

County Court Courier

Conference of County Court Judges of Florida Volume 9, Number 1, Spring 2004

Judge Jeff Arnold Installed as 2004-05 Conference President

By Judge Peggy Gehl

The Conference of County Court Judges is proud of its new President, C. Jeffery Arnold, installed at the 2003 Summer Conference in Marco Island. An Orange County Judge since his appointment by Governor Lawton Chiles in 1994, Judge Arnold received his legal education from Florida State University in 1969, after graduating from the College of William & Mary with a bachelor of arts degree in 1966.

His election as our new President came as a natural progression of Judge Arnold's stellar legal career and leadership within the Conference. Jeff began his conference teaching after having served the bench for just four years.

His first lecture on Criminal Law was presented to the 1998 Summer Conference, and it was followed by lectures on Evidence and Civil Law Update during the 1999 Winter Conference. Selected Issues in Personal Injury Protection (PIP) was his latest educational endeavor presented at the 2003 Winter Conference.

Jeff served as the Chair of the Conference's prestigious Education Committee from 1999-2000, as well as Chair of the Delphi Committee for the same period. He has proudly served on the Conference Board of Directors since 1998 as the Circuit Representative for the 9th Judicial Circuit, as well as President-Elect from 2002-2003 and now our President.

Judge Arnold's successful legal career in private practice was interrupted just once by his military service from 1970-72 when he served our country as Captain Arnold in the U.S. Army with the Second Armored Division, Fort Hood, Texas.

Just prior to his appointment to the bench, Judge Arnold was a partner in the law firms of Arnold, Matheny & Eagan, Foley & Lardner, and Anderson & Rush. He also served the Orange County Bar Association as its President from 1984-85, and



Caption: President Jeff Arnold (left) and President-elect A.B. Majeed (right) enjoyed the remarks by Florida Supreme Court Justice Harry Anstead (center) at the Winter Educational Conference in Amelia Island in January.

as Chair of its Judicial Relations Committee from 2001-2002.

He is most proud of his work as a significant member in the 9th Judicial Circuit on the Collections Court Committee. He was instrumental in starting this specialty court where he sits part-time as a collections court judge. The amount of fines and court costs collected for Orange County as a result of his persistence in the field has been outstanding. This past January, Judge Arnold received The Florida Public Defender Association's Administration of Justice Award for implementing compassion in his enforcement of orders from sentencing judges – holding defendants accountable while utilizing compassion, leniency, and alternative collection methods for the poorest of the poor.

Significantly, Judge Arnold has also served The Florida Bar in many leadership capacities. He served as Chair of the Statewide Law Day Committee in 1992, Chair of the Voluntary Bar Liaison Committee in 1991-92, as Vice Chair of the 9th Judicial Circuit Grievance Committee from 1979-82, and as a frequent CLE lecturer.

The Conference is fortunate that our new President faces this year as a significant challenge because of the Article V revisions. He spends a great deal of personal time meeting with the legislative leadership, as a member of the Trial Court Budget Commission (T.C.B.C.), as a member of the Revision 7 Communications Advisory Group, as a member of the Inter-Conference Council, as a member of the Delphi Policy Committee, lobbying for more county judges, and lobbying for more use of general masters and hearing officers for use in county court.

"Most people don't ever have to come to court, and most of the people who do come to court, come to County Court," he noted. "We need to be sensitive to the public and to be well-staffed and hard-working in order to serve them."

On a personal note, Judge Arnold is the proud father of son, Jon, a Marine who has been recently deployed to Jabudi in East Africa to combat terrorist activities there; and daughter, Aimee, a graduate of Fordham University with a degree in marketing, who enjoys employment as administrative assistant to a Senior Vice-President of the NFL.

Letter from the President

2004 Legislature Will Decide How to Fund the State Court System

By Judge Jeff Arnold



Buckle up your seatbelt, we're about to begin Mr. Toad's Wild Ride. On March 2, 2004, the Florida Legislature began its regular session. Last year's was described as one of the most important legislative sessions ever impacting our

Florida court system. I would suggest this session is even more important.

Last year, the Florida Legislature considered the Article V/Revision 7 amendments, which require the State of Florida to "fund" the court system. Historically, the State did not adequately or fully fund the court systems. So out of default, the 67 counties accepted the responsibility. Article V/Revision 7 was passed by the voters to correct this funding problem. The 2003 Legislature considered the "philosophy" of many issues relating to Article V/Revision 7. After public input and consideration, Bill 113 A was passed. Since that time, the legislation has received careful scrutiny from everyone who had an interest in the subject matter. The 2004 Legislature will pass a "Glitch Bill" which will clarify, add to or correct matters which were not adequately covered in the 2003 version. In addition and more importantly, the Legislature must actually "fund" the legislation. The amendment and legislation will take effect on July 1, 2004.

In anticipation of the hearings relating to this matter, O.S.C.A. and the Trial Court Budget Commission (T.C.B.C.) requested that the Clerks of all 67 counties research their programs and identify finances. Following this initial input, the information was filtered, reinvestigated and audited. Thereafter, the T.C.B.C. prepared recommendations regarding the adequate funding of the court system.

