C
Gainesville, FL 32606-6667
(352) 371-3117
(352) 377-6324 (fax)
sharon@sharonsperling.com

Michele Lieberman
Secretary
12 SE 1st Street
Gainesville, FL 32601
(352) 374-5218
(352) 374-5216 (fax)
mlieberman@alachuacounty.us

Members at Large

Jan Bendik
901 NW 8th Ave., Ste. D5
Gainesville, FL 32601
(352) 372-0519
(352) 375-1631 (fax)
jan.bendik@trls.org

Raymond F. Brady
2790 NW 43rd St, Ste 200
Gainesville, FL 32606
(352) 373-4141
(352) 372-0770 (fax)
rbrady1959@gmail.com

Cherie H. Fine
622 NE 1st Street
Gainesville, FL 32601
(352) 372-7777
(352) 372-0049 (fax)
cfine@ffplaw.com

Norm D. Fugate
248 NW Main Street
P.O. Box 98
Williston, FL 32696
(352) 528-0019
norm@normdfugatepa.com

Ryan Gilbert
203 NE 1st Street
Gainesville, FL 32601
(352) 372-4381
(352) 376-7415 (fax)
rgilbert@gmail.com

Nicholas S. Hamm
4707 NW 53rd Ave Ste A
Gainesville, FL 32653
(352) 888-6142
nick@hammlawfirm.net

Michael Hines
317 NE First Street
Gainesville, FL 32601
(352) 375-0812
(352) 375-0813 (fax)
michael@galiganilaw.com

Stephanie N. Hines
120 W University Ave
Gainesville, FL 32601
(352) 374-3670
hiness@sao8.org

Courtney Wilson Johnson
115 NW 34th St
Gainesville, FL 32607
(352) 372-1282
(352) 375-9960 (fax)
courtney@foldsandwalker.com

Dominique Lochridge-Gonzales
901 NW 8th Avenue, Ste D5
Gainesville, FL 32601
(352) 415-2324
(352) 375-1631 (fax)
dominique.lochridge-gonzales@trls.org

Frank E. Maloney, Jr. – Historian
445 E. Macclenny Ave., Ste. 1
Macclenny, FL 32063-2217
(904) 259-3155
(904) 259-9729 (fax)
frank@frankmaloney.us

George Nelson
81 N. 3rd Street
Macclenny, FL 32063
(904) 259-4245
(904) 259-0285 (fax)
nelsong@pdo8.org

Peggy A. O'Connor
102 NW 2nd Avenue
Gainesville, FL 32601
(352) 372-4263
(352) 375-5365 (fax)
peg@turnerlawpartners.com

Monica Perez- McMillen
101 NW 75th St, Ste 1
Gainesville, FL 32607
(352) 335-2393
(352) 375-0104 (fax)
m.perez@foryourlaw.com

Star M. Sansone
3940 N.W. 16th Blvd, Bldg. B
Gainesville, FL 32605
(352) 376-8201
(352) 376-7996 (fax)
stars@salterlaw.net

Dawn M. Vallejos-Nichols
Editor
2814 SW 13th Street
Gainesville, FL 32608
(352) 372-9999
(352) 375-2526 (fax)
dvallejos-nichols@avera.com

Jamie L. White
203 NE 1st Street
Gainesville, FL 32601
(352) 372-4381
(352) 374-7415 (fax)
jwhite@dellgraham.com

Mary K. Wimsett
1204 NW 69th Ter, Ste D
Gainesville, FL 32605
(352) 379-1900
(352) 379-3926 (fax)
mkwimsett@millerelderlawfirm.com

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:

Eighth Judicial Circuit Bar Association, Inc.
P.O. Box 13924
Gainesville, FL 32604
Phone: (352) 380-0333
Fax: (866) 436-5944

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.

Judy Padgett
Executive Director
P.O. Box 13924
Gainesville, FL 32604
(352) 380-0333
(866) 436-5944 (fax)
execdir@8jcba.org

Dawn M. Vallejos-Nichols
Editor
2814 SW 13th Street
Gainesville, FL 32608
(352) 372-9999
(352) 375-2526 (fax)
dvallejos-nichols@avera.com

Deadline is the 5th of the preceding month

Alternative Dispute Resolution

By Chester B. Chance and Charles B. Carter



“IF....”, Embers, and Answers

In the April edition of this newsletter we published an article where members of the bar could win a gift certificate for a dinner at Embers. The winner of that contest will be announced in the June newsletter.

If you recall, in the April article, we listed nine provocative legal questions and then provided nine answers. The answers were selected from those provided by a list of nine members of our local Bar Association. You were asked to match the answer to the attorney who provided the answer.

Of course, we received more answers from the nine guest-lawyers than just the ones that were published. We thought many of the answers were so thought provoking we would share some with you in this follow-up article.

Question #1 asked “If you were on trial and someone you know (who is not a lawyer) had to act as your legal representative, who would you want to defend you?” Bill Cervone suggested “Pope Frances” and added “I mean, really – who is going to say no to him?” Interestingly, Larry Turner also would select Pope Francis. We really like Rick Smith’s answer: Billy Donovan.

