



PARACLETE
October 2003

A Hundred Years From Now

. . . it will not matter what my bank account was, the sort of house I lived in, or the kind of car I drove . . .

But the world may be different because I was important in the life of a child.





President's Message



David Abbey

Challenges On The Home Front

Family and Children seems like such a nice, simple theme for an edition of the *Paraclete*, like Motherhood and Apple Pie. Contrary to our initial feel good impulses, reality prompts us to recall we recently completed a century in which the rate of failing marriages, the cement that holds families together, increased from one in ten to one in two. As the overall wealth of American society has increased over the last decades, the number of American families and children living in poverty has also continued to climb. Although these circumstances and their consequences have commanded much of our legal resources and public attention, other matters have arisen which will require room on America's domestic plate.

One example is same sex marriages or partnerships. We may be heading for a major national public policy debate on the appropriateness of providing legal sanction for such arrangements and the constitutionality of refusing to do so.

A second example is the rapidly developing area of human reproductive technology. It is no coincidence

that modern tort law developed along with the motor vehicle, the tool which has killed or injured more humans in the last hundred years than any other. Likewise, some new, and some no longer new, reproductive technologies such as in vitro fertilization and cloning will receive increasing attention from legislative bodies and the courts as we determine the appropriate prohibitions, limitations and conditions for their use. No policy debate over the last thirty years has more polarized Americans than abortion issues, at times to the extent of violence. The "pro-life" versus "pro-choice" arguments and fervor are likely to be transferred to the consideration of reproductive technologies.

The Nineteenth Century in America saw the emergence of the United States Supreme Court as a constitutional arbiter and the triumph of Federalism. The Twentieth Century witnessed the progress of individual rights. Public policy and constitutional issues concerning Family and Children may require more public attention and resources in the coming years than any other matters. If they ever were, the laws effecting families and children are not simple any more.



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The mission of the St. Petersburg Bar Association is to serve the community of St. Petersburg lawyers and to strengthen and improve the administration of justice in the St. Petersburg area.

The opinions and conclusions, including legal opinions and conclusions contained in articles appearing in the *Paraclete*, are those of the authors and do not reflect any official endorsement of these views by the St. Petersburg Bar Association or its officers and directors, unless specifically stated as such.

The *Paraclete* Board welcomes submissions for publication subject to said Board's discretion.

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Coming Next Month:

November 14, 2003 Membership Meeting

Mirror Lake Lyceum

Guest Speaker

Charlie Crist, Attorney General for the State of Florida

Luncheon Sponsored by

Gulf Coast Business Review

See registration flyer in this issue.



A LEGACY OF COURAGE, & VISION, & HOPE

AFRICAN AMERICANS IN THE LEGAL
COMMUNITY IN PINELLAS COUNTY

Over 100 people attended the VIP Opening of “A Legacy of Courage, Vision & Hope,” on August 28 at the Florida Holocaust Museum. Many of the individuals featured in the exhibit were on hand, together with exhibit sponsors, local judges and other dignitaries.

Past St. Pete Bar President, Eric Ludin with, from left to right, Jeannine Williams, co-chair Diversity Committee; Jacqueline Gayle-Kelly, past Diversity Committee chair; and Tamara Felton Dudley, Diversity Committee co-chair.



Remembering, revealing, and revisiting the history of African Americans and their quest for acceptance in the St. Petersburg legal community.



By **Kimberly G. Jackson**

As a young African American lawyer it is hard to imagine that just over three decades ago African American attorneys in St. Petersburg were struggling for acceptance in our community. While gathering information for this article I reflected on my thoughts from when I was first introduced to this legal community. Admittedly, the most obvious observation was that I was the only student and African-American female at the bar luncheon. My most vivid recollection, however, is feeling completely embraced in spite of my differences. Unfortunately, the same reception did not take place for my predecessors who sought membership in the St. Petersburg Bar Association.

Eric Ludin, past president of the St. Petersburg Bar Association acknowledged the past practice of non-acceptance and decided to address the past actions of the bar head on. "I decided to confront the past, study it, document it and teach it...while honoring the pioneers." Mr. Ludin spent months reading minutes from past meetings and discovered that the St. Petersburg Bar Association was an organization designed exclusively for white attorneys. Instead of continuing this practice, Mr. Ludin made it his mission to "make sure the legal profession reflects the community we serve." As one of his first tasks as president, Ludin created a diversity scholarship named for Judge Frank H. White, an African American who was denied admission to the St. Petersburg Bar. Mr. Ludin also created the Diversity Committee and charged the committee with the task of increasing diversity in our local bar association. That vision began what Jeannine Williams, current co-chair of the St. Petersburg Bar Association's Diversity Committee describes as a "labor of love." Mrs. Williams, Jacqueline Gayle-Kelly and Tamara Dudley gathered a team of individuals who would essentially create an exhibit, which chronicled African Americans in the St. Petersburg area and their plight for acceptance in the legal community. The Exhibit, appropriately named "A Legacy of Courage, Vision & Hope: African Americans in the Legal Community in Pinellas County," is being housed at the Florida Holocaust Museum. Mrs. Williams never anticipated the depth of the project until she found herself digging through Mr. Ike Williams garage, searching for information that would help her shed more light on the practices of our community at that time.

Mrs. Dudley agrees that this exhibit made her truly appreciate the sacrifices that were made by African Americans in Pinellas County. "It was more difficult than we expected, finding artifacts from families and general past information." Mrs. Dudley also believes the project was necessary to give African American attorneys like Ike Williams and Fred Minnis the recognition they deserve. When asked how this project will maintain the momentum it currently has, Mrs. Dudley simply stated, "There is a lot of history still uncovered and many people who may benefit from the discovery of these pioneers' stories."

See **Remembering**
continued on page 22

A LEGACY OF COURAGE, & VISION, & HOPE

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How to GPS Your Laptop and Amaze Your Family for \$100



By James W. Martin

I love maps but hate to travel. I love gadgets but can't have them all. I only buy another gadget when I can justify its economic practicality. So for years held off buying a global positioning system (GPS)...until last week when I read that DeLorme released its newest GPS for laptop computers. Price: \$100. I was at that moment planning a car trip to Ft. Lauderdale. So, my gadget-purchase-stars aligned once again, I ordered online from Amazon.com, and two days later I had the Earthmate GPS complete with Street Atlas USA 2003.

I promptly opened the box to find a handsome Scuba-yellow cube about 2" square that weighed about what I remember my Dad's full pack of Camels weighed in the 50's—not much. I attached its six foot umbilical cord to my laptop's USB port, stretched it over to the window of my seventh floor office and affixed it securely with the suction cup. I then installed the Street Atlas USA software from its CD and updated the software online. Now my computer had not only all streets in America that existed when the software was shipped but also every new street built in America since then. I excitedly fired up the software and watched as a detailed street map of Washington, D.C., appeared on my screen.

At first I was disappointed that my city did not appear onscreen first...that it did not read the Scuba cube's location as being on the 7th floor of my office building in downtown St. Petersburg. Then I realized that I must not have positioned it right to see a satellite. I also realized that showing D.C. was a very proper opening screen since it was the only city in America with no preferential state, so the programmers were showing deference to the user rather than having their own city (San Jose, Singapore, etc.) appear as the default screen.

I moved the cube all around my office windows and no matter how hard I tried I could not get it to see a satellite. The directions said it needs to see three of them. And then I figured it out. The satellites were above the roof of my building, not in front of it, so there was no way this would work in my office since there is no dashboard or sun roof. I sulkily put the gadget back in its box and waited until I got home and could try it in my car. But I learned **GPS Lesson Number One: Scuba cube needs to see up, not out.**

When I got home, I put the laptop in the front seat, plugged in the Scuba cube, placed it on the dashboard, fired up the Street Atlas USA software and applauded when a few seconds later a detailed street map of my city, my street and my corner appeared on my laptop screen. Just like it was supposed to do. Technology rules. I sat there in amazement, thinking about the three satellites out in space orbiting around and telling my computer through the Scuba cube where we were. And as I watched I saw the little green spot that marked our location move a little here and a little there ever so much every few minutes. The computer screen even gave a readout of our speed and direction. After about ten minutes we had traveled some distance but not too far, according to the computer. Nevertheless, I was a bit dizzy since the car was not running and we were still in the driveway and I was over in the passenger seat. It was kind of like watching an Imax movie: it was moving, not me, but it still made me dizzy. And I learned **GPS Lesson Number Two: GPS is very close, but not exact.**

Next, I used Street Atlas USA to plot our route to Ft. Lauderdale. I had never driven to South Florida, despite living in Florida for 37 years. Only the presence of our first grandchild in that city justified sacrificing my claim to be the only Floridian my age never to have driven on Alligator Alley. I watched as Street Atlas plotted out the route down I-275, to I-75, across Alligator Alley, to I-595, to Ft. Lauderdale and to the very street and corner of our hotel. I put Scuba cube back in its box, packed up my laptop, brought them into the house and told my wife proudly about this economically practical invention I had so wisely acquired for use on our trip. She only rolled her eyes. Again. And said something about I was welcome to bring it along but don't expect her to be running the darn thing. Hmmm. I was the driver. How could I drive and punch computer buttons and watch the computer screen at the same time. I learned **GPS Lesson Number Three: the driver needs a navigator to operate GPS even more than the driver needs a navigator to read a map.**

The next morning I got up early, packed the car, put the laptop in the backseat, and put Scuba cube on the dashboard. I turned on the car and the computer, verified by GPS that we were in our driveway, backed up and began to drive. Then I remembered something that was very important and

that would lead to another lesson. Street Atlas said the route would take about 4 hours. My laptop computer battery would go about 2 hours. If I left the computer on now it would run out of power at the beginning of Alligator Alley. That disturbing thought prompted others, such as what good is GPS on Alligator Alley? If we were to get a flat tire or have an accident could we use it to call for help and tell the authorities our exact position? Would our cell phones work in the middle of the Everglades? I checked Verizon online (my laptop has cellular Internet access) and found its Express Network runs all the way down I-75 including Alligator Alley. So I decided that safety called for me to power down the laptop and conserve its power in case we needed to know our position later. **GPS Lesson Number Four: bring extra laptop batteries.**

The trip was long but flawless and we soon arrived in Ft. Lauderdale, played with children and grandchild, talked, and had fun. All without GPS, just like in the old days. When everyone went to bed, I powered up the laptop and plotted the route on Street Atlas that would take us on a tour of Miami and Coral Gables the next day. It worked great. I could add destinations like the Coral Gables Biltmore, and it would stake it out and plot the route for me. I read the instructions a little bit, but did not have enough time to really study and understand them since it was already so late. The next day I learned **GPS Lesson Number Five: take the time to read the instructions.**

The next morning we packed the kids and grandchild into the car, handed the computer to the involuntarily-conscripted navigator in the back seat, stuck the Scuba cube in the dashboard, verified by GPS that we were still in the parking lot, then headed down the street toward I-595. As we passed each block I had the navigator in the back seat confirm that the little green spot denoting our GPS-determined position was moving along the chosen route highlighted on the computer screen. The navigator, to whom I had forgotten to pass on what few instructions I had gleaned the night before, did his best to read the hieroglyphics on the screen. As we approached the Interstate access ramp I asked if the computer was telling us to turn right onto the ramp, and navigator responded that it was not. At first, this puzzled me since the route the night before had shown that taking the Interstate to

Coral Gables was faster than taking Highway 1, which is what we were on. Then I remembered that I had added Vizcaya to the route that morning and had not checked to see what route it chose. Perhaps it thought Highway 1 was faster for this new destination. So we passed the Interstate onramp. The computer then told us that we should have turned right onto the Interstate. I said not to worry, that it was programmed to put us back on route, just wait and see what it shows as we move along Highway 1. But what it showed as we drove was that we should have turned back at the first onramp. As we came up to each additional Interstate sign, I expected the computer to tell us to turn right to connect to the Interstate and get back on route, but it never did. It kept telling us to go back to the first onramp, which was now many miles away. Frustrated, I followed the next sign to the Interstate and headed to Miami and watched the computer for the next thirty minutes tell us that we were getting farther and farther away from that Interstate onramp that it told us to get on way back in Ft. Lauderdale. I asked navigator to close the computer lid and let it go to sleep, which it promptly did. **GPS Lesson Number Six: it's not smarter than you.**

For the next few hours we used Interstate road signs, my memory of the computer-mapped route I had seen the night before, and pure human GPS to make our way through Miami to Coconut Grove. We then drove in circles looking for Coral Gables, but finally stopped the car, fired up the laptop, put Scuba cube on the dashboard, and found that our little green spot on the map was only about 8 blocks away from the Coral Gables Biltmore. We (I?) kept the computer on and watched gleefully as the little green spot followed along the map as

Technology is amazing.
But it's not always better
than the real thing.

we drove up to the front door of the majestic hotel. Deciding that was as good as it gets, I powered down the laptop and packed Scuba cube away for the day as we toured Coral Gables, the Biltmore, the Venetian Pool, Vizcaya, and other sites. We found our way back to Ft. Lauderdale without too much trouble, but learned **GPS Lesson Number Seven: always take a paper backup map.**

Technology is amazing. But it's not always better than the real thing. Today a friend told me about a funny little piece he had seen: Lincoln's Gettysburg Address performed as a PowerPoint presentation

("Hello, I'm glad you asked me to be here today...let me see if I can find the right switch to turn this thing on here...there it is...Ahem...Four-score and seven years ago... as my first slide shows, a score is twenty years, and four times twenty is eight, and you add the seven, so that's eighty-seven years ago..."). Sometimes I like technology; sometimes I like the real thing.

James W. Martin is a contracts, probate and real estate lawyer in St. Petersburg, Florida, author of forms book for Thomson/West Publishing, past chair of the Florida Bar Coordinating Committee on Technology and present chair of the St. Petersburg Bar Technology Section. Additional publications appear on his website at www.jamesmartin-pa.com.

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Foster Homes – A Very Special Need

By Lois A. Sears

Every weekday morning in at least one 3rd Floor Courtroom at the Criminal Justice Center on 49th Street, a Unified Family Court Judge holds Shelter Hearings for local children who find themselves with parents allegedly unable to properly care for them due to abandonment (e.g., parents incarcerated, parents whereabouts unknown, parents unable to care for their children, etc.), abuse (e.g., excessive physical punishment, deliberate infliction of physical harm, emotional abuse, failure to protect their children from the abuse inflicted by others, etc.), or neglect (e.g., home is a health hazard, child is not adequately fed or cared for, lack of necessary medical treatment, etc.). If, after hearing the evidence presented, the judge finds that there is probable cause to find parental abandonment, abuse or neglect, one of the important decisions the judge must make is finding a suitable immediate placement for the child or children. If the judge determines that it is not appropriate to leave the child, or children, with parents, another option available is to place the child with willing and able relatives. Many families, in our community and elsewhere, at one time or another, find themselves in a situation where they take in and care for young relatives for an indefinite period of time, often while the parents are offered services to remedy their inability to care for their children. For some families this is a temporary situation. For others it turns out to be long term. Other children, who do not have such relatives, or family friends or acquaintances, find themselves placed in licensed foster homes.

Deborah Ellidridge, the past chair of the Marital and Family Law Section for the St. Pete Bar Association, recently invited the Director of Resources for Family Continuity Programs, Laurallyn Segur, to address the Family Law Section members and provide general information concerning the foster care system in Pinellas County. One important point she stressed was the need for additional licensed foster homes to adequately meet the needs of the children who have been removed from their parents. Other highlights of her presentation are listed below:

Questions

Q: How many local children are presently in foster homes?

There are over one thousand foster children in Pinellas and Pasco Counties.

Q: Why are children placed in foster homes?

They cannot remain in their own homes due to concerns for their safety. There is no willing and/or able relative and/or other non-relative adult approved to care for the child at the time.

Q: What is the average amount of time a child may spend in a foster home?

Nationally, the average time is approximately fifteen to twenty four months. For some the time is much less. For others, unfortunately, the time is much greater.

Q: Do foster children continue to have contact with their biological parents and/or siblings?

In most cases yes. Visits are usually court ordered if in the child's best interest, particularly when reunification with the parent(s) is the goal. Sibling visits and visits with other relatives are also facilitated through the child's caseworker. All efforts are made to keep siblings together in a foster home.

Q: How many licensed foster homes are there in Pinellas County?

Presently over 250.

Q: Is there a need for additional foster homes in Pinellas County?

Yes, definitely.

Q: What are the requirements for becoming a foster parent?

One of the first steps is to contact Laurallyn to arrange attendance at the ten week MAPP ("Model Approach to Partnership & Parenting") class offered. Prospective foster parents prepare in a group setting. There are also two family consultations with a family caseworker. You must have a clean criminal record (i.e., no abuse/neglect allegations). Your home has to pass a health and fire inspection. You must have enough available space for a child or children. Ultimately, the "matches" made are based upon consideration of what a family can handle.

Q: What if - I have my own children living at home? I work? I am single?

Many foster parents have their own children living at home. Most foster parents work. You can be single and be a foster parent.

Q: What resources and/or support exists for foster parents?

There are support services, such as in-home assistance, counseling, and behavioral



analysts available. There is also an active foster parent association and support group.

Q: Is there any financial compensation for foster parents?

Foster parents are paid "board rate." The children are eligible for medicaid and coordinated child care is available.

Q: Are licensed foster parents given any discretion in the decision to accept a foster child (i.e., age, sibling groups, special needs children, etc.)

Yes. There is a "matching process" with the input, needs and capabilities of the foster family taken into consideration.

Q: What happens if I want to adopt a child?

Foster parents are eligible for consideration if the child is available for adoption (i.e., parental rights terminated.)

Q: Where can I find more information about becoming a foster parent?

Contact Laurallyn Segur, Director of Resource Development, Family Continuity Programs at (727) 204-4170. (Laurallyn indicated during the meeting that she grew up in a home where her family had foster children living with them, and she shared a lot of insights and information about her own professional and personal experiences.)

Note:

In the fall of 2002, Chief Judge David A. Demers requested that the Guardian ad Litem Program (GAL) make a home visit to every child in foster care in the Sixth Judicial Circuit. (There are over 1000 children in non-medical foster care homes.) This special project is underway. After the visit, the assigned GAL may do some follow up concerning schooling, counseling or any other special needs of the children. The visits may result in communication with the Family Continuity Program caseworker about any areas of concern, other actions needed on behalf of the child(ren), or requests to Speaking Up for Children (SUFC) for assistance for the children that the state has been unable to provide. If needed, the GAL will request a hearing before the Court. SUFC Inc., the non-profit organization that supports certain needs of the children who have the GAL Program appointed, purchased "A Foster Care Guide: for Kids" by Laura Greer for distribution to the foster parents.

Attorneys Rise to the Challenge Posed by Guardian ad Litem Program



By Lois A. Sears,
Guardian ad Litem Program

On July 18th a free training was held at the Criminal Justice Center aimed at certifying local private attorneys willing to serve as volunteer guardians ad litem for children in family law cases. The Guardian ad Litem Program is appointed by family law judges on certain cases involving allegations of domestic violence, child abuse, substance abuse and other serious issues. The Guardian ad Litem Program is striving to expand the number of guardians ad litem to take cases where a Judge sees the need for the appointment of a guardian ad litem.

Currently the program has over two hundred certified volunteer guardians ad litem serving in Pinellas County. Most serve on dependency cases, while a core group trained and certified to handle family law cases accepts family law appointments. While a small number of those guardians ad litem are attorneys, most are lay people from all walks of life (i.e., college professors, doctors, nurses, former educators, homemakers, retirees, business people, etc.) Since statutes mandate that a guardian ad litem must be appointed on all Termination of Parental Rights dependency cases, and, more recently, cases where a child is committed to a residential treatment facility, quite frequently, due to a shortage of volunteers to accept family law cases, the program must request to be discharged due to lack of a volunteer.

Hearing this plea for more guardians ad litem, the following attorneys attended our recent training seminar and expressed their willingness to get involved. Many thanks to: Brant Bailey, Meredith Craig, Wayne Ekren, Linda Gruszynski, Randall Hafner, Nathaniel Kidder, Cherie Parker, Bill Penrose, and Jeff Worman who attended, signed up and became certified as guardians ad litem. Special thanks to Randall Hafner and Jeff Worman who have already accepted cases. Program Director, Donna Rasmussen, addressed the group along with Program Attorneys Lois Sears, Kristi McSorley, and Assistant Director, Barbra Sessa. Also attending were Guardian ad Litem Program Attorneys Christina Clemenson, Rachael Santoriella, and, from Dade City, Julie Scott.

We thank them all for their willingness to provide this very important service benefitting children and families in our community. We also take this opportunity to thank the many area attorneys who serve as pro bono attorneys for the Guardian ad Litem Program. You are all appreciated.

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Board Of Governor's Report



By **Louis Kwall**

Sixth Judicial Circuit Representative to The Florida Bar Board of Governors

The Board of Governors met in Clearwater, Florida at the Sheraton Sand Key from August 20, 2003 to August 23, 2003.

This was the first meeting in Clearwater in at least 20 years and it was a definite success. At the meeting several important issues were discussed:

1. The Equal Opportunities Law Section of the Florida Bar only has one-half of the necessary members needed to exist. If you have any interest at all in this section surviving, or any ideas as to how to maintain its existence, please contact Vicki Brand at the Florida Bar in Tallahassee and let her know of your interest.

2. The Investment Committee reported that in the last quarter investments were up 10.6% and the present balance of Florida Bar Funds is \$14,277,000. This brings us back to where we were 3 years ago prior to the dip in the stock market.

3. A review of lawyer regulation is being headed up by Attorney Hank Coxe of Jacksonville. Any of you involved in the disciplinary process and have some input, please feel free to contact Hank. His number is listed in the Florida Bar Directory. Along those lines, there was a public reprimand at this meeting because a lawyer had written a letter to a potential defendant in a civil action threatening to humiliate them in the media and totally misstating the statute of limitations in the matter at issue. It is important that we do not allow our tempers or outrage get the better of us in dealing with adversaries in our cases.

4. The Communications Committee reported that the expenditure for Dignity In Law is reduced from \$750,000 to \$300,000. This was done by moving many of the jobs which were being performed by a public relations firm in house. It is believed that this amount of money is at least adequate to keep this program in effect.

5. There was much discussion concerning the procedure for certification and re-certification. At present the Appellate Reviewing Authority does not receive the peer reviews from the BLSE. The respondent also does not receive these peer reviews. An attempt is being made to form a new Appellate Committee from the BLSE which would receive the peer reviews, when the basis for denial by the BLSE is because of a negative peer review.

This provoked much discussion and many of us feel that if the peer reviews are released to this new Appellate Committee that the respondent should also be entitled to receive them. This, then led to the issue of whether or not we would be able to get honest peer reviews if those giving them know that potentially they could be disclosed to the respondent. Any input from you would be appreciated.

6. There has been a change in the prison procedures and prisoners must now write their appeals by longhand. Along with this there has been a great reduction in the number of books and libraries made available to prisoners for them to pursue their own appeals. After much discussion, the Florida Bar voted in a 23 to 20 vote to sign on a brief as Amicasts being prepared by Attorney Steve Hanlon on behalf of the prisoners.

7. A law firm requested information on what the phrase Prior Professional Relationship means in trying to determine whether or not a mailer could be sent out promoting a seminar they were having without placing the word "Advertisement" on it. Again, after much discussion the Board determined that the term Prior Professional Relationship means more than just an attorney/client relationship and the matter was referred to the Professional Ethics Committee to try and define exactly what that term means.

8. This year the Legislature only provided \$1.5 million dollars to the legal needs of the poor as opposed to the \$2 million that they allowed last year. We are hopeful that the success of this program will encourage our Legislators to place additional funds to help the poor in the next budget.

9. We are once again pursuing our Key Contact Program. If any of you have Legislators that you know or are friendly with, please let me know. There is a Legislative attempt to roll back the High Speed Rail System and the Class Size Amendment. The Circuit Court Judges estimate that they will need \$170 million more dollars to operate the courts next year.

A Statute passed in October 2001 is going to expire in October 2003. The purpose of the Statute was to allow DNA testing for death row inmates where there is a possibility that might shed some evidence on the guilt or innocence of the defendant. At this time only approximately 1/3 of the inmates that should be tested have been tested. It is almost physically impossible for the Legislature to renew this before its expiration. If any of you are interested in this matter, I suggest you contact your Legislator directly and bring it to their attention.

10. A Standing Committee on the legal needs of children was adopted. Please contact Attorney Sharon Langer if you are interested in participating in that particular committee.

It was great to have the Board of Governors meet here in our home Circuit. Thanks to everyone who helped make it a success. Senator Dennis Jones was our lunch speaker and did an outstanding job of explaining recent legislation.

In closing, this was Murray Silverstein's first meeting and also the first meeting without John Yanchunis. Murray is a welcome addition to the Board of Governors and John Yanchunis will be missed. The next meeting of the Board of Governors will be held in Chicago in October 2003.

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Jury Trial Verdicts



Compiled by Bruce P. Taylor
August 2003

ESTATE OF DARLENE KELLY vs.
CHARLES and JERILYN VICKERS
Case no. 02-155-CI-13

Presiding Judge: Honorable Anthony Rondolino

For the Plaintiff(s): James Sheehan, Esq.

For the Defendant(s): Bryan Reynolds, Esq.

Action: For damages for wrongful death due to alleged auto negligence. This was a bifurcated trial on the issue of the liability of the defendants under the dangerous instrumentality law (a summary judgment had already been obtained against the driver).

Verdict: The defendants were found to be liable.

DAVID EWASICK vs.

JAMES and KATHLEEN DOWNES

Case no. 01-3846-CI-19

Presiding Judge: Honorable John C. Lenderman

For the Plaintiff(s): Russell L. Cheatham, III, Esq.

For the Defendant(s): Paul Ley, Esq.

Action: For damages for personal injuries (herniated disks, back and neck) due to alleged auto negligence

Verdict: For Defendants

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Great Grokster! Nifty Non-Napster Networks Not Nixed



By David R. Ellis, Attorney at Law

In an important decision issued in late April 2003, a federal district court judge in Los Angeles upheld the legality of two file-swapping services, Grokster and StreamCast Networks, in a lawsuit brought against them by the record industry and major movie studios. *MGM Studios v. Grokster, Ltd.*, 259 F.Supp.2d 1029 (C.D. Cal. 2003).

The court's ruling is in stark contrast to the February 2001 decision of the U.S. Court of Appeals for the Ninth Circuit which effectively shut down the Napster file-sharing website by holding that it had committed contributory infringement in operating a somewhat similar, but materially different, network. For a discussion of that case, *A&M Records, Inc. v. Napster, Inc.*, 239 F.3d 1004 (9th Cir. 2001) see my article, "Ninth Nixes Napster's Nifty Network," <http://www.easl.net/Document s/pr08.htm>.

In this case, U.S. District Judge Stephen Wilson ruled that the record companies and movie studios could not hold the two file-swapping services liable for copyright infringements that occurred using their software. In his opinion, the judge relied in part on the U.S. Supreme Court's landmark 1984 *Sony Betamax* decision, *Sony Corp. of America v. Universal City Studios*, 464 U.S. 417 (1984), when he said that "Grokster and StreamCast are not significantly different from companies that sell home video recorders or copy machines, both of which can be and are used to infringe copyrights." In the *Betamax* case, the Supreme Court ruled that manufacturers of video cassette recorders were not liable for their customers taping of television programs, citing the copyright "fair use" doctrine, Section 107 of the Copyright Act, 17 U.S.C. §107.

The Defendants here, Grokster and StreamCast Networks, along with another company, Kazaa, distributed software that enabled users to exchange digital media such as music and videos by means of a peer-to-peer transfer network. The software could be downloaded free of charge, and users were essentially connected to the same peer-to-peer network and could exchange files seamlessly. (Kazaa did not defend the case and defaulted, leaving Grokster and StreamCast as the defendants).

In their suit, the Plaintiffs contended that the Defendants were liable for both con-

tributory and vicarious infringement of their copyrighted works. According to the Napster decision, in order to find a defendant either contributorily or vicariously liable for copyright infringement, the defendant's end-users must themselves be engaged in direct copyright infringement. The judge found that, as in Napster, many of the users of the Defendants' software used it to download copyrighted media files, including those owned by the Plaintiffs, and thereby infringed the Plaintiffs' exclusive rights of reproduction and distribution granted by the Copyright Act, 17 U.S.C. §106.

As to the issue of contributory infringement, the judge referred to the *Sony Betamax* case, and pointed out that the Supreme Court had not found the VCR manufacturers liable for contributory infringement because the VCRs were not only capable of infringing uses but also "substantial noninfringing uses," i.e. users could legitimately use the devices to record non-copyrighted material or simply to "time-shift" a program by recording it at one time, viewing it later, and then erasing it. Similarly, there was evidence here that there were substantial noninfringing uses for the Defendants' software, such as distributing movie trailers, free songs or other non-copyrighted works, using the software in countries where it is legal, or sharing public domains works like Shakespeare's plays.

According to the judge, the Defendants were not significantly different from companies that sell home video recorders or copy machines, both of which can be and are used to infringe copyrights. "While the Defendants, like Sony or Xerox, may know that their products will be used illegally by some (or even many) users, and may provide support services and refinements that indirectly support such use, liability for contributory infringement does not lie 'merely because peer-to-peer file-sharing technology may be used to infringe plaintiffs' copyrights.' . . . Absent evidence of active and substantial contribution to the infringement itself, Defendants cannot be liable."

The court then considered whether the Defendants were liable for vicarious infringement, in which liability for copyright infringement may be extended to cases in which a defendant has the right and ability to supervise the infringing activity and also has a direct financial

interest in such activities. In Napster, the court found that Napster had the right and ability to supervise its users' conduct. Here, however, because of the technology, Grokster and StreamCast could not supervise or control the file-sharing networks or restrict access to them, and thus they could not police what was being traded as Napster could.

Since there was no evidence before the Court indicating that the Defendants had the ability to supervise and control the infringing conduct, the Defendants could not be held liable for vicarious infringement, or for contributory infringement, and the judge thus granted summary judgment in their favor.

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David Ellis is a Largo, Florida attorney practicing computer and cyberspace law; copyrights, trademarks, trade secrets, patents, and intellectual property law; business, entertainment and arts law; and franchise, licensing and contract law. A graduate of M.I.T. and Harvard Law School, he is a registered patent attorney and the author of the book, *A Computer Law Primer*. He has taught Intellectual Property and Computer Law as an Adjunct Professor at the Law Schools of the University of Florida and Stetson University.

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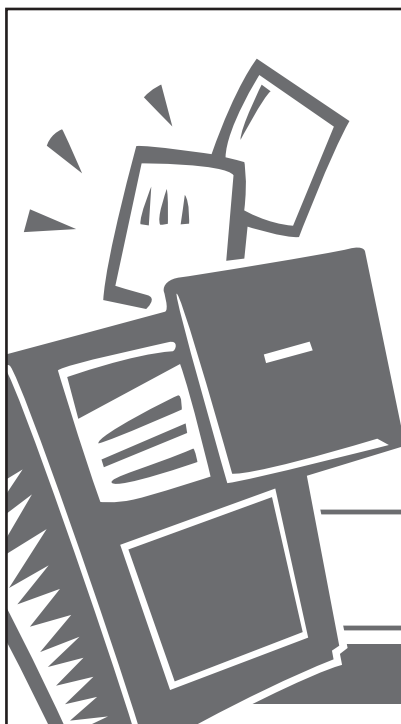


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Out to Lunch
 By Bruce P. Taylor

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All that would not be reason enough to take your family to Beef O'Brady's if you didn't get great food and service. Fortunately, you get both in abundance. The menu has a variety of soups, salads, wings and sandwiches, ranging in price from \$4.99 for a "Brady" burger to \$6.99 for a grouper sandwich. One of my favorites is the "Watterson," which is a great combination of roast beef, horseradish, lettuce, tomato and cheese. A good feature about the fried grouper is light batter, which is also very tasty. There is a lunch club which entitles you to a \$4.99 discount on every 7th lunch. There is also a menu for kids under 12. For a fixed price of \$2.99 they get a choice of wings, nuggets, grilled cheese or hamburger, plus a fountain drink, fries and an Oreo cookie. When you've had enough of your kids for a while, there is also a bar, separated from the main eating area by a large screen TV. The service is always bright, friendly and efficient. The servers seem to cover for each other so that the customer's needs take priority over whose station it happens to be. So if you want to have a nice outing, with or even without the kids, try Beef O'Brady's.

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UNIFIED FAMILY COURT:



A day in the life of five teenagers on the brink and one judge seeking to save them from a life of failure

By *Kimberly G. Jackson*

CASE #1: 10:20 A.M.

I am seated in the Unified Family Courtroom watching a 17-year-old male, in handcuffs waiting for his fate. It is not the first time this young man has appeared before Judge Marion Fleming. "Young man, it is time to change your ways...you really do not want to get caught up in the adult system." Judge Fleming is firm and gentle all at once. This young man stands before her on V.O.P. (violation of probation) charge. "I am trying to get your attention before it is too late." The Judge adjudicates the young man delinquent and warns him that this is the last chance he has because she may not be able to spare him next time. His 18th birthday is less than two months away.

CASE #2: 10:35 A.M.

I am beginning to feel increasingly uneasy as I watch another young male walk into the courtroom with handcuffs to find out his fate. This young man has fortunately completed a residential treatment program. His punishment - a fifty dollar fine and an apology letter to his victim.

CASE #3: 10:45 A.M.

Now I am becoming numbed watching teenager after teenager come into the courtroom. None of the teenagers showed any signs of remorse. Yet I am amazed at how compassionate the judge is despite the fact that these teenagers are looking at her with blank stares and giving the judge what sometimes appears to be empty promises. This time the judge addresses an angry parent who is concerned that her child is not being held in a safe environment. "If something happens to my son, you are taking full responsibility, right?" The judge, undisturbed by the parent's visible anger, calmly reminds the parent that her son is being charged with a serious offense and has anger management issues. "We will do our best, but you had 13 years with him, we have had him for a only a few days."

CASE #4: 10:55 A.M.

The young female appearing before the judge this time is a runaway. Apparently the teenager skipped school and was under the influence when she was found. The teenager pleaded to go home, but the judge was not persuaded. "I have taken too many chances with you before." Another teenager adjudicated delinquent with a commitment sentence.

CASE #5: 11:15 A.M.

This teenager, only 14 years old is charged with disorderly conduct, robbery by sudden snatching, obstructing justice and several other offenses one would not expect a teenager of this age to be involved in. "What is going on with you, young man?" The teenager responded that he was hanging with the wrong crowd. The judge's advice - "Get a new set of friends."

The time is now 11:45 A.M. I am leaving the courtroom feeling a bit dismayed over the events I witnessed this morning. I could not help but think what would happen if there was no Unified Family Court. Is the adult system capable of being as gentle and firm with these troubled teens? After spending the day with these teenagers, if the judges in Unified Family Court can persuade just one child to change his or her ways before turning 18, I believe saving the Unified Family Court will not only enhance our community, it will help preserve it.



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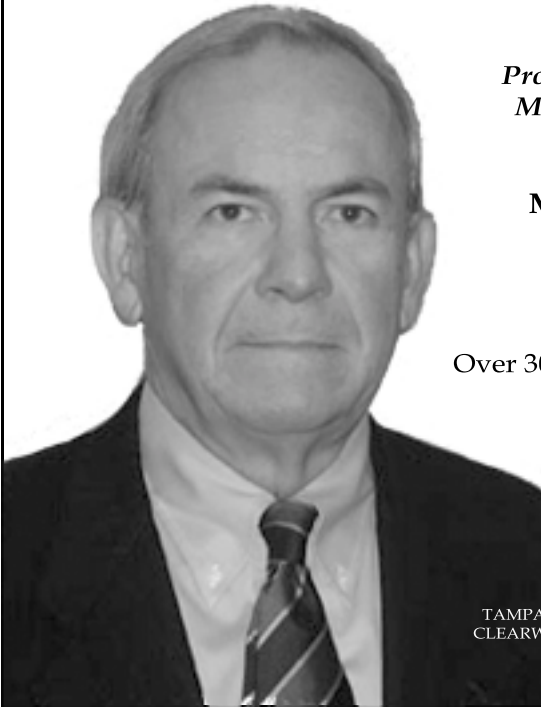
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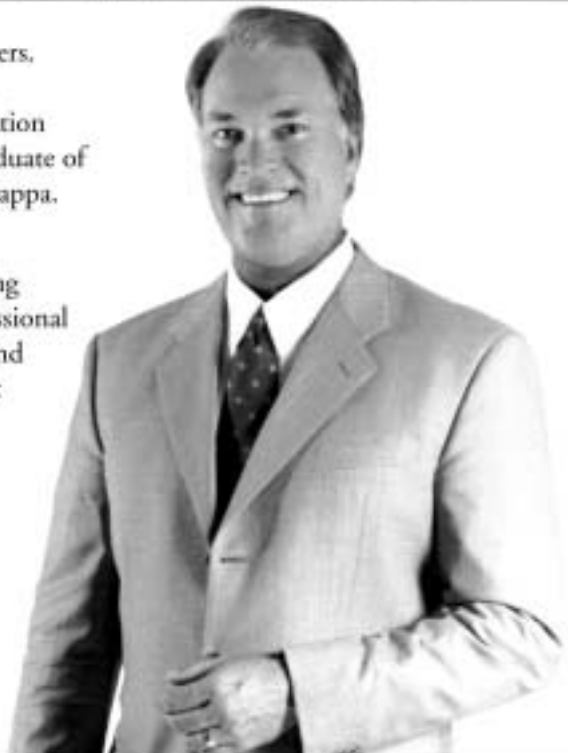
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WHAT'S UP & WHO'S NEW

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The law firm of **Abbey, Adams, Byelick, Kiernan, Mueller & Lancaster**, L.L.P. in St. Petersburg and Tampa is pleased to announce that **Jennifer J. Card**, former clerk with the Second District Court of Appeal has joined the Firm as an associate in the appellate department.

Charles N. Castagna, president and diplomate member of the Florida Academy of Professional Mediators and president of the Mediation Center of Tampa Bay, Inc., has been selected for

inclusion in the 13th Edition of *Who's Who in American Law*. This publication is the source for current biographical information that documents the leaders and their latest achievements in the legal profession. Castagna is certified in circuit-civil, family and federal court mediation and has been helping people resolve disputes in the Tampa Bay area and throughout the state since 1989.

The St. Petersburg law firm of **Englander & Fischer**, P.A. raised over \$8,000 at its 4th Annual Charity Golf Tournament in August. The tournament, which has alternated around Pinellas County golf courses, was played this year at Pasadena Golf Club. Since the inception of the tournament, over \$44,000.00 has been raised for the benefit of 40 charities. The firm sponsors green fees, food and beverage, but requires its participants to bring a check made payable to their favorite charity.

The Tampa-based law firm of **Trenam, Kemker, Scharf, Barkin, Frye, O'Neill & Mullis** is pleased to announce that **Thomas M. Ramsberger** has successfully completed the Leadership Tampa Bay program. Ramsberger, an attorney with

Trenam Kemker, works primarily out of the firm's St. Petersburg office. Leadership Tampa Bay is a non-partisan, independent program that provides regional learning experiences and networking for leaders and future leaders of the three county Tampa Bay area, over a six month period. The mission of Leadership Tampa Bay is to offer study, review, and discussion of major issues which impact the entire region - from the environment to politics to leadership to transportation.

Haas, Dutton, Blackburn, Lewis and Longley, P.L., of Tampa, is pleased to announce that Governor Jeb Bush has appointed **Rebecca O'Dell Townsend** to the Florida Film and Entertainment Advisory Council for a term beginning August 26, 2003 and ending August 20, 2007. Of note, Ms. Townsend also recently spoke as a member of a Panel on Emerging Issues in Tort Litigation at the 2003 Florida Defense Lawyers Association Annual Meeting in Key Biscayne, Florida. Her topic was "Recent Trends in Tort Litigation." Rebecca is a member of her firm's litigation team involved in defense of CCA wood litigation.

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SPALSS (Legal Support Specialists)

The St. Petersburg Association of Legal Support Specialists monthly meetings are held the first Tuesday of each month. The next upcoming meeting is:

October 7, 2003 - 6:00 p.m.

Speaker: *Hon. Thomas B. Freeman*

Topic: *DUI*

Location: Holiday Inn Select

3535 Ulmerton Rd., Clearwater, FL

November 4, 2003 - 6:00 p.m.

Arts, Crafts and Baked Goods Auction

Location: same as above

Reservations are required. Contact Loretta Aldridge for more information at 727-894-0676.

Pinellas County Paralegals

The next meeting of the Pinellas County Chapter of the Paralegal Association of Florida, Inc., will be :

October 13, 2003

Dinner Meeting 6:15 p.m.

Holiday Inn Select, 3535 Ulmerton Rd., Clearwater, FL

Speaker: *Raymond Parri, Esq.*

Topic: **Elder Law**

Cost: \$18 members, \$19 non-member, \$5 after-dinner guests

Paralegals, student paralegals, non-members and attorneys are always welcome. For further information or to make reservations, please call Patricia Weaver at work: 727-586-4224, fax: 727-585-4452, home: 727-584-4390, or e-mail: patricia1208@yahoo.com no later than 5 days in advance of the meeting.

Federal Regulations Control Health Information Discovery By Judge John C. Lenderman

Federal HIPPA regulations now require a qualified protective order or a stipulation by the parties that prohibits the parties from using or disclosing protected health information in all cases for any purpose other than the litigation and requires the information to be returned or destroyed at the end of the litigation.

Pinellas/Pasco Administrative Order No. 2003-014 PA/PI-CIR provides a method and sample Qualified Protective Order for use in all cases where medical information and records are sought in litigation. See <http://www.jud6.org/LegalPractice/AOSAndRules/aos/aos2003/2003-014.htm>.

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Remebering

Continued from page 5

Jacqueline Gayle-Kelly, former co-chair of the Diversity Committee and current president of the Fred G. Minnis Bar Association says that this project places a new perspective on the pioneers of the past and believes the project has a permanent place in our community. "The project's primary function is to teach prosperity." In order to ensure the project maintains that focus, Mrs. Gayle believes the entire legal community must embrace it. According to Mrs. Gayle that means everyone from Stetson University College of Law to private firms to government attorneys must do their part to embrace diversity. "The project will have continued life if the St. Petersburg community takes an active role in promoting the project." Mrs. Gayle would like to eventually see the project expanded and featured at the State Capitol.

David Abbey, current president of the St. Petersburg Bar Association encourages the legal community and the public at large to visit this historic exhibit. The exhibit is featured along with the national exhibit "We Shall Overcome: Photographs from the American Civil Rights Era," on display at the museum.

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The Paraclete Parent

By Gay L. Inskip



Over the summer, I attended a summit entitled, "A Call to Action." It was sponsored in part by the Pinellas Safe Start project, whose mission is to reduce very young children's exposure to violence in the community. There were hundreds of people there, including social workers, child protection specialists, law enforcement officers, victim advocates, representatives from the many child and family friendly agencies in our county, and concerned citizens. The luncheon speaker was a young woman who told a heart-breaking yet ultimately hopeful tale about the many years she spent as a child in the foster care system. There were small group sessions throughout the day where attendees tackled the serious challenges and obstacles facing the safety and well-being of children in our community. I left the summit feeling buoyed by the energy of the participants, but also overwhelmed by the enormity of the issues discussed. To keep from getting too discouraged, I focused on one practical piece of information that was provided to me at the summit. I include these "pointers" here after having obtained permission from the Pinellas Safe Start coordinator. They are 99 surprisingly simple things that each of us can do to help our children feel valued, cared for, and safe:

1. Love them unconditionally.
2. Explore together.
3. Applaud their discoveries.
4. Play with them.
5. Ask for their input.
6. Teach thoughtful decision-making.
7. Catch them being good.
8. Be compassionate.
9. Tell them why you like being with them.
10. Help them become an expert at something.
11. Surprise them.
12. Comfort them when they're afraid.
13. Suggest better behaviors when they act out.
14. Show that you care about them.
15. Share their enthusiasm.
16. Notice when they act differently.
17. Respect them.
18. Call them just to say hi.
19. Laugh at their jokes.
20. Expect their best, not perfection.
21. Answer their questions.
22. Appreciate their presence in your life.
23. Tell them how terrific they are.
24. Create a tradition with them.
25. Read aloud together.
26. Smile a lot.
27. Learn from them.
28. Be available.
29. Attend their church and school events and activities.
30. Find a common interest.
31. Be silly and laugh together.
32. Empower them.
33. Keep your promises.
34. Showcase their artwork.
35. Stoke their imaginations.
36. Compliment them.
37. Tell stories which feature them as the hero.
38. Nurture them.
39. Teach peace.
40. Tell them they are loved.
41. Discuss their dreams and nightmares.
42. Let them solve most of their own problems.
43. Include them in conversations.
44. Take part in their favorite activities.
45. Model responsible behavior.
46. Listen and respond without being judgmental.
47. Give them space when they need it.
48. Respect their decisions.
49. Make time to be with them.
50. Greet them with joy.
51. Accept them as they are.
52. Be their advocate.
53. Help them learn from mistakes – their own and others.
54. Appreciate their uniqueness.
55. Talk openly with them.
56. Encourage win-win solutions.
57. Include them in your life and activities.
58. Allow them to act their age.
59. Praise more; criticize less.
60. Tell them what you expect of them.
61. Give them your phone number.
62. Introduce them to new experiences.
63. Be spontaneous and flexible.
64. Learn about them.
65. Ask them about themselves.
66. Make eye contact when talking with them.
67. Listen more than you talk.
68. Be consistent.
69. Express your pride in them.
70. Relax together.
71. Acknowledge them.
72. Respond to crises patiently and calmly.
73. Ask them to help you.
74. Applaud their successes – big and little.
75. Visit their schools and homes.
76. Teach them something new.
77. Tell them their feelings are okay.
78. Set boundaries that keep them safe.
79. Be affectionate – hug them, hold hands.
80. Contribute to their collections.
81. Provide options when they ask your advice.
82. Be understanding.
83. Create a safe environment.
84. Celebrate their accomplishments.
85. Help them to help others.
86. Tackle tasks together.
87. Seek them out.
88. Believe what they say.
89. Help them take a stand.
90. Meet their friends.
91. Make decisions together.
92. Encourage thinking big.
93. Go places together.
94. Welcome their suggestions.
95. Pay attention to them.
96. Pamper them when they are sick.
97. Send messages to them.
98. Let them make mistakes.
99. Remember: they look to you as a role model!



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Community Law Program



By Janet D. Herron, Esq., Executive Director of the Community Law Program

Community Law's role in helping Families and Children

The *Florida Bar News* recently highlighted the practice of making monetary contributions to legal aid organizations of \$350 per attorney in lieu of providing pro bono services by the firm of Ruden McClosky. We challenge other firms and individual attorneys who are not able to participate in pro bono work, for what ever reason, to consider providing financial support to the Community Law Program. Community Law Program greatly appreciates the contributions of the 14 attorneys from Ruden McClosky. We also give thanks to Allstate Insurance Group for its contribution of \$350.00 to the Community Law Program for each of its 8 attorneys. A big thank you to those who have already made a contribution. Our funding sources continue to become more limited. For the first time the City of St. Petersburg was unable to provide funding through the Social Action Funding grant for 2004 due to budget limitations.

Florida Bar President Miles A. McGrane III has chosen the Lawyers Challenge for Children as the Bar's project for the year. Although Community Law does not usually receive requests for direct representation of children there are a number of ways that our free legal services help to stabilize the family environment and improve the life of children.

If you would like to be involved but do not feel comfortable handling a family law case Community Law provides other opportunities to help.

Community Law provides a Housing clinic on the first and third Friday of the month. Assistance with landlord/tenant issues can help prevent homelessness by ensuring that there is a roof over the family. Community Law offers a Bankruptcy Clinic on the second Friday of the month. Information on the consequences of filing for bankruptcy and exploring other options can help


preserve the home and stabilize family income. Having a will, a Living Will, and a Power of Attorney can provide peace of mind and assure a smoother transition and ensure that the family home is passed on with a clear title.

The Community Law Program has developed some creative ways to meet the need for assistance in the Family Law area by offering assistance to clients who can proceed pro se. The Florida Supreme Court Approved Simplified Family Law Forms are now available on the internet at www.jud6.org and www.flcourts.org. Many of our clients are able to download these forms at no cost or go to the public library and download the forms at a nominal cost. On the first and third Tuesday of the month Community Law offers a Dissolution of Marriage Forms Class. An attorney, using an overhead projector, provides instructions on completing the required Florida Supreme Court Approved Simplified Family Law Forms for Dissolution of Marriage with children and Dissolution of Marriage without children. Attorneys are available after the class and on every Thursday at noon to review completed Florida Supreme Court Approved Simplified Family Law Forms for dissolution of marriage, paternity, modification and enforcement of child support, and modification of custody or visitation. Attorneys also provide assistance in filing a response. In addition to reviewing the completed forms the volunteer attorneys provide general procedural advice and answer specific questions.

Any attorney can assist with the Simplified Family Law forms. After all, these forms are designed to be completed by non-attorneys. Call 582-7402 today to volunteer to help a family or mail your check to Community Law Program, 501 First Avenue N., St. Petersburg, and FL33701.


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