

# FORUM 8

Volume 78, No. 2

Eighth Judicial Circuit Bar Association, Inc.

October 2018

## President's Message

By Gloria Walker



According to the preamble of the Florida Rules of Professional Conduct:

A lawyer is a representative of clients, an officer of the legal system, and a public citizen having special responsibility for the quality of justice. A lawyer should seek improvement of the law, the administration of justice, and the quality of service

rendered by the legal profession.

As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law, and work to strengthen legal education. . . A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest. . . A lawyer should strive to attain the highest level of skill, to improve the law and the legal profession, and to exemplify the legal profession's ideals of public service.

To this end we are happy to report that the EJCBA Mentorship Program had 38 applications from mentees seeking mentors from the EJCBA. Of the 38 applicants, 15 will be selected and matched with 15 lawyers from the Eighth Judicial Circuit who will serve as their mentors. As we mentioned in last month's *Forum 8*, the EJCBA has launched a Mentoring Program designed to share the highest level of skill and to improve the legal profession by exemplifying the legal profession's ideals to the law students of the University of Florida's Levin College of Law, 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 help 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 unnecessary pitfalls. As lawyers, we must continue to seek to improve the quality of services rendered by the legal profession each and every day.

**SAVE THE DATE**

**EJCBA'S**

**FALL FAMILY-FRIENDLY  
SOCIAL**

**SUNDAY, OCTOBER 14,  
2018**

**3-6 p.m.**

**at**

**FIRST MAGNITUDE BREW-  
ING COMPANY**

**1220 SE VEITCH ST.**

**GAINESVILLE, FL 32601**

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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](mailto: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



## At The End Of The Day, It's Just Annoying

Eight years ago we wrote an article about a list of the “Top 10 Most Annoying Phrases.” The number 1 most irritating phrase, according to the list, was “At the end of the day.” Others on the list included: 2) “fairly unique”; 3) “I personally”; 4) “at this moment in time”; 5) “with all due respect”; 6) “absolutely”; 7) “it’s a nightmare”; 8) “shouldn’t of”; 9) “24/7”; and 10) “it’s not rocket science.”

It appears Oxford University research compiling such a list, and your intrepid authors writing about the list, had absolutely no affect on the use of these irritating phrases. At the end of the day, we hear these things through-out the day. Please stop saying “I personally.” A BBC radio host noted that phrase is “the linguistic equivalent of having chips with rice.” If you do not understand the point, that is even a better reason to stop using this phrase.

Stop using “shouldn’t of” instead of the correct term “shouldn’t have.” The phrase “shouldn’t of” ain’t right.

We did some further research and found some other words and phrases, which according to a recent article, make the speaker sound stupid.

The first on this new list is “irregardless.” There is no such word. Please use the correct word “regardless.”

Perhaps the most annoying and overused word: “like.” Like knock it off. You are not trying out for a role in the off Broadway production of *Clueless*. And we literally mean what we say. No we don’t: Stop saying “literally” all the time. Researchers tell us the word “literally” is known as an intensifier (people use it to put more emphasis on what they are saying). Maybe you think “I am literally falling asleep” sounds more meaningful than “I am falling asleep.” You would be wrong.

Which brings us to the word “actually.” It rhymes with literally and is used as frequently. It also is thought to be an intensifier. “It was actually the funniest joke I have ever heard.” By using the word “actually” you are suggesting what you said was 100% true and not exaggeration. Keep using the word and people will realize what you are saying is not actually true and you exaggerate too much.

Unlike actually, “basically” seems to suggest simplicity. If you are using simple terms you do not need to throw in the word “basically.” Please stop using the word “basically” at the start of every sentence.

While we are ruminating, we personally do not think you should start every sentence with “I personally.” It is not necessary; we assume the opinions and view you are expressing is your personal view point. Were you unsure? We are sure. “Absolutely.”

