

FORUM 8

Volume 78, No. 1

Eighth Judicial Circuit Bar Association, Inc.

September 2018

President's Message

By Gloria Walker



Welcome back! Members of the EJCBA Board of Directors hope you all had a wonderful summer and got some well-deserved rest! We met over the summer at our annual EJCBA retreat, and are ready to provide our members another amazing year of opportunities to Gather, Grow and Give.

GATHER

At our September Bar Luncheon, we will hold a Candidates Forum for the county and circuit court judicial vacancies. Last year, at the State of the Circuit Bar Luncheon, Chief Judge Monaco announced that he and Judge Hulslander were going to retire at the end of their term (December 2018). The retirement of Chief Judge Monaco and Circuit Judge Hulslander created two vacancies at the circuit court level. County Court Judge Denise Ferrero resigned her seat and will fill Judge Monaco's vacancy effective January 8, 2019. Judge Ferrero's resignation thus created a county court vacancy. Judge Hulslander's circuit seat also remains vacant. Both of these positions will be filled through the election process this Fall.

In November, in addition to celebrating our annual Gator Homecoming, we will gather at Cedar Key for the annual James C. Adkins Dinner. The remainder of the year will be filled with wonderful guest speakers at our monthly bar luncheons. We will also have other opportunities to gather at our Fall Family Friendly Social and Spring Fling.

GROW

We are so excited to announce that EJCBA continues to grow. In addition to participating in

the Professionalism Seminar, Trial Practice Series, Medical Legal Partnership, Diversity and Inclusion Roundtable and CLEs, we have two new opportunities to continue to grow through our new Mentorship and Homeless Youth programs.

Mentorship:

The EJCBA Mentoring program is designed to meet the targeted needs of law students through all three years of law school. The goal of the program is to ensure a positive perception of the legal profession by mentoring law students and young lawyers to practice law with the highest level of civility and professionalism. The EJCBA hopes to establish long lasting relationships between law students, young lawyers and experienced lawyers where law students and young lawyers will seek guidance from their mentors and avoid pitfalls. The primary focus of this program is to ensure that the lawyers in this circuit maintain the highest level of professionalism, integrity and civility. This program is chaired by Magistrate Jodi Cason.

Homeless Youth:

The Eighth Judicial Circuit Bar Association is partnering with Interface Youth Shelter in Gainesville (the only homeless youth shelter in the Eighth Circuit) to provide legal education and representation to homeless youth receiving services from the shelter. This project is part of a statewide pilot in Florida of the American Bar Association's Homeless Youth Legal Network to increase legal services and improve stability and outcomes for homeless youth. This project will officially launch in the Fall, and we hope to encourage lawyers to participate in this pro bono project to help vulnerable youth in our community.

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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



Mediation Procedures

Lawyers often raise questions about mediation procedures. We have tried to organize *some* common questions and find a MEAC Opinion relating to and hopefully answering the question. MEAC is the Mediator Ethics Advisory Committee of the ADR section of the Florida Supreme Court.

Mediators forward formal questions to MEAC, and MEAC publishes answers/opinions. We cannot address every question we are asked about mediation procedures in this single article; however, we will try and do a follow-up article in order to address more of your frequently asked questions.

Question #1: Can a mediator report to the Court that a party or an attorney did not attend a scheduled and noticed mediation?

Answer: Yes. In MEAC Opinion 2015-002 the committee clearly stated that in a court-ordered Circuit case, the mediator may, but is not required to, identify the parties and participants who appeared for mediation “based on physical observation.” In other words, oddly, MEAC sort of dances on the head of a pin and determines that a “physical observation” is not a “mediation communication subject to privilege.” In summary, unless there is a local court rule, court order, or administrative order requiring a mediator to identify the parties or participants who appeared for mediation, the mediator “may” but is not required to do so. We think that means the mediator may do so.

Question #2: If a party or attorney requests that a mediation be rescheduled for “good cause,” should the mediation be rescheduled to a mutually convenient time?

Answer: Yes. MEAC states that if a party is objecting to attending the mediation, the mediator cannot compel attendance; however, the mediator should advise a party that pursuant to Rule 12.741 the party may be subject to sanctions by the Court for a non-appearance. However, an objection to attending is different from a conflict with attending. MEAC clearly states a date for mediation may be set without the advance agreement of all parties, but any party would be permitted to request that it be rescheduled. A mediator may report

non-appearance at a mediation *if* the mediator gave the non-appearing party due notice of the date and time for the mediation session *and* good cause was not shown for rescheduling. In other words, there is a difference between objecting to attending a mediation on a particular date or being unable to attend on the date scheduled and a mere request that it be rescheduled for good cause.

Question #3: Is an “orientation session” required at every mediation?

Answer: Yes. First, you are probably asking what is an “orientation session”? Rule 10.420(a) requires that a mediator give an orientation session in order to commence a mediation. According to that Rule:

Upon commencement of the mediation session, a mediator **shall** describe the mediation process and the roll of the mediator and **shall** inform the mediation participants that:

- (1) Mediation is a consensual process;
- (2) The mediator is an impartial facilitator without authority to impose a resolution or adjudicate any aspect of the dispute; and,
- (3) Communications made during the process are confidential, except for disclosures required or permitted by law.

According to MEAC there is no ambiguity to these requirements nor are there any exceptions. Regardless of party negotiations, the mediator must deliver the orientation session. In fact, MEAC separately opines that if parties/counsel do not participate in an orientation session then they have not attended the mediation. Moreover, in opinion 2016-006, MEAC states that Rule 10.420 is not mandatory and “does not give the mediator authority to ask parties/counsel if they wish to waive a mediator’s orientation session.”

Question #4: Let’s change things up a bit and address an issue that often comes up regarding negotiations at mediation. Are parties required to make an offer? Required to make a demand?

The answer is “no” according to *Avril v. Civilmar*, 605 So.2d 988 (Fla. 4th DCA 1992). In *Avril* the Plaintiff sought sanctions against the Defendants for failure to negotiate in good faith during a court-ordered mediation. Plaintiff stated that at the mediation the defense offered \$1,000.00 to settle the case, explaining the underlying

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Criminal Law

By William Cervone



“The gravest, most persistent sin of mankind lies in not treating everyone as an individual.” *Paris In the Present Tense*, a novel by Mark Helprin, 2017.

“At times there is something noble in standing alone. The Confederate battle emblem has no place in shaping a New Mississippi, and is better left retired to history.” *Moore v Bryant*, 205 F.Supp.3d 834 (SD Mississippi 2016), Carlton W. Reeves, J.

I am, you have probably noticed, not inclined to write in this journal about truly weighty and highly controversial or political topics. We are a diverse legal community with many and varied opinions and I don't see this forum as being the place for that. Usually. This is an exception, provoked by some of my summer reading.

Over the last year or so, both locally and nationally, the debate has gotten sometimes loud and furious about symbols of the Confederacy. Emotions run high on both sides. Those who say that all such vestiges of the past must go point to the on-going harm they bring to the future. Those who say that they must stay say that to deny history is to risk repeating it. Both say that they have a right to freedom, either from such symbols or to remember them as a part of the fabric of their heritage. To be honest, I have leaned towards the latter view. As a child of the 60s when the fight for racial equality that continues today was ignited I have seen change and no change and I have wondered at how it can be that today, 50 years later, such topics can still be so divisive. Shouldn't we be over it by now? Certainly, as a teenager in the 60s I'd have thought that would be so by the time I was the age I am now. But we're clearly not there.

I commend to all of you the federal opinion quoted above. The lawsuit that generated it was an effort by a black attorney/plaintiff to sue the Governor of Mississippi over the constitutionality of Mississippi's state flag, the top corner of which incorporates the Confederate battle flag. His claim, essentially, was that the flag “is tantamount to hateful government speech [having] discriminatory intent and disparate impact.” The flag, essentially, is a cloth Old Joe statue.

The opinion is a strong and marvelous piece of historic research. I will highlight only a few of the points it raises:

- Mississippi's Declaration of Secession says that “Our position is thoroughly identified with the institution of slavery - the greatest material interest of the world.” So much for state's rights and so on.

- Confederate Vice President Alexander H. Stephens declaimed in 1861 that the Confederacy “rests upon the great truth that the negro is not equal to the white man; that slavery - subordination to the superior race - is his natural and normal condition.”

- Citing numerous examples, all violent, Judge Reeves notes that both soon and long after the end of the Civil War Southerners continued to romanticize KKK activities as “a chivalrous extension of the Confederacy.”

