Volume 3, Issue 2

Spring, 2014

The Florida Public Interest Journal

A publication of The Florida Bar Public Interest Law Section

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Message from the Chair

Anthony Musto
2013—2014 Chair
The Florida Bar Public Interest Law Section

On February 26 of this year, 182 Florida Bar members submitted a petition seeking to raise the cap on annual dues by $100.00, with any increase earmarked for The Florida Bar Foundation to use to provide legal services to the poor.

This proposal will undoubtedly spark controversy as there are certainly arguments both for and against a dues increase. In writing this column, I neither urge support for—nor opposition to—the proposal.

Instead, I write to urge everyone to keep in mind what should not be in dispute, the need to increase the availability of legal services to the poor—and to the middle class—as well as the obligation of the legal profession to address this need.

There are many problems in the world today. Hunger, homelessness, the designated hitter, to name a few. We lawyers share in society's obligation to something about these problems, but we have no greater obligation than do doctors, teachers, plumbers, or anyone else.

When it comes to the legal needs of the poor, however, we have a special obligation that others do not share. That obligation arises from the fact that society grants us, and only us, the power to address those needs. Anyone can work at a soup kitchen or help build a house for Habitat for Humanity (and all, including lawyers, should be encouraged to do so). But we are the only ones who can even enter the legal arena. Only we can fight the fights there. Only we can right the wrongs.

This power is truly a great one and, as it is said, with great power comes great responsibility. Our responsibility is to make sure that our power is used not just for those who can pay us for its use, but for those who have no voice as well.

All possible methods of achieving that goal should be explored. Those methods should include, but not be limited to, a dues increase. Other options, such as the Public Interest Law Section's suggestion that the Bar's Vision 2016 Project create a Legal Job Corps, should also be explored.

A Legal Job Corps would not only help our profession meet its obligations to the poor, but would also help lawyers as well.

In today's employment market, talented and capable law school graduates often find themselves unable to find jobs or having to settle for positions on the fringes of the legal profession. Moreover, experienced lawyers found themselves out of work. As a result, there is a glut of attorneys without clients. Yet, we also have a glut of clients without attorneys—the poor and members of the middle class who are not represented.

There has to be a way to get these groups together. A Legal Job Corps is one way to help bridge the disconnect that so clearly exists. Such a program would provide fellowships designed to allow the unemployed and underemployed attorneys to represent clients in return for enough of a stipend to put a roof over their heads and food on their tables.

The lawyers would hone their skills, gain experience, and make contacts, all of which would make them more marketable and thus help them find jobs.

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This publication was produced on behalf of The Florida Bar Public Interest Law Section by St Thomas University School of Law.

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When they do, their place would be taken by another of the endless parade of unemployed law school graduates.

Of course, such a program would require funding. That is where the Bar can play an important role. Whether by seeking and coordinating sponsorships and grants, a dues increase, allocating existing resources, lobbying for legislative appropriations, utilizing resources from The Florida Bar Foundation, affiliating with other groups, or employing some combination of these and other methods, this program can exist.

PILS cannot do much in terms of providing funding for a Legal Job Corps, but it can play a critical role in making sure that a program of this nature will succeed. Fellows should work through legal services offices, where they can get training and supervision (with some of the funding going to adding trainers and supervisors to existing staff), while also receiving deferrals or reductions in their student loan payments. PILS is in the perfect position to assist and coordinate these efforts.

The idea of a Legal Job Corps is gaining traction nationally. It is on the ABA's radar. But Florida need not wait for action at the national level. We can be very proud of the fact that over the years The Florida Bar and the Supreme Court of Florida have been leaders with regard to providing access to justice for the poor. If it is found that the creation of a Legal Job Corps should be part of the effort to address the need that now exists, we should not hesitate to take on the mantle of leadership once again. The petition to increase Bar dues should therefore not be viewed as a strict yes-no proposition. It should be used as a catalyst to make the Bar look at the question of how we as a profession are going to meet our obligation to the poor. That look should encompass all options and combinations of options.

In undertaking such a process, many questions would need to be answered. Here are a few to start with. Which would accomplish more, a Legal Job Corps or a dues increase? Would one lessen the impact of the other in the sense that a dues increase might dry up funding sources for a Legal Job Corps or the creation of a Legal Job Corps erode support for a dues increase? Would adopting either approach cause existing funding sources to be redirected on the theory that the need is being met, or largely addressed, by the Bar? Could the options be combined, with all or some of a dues increase funding a Legal Job Corps? Where is the economy going, and, if interest rates are going to rise (and, if you know the answer to that, please tell me so I can figure out what to do with my personal finances), will that make up for the fact that the problems have become much more acute recently due to economic factors that have reduced the levels of funding from sources such as The Florida Bar Foundation? Are there other alternatives that are better than either of these approaches or that can effectively be integrated with either or with a combination of the approaches?

Whether the need to provide the necessary legal services is addressed through a dues increase or otherwise, it must be addressed. The danger when there is a specific proposal, this one or any other, is that people on each side of the issue dig in their heels and lose sight of the big picture. It becomes about adopting the proposal or stopping the proposal.

In the coming months, as the dues increase proposal attracts attention and the inevitable debate ensues, PILS members may quite appropriately become involved in the fray. If you are one of those members, I urge to think in terms of working together with those who have different perspectives, keeping your eyes on the prize, and not becoming emotionally vested in either pushing through a dues increase or blocking one.

If we think in terms of solving or at least easing the problem, as opposed to thinking in terms of whether one particular approach should be adopted or not, we can make great strides. However those strides are taken, PILS can and should be one of the leaders of the march. I look forward to our section's efforts to help our profession recognize the problem, accept its responsibility to address it, determine the best way(s) to deal with it, and solve it. ▪

Hot Topics: News from Practice

New Health Coverage Option for Former Foster Youth

By **Amy Guinan, Esq.**
Guest Writer

One of the most popular changes under the Affordable Care Act (ACA) is the provision allowing young adults to stay on their parent's health insurance until age 26, but many people are unaware of a parallel provision in the ACA intended to help former foster youth access health insurance when they can't turn to their parents for insurance coverage. As of January 1, 2014, the ACA provides for Medicaid coverage for former foster youth who have aged out of the system until the age of 26. Unlike other ACA Medicaid expansion provisions that the Supreme Court determined were optional, all states are now required to provide this Medicaid coverage for former foster youth.

Young adults formerly in foster care are more likely than their peers to have a health condition that limits their daily activities, and they often struggle to find employment that includes health benefits. This new ACA Medicaid coverage option provides a much needed opportunity for health insurance to a group of young adults who seldom have supported or consistent access to health insurance. But unless eligible former foster youth are aware of this new coverage and know how to get enrolled, this ACA provision will become merely a missed opportunity.

Outreach and education on this coverage is critical to getting young adults enrolled. Listed below are some key facts and tips relating to eligibility and the application process. Please help spread the word about this new Medicaid coverage for former foster youth. Young adults formerly in foster care are eligible for Medicaid under the ACA if they:

- Are under the age of 26;
- Aged out of foster care at 18 or older;
- Were on Medicaid while in foster care; and
- Are not eligible for other Medicaid coverage (e.g. pregnant, parent, disabled).

To enroll in this new coverage in Florida, young adults are required to complete a regular Florida Medicaid application by:

- Applying online through the Florida Department of Children and Families (DCF) ACCESS website at: https://dcf-access.dcf.state.fl.us/access; or
- Contacting their local DCF ACCESS Office. (To find the nearest local office, call 211 from any telephone in Florida.)

While it is possible to apply for this former foster youth Medicaid coverage through the Federally-Facilitated Marketplace (FFM), DCF's ACCESS system is the recommended application process at this time. Due to delays in processing FFM applications, many applicants who applied for former foster youth Medicaid coverage through the FFM are still waiting for coverage. Young adults who previously applied through the FFM and are still waiting for a response, should apply again through DCF ACCESS. Completing a second application through ACCESS will not have a negative impact on a previous FFM application but may help the young adult access Medicaid coverage sooner.

For this coverage, "foster care" means licensed or unlicensed 24-hour substitute care for children placed away from their parents or guardians, for whom the DCF has placement and care responsibility. This includes, but is not limited to, placements in licensed foster family homes, group homes, emergency shelters, residential facilities and child care institutions, or placements in unlicensed homes or relatives or non-relatives.

Income does not impact eligibility for this coverage. Therefore, young adults formerly in foster care can work and earn income without fear of losing their Medicaid coverage. At this time, however, Florida's ACCESS application process does include income and tax filling-related questions applicants will have to answer in order to complete the application.

Children who were adopted or placed in guardianship prior to age 18 are not eligible for Medicaid under the former foster care coverage group. However, these individuals may be still eligible for Medicaid under a different eligibility group (e.g. if they are pregnant, a parent, or have a disability.) Young adults who were adopted prior to turning 18 can access health care coverage through their parents' private health insurance plans, if available. These young adults may also be eligible for lower costs on health coverage based on their income and household size. To find out if they are eligible for these lower costs and to learn more about other health insurance coverage options, they should go to the federal Health Insurance Marketplace at: www.healthcare.gov/marketplace.

Young adults formerly in foster care in other states are not eligible for this coverage in Florida. While the ACA provides states with the option of covering young adults formerly in foster care who have moved from other states, Florida has chosen only to provide this coverage to young adults who aged out of foster care in Florida.

For additional information about this coverage or if you encounter problems with the ACCESS application process, please contact Amy Guinan with Florida Legal Services, Inc. at: 1-800-436-6001 or amy@floridalegal.org. ▪

Amy Guinan, Esq. is an attorney with Florida Legal Services, Inc. and has been a member of the Florida Bar since 1998.

Florida Provides Legal Counsel for Children in Nursing Homes

By **Rebecca A. Gayoso**
Student Writer

The Florida Legislature recently enacted legislation to provide legal representation to medically fragile foster children who reside in nursing homes. Appropriation 744, which is a part of Senate Bill 1500, became effective as of July 1, 2013. It allows for funds, specifically $323,000.00 in recurring general revenue, to be allocated to the Justice Administrative Commission, which in turn contracts with the Guardian ad Litem Program in order to provide legal representation and counsel to Florida's medically fragile foster children.

Earlier in 2013, the Civil Rights Division of the Justice Department notified the State of Florida that its health care providers were violating the Federal Americans with Disabilities Act. This Act was created in order to protect people who are frail, disabled and vulnerable from being confined to living in large, isolated institutions. At that point in time, over 200 children, including infants and toddlers were being housed in adult nursing facilities.

The problem with housing children in these adult nursing homes is that these institutions are ill-equipped to care for the special needs of children. They receive no education, nor any form of physical or emotional nourishment, which is important for the growth of any child. Further, it costs more money to provide pediatric services in an adult nursing home, and according to the Justice Department, Florida failed to set aside enough money in order to pay for in-home nursing care for these medically fragile children, which would allow parents or guardians to care for these children at home.

The provision of legal assistance to these children is a critical step to ensuring that they are not unnecessarily confined to institutions. Children who are in dependency proceedings do not have parents who are willing and able to seek the legal assistance so desperately needed. This, coupled with the fact that medically fragile children have additional issues surrounding their condition, creates even more vulnerability for the children living in adult nursing homes. Legal counsel for these children is important to make sure proper services are in place, and to seek administrative hearings if the services are denied.

According to Robin Rosenberg, the Deputy Director of Florida's Children First, "It is important for the GAL program to be involved because they have an in-depth understanding of the legal and factual issues involved in these cases and are, therefore, in a better position to hire appropriate counsel than any other state agency."

Upcoming Disabilities Training Conference:

In addition to hiring attorneys for the medically fragile foster children, the language within Appropriation 744 anticipated that some of the funds would be allocated toward training programs. In conjunction with that anticipation, the Guardian ad Litem Program is preparing a two-day training event on representing children with disabilities. It will be held on Thursday, May 22, 2014 and Friday, May 23, 2014 at the JW Marriott Grande Lakes in Orlando, Florida.

The conference will be the first of its kind to bring together attorneys ad litem, attorneys and non-attorneys from government agencies, as well as private attorneys and others who work with dependent children with disabilities. Attendees of this conference can anticipate advancing their advocacy skills, gaining a better understanding of government agencies, developing connections among participants and agencies and sharing best practices across agencies, all in an effort to effectively improve outcomes for dependent children with disabilities. ▪

Growing Up Is Tough: Hopefully It Just Got a Bit Easier

By **Alexandra St. Pierre, Esq.**
Guest Writer

Several recent surveys have pointed to the idea that young adults in the United States receive varying amounts of support from their parents well into their 30s. Additionally, more scientific studies have additionally shown that the human brain doesn't fully mature until age 26. These studies highlight the common-sense idea that growing up is hard to do and even though turning 18 may be the legal marker of adulthood, a successful transition from child to adult requires numerous trials and errors and lots and lots of support.

On January 1, 2014, Florida law completely changed as a result of this newly accepted wisdom—a brand new law went into effect extending foster care to age 21, or age 22 for young adults with a documented disability. PILS has been a strong advocate for extending foster care, and had a longstanding legislative position on this issue. Now, a few months into the new year, it is becoming clear that while progress has been made, there is still a lot to be done.

Extended foster care (or EFC) provides many benefits to a young adult who was in licensed care on his/her 18th birthday.

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Growing Up Is Tough: Hopefully It Just Got a Bit Easier *Cont'd from page 4*

The Department of Children and Families (DCF), through its community based care lead agency, is responsible for ensuring that a young adult in EFC has a supportive living arrangement, receives case management services, has access to 24-hour crisis intervention and support, is taught independent living skills, and is given employment preparation. The only requirement for a young adult to be eligible for these services is that the young adult be enrolled in school full-time, working at least 80 hours per month, or attending a program that eliminates barriers to employment. Exceptions are made for young adults with documented disabilities or more temporary conditions that limit participation, such as recently giving birth or dealing with a substance abuse issue.

So far this year, a number of young adults have chosen to continue in foster care on their 18th birthday or to opt back in to foster care if they have already aged out. The main enticement of EFC has clearly been the housing component. However, one major problem that has arisen—or more accurately has clearly been on the horizon for a while—is the lack of available supportive housing for young adults 18 and over in almost all counties. Many young adults throughout the state are being placed in apartments on their own because there are no other housing options for them. While most young adults couldn't be happier to live alone in an apartment after spending years in group homes—many getting in fights and moving from home to home—the reality is that many would be better off in the traditional Transitional Independent Living homes where life coaches are on-site for most of the day and group activities include cooking classes, learning interviewing techniques, and trips to the movies. Somewhat out of touch with reality, the statutory preference for young adults opting into EFC is to be placed with, or remain with, a licensed foster family. Unfortunately, the majority of the older teens in licensed care are aging out from group homes, not foster families, and the scarcity of foster families that plagues younger children in care is even more pronounced for teens with mental health and behavioral issues. Additionally, because the group home licensing requirements have not yet been updated, many group homes feel that they cannot keep these foster youth past their 18th birthday and at the same time maintain their licensing. The end result becomes that even though DCF is responsible for finding and funding a home for a young adult in EFC, many young adults must still move out on their 18th birthday.

Another new program that went into effect at the beginning of the year is called Postsecondary Education Services and Support (PESS). PESS is a monthly stipend of $1,256 for young adults enrolled at least 9 credit hours in a postsecondary institution and who aged out of foster care after having spent at least six months in care, or alternatively, were adopted or placed with a court approved dependency guardian after turning 16 and spent at least six months in licensed care during the 12 months immediately preceding the adoption or placement with the guardian. This program replaces the former Road to Independence (RTI) program which provided a monthly stipend to young adults enrolled in *any* school fulltime (including high school and GED preparatory programs). While the requirements are somewhat stricter—a young adult must be in a postsecondary institution—a bonus of the PESS program is that a young adult is not required to undergo a needs assessment to determine the amount of her/his monthly award, as was the case with RTI.

So who gets left out of all these new benefits? The young adults placed in permanent guardianships or adopted after age 16 who are still in high school. Theoretically, these adoptions and guardianships are supposed to last for the rest of the child's life; however, in practice, many guardianships, and even adoptions, end almost as soon as the young adult turns 18. If these young adults are not in a postsecondary school, they do not qualify for EFC or PESS because they did not age out in foster care and they are not yet ready (and may never be ready) to attend a postsecondary school. The silver lining is that they may still qualify for Medicaid until age 26 under the Affordable Care Act.

While this short article has mainly highlighted some of the problems with the new EFC and PESS legislation, there is a lot of good coming out of the new laws. The goal of this article is simply to call attention to the issues that we still face in the hopes that attorneys will begin to come up with better solutions. So what could help? More (or really, *any*) money. Additional dedicated and trained families willing to care for older teens—and willing to keep them past 18. New legislation filling in the gaps for children in permanent guardianships or who were adopted. And attorneys for transitioning youth to advocate for each young adult as they face the challenges of adulthood. ▪

Alexandra St. Pierre, Esq. is an Equal Justice Works Fellow at the Legal Aid Society of Palm Beach County, Inc., sponsored by the Florida Bar Foundation and Greenberg Traurig, LLP. Her fellowship specifically focuses on providing holistic direct legal representation and systemic advocacy to young adults who are aging out or have aged out of foster care to preserve their legal rights and ensure a more successful transition to independence.

Senseless Violence: Most Violent Acts Against Homeless People Occur In Florida

By **Alison Morris**
Student Writer

On December 13, 2013, the National Coalition for the Homeless (NCH) released its newest report on hate crimes and violence against homeless people in America. Titled *Senseless Violence*, the report had several horrors to recount, such as a serial killer targeting the homeless as a "public service" or a homeless woman being set on fire. What was especially notable for Floridians, however, was the fact that, for the year 2012, Florida had more than double the violent acts on homeless persons than any other state in the country.

Most of the report's information comes predominantly from news reports (both national and local), homeless advocates and those involved in service toward and the awareness of homeless persons in the country, and homeless people themselves. Based on this information, it found that, within Florida, 15 violent acts against homeless people occurred in 2012 alone. The next highest offender, California, only experienced seven attacks on homeless people – less than half Florida's number. In the past 13 years, the two states were the largest contributors to violent attacks on homeless people in America, with the combined total of attacks nearing 500, and Florida being the worst.

Michael Stoops, the Director of Community Organizing for NCH, is especially concerned. "Despite the fact that homelessness was added on October 1, 2010 as a category that should be protected by Florida's hate crimes law," he noted, "the number of attacks against homeless individuals in the state has essentially remained consistent. Florida has had the most attacks of any state in six of the last eight years (2005 through 2012)."

The NCH explains the relatively high number of attacks as being a result of laws criminalizing homelessness in Florida. Many cities in the two states, according to the report, have enacted anti-camping, panhandling, and anti-food sharing laws, along with other restrictive laws. Beyond the NCH report, a report titled *Homes Not Handcuffs* named three California cities and four Floridian cities as some of the ten meanest cities in America. The result of these laws is not that the homeless people disappear.

In a Nutshell

The National Coalition for the Homeless reported over the past 14 years:

- 1,328 acts of bias motivated violence on the homeless occurred nationally.
- 327 of these attacks were fatal.
- Attacks occurred in 47 states, as well as Puerto Rico and Washington, DC.
- Florida had the second highest attacks—217 between 1999 and 2012.

In 2012:

- 72% of victims nationwide were over 40.
- 21% of all attacks ended in death.
- Florida had more than double the attacks of any other state—15—while the next highest was California with 7.

Instead, the NCH explains, it tells the public that "homeless people do not matter and are not worthy of living in our city" – a demeaning tactic that they believe leads to violent attacks.

And these violent attacks, it appears, are happening quite often in Florida. In the report's section detailing lethal violent attacks on homeless people, three of the seventeen murders occurred in Florida. In the non-lethal section, nine Floridian attacks are recounted in areas including police brutality, assaults with a deadly weapon, beatings, and multimedia exploitation (where a homeless person is beaten up on video, to be posted on social media). The inhumanity of these acts shows clearly how bad the problem of violence against homeless persons has truly become in Florida.

What we do about it, however, is another story. In its last section, the report applauds Florida for adding "homeless status" to its state hate crime legislation in 2010. But, it notes, the state could go a step further in requiring the "compilation of hate crimes data against the homeless, procedures for their distribution, and data analysis."

Luckily, we are on our way to doing so. PILS was a longstanding advocate of adding homelessness as a protected class under Florida's Hate Crimes Law, and now is taking up the cause of ensuring that the state collects and reports hate crimes data for homelessness. ▪

PILS Advocating for Florida to Report Data on Hate Crimes for all Protected Classes

By **Alison Morris**
Student Writer

Despite a recent amendment to the Florida Hate Crimes Statute including homeless status as a protected category, there is still no accurate data on hate crimes against homeless people reported by the Florida Attorney General's Office (AGO). As a result of incongruities between the Hate Crime Statute and the Hate Crimes Reporting Act, crimes that evidence bias against homeless people are left out of the state's annual hate crime reports – allowing a large criminal trend in Florida to be almost wholly ignored.

In 2010, the Florida Hate Crime Statute was amended to include homeless status as a category of hate crimes. The Statute now reads that a felony or misdemeanor will be reclassified as a hate crime if there is evidence of prejudice based upon "race, color, ancestry, ethnicity, religion, sexual orientation, national origin, homeless status, mental or physical disability, or advanced age of the victim." § 775.085(1)(a), Fla. Stat. (2013). However, the Florida Hate Crimes Reporting Act, which requires the Governor, through the Florida Department of Law Enforcement (FDLE) to "collect and disseminate data on incidents of criminal acts that evidence prejudice based on race, religion, ethnicity, color, ancestry, sexual orientation, or national origin." § 877.19 (2), Fla. Stat. (2013) The Hate Crimes Reporting Act does not require reporting of crime based on homeless status – nor those based on advanced age or physical or mental disability of the victim.

Much of this problem stems from the fact that the Hate Crimes Reporting Act was last amended in 1996, prior to the categories of homeless status, mental or physical disability, or advanced age of the victim being added as protected classes under Florida's Hate Crimes Act. As a result, there is no legal requirement that the FDLE collect data on incidents of criminal acts that evidence prejudice based on those categories.

Yet, it is only crimes based on homeless status of the victim that is excluded from the state's Hate Crime Reports. The AGO (based on data collected from the FDLE) has reported incidents that evidence prejudice based on disability and advanced age every year starting with the 2000 Hate Crimes Report (2000 was the first year at least one incident was reported based on disability, and 2001 was the first year at least one incident was reported based on advanced age). The Attorney General noted the discrepancy in the Statute and the Reporting Act in 1999, using it as a reason for not including advanced age and disability in the 1999 Hate Crimes Report. Now, there is a similar addendum to the report, explaining the absence of homelessness.

However, there is no explanation as to why advanced age and disability have been included every year since 2000 (despite being omitted from the Reporting Act) but homeless status is left out. What is clear, however, is that the problem of hate crimes against homeless persons in Florida goes almost entirely unreported.

"Since the passage of the hate crimes law, Florida law enforcement officials have not reported a single hate crime against a homeless person," reports Michael Stoops, the Director of Community Organizing for the National Coalition for the Homeless. As a result, he says, they are "allowing the perpetrators of homeless hate crimes to escape legal consequences."

Understandably, Stoops and the NCH find the inadequate enforcement of Florida's statues to be inexcusable. To combat the oversight, Stoops said, "NCH will continue to lobby for voluntary compliance from local officials until the hate crimes law is amended to require that incidents of hate crimes against the homeless are reported by law enforcement agencies."

Hopefully, however, they will not have to wait long. At their mid-year meeting on January 24th, the Executive Council of PILS approved a legislative position proposed by the Committee on Homelessness, which will ensure Florida's Hate Crimes Reporting Act is consistent with Florida's Hate Crimes Law by requiring reporting on all protected classes. Once the legislative position is approved by the Board of Governors, PILS can engage in legislative advocacy on this issue and the discrepancy between the two laws can be resolved, requiring data on hate crimes against homeless persons in Florida to be collected and reported. ▪

Side Project Inc.: Helping People and Organizations That Help Others

By **Jeff Fromknecht, Esq., MSW**
Guest Writer

Side Project Inc. is a tax-exempt organization whose mission is to help develop socially-minded ideas into sustainable projects that have a positive impact on the community. Side Project is led by co-founder and President Jeff Fromknecht, a social worker with a law license, and has offices in South Florida and Western Pennsylvania.

In 2009, while in law school, Fromknecht organized a group of his most civically minded friends to have a conversation about how to best leverage their combined education and experience to make a positive impact on the community. They had all volunteered at several small and grassroot nonprofits run by the passion and energy of volunteers. As grant writers, lawyers, accountants and IT specialists, they were often asked to help with administrative side projects. Their experience taught them that many nonprofits and grassroot efforts operate big ideas on small budgets.

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Side Project Inc.: Helping People and Organizations That Help Others

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Jeff Fromknecht,Esq., MSW

Organizations are kept afloat by the dedication and passion of staff and volunteers. With small operating budgets, many nonprofits cannot afford to hire a lawyer, development director, grant writer, or a quality assuance manager. Even worse, legal and administrative tasks are often ignored or completed incorrectly. After three years of informally providing support for nonprofits on legal and administrative side projects, Fromknecht and his friends incorporated their idea into Side Project Inc., a nonprofit corporation with a vision of effecting long-lasting macro social change by supporting the nonprofit and philanthropic community.

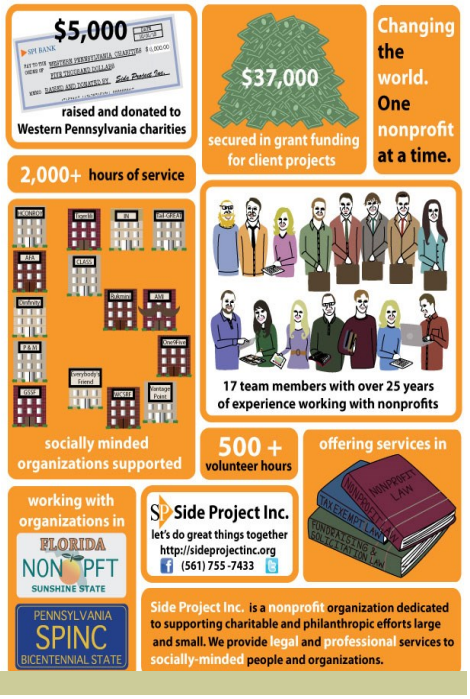
Today, Side Project supports small nonprofits and socially-minded grassroot projects by taking care of their legal, development, evaluation, and miscellaneous administrative side projects. By allowing its clients' staff to spend more time working in the community, Side Project helps to enhance the social impact of the organizations it works with.

Many of Side Project's activities are provided pro bono through a network of volunteers in both Pennsylvania and Florida. Side Project serves as a hub of volunteerism and civic engagement, providing opportunities for young professionals to give back to the community by taking on a charitable side project and volunteering some of their time to support a nonprofit in need.

The original group of seven volunteers has grown to more than 17 and is now called the Action & Advisory Committee. The committee has lawyers licensed in both Florida and Pennsylvania and professionals in business, human resources, accounting, finance, information technology, development, marketing, and graphic design. This eclectic team has experience working at and with nonprofits in a variety of roles and is able to offer a variety of resources and advice.

Side Project's newest project is the VisitABLE Project, which is focused on helping the community understand the Americans with Disabilities Act (ADA). Side Project is partnering with John Tague, a Disability Policy Analyst, to plan a series of community forums and public education opportunities. These forums will provide education on the technical aspects of the ADA as well as the psychosocial aspects of inclusion.

You can learn more about Side Project Inc., its work, and its volunteer program at sideprojectinc.org or follow them on Twitter @sideprojectinc. ▪



Florida Lawsuit Seeks Marriage Equality for Same-Sex Couples

By **Suzette M. Reyes**
Student Writer

As of February 2014, seventeen states, including the District of Columbia, now recognize same-sex marriage. Some of the remaining states that continue to not recognize same-sex marriage have begun the process of removing the ban altogether or have begun to recognize same-sex unions. A recent wave of decisions throughout the United States has been in favor of same-sex marriage. Federal district court judges in states such as Utah, Oklahoma, Kentucky, Texas, and Virginia have all struck down laws that ban same-sex marriage. Given the current rise in same-sex marriage lawsuits filed nationwide, this trend could lead to the removal of the same-sex marriage ban in Florida and the remaining states that presently do not recognize same-sex marriage.

On January 21, 2014, thirteen plaintiffs filed a lawsuit in Florida challenging the state's ban on same sex marriage. The plaintiffs include six same-sex couples and the Equality Florida Institute, Inc., and they are suing Harvey Ruvin in his official capacity as the Clerk of the Courts of Miami-Dade County, Florida, for the denial of marriage licenses to same sex couples. The Equality Florida Institute, Inc. is Florida's LGBT advocacy organization. These plaintiffs argue Florida ban on same-sex marriage is unconstitutional because it infringes their fundamental right of marriage.

These six couples vary in the duration of their relationships and the size of their families. The majority of these plaintiffs have children and have expressed in the complaint that without the ban being lifted on same-sex marriage, their children may experience a lack of family autonomy that is present in traditional families. This complaint is similar to the Virginia case, *Bostic v. Rainey*, issued on February 13, 2014.

The U.S. District Court Judge for the Eastern District of Virginia held that under Article I section 15-A of the Virginia Constitution and any other Virginia laws that ban same-sex marriage or the laws that prohibit the recognition of same-sex marriages from other jurisdictions were unconstitutional.

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Florida Lawsuit Seeks Equality for Same-Sex Couples

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The District Court of Virginia stated that those laws deny Plaintiffs their rights to Due Process and Equal Protection that is guaranteed under the Fourteenth Amendment of the United States Constitution.

The Plaintiffs in the Florida complaint seem to be arguing that same rights denied to them are those that were denied to the Plaintiffs in *Bostic v. Rainey*. The complaint alleges that the state's ban on same-sex marriage deprives same-sex couples of their fundamental right to marriage and infringes upon their constitutionally protected interest in liberty, dignity, privacy, autonomy, family integrity, and intimate association.

These plaintiffs are requesting the Court to declare and issue a mandatory injunction requiring the Clerk of Courts of Miami-Dade County, Florida, the Defendant, to issue marriage licenses to each of the Plaintiff couples. The Plaintiffs also request that the exclusion of same-sex marriage under Article I, Section 27 of the Florida Constitution and the portions of Florida Statute section 741.04 and 741.212 that also exclude same-sex marriage in Florida to be held as unconstitutional for violating the Due Process and Equal Protections Clauses of the Fourteenth Amendment of the United States Constitution.

The National Center for Lesbian Rights (NCLR) will represent the couples, along with attorney Elizabeth F. Schwartz, and attorney Mary B. Meeks, and the law firm Carlton Fields Jorden Burt, P.A.. The NCLR had a press release on their website, http://www.nclrights.org/, the day the complaint was filed. The NCLR press release had a quote from their Legal Director Shannon Minter, who stated "the law should support families, not make it harder for committed couples to support one another and protect their children. Barring same-sex couples from marriage causes great harms to their families and children while helping no one." ▪

Landmark *Pottinger* Agreement Amended

By **Tim Kavaklian-D'Annecy**
Student Writer

The City of Miami recently made headlines when it moved to reopen a longstanding consent decree that protects the rights of homeless residents of the City. In 1992, the U.S. District Court for the Southern District of Florida issued a landmark ruling in the case *Pottinger v. City of Miami* in favor of a class of approximately 6,000 homeless individuals that found the City's practice of arresting homeless individuals for the involuntary, harmless acts they are forced to perform in public was unconstitutional. The Court also held the City's practice of seizing and destroying homeless persons' personal property violated the Fourth Amendment of the U.S. Constitution. After more than a decade of litigation, the case was settled by consent decree that provided homeless residents protection from arrest by Miami law enforcement officers for "life sustaining activities", including sleeping, bathing, urinating/defecating, changing clothes, and other essential functions of daily living. To create these protections, the settlement implements training standards, defines operational protocols, and creates an advisory committee to evaluate and enforce compliance.

Pottinger has long been considered the gold standard of civil rights litigators who seek to protect homeless individuals from being punished for their status. The definition of "life sustaining activities" used in *Pottinger* creates a system of visible protections for actions which homeless individuals require to survive. *Pottinger* also addressed an issue that has increasingly plagued cities across the nation: the use of the criminal justice system to punish people for engaging in essential, life-sustaining activities rather than pursuing solutions that address the causes of homelessness. While other cities pursued aggressive law enforcement strategies that criminalized homelessness by targeting homeless people for sitting, sleeping, camping, "storing" personal property in public, "improper use" of bathrooms or public urination/defecation in the absence of access to bathrooms, the City of Miami refrained from such tactics due to the robust legal protections guaranteed by *Pottinger*.

In September 2013, the City of Miami filed a request to revise the Pottinger consent decree citing a need to address demographic changes in both general and homeless populations in the area and the need to update some protections that have changed over twenty years. City Commissioners stated a desire remove certain protections, for example by allowing officers to search, seize and destroy backpacks and other personal bags citing a need to increase counter-terrorism in the wake of the 2013 Boston bombings. They also indicated removing protections from public defecation/urination charges for public health and safety concerns when a public restroom was within a mile away.

The ACLU of Florida opposed the City's motion, citing concerns about an increase in the ability for officers to search and seize property and also fearing a potential domino effect in other cities which use *Pottinger* as the basis for their policy for homeless residents; a rollback in protections in Miami may signal a wave of similar rollbacks in other municipalities.

In response to the filings, U.S. District Court Judge Moreno ordered mediation, and an agreement was reached between the ACLU and the City of Miami in December 2013.

Landmark Pottinger Agreement Amended
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Landmark *Pottinger* Agreement Amended

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The agreement was approved by the Miami City Council in a closed-door session on January 12, 2014. Councilmembers placed a two-year moratorium to reopen *Pottinger*.

Most of the original safeguards remain, but changes to the original 1998 agreement rollback a few protections. Notable changes include a removal of protections for erecting tents in public areas, cooking over an open fire in public areas, and littering within 300 feet of a trash can. The most striking rollback is the removal of all protections under *Pottinger* for homeless residents who have been convicted of sex offenses. Residents can be arrested for the life sustaining misdemeanors and must adhere to pre-*Pottinger* public decency laws.

The Florida ACLU agrees the revisions to the consent decree reflect the changing conditions in the region, but Associate Legal Director Maria Kayanan commented, "...no accord reached could have solved the issue of homeless sex offenders until the County repeals its draconian 2500 foot sex offender residency restrictions or safe and permanent housing is build that will provide lawful residences for men and women who have served their sentences but have no place to live. The ACLU will continue to urge the County to revisit its residency restrictions, and to take whatever action is available to put an end to the local and state laws that are the root cause of homeless among former offenders." ▪

Florida Works to Combat Human Trafficking

By **Jasmine Esmailbegui**
Student Writer

Trafficking is modern day slavery. The National Human Trafficking Resource Center reports that there are 27 million enslaved persons worldwide today. The human trafficking industry is believed to produce $32 billion in profits annually, with $15.5 billion made in industrialized nations. These yearly profits exceed those of Ford, Exxon, and Apple and are second only to drug trafficking.

Florida is a hub for human trafficking due to its various industries, extensive coastline, and presence of major airports. As of 2011, Florida ranked third in the nation in terms of the number of calls made to the national human trafficking hotline annually. Florida has between 30,000-40,000 runaways at any given time, and about one-third of children are coerced into prostitution within the first 48 hours of living on the street. Human trafficking hides in Florida within strip clubs, massage parlors, restaurants, agricultural businesses, private homes, and in many other arenas. Once trafficked, a victim will die in an average of seven years due to factors such as violence, rape, alcohol and drug use, and untreated disease.

Human trafficking involves the obtainment and harboring, through coercion, fraud, or force, of a person for labor and services; it includes both sex and labor trafficking, especially in the commercial sex and agricultural industries. In 1999, during a home visitation in response to a report of domestic violence, Florida Coalition Against Human Trafficking founder Anna Rodriguez stumbled upon a young woman who had been trafficked from Guatemala. The woman was coerced into domestic servitude and had endured sexual abuse at the hands of her trafficker, but Rodriguez helped rescue her from this situation. This case, *U.S. v. Tecum*, was the first high profile case of human trafficking in the State of Florida and led in part to the nation's first legislation regarding this issue passed in 2000 – the Trafficking Victims Protection Act (TVPA).

Four years after the TVPA of 2000 passed, Florida enacted its own law to criminalize trafficking. In 2007 Bill McCollum, Florida's Attorney General at the time, released a statement calling this crime "one of the worst offenses against human dignity" and placing his confidence in Statewide Prosecutors to pursue these types of cases. Despite this, research has shown that statewide prosecutors are largely reluctant and unaware regarding this issue, and they typically lack the resources and training to prosecute trafficking cases.

In 2012, the Florida Legislature passed several pieces of legislation targeting human trafficking including the Safe Harbor Act, which prevents law enforcement from treating child victims as criminals. Effective January 2013, this law prohibits arrest or placement of trafficked children in juvenile correctional facilities, instead directing officials to take them to a safe facility for treatment. In May of last year, Governor Rick Scott signed new legislation to help victims expunge criminal records they obtained while in their period of victimization and to keep their records private.

Attorney General Pam Bondi, since taking office in 2011, has advocated heavily to end human trafficking in the State of Florida. "Human trafficking robs people of their dignity and deprives them of their most basic human rights," Bondi once said. In the last few months, forty-seven state and territorial attorneys general, including Pam Bondi, have called for Congress to fund programs authorized in the Trafficking Victims Protection Reauthorization Act. Bondi insists that "combating human trafficking requires national support." Bondi has also worked to train law enforcement, engage business owners, and raise awareness throughout the State of Florida.

Should a situation arise in which you suspect someone is a victim or perpetrator of human trafficking, please call the Florida Abuse Hotline: 1-800-96-ABUSE or the National Human Trafficking Hotline: 1-888-373-7888. ▪

New CMS Regulations on Home and Community-Based Services

By **Nancy E. Wright, Esq.**
Guest Writer

Effective March 17, 2014, the federal Centers for Medicare and Medicaid (CMS) implemented a set of regulations that make some significant changes and additions to Medicaid home and community-based services (HCBS). The subject of these new regulations can be divided into three general categories:

A. Changes to service requirements for HCBS Waiver programs (42 CFR §441.301(b)(1)(i), (b)(6), and (c); 441.530)
B. Expansion of CMS oversight of HCBS Waivers and ability to devise sanctions (42 CFR §441.302, 441.304)
C. Addition of regulations that will allow states to offer HCBS as part of a State Plan Amendment (42 CFR §§441.700, et seq.; new Subpart M)

A. HCBS Waiver Changes

The changes focus on two areas: Person-Centered Planning (PCP) (42 CFR §441.301(c)(1)-(3)) and Home and Community-Based Settings (42 CFR §441.301 (c)(4)-(6) and 441.530). HCBS Waiver programs that submit new or renewal applications with CMS after the effective date of these regulations have to submit a transition plan to comply with the regulations. Otherwise, transition plans for existing HCBS waivers must be submitted within 12 months. Transition plans must be publically noticed and fully available for public comment.

Person-Centered Planning:

A detailed person-centered planning process is now described, to be led by the individual (and his or her legal representative) to the maximum extent possible. A "person-centered service plan" (PCP) must be developed at least annually, with the assistance of a case manager who is free from conflict of interest with service providers. §441.301(c)(1)(vi) (This may be an issue with the current set-up under Florida's Long Term Care Waiver which uses case managers employed by the managed care organization.)

The PCP must be based on an assessment of functional need and individual preferences and "reflect that the setting in which the individual resides is chosen by the individual." §441.301(c)(2)(i). PCPs should also include back-up plans and set out both paid and unpaid services, be written in plain language, and be finalized with informed consent and distributed to everyone involved.

Home and Community-Based Settings:

These CMS regulations reflect a shift from defining "community-based" facilities centered on location and size, to an emphasis on whether the individual has actual access to and integration with people who aren't on the Waiver. Certain settings are excluded: nursing facilities, hospitals, and institutions for persons with mental illness of intellectual disability. Other settings with "qualities of an institution" that have "the effect of isolating individuals" from people not on the Waiver are presumed not to be a HCB setting, unless proven otherwise "under heightened scrutiny."

The importance of a HCB setting extends beyond where a client lives: the regulations now require that "attendant services and supports" must be made available in a HCB setting. This would include, for instance, adult day training and supported employment settings. HCB settings "must have all of the following qualities":

- Integration and support to the "greater community" including opportunities to seek employment, engage in community life, control personal resources and receive services in the community to the same extent as non-Waiver people.
- Options (documented in the service plan) that include non-disability specific settings and an option for a private unit in a residential setting (depending on resources for room and board).
- Rights of privacy, dignity, respect and freedom from restraint or coercion.
- Independence, as much as possible, in life choices, including daily activities, physical environment and with whom to interact.
- Choice of services, supports and providers are facilitated.

For HCB residential facilities (those owned or controlled by a provider), HCB setting requirements set out much greater autonomy for the client and protections from eviction "under a legally enforceable agreement" with at least the same protections as provided by the state's landlord tenant laws.

A client living in a residential facility also must have:

- Privacy in their sleeping or living unit (lockable entrance doors with only "appropriate staff" having keys "as needed," choice of roommate if sharing rooms, freedom to decorate within terms of lease, freedom and support to control schedule and activities)
- Access to food at any time
- Visitors of their own choosing at any time
- Physical accessibility

Any modifications to the residential facilities requirements must be supported by "a specific assessed need" and justified in the client's service plan. Justification includes documentation of supports and interventions used, less intrusive methods, ongoing data on effectiveness of the modification, periodic reviews, informed consent, and assurance of no harm.

B. Expansion of CMS Oversight

New Compliance Strategies

In the past, CMS has had few options to enforce state compliance with federal requirements. Essentially, CMS could only terminate the program, a threat no one was willing to carry out. Under §441.304(g), if CMS finds substantive non-compliance, CMS may "employ strategies to ensure compliance" or "terminate the waiver." Strategies may include:

- A moratorium on enrollment
- Withholding a portion of Federal payment
- Other corrective strategies appropriate to ensure the health and welfare of waiver participants

New CMS Regulations Cont'd on page 12

New CMS Regulations on Home and Community-Based Services

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The regulations seem to set out a two -step notice process when compliance issues arise, give the agency an opportunity for hearing on both the finds of non-compliance and on the type of strategy employed.

Waiver Modifications or Amendments

The regulations now add provisions that clarify amendment or modification of waiver applications. §441.304(d). For substantive changes, amendments may not be retroactive but only take effect on or after the day of approval. Substantive changes include (but aren't limited to):

- Reduction or elimination of services
- Reduction in amount, duration and scope of any service
- Change in qualifications of service providers
- Change in rate methodology
- Constriction in eligible population.

States are required to publicly notice and allow for input on significant proposed changes, whether by renewal application or proposed amendment. 42 CFR §441.304(e) – (f).

C. State Plan Amendment for HCBS Option

Under §1915(i) of the SSA, which was added in 2005, states can *choose* to offer HCBS as an option under State Plan Medicaid, rather than using a waiver application. One big difference is that State Plan HCBS would NOT require an institutional level of care to qualify. The thought was to provide home care or support before an individual's situation deteriorated, making this ideal for treatment of mental illness or substance abuse disorder, for example. The Affordable Care Act corrected some of the features of §1915(i) that made states shy away. Those changes, implemented in the new regulations, now allow states to target specific groups defined by any combination of age, diagnosis, disability, or Medicaid eligibility group. §441.701(e)(2). States can allow financial eligibility of up to 150% of the Federal Poverty Level, with the less stringent level of care requirement. In addition, states can use this program to whittle down wait lists for Waiver programs by allowing eligibility for Medicaid institutional placement – up to 300% of the SSI benefit rate – as long as the individual qualifies for a waiver program but isn't receiving services.

The state can modify the criteria, without CMS prior approval, if the number enrolled for the State Plan HCBS "exceeds the projected number submitted annually to CMS." Room and board is not covered by the federal share, except for temporary respite and meals provided as a standard protocol of adult day or another service. Person-centered planning and HCBS setting requirements are applied to State Plan HCBS as well as HCBS waivers. ▪

Improving Access to Higher Education for Florida's Foster Youth

By **Krisel McSweeney**
Student Writer

Higher education is a ticket to an opportunity that is out of reach for many current and former youth in foster care, but Florida's Children First ("FCF") hopes to change that. In 1988, Florida enacted its first law providing a tuition and fee exemption to invest in the future of certain individuals who otherwise would not have access to post-secondary education. To make tuition fee exemption more accessible for eligible youth and adoptive parents, the law underwent many significant changes. Essentially, current and former foster youth who meet certain qualifications enumerated in the statute are eligible to be exempt from the payment of tuition for postsecondary career programs, Florida College System institutions, or state universities.

Despite the availability of a tuition and fee exemption, only 15% of the current foster youth take advantage of the exemption. FCF's goal is to change this statistic, and the organization recently issued a white paper on this issue titled "Tuition & Fee Exemption for Florida's Foster Youth." FCF's white paper analyzed reasons for low rates of usage of the exemption and suggested changes that can be implemented to achieve greater participation of foster youth in this program. Findings by FCF show that the 11 universities, which make up the State University System, are not successfully promoting and accurately communicating information pertaining to the tuition fee exemption opportunity afforded to foster youth. Additionally, some colleges that promote the tuition and fee exemption have incorrect information or have burdensome paperwork requirements.

Young adults who qualify for the statutory tuition and fee exemption are limited to four categories: a student who is or was at the time he or she reached 18 years of age in the custody of the Department of Children and Family Services or who, after spending at least 6 months in the custody of the department after reaching 16 years of age, was placed in a guardianship by the court and a student who is or was at the time he or she reached 18 years of age in the custody of a relative under s. 39.5085 or who was adopted from the Department of Children and Family Services after May 5, 1997. Apart from the statutorily defined categories of youth who qualify for tuition exemption, there are a number of youth who were in state care, but who are not eligible for the exemption. Additionally, the tuition exemption is limited to 120 credit hours, which in some cases is insufficient to complete an undergraduate degree.

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Improving Access to Higher Education for Florida's Foster Youth

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Though the number of youth who take advantage of the tuition and fee exemption has increased throughout the years, only 3,448 students out of a possible 22,638 total eligible use tuition exemption, which is 15% of the qualified population. FCF suggests strategies to address this issue. First, eligible youth need to be informed about the availability of the tuition exemption and the exemption should be more accessible by decreasing the amount of unnecessary and onerous paperwork and simplifying the process. Additionally, the allowable credit hours should be increased in order to accommodate the needs of foster youth and ensure the completion of an undergraduate degree. Finally, the state should consider adding categories of youth that were in state care and do not currently qualify under the statutory requirements.

A bill recently filed by Senator Detert (R- Sarasota) includes many of the suggestions made by FCF, such as expanding the categories of qualified youth, prohibiting restriction on the number of hours that can be completed under the program, requiring Florida College System institutions and state universities to adopt rules and regulations for tuition fee exemption and requiring financial aid counselors to contact youth that may qualify for tuition fee exemption and advise them of this opportunity. Robin Rosenberg, Deputy Director of FCF stated, "We were very excited when the bill was filed and regardless of whether it passes, we hope it will prompt everyone involved to work harder to ensure that the young people who are eligible have access to tuition exemption." Overall, change must be implemented so foster youth can take advantage of the opportunity offered by the state of Florida to access higher education. ▪

What Is Up With Medicaid?

By **Nancy E. Wright, Esq.**
Guest Writer

Developmental Disabilities Waiver and iBudget Implementation

Effective July of 2010, the Florida Legislature directed the Agency for Persons with Disabilities (APD) to redesign its Medicaid Waiver program for providing home and community-based services to persons with developmental disabilities. The new program, called "iBudget," involves completely new criteria for determining an individual's budget and new service families.

Notice problems

APD started transitioning its 30,000 clients into iBudget in April of 2012. About 40% of those clients got notices that their current level of funding would be reduced. The notices did not give individual explanations of how APD determined that person's funding amount, or why APD believed that a reduction would be justified. In addition, notices were not sent to the guardian advocates of the client, nor were they sent in the client's primary language.

A class action lawsuit was filed in federal court challenging the adequacy of these notices. *Moreland v. Palmer4:12-cv-00585-MW-CAS*. After a full evidentiary hearing, a preliminary injunction was entered finding substantial likelihood of success on the merits and enjoining APD from reducing the funding of the named Plaintiffs until sufficient notice was given. APD then entered a class settlement agreement to:

- Reinstate services to those clients who had their funding reduced
- Send an Amended iBudget Notice to everyone who got an earlier notice of reduction, fully explaining how APD arrived at the funding amount and why it believes the reduction is not justified by "extraordinary needs
- Send the new notice to all legal representatives and in the client's primary language

The new notices will also clarify an important issue: whether and how APD could seek recovery of funds spent continuing services pending a hearing. In the initial notice, APD merely said that it could recover if APD ultimately won at a hearing. In the Amended Notice, APD now clarifies that recovery cannot be obtained from legal guardians or family members, nor can it be taken out of a client's Medicaid benefits.

Rule problems

APD rolled out its iBudget program without adopted rules. Proposed iBudget rules were not published until August of 2012, four months after implementation of iBudget began. These proposed rules were challenged and changed three times. After a lengthy evidentiary hearing on the last set of changes, the ALJ issued a Final Order that the rules were a valid exercise of delegated legislative authority, making the rules effective in October of 2013.The Final Order is on appeal with the First District Court of Appeal. *G.B., Z.L., et al. v. APD*, 1D13-4903.

Service request problems

Even before iBudget, APD instituted cost cutting measures that made it much more difficult to receive an increase in funding. Under a "cost plan freeze," DD Waiver clients were asked to justify any increase as a "crisis," using rules developed to prioritize crisis enrollment applications. In addition, APD developed pages of procedures for documenting the request and had multiple levels of review. The result was so-called "crisis requests" that were pending for up to two years.

The long delays and strict criteria were challenged in federal court as violations of Medicaid's reasonable promptness and comparability requirements. *Wheaton v. Palmer*, Case No. 4:13-cv-00179-MW-CAS. In a Settlement Agreement, APD agreed to:

- Adopt time limits for review, document requests, and respond in writing
- Develop statewide tracking of requests, with monitoring by Disability Rights Florida for a year

What Is Up With Medicaid?
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What Is Up With Medicaid?

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- Implement the approval criteria for supplemental funding under iBudget
- Allow for approval emergency funds, as needed, at the Regional Offices while service requests are pending

Transition to Medicaid Managed Care

In 2011, the Florida Legislature adopted the Medicaid Reform Act, which requires most Medicaid recipients to enroll in a managed care organization (MCO). Florida is rolling out these requirements in two separate parts: (1) Medicaid Long Term Care (LTC) programs, including nursing home care and almost all home and community-based waiver programs that serve the elderly; and (2) Medicaid Medical Assistance (MMA), like hospitalization and physician visits, for most, but not all, Medicaid recipients.

LTC rolled out first, with the last region enrolled December 1, 2013. MMA is right on its heels, with implementation between May 1st and August 1st of 2014. The state was divided into 11 regions, each with a certain minimum number of MCOs ranging from 2 to 7, depending on population. (From 2 to 7 for LTC; and 2 to 10 for MMA.) There are currently separate MCOs for LTC and for MMA. For LTC, there are 7 MCOs now operating under a contract with the Agency for Health Care Administration (AHCA) and 14 MCOs for MMA.

Advocates are trying to monitor these programs as Medicaid recipients are being enrolled across the state. Please be alert for:

- Disruptions in services due to delays in prior authorizations
- Incomplete, vague or inadequate "plan of care" for consumers receiving home and community-based services
- Pressuring consumers to undertake assessment or approve a plan of care without the presence or assistance of legal representatives or requested family members
- Confusing or misleading information given to consumers through Choice Counseling or by MCO representatives
- Inadequate or inaccurate notices of MCO decisions
- Failure to continue services when requested while an appeal or fair hearing are pending
- Problems with transitions from one waiver to the new LTC Waiver, or from getting Medicaid home services as a child (under 21)
- Charging increased room and board for clients in assisted living facilities to make up for reduced medical assistance payments under contracts with MCOs.

Clients, or anyone on the client's behalf, can file an on-line complaint with AHCA at http://ahca.myflorida.com/medicaid/statewide_mc/index.shtml#SMMC_Home. Attorneys can also contact Anne Swerlick at Florida Legal Services, Inc. (850) 385-7900 or anne@floridalegal.org. ▪

Advocacy Groups Succeed in Ending Bank Payday Loans

By **Anika Guevara**
Student Writer

In a severe economic climate banks have turned to unscrupulous lending methods in order to maximize their profits in the shortest period of time. Payday loans are the result of such lending methods. Payday loans are loans in which a bank lends money to a borrower, at extremely high interests rates, to be repaid on the borrower's payday. The banks secure their loans by gaining access to the borrower's bank account. For example, in the case of direct deposit, the bank repays itself the advancement plus a fee before the borrower gains access to their money. Although this loan method may seem like a good alternative when the borrower needs quick money, the effects of such loans are far from good. Often times, this balloon payment method causes borrowers to default on other obligations, such as mortgage and utility bills, because they do not have the money to repay the bank in full and to pay their other obligations simultaneously. Wells Fargo, U.S. Bank, Regions, and Fifth Third Bank are the leaders in issuing payday loans. Despite the many problems that payday loans cause to the borrower, these banks offer the loans in nearly all fifty states.

Recently, advocates have raised awareness and have spoken publicly about their opposition to payday loans. In Florida, attorneys, including PILS members, participated in strategy, letter writing and advocacy with several national banks to ask them to stop selling these predatory products. Counterparts in other states and national groups, including Center for Responsible Lending, National Consumer Law Services Florida Legal Services, and others publicly expressed their concern regarding payday loans. These efforts were bolstered by state and public officials who have zealously advocated to either limit or eliminate the issuance of payday loans while establishing more stringent regulations. Senators Richard Blumenthal of Connecticut, Richard J. Durbin of Illinois, Charles E. Schumer of New York, Sherrod Brown of Ohio, and Tom Udall of New Mexico were amongst the prominent officials who spoke against payday loans.

Success has been a long time coming, but it is here now. Due in great part to the huge efforts of these advocates, the DOJ, CFPB, and FDIC have taken action against all type of payday lenders, including banks that support payday loans. The FDIC and OCC finalized rules to regulate payday loans.

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Furthermore, states such as New York and Iowa will enforce usury and consumer protection laws, respectively, to protect their residents from banks that issue payday loans. Undoubtedly, all major regulatory agencies buckled down and got to work. As a result, a week after Regions Bank announced that it will discontinue payday loans. In the following weeks, Wells Fargo, U.S. Bank, and Fifth Third Bank announced that they too would discontinue all payday loan products. All the advocacy efforts led to a complete end of these predatory bank loan products.▪

PILS Consumer Law Committee Concerned with Lack of Regulation for Tax Preparers

By **Alison Morris**
Student Writer

A recent National Consumer Law Center (NCLC) study, conducted in November and updated in March, has found that there is a lack of regulation for tax preparers, which could lead to thousands of dollars lost each year in errors or fraud. According to the IRS, 63% of taxes in the United States are done by tax preparers, 50% of whom are completely unregulated. In fact, in states other than California, Oregon, Maryland, and New York – all of which have some restrictions on their tax preparers – independent tax preparers are less regulated than hair stylists and barbers, all of whom are required by states to have a license. Currently only certified public accountants, enrolled agents credientialed by the IRS, and unpaid volunteers at the Volunteer Income Tax Assistance (VITA) sites are tested and subject to regulation.

This lack of regulation is not without consequence. Problems in returns filed by independent tax preparers range from errors costing taxpayers part of their refund or penalties for illegal deductions, to deliberate fraud where preparers make purposeful errors to collect the resulting money. And these errors are not infrequent: a Government Accountability Office study of all tax preparers in 2008 found a failure to claim all available deductions in seven out of every nine returns, and a failure to report business income in ten out of nineteen.

The flaw in the system affects consumers in many ways: not only are they often held financially and legally responsible for the errors their preparers make, but they are easily taken advantage of. The NCLC study found that, beyond the errors made by preparers, there is also a "severe lack of transparency" in tax preparation fees. Because many tax preparers claim they are incapable of giving quotes or accurate estimates, taxpayers are seldom able to get information beforehand on how much the service will cost. As one contributor to the NCLC report noted, if consumers cannot comparison shop due to the lack of price information, the market cannot be competitive and the consumer suffers.

To address this oversight, the PILS Consumer Law Committee is considering advocacy on the issue. They are currently interested to find out if the lack of regulation for tax preparers is impacting people in Florida. If anyone has any information regarding this problem, or knows anyone affected by this issue, please contact Alice Vickers at alice.vickers623@gmail.com. ▪

One Lawyer, One Life: Matching Attorneys with Aging Foster Youth

By **Danielle Snyder**
Student Writer

"One Lawyer, One Life" is Florida's statewide pro bono project aimed at matching volunteer attorneys with seventeen year olds in foster care.

When teenagers in foster care turn seventeen there are numerous important decisions they must make which greatly impact their futures. For instance, upon turning eighteen, teenagers have the option to either age out of the foster care system, or to extend their time until the age of twenty-one. Furthermore, eligibility for benefits and services provided by the State often depend on their dependency status, and several other variables that arise during their juvenile years before eighteen.

What the "One Lawyer, One Life" program accomplishes when it matches attorneys with aging foster youth is that it advocates and gives these teenagers a voice. The program allows these teenagers to receive competent representation to advocate their positions in Court, and also provides for experienced legal advice to help the teenager with important decisions pertaining to their dependency proceedings. Currently, Florida does not routinely provide counsel for children in dependency proceedings, and volunteer counsel have little access to funding for research or case analysis that may hinder case preparation. With the assistance of FLORIDA for Children and Families (F4CF), through recruitment, training, support, and mentoring of volunteer attorneys to represent these teenagers, the "One Lawyer, One Life" program is able to provide this competent counsel to these foster children. As a result, F4CF acts as a platform tool for pro bono lawyers to register for the program, and facilitates their access to research materials, as well as a community of legal support.

The "One Lawyer, One Life" program, through its F4CF platform, is instrumental in helping to ensure that youth in foster care receive the support to which they are entitled. ▪

Outlook: Perspectives on Law and Practice

PILS Sponsors Pro Bono Project to Assist Human Trafficking Victims

By **Anthony C. Musto, Esq.**
2013-2014 Chair

PILS has introduced a new initiative to train an experienced criminal lawyer in each circuit in new state legislation providing relief to human trafficking victims, as well as, if necessary, the traditional manner for sealing or expunging records. This person will be the primary contact for potential human trafficking victims and will either handle their legal representation or find a local contact to do so. Training will also be available to those whom the primary contact may refer cases to, with larger circuits likely requiring more than one available attorney.

The legal profession has finally started to recognize that human trafficking victims are truly victims even if they commit criminal acts. And, as those victims struggle to break the entanglements that bind them and to get out of the lives into which they have fallen, they need assistance. Clearing their criminal records is, of course, only one part of the assistance they need, but it is a part that we, as lawyers, can help provide. It is truly in the public interest to remove the obstacles criminal records create in the path leading these victims to productive places in society. Thus, it is a perfect project for PILS to undertake. ▪

Miami State Attorney's Office kicks off Human Trafficking Awareness and Hotline campaign www.stopsextraffickingmiami.org and www.miamisao.com.

Direct Filing: No Hope for Our Youth

By **Shaun Quinn**
Student Writer

Direct filing is a process in which a prosecutor has the sole discretion to file charges against a juvenile in criminal court, causing the child to be tried as an adult In Florida, this discretion is vested in Fla. Stat. 985.557. The statute requires that the child be at least 14 years old. Although there are other factors taken into consideration, we should not be so readily able to charge a 14 year old child as we would an adult. No child has the reason, knowledge, or logic of an adult, and we are cutting our children off at the knees by allowing them to be tried as if they do. Of course, there are always exceptions to the rule, but a decision to charge a child as an adult has such drastic effects on the child's life that the decision to do so should not be so subjective.

Juvenile court is a way to reprimand a child for their actions without tying certain adverse stigmas to them for life. A child is not convicted in juvenile court, they are adjudicated. A child does not have an information filed against him, there is a petition. Although these words, in effect, mean the same thing, juvenile court uses different words because it provides a different effect. It is supposed to allow the child the opportunity to grow and see their errors. A child with a record in juvenile court can leave that past behind them, but a child with an adult record cannot. For a child, a conviction means more restrictions. A child that is convicted at the age of 14 could be faced with more difficulties when he's 18. For example, the conviction information has to be provided on college and trade school applications, federal loan applications, government assistance applications, and the list goes on.

Charging a child as an adult is equivalent to telling that child we no longer have hope in them. We are supposed to be a country that believes in rehabilitation and change. As a society, we are constantly reminded that the children are our future. To give up on a child simply because they made a bad decision is to punish a child for acting as children do. The purpose of the juvenile court is to allow children the possibility of life after making these bad decisions. When we remove them from the juvenile system, we are throwing them to the wolves of adult culture. In today's society, we are fighting to ensure our children do not grow up too fast and to be productive citizens. How can we convince a child that is already lost to believe in himself, change his ways, and start fresh when we take these opportunities away from him by convicting him as an adult? ▪

PILS Advocacy

Consistent with the final Report of the Special Committee on the Legal Needs of Children, the Public Interest law Section supports legislation to restore judicial authority to determine the appropriateness of whether a child should be prosecuted in adult court. For more information about direct filing of juveniles in adult court in Florida, see "Direct filing blurs boundary where childhood ends for juveniles: Proposed changes seek uniformity, transparency, accountability", *The Public Interest Journal*, Volume 1, Issue 2, Winter 2012, available on The Public Interest Law Section's page at www.floridabar.org. ▪

Q & A with Laura J. Boeckman:

PILS Chair– Elect, North Florida Bureau Chief for the Consumer Protection Division of the Attorney General's Office

By **Alisha Marano**
Student Writer

How long have you been involved with the Public Interest Law Section (PILS) of the Florida Bar?

I have been a member of PILS since 2003, but I did not become active in PILS until 2008 when PILS created the Consumer Law Committee. I had been on the Bar's Consumer Protection Law Committee, but that committee was limited in the type of legislative work it could do. The PILS consumer committee is a complement to the Consumer Protection Law Committee in that PILS can take positions on legislation and lobby for legislation that benefits consumers. After serving as a committee chair for 5 years on PILS, I wanted to get more involved and became interested in serving as the chair.

What do you look forward to most about being the new PILS Chair Elect?

I am most looking forward to continuing to educate the rest of the Bar about the important work our Section does. I am also hoping to make it more feasible for our members to attend meetings and be more involved in our activities.

What other PILS committees have you been involved in?

The Consumer Law Committee is the only committee that I have served on as a member of PILS.

U.S. News and World Report has listed your Alma Mater, Indiana University-Bloomington as one of the top 3 best graduate schools for Public Affairs. How do you feel your knowledge and experiences in Public Affairs will assist you in your role as Chair Elect?

I actually do not know that I have directly used my Masters degree in my work thus far. I got my joint degree while I was in law school because I was interested in working in the public sector. While I have worked in the public sector since graduation, it is has been only in the capacity of a lawyer and not in policy. I'm sure my policy background is useful to me in ways I do not even realize, but I enjoy the legal side much more.

You have an extensive background in Consumer Law. What about your skills and training in this area of law makes you a valuable asset to PILS?

Most of the members of PILS work at a legal aid organization or in some type of public interest role. I spent two years working at Jacksonville Area Legal Aid shortly after law school. It was an incredibly valuable experience.

I have an understanding of the challenges our members face in terms of the work that they do and also the limited funding they have to be able to travel to our meetings or participate in our activities. I am very sensitive to the challenges they face in their practices.

I have always worked with low income clients, so I am very passionate about the work that PILS does and the people we are trying to help. While I was teaching at the law school, I was supervising a consumer law clinic where we helped low income clients who were being sued for debts and who were in foreclosure. It was not only a wonderful opportunity to create a new generation of public interest lawyers, but we were able to help those in the Jacksonville community who most needed it. Many of our clients were also former or current military. And as a military spouse (my husband is a Lt. Col., in the Florida Army National Guard), it has always been extremely important to me to be able to help those who serve our country.

I am really enjoying my work with the Attorney General's office. I work in the Consumer Protection division where we represent Florida's consumers who have been victims of unfair and deceptive trade practices. I enjoyed being able to represent individual clients for 10 years, and now I have the opportunity to help a greater segment of the population.

Laura J. Boeckman, Esq.
2014-2015 PILS Chair-Elect
North Florida Bureau Chief for the Consumer Protection Division of the Attorney General's Office

The Scoop....

Q: Favorite Animal?
A: The ones I don't have to take care of! We have 6 year old triplets and a 2 1/2 year old, so someday we will get a dog again (a Black Lab), but for now, no more heartbeats can live in our house!

Q: Favorite Food?
A: Chocolate

Q: Favorite Season?
A: Spring—the weather is not too hot yet, and it is the start of triathlon season.

Q: Favorite book?
A: Too many to choose from—most recent is Me Before You. Also wonderful—The Night Circus, Where'd You Go Bernadette?

Q: Favorite sports team?
A: I don't have one, but my husband is a Gator, so I am a Gator by marriage.

Q & A with Laura
Cont'd page 18

Q & A with Laura

Cont'd from page 17

I believe that all of these experiences will benefit me during my year as Chair of PILS because even though our members have various practice areas, our goal of helping the underserved is the same.

Where are you currently working?

I am the North Florida Bureau Chief for the Consumer Protection Division of the Attorney General's Office. I oversee the Jacksonville and Tallahassee Consumer Protection offices. We investigate and litigate violations of Florida Statute 501 – the Florida Deceptive and Unfair Trade Practices Act. Basically, we investigate and enforce cases against companies and businesses that are engaging in unfair and deceptive practices. For example, we look at deceptive advertising or companies who sell a service or product and then do not deliver it or do not deliver what they promised.

How long were you a professor at Florida Coastal School of Law, and what courses did you teach?

I taught the Consumer Law Clinic for 8 years. I supervised students who were representing clients in debt collection, bankruptcy, and foreclosure cases. It was very rewarding. I liked working with the students and continuing to practice law and helping people. I also supervised the Judicial Externship program and taught a Consumer Transactions class.

What will you miss the most about teaching?

I miss my colleagues at the law school. They were a great source of teaching ideas and support.

As a final note, what is something you'd like the readers to know about yourself and your future as Chair Elect?

During my year as chair, I will try to live up to the very high standards that have been set by our past chairs. I am still learning about PILS' history and the many functions that it serves, so I hope to do justice to the many years of work and success that we have to build on! ▪

Ex-Felon Sub-Class in Limbo and Without Civil Rights

By **Kristen Montgomery**
Student Writer

If you do the crime, you will do the time—and lose your civil rights. In this state, ex-felons who desire the right to vote, to serve on a jury, and to hold public office are denied civil rights restoration even after completing their prison sentences. As such, Florida's ex-felon civil rights restoration scheme ranks among the toughest in the nation.

In March 2011, Gov. Rick Scott and the Florida Cabinet sitting as The Florida Board of Executive Clemency embraced a strict civil rights restoration scheme at Attorney General Pam Bondi's urging that was in stark contrast to the policies that were in place during the previous Crist administration.

In a February 2011 statement, Bondi asserted "The restoration of civil rights for any felon must be earned, it is not an entitlement." Accordingly, ex-felons must wait five (and sometimes seven) years before they can apply to regain their civil rights.

Ex-felons are now caught in a limbo. After completing their sentences and are out in society they nonetheless represent a quasi-citizen subclass who may never regain their civil rights. In PILS member Mark Schlakman's Orlando Sentinel article from March 2013 entitled, "Once Time is Served, Restore Offenders' Rights Immediately," he writes "The bottom line is that, barring a material change in policy or a related amendment to the state constitution, simple math suggests a growing subclass of more than 600,000 disenfranchised ex-felons who have completed their sentences may reside in the Sunshine State by the end of the governor's and Cabinet's current terms… caught in an executive-branch limbo that, in effect, extends their legislatively mandated sanctions indefinitely."

He also noted that an independent study indicated there may be more than 1.5 million disenfranchised ex-felons who reside in Florida who have completed their sentences.In a more recent column that Mark Schlakman co-authored with Walt McNeil , chief of police in Quincy, past president of the International Association of Chiefs of Police (IACP) and former secretary of the Florida Department of Corrections during the Crist administration, and Ion Sancho, supervisor of elections in Leon County in December, he notes that on Nov. 26, 2013 the *Miami Herald* reported in its Naked Politics/ PolitiFact.com blog that more than 150,000 felons regained their civil rights during Gov. Charlie Crist's tenure, while only 844 felons have regained their civil rights since Scott took office in 2011 through September 2013.

These stringent restrictions on the restoration of civil rights have contributed to an unnecessary impediment for ex-felons who want to make a fresh start. Moreover, the Florida Parole Commission, which serves as the investigative arm of the Clemency Board, released a study several months after the more highly restrictive criteria were adopted indicating a positive correlation between ex-felons regaining their civil rights and a reduction in recidivism which seems to run counter to the harsh policy the board adopted.

Ironically, the rates of recidivism seem to increase when ex-felons are slow to re-establish themselves as bona-fide members of the community. Wouldn't it be more reasonable to tackle ex-felon recidivism by allowing immediate restoration of civil rights, than to force ex-felons to pay interest on their debt to society? ▪

Law Student Perspective:

A Behind the Scenes Look into the Upcoming *Florida Coastal Law Review* PILS Collaborative Issue

By **Amanda Ingersoll**
Student Writer

Amanda Ingersoll, Editor-in-Chief, *Florida Coastal Law Review*

When our former Editor-in-Chief approached me with the possibility of publishing an issue of our journal with PILS, I was extremely excited. Florida Coastal's mission is to serve the underserved, and *Law Review*'s mission is to publish a visible and forward-thinking journal that influences and engages the legal community. Over the past few months our members have had the opportunity to review five articles that discuss public interest issues ranging from using contempt in juvenile court proceedings, to the effect that the recent DOMA decisions will have on public benefits, to how pleading guilty to a criminal charge may lead to termination of parental rights. The ideas presented in these articles strike the perfect balance of meeting the two goals we strive to reach with our work. As we wrap up editing the last articles in the PILS issue, let's take a brief look at the journey each article has been through.

Our editing process is quite complex and takes about 100 day to take an article from submission to publisher ready. We process each article consecutively, so for the entire PILS issue our time line was 150 days, which does not include time off for finals, reading week, or every law student's coveted winter break.

Each article begins with an extensive staff edit where our staff editors give their sections of the article a comprehensive grammar and citation edit and create binders full of hard copies of all of their cited material. From there, the article travels though our Board. We have ten outstanding Board members, but at this point in the editing game, three of them, which we have coined the "Genius Bar," give each article a law review spa treatment like no other. Our Research & Writing Editor closely analyzes each sentence to ensure that the cited material in the staff editors' hardcite binders adequately supports the author's assertions. The article then visits our Technical Editor who gives each footnote our famous Bluebook treatment, ensuring that no comma is left out and periods are properly italicized. At its last stop through the Genius Bar, the article swings past our Manuscript Editor, whose knowledge of the Chicago Manuel of Style is likely unmatched by any other human being, for an in-depth grammar treatment. After visiting an Executive Editor and the Editor-in-Chief, the article is reunited with its author for an author edit week. Upon its return, the article takes one last trip through our Board before it awaits the other articles in its issue to go to the publisher for proofs, blueline edits, and final publication. The process is quite the experience, and after publication, the *Law Review* members are the ones who need spa treatments. This issue has presented some of its own unique circumstances, such as changes in the law during our editing process. However, these new and fresh ideas only enhance the impact this issue is likely to have on the public interest community.

We look forward to continuing this relationship and are already looking forward to our next PILS issue. Anyone interested in publishing an article for our next issue should contact our incoming Submissions Editor, Betsy Dobbins, at Betsy.Dobbins@law.fcsl.edu. We thank you for letting us be a part of your wonderful organization and look forward to sharing our first collaborative issue with you soon! ▪

Articles in the Public Interest Edition of the *Florida Coastal Law Review*

Khaya Novick Eisenberg, Daniel Pollack, and Amanda Sundarsingh, *Transvestism and Foster Parenting: A Child Protection Concern?*

Gerard Glynn, *Contempt: The Untapped Power of Juvenile Court*

Sarah R. Sullivan and Martha Pardo, *Preemption of Public Benefits in the Shadow of DOMA: When State and Federal Law Collide*

Anthony C. Musto, *Up the Slippery Slope: The Need to Advise Criminal Defendants That Their Pleas Can Lead to Termination of Their Parental Rights*

Matthew Dietz, *How can the State of Florida Improve Accessibility for Persons With Disabilities and Benefit the Business Community?*

A Preview of the Windsor Article in the Public Interest Edition of the *Florida Coastal Law Review*

By **Sarah Sullivan, Esq.**
Guest Writer

Marriage equality advocates lauded the United States Supreme Court's abrogation of the Defense of Marriage Act (DOMA) in the landmark *Windsor v. United States*. As Federal and state governments experience the full breadth of the decision, Sarah Sullivan, Chair of the Disability Committee and Executive Council member of the Public Interest Law Section explores how *Windsor* affects the realm of public benefits including Social Security, Medicaid, Medicare, Food Stamps and Veterans benefits. Of particular focus are those programs which have both a State and Federal component and how each state's laws concerning marriage, civil unions and domestic partnerships may affect citizens' access to public benefits. ▪

Florida Coastal Law Review Board

Back left to right: T. L. Coleman Brooks, Managing Editor; Neda Sharifi, Submissions/ Symposium Editor; James Durstein, Senior Articles Editor; Allison "Derek" Folds, Notes & Comments Editor; Jack "Trey" Coker III, Technical Editor; Kristy Warren, Executive Editor; Christian Rogers, Manuscript Editor.

Front left to right: Job Fickett, Executive Editor; Amanda Ingersoll, Editor-in-Chief; Patrick Goode II, Research & Writing Editor.

U.S. Supreme Court Rejects Florida's Appeal on Mandated Drug Testing

By **Joanne Dautruche**
Student Writer

The U.S. Supreme Court refused to hear Florida Governor Rick Scott's appeal of a ruling by the Eleventh Circuit Court of Appeals that struck down his executive order mandating random drug testing of all state employees. The executive order was challenged as an unlawful search in a lawsuit brought by Council 79 of the American Federation of State, County and Municipal Employees (AFSCME), one of the nation's largest public service unions, and by the American Civil Liberties Union (ACLU) of Florida. The suit claimed the scope of the mandate, which allowed for quarterly testing of any state employee, was both unreasonable on its face and unfairly broad as applied to 85,000 people, or 77 percent of the state's workforce.

The Eleventh Circuit agreed, stating urinalysis "can reveal a host of private medical facts about an employee, and which entails a process that itself implicates privacy interests, is a search" within the meaning of Fourth Amendment. The court further held the government's interest in a drug-free workforce was not a special need justifying suspicionless drug testing—particularly of employees who are not in safety-sensitive positions where heightened probity is relative.

The state, however, purported otherwise in its petition to the Supreme Court, asserting individuals have no constitutional right "to be impaired for duty or to engage in illegal drug usage." The petition claims drug use results in billions of dollars of lost productivity and poses a threat to public safety, thus Florida has a duty to provide taxpayers a fit, drug-free public workforce. Comparing the practice of drug screening job applicants within certain industries of the private sector, the petition states Florida "has the same need for supervision, control and the efficient operation of the work place as does any other employer, public or private."

ACLU of Florida Staff Attorney Shalini Goel Agarwal responded in a press release, "Every court that has heard the arguments of the governor's lawyers, defending the policy that treats all those who serve the people of Florida like suspected criminals by requiring them to submit to an invasive search, has rejected them." She continued, "We are prepared to demonstrate to the U.S. Supreme Court, as it has found before, that the state has no authority to require people to submit their bodily fluids for government inspection and approval without reason or suspicion."

The Supreme Court writ comes on the heels of another federal court defeat to ACLU, which struck down a Florida law requiring applicants for Temporary Assistance for Needy Families (TANF) to submit to drug tests as a condition for eligibility, ensuring against the state funding of crime and a "drug epidemic." However, the middle district court found the state-commissioned study showed a lower drug usage rate among TANF applicants than among Florida's general population. Moreover, the court held that positive test results shared with third parties and memorialized in a database accessible by law enforcement "implicates a far more substantial invasion of privacy than in ordinary civil drug testing cases." ▪

Shelter from the Cold

By **Casandra San Martin**
Student Writer

Vulnerability to the cold is one of the most dangerous aspects of life that people experiencing homelessness must endure. This January's average temperature was a frigid 15.7 degrees F which is a good 8.1 degrees below the norm of 23.8 F. During the month the mercury dipped as low as -16 degrees F. These temperatures are a burden to even those with homes to seek refuge, so what about those without proper shelter, where do they go?

Emergency shelters are tirelessly making strides in their efforts to provide sanctuary for people experiencing homelessness, yet it seems that no matter how much progress they make it is never enough. In 2012, the National Alliance to End Homelessness reported that there was somewhere around 633,782 people experiencing homelessness in the United States. There is not enough shelter space for everyone experiencing homelessness, but in during the winter many communities operate "cold night shelters" to provide overflow shelter from the cold.

Despite these efforts, hypothermia is a leading, yet preventable, cause of injury and death among those experiencing homelessness. According to Dr. James O'Connell from the Boston Health Care for the Homeless Program, the most severe cases of hypothermia occur when the days are warm (between the 40s and 50s) and the nights drop into the mid 30s. Due to lack of funding and volunteers, however, the majority of emergency cold night shelters do not have the means to keep their doors open under these conditions.

These shelters are forced to set their admission standards to deathly low temperatures.

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Shelter from the Cold

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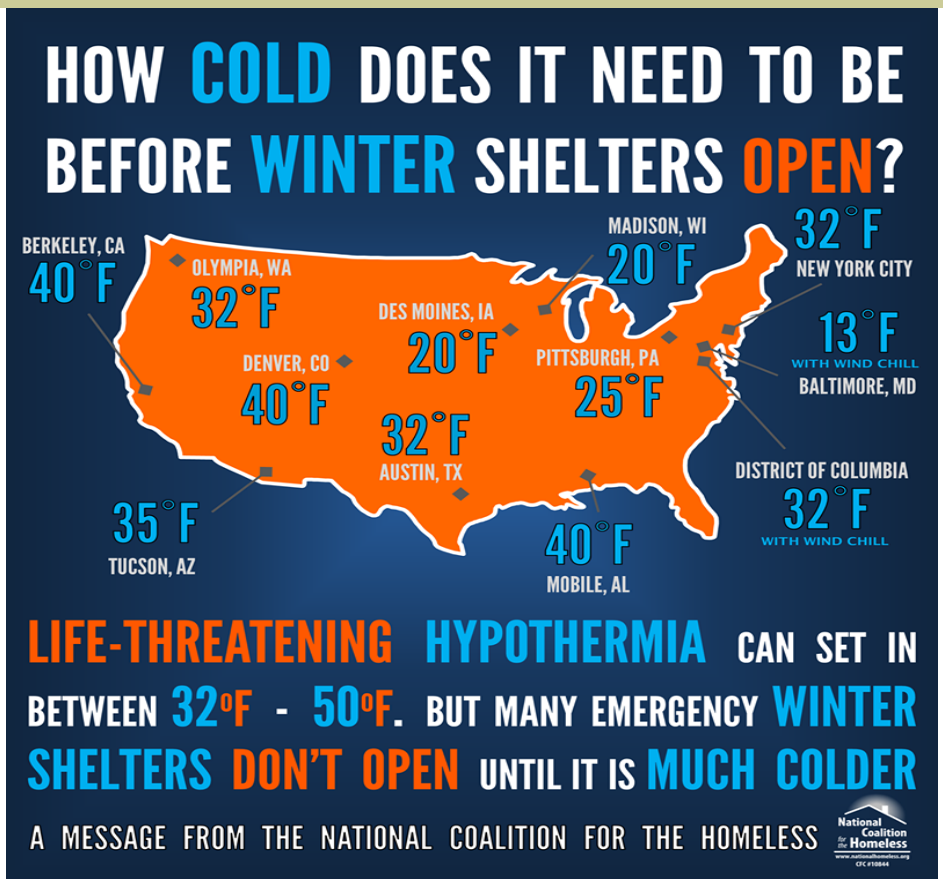
Some shelters don't open their doors until the outside temperature reaches 13 degrees F, far beyond the threshold of obtaining hypothermia. Most shelters in Florida wait until temperatures reach 40 degrees F before they begin allowing people in from off the streets. The biggest difficulty shelters face when trying to accommodate the needs of homeless people during extreme winter conditions is finances as most do not have the resources and volunteer energy to sustain more frequent openings.

Under these conditions people experiencing homelessness are given no other option but to sleep out in the cold, which puts them at risk for severe medical conditions or even death. This winter served as a reminder that the basic human need of shelter is not a luxury, it is essential to protect people from preventable disease, injury and death. ▪



PILS Chair Tony Musto and Chair-Elect Laura Boeckman meet with incoming Florida Bar President Greg Coleman at a dinner in Ft. Lauderdale to discuss PILS initiatives for the upcoming year.

Interning at Florida Coastal School of Law In-House Clinics

By **Kiarash Izadifar**
Student Writer

I am one of twelve legal interns at the Florida Coastal School of Law (FCSL) Disability and Public Benefits Clinic (DPBC). The DPBC is one of many in-house clinics that FCSL offers in service of the indigent population; other clinics offered include Family Law, Immigrant Rights, and Criminal Defense. Every semester, the clinics accept only a select few student legal interns, and I was fortunate enough to receive one of these highly coveted positions. I am extremely enthusiastic to be an intern for the DPBC for several reasons.

First, because of FCSL's commitment to providing free legal services to the indigent population, in-house clinics are staffed with a dedicated experiential learning team. FCSL houses eleven clinics that employ one dean, twelve professors, four clinical fellows, and more than a hundred paralegals, administrative assistants, student clerks, and legal interns. The setting is modeled after a law office, and maintains its own resources and case management system. It also has the benefit of the school's technology, which is used for the classroom component. There are knowledgeable and distinguished law professors overseeing and guiding the students' casework. In addition, clinical fellows—who are Florida Bar members—and senior student advocates are available for case consultation. Furthermore, the clinic employs student clerks, administrative staff, paralegals, and notaries to help provide a holistic approach to servicing clients. Everyone in the clinic is an important component and works in concert towards the goal of providing competent and zealous representation of the most vulnerable members of our society.

Secondly, the clinic offers legal interns the unique opportunity to manage their own caseload and interact with clients. FCSL clinics are well known among various agencies and community stakeholders in the Jacksonville area, resulting in numerous referrals. These conduits provide legal interns with an opportunity to interact with clients from all walks of life and allows interns the opportunity to witness the effect their work has in the community.

Lastly, the clinic is similar to other academic courses, with the addition of practical experience, but without a final examination. Every week law professors conduct lectures about specific areas of law related to the clinics. Professors also introduce interns to pressing issues in their particular field of practice. Instead of a final examination, professors evaluate interns based on how they apply the knowledge gained in the clinic to their cases. An intern's grade does not depend on whether the intern wins or loses a case, but rather, that intern's personal growth and development of practical skills that will translate to the practice of law. The combination of a doctrinal class with practical experience allows interns to understand the challenges inherent in the practice of law.

I have thoroughly enjoyed my experience in the clinic thus far. In my first week, I was assigned an appellate brief that was filed in Florida's First District Court of Appeal. Now I am learning how to draft motions and briefs for Florida circuit courts. I plan to continue interning until graduation. Not only will I earn academic credit by interning, but I can also take advantage of the clinic resources. Without hesitation, I definitely recommend this opportunity to my fellow classmates. ▪

Kiarash Izadifar,
Legal Intern

Nova Southeastern University Shepard Broad Law Center—Veterans Law Clinic: *Student Perspective*

By **Mike Cubbage**
Student Writer

As a full time clinical intern with the Nova Law Veterans Law Clinic (VLC) I have an opportunity not only to gain experience in multiple areas of law, but to aid and assist those who have put their lives on the line for the welfare of our country. As a combat veteran with almost a decade of active duty service, I understand the problems that face many veterans. Our soldiers, sailors, marines, and airman are returning home with significant legal issues often compounded by physical and mental disabilities which often limit them in their ability to respond to such issues. Post-traumatic stress disorder (PTSD) as well as traumatic brain injury (TBI) can affect veterans' abilities to properly represent themselves in many legal matters not only substantively, but procedurally, and proactively.

In the VLC we learn specifically how to deal with and mitigate these issues that are often not presented in typical civilian clients. Knowing how to properly show respect, understand the needs and expectations of veterans in an attorney/client relationship and establishing proper rapport can make or break the relationship. The VLC teaches students about the nature of prolonged combat deployments, constant changes in duty station assignments, "soldier culture," military family life, and other aspects of the military lifestyle which often complicate or make veterans' legal issues more unique than typical civilian issues.

The VLC also gives its members the opportunity to practice in a general practice setting, something unique to NSU'S VLC specifically. While I may be sitting in hearings at Veterans Court on Monday, I may be working on expunging a client's criminal record on Tuesday, sit down Wednesday to work on a disability benefits appeal, turn around on Thursday and draft a power of attorney, then wrap up my week with a family law case having to do with child custody and dissolution on Friday. It is truly the only clinic that allows its participants to gain practical experience in multiple areas of law.

The clinical environment feels more like a firm than a class which allows interns a sense of practical accomplishment as they work on real world cases and feel empowered and practiced. Not only do interns in the VLC leave law school with a substantive knowledge of the law but a procedural and practical understanding of practice.

Being a member of the VLC has also created a fun working environment in which my trust in my Professor and Supervising Attorney as well as my colleagues puts my own concerns as a veteran at ease. The professionalism and understanding of these particular issues affecting veteran clients amongst everyone in the clinic has made the clinic more like a cooperative family intent on helping those who voluntarily and selflessly protect our interests. I believe this area of legal representation is growing exponentially as our troops continue to return from combat with significant issues and I am proud to be a member of this groundbreaking clinic. ▪

NSU Veteran's Law Clinic Participants
Front Row:
Kendra Breeden
Jessica Chery
Michael Cubbage

Back Row:
Jayme Cassidy, Esq., *Faculty Supervisor*
Michael Nahabedian
Michelle Avis
Camila Daza

Faculty Perspective

By **Jayme M. Cassidy, Esq.**
Staff Attorney—Veterans Law Clinic

The Veterans Law Clinic at Nova Southeastern University Shepard Broad Law Center enrolled its first semester of students in January of 2014.

Students enrolled in the Veterans Law Clinic have the unique opportunity to provide legal assistance to low income veterans and military personnel on a variety of issues.

These issues include: veteran benefits, housing matters, power of attorney, advanced directives, qualified income trusts and wills, consumer rights, family law, veteran's court, driver's

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license restoration, sealing & expungement, debtor/creditor issues and military upgrades. In addition to a caseload, students have had the opportunity to host self- help workshops and outreaches in the community.

South Florida has one of the largest veteran populations in the country. Broward County has over 109,000 veterans and Miami-Dade has an estimated 64,000. Broward County has two National Guard Units that coexist with the military bases in Dade County. The clinic will expose students to the challenges that our returning troops face and the unique laws that govern their rights. Due to the Iraq War's end in 2011 and the anticipated end of the Afghanistan War in 2014 there is a government trend to support veterans. Soldiers are returning stateside seeking multiple services. The need for legal services is a reality for the OEF/OIF/OND veterans. Assistance with civil and criminal legal issues eliminates a barrier to productivity as a civilian. Students will gain instruction in the necessary legal skills and knowledge involved in the general practice of law: client interviewing, legal analysis, drafting legal documents, motion practice, courtroom presentation, professionalism and general case management while providing a service to our heroes.

It is a pleasure working with the students as they are eager to learn and excited about being able to assist our heroes. Students have been able to witness how legal help affords the veteran the opportunity to re-integrate successfully. This was a great opportunity for the students to execute and develop further their practice ready skills and give back to the veteran and military community. ▪

Early Voting Causes Controversy at University of Florida

By **Kimberly Burroughs**
Student Writer

The University of Florida's J. Wayne Reitz Union is once again the center of controversy in Gainesville. Florida's Director of Elections, Maria Matthews, recently excluded the Reitz Union from an expanded list of allowed early voting locations found in a 2013 amendment to the Florida Election Code. The decision was prompted by a request for clarification from Gainesville City Attorney Nicolle Shalley on whether the Union would constitute a "government-owned community center or a convention center" for purposes of the expanded early voting statute. As a result of the Director's opinion, the City of Gainesville will not use the Reitz Union as an early voting location.

The Florida Legislature passed the 2013 elections amendment after the state endured extensive criticism for its execution of the 2012 presidential election. After the legislature slashed the early voting period in half to allow only eight days of early voting, the election was mired by lines that required voters to wait up to six hours to vote. A study of data compiled by the Orlando Sentinel found that at least 200,000 voters left the lines in frustration before casting their vote.

In response, the Florida Legislature amended the election code to correct the problems of the 2012 election. The amendment, section 101.657 of the Florida Elections Code, grants local supervisors of elections the discretion to expand the early voting period from the eight days allowed in 2012 to the original fifteen days of pre-2012 elections. The amendment also expands the approved early locations available to supervisors of elections to include any "civic center," "convention center," and "government-owned community center."

When a statute is susceptible to multiple interpretations, a statutory construction analysis is applied to clarify ambiguities in the statute's meaning. This analysis first requires an interpretation of the statute's plain meaning. An interpreter may only introduce evidence of legislative history should a plain meaning and case law analysis of the language fail to clarify the statute's meaning.

Director Matthews's advisory opinion excluding the Reitz Union from the amendment's expanded list of possible locations makes no mention of the plain language of the statute. The two-page advisory opinion disqualifies the Reitz Union as a "government-owned community center" or "convention center" by leaping immediately to an assertion that "the Legislature considered and rejected several bills…that specifically proposed the addition of educational facilities as optional early voting sites before the final version of the bill was passed." Director Matthews then cites four amendments that died in the Ethics and Election Committee and Subcommittee before coming to a vote by the complete legislative body.

An October 2013 resolution by the University of Florida Student Senate urged Alachua County officials to establish an early voting location on UF's campus. The resolution specifically cites the UF's "indispensable" 50,000 person student population, the difficulty of student schedules in terms of access to voting, and students' limited access to transportation as compelling reasons to establish an early voting location on campus. The Student Senate passed this resolution five months after the Florida Legislature passed Section 101.567 to amend the Florida Elections Code. ▪

Case Notes

Sprint Communications, Inc. v. Jacobs: U.S. Supreme Court Clarifies Scope of *Younger* Abstention

By **Kirsten Clanton, Esq.**
Executive Editor

In a unanimous decision delivered by Justice Ginsburg in December 2013, the U.S. Supreme Court clarified and defined the scope of *Younger* abstention. *Sprint Communications, Inc. v. Jacobs*, 134 S. Ct. 584 (2013). Generally, when a federal court has jurisdiction to hear a case, the "federal court's 'obligation' to hear and decide a case is 'virtually unflagging.'" *Id.* at 591. However, there are certain instances where the existence of parallel state court proceedings require federal-court abstention.

This doctrine, known as *Younger* abstention, originated with the Court's decision in *Younger v. Harris*, 401 U.S. 37 (1971) which held that "when there is a parallel, pending state criminal proceeding, federal courts must refrain from enjoining the state prosecution." *Sprint*, 134 S. Ct. at 588. The Court subsequently applied *Younger* to certain civil actions: certain civil enforcement actions and cases where the federal case would unduly interfere with the state courts' ability to perform their judicial functions. *Id.* at 590. The Court clarified that it has never applied *Younger* outside these three "exceptional" circumstances and held that they define *Younger's* scope. *Id.* at 591.

In *Sprint*, the Court reversed a decision of the Eighth Circuit that Younger abstention was appropriate because there was a parallel state judicial proceeding that implicated important state interests. In holding abstention was proper, the Eighth Circuit relied heavily on the Court's decision in *Middlesex County Ethics Comm. v. Garden State Bar Assn.*, 457 U.S. 423 (1982) to require abstention whenever three conditions were met: (1) "an ongoing state judicial proceeding, which (2) implicates important state interests, and (3) …provide[s] an adequate opportunity to raise [federal] challenges." *Sprint*, 134 S. Ct. at 593 (*citing Middlesex*). The Court found the Eighth Circuit erred in applying these three conditions as dispositive factors, stating that these were instead "additional factors appropriately considered by the federal court before invoking *Younger*." *Id.*

The Court reasoned that "[d]ivorced from their quasi-criminal context, the three *Middlesex* conditions would extend Younger to virtually all parallel state and federal proceedings, at least where a party could identify a plausibly important state interest." *Id.* The Court stated that such a result is "irreconcilable with our dominant instruction that, even in the presence of parallel state proceedings, abstention from the exercise of federal jurisdiction is the 'exception, not the rule.'" *Id.* For these reasons, the Court held that *Younger* extends to these three exceptional circumstances (ongoing state criminal prosecutions, certain civil enforcement proceedings, and civil proceedings involving certain orders uniquely in furtherance of the state courts' ability to perform their judicial functions) "but no further." *Id.* at 594.

Sprint is already making an impact on *Younger* abstention jurisprudence in the Circuits. For example, the Eleventh Circuit reversed and remanded a decision by the U.S. District Court for the Middle District of Florida that relied on a three-part test derived from the *Middlesex* factors to abstain from hearing the case. *Dandar v. Church of Scientology Flag Srvc. Org., Inc.*, --- Fed. Appx. ---, 2013 WL 6670911 (11th Cir. 2013). The Eleventh Circuit relied on *Sprint* in holding that the district court erred in applying *Middlesex* as dispositive factors, stating "If a district court in its discretion decides none of these [exceptional] circumstances is present, *Younger* abstention is inappropriate regardless of what the *Middlesex* factors indicate." *Id.* at *8. ▪

John Doe v. Regional Sch. Unit 26 Maine Supreme Court Issues Landmark Ruling on Gender Dysphoria

By **Tim Kavaklian-D'Annecy**
Student Writer

Parents of Susan Doe and the Maine Human Rights Commission appealed a judgment from the Maine Superior Court in favor of a local school under the Maine Human Rights Act (MHRA), a law similar to the Americans with Disabilities Act which provided for protections against discrimination. Doe, born male, was diagnosed with gender dysphoria in fifth grade, a medical term for a psychological disorder where a person feels their gender expression does not match one's biological sex.

John Doe v. Regional Sch. Unit 26
Cont'd on page 27

John Doe v. Regional Sch. Unit 26

Cont'd from page 26

Doe was given arrangements to use the girls' communal restroom agreed in a 504 plan drafted by the school and Doe's parents to protect her from discrimination in the school environment pursuant to Section 504 of the Rehabilitation Act. School administrators, facing public criticism, later reversed this policy and required Doe to use a staff restroom because they considered that using a boys' communal restroom would be inappropriate for someone presenting as a girl. The Maine Supreme Court held 5-1 that the school's decision to prohibit Doe from using the girl's communal restroom constituted discrimination based on her sexual orientation in violation of the MHRA, reasoning that under state law the definition of "sexual orientation" includes a person's actual or perceived gender identity or expression. *John Doe v. Regional Sch. Unit 26*, 2014 WL 325906 (Me. 2014). The Court ruled that it was unlawful for the school officials to deny an individual the right to use the restroom that is consistent with his/her gender identity. The Court distinguished this case where the administration created an extensive multi-year plan designed to address her gender dysphoria from a situation where a child without the disorder wished to use a restroom of the opposite sex. ▪

Fernandez v. California— U.S. Supreme Court Examines Consent to Warrantless Searches

By **Robert Garvine**
Student Writer

Walter Fernandez was convicted in Los Angeles County of robbery and several other charges based on evidence police obtained from a search of an apartment he shared with Roxanne Rojas. Fernandez moved to suppress the evidence found in the apartment on the grounds the consent police obtained from Ms. Rojas was not effective to permit the police to search the premises without a warrant because Fernandez had previously refused to allow police to search the premises. The appeals court rejected this argument and affirmed Mr. Fernandez's conviction. The California Supreme Court denied Fernandez's petition for review but the U.S. Supreme Court granted certiorari. Justice Alito wrote the majority opinion for the court, rendered on February 25, 2014. *Fernandez v. California*, __S. Ct. __, 2014 WL 700100 (2014).

Normally the consent of one resident, or even a person police reasonably believe is a resident, is enough to allow officers to search a residence without a warrant regardless of whether there are other residents who have not consented to the search. However there is a limited exception to this rule which holds that if any resident is physically present at the time police request permission to conduct the search and objects to the search, that objection controls as to the objecting resident. *Georgia v. Randolph*, 547 U.S. 103, 114 (2006). Fernandez argued that this exception should not apply in his case for two reasons. First, the reason he was not present is that he was removed by the police. Second, he objected to the police searching the apartment before he was removed.

Fernandez's first argument is based on dicta in the *Randolph* opinion which speculates that one resident's consent might not be sufficient if there was evidence that the other resident had been removed to prevent him from objecting to the search. *Id.* at 121. The majority held that the *Randolph* dicta only required that the removal of a resident be objectively reasonable and the subjective intent of the removing officers was irrelevant. The removal of Mr. Fernandez from the apartment was objectively reasonable; thus, the consent of Ms. Rojas was sufficient to allow a warrantless search. The majority also rejected Fernandez's second argument that his earlier objection to the search should remain effective until he revoked it or alternatively for a reasonable amount of time. The majority ruled that *Randolph* created a bright line test based on actual physical presence at the time consent is given. In contrast, since Ms. Rojas consented to a search after Fernandez was taken into custody his objection could not override her consent. In reaching this decision the majority cited the practical problems with implementing a subjective reasonable objection duration standard and a desire to protect the right of cotenants to grant others access to their home from undue control by another cotenant.

Justices Scalia and Tomas joined the majority but also filed concurring opinions emphasizing that they believe the majority interpreted *Randolph* correctly but that *Randolph* itself was decided incorrectly. Justice Ginsburg wrote a dissenting opinion joined by Justice Sotomayor and Justice Kagan in which she argued that Fernandez's objection should have remained in effect after the police removed him. The dissent disputed the practical difficulties cited by the majority and emphasized the particular distrust of warrantless home searches in Fourth Amendment jurisprudence. The dissent does not advance a specific alternative to the majority's bright line physical presence rule. ▪

Up to date: Committee Reports and Awards

Karen Meyer Buesing Receives Prestigious Tobias Simon Award

By **Alsiha Marano**
Student Writer

On January 30, 2014, at the Supreme Court of Florida in Tallahassee, Karen Meyer Buesing was presented with the highest statewide pro bono award, the Tobias Simon Pro Bono Service award. The award commemorates the late Miami civil rights attorney Tobias Simon who was known as a "crusader for prison reform and appellate authority." In addition to creating public awareness, the award was intended to encourage and recognize lawyers throughout the state of Florida who provide legal services to people who are unable to afford them. And for over 20 years, it has done just that.

Graduating with high honors in 1975, Ms. Buesing received a Bachelor of Science degree in Journalism from the University of Florida College of Journalism. She then went on to obtain her Juris Doctor from the University of Florida Levin College of Law, graduating in 1982 again with honors. She became a member of the Florida Bar in 1982 and is Board Certified in Labor and Employment law. Today she is a shareholder at Akerman LLP in Tampa.

For over 30 years Ms. Buesing has provided pro bono legal services to individuals and organizations throughout the Tampa Bay area. In the last year alone she has logged more than 180 hours of pro bono services. For more than 20 of those years she has chaired a selection committee that recommends candidates to serve in the attorney seats on the board of directors of Bay Area Legal Services. Amy Singer of the Hillsborough Association for Women Lawyers spoke about Ms. Buesing's involvement stating, "Her participation has ensured focus on the organization's goals, and a steady pool of outstanding applications. The stellar board has helped make BALS one of the model legal services corporations in the country."

Ms. Buesing has provided hundreds of pro bono service hours to non-profit organizations including but not limited to: youth sports opportunities, after school care and foster care transition services, and a church in Hillsborough. More specifically, she has donated a substantial amount of time to Project Akilah, which helps young women in Rwanda who were orphaned by the genocide. The organization opened a school for these women and just recently graduated its first class. This is an amazing organization that is giving young women of Rwanda hope for the future.

In addition, Ms. Buesing set out to spread the word about available tax credits for the working poor, including the Earned Income Tax Credit (EITC). She was an instrumental part in founding the Prosperity Campaign of Hillsborough County. During its first year the Prosperity Campaign captured an outstanding amount of more than $11 million in EITC dollars for the working poor in Hillsborough County.

Tampa's very own wonder woman refused to stop there. Starting more than 6 years ago, Buesing has taken homeless youth who lacked stable homes into her own home. She has arranged for their education, medical care, and transportation, while providing food, clothing, shelter and a loving home. Today, two of these youths still live with her and her family while attending college. She then has worked with legislators on behalf of Lazydays Homeless Youth Program to bring attention to the ever-growing problem of homeless children and teens. She has helped ensure legislation would be passed during the 2013 session to enable these youths to obtain their own birth certificates and become emancipated when necessary so they

Karen Meyer Buesing, Esq.
Award Recipient

can take actions for themselves. With Governor Rick Scott in attendance, Buesing helped organize Hillsborough County's first ever Homeless Youth Forum. The forum allowed a number of homeless youths to tell their story and also to stage readings with the Stageworks in Tampa. Her staged reading of "Sylvia" in January 2012 raised a record of $8,000 in one night for at-risk teens.

Ms. Buesing sets an example for practicing attorneys and law students everywhere. She illustrates how putting your legal knowledge to use and helping the less fortunate is a valuable and indispensible part of one's legal career.

If you happen to find yourself in the lawyer's lounge of the Supreme Court in Tallahassee, you can see a permanent plaque listing the names of all award recipients, and there is no question that Ms. Buesing will make a wonderful addition to that prestigious list. ▪

PILS Executive Council Meeting Report

By **Kirsten Clanton, Esq.**
Executive Editor

The PILS Executive Council (EC) met in person at the midyear meeting of The Florida Bar Convention on Friday, January 24, 2013. Chair Tony Musto shared that he presented a report about PILS to the BOG at their December meeting in Ft. Lauderdale. Musto spoke with the BOG about involving PILS in the Bar's 2016 Vision. Musto also suggested to the BOG that we develop a legal job corps to employ recent graduates to address unmet legal needs of the poor.

PILS Board of Governors (BOG) liaison Winston "Bud" Gardner attended the meeting. Gardner is one of the public members of the BOG, and reported that he served on the pro bono committee. He stated he was encouraged by Musto's report to the BOG. Musto stated that Gardner has been a tremendous asset to PILS, and is very active in attending our meetings and seeking our input.

Musto also reported on the status of the Children's Law Certification petition. The BLSE has approved the petition, but there are three more hurdles; the Program Evaluation Committee (PEC), the BOG, and the Florida Supreme Court. The challenge with the PEC is that the committee will focus on whether the certification program will lose money for the Bar. Children's Law Certification will not be a big money-maker. Originally, 149 people signed up for certification and Musto is looking for commitment from people who will sig n a notice of intent to seek certification if approved. So far, that number is up to 50 including a count of members of the PILS EC and members of the Legal Needs of Children Committee (LNOCC). Must noted the challenge is that the value should not be measure in money, but in terms of improvement of the quality of lawyers representing children.

Fran Tetunic, Treasurer, reported PILS is within its budget. Musto congratulated Tamara Gray on her work on the Gideon CLE. The Gideon program is now paid for so all money that comes in to PILS is now for profit. PILS also has received money from the Baker Act CLE. The telephonic CLEs are very profitable for the section. Bar Administrator Mary Ann Obos suggested that PILS aim to put on 2 telephonic CLE presentations this year. Obos also explained that the CLE on consumer law is not at the point of making a profit yet so PILS is not receiving money, but PILS is not being charged expenses because it was a joint effort with the Consumer Protection Committee. Musto commented that due to the Children's Law Certification petition, PