

County Court Courier

SPRING 2005



CONFERENCE OF COUNTY COURT JUDGES OF FLORIDA

Conference Bids Farewell to Hernando County Judge Peyton Hyslop

Reprinted from
The St. Petersburg Times
By Jennifer Liberto

Brooksville — Beside a row of thick law books on Judge Peyton Hyslop's desk sits a box of nine tiny toy cars, including a police car, a yellow pickup, a blue sedan, a black sports car and — Judge Hyslop's favorite — a red 1957 Chevrolet.

In traffic court, Judge Hyslop occasionally rolls the matchbox cars out on his desk, to the delight of a usually packed courtroom and a confused defendant. The cars are used to recreate crash scenes, often illustrating how perceptions can be skewed from reality.

"People in crashes often don't have good recollections," says a smiling Judge Hyslop, 52, who denies he's ever played with the cars during long-winded attorney soliloquies, but admits he may doodle on a pad of paper.

Today, the cars get packed with Judge Hyslop's books, certificates and even the emergency tie he keeps in his desk drawer on slow days.

Judge Hyslop completed his 15-year tenure on the bench January 3, after finishing a 300-case docket, filled with misdemeanor and traffic offenders hoping to resolve their cases before a county judge perceived as lenient.

Judge Hyslop lost his seat in September's primary election to new Judge Don Scaglione, a former assistant state attorney. Judge Scaglione won the county judge race with 54.7 percent of the vote.

Controversy marked Judge Hyslop's tenure and might have led to his defeat, local politicians and attorneys say.

Judge Hyslop had earned a reputation for being a thorn in the county's side because of his decisions against the government. But Judge Hyslop has more often ruled in the county and state's favor, except in several controversial and higher profile civil cases.



Former Hernando County Judge Peyton Hyslop with Polk County Judge Angela Cowden at Conference's 2005 Winter Meeting.

"Never in 15 years did Judge (Hyslop) ever make a decision for public perception. Not a lot of people have that strength, that conviction." —Joannah Holt, Judge Hyslop's judicial assistant

Just before the end of 2004, Judge Hyslop decided against the county when he ruled the county owed its Florida water customers about \$3 million in regulatory fees, a case county commissioners considered appealing.

A few years ago, county attorneys cited Judge Hyslop's refusal to uphold some politically charged rules, like watering restrictions, as part of the reason they inquired into "special master" hearings. Now most county code disputes are handled by a special master — a private attorney hired by the county to adjudicate those who challenge citations and fines.

On the criminal side, Judge Hyslop's bail-setting practices drew ire from local prosecutors and other judges. Judge Hyslop maintained his right to lower some bail, based on his evaluation of the case. He often said setting an unreasonably high bail imposed a sentence before trial.

The Florida Supreme Court backed him up.

A year before Judge Hyslop was defeated, the issue was resurrected when the Circuit's Chief Judge, Victor Musleh, revoked Judge Hyslop's authority to preside over felony first appearances.

See Judge Hyslop, page 12

Letter from the President

By Judge A.B. Majeed



The Winter Conference was a huge success. We received many warm compliments on the organization and the content of the education meetings. The presentation by our legislators was informative, encouraging, and very well received. Many of our judges particularly enjoyed the presentation by Fish and Wildlife, and there were several volunteers for the nighttime patrol along with the Commission officers.

The Legislative session has begun. The Governor has submitted his budget. It provides for the appointment of 110 judges, of whom 41 will be county judges.¹

These judges will be introduced incrementally, 34 by November 2005, an additional 45 by March 2006, and a final 31 by June 2006.

Committee meetings are in full swing. We are planning and hoping for some generosity towards the judiciary.

I have developed a warm, cooperative, and cordial relationship with the leaders of the circuit and DCA conferences. We speak with one voice and seek the same pay and benefits package from the Legislature

A SUMMARY OF OUR POSITION:

"Since October 1, 2000, the national consumer price index has risen by more than 10 percent. During this period, the Legislature provided three general cost-of-living pay increases for state employees: 2.5 percent in 2001, 2.5 percent in 2002,

and 2 percent in 2003. Although Florida judges were included in the 2002 increase, they received no increase in 2001 and only approximately one-half of the amounts they would have received in 2003 had they been fully included in the 2003 general state-employee cost-of-living increase. Because Florida judges were not fully included in the cost-of-living increases, they have suffered a substantial reduction in real income.