- Even seemingly altruistic or innocuous groups, such as the United Daughters of the Confederacy, sang from this hymnal in raising money to raise monuments so that there “shall be no doubt in the minds of future generations as to the causes of the war...”

- Mississippi is not alone in incorporating the Confederate flag's imagery into a state flag, which it did in 1890. Georgia, South Carolina, and Alabama all did so in one way or another, not in the still angry and wounded times immediately after the Civil War but in the 1950s and 1960s as the civil rights movement gained steam.

- The racially tinged violence continues. Charleston. Charlottesville. Fortunately not Gainesville.

Perhaps the most amazing thing about the opinion, after a lengthy analysis detailing all of this and more, and discussing how this historical context impacts present day perceptions and realities among both blacks and whites, and while concluding that “it is difficult to imagine how a symbol borne of the South's intention to maintain slavery can unite...in the 21st century,” is that the end result turned on simple legal principles, standing and injury. Finding those to be lacking, Judge Reeves dismissed the case, a result affirmed by the Fifth Circuit Court of Appeals, which decision the United States Supreme Court declined to hear in denying cert in 2017. In other words, it is not for the courts to pull down the Mississippi state flag. Some might disagree, but this is to me an extraordinary example of the rule of law.

In any event, I hope that all or at least some of you will read the opinion. It is thought provoking, to say the least, and may provide some insight, as it

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The Americans with Disabilities Act

By Krista L. B. Collins



The Americans with Disabilities Act (“ADA”) is a fine piece of legislation, with a laudable goal: making public spaces accessible and truly usable for people with disabilities. What many people, including business and property owners responsible for ensuring compliance with the ADA, may not realize, is that the ADA contains extremely specific

and detailed requirements. Restroom sign an inch too high? Displays that narrow your shop aisles? A crack in the sidewalk that changes the slope? All violations of the ADA. I’m not trying to suggest that these requirements should be done away with or changed. The problem arises due to the lack of notice: an out of place paper towel holder can result in a costly federal lawsuit without any prior notice to the business owner that anything is wrong.

Why would a plaintiff file a federal lawsuit over an out of place paper towel holder? Or, a more realistic question: how could a plaintiff find an attorney willing to do so? One need only look to the sole available remedy: injunctive relief requiring the business or property owner to remedy the ADA violation, or “barrier to access,” *along with an award of attorneys’ fees*. 42 U.S.C. §§ 12188(a) and 12205. While some plaintiffs are genuinely concerned about accessibility, others are paid a pittance for the use of their name by attorneys who then file lawsuits alleging ADA violations,¹ in which remedying the alleged violations takes a backseat to collecting attorneys’ fees.²

Over 6,000 ADA lawsuits were filed in Florida between 2012 and 2017, more than half of which were filed by just 12 plaintiffs.³ These abusive ADA suits – which often target small business owners

who lack the financial wherewithal to put up much of a fight – have been such a problem that both the Florida state government and Congress have now become involved.

Last year, the Florida legislature created a new law, codified at §553.5141, *Fla. Stat.*, that allows business and property owners to hire a qualified expert to inspect the property. If the property complies with the ADA, the expert can issue a certificate of conformity to be filed with the state. If it does not, the business or property owner can develop a remediation plan, to be completed within 10 years, which would be filed with the state. In any ADA lawsuit, the court would be required to consider the certification or remediation plan when determining if the plaintiff’s complaint was filed in good faith and if the plaintiff is entitled to an award of attorney’s fees.

Legislation passed earlier this year by the House of Representatives goes even farther, requiring potential ADA plaintiffs to provide written notice to business and property owners of the existence of any alleged violations. The owner would then have time to either remedy the barriers to access or provide the potential plaintiff with a written plan to do so. If the owner fails to do so within the allotted time, only then could suit be filed. The legislation has yet to come to a vote in the Senate. However, it seems clear that the legislative branch of government, at both the state and federal levels, is coming to recognize the problem discussed in *Rodriguez v. Investco, L.L.C.*, 305 F.Supp.2d 1278, 1282, n. 4 (M.D. Fla. 2004):

One might reasonably ask whether attorney’s fees should be awarded where no effort is made pre-suit to obtain voluntary compliance. After all, if the litigation achieves no result other than that which could be accomplished by agreement, what social or economic value has been added by the lawyer’s decision to file a suit without warning? Indeed, under this scenario, it would seem that litigation carries only negative economic value—it has accomplished nothing but expense and waste of precious judicial resources.

In the meantime, what is a business owner with no plan under §553.5141 to do if she finds herself defending an ADA lawsuit based on technical violations? Often, the quickest, least expensive course of action will be to reach out and come to a settlement with the plaintiff, which will almost certainly

1 Ken Barnes, *Congress Should Take Action on ADA ‘Drive-By’ Lawsuits*, *Forbes*, Dec. 14, 2017, at <https://www.forbes.com/sites/realspin/2017/12/14/congress-should-take-action-on-ada-drive-by-lawsuits/#4e98c7776f6f>.

2 Melanie Payne, *Are ADA Lawsuit Plaintiffs Hucksters or Heroes?*, *News-Press*, Mar. 30, 2017, at <https://www.news-press.com/story/news/investigations/melanie-payne/2017/03/30/ada-driveby-lawsuits-activism-scam-melanie-payne/99143134/>.

3 *Id.*

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What's Important for a Successful Mediation?

By Robert Stripling



The Florida Rules for Certified & Court-Appointed Mediators define mediation as a process where a mediator acts to encourage and facilitate resolution of a dispute. (R. 10.210.) The mediator's role is to reduce obstacles to communication, assist in identification of issues and exploration of alternatives.

However, the rules emphasize that the parties have the ultimate decision-making authority, and that coercion by the mediator to force a settlement is unethical. (R. 10.310.) Nevertheless, the Committee Notes recognize various techniques and styles from mediator to mediator. This seems to give some degree of latitude to the mediator to assist in bringing the parties to resolution. After all, this is the purpose of the process, and the reason most Florida courts require a case to be mediated before it can proceed to trial.

Why, then, do some cases settle and some do not? Of course, the reasons are numerous. However, mediators and counsel sometimes focus on the economic aspects of the case, and overlook the fact that mediation is about people and their problems, not just about money. The mediator must use his skill to help relax the parties and give them hope that their case can be resolved if the process is allowed to work.

Parties to a lawsuit come from all walks of life. Some are professional or business people, others are members of the workforce, and some are homemakers. They all come with different points of view about life. It is, therefore, the responsibility of the mediator to open their minds to the possibility of resolution. The mediator has to slowly gain the confidence of the parties and the lawyers. They are looking for leadership and rely upon the mediator for this.

It is the responsibility of the mediator to find out what the real needs and goals of the parties are. Is the lawsuit about principle, or about the need of the parties to be heard and to come away feeling that they are worth something? The mediator can find this out by talking to them. I have seen many situations where it's really not about the money, but that the money offered is a statement to the person about what the system thinks that party is worth as a person. This

is a difficult task, but through individual caucuses, and listening to the parties, the mediator must work with both sides to validate the various concerns of all parties. Business interests must, of course, be satisfied. However, allowing a person to tell his story, validating his concerns, while also explaining the limitations of the litigation process, often leads to breakthroughs in obtaining resolution.

Low Income Taxpayer Clinic Brings Financial Relief to Community

By Marcia Green



Three Rivers Legal Services' Low Income Taxpayer Clinic [LITC] brought more than \$158,000 in tax relief to clients in 2017.

With grants from the Internal Revenue Service and the Legal Services Corporation, Three Rivers' LITC Director, LaKeshia Thomas has rallied on behalf of low income taxpayers.

With a group of volunteer attorneys and law students, the project helps eligible clients in disputes with the IRS. Issues can include audits, appeals, collections, tax debt relief and more.

Thomas, who received her LL.M. in Taxation from UF Levin College of Law, and her volunteers educate our low income residents about taxpayer rights and responsibilities and advocate on behalf of low income wage earners. Although the program, which is free for eligible taxpayers, is funded in part by the IRS, it is completely independent of the IRS and is operated by Three Rivers Legal Services.

Are you wondering just how the program works? One example is that of a 66-year-old retiree who owed a tax debt of \$8,547. After an initial request to settle the debt with the IRS was denied, Thomas submitted a legal argument addressing our client's negative monthly income and her modest assets (including

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President's Message

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GIVE

Through Ask a Lawyer, we will continue to give to the community by providing pro-bono advice and legal services to the indigent and homeless members of our community. We are also looking forward to another festive and heart-warming holiday through the Holiday Project dedicated to providing holiday gifts and books to the children of our community. Of course, the year would not be complete without our annual Golf Tournament "The Gloria," where we will challenge ourselves to exceed last year's \$16,000 donation to the Guardian Ad Litem program.

I look forward to working with each and every one of you and having another amazing year!

Taxpayer Clinic

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her 2003 vehicle) that helped meet her basic living expenses. After a review of the case law, the offer was finally approved, allowing our client to move forward without this debt on her shoulders. Our client was so relieved.

In another example, our 63-year-old client became disabled after years of low wage earnings. She had attempted to make payments on her accumulated tax debt, but her loss of income made that difficult. After receiving a notice from the IRS that she owed more than \$37,000 in taxes, a pro bono tax attorney represented her in an offer-in-compromise resulting in a tax debt of only \$1000. The reduction in this debt significantly changed our client's life.

If you encounter clients with tax collection problems, our LITC may be able to help. Referrals are easily made by telling clients to call 866-256-8091.

Have tax expertise but not sure you know how to represent low income taxpayers? LITC Director LaKesha Thomas can help you. Her recently recorded training "LITC Fresh Start Initiative" is available to help you become comfortable advocating on behalf of low income clients facing the IRS. Interested? Contact lakesha.thomas@trls.org or volunteer@trls.org.

Calendar Your EJCBA Luncheons Now!

The following dates have been set for the monthly EJCBA luncheons at The Woolly for the 2018-19 season:

September 21
October 19
November 16
December 21
January 18
February 15
March 15
April 12
May 17

To register for the EJCBA luncheons each month, visit www.8jcba.org. Luncheon prices for 2018-2019 are: \$18 for EJCBA Members, \$25 for Members who do not register by the deadline, and \$25 for Non-Members.

CELEBRATING FIFTY (Yes, that's 50!) YEARS

Congratulations to the following members of the Class of 1968 – now part of The Florida Bar's 50-year-Members. The EJCBA celebrates your service to the profession and to the Eighth Judicial Circuit:

R. Luther Beauchamp

Robert T. Mounts

Robert Clark Ross

Elzie Stanford Sanders

Save the Date!

Chambers Lunch with U.S. District Judge Roy Dalton, Jr.

October 17, 2018, starting at noon

United States District Court, Middle District of Florida, Ocala Division Golden-Collum Memorial Federal Building and U.S. Courthouse
207 N.W. Second Street, Ocala, Florida 34475

\$15.00 for members, North Central Florida Chapter of the Federal Bar Association
\$25.00 for non-members
(lunch included)

Please RSVP and send checks to: Gilbert Schaffnit, gaslaw@gmail.com, 719 Northeast First Street, Gainesville, Florida 32601, 352/378-6593.

Florida Summer Camp Counselors Cause Nearly \$700,000 In Wage And Hour Woes

By Laura Gross



If you have been reading my column over the past several years, then you know that Florida leads the rest of the country in the number of unpaid minimum and overtime wage claims filed in federal court under the Fair Labor Standards Act. In fact, the Southern District of Florida (Miami) is number one with more than six times the national average number of filings, and the Middle District of Florida (Tampa) is number four. FLSA wage claims are highly valued by plaintiff-side attorneys due to the mechanical nature of the law and mandatory recovery of attorney's fees from the employer who has failed to pay proper wages.

Attorney's fees can quickly become the driving force of the case. An employer who violates minimum wage or overtime provisions to the tune of \$500 in back wages may end up paying out ten, twenty or even fifty times more than that in attorney fees if the case is not quickly resolved. In other cases, the employer's wide application of an improper employment practice racks up significant back-pay liability, regardless of

attorney fees. That's what happened this summer to Belen Jesuit Preparatory School in Miami.

According to the US Department of Labor, the school employed 97 summer camp counselors ages 14 and 15, allowing them to work more than 40 hours per week. Under the FLSA, children ages 14 and 15 may not work more than 40 hours per week during the summer. The camp also treated camp counselors as exempt from overtime under the recreational exemption, paying them straight salaries regardless of the number of hours worked, and required counselors to attend unpaid training prior to the beginning of camp and weekly meetings during the camp which were not reflected in the time records. The DOL found these acts, too, violated the law.

As a result, the school was assessed a whopping \$635,269 in back pay plus \$47,578 in civil money penalties. The school has decided not to fight the back-pay but says it will contest the fine. The high liability associated with FLSA claims, even where the claims are resolved early at the administrative level, makes it critical for employers to institute appropriate preventative policies and ensure managerial compliance.

Pro Bono Rural Delivery Project

By Marcia Green



Three Rivers Legal Services' Pro Bono Rural Delivery Project is up and running! Now it's time for you to join our panel of volunteer attorneys who video-conference with clients living in the rural and hard-to-reach communities of the Eighth Judicial Circuit.

Our technology is in place and paralegal Kim Tibbetts has joined our staff as the project coordinator. Kim has been traveling throughout the rural communities, scouting internet accessible locations and meeting with community members and low-income residents. Kim will connect the clients with you, our volunteer attorneys, during scheduled video-conferencing appointments. If you have a web cam, you can be in your office or at home. If your equipment isn't quite up-to-date, feel free to arrange to use space in our office.

This project, funded in part with a Pro Bono Innovation Grant from the Florida Bar Foundation, is allowing Three Rivers to expand access for some of the Circuit's neediest residents. Low-income rural residents often have a difficult time coming into Gainesville to meet with an attorney. By facilitating the communication, our staff connects the client with your civil legal expertise while you continue to work conveniently from the comfort of your office.

This is a great opportunity to engage in pro bono assistance throughout our expansive community. Let us know how you can help and join us in once again showing off the generosity, creativity and inventiveness of our local legal community. We look forward to working with the attorneys in Gainesville to serve residents throughout the Eighth Judicial Circuit. Available? Contact kimberly.tibbetts@trls.org. I'm available to explain the project, too, and I'll introduce you to Kim! marcia.green@trls.org

The Florida Bar Foundation sent our grant team to Montana to review their similar project using technology to serve hard-to-reach clients. The remote locations in Montana aren't called rural, they are called frontier! We were so grateful to our hosts, Montana Legal Services Association, for sharing their experiences and allowing us to review their clinics. We thoroughly enjoyed the opportunity to learn as well as explore a small part of Montana during our brief visit.



TRLs staff, from right to left - Alan Hill, Director of IT, Donna Macrae, Pro Bono Director, Kim Tibbetts, Pro Bono Rural Project Coordinator, and Marcia Green, Pro Bono Coordinator.

Positions Available

Bogin, Munns & Munns, P.A., a well-established firm with offices throughout Florida, is seeking an experienced associate or 'of counsel' to add to our team in Gainesville, FL. Areas of practice would include Estate Planning, Probate and Guardianship law. The ideal candidate must be able to work independently with the ability to handle all aspects of a case file with little oversight. Creative compensation packages available with excellent benefits and working conditions. Submit cover letter, resume and writing sample in confidence to: atipton@boginmunns.com.

Bogin, Munns & Munns, PA seeks a litigation paralegal/legal assistant to add to our team in Gainesville, FL. The ideal candidate will have strong general litigation experience with contested probate/trust administration/guardianship a significant plus. Candidate must possess exceptional organizational and communication skills, with a professional demeanor and a commitment to high-quality work. Salary is determined by experience. Interested candidates should email their resume and cover letter to atipton@boginmunns.com.

Bogin, Munns & Munns, P.A. seeks an experienced real estate legal assistant. Candidate should have knowledge of all aspects of real estate closings as well as DoubleTime software and business transactions. Exceptional organizational and communication skills a must. Salary determined by experience. Email resume and cover letter to atipton@boginmunns.com.

EJCBA Annual Dinner and Summer Retreat



Newly elected EJCBA President Gloria Walker, Past President Meshon Rawls and President-Elect Cherie Fine at the Annual Dinner on June 7



Chief Judge Toby Monaco and EJCBA Board Member and Historian Frank Maloney at the Annual Dinner, held at the Harn Museum of Art.



EJCBA Board Member Jan Bendik and Judge Groeb at the Harn Museum of Art.



Your 2018-19 EJCBA Officers and Board Members

Criminal Law

Continued from page 4

did to me. Personally, I cannot endorse things like the erasure of the names of Founding Fathers and others for their having fallen prey to the sins of their times but this perspective on the impact of symbols is different.

Read the book, too. It was pretty good.

ADA

Continued from page 5

involve both remedying the violations and paying some amount of attorneys' fees. Otherwise, to the extent achievable, a business owner should fix the violations as quickly as possible. Facilities built before January 25, 1993, which are generally the targets of these type of ADA suits, are not required to meet the exacting design and implementation standards to which new construction is held under the ADA. *Gathright-Dietrich v. Atlanta Landmarks, Inc.*, 452 F.3d 1269, 1273 (11th Cir. 2006). Instead, barriers to access must be removed where such removal is readily achievable. 42 U.S.C. §12182(b)(2)(A)(iv); *Gathright-Dietrich* at 1273. "Readily achievable" means "easily accomplishable and able to be carried out without much difficulty or expense." 42 U.S.C. §12181(9).

If the violations can be remedied quickly, it may be possible to obtain judgment in favor of the defendant: in an ADA case, "the Court may properly grant summary judgment on any claim that is moot based on Defendant's implementation of permanent, structural modifications." *Access 4 All, Inc. v. Bamco VI, Inc.*, 2012 WL 33163 at *6 (S.D. Fla. 2012). In a case close to home, the defendant successfully defeated an ADA claim by swiftly removing the barriers to access. *Deleo v. Cakmis Enterprises, Inc.*, 1:16-cv-00051-MW-GRJ (N.D. Fla. 2016). Upon a motion for summary judgment, the Court dismissed the plaintiff's claims with prejudice and denied her request for attorneys' fees based upon *Buckhannon v. West Virginia Dept. of Health and Human Resources*, 532 U.S. 598, 610 (2001) (rejecting the "catalyst theory" as a basis for recovery of fees and costs in ADA cases).

Acting quickly can defeat these abusive suits – while still achieving the ADA's intended goal of increasing accessibility for all.

ADR

Continued from page 3

circumstances (mediation ordered 80 days after service of process, no time to take a discovery deposition of Plaintiff, no time to do a compulsory medical exam, etc.) for the defense position. Interestingly, although this was 1992, "the mediator reported that the Defendant steadfastly refused to increase the offer under the circumstances." Plaintiff suggested these circumstances meant the Defendants and their Insurer appeared at mediation "with unclean hands and not in good faith." The trial court ordered the Defendants to pay Plaintiff's attorney's fee, half the cost of the mediator fee and an expert witness fee and granted the motion for sanctions. The 4th DCA quashed, finding that the Order was a departure from the essential requirements of law. As noted by the court, it was never suggested that the Defendants refused to attend or participate in a mediation. Rule 1.720 allows sanctions **only** for failing to appear at a noticed mediation conference. The appellate court stated the only basis for Plaintiff's request for sanctions "is *merely* the Defendants who are unwilling to make an offer of settlement satisfactory to the Plaintiff." The court noted the mediation statutes do not require that parties actually settle cases. The court further stated there is no requirement that a party even make an offer (or a demand) at mediation, let alone offer what the opposition wants to settle.

We have a file with scores of MEAC opinions and case law addressing common questions we are asked. Future articles will deal with more of these questions which you have deemed important enough to ask.



Chief Judge Monaco, Lynn Monaco and attorney Scott Walker at the Annual Dinner.



*The North Central Florida Chapter of the Federal Bar Association
Presents*

*A Retirement Reception
Honoring*

United States Magistrate Judge Gary R. Jones

*Thursday, September 13, 2018
6 p.m. to 9 p.m.*

*The Cade Museum
811 South Main Street
Gainesville, Florida 32601*

*RSVP by September 6, 2018
Complimentary Drinks and Hors d'oeuvres*



Invitation To Renew / Join The 2018-19 EJCBA

The Eighth Judicial Circuit Bar Association (EJCBA) cordially invites you to either renew your membership or join the EJCBA as a new member.

To join, please visit : www.8jcba.org to pay online or return the below application, along with payment, to the EJCBA at PO Box 13924, Gainesville, FL 32604. The EJCBA is a voluntary association open to any Florida Bar member who lives in or regularly practices in Alachua, Baker, Bradford, Gilchrist, Levy or Union counties.