When asked “If you were to be successful in another profession, what would you want to do?” Gloria Walker responded she would like to be a successful surgeon. Stacey Scott would like to be a veterinarian. Rick Smith would like to be a test pilot. Paul Brockway, a historian.

Asked “If you could resolve any single dispute, anywhere in the world, what would you resolve?” Gloria Walker would end the Israeli/Palestinian conflict, as would Bill Cervone and Paul Brockway. We were fascinated by Stacey Scott’s response: “the internal dispute that exists in every person: how to place love of your neighbor above self-interest.” Mary K Wimsett would attempt to resolve the crisis in Syria while Rick Smith would focus on the dispute between Russia and Ukraine over Crimea. Larry Turner provided a more generalized answer in that he would attempt to resolve all religious wars and disputes involving intolerance.

We were interested in how attorneys would respond to the question “If you could have been a jury member in any court case in history, which trial would you choose?” Rick Smith picked the Scopes trial. Mary K Wimsett and Gloria Walker selected the OJ Simpson trial, as did Bill Cervone. Stacey Scott would have liked to participate

in the trial of Socrates. Paul Brockway, probably because he wants to be a historian, would have liked to have been a juror at “any case tried by Cicero.”

We asked our esteemed fellow lawyers “If you could solve one unsolved crime, which one would you solve?” Paul Brockway would like to determine the identity of Jack the Ripper. Gloria Walker would like to solve the murder of Jon Benet Ramsey, as would Bill Cervone. We enjoyed Rick Smith’s response as it was very, very personal: he would like to figure out who dinged his car in the Publix parking lot. We suggest he refer that on to Bill Cervone as a substitute case for the Jon Benet Ramsey murder.

We eagerly anticipated the responses to the following question: “If you could be the only one to hear the confession of one criminal from history, who would it be?” Mary K Wimsett thought Patty Hurst would be fascinating to speak to. Gloria Walker would like to spend a great deal of time hearing Adolf Hitler’s confession, while Bill Cervone would like to interview Judas Iscariot and ask “Judas, what were you thinking?” Paul Brockway would love to interview Joseph Stalin. Meshon Trinette Rawls would like to hear the confession of James Earl Ray.

On a more family related note, we asked our panel “If you could enact one law that applied only to your own family, what would it be?” Stacey Scott felt leaving dishes in the sink should be strictly prohibited. Rick Smith thoughtfully suggested every member of his family who is between 5 and 55 years of age must live outside of the United States for not less than 30 days every year. (Your reporters recall it was Mark Twain who said no one who travels can ever be a bigot). We thought Mary K Wimsett had a compelling suggestion: “if you eat the last cookie, cracker, chip, etc., then for the LOVE OF ALL THAT IS HOLY throw the bag away and do not put it back in the pantry or you will be heavily fined and possibly imprisoned.”

Finally, we just have to share with you Paul Brockway’s response when asked to decide on a new punishment for convicted murderers aside from life in prison or the death penalty, and he suggested: listening to an endless loop of William Shatner’s cover of McArthur Park, or, Madonna’s cover of American Pie. We remind Mr. Brockway about the constitutional prohibition with respect to cruel and unusual punishment.



Criminal Law

By William Cervone



Some time ago a column by *Washington Post* writer Neal Peirce headlined “Law And Order Dilemma: Who Checks The Prosecutors?” caught my attention. His theme should be obvious from the title. I was surprised that a journalist would raise such issues without also mentioning any of the factors that do govern prosecutors. Instead, Mr. Peirce put forth a one-sided and critical story based entirely on the work of a law professor who apparently is a member of and advocate for the criminal defense Bar in the District of Columbia area.

While it may be naive to think that aspirational standards as recited by Mr. Peirce can protect society from abuses, it would be more honest to look at how many checks and balances exist within the criminal justice system that serve to do so. First, prosecutors practice side by side with a vigorous defense Bar that works to make sure that adequate proof and proper procedure exist and have been followed at every step of a criminal case. Prosecutors actually welcome that - not only does this serve as an insurance policy of sorts in our quest for justice but also it makes us better at what we do since virtually nothing we do goes unchallenged. Second, the procedural and evidentiary rules we follow provide court review of both the sufficiency of the evidence and the propriety of our actions at every step. A mistake, to say nothing of an intentional abuse, can result in a judge taking action up to and including dismissal of a case and referral for disciplinary action. Third, juries, not prosecutors, hold the ultimate say in determining guilt or innocence. Juries can and do act as their collective sense of justice dictates, sometimes regardless of the evidence or the argument of the prosecution. Next, judges impose sentences, not prosecutors. Finally, even after that a sometimes endless series of appeals follows, almost always filed by the defense. Like everything before it, the appeal process serves to check the prosecution. The idea advanced by Mr. Peirce that prosecutors are unwatched and unchecked is simply false.

The remaining point raised by Mr. Peirce was a concern that prosecutorial decision making

is haphazard or arbitrary. This is, he suggests, because different results occur in similar cases. In reality, so many factors are involved, and such an effort is made to treat each case individually based on its merits and circumstances, that to expect justice to be identical in each case is both unworkable and undesirable. Whether we like it or not, all cases are not created equal - in some the evidence is overwhelming while in others it is suspect. In some, witnesses are credible and cooperative. In many they are not. As important, not all defendants are equal. Some have terrible records; others are first offenders. Some have mitigation in terms of mental health issues or substance abuse problems. Others do not have any semblance of justification for their acts. It is true that sometimes a defendant may have the means to provide for something like expensive drug treatment that most people could not afford and that the courts often have inadequate resources to provide. Should a prosecutor refuse to recognize and take advantage of that? I think not. To suggest that criminal justice can be administered in a cookie cutter, one size fits all manner ignores the realities of human nature that we deal with.

To be sure, racial or class bias should have no role in the decisions prosecutors make. Neither should a prosecutor ever lose sight of the impact he or she has on everyone involved in a criminal case. One of the strongest principles that I seek to instill in new prosecutors when they join my office is that they must respect the power they have and use it appropriately. The public is entitled to know that the men and women who represent them in the criminal courts of our state and nation strive above all else to do justice. There is no perfect justice system, but in promulgating his criticisms Mr. Peirce would do well to at least acknowledge the other side of the story. For example, he might have noted that the fact that few complaints against prosecutors ever result in actual discipline of any sort is likely because few of those complaints have merit. Most are simply the sour grapes of those under prosecution or already imprisoned for their own mis-deeds. As a career prosecutor I've learned to expect that people who criticize us often have an agenda of their own, political or otherwise, and that seems to be what's at work in Mr. Peirce's commentary.

Funding legal aid in Alachua County positively impacts the economy

By Stephanie Marchman



As members of the 8th Judicial Circuit Bar Association, most of us are familiar with the positive impact of legal aid on low-income families, but we now have powerful evidence that legal aid also benefits the economy in our community and statewide.

A new study commissioned by The Florida Bar Foundation found that every dollar invested in civil legal aid organizations by the Foundation, donors and other sources resulted in more than \$7 in economic impacts in 2015.

The study, performed by The Resource for Great Programs, found that investments in civil legal aid resulted in \$600 million in total economic benefits, including more than \$264 million in income for Floridians obtained with the help of legal aid and pro bono attorneys.

The direct dollar impacts come from sources such as Social Security and Social Security disability, Medicare and Medicaid reimbursements, veterans' and other federal benefits, as well as child and spousal support, unemployment compensation and wages. This income generates an additional \$274.8 million in impacts resulting from the economic multiplier effect as that income flows into Florida communities like ours.

In addition, the savings for communities are substantial, with about \$60.4 million of costs avoided statewide from positive trends such as reduced homelessness, fewer police calls and reduced burden on the court system. Avoided costs from domestic violence alone account for \$6.9 million in savings.

The extraordinary findings are impressive and demonstrate the importance of supporting legal aid in Alachua County.

Unfortunately, total funding for civil legal aid in Florida is at a 10-year low. Locally, The Florida Bar Foundation is one of several funding sources for the Jacksonville Area Legal Aid (JALA) and Three Rivers Legal Services (TRLS), whose service areas include Alachua County. The Foundation provided a general support grant in 2016-17 of \$380,550 for JALA and \$40,395 for TRLS.

But these grants are a fraction of what they once were. Because of the near-zero interest rates since the Great Recession, the Foundation's grants to civil legal aid organizations statewide have fallen by about 80 percent since 2010 and are expected to fall even further. And total legal aid funding from all sources in Florida has fallen from \$100 million in 2010 to \$83 million in 2015.

We have a big responsibility in that as attorneys we alone can provide legal services to those in need, and we have a unique understanding of the importance of civil legal aid to our community. We know the satisfaction that we get from touching the life of a pro bono client, and now we also know the economic ripple effects that extend throughout our community when we do.

By taking pro bono cases through legal aid and by donating to our local legal aid organizations or to The Florida Bar Foundation, we can help ensure that Alachua County continues to thrive and to be the kind of prosperous and caring community we want it to be.

Getting involved and helping promote legal aid funding for programs that provide access to justice will ensure positive economic stability statewide and locally. Through our support as lawyers and as humanitarian leaders, we can strengthen the economic impacts of legal aid.

This is the time for us to lead.

8th Circuit JNC Engaged For County Court Vacancy

Governor Scott has engaged the Eighth Circuit Judicial Nominating Commission for the County Court vacancy created by Judge Susanne Wilson Bullard's appointment to the Eighth Judicial Circuit Court. The JNC will meet soon to establish the schedule for application and candidate interviews. Application procedures and deadline will be publicly announced following that meeting. Applications may be downloaded from The Florida Bar's JNC webpage [here](#). A list of the members of the Eighth Circuit Judicial Nominating Commission is available from The Florida Bar's website [here](#).