In order to align cost-of-living increases in judicial salaries with those cost-of-living increases extended to most state employees, the conferences offer a two-step proposal. The conferences first request that the salaries of Florida judges be adjusted to bring their compensation in 2005 to the levels they would have reached had Florida judges been fully included in the 2001-2003 general state-employee cost-of-living adjustments. As a second step, the conferences request that judges be fully included in any general pay package extended to state employees during the 2005 session."

The leaders of the Conferences are also working together for parity in medical insurance coverage.

The State of Florida has been both fair and generous in meeting the costs of medical coverage for its elected officials. The judiciary is conspicuously singular as the group of elected state employees whose medical coverage is overlooked annually. Some Legislators seem favorably inclined to bring this to an end and we are working diligently for broad based support from the House and Senate.

To accomplish these objectives I'm working hand in hand with each and every person who can help, including our well-liked, respected, and knowledgeable lobbyist, Don Lamonica.

JUDICIAL PAY AND BENEFITS WORK GROUP

Many of our county judges have, over the years, established a warm, professional and

personal relationship with our courageous and beloved Chief Justice Barbara Pariente. She is a joy to work with. Her dedication to the long-term welfare of our profession is second to none. She has formed a Work Group to study and advise her on the future of Judicial Pay and Benefits. Three county judges are on that Work Group. I have developed a compensation plan which I intend to graciously but cogently present to this Work Group. I have labeled it the Equidistant Plan. Simply stated, the plan seeks to set the pay for each judicial layer, numerically equidistant from the next. For example, working with the figure of \$10,000, the pay plan would look like this:

JUDICIAL ANNUAL SALARIES

Florida Supreme Court	\$165,000
Florida DCA	\$155,000
Florida Circuit Judges	\$145,000
Florida County Judges	\$135,000

To perpetuate this system, I'm advocating that pay raises for the judiciary not be in percentages but instead in numerical figures. Since County Judges have the lowest principal, percentages are a disadvantage to us. For example, if all judges receive a 2 percent COLA, the results will mean county judges will receive the lowest pay increase, and will further distance us from the next layer.

However, if the entire judiciary receives a pay increase of \$500.00 then we will maintain our \$10,000 equidistant ratio.

This is a new, but simple and fair idea. I am convinced it is best for the Judicial Branch as a whole and for county judges in particular.

Will it fly? Time will tell.

In 1981, County Judges were \$4,000 behind Circuit Judges. It is imperative that we regain our lost ground and HOLD IT.

Conference of County Court Judges of Florida

Our Honorable Chief Justice has submitted a set of nine Principles of Professionalism for Florida Judges for our approval and application. Your executive body has unanimously approved the adoption of these principles. Please keep them on your Bench for ready reference.

PRINCIPLES OF PROFESSIONALISM FOR FLORIDA JUDGES

1. A judge should be courteous, respectful, and civil to lawyers, parties, witnesses, court personnel, and all other participants in the legal process.
 2. A judge should maintain control of proceedings, recognizing that judges have both the obligation and the authority to ensure that all proceedings are conducted with dignity and decorum.
 3. While endeavoring to resolve disputes promptly and efficiently, a judge should be considerate of the time constraints and pressures imposed on lawyers, parties, and other participants in the legal process.
 4. To the extent possible, a judge should be punctual in convening trials, hearings, meetings, and conferences, and should, when practicable, promptly notify those affected if the judge becomes aware that there will be a significant delay.
 5. A judge should permit a lawyer or self-represented party to properly present a cause and to make a complete and accurate record.
 6. A judge should not impugn the integrity or professionalism of any lawyer on the basis of the lawyer's clients or cause.
 7. A judge should refer to lawyers and adult parties and witnesses by surname preceded by the preferred title (as, Mr., Ms., Mrs., Miss, Dr.) or by professional title (as, counselor or Doctor) when conducting a trial or hearing.
 8. A judge should work cooperatively with other judges on matters relating to the availability of lawyers, parties, witness, or court resources, and the scheduling of proceedings.
 9. A judge should be courteous and respectful to other judges in speech and in written decisions and opinions, mindful that a position articulated by another judge is the result of that judge's earnest effort to interpret the law and the facts correctly.
- These principles are promulgated to encourage judges, including masters (and magistrates) to fulfill their obligation to be civil and respectful to all persons.

SUMMER CONFERENCE

The Summer Conference is scheduled for July 20 through 22, 2005 at Ocean Reef in Key Largo. Cory Ciklen, our energetic and super efficient Conference Chair, has planned a superb program. The Ocean Reef facility has been renovated to become a very desirable vacation spot, yet ideally suited for our education programs. I am looking for a maximum turnout at this conference.

The Education Committee has received extensive direct input from our judges as to programs they desire on our curriculum. The Committee has been very sensitive to the suggestions submitted. They have tailored a summer program chock-full of substantive information, yet reflecting the wishes and suggestions of our fellow judges.

My one-year tenure as your President is quickly approaching its conclusion. It has been an honor and privilege to serve each and every one of you. Your active participation and continued input are essential for the success of this Conference.

My sincerest thanks to all my fellow County Judges for giving me this opportunity to be of service.

— A.B.

¹ *Editor's Note: Orange County Judge Jeff Arnold has reported that there is opposition by Sen. Victor Crist in Senate Bill 2048 to the 41 new county judges certified by OSCA. This bill proposes authorizing only six new county judges and only ten of the 67 circuit judges certified. Judge Arnold asks that we mount a strenuous objection to the proposed bill.*

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County Court Courier

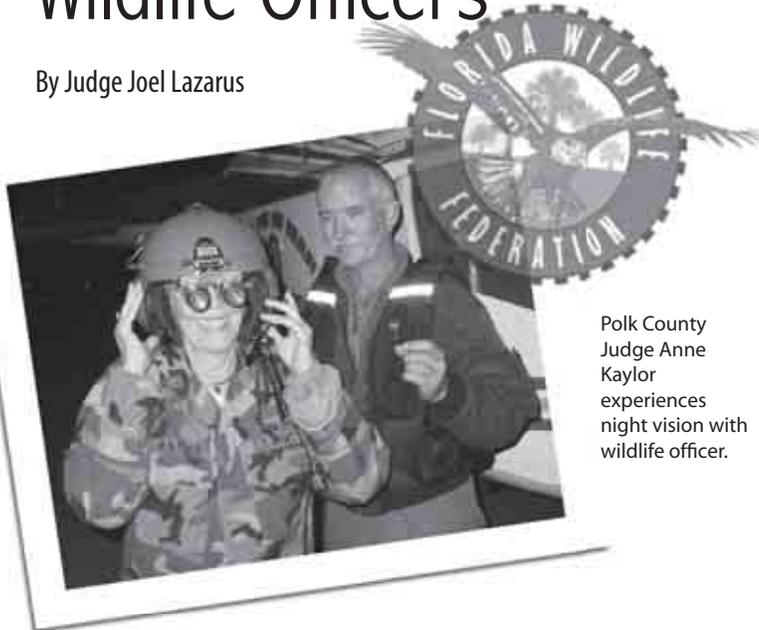
Conference of County Court Judges of Florida
201 SE Sixth Street, No. 335
Ft. Lauderdale, FL 33301

Phone: (954) 831-7675

Fax: (954) 831-8546

Judges Look for Poachers with State Wildlife Officers

By Judge Joel Lazarus



Polk County Judge Anne Kaylor experiences night vision with wildlife officer.

During the winter conference at Amelia Island, some of us had a wonderful opportunity to experience “up close and personal” the working environment of the Florida Fish and Wildlife Conservation Commission (FWC). This is a relatively new commission, combining many other areas and coming into existence July 1, 1999.

We were afforded the opportunity to travel with members of the Law Enforcement Division. This division has 722 sworn officers, second in number only to Florida Highway Patrol for a state agency. Their aviation unit, consisting of fixed wing aircraft as well as helicopters, is the second largest law enforcement aviation unit in the country, second only to Los Angeles County.

For those who chose to (which was almost all of us), we boarded the helicopters for an hour’s nighttime patrol. There were two judges per helicopter, and we were equipped with helmets and night vision glasses! The only way to describe what it was like was to recall the videos coming back from Iraq during “shock and awe.” What was an overcast night turned into a sky with a thousand stars upon putting on our NVGs. We also had plenty of time to talk with our host/officer. In my own situation, after we touched down, I rode with the lieutenant-in-charge in his SUV until well after midnight, listening to his stories and learning what the commission and conservation are all about.

Our craft did not encounter poachers or unlawful activity, although others thought they had something (turned into a false alarm) and in one particular situation, action was about to begin when it was realized that the potential “perps” were in Georgia!!!

Hopefully, the same opportunity will be afforded our conference next winter at Amelia Island. Thanks, FWC, for a wonderful opportunity.

Judge Shirley Green: Persistence Pays

By Judge Patti A. Christensen

If at first you don’t succeed, maybe you should talk to recently elected Judge Shirley A. Green, Volusia County’s first African-American female judge. Judge Green’s life is a remarkable story of persistence, courage and determination.

Her early years were difficult, living in a labor camp near Miami with her parents and nine other siblings. From age eight she worked alongside her family, picking tomatoes, beans, and other farm products.

High school brought its own share of problems. She attended South Dade Senior High School during its first year of integration. Because tensions were high, police escorts and escape plans were part of her daily routine. She married at age 17 and had two children, but she graduated.

After her sixth child was born, she decided to enroll in junior college. She had been passed over for a promotion at her work in a furniture store and decided “something was wrong and I wanted to fix it.” It was at this time that she decided that she wanted to become an attorney.

But college had its challenges. She transferred to University of Miami, but in her junior year tragedy struck – her husband died unexpectedly of leukemia. With the help of her family and her faith, this widowed mother of six persisted. She graduated, then enrolled in law school. She took the Bar exam in July. One month later Hurricane Andrew hit.

Upon her graduation she worked many years with legal aid in Daytona Beach, helping to “prevent homelessness,” as she explains it.

Twice she applied for a judgeship but was not appointed. Then she ran for judge and was defeated. Last fall she ran again and got her just rewards. “I don’t know how to give up,” she admits.

Judge Green’s own experiences and her compassion for the disadvantaged give her excellent credentials for serving as judge, particularly at the county court level in “the people’s court.” Be sure to welcome her at the Summer Conference.

Congratulations, Judge Green!



Judge Shirley Green, Volusia County

Judge Judith Hawkins Visits Panama

Leon County Judge Judith W. Hawkins, a delegate in the Florida Law Related Education Association, journeyed to Panama City, Panama in September last year to visit its partner, the Civitas Panama. The programs promote democracy, the rule of law, and civic education in the United States and other participating world countries.

The delegation team visited several schools and met with several governmental agencies. The meeting with the Electoral Tribunal was reported locally, and the Past President of the Panama Supreme Court accepted the invitation to join the delegation in a reciprocal exchange.

In November, delegates from Panama, including the Past President, traveled to Miami and Tallahassee to observe the 2004 election process, civic education programs, and met with government officials. In Leon County, the delegation observed Circuit Judge Terry Lewis conduct family law proceedings.

Other Florida delegates to Panama included Annette Boyd Pitts, Executive Director of the program; Florida Representative Curtis Richardson; Mark Schlakman, Program Director, FSU Center for Advancement of Human Rights; Nina Ashenafi, President of the Tallahassee Bar Association; and Lauren Schlakman.



Leon County Judge Judith Hawkins (center, right) Leon Circuit Judge Terry Lewis (top, left), with Civitas Panama delegation.



State Now Requires Interlock Device for Twice-Convicted DUI Drivers

Florida Statute/DHSMV now requires the installation of the Interlock device on drivers convicted of a second (or more) DUI. This is called a "P" restriction when a driver seeks to obtain a driver's license.

The Interlock device is calibrated at 0.05 BAL, but the device is capable of being calibrated down to 0.02 BAL (20 mg%).

If a judge wishes to have the Interlock calibrated at a BAL reading below 0.05 (50 mg%), here is the procedure to do so:

1. Sign the "Ignition Interlock Device – Court Order" which is provided by your clerk.
2. Enter a separate order setting BAL.
3. Fax the two orders to the INTERLOCK facility.

Interlock Systems of Florida (ISF) will enter the information in the computer and provide follow-up. If you have any questions, please contact Barbara Lauer at DHSMV: Lauer.Barbara@hsmv.state.fl.us

There are two Interlock installation facilities in Florida:

Interlock Group of Florida

5842 Commerce Road
Milton, FL 32583
Phone: (800) 728-7396
Fax: (850) 626-6389
Contact: Sheila Cagle

Interlock Systems of Florida

Airport Business Center
5852 South Semoran Boulevard
Orlando, FL 32822
Phone: (866) 837-8646
Fax: (407) 207-3314
Contact: Zandra Lugo

Winter Meeting 2005



Broward County Judges Marty Dishowitz (left), and Jeff Levenson (right) and Paula Levenson



Judges Kathleen Ireland (Broward County); Karen Schwartz (Dade County); Gisele Pollack (Broward County); Judy Hawkins (Leon County); and Ana Pando (Dade County)



Conference President A.B. Majeed (Brevard County) and new Broward County Judge Eric Beller



Officer Chris Jones, Florida Fish and Wildlife Conservation Commission and Seminole County Judge Carmen Bravo



– Amelia Island



Judicial Assistants Victoria Cosby,
Diana Grant and Denise Dodson



Broward County Judges Linda Pratt and Robert Lee

Dade County judges (l to r) Dava Tunis, Beth
Bloom, Shelly Kravitz, Mark Leban. Duval
County judge Gary Flower (back)

Broward
County Judge
Peggy Gehl
and Baby
Gator



**FLORIDA CONFERENCE OF
COUNTY COURT JUDGES**
Upcoming Education Conference Schedule

SUMMER, 2005
July 20-22-, 2005
Ocean Reef Club
Key Largo

WINTER, 2006
January 4-6, 2006
Ritz Carlton
Amelia Island

SUMMER, 2006
July 5-7, 2006
JW Marriott Grand Lakes Resort
Orlando

Eighth Judicial Circuit Welcomes Three New Judges



**Judge Thomas M. Jaworski,
Alachua County**



**Judge Walter M. Green,
Alachua County**



**Judge Mary Day Coker,
Alachua County**

The Conference of County Court Judges welcomes three new county judges from the Eighth Judicial Circuit, two of whom replace retiring county judges, and one replaces a county judge who was elected to the Circuit bench.

In 1989, then Florida Governor Bob Martinez appointed Aymer L. "Buck" Curtin to the Alachua County bench. Judge Curtin served the citizens of Alachua County well for 15 years until his retirement this past December 31. In January, 2005, Judge Curtin returned to the Eighth Judicial Circuit as a senior judge. Short retirement!

Judge Curtin plans to spend time with his family and to travel with friends and family between court assignments. Judge Curtin served the Conference on the Board as both a Circuit Representative and District Vice-President, as well as chair of the Sentencing Committee. Good luck, Judge Curtin!

Replacing Judge Curtin on the Alachua county bench is new County Judge Thomas M. Jaworski, who was elected to the bench on August 31. Judge Jaworski was admitted to the Florida Bar in 1984, and has served as both an Assistant Public Defender and for ten years as an Assistant State Attorney. He also practiced law privately in a local law firm and as a sole practitioner. He is currently assigned to a criminal division.

In 1993, then Florida Governor Lawton Chiles appointed Ysleta W. McDonald to serve on the county bench in Alachua County. A Circuit seat became available, and without opposition, Judge McDonald was elected to the seat in May, 2004. She began her Circuit career on January 4, 2005, assigned to the family division. Congratulations Judge McDonald!

Replacing Judge McDonald on the county bench is new Alachua County Judge Walter M. Green, elected on November 2, 2004. Judge Green came to the bench after 15 years of service in the State Attorney's Office of the 8th Judicial Circuit, including 9 years as a division chief. Judge Green began his career on the county bench January 4th and has been assigned to a civil division.

One of Alachua County's finest jurists, County Judge Phyllis Kotey, resigned her position in June, 2004, to begin her career as a Professor of Law at Florida International University College of Law. Judge Kotey served the Conference well in many capacities including a Circuit Representative, Committee Chair, Teacher, and member of the Judicial Ethics Advisory Committee. She is truly missed by our Conference members.

Replacing Judge Kotey on the Alachua County bench is newly-appointed Judge Mary Day Coker, tapped by Governor Jeb Bush on September 7, 2004. Judge Coker practiced privately for more than 20 years in Alachua County, most recently as a partner with Scruggs and Carmichael, P.A., in Gainesville. Judge Coker has been assigned to a civil division.

Conference Welcomes New Santa Rosa County Judge

The Conference of County Court Judges welcomes new Santa Rosa County Judge W. Joel Boles, who began his judicial service on September 2, 2003, replacing Judge Ron Swanson who was appointed to the Circuit bench.

Judge Boles was elevated to the bench from private prac-

tice. The past eleven years of his legal career were spent as a shareholder in Wilson, Harrell, Smith, Boles & Farrington, P.A. in Pensacola, where he specialized in civil litigation including personal injury defense, insurance litigation and commercial litigation.

A graduate in 1987 from The Cumberland School of Law in Birmingham, Alabama, Judge Boles earned his undergraduate degree in Broadcast Journalism at The University of Alabama in 1983.

Judge Boles serves as a Deacon in The First Baptist Church of Pensacola, and enjoys playing the bass guitar in the church Praise Band, as well as a local jazz band.

He is married to Rebecca Boles. The couple has two children – daughter, Bayleigh, and son, Joel.

Congratulations, Judge Boles.



NEW JUDGES CLASS OF 2005



Judges Liz Rice (Hillsborough County) and Jim Ward (Okaloosa County)



Judge Judy Rubenstein, Dade County



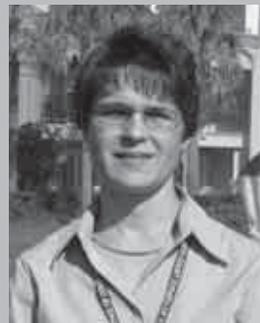
Judges Mike Murphy (Orange County) and Peary Fowler (Monroe County)



Judge Ada Pozo Ravilla, Dade County



Judge Donald Scaglione, Hernando County



Judge Kathleen Hessinger, Pinellas County



Judge Giselle Pollack, Broward County

More new judges will be featured in the next issue of the Courier. Please send bios and photos to Judge Peggy Gehl, 201 SE 6 Street, Ft. Lauderdale, FL 33301 or ldigiova@17th.fl.courts.org

CRIMINAL RULES COMMITTEE

The Criminal Rules Committee, chaired by Judge Gus Aikens (Leon) and Judge Roberto Arias (Hillsborough), met in Amelia Island to discuss various rules currently being considered by the Florida Bar Committee. One such rule is whether there should be a change in the rule instructing the jury **after** closing arguments to instructing them **prior to** closing arguments. The Committee did not take a position at this time.

Members discussed whether attorneys should be contacting jurors after the verdict, which can make jurors feel uncomfortable. The disciplinary rule directed to this issue needs to be emphasized or strengthened.

Judge Fred Berman (Broward) offered his own personal approach – keeping jurors in the courtroom after verdict without the attorneys. He would thank the jurors for their service and ask for their thoughts and criticisms on the attorneys' presentations for educational and improvement purposes. He reported that their comments were enlightening.

Polk County Judge Mary Catherine Green discussed a proposed statute regarding domestic violence "no contact-no firearms" orders which, upon entry, would require communication between the court and FDLE of a domestic violence arrest immediately and before the Defendant bonds out. The defendant would then be prohibited from purchasing a firearm upon release on bond. The "no contact-no firearms" order would become a pre-trial order, which, if violated, would be charged as a first-degree misdemeanor.

The Court would have to make a finding that the defendant is a credible threat. Defendants who have no prior felony convictions and are otherwise eligible to purchase a firearm would be prohibited from doing so by the entry of the "no contact-no firearms" order. This concept would apply to the "intimate partner" domestic violence cases as well.

EDITORIAL COMMITTEE By Peggy Gehl, Editor

Three members of the Editorial Committee met in Amelia Island to discuss the format and content for the Conference of County Court Judges' *County Court Courier*.

The Committee received valuable input from the *Courier's* first editor, Judge Rad Smith (Pinellas), who advised that one of the original purposes of the *Courier* was to publish the minutes of the Board meetings to the membership.

In fact, the by-laws, now amended, stated that the publication of the minutes was the duty of the Editor. The publication is now the duty of the Secretary. Anne Kaylor, our present Secretary and Webmaster, publishes the minutes on line at CountyJudges.com. It is no longer necessary to publish the minutes in the *Courier*.

Along with a short biography of each new judge, it was suggested that a short article on each retiring judge be added as a regular feature in the *Courier*.

Judge Karl Grube (Pinellas) suggested that a regular column be added focusing on our judges' community outreach. Each Circuit Representative must send the *Courier* editor articles or information on the community service, volunteer work, teaching, or community activities of its judges for publication in the *Courier*.

Each DCA Vice-President must remind Circuit Representatives to contact Judge Peggy Gehl, *Courier* Editor, with information and contact information for new judges, along with information on retiring judges. Her email address is jgehl@17th.flcourts.org, and address at the Broward County Courthouse is 201 S.E. 6th St., Ft. Lauderdale, FL 33301.

Without the participation of the DCA Vice-presidents and the Circuit representatives, the *Courier* will not be complete and many judges will be left out.

EDUCATION COMMITTEE

Committee Chair Judge Gary Flower, who also serves our Conference as the Circuit Representative for the 4th Judicial Circuit, opened his meeting by emphasizing that due to the budget cuts, and the reduction of our committee meetings from four to two per year, necessitates long-term planning for our educational conferences.

Our Conference offerings have already been planned through January, 2006.

Largest of all of our Conference committees, the Education Committee boasts 52 members, most of whom have been "Zimmerized" for teaching. Approximately one-half of the members attended this winter's meeting at the Ritz in Amelia Island where a list of general interest topics was distributed for consideration of future educational presentations.

Broward Judge Joel Lazarus suggested that freedom of speech issues need refreshing. This topic will be presented at the Winter Educational Conference in January, 2006. The Conference is fortunate to have Nova Southeastern University Constitutional Law Professor Bruce Rogow presenting.

During this Summer's Educational Conference at the Ocean Reef Club in Key Largo, our judges will receive a timely presentation entitled "Courting Disaster," focusing on court procedures during hurricanes and other disasters which may disrupt the schedules and workings of a normal courthouse.

A short course in Expert Testimony will be presented this summer, as well as a lengthy presentation on Relations and the Media. Further, on our summer agenda is a special two-hour program on Professionalism which has been prepared for delivery by Circuit Judges Ron Rothchild (17th Cir.), Peter Blanc (15th Cir.) and Blan Teagle of OSCA.

Suggestions and comments for future educational topics should be sent to Judge Gary Flower at 330 East Bay Street, Jacksonville, Florida 32202, or email to gflower@coj.net.

SENTENCING COMMITTEE By Judge Mark Yerman

One of the issues discussed during the Winter Educational Conference in January was the sentencing provisions of the "Racing" statute, Florida Statute 316.191. The statute currently suggests that all first offenders who plead must be adjudicated, and that a mandatory fine and driver's license revocation must be imposed for the adjudication.

Some Assistant State Attorneys have been negotiating a "withhold" of adjudication and fines.

The majority of committee members believe that case law prohibits a "withhold" of adjudication along with an accompanying fine. They believe that a "withhold" may only be accompanied by court costs.

Members discussed that these cases could possibly be filed as reckless driving cases pursuant to Florida Statute 316.192, thus avoiding the mandatory sentence pursuant to 316.191.

Committee Chair Mark Yerman will research the legality of a "withhold" and fines.

Sentences for worthless check charges were discussed. One common sentence of many members is probation with special condition of payment of the worthless check, and early termination of probation upon completion of this special condition. Some counties have a "clerk's payment plan" which removes the judicial setting from the collection process. The offender simply signs up to pay through the clerk's office.

The members also discussed the misdemeanor recidivist statute, "not me" cases, and sentencing defendants to DUI school for smoking cannabis while driving.

CIVIL RULES COMMITTEE By Judge Jerry Pollock

The Civil Rules Committee discussed matters pending before the Florida Bar Civil Rules Committee:

1. The Florida Bar Civil Rules Committee (Committee) overwhelmingly defeated a proposed amendment to Rule 1.442. *Proposals for Settlement.*

2. The Florida Bar Civil Rules Subcommittee (Subcommittee) passed, in concept, a proposal incorporating section 40.50, F.S., into the Rules of Civil Procedure. The Rule will substitute the word "shall" for the word "may" where the statute discusses allowing jurors to ask questions of witnesses. Chair Legendre asked the members of the Subcommittee to submit suggested written instructions for this purpose.

3. The Subcommittee discussed a proposal dealing with "Deposition Summaries." The item was tabled until receipt of input from the Florida Bar Trial Lawyers section and the Evidence Committee.

4. The Subcommittee also discussed eliminating the "100-mile" rule. This item was also tabled until input is received from the Trial Lawyers and the Evidence Committee. Members discussed whether this proposal will increase or decrease litigation.

5. The Subcommittee proposes permissive use of juror notebooks controlled by the court. The Committee opposes this proposal and favors exclusive use of notebooks by jurors.

6. The Subcommittee proposed reading certain jury instructions before closing arguments.

7. The Subcommittee discussed a proposal whereby the court would allow an expert to testify in an attorney's fee hearing IF the grounds for the need of expert testimony are set forth in pleadings or a motion.

8. By a 32-0 vote, the Subcommittee approved adding language to Rule 1.351. Production of

Documents and things without Deposition, which would make the rule the exclusive procedure for requesting documents without deposition. Parties are attempting to circumvent the rule by Deposition Duces Tecum, then canceling the deposition by letter and requesting the documents in lieu of sworn testimony.

Among other things, the Committee discussed lawyers who insist upon appearing by telephone at all hearings. It was suggested that by requiring them to appear in person, settlement of their cases would increase.

A further suggestion was made that default judgments sent with a 2.0 multiplier should not be signed. It was suggested that all judges read all ex-parte orders very carefully.

Changing section 48.081, F.S., to allow service of process on a registered agent at his residence was discussed.

Changing section 832.07, F.S., to allow the tender of payment on a bad check from 7 days to 15 days was discussed.

JUDICIAL ASSISTANTS COMMITTEE By Judge Ana Maria Pando, Chair

Six members of the Judicial Assistants Committee met in January at Amelia Island to discuss salary increases for Judicial Assistants. The Judges feel that because of the increase in workload resulting from the Article V changes, Judicial Assistants are entitled to an increase.

One possible way to obtain an increase is use of rate money.

Rate money is a budget surplus dispensed at the pleasure of the Chief Judge of each circuit. Each circuit will be researched for the possibility of tapping these funds for the Judicial Assistants' salaries.

The Judges decided that they would show Committee support for the Judicial Assistants by attending their conferences. The Chair will place it on her agenda to attend their next conference.

Some speculate that decision sank Judge Hyslop's judicial career.

"Judge always did what he thought was right, no matter what the public perception was," said the Judge's judicial assistant, Joannah Holt, who lost her job after 19 years with the court system. "Never in 15 years did Judge ever make a decision for public perception. Not a lot of people have that strength, that conviction," she added.

Several attorneys who appeared before Judge Hyslop over the years said they respected him as fair, even if they didn't always agree with his decisions.

"I never, never saw him lose his temper or raise his voice, when he had more than sufficient provocation to do so," defense attorney Jim Brown said. "He's scrupulous at protecting people's rights on the civil and criminal sides of the court."

Although the election results shocked and dismayed Judge Hyslop for a few weeks, he says he has

no regrets about his campaign nor a single case he decided over his tenure on the bench.

"A lot of times, I've ruled in ways I didn't think was the right way to rule personally, but I followed the law," Hyslop said. "What's legal and what's right are not necessarily the same things."

For most of his last month on the job Judge Hyslop resumed his quirky, laid-back and even irreverent demeanor in the courtroom.

"Ahh, the always official, but seldom accurate Florida driver's record," commented Judge Hyslop during traffic court hearings. He also advised two deadbeat dads they should seek the assistance of an attorney because they had been jailed longer than the maximum time allowed – 48 hours – without a hearing.

This year the Florida Supreme Court has suggested that Hernando County require an additional county judge to meet its increased court filings.

Judge Hyslop is interested in the new position if it becomes available.

Until that time, Judge Hyslop has applied for the job of School Board attorney. He said he might consider another political run for another office, but he's not sure what political party he would choose.

He has been registered as an Independent for years.

Editor's Note: The Conference of County Court Judges will truly miss Judge Hyslop. He has been an active contributing member for 15 years, serving on many committees and in many leadership capacities. He presented to the Winter Educational Conference on the issue of first appearance bonds, an issue which he has perfected. Good luck, Peyton!



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