Remember, only current EJCBA members can access a printable version of the complete member directory, edit their own information online, post photos and a website link, and be listed on results for searches by areas of practice. Additionally, our Forum 8 Newsletter, event invitations, and updates are all sent electronically, so please ensure we have your current email address on file and add execdir@8jcba.org to your email address book and/or safe senders list.

EJCBA Membership Dues:

Free - If, as of July 1, 2018, you are an attorney in your first year licensed to practice law following law school graduation.

\$65.00 - If, as of July 1, 2018, you are an attorney licensed to practice law for five (5) years or less following graduation from law school; or

- If, as of July 1, 2018, you are a public service attorney licensed to practice law for less than ten (10) years following graduation from law school. A "public service attorney" is defined as an attorney employed as an Assistant State Attorney, or an Assistant Public Defender, or a full-time staff attorney with a legal aid or community legal services organization; or
- you are a Retired Member of the Florida Bar pursuant to Florida Bar Rule 1-3.5 (or any successor Rule), who resides within the Eighth Judicial Circuit.

\$85.00 - All other attorneys and judiciary.

Optional – YLD Membership Dues (in addition to your EJCBA dues above):

\$35.00 - EJCBA Young Lawyers Division (eligible if, as of July 1, 2018, you are an attorney under age 36 or a new Florida Bar member licensed to practice law for five (5) years or less)

* EJCBA voting membership is limited to Florida Bar members in good standing who reside or regularly practice law within the Eighth Judicial Circuit of Florida. EJCBA non-voting membership is limited to active and inactive members in good standing of the bar of any state or country who resides in the Eighth Judicial Circuit of Florida, and to UF College of Law faculty.

EJCBA Renewal/Application for Membership

Membership Year: 2018-2019

Check one: Renewal New Membership

First Name: _____ MI: _____

Last Name: _____

Firm Name: _____

Title: _____

Street Address: _____

City, State, Zip: _____

Eighth Judicial Circuit Bar Association, Inc.

Telephone No: (_____) _____ - _____

Fax No: (_____) _____ - _____

Email Address: _____

Bar Number: _____

List two (2) Areas of Practice:

Number of years in practice: _____

Are you interested in working on an EJCBA

Committee? Yes No

September 2018 Calendar

- 1 UF Football v. Charleston, 7:30 p.m.
- 3 Labor Day Holiday - County and Federal Courthouses closed
- 5 Deadline for submission to October Forum 8
- 5 EJCBA Board of Directors Meeting, Three Rivers Legal Services, 1000 NE 16th Ave., Bldg. I, Ste. B, 5:30 p.m.
- 8 UF Football v. Kentucky, 7:30 p.m.
- 10 Rosh Hashanah Holiday – County Courthouses closed
- 12 Probate Section Meeting, 4:30 p.m., 4th Floor Meeting Room of the Alachua County Family/Civil Justice Center
- 15 UF Football v. Colorado State, 4:00 p.m.
- 18 Family Law Section Meeting, 4:00 p.m., Chief Judge’s Conference Room, Alachua County Family & Civil Justice Center
- 19 Yom Kippur – County Courthouses closed
- 21 EJCBA Luncheon, Judicial Candidates Forum, The Woolly, 11:45 a.m.
- 22 UF Football at Tennessee, TBA
- 29 UF Football at Mississippi State, TBA

October 2018 Calendar

- 3 EJCBA Board of Directors Meeting, Three Rivers Legal Services, 1000 NE 16th Ave., Bldg. 1, Ste. B, 5:30 p.m.
- 5 Deadline for submission to November Forum 8
- 6 UF Football v. LSU Tigers, TBA
- 8 Columbus Day Holiday – Federal Courthouse closed
- 11 Probate Section Meeting, 4:30 p.m., 4th Floor Meeting Room of the Alachua County Family/Civil Justice Center
- 13 UF Football at Vanderbilt, TBA
- 16 Family Law Section Meeting, 4:00 p.m., Chief Judge’s Conference Room, Alachua County Family & Civil Justice Center
- 19 EJCBA Luncheon, Dean Onye Ozuzu, Dean of UF’s College of the Arts, The Woolly, 11:45 a.m.
- 27 UF Football v. Georgia Bulldogs (Jacksonville), 3:30 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.