Severance Agreements: What To Include And Exclude

By Laura Gross



When an employee is involuntarily separated from employment, a severance agreement can provide a graceful exit. However, if the agreement is not properly drafted, it can create additional problems resulting in litigation over the very words chosen. Here are a few points to consider when drafting a severance

agreement.

Where there is a broad general release of claims, consider including a savings clause that permits the employee to file charges of potential violations of law to governmental agencies like the Equal Employment Opportunity Commission, Florida Commission on Human Relations, and other fair employment practices agencies and to participate in administrative proceedings brought by others. The EEOC posits that it is unlawful for an employer to include overly broad waivers which purport to prohibit employees from exercising these rights, including the right to accept financial recovery from the EEOC and to not be required to arbitrate claims which might be raised otherwise in an EEOC charge. To avoid this issue, consider including a savings clause, a provision advising the employee to consult with an attorney, and a statement that the employee fully understands and voluntarily accepts the agreement's terms.

Where there is a broad confidentiality provision, consider including a carve out provision permitting the employee to report possible violations of federal law or regulation to any government agency or entity, including but not limited to the Equal Employment Opportunity Commission, Florida Commission on Human Relations, and Securities and Exchange Commission, or making other disclosures that are protected under the whistleblower provisions of law. The SEC has taken the position that in businesses subjected to its regulations, an employer cannot use agreements that prohibit employees from disclosing information about the substance of an internal investigation, perhaps related to their separation, without prior authorization of the employer's legal department. According to the SEC, this undermined the purpose of the law which is to encourage individuals to report violations. Additionally, if the employee is a current employee covered by section 7 of the NLRA, be aware that section 7 provides that

employers cannot restrict employees from discussing work conditions with other employees. Consider carving out these rights, too.

In all cases, consider a severability clause stating that any clause found by a court to be unenforceable will be deemed deleted from the agreement, and the remaining provisions will be valid and enforceable. This will help to ensure the continuing validity of the severance agreement even if the former employee later sues, claiming a particular provision is invalid.

Other topics to address in a severance agreement include cooperation with the employer in any litigation against the employer, taxability of benefits, unpaid wages and benefits including accrued paid leave, unemployment benefits (whether employer will or will not challenge), and noncompete and nonsolicitation agreements.

With these considerations in mind, the severance agreement can end the employment relationship with both positivity and finality.

Free CLE On Technology Offered

On Tuesday, May 16, 2017 at 4:00 p.m. at the Alachua County Civil and Family Justice Center, Katie Floyd and Richard Knellinger will present a free technology CLE: Technology Apps to help you in your law practice. 1 CLE credit pending. Please contact Tee.Lee@swansonlawcenter.com for more information.

It's that time again!

The Eighth Judicial Circuit Bar Association Nominations Committee is seeking members for EJCBA Board positions for 2017-2018. Consider giving a little time back to your bar association. Please complete the online application at <https://goo.gl/forms/fTwMzr0QbaRncwHs2>. The deadline for completed applications is May 5, 2017.

Sponsors:

2017 EJCBA Charity Golf Tournament in Memoriam of Gloria Fletcher

Gold

Capital City Bank

Community State Bank

Folds and Walker

Faulkner Realty, Inc.

Stephen Rappenecker

Stripling Mediation

Silver

LogistiCare

Roberts Insurance

Gainesville Health and Fitness

UF Law (E-Discovery Project)

Ference Insurance Agency

The Resolution Center

Salter Feiber

Bronze

Bill Cervone, State Attorney, 8th
Circuit

Dave & Carol Remer

Lucky's Market

Stacy Scott, Public Defender, 8th Cir-
cuit

Tom Copeland, Allen Law Firm, P.A.

Wershow and Schneider P.A.

Special Thanks

UF Mark Bostick Golf Course

Renaissance Printing

*Thank you to all of the participants and vol-
unteers. Your invaluable support helped to
make the 2017 tournament one of the most
successful tournaments to date.*

Signature Sponsor:

2017 EJCBA Charity Golf Tournament in Memoriam of Gloria Fletcher



UF Basketball Head Coach, Mike White Wraps Up Luncheon Speaker Series



Mike White, the head coach of the University of Florida's basketball team, is the last luncheon speaker for the year. In two seasons at Florida, Coach White has returned the Gators to the national conversation, leading UF to the NCAA Tournament Elite Eight, a 27-9 record and a second-place SEC finish at 14-4. White earned an array of awards,

including SEC Coach of the Year and the USBWA and NABC District Coach of the Year. He was also a semifinalist for Naismith Coach of the Year.

In his six years as a head coach, Coach White has now earned his conference's Coach of the Year honor three times. Coach White's 48 wins through his first two years rank fourth in SEC history, only surpassed by coaches at Kentucky. In posting a six-win improvement over his debut season at UF, Coach White helped the Gators reach 27 wins for just the eighth time in school history.

Under Coach White's watch in 2016-17, Canyon Barry earned SEC Sixth Man of the Year honors, while KeVaughn Allen (first-team) and Kasey Hill (second-team) earned All-SEC honors. While leading the Gators to a successful campaign on the floor, Coach White and his staff also put together a 2017 recruiting class rated ninth in the nation by ESPN that includes three top-100 players.

Coach White matched a program record with 21 wins in his first season as head coach at the University of Florida, leading the Gators to a five-win improvement over the previous season. Among active SEC coaches, 21 wins matches the second-most in the first season on the job.

The Gators returned to the postseason, reaching the quarterfinals of the NIT, which included a road win at Ohio State, UF's first-ever road win vs. a Big Ten program. Coach White and the Gators also posted the team's first top-10 win in nearly five years with a dominant 88-71 win vs. ninth-ranked West Virginia in the SEC/Big 12 Challenge.

Coach White, the 2014-15 Conference USA Coach of the Year, came to the Gators after leading Louisiana Tech to a 101-40 record (.716) over the past four seasons, including three straight conference championships. Born in Dunedin, Fla., White brings a wealth of SEC experience to the Gators, as a four-year starter at Ole Miss and later an assistant coach for seven seasons under two different head coaches on the Rebels' bench.



Save the Date: Trial Skills Spring Workshop: May 12, 2017

Judge Hulslander will present another session of his Trial Skills Workshop on Friday, May 12, 2017 from 1:00 - 5:00 p.m. at the Alachua County Civil and Family Justice Center.

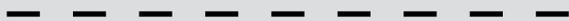
Topics will include:

- Special Presentation by J.K. "Jess" Irby on the Clerk's role in Jury Selection
- Striking and Back Striking
- Challenges for Cause
- Mock Jury Selection
- Direct and Cross Examination
- Using Real and Demonstrative Evidence
- Using Judicial Notice Appropriately
- Documentary Evidence and predicate for Admission
- Business Records

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.

To learn more and register, please visit our website: www.educatethe8th.com.

Signature Sponsor:
2017 EJCBA Charity Golf
Tournament in Memoriam of
Gloria Fletcher



**Dharma
Endowment
Foundation**

Signature Sponsor:
2017 EJCBA Charity Golf
Tournament in Memoriam of
Gloria Fletcher



Signature Sponsor:
2017 EJCBA Charity Golf
Tournament in Memoriam of
Gloria Fletcher



Signature Sponsor:
2017 EJCBA Charity Golf
Tournament in Memoriam of
Gloria Fletcher



Can Real Property be the Subject of a Civil Theft Claim? The Answer Might Surprise You.

By Krista Collins



Conversion and civil theft. Most Florida cases—and most Florida attorneys, for that matter—make little distinction between conversion and civil theft, other than the burden of proof and the availability of treble damages. See *Heldenmuth v. Groll*, 128 So.3d 895, 896, n.2 (Fla. 4th DCA 2013) (“Case

law does not seem to make a clear delineation between conversion and civil theft. It appears conversion is a common law tort and civil theft is a tort that draws support from statutes.”) Courts have held that “to establish a claim for civil theft, a party must prove that a conversion has taken place and that the accused party acted with criminal intent.” *Id.* (quoting *Gasparini v. Pordomingo*, 972 So.2d 1053, 1056 (Fla. 3rd DCA 2008)).

In fact, the statutory nature of civil theft means that there are important differences between conversion and civil theft – including whether the claim applies to real property. Florida case law is clear that real property cannot be the subject of conversion. *United Companies Fin. Corp. v. Bergelson*, 573 So.2d 887, 888 (Fla. 4th DCA 1990). But §772.11, *Fla. Stat.*, which governs civil theft, provides that anyone who proves by clear and convincing evidence that she has been injured in any fashion by reason of any violation of §§812.012-812.037 or 825.103(1), *Fla. Stat.*, has a cause of action for threefold the actual damages sustained, plus attorneys’ fees and court costs. Section 812.014, *Fla. Stat.*, then defines “theft” as when a person “knowingly obtains or uses, or endeavors to obtain or to use, the property of another with intent to, either temporarily or permanently: (a) Deprive the other person of a right to the property or a benefit from the property. (b) Appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.” Section 812.012 then defines “property” to mean anything of value, including but not limited to “real property, including things growing on, affixed to, and found in land.”

§812.012(4)(a), *Fla. Stat.*

In *Burr v. Norris*, 667 So.2d 424 (Fla. 2nd DCA 1996), the Court reversed the trial court’s entry of summary judgment in favor of the defendant on the plaintiff’s civil theft claim. The plaintiff sought treble damages under §772.11 for the value of the labor and material he expended improving a house and which he was forced to leave behind when he moved out (due to the defendant’s superior claim to title of the house). *Id.* at 425. The Court noted that §772.11 incorporates §812.012 for the definition of “property,” and stated:

The transcript of the summary judgment hearing shows that the trial court was concerned about the items at issue in the civil theft claim, considering them to be “fixtures” as that term is commonly understood in real estate transactions. We see nothing in the plain language of the statute excepting real property fixtures from the reach of the civil theft statutory remedy.

Id. at 426.

Likewise, in *Bullard v. U.S. Bank, N.A.*, 3:10CV434-MCR/CJK, 2012 WL 2542907, *3 (N.D. Fla. 2012), the Bullards brought suit alleging that U.S. Bank and its agent committed civil theft by virtue of a felonious trespass when the agent entered the property, changed the locks on the house and a shed and removed some of the Bullards’ personal property. The Bullards argued that the actions of locking the shed and removing personal items showed a felonious intent to steal. *Id.* at *5. The Court stated that “even assuming an intent to steal can be implied as to the shed and personal property removed...an intent to steal the shed and items of personal property does not imply an intent to steal the real property, in which U.S. Bank held a valid mortgage and security interest.” *Id.* In other words, while the facts of *Bullard* did not rise to the level of civil theft, the civil theft of real property is still possible.

However, as with any claim for civil theft, there are important caveats to consider before bringing a claim for civil theft of real property.

Continued on page 11

Real Property

Continued from page 10

First, §772.11, *Fla. Stat.*, provides that before filing suit, demand must be made for \$200 or the treble damage amount, and if the person upon whom demand is made complies within 30 days after receipt of the demand, that person “shall be given a written release from civil liability for the specific act of theft or exploitation by the person making the written demand.” So, if the wrongdoer pays the treble damage amount within 30 days, it could preclude the bringing of any other claims against him arising from the same acts.

Second, as noted in *Bullard*, civil theft requires that a plaintiff allege and ultimately prove that the defendant acted with a felonious intent to steal, which requires more than just an unauthorized trespass onto the plaintiff’s property. Third, the burden of proof is higher on a claim for civil theft than on a regular civil claim, requiring proof by clear and convincing evidence. §772.11(1), *Fla. Stat.* Failure to meet that higher burden could result in an award of fees to the opposing party if the court finds that the claim was raised without substantial fact or legal support. *Id.* This is a less stringent standard than that under §57.105, *Fla. Stat.*, so the possibility of a fee award is greater. See *Bronson v. Bronson*, 685 So.2d 994, 995 (Fla. 5th DCA 1997).

Finally, a treble damages award on a civil theft claim would be in place of, not in addition to, any potential award of punitive damages on other claims. Section 772.11(1), *Fla. Stat.*, provides that “punitive damages may not be awarded under this section.” While the statutory language refers only to “this section,” courts have held that an award of treble damages under a civil theft claim precludes *any* other punitive damage award. *Greenberg v. Grossman*, 683 So.2d 156 (Fla. 3rd DCA 1996); also see Mark R. Osherow, *Counsel Beware: Considerations Before Implementing Florida’s Civil Theft Statute*, Fla. 77-MAR Fla. B.J. 28 (2003); cf *Palm Beach Atl. Coll., Inc. v. First United Fund, Ltd.*, 928 F.2d 1538 (11th Cir. 1991) (indicating that punitive damages may be still be available where treble damages have been awarded under §722.11, provided that they arise out of separate events/acts).

Under the right circumstances, a claim for civil theft of real property could be a powerful weapon in a plaintiff’s arsenal.

Levin College Of Law’s Trial Team 2-Time National Champs!

By Tristan Montaque, 3L

On March 16 - 18th, UF Levin College of Law’s Trial Team sent a team of four students to compete in an invitation-only, national trial advocacy competition, specifically the ABA National Criminal Justice Trial Competition hosted by the John Marshall Law School in Chicago, IL. Our team won the entire competition, receiving the title of national 2017 champions!

This does not mark the first national win for this specific team. Just this past October, this same team of four, comprised of Tristan Montaque, William Sepulveda, Dani Kaboudi and Neal Cordero, traveled to Puerto Rico to another national trial advocacy competition where they also won First Place, and Tristan Montaque won Runner-up for Best Advocate for the entire competition!

These two national title wins within one school year marks a historic precedent for the University of Florida Law School, as this is the first time in the law school’s 108 year history that any UF Law Trial Team has won two consecutive national championships within the course of one school year. Additionally, our recent win in Chicago has a direct positive impact on our US News & World Report and ABA ranking in regards to nationally-ranked law school trial advocacy teams/programs!

We are very proud of this historic achievement – GO GATOR LAW!!!



Pictured from left to right, Two-Time National Champions Tristan Montaque, William Sepulveda, Dani Kaboudi, and Neal Cordero

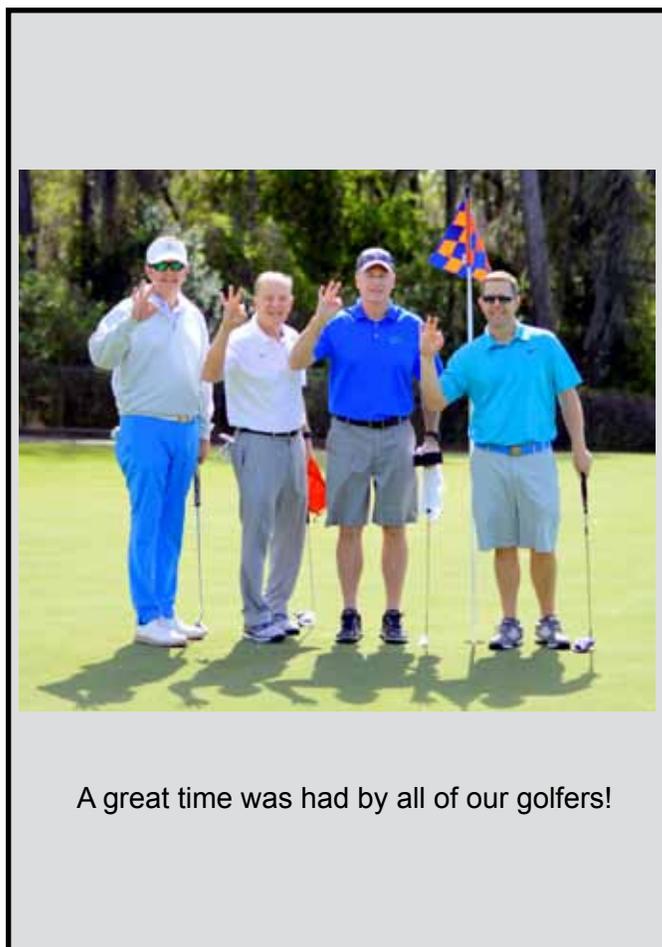
EJCBA Charity Golf Tournament, “The Gloria” in Memoriam of Gloria Fletcher, Raises \$11,566 for Guardian Ad Litem Foundation

The Eighth Judicial Bar Association held the Charity Golf Tournament, “The Gloria” in Memoriam of Gloria Fletcher, at UF’s Mark Bostick Golf Course on Friday, March 3, 2017. Over 70 golfers were treated to a beautiful day and competed in the “Player’s Choice” tournament. Thanks to these golfers and our 29 incredible sponsors, the EJCBA was able to exceed its prior checks to the Guardian ad Litem Foundation, with a donation this year of \$11,566. The Guardian ad Litem program is a volunteer-based organization that provides representatives to children involved in court proceedings, primarily as a result of alleged abuse or neglect. Thanks to the generous contributions of everyone involved, the EJCBA was able to once again donate an estimated 30% of the Guardian Foundation’s annual budget to help the children in our community. Event sponsors included:

- Bill Cervone, State Attorney
- Capital City Bank
- Community State Bank
- Dave & Carol Remer
- Dharma Endowment Foundation, Inc.
- Faulkner Realty, Inc.
- Ference Insurance Agency
- Folds and Walker, LLC
- Gainesville Harley Davidson
- Jonathan Wershow & Pamela Schneider
- LogistiCare
- Lucky’s Market
- McCarty, Naim, Focks & Keeter, P.A.
- Mojo Hogtown Bar-B-Que
- Renaissance Printing
- Roberts Insurance Inc. - Scott Roberts
- Salter Feiber, PA
- Stacy Scott, Public Defender
- Steve Rappenecker
- Stripling Mediation
- The Fletcher Family Company
- The Liquor and Wine Shoppe at Jonesville
- The Resolution Center
- Tom Copeland (Allen Law Firm)
- UF Law E-Discovery Project
- UF Mark Bostick Golf Course

- Unspoken Photography
- Zaxby’s

Following a catered lunch by Zaxby’s, the tournament golfers of ALL skill levels began with a shotgun start at 12:30 p.m., competing against other two-person and four-person teams in this multi-format tournament. Golfers were able to stay hydrated on the course thanks to The Resolution Center, which graciously sponsored all of the on-course beverages. The post-round reception food was delivered by Mojo Hogtown BBQ and adult beverages were provided by the Liquor and Wine Shoppe at Jonesville. In total, it was a great day enjoyed by all, but more importantly, the EJCBA and all of the participants were able to raise money for this great cause that benefits the children within our community.



A great time was had by all of our golfers!

Guardian Advocates Needed

By Julie Waldman

Tacachale, a progressive community for the developmentally disabled in Northeast Gainesville, provides 24-hour supervision and care, and serves about 350 residents. One of the issues Tacachale continually faces is the lack of volunteers to serve as guardian advocates for the residents. As the population ages, family and relatives of the residents we serve become unable to continue their commitment to their loved ones. It is not burdensome to be a guardian advocate for a Tacachale resident. There are no filing fees or visitation requirements; the duties generally relate to consenting to medical and dental procedures, and overseeing placement choices, and are usually handled by phone. The time obligation is minimal. Guardian advocates are required to file an annual plan with the clerk of courts. At Tacachale, the plan is prepared by the resident's social worker, who then submits it to the guardian advocate for filing, which can be completed online. Tacachale is dedicated to offering the people we serve opportunities and services that respect and encourage their personal choices, enhance their quality of life and maximize their individual potential. The guardian advocate plays an important role in carrying out that mission. Specific information pertaining to guardian advocacy can be found in Florida Statute Chapter 393.12. Please contact Heather Huzzen, 352-955-5580, to see if this service opportunity is right for you.



*The Eighth Judicial Circuit Bar Association
invites you and your guests to join us for our*

2017 Annual Dinner and Meeting

*Thursday, June 8, 2017,
6:00 pm until 8:30 pm
(Cocktails 6:00 pm – 7:00 pm)*

*at the
Austin Cary Forest Learning Center
10625 NE Waldo Rd, Gainesville*

*Reservations required
\$40 for members and non-lawyer guests
\$55 for non-members*

To RSVP

*You may RSVP for you and
your guest(s) at*

*[http://www.8jcba.org/event-
registration/2017-annual-
dinner/](http://www.8jcba.org/event-registration/2017-annual-dinner/)*

*Cocktails and Buffet
Dinner Included*

*Reservations must be
received no later
than June 1st*



Thank you to all of our golfers who came out to support the Guardian Ad Litem Foundation.

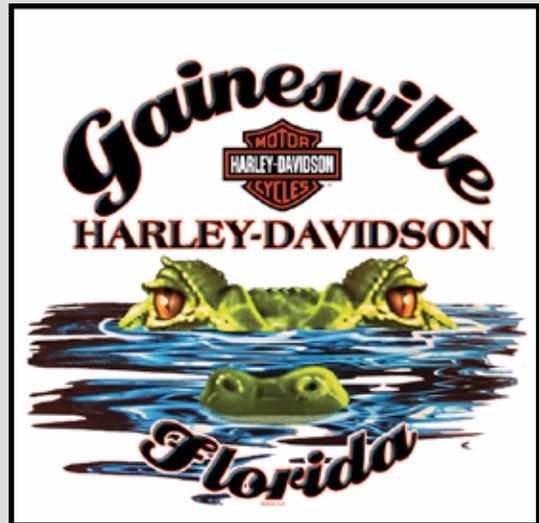
Signature Sponsor:
2017 EJCBA Charity Golf Tournament in Memoriam of Gloria Fletcher



Signature Sponsor:
2017 EJCBA Charity Golf Tournament in Memoriam of Gloria Fletcher



Signature Sponsor:
2017 EJCBA Charity Golf Tournament in Memoriam of Gloria Fletcher



New Member Applications for James C. Adkins, Jr. American Inn of Court

The James C. Adkins, Jr. American Inn of Court is an association of lawyers, judges, and other legal professionals from all levels and backgrounds who share a passion for professional excellence. Through regular meetings, members build and strengthen professional relationships; discuss fundamental concerns about professionalism and pressing legal issues of the day; share experiences and advice; exhort the utmost passion and dedication for the law; provide mentoring opportunities; and advance the highest levels of integrity, ethics, and civility. The Inn of Court usually meets on the third Thursday evening of each month from September through May.

Members enjoy a 45 minute social time followed by dinner and a program designed to help attorneys improve their skills and professionalism. The monthly meetings provide networking opportunities as well as 1-2 CLE credits per meeting. We invite you to apply by completing the application [here](#) and returning it to Frank Slavichak by mail: 14260 W. Newberry Road #349, Newberry, Fl. 32669-2765 or email: adkinsinn@yahoo.com. Applications are due by June 1, 2017. Dues for 2017-2018 are \$325.00. Current members will be receiving a renewal membership application by email, but, may also submit the attached application to renew.

May 2017 Calendar

- 3 EJCBA Board of Directors Meeting – 5:30 p.m., Blue Gill Quality Foods
- 5 Deadline for submission of articles for June Forum 8
- 5 Deadline to apply for 2017-2018 EJCBA Board of Directors
- 10 Probate Section Meeting, 4:30 p.m., Chief Judge’s Conference Room, 4th Floor, Alachua County Family & Civil Justice Center
- 16 Family Law Section – Free CLE on Technology, 4:00 p.m., Chief Judge’s Conference Room, Alachua County Family & Civil Justice Center
- 19 EJCBA Luncheon, UF Basketball Head Coach Michael White, The Woolly, 11:45 a.m.
- 29 Memorial Day, County & Federal Courthouses closed

June 2017 Calendar

- 8 EJCBA Annual Dinner and Meeting, 6-8:30 p.m., Austin Carey Forest Learning Center
- 14 Probate Section Meeting, 4:30 p.m., Chief Judge’s Conference Room, 4th Floor, Alachua County Family & Civil Justice Center
- 20 Family Law Section Meeting, 4:00 p.m., Chief Judge’s Conference Room, Alachua County Family & Civil Justice Center
- 21-24 67th Annual Florida Bar Convention, Boca Raton Resort & Club

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.