“Absolutely” is one of these annoying words or phrases. One of your authors is wincing because he says it a lot. Now he is embarrassed. We take some solace in the fact that the word “absolutely” can be used as both an affirmation and an intensifier. If someone asks you a question you could simply reply “absolutely.” Also, you could incorrectly use it as an intensifier to emphasize your point and say “I am absolutely exhausted today!” One of your authors uses “absolutely” as an affirmation. We researched and found an authority which said “while it’s fine to use it as an affirmation, you may want to think twice about using the word as an intensifier.” Whew, we feel better now.

Maybe you “could care less” about irritating words and phrases. If that’s the phrase you’re using, stop it. If you use the phrase “could care less” to mean you don’t care about something you are using it incorrectly. The literal meaning is that you have the capacity to care more – not that you don’t care. So, “actually” the correct phrase would be “couldn’t care less” which we are told makes far more sense.

Please point out to us when we use some of these phrases. If your goal is to embarrass us, you will succeed. At this moment in time we are going to try and practice what we preach, and, with respect to the phrase we just used: there is no need to underscore that the time you’re speaking about is this exact moment in time. Just say “right now.”

In conclusion, we also found an article with the 15 most annoying expressions in politics. We are surprised the list was limited to only 15 annoying expressions. Indulge us and take a moment and picture several annoying politicians. Please, do not limit your images to members of a political party which

*Continued on page 6*



# Criminal Law

By William Cervone



I do not do Facebook, if “do” is the correct term. I suppose many of you do “do” Facebook, although why is a mystery to me. Surprisingly, many defendants do Facebook, and shockingly they tend to post all sorts of incriminating things there. Arkheem Lamb is one such defendant.

In addition to Facebook, Arkheem likes cars, particularly stealing them at gunpoint. Back in 2016, while living in the Palm Beach County area, he and some buddies jacked two cars in the space of a couple of hours. Thoughtfully for the police if not for himself, during the festivities surrounding those events he or someone posted a video to Facebook showing himself driving one of the stolen cars, proudly displaying the victim’s stolen watch on his wrist, and proclaiming “We live!” The post was dated and timed in close proximity to the carjacking and before the car was later found abandoned, Arkheem apparently having tired of using it.

Even more thoughtfully, once the police found the video they provided it to the prosecutor who relished the opportunity to play it at trial. Of course, a major kerfuffle ensued about authentication of the video. Arkheem’s lawyers claimed that it was not properly authenticated because neither the detective who found it nor the forensic examiner who downloaded a copy for evidence and testified had actually taken the video or were shown in it. They also asserted that the Best Evidence Rule was violated and that various discovery violations had occurred because the forensic examiner wasn’t disclosed as an expert, just as an ordinary witness. The prosecutor took the position that all of that was nonsense and that the video was basically self-authenticating and admissible, a position the trial judge liked. Needless to say, the jury liked the video that they were then shown well enough to convict Arkheem, but only of Grand Theft/Auto. Had they seen his various tats such as “Thug Life” and “AK47” they might have bought the more serious carjacking charges, but that’s another story. Arkheem got two years in prison and spent most of that time appealing. Because the

admissibility of Facebook posts is relatively new and unsettled, and perhaps unsettling, I thought I might use this space to summarize the feelings of the 4th DCA about all of this.

First, the forensic examiner was not an expert witness but merely a fact witness. Although he had some knowledge and skill with regard to Facebook, that was not sufficiently specialized as to make him an expert. He, and by implication, anyone, could properly testify about accessing a public Facebook page, finding a video on it, and downloading the video for evidence, as well as explaining how the whole thing worked for those jurors who, like me, have no clue and less interest in that.

Second, being online does not make something self-authenticating. It is not, however, necessary to call the creator of a video, search the device used to make the video, or obtain information from the social media website involved to establish authentication. Those things could be used but are not necessary. In essence, Arkheem’s face was good enough under all of the circumstances involved to allow admission. While the video could have been authenticated through a Facebook records custodian certificate as a business record or something of that sort, that was unnecessary.

Third, the downloaded video was essentially an original and there was no Best Evidence problem with using it. Gratuitously, the DCA observed that this complaint was really about the police and the victim using that video and saying that it was indeed Arkheem’s face in it, an entirely different problem that the court danced around by concluding that those witnesses had a sufficiently unique ability to allow them to do that.

As the 4th DCA concluded, “But for the Defendant’s participation in the Facebook video showing off the bounty from the night’s criminal escapade, the State may not have had sufficient evidence to convict the Defendant as a participant in these crimes. However, the Facebook video existed, and made the State’s case.”

This case represents a still developing body of case law dealing with social media as evidence. Expect refinements as decisions mount up. And to think that when I started trying cases I was thrilled to have an 8x10 glossy, usually black and white, as evidence. How times have changed.

## Associate Attorney Position Available

Knellinger, Jacobson & Associates is seeking an associate attorney with experience in the areas of construction law, probate, guardianship, estate planning, and family law. Exceptional writing and communication skills are required, along with a high level of professionalism and an interest in community involvement. Salary commensurate with experience. Retirement savings plan with firm contributions after one year. Ten paid vacation days per year.

## Legal Assistant/Paralegal – FULL TIME

The Miller Elder Law Firm in Gainesville, Florida is looking for a full-time, EXPERIENCED Legal Assistant/Paralegal. Experience in Estate Planning/ Probate/ Guardianships/Litigation is preferred. Proficiency in Outlook, Microsoft Word and Excel is required. Knowledge of Trialworks, Timematters, Lawgic, Westlaw is a plus.

Duties include:

- Drafting correspondence and pleadings;
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- Answering phones, conducting client intakes;
- Client billing;
- E-filing;
- Managing attorney calendar.

Salary range \$18.00-\$25.00 per hour based on experience. We are a hard-working team of attorneys and staff who enjoy the occasional "bring your dog to work day." Please respond by email to: sandir@millerelderlawfirm.com, with a cover letter, your resume, salary requirements and three references.

## Celebrate Pro Bono!

By Marcia Green



"...[L]awyers who engage in pro bono service to protect those who cannot help themselves are truly the heroes and the heroines of the legal profession." ~ *Janet Reno, former US Attorney General*

The American Bar Association declared that October 21-27, 2018 is National Pro Bono Week. In the Eighth

Judicial Circuit, we celebrate pro bono daily - weekly - monthly - yearly! The commitment of the attorneys who practice in the six counties that make up this circuit to help those in need is truly a thing to celebrate and we are appreciative.

Three Rivers Legal Services is grateful for the many attorneys who volunteer to assist our clients. Chip Koval assisted an elderly woman in obtaining clear title to property purchased under an agreement for deed allowing her to be eligible for low-cost funding to make badly needed repairs on her home. Lake City attorney Kevin McNeill zealously and successfully represented a Gainesville client whose car was incorrectly towed by a roam towing company at her low income housing complex.

Attorneys provide wills and advance directives to our clients, probate estates to secure homestead exemption, and represent victims of domestic violence in dissolution of marriage. Volunteer attorneys Bill Galione, Amy Abernethy, Bob Ackerman and Lucy Goddard-Teel regularly provide advice and brief services to clients in our Small Claims Clinics. Three Rivers' new Rural Pro Bono Project is an exciting new way to assist those residents in the harder-to-reach communities of the Circuit.

The Ask-A-Lawyer Project, a collaborative effort of the EJCBA, Three Rivers, Southern Legal Counsel and UF Levin College of Law provides advice and assistance to the homeless at various locations in Gainesville. Local attorneys Ray Brady, Peg O'Connor, Kathleen Fox, Edith Richman, Phil Kabler, and John Bonner, just to name a few, regularly attend the Ask-A-Lawyer events and members of the group will again serve dinner at Grace Marketplace later this month.

The EJCBA has numerous projects including the Homeless Youth Legal Network Project, raising funds for the Guardian Ad Litem program and providing gifts

*Continued on page 8*

# Appellate Court Bars Re-litigation of Tax Exemption<sup>1</sup>

By Jung Yoon



Recently, the First District Court of Appeal upheld the doctrine of administrative finality (also known as decisional finality) and ruled that the property appraiser was barred from re-litigating an acupuncture school's educational institution tax exemption absent changed circumstances. See Crapo v. Academy for Five Element Acupuncture, Inc., No.

1D17-1895 (Fa. 1<sup>st</sup> DCA August 30, 2018). The school's tax exemption as a private post-secondary educational institution was decided in the school's favor a decade ago in 2008 by the Alachua County Value Adjustment Board. The property appraiser took no steps to appeal the VAB's decision and the school's exempt status was settled. In 2014, the property appraiser decided to revisit the issue and denied the exemption though there had been no change in the facts or law. For the second time, the VAB upheld the exemption, as did the trial court when the property appraiser appealed.

But for the appellate court, the issue to be decided (raised by the school on cross-appeal) was whether the property appraiser could year after year or perhaps every few years, decide to re-challenge the exemption even though nothing has changed. The appellate court resoundingly said, no. Allowing the property appraiser such authority was contrary to the principles of administrative finality and served no cognizable purpose, the court said. The decision (3-0) has an impact beyond educational tax exemption and is a win for property owners who may justifiably rely on prior determination on tax exemption absent changed circumstances.

Notably, Judge Makar agreed with the disposition on decisional finality but authored a separate concurrence that he would also affirm the trial court's ruling on the validity on the school's tax exemption because the school is certified and regulated by the Florida Department of Education via its license with the Commission. Judge Makar noted as persuasive and supportable the Florida Department of Education's position that the exemption extends to independent post-secondary educational institutions which meet minimum education standards set by its Commission for annual licenses.

<sup>1</sup> (Ed. - Local law firm Donnelly + Gross represented Academy for Five Element Acupuncture, Inc. in this litigation and appeal.)

# Alternative Dispute Resolution

Continued from page 3

does not include you. Members of all political parties, given that they are politicians, irritatingly start almost every sentence with "frankly" or "candidly." Do you really believe, when you hear these words, that the politician is being candid or speaking frankly? We don't. We assume just the opposite.

Politicians will also quote a source and reference the source, for example, as "Dr. Smith." Many people have Ph.D.'s and are very accomplished, but we like the old news room rule: if someone isn't licensed to prescribe medication, please do not call them "doctor."

Barack Obama was a one-person army for his constant use of the word "look..." Jimmy Fallon once did a brief video of Obama saying "look..." over 25 times in one 60 minute news conference. When you use this word it comes across as what you're really saying is "look, you idiot..." On the other hand, apologists state that the speaker, including Obama, was really trying to signal that he/she is about to provide background information as part of an answer. Ronald Reagan often began answers to questions with the word "well..." for the same reason.

Are you still picturing an annoying politician (well, that was redundant)? If so, I bet at some point you hear them use the work "folks." Bill Clinton always used it. George W. Bush always used it. Barack Obama often used it. Whoever uses it, it does not sound folksy.

Your authors are not whining or complaining. We are just trying to keep you and us up to date and make you and us less irritating.



Circuit Judge candidates David Robertson and Gloria Walker.

## Fifth Annual Amaze-Inn Race

**November 15, 2018**

Please join the fifth annual Amaze-Inn Race on November 15, 2018 at 5:30 p.m. The Amaze-Inn Race is a legal themed scavenger hunt where judges, lawyers, and law students are placed into teams to participate in activities challenging the body, mind, and taste buds throughout downtown Gainesville. Participants must solve clues to determine the locations of various *challenges*. Past challenges have included taking an immigration quiz, eating goat, scoring points on a pinball machine, cross fit workouts, and singing in Bo Diddley Plaza. There are challenges for every skill level and ability!

The event is a collaborative effort among the EJCBA, Adkins Inn, and Bennett Inn. A reception and award ceremony will follow the Race. Cost of admission is two NEW unwrapped books or toys (each valued at \$10 or above) for the EJCBA and Margaret Stack's Holiday Project. Please email Mary K. Wimsett, [mkwimsett@adoptionlawfl.com](mailto:mkwimsett@adoptionlawfl.com) if you are interested in participating.

## 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](mailto:gaslaw@gmail.com),  
719 Northeast First Street, Gainesville,  
Florida 32601, 352/378-6593.



A "Judicial Candidates Forum" was held at the September EJCBA luncheon on 9/21. Above, from left, are Craig DeThomasis and Meshon Rawls, candidates for County Judge; and David Robertson and Gloria Walker, candidates for Circuit Judge



It was a capacity crowd at the Woolly for the EJCBA's first luncheon of the 2018-19 season - a Judicial Candidates Forum

# DOL Opinion Letters: Just do the research

By Laura Gross



Wage and hour issues are generally mechanical, but there are interesting exceptions and obscure exemptions. That's when Department of Labor opinion letters help. On August 28, 2018, four such letters were issued, favoring employers and affirming the importance of detailed factual and legal analysis when defending claims

for overtime pay.

**Opinion 1.** Q: Is an employee's voluntary participation in biometric screenings, wellness activities, and benefits fairs at work compensable under the Fair Labor Standards? A: No, this time is not compensable where the employee is relieved of all job duties and participation is wholly optional. "These activities provide direct financial benefit to only the employee, and they also help the employee make more informed decisions about matters unrelated to his or her job." Thus, the employee's participation predominantly benefits the employee.

**Opinion 2.** Q: Are employees who sell a technology platform that enables online and retail merchants to accept credit card payments from their customers from a mobile device, online or in person, subject to the retail or service representative exemption from overtime? A: Yes, the business is a retail or service establishment because it engages in the making of sales of goods or services by selling its platform to a variety of purchasers for their own use and not redistribution, and the sale of this platform constitutes over 75% (actually, 100% here) of the company's sales. Accordingly, employees of the company whose regular rate of pay exceeds one and one-half times the applicable minimum wage for workweeks in which they work overtime, and whose commissions constitute more than half of their earnings are exempt from overtime.

**Opinion 3.** Q: Is the FLSA applicable to "member examination graders" who volunteer for a nonprofit organization that administers professional examinations and who travel and grade such examinations expecting no fee other than reimbursement of travel expenses? What about if they have traditionally been paid stipends? A: No, the FLSA does not apply to these volunteers who are

typically highly compensated executive employees as they do this work for various service-oriented reasons and without contemplation of compensation.

**Opinion 4:** Q: Does the motion picture theater exemption from overtime apply to food service employees (kitchen employees and servers) who work in the full-service on-site restaurant? A: Yes, even though these are food service employees, they are exempt because the food services operations are functionally integrated with the theater operations. Both are incorporated as a single entity for purposes of taxes, business records, purchases, invoices, and bank accounts. And motion pictures are shown consistently during hours of operations, more than the 50% percent threshold necessary to qualify as a motion picture theater exemption under the FLSA.

While employers must continue to be cautious in the area of wages, gems can be found in unusual facts, obscure exemptions, and opinion letters. Just do the research.

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## Pro Bono

*Continued from page 5*

to children through the Holiday Project.

Without the valued help of the generous pro bono attorneys, more people in need would be left without access to advice and/or representation. Without the volunteers, the already stretched resources of the legal aid programs would leave too many unserved. As Chris Larson, Executive Director of Three Rivers, notes "Our volunteers throw a lifeline to those who are about to go under; they care and listen!"

Let's celebrate the work, compassion and care of the attorneys who provide pro bono help to those in need! We applaud you, we are grateful to you and we need you! Interested in helping? Want to volunteer your skills, time, expertise and knowledge? Contact me at [marcia.green@trls.org](mailto:marcia.green@trls.org) or visit Three Rivers' new website <http://www.trls.org/volunteer/>.

Three Rivers Legal Services is now participating with other pro bono projects and the Florida Bar Foundation in Florida Pro Bono Matters, a new website that lists available pro bono cases in need of placement. Visit <https://www.floridaprobono.org/probonomatters/> and search local cases by typing the county into the search bar.

# MERGER ANNOUNCEMENT

EFFECTIVE JULY 2018



&



ONE FIRM, SAME GOALS



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SCRUGGS, CARMICHAEL  
& WERSHOW, P.A.

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Attorneys at Law

GAINESVILLE

# The Holdover Government Tenant

By Michael S. Alvarez



When a commercial tenant overstays their welcome, most lawyers know how to help their clients, but what happens when that tenant is the U.S. Government? The U.S. Government and its agencies are immune from eviction through sovereign immunity, leaving private lessors with only three viable options when

the U.S. Government holds over: (1) comply with the administrative proceedings in the Contracts Disputes Act (“CDA”) and bring an action for a breach of the implied duty to vacate, (2) bring an action under a takings theory for temporarily taking the lessor’s property without just compensation, or (3) negotiating a resolution with the Government.<sup>1</sup>

The United States government and its agencies have sovereign immunity from suit, meaning a private lessor can only sue the U.S. Government when there is a waiver of sovereign immunity.<sup>2</sup> “The Tucker Act, 28 U.S.C. § 1491(a), waives sovereign immunity with respect to claims arising from express contracts with the government as well as claims and disputes subject to the [Contract Disputes Act] CDA, 41 U.S.C. § 7104(b)(1).”<sup>3</sup> Even though the CDA states that it does not apply to interests in real property, the case law is very clear that the CDA applies to leaseholds of the Federal Government.<sup>4</sup> Under the CDA a Federal Claims Court has the power “to adjudicate CDA leasehold disputes” and “to grant nonmonetary relief in appropriate circumstances.”<sup>5</sup> Unfortunately, a claim under the Takings Clause entitles the lessor to pecuniary damages only, meaning eviction is not an option.<sup>6</sup> Even worse, the U.S. Government can hold over indefinitely, and will in most cases only be liable to the private lessor for the rental amount being paid before the lease term ended.<sup>7</sup>

To bring a claim against the U.S. Government in Federal Claims Court, a private lessor must first exhaust its remedies under the CDA.<sup>8</sup> “Thus, for the Court of Federal Claims to have jurisdiction under the CDA, the contractor must submit a proper claim—a written demand that includes (1) adequate notice of the basis and amount of a claim and (2) a request for a final decision” and receive a final decision from the contracting officer.<sup>9</sup> The claim must be submitted

with the Contracting Officer of the relevant U.S. Government agency (most often the General Services Administration).<sup>10</sup> Once the Contracting officer gives his or her final decision, then the private lessor can appeal within 90 days to the relevant agency board<sup>11</sup> or file a claim in Federal Claims Court (within 1 year from the final decision).<sup>12</sup>

A private lessor can also bring a claim for a temporary taking, however, “it is only when a contractual remedy is unavailable that the court will grant relief under the Takings Clause.”<sup>13</sup> The upside to a takings clause claim is the ability to recover rent at the fair market value as opposed to the lease rate.<sup>14</sup> This is particularly important if the U.S. Government holds over for a year or more and the property values have increased substantially.

Finally, a private lessor can simply communicate with the U.S. Government about its intent to hold over and negotiate a resolution that benefits all parties. For example, the U.S. Government may be willing to pay a slightly higher rate of rent for a limited time to hold over on the property or the private lessor may decrease their obligations under the original lease to reduce upkeep costs. With the severely limited options to recover damages and the near impossibility to evict the U.S. Government, negotiating an amicable resolution is often the safest bet when dealing with a U.S. Government holdover tenant.

## Endnotes

1 See *Reunion, Inc. v. United States*, 90 Fed. Cl. 576, 581 (2009). There is arguably a fourth remedy, the tort of trespass, under the Federal Tort Claims Act; however, “there do not appear to be any reported cases of trespass arising from a holdover tenancy by the Government, presumably because the Federal Tort Claims Act, 28 U.S.C. § 2671 et seq., provides that the Government is not liable for claims based on the authorized performance of a “discretionary function,” which likely encompasses any decision to hold over.” Alex Tomaszczuk, *The Vexing Problem of Holdovers Under Government Leases*, GOV’T LEASING NEWS, Summer 2010, available at <https://www.pillsburylaw.com/images/content/3/2/3206.pdf>.

2 *CanPro Investments Ltd. v. United States*, 120 Fed. Cl. 17, 21 (2015).

3 *Id.*

4 *Forman v. United States*, 767 F.2d 875, 879 (Fed. Cir. 1985).

5 *CanPro*, 120 Fed. Cl. at 21.

6 *Reunion*, 90 Fed. Cl. at 584 (“Just compensation

*Continued on page 12*

# 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](http://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](mailto: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.

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- 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.

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\* 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.

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Are you interested in working on an EJCBA  
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# Holdover Footnotes

Continued from page 10

requires that an aggrieved property owner be put in as good a position pecuniarily [sic] as if his property had not been taken.”).

7 *Modeer v. United States*, 68 Fed. Cl. 131, 143 (2005), *aff’d*, 183 Fed. Appx. 975 (Fed. Cir. 2006).

8 *CanPro*, 120 Fed. Cl. at 21. (collecting cases).

9 *M. Maropakis Carpentry, Inc. v. United States*, 609 F.3d 1323, 1328 (Fed. Cir. 2010).

10 41 U.S.C. § 7104.

11 In the case of a U.S. Government agency that contracts through the GSA, then the appeal is taken to the

Civilian Board of Contract Appeals, which is often more private lessor friendly than the Federal Claims Court. See Alex Tomaszczuk, *The Vexing Problem of Holdovers Under Government Leases*, *supra* note 1, at page 9.

12 *Id.*

13 *Reunion, Inc.*, 90 Fed. Cl. at 581 (the court allowed the plaintiff to proceed on both its contract and takings clause theories only because the government conceded liability for a temporary taking); see also *Allenfield Associates v. United States*, 40 Fed. Cl. 471, 488 (1998).

14 *Reunion, Inc.*, 90 Fed. Cl. at 584.

## October 2018 Calendar

- 3 EJCBA Board of Directors Meeting, Three Rivers Legal Services, 1000 NE 16<sup>th</sup> Avenue, 5:30 p.m.
- 5 Deadline for submission to November Forum 8
- 6 UF Football v. LSU Tigers, 3:30 p.m.
- 8 Columbus Day Holiday – Federal Courthouse closed
- 10 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
- 14 EJCBA’s Fall Family-Friendly Social, First Magnitude Brewing Co., 1220 SE Veitch St., 3-6 p.m.
- 16 Family Law Section Meeting, 4:00 p.m., Chief Judge’s Conference Room, Alachua County Family & Civil Justice Center
- 19 EJCBA Luncheon, Thomas Ankersen, Director, University of Florida’s Conservation Clinic, The Woolly, 11:45 a.m.
- 27 UF Football v. Georgia Bulldogs (Jacksonville), 3:30 p.m.

## November 2018 Calendar

- 1 Annual James C. Adkins, Jr. Cedar Key Dinner, sunset
- 3 UF Football v. Missouri, TBA
- 5 Deadline for submission to December Forum 8
- 7 EJCBA Board of Directors Meeting, Three Rivers Legal Services, 1000 NE 16<sup>th</sup> Avenue, 5:30 p.m.
- 10 UF Football v. South Carolina, TBA
- 12 Veteran’s Day Holiday (observed) - County & Federal Courthouses closed
- 14 Probate Section Meeting, 4:30 p.m., Chief Judge’s Conference Room, 4<sup>th</sup> Floor, Alachua County Family & Civil Justice Center
- 15 Fifth Annual Amaze-Inn Race, 5:30 p.m.
- 16 EJCBA Luncheon, Dean Onye Ozuzu, Dean of UF’s College of the Arts, The Woolly, 11:45 a.m.
- 17 UF Football v. Idaho, TBA
- 20 Family Law Section Meeting, 4:00 p.m., Chief Judge’s Conference Room, Alachua County Family & Civil Justice Center
- 22 Thanksgiving Day – County & Federal Courthouses closed
- 23 Friday after Thanksgiving Holiday – County Courthouses closed
- 24 UF Football at FSU, Tallahassee, TBA

Have an event coming up? Does your section or association hold monthly meetings? If so, please fax or email your meeting schedule to let us know the particulars, so we can include it in the monthly calendar. Please let us know (quickly) the name of your group, the date and day (i.e. last Wednesday of the month), time and location of the meeting. Email to Dawn Vallejos-Nichols at [dvallejos-nichols@avera.com](mailto:dvallejos-nichols@avera.com).