This activity began on a very positive note. Governor Jeb Bush prepared a budget providing approximately \$102 million for the court system. Special thanks go to the Governor, Racquel Rodriguez (General Counsel), and Brad Thomas (Co-

"The National Center for States reported that the Florida trial judges handle 31 percent more cases than the average national trial court judge. With this confirmation of efficiency, we now need to convince the Legislature they should fully fund the Article V/Revision 7 bill."

ordinator, Public Safety Unit-Office of Policy and Budget) for their contributions. While the funds provided in the Governor's budget do not cover all of the funds requested by the T.C.B.C., it would be fair to classify the same as a "very good start." Since the Governor's staff was evaluating the budget, the economy has continued to flourish and even more money has come into the coffers of the State. This influx of new money should assist the Legislature in adequately funding the court system.

The Florida court system is considered one of the finest in the nation. The National Center for States reported that the Florida trial judges handle 31% more cases than the average national trial court judge. With this confirmation of efficiency, we now need to convince the Legislature that they should fully fund the Article V/Revision 7 Bill which they passed last year. After all, before the State takes over the funding of the State court system, less than one half of one percent of the State budget was devoted to the court system. Even if the Legislature were to fund, in its entirety, all of our requests, our portion of the budget would still be less than two percent of the State budget.

Part of the efficiency built into our trial court system is properly trained and adequate staff support. To the County Court Judge, this means that we need a properly funded Court Administration. In those counties which use masters and hearing

officers, they must continue to be adequately funded.

In the category of hearing officers and masters, the T.C.B.C. requested a little more than \$18.5 million. The Governor's recommendation is only \$11 million. This is a difference of nearly \$8 million. Some believe we would rather have county judges performing the functions of masters and hearing officers; however, given the current financial concern with the budget, it is unrealistic for the Legislature to replace masters and hearing officers with county or circuit judges. Accordingly, we are hopeful to convince the House and Senate to fund more of the masters and hearing officers, thereby narrowing the gap currently existing on the two proposals. Tax Watch agrees with the T.C.B.C. recommendations.

Part of the rationale behind the passage of the Article V/Revision 7 theme was to 'equalize' programs throughout the State. Most of our judges sit in metropolitan jurisdictions which utilize masters and hearing officers to offset the workload. Unfortunately, 34 of our 67 counties are considered rural and only have a single county court judge, much less any additional quasi-judicial officers. The T.C.B.C. has recommended a budget of \$20 million for Court Administration within all 67 counties. The Governor's recommended budget for Court Administration is \$4 million short of this, or about \$16 million. Because judges don't have to involve themselves with Court Administration responsibilities such as human resources, budget preparation, parking, supplies, and security, our judges have more time to devote to our caseloads. For single-judge counties, additional administrative responsibilities must be absorbed by the judiciary. If Court Administration services are properly implemented and funded, some of the successful programs used in the metropolitan counties can be implemented in their lesser-populated counties. Our Conference goal is to secure sufficient funding so as to equalize useful, efficient programs throughout all of our counties.

The T.C.B.C. has recommended \$12 million in judge and judicial assistant operating expenses. The Governor's recommendation falls far short by nearly \$10 million — at only \$2.3 million. This category does not even include any new judges but only the expenses currently paid by the counties. Since all judges and judicial assistants are state employees, the expenses should be paid by the State and not by the counties. By default, the counties have picked up those expenses. This category includes \$500,000 for use by the Chief Judge for "senior judge" time, as well as office supplies, travel expenses, office equipment, and faxes. We have informed the Legislature that judges gener-

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Letter from the Editor

The Conference Remembers Judge Robert Earl Collins

By Judge Peggy Gehl



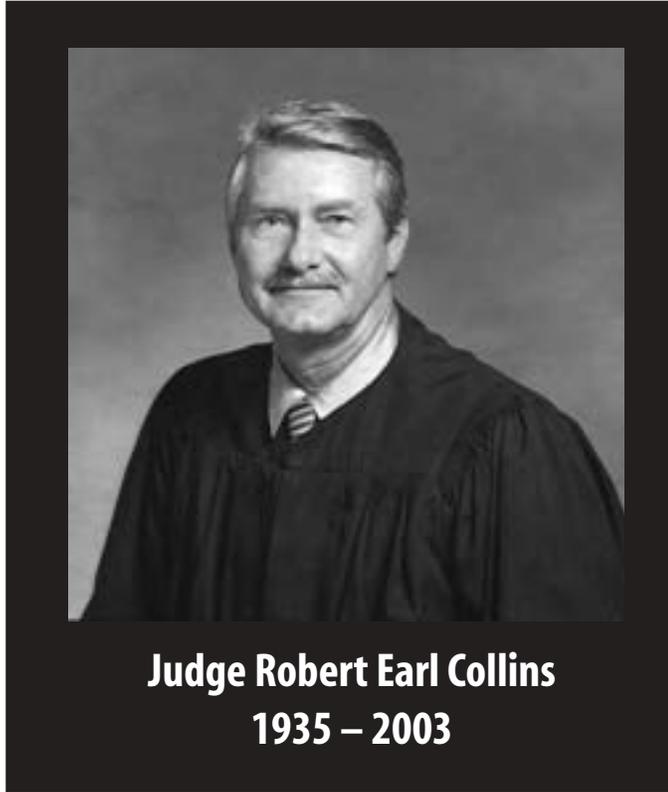
In November, one of the Conference's most respected, dedicated, and colorful judges, Hardee County Judge Robert Earl Collins, lost his lengthy battle with cancer. A Governor Reuben Askew appointment in 1978, Judge Collins faithfully served our Conference for 10 years as the Conference Manager, unselfishly donating his time researching, reviewing, negotiating, and contracting with hotel facilities for our seasonal meetings and conferences.

"Earl was a good-natured and pleasant man," Broward County Judge Jay Spechler, a member of the Conference Committee, said. "He thoroughly enjoyed his role as conference manager and always made our educational conferences a fun and enjoyable experience."

His good nature and easy temperament won him praises from all who knew this man who loved life, the arts, diverse cultures, travel, and people. Just a week before his death, Earl returned from Cuba where he had spent several weeks enjoying its culture and people.

A native of tiny Fort Meade, Florida, Earl inherited his work ethic from his hard-working parents, whom he helped till the land as sharecroppers until eventually they saved enough money to open the Collins Cafe in Fort Meade.

Upon graduating from Fort Meade High School in 1953, Earl attended Florida State University where he met his wife of 44 years, Sylvia, at a fraternity party. A Stetson student, Sylvia was visiting her boyfriend in Tallahassee, but a chance meeting with this Lincolnesque, 6-foot 4-inch junior, changed both of their futures forever. The couple proudly raised two children—Robert Earl



Judge Robert Earl Collins
1935 – 2003

Collins, Jr., a graduate of the United States Military Academy who works as an engineer for TECO but remains on active reserve at MacDill Air Force Base, and Candace Sylvia Preston, an attorney who once headed the Wauchula branch of the state attorney's office.

Upon graduating from FSU in 1957, Earl joined the United States Air Force where he attained the rank of Captain, serving two years in the Strategic Air Command as a navigator for refueling tankers based in Louisiana.

Three years later, Earl began his law school career at South Texas College of Law, obtaining his juris doctor degree in 1963. He made Hardee County his permanent home four years later opening his own firm, Burton, Patarini & Collins.

"He had good judicial temperament," his former partner, Val Patarini observed. "I never saw him really really mad. He had an easy temperament. I'd be the volatile one. I'd be screaming and he'd be saying 'Calm down. Let's see what we can do.'"

When Hardee County Judge Joel Evers retired at 70 in 1978, the door opened for Earl's appointment by Governor Askew. He won re-election every four years from 1980 to 2000. County Judge Marcus Ezelle, who always remained a friend, defeated him in the 2000 election.

Earl has been described as "a Hardee County treasure" by State Attorney Jerry Hill. Hardee County Sheriff Loran Cogburn commented on Earl's goodness, spirituality, and caring nature:

"He always cared about the people of the county and it showed in his decisions. It took a lot of wisdom to make the decisions he did," the Sheriff remarked.

A memorial service was held at the First Baptist Church of Wauchula, where Earl was active and served as a deacon. His spirituality and religious beliefs contributed heavily to the goodness of the man known as a Hardee County "treasure."

His memory will enrich our Conference history as we recall the tall, affable, gregarious judge with the southern accent from Wauchula.

Conference and County Court Judges of Florida

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Conference of County Court Judges of Florida
201 SE Sixth Street, No. 335
Ft. Lauderdale, FL 33301

Phone: (954) 831-7675

Fax: (954) 831-8546

Conference Welcomes New County Judges



JUDGE DONALD E. HORROX
Hillsborough County

The Conference welcomes new Hillsborough County Judge Donald E. Horrox, a 1982 graduate of Stetson University College of Law and Wilkes College.

Judge Horrox comes to the bench from the Tampa Office of the Federal Public Defender where he served the past 6 years as a supervising assistant and defending a caseload of federal crimes. His 21 years as a member of The Florida Bar has kept him in the courtroom trying nearly 100 jury trials in criminal law both in defense and prosecution.

Welcome, Judge Horrox!



JUDGE RAMIRO MAÑALICH
Collier County

The Conference welcomes new Collier County Judge Ramiro Mañalich, appointed to the bench by Governor Bush in September to replace Judge Larry Martin who was appointed to the Circuit bench.

Judge Mañalich comes to the county bench from 14 years of service in the Collier County Attorney's Office, where he served as Chief Assistant County Attorney for the past eight years, advising the Board of County Commissioners, County Manager and County staff on all legal matters affecting operations, facilities, programs and litigation. He

served as an Assistant County Attorney for the six years prior.

The Judge received his undergraduate degree with highest honors in 1980 from the University of Wisconsin, and his juris doctor degree from Marquette University Law School in 1984. He is admitted to practice in Florida, Colorado, and Wisconsin.

Judge Mañalich has been active in the Collier County Bar Association for ten years, serving on the Board, on several committees, and in all officer positions, culminating in the Presidency for the 2000-01 term.

He has served on the Board of United Way of Collier County, and has instructed the Collier County division administrators, department directors and employees on ethics law.

Judge Mañalich hears both civil and criminal cases.

Welcome, Judge Mañalich!



JUDGE SHIRLYON McWHORTER
Miami-Dade County

The Conference is pleased to announce the appointment of Miami-Dade County Judge Shirlyon McWhorter, a University of Florida College of Law graduate in 1991.

Having earned her undergraduate degree in criminal justice from Bethune Cookman College in 1981, Judge McWhorter first worked as a felony probation officer for six years before entering law school. After receiving her J.D., she spent the next six years of her budding legal career in the Dade County State Attorney's Office. She left the SAO to practice privately, primarily as the assistant general counsel to the Dade County Police Benevolent Association.

Judge McWhorter currently chairs the Miami-Dade County Planning and Zoning Board. She is the past president of the Women Lawyers Division of the National Bar Association as well as past president of the Black Lawyers Association.

Welcome, Judge McWhorter!



JUDGE ANGELA COWDEN

Polk County

The Conference welcomes newly-appointed Polk County Judge Angela Cowden, a sixth generation Floridian tracing her ancestry back to the 1800's.

Judge Cowden, the only daughter of parents born in Winter Haven and Kissimmee, was born at the Bethesda Naval Hospital. Her father was a Navy Lieutenant who was transferred to the Pensacola naval base when she was two. The family moved to Lakeland when she was six and has remained there ever since.

In 1986, Judge Cowden received a chemistry degree from Lakeland's Florida Southern College and worked as a chemist at Sherex Chemical, a polymers company, before returning to Florida Southern to obtain an MBA in 1989. She decided law was her future and graduated from Stetson University College of Law in 1993.

She spent her law career at the Tenth Judicial Circuit's Office of the State Attorney in Bartow, where she worked misdemeanors, felonies, child abuse, and economic/white collar crime.

Judge Cowden uses her varied education by teaching economics, management science and business law as an adjunct professor at Florida Southern College.

Welcome, Judge Cowden!

ARTICLES WANTED

The Courier welcomes your articles, news, letters to the editor, and photos. Send submissions to the editor:

Judge Peggy Gehl

201 S.E. 6 Street,

Ft. Lauderdale, Florida 33301

by August 15, 2004.

COUNTY NEWS

Broward County

Broward County Judge Louis Schiff, a trumpeter, is requesting that any judge who has an interest in forming a jazz combo for performance at conferences contact him at jschiff@17th.flcourts.org

Dade County

Pace Academy girls attended the musical comedy "Annie" at Actors Playhouse in December as guests of Judge Bonnie Rippingille (Miami-Dade) and the Sisters of the Heart. Pace Academy is an alternative school for girls and included in the mentoring project, founded by Judge Rippingille, which provides the girls with cultural enrichment and exposure to outstanding women role models.

The girls met Barbara S. Stein, executive producing director of Actors Playhouse who warmly greeted them at intermission.

"Visiting beautiful downtown Coral Gables lit up for the season was a thrill," remarked one of the girls, who added that the play was the "highlight of her holidays." Elegantly dressed with smiles on their faces, these beautiful young women, like "Annie", are learning that what happens to them tomorrow will be determined by what they do today.

The 11th Circuit is proud to introduce two new county judges, Shirlyon McWhortor and Maria Ortiz. We also congratulate County Judge Ellen Sue Venzler on her appointment to the Circuit bench.

IN MEMORIAM

Judge David Bemby 1946-2004

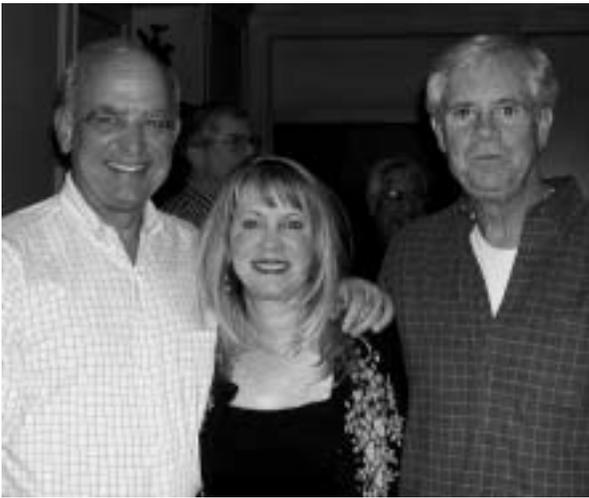
Hamilton County Judge David E. Bemby, a county judge in Jasper for 25 years, passed away March 28th after a long battle with cancer. He was 57. Our Third Circuit judges generously covered his dockets while he spent his last days at home with family and friends.

A Hamilton County native, Judge Bemby graduated from Jasper High School. He served two years in the U.S. Marine Corps prior to attending Florida State University, earning his undergraduate and law degrees.

For five years following his graduation, Judge Bemby worked as a private practitioner. He was elected to the bench in 1978 and won re-election every term for 25 years.

The Judge is survived by his wife of 31 years, Joanne, and two sons, Andrew of Seattle and Adam of Valdosta, Georgia. A dedicated member of St. Therese Catholic Church, Judge Bemby's family has requested memorial contributions be made to St. Therese Catholic Church at P.O. Box 890, Jasper, FL 32052; or to Hospice of the Suwannee Valley, 618 SW Florida Gateway Drive, Lake City, FL 32024.

Spring Conference 2004



(L to R) Conference President Jeff Arnold (Orange) and Judges Shelley Kravitz (Miami-Dade), and Jim Glatt, Jr. (Orange).



(L to R) Judges Cathleen Clarke (Brevard), Judy Hawkins (Leon), Rhonda Babb (Brevard), and Debra Roberts (Pasco).



(L to R) Judge Cristina Pereyra Shuminer (Miami-Dade) and husband, Alan.



(L to R) Judge Krista Marx (Palm Beach) and Judge Amy Williams (Pinellas).



(L to R) Judges Lou Schiff (Broward), Jane Fishman (Broward), Karl Grube (Pinellas), and Marty Dishowitz (Broward).

Amelia Island



(L to R) Judges Marty Dishowitz (Broward), Mark King Leban (Miami-Dade), Beth Bloom (Miami-Dade), Andy Hague (Miami-Dade), Carroll Kelly (Miami-Dade), Bob Diaz (Broward), Dava Tunis (Miami-Dade) and Sam Slom (Miami-Dade).



Judges Mark King Leban (Miami-Dade) and Peggy Gehl (Broward).



(L to R) Conference President-Elect A.B. Majeed (Brevard), and Judges Marty Dishowitz (Broward), and Angela Cowden (Polk).



Judges Mark Yerman (Citrus) and Frances King (Marion).



(L to R) Judges Colby Peel (Washington), Woody Hatcher (Jackson) and David Green (Walton).

Judge Peter Evans Honored by the ABA

Palm Beach County Judge Peter Evans was awarded the 2003 ABA Judicial Division Education Award, presented annually to a judge who has “personally strived to provide the highest quality and most innovative education and training programs to judges on both the state and national level.”

Within Florida, Judge Evans began his teaching career as an instructor for the Florida New Judges College. In that capacity, he designed and implemented interactive teaching segments to provide newly-elected and appointed county judges with a working knowledge of civil and small claims court procedures.

In 1994, he became the Dean of the Florida Traffic Adjudication Program, now known as the DUI Adjudication Lab. In the annual 5-day program, judges receive training skills in the trial and adjudication of impaired driving and other serious traffic offenses.



Judge Peter Evans, Palm Beach County

Most recently, Judge Evans became the first limited jurisdiction judge to design and implement a web-based distance learning course exclusively for limited jurisdiction judges who handle civil

and small claims actions. His small claims course is now featured as one of only two on-line distance learning courses available from the National Judicial College. The Judge’s model for a distance learning course has earned him the recognition of the college and led to his appointment as a member of the faculty in the advanced distance learning faculty development course that will be presented in April.

The Florida Conference of County Court Judges has repeatedly recognized Judge Evans’ contributions to its educational endeavors. The Judge has presented his annual Civil Law Update the past seven years. This update appraises the county judges on the latest developments in case law and rules of procedure which affect practice in the civil and small claims divisions. Judge Evans also has authored definitive works on the law of garnishment and replevin.

Congratulations, Judge Evans!

Gavels Out of Commission in Courtrooms

Reprinted from the Tallahassee Democrat

By James L. Rosica, Democrat Staff Writer

Along with the scales, the gavel is the quintessential symbol of American justice.

But judges say they don’t use gavels these days – and some can’t even remember the last time they saw one used.

“I may have seen a gavel in a courtroom, but I cannot recall an instance – other than ceremonial – when it was used,” said Florida Supreme Court Chief Justice Harry Lee Anstead, who’s practiced law since 1964.

“I’ve never seen it used in 13 years,” appellate Judge Charles J. Kahn, Jr., said of the 1st District Court of Appeal’s gavel. “I haven’t thought about why. Maybe the idea was so hackneyed, judges decided not to do it anymore.”

Leon County Judge Tim Harley said he’s seen a couple in the county courthouse. An unscientific survey of some courtrooms last week didn’t find any.

“I don’t remember judges ever using one,” said Harley, a lawyer since 1976. “I generally have one, but if I feel the need to get somebody’s attention, I just yell. Sometimes, I’ll tap the microphone.”

You can still buy gavels locally, but they’re tough to find.



“I only have one in stock,” said Tim Yoho, owner of Active Images, a trophy and awards shop on North Monroe Street.

He didn’t even remember how much it sold for, though he guessed that the set – a solid walnut gavel with sounding block – was about \$50.

“I sell two or three a year,” Yoho said. “Mostly to lawyers and law firms that want them as a symbol.”

Francine Walker, spokeswoman for The Florida Bar, said the traditional courtroom gavel’s history is murky, though it dates back to at least the 1700s. The black robes that judges wear go back even further, she said, modeled after the Roman toga.

“The use of a hammer to keep order was common in medieval institutions,” according to Masonicfax.com, a web site about Masonic orders. “In a larger sense, gavels symbolize . . . power, as this is the instrument (that) strikes blows.”

U.S. Magistrate Judge William Sherrill, who said he never uses one, surmised that judges used gavels more in the days of larger courtrooms, which often had balconies. And before air conditioning, windows were wide open, letting in street noise as well as a breeze.

His colleague in Tallahassee’s federal courthouse, U.S. District Judge Robert Hinkle, said he’s never needed one.

“I can accomplish everything I need to without it,” he said. “And tapping on the microphone has the same effect.”

Florida Supreme Court Marshal Wilson Barnes added that the state’s highest court has a ceremonial “passing of the gavel” when one chief justice succeeds another.

But, he said, “in terms of day-to-day business, I’m the gavel. When I call everybody to order, (the justices) have everybody’s undivided attention.”

Cars' Breath-testing Device Spurs Suits

Reprinted from the South Florida Sun-Sentinel

EDITOR'S NOTE: As the Courier went to press, Circuit Judge Nikki Clark ruled that the state Department of Highway Safety and Motor vehicles cannot require ignition interlock devices without a court order. Judge Clark's decision only applies to the 2nd Judicial Circuit and to drivers convicted before February 1, when the law mandating interlocks after a second DUI conviction went into effect. Judge Clark wrote, "The Department simply has not been granted authority by the Legislature to require installation of the device . . . The Judiciary is not at liberty to grant authority to the department where the Legislature did not." Clark then ordered the department to remove the interlock requirement from a driver who received a second DUI conviction before the new law went into effect and reinstate her license. Department attorneys are reviewing Clark's decision and have not yet decided whether they will file an appeal. Similar suits are pending in Pinellas, Pasco, Hillsborough, Gilchrist, Monroe and Marion counties.

Two men filed separate Broward Circuit Court lawsuits on February 18th challenging the recently enforced state law requiring some convicted drunken drivers to have breath-analysis devices hooked up to their ignitions.

Peter Doyon of Davie, and Stuart Barnett of Vero Beach, allege the Department of Highway Safety and Motor Vehicles is violating their rights by forcing them to either get ignition interlock devices installed in their vehicles, or lose their driver's licenses. The dashboard-mounted device keeps a car from starting if it detects a breath alcohol level of 0.05 or higher when the driver blows into a plastic mouthpiece.

Even though the law became effective in July, 2003, and affects DUI convictions subsequent to July, 2002, installation of the devices did not begin until private vendors were contracted to implement the program. Cincinnati-based LifeSafer Interlock Inc. and Canadian-based Alcohol Countermeasures Systems Corporation were selected by the department. Florida is one of 43 states to enact an ignition interlock law.



Attorneys for the two men argue that DMV is taking on powers reserved for the courts. They are seeking a court order barring enforcement of the law.

Both men had finished serving their respective sentences for DUI convictions when they received letters saying they needed to get the device, said Miami attorney Rhonda Goodman, one of their attorneys. Since a judge never ordered the ignition-interlock device, any DMV requirement would amount to double jeopardy, or taking the judicial function away from the judiciary thus violating separation of powers, Goodman said.

In addition, the law unfairly affects others by requiring some convicted drunken drivers to get the device installed in every vehicle they own. In Doyon's case, he runs his entire company and would be required to install the breath-analysis device in nine vehicles, she said.

"Who is going to want to work for this man if they have to blow in the interlock device?" Goodman asked.

The device costs \$75 for installation and \$65 per month for monitoring and recalibration.

DUI Adjudication Lab

December 2003



Judge Peter Evans (Palm Beach), Dean of the DUI Adjudication Lab since 1994, directs the Lab operations.



Judge Peggy Gehl teaches both mandatory and creative sentencing in criminal traffic cases.



(L to R) Judges Cristina Pereyra-Shuminer (Miami-Dade) and Peggy Gehl (Broward) taught Sentencing at the DUI Adjudication Lab in Ft. Myers Beach.

Civil Committee Report

By Judge Jerry Pollock

At both its fall and winter committee meetings, the Civil Committee discussed rule amendments proposed by The Florida Bar Civil Procedure Rules Committee:

1. The approved final draft of the amendment to Rule 1.420(e), providing notice to the party who fails to prosecute for a period of 10 months, and allowing 60 days to take action on the claim.
2. The proposed amendment to the summary judgment rule requiring the movant to file the relevant exhibits or attachments along with the original motion.
3. Providing the authority for the judge to read jury instructions before or after closing argument.
4. Providing the court with discretion to permit testimony using communication equipment, over the objection of opposing parties, in lieu of live testimony. The committee voted to support this amendment, which support was approved by the Conference Board.
5. An amendment to Rule 1.442(c), requiring the recipient of a Proposal For Settlement to object to any defects within 30 days rather than at the conclusion of the case.
6. An amendment to Rule 1.525, requiring a post judgment motion for attorney's fees to state the basis for the fees.
7. An amendment to Rule 1.110(i), requiring that the basis for attorney's fees be stated in the pleading.

In January, the Committee made suggestions to the Education Committee for future educational presentations on fee splitting between doctors and unlicensed therapists or examiners in PIP cases, as well as insurers who pay only a portion of plaintiff's medicals while exhausting PIP benefits by paying other providers; and, in landlord/tenant cases, on the application of Chapter 83, Florida Statutes, to situations where there is no lease (possibly unlawful detainer or ejection?).

The Florida Bar Civil Procedure Rules Committee has prepared a draft of a proposed amendment to Rule 1.510(a) regarding motions for summary judgment. The committee members approved the concept but were troubled by the draft language.

The committee members discussed the conflict between the 2nd District Court of Appeals and the 5th District regarding the Beech Street Agreements in PIP lawsuits, as well as whether a treating physician should be paid an expert witness fee prior to giving a deposition.

Community Service Committee

By Judge Pauline Drayton-Harris, Chair

The Community Service Committee has met twice since the last Courier. In October, committee-member Judges Pauline Drayton-Harris, Keith Spoto, and Patti Christensen discussed section 938.30(2), Florida Statutes, in reference to court costs. While the committee recognized that the imposition of court costs is mandatory, its members discussed ways to utilize community service to satisfy this requirement. A memorandum of law will be prepared on this subject.

Committee members also discussed community service among county court judges and whether this committee should take on this subject. A handout detailing court costs and their application to community service was distributed.

In January, committee-member Judges Drayton-Harris, Mary Catherine Green, Richard Suarez, Kirby Sullivan, and Timothy Coon attended the meeting in Amelia Island.

Judge Green indicated that the Polk County Clerk's Office will be keeping a record of the number of community service hours performed in lieu of court costs for the period January 19-February 29, 2004. Committee members agreed to assist the Florida Legislators by providing community service information and its many benefits to the community. Judge Drayton-Harris volunteered to provide the presentation materials on community service to the appropriate individuals.

The memorandum of law discussed at the October meeting was prepared by a judicial staff assistant regarding the legal support for court costs and community service. A copy of this memorandum was provided both Co-Chair Green and Conference President Jeff Arnold.

The members decided to send a form to all Circuit Representatives to update previous information received on community service hours in each circuit. It was noted that in some smaller circuits judicial assistants were monitoring community service, while in larger circuits community service hours were monitored almost exclusively by the probation officers. There was some discussion on probation fees that are assessed or waived by the sentencing judges. Judge Green volunteered to prepare the form for the Circuit Representatives.

As a consensus, the Committee decided to adopt as one of its goals the education of the Legislature on the benefits and importance of community service in lieu of court costs when appropriate. It is the philosophy of the Committee that accurate community service hour records are prepared so that conversion of court costs to community service hours would not be viewed as a waiver.

It was further discussed that apparently the Legislature has concerns about members of the judiciary not imposing the maximum fine, and some legislators wonder why community service is not supplemented when the maximum fine is not ordered.

Criminal Rules Committee

By Judge Roberto Arias, Chair

The Criminal Rules Committee January meeting in Amelia Island produced a lively discussion on the Florida Bar's proposed new amendments to be submitted to the Florida Supreme Court.

These new amendments include:

Rule 3.150 Joinder of Offenses and Defendants--

The proposed amendment will add a subsection requiring the Court to advise each defendant of the right to effective assistance of counsel, including separate representation, whenever two (2) or more defendants have been jointly charged or have been joined for trial and are represented by the same attorney.

Rule 3.180 Presence of Defendant--

Language has been added to subsection three (3) of this rule:

"However, this subsection shall not limit the Courts' authority to order the defendant's presence at any proceeding." The added language will clear up any conflict existing among the District Courts of Appeal on whether the trial court may revoke a defendant's waiver of appearance.

Rule 3.191 Speedy Trial--

The proposed amendment will strike language within subsection A which states that every person who is charged with a crime by indictment or information shall be brought to trial within 90 days. The proposed amendment would strike "by indictment or information." It appears that the changes are intended to clarify that speedy trial without demand is available in all misdemeanors, whether charged by information, uniform traffic citation, affidavit, or issued summons.

Rule 3.575 Motion to Interview a Juror--

This is a proposed new rule setting forth procedures for parties wishing to interview a juror. It requires a written motion directed to the trial court which must find that the verdict may be subject to challenge in ordering the juror interview. The interview must be conducted in the presence of the Court and of the parties. In the event the Court does not find that the verdict is subject to challenge, the Court must enter an order denying permission to interview. This rule appears to formalize the process contemplated by the Florida Bar Disciplinary Rules.

Other proposed amendments, mostly applicable to felonies, deal with pre-trial sentence investigation reports and forms related to judgment and sentences.

Judge Arias would like the members of the Criminal Rules Committee to advise him by email (Rarias@coj.net) or regular mail (Duval County Courthouse, Jacksonville, Florida 32202) as to whether the Conference should support the proposed amendments.

Report of Ad Hoc Committee on Minorities

By Co-Chair Judges Pauline Drayton-Harris and Judith Hawkins

The members met for the first time since this committee was formally included as an activated committee. After discussion, it was decided that the report generated last year on the status of minorities in the judiciary be reviewed. Recommendations or a report to the Executive Board of the Conference will be forthcoming for consideration.

PECT Committee Report

By Judge Patti Christensen, Chair

The PECT (Public Education of the Courts Team) Committee plans to publish a judicial yearbook, including photographs, setting forth biographical information on each of us.

Each county judge should have received a questionnaire from Judge Christensen requesting its completion for inclusion in the yearbook. The form may be returned by mail, fax, or email. Her mailing address is St. Johns County Judicial Center, Room 244, 4010 Lewis Speedway, St. Augustine, FL 32084. Her fax number is 904-827-5615, and her email address is christensen@co.st-johns.fl.us. The questionnaire requests information about each judge and any activities they have participated in which promotes education of our judicial system. The yearbook, reflecting the many hours of pro bono work our county judges donate, will be provided to all of our county judges as well as to the Florida Bar and members of the Legislature.

If you have lost or misplaced your questionnaire, call Judge Christensen at 904-827-5613.

The purpose of PECT is to educate the public about the judicial system. The committee requests that each judge participate in at least one activity designed to promote a better understanding and appreciation of our judicial system.

Civic group and school class visits to the courtroom are two excellent ways to satisfy this requirement. Judges may also speak to various groups about the workings of the court or discuss at a local bar association luncheon or meeting an interesting legal issue you've encountered.

Don't be left out. The questionnaires must be returned by May 15th for inclusion in the yearbook. Remember to include a current photo.

Sentencing Committee Report

By Buck Curtin, Chair

The Sentencing Committee discussed various sentencing issues at the Winter Conference in Amelia Island.

There were no motions which required Board action but the committee may ask the Conference to take a position in the future on

decriminalizing certain crimes; transferring all juvenile criminal traffic to circuit court; how to handle juvenile no-shows and vop's; mandatory and discretionary costs; right to appointed counsel; waiving counsel; refusal to hire counsel; speedy trial; multiple defendants and public defenders requests for continuances.

Single Tier / Concurrent Jurisdiction Committee Report

By Judge Doug Henderson, Chair

House Representatives Benson and Smith do not anticipate this issue to be addressed this year. Representative Negrón (Chair of the Subcommittee on Judicial Appropriations as well as a member of the Appropriations Select Committee on Article V) concurs.

Small Claims Committee

By Judge Pauline Drayton-Harris, Acting Chair

Eleven judges attended the Small Claims Committee meeting in Amelia Island in January to discuss new small claims rules and amendments.

Broward County Judge Sharon Zeller, a member of The Florida Bar Small Claims Rules Committee, advised that this Florida Bar committee is considering a new rule creating sanctions for appearing at pre-trials without the authority to settle. The language would be as follows:

Added to Rule 7.090(f). APPEARANCE AT MEDIATION; SANCTIONS.

Failure to comply with this subsection may result in the imposition of sanctions, including costs, attorneys' fees, entry of judgment, or dismissal.

Also a member of The Florida Bar Small Claims Rules Committee, Judge Pauline Drayton-Harris, advised that the committee is also considering a new rule relating to attorneys' fees and costs containing identical language from Fla.R.Civ.P. 1.525-- MOTION FOR ATTORNEY FEES AND COSTS, as follows:

Any party seeking a judgment taxing costs, attorneys' fees, or both shall serve a motion within 30 days after filing of the judgment, including a judgment of dismissal, or the service of a notice of voluntary dismissal.

The general consensus of the committee was that the addition of this new rule would not have a negative impact. Judge Drayton-Harris will provide assistance to Judge Phyllis Kotey during her absence. Both Judges Drayton-Harris and Zeller will be attending The Florida Bar Small Claims Rules Committee in Miami and will provide a report at the next meeting.

Florida Conference of County Court Judges

Upcoming Conference Schedule

SPRING BOARD MEETING

April 28-30, 2004
City Place Marriott
West Palm Beach

SUMMER EDUCATION CONFERENCE

July 14-16, 2004
The Registry
Naples

DUI ADJUDICATION LAB

November 29 – December 3, 2004
Alexander All-Suite
Oceanfront Resort
Miami

WINTER EDUCATION CONFERENCE

January 11 -13, 2005
The Ritz-Carlton
Amelia Island

SUMMER EDUCATION CONFERENCE

July 19-21, 2005
Ocean Reef Club
Key Largo

ate more paperwork than other types of "state" employees, and therefore we are entitled to more than the "standard" amount allotted for a state employee. Tax Watch agrees and has recommended \$7.8 million for this category.

Currently, Public Defenders, State Attorneys, and the court system cannot communicate through technology. In multi-county circuits, the Chief Judges and counties cannot communicate; State Attorneys cannot determine, through technology, if an individual is in custody in the county next door; nor can the State Attorneys determine if the same defendant has any pending charges anywhere within the same circuit or across the State. Chief Judges cannot compare notes, statistical data or other information via technology.

The T.C.B.C. has recommended a little more than \$7 million for new technology. The Governor's budget recommends ZERO dollars. The entire \$7 million+ difference is somewhat misleading. At the time the Governor's budget was prepared, both the State and the counties were arguing over responsibility for the "technology"

"I would urge you to contact your State Senator and State Representative and express your concern and share your experience with how important it is to 'fund' the court system."

category. At the time the budget proposals were being prepared, the State held fast on its position and therefore left it out. I think it is fair to give the Governor the benefit of the doubt, and I fully believe that the parties involved in the negotiations understand that there may be funding in the future once the issue is ironed out. Nonetheless, the category constitutes a significant difference between the court's request and the Governor's recommendations. Tax Watch agrees that the court system should receive significant funding for technology.

The Supreme Court certified the need for 88 new county and circuit judges. The Governor

agreed that the court system needs 40 new judges — 24 new circuit judges and 16 new county judges. This is a great start for us. Our goal will be to keep the 40 and work with the Legislature to expand that number.

We were fortunate that Tax Watch reported that the minimum amount necessary to properly operate Florida's court system is \$140 million. I hope our economy continues to improve, resulting in more tax dollars and other state revenue available to the Legislature for division amongst the many competing and worthy projects. A lobbyist once described the 60-day Legislative Sessions as "59 days of boredom and the final day absolute chaos." While the Legislature is moving with deliberate speed and consideration, as the final days approach, we must pay careful and constant attention to serious budget negotiations.

I would urge each of you to contact your State Senators and Representatives to express your concern and share your experiences with how important it is to fully "fund" Florida's court system.

ARTICLES WANTED

The Courier welcomes your articles, news, letters to the editor, and photos. Send submissions to the editor, Judge Peggy Gehl, 201 S.E. 6 Street, Ft. Lauderdale, Florida 33301, by August 15, 2004.



County Court Courier

201 SE 6th Street, Room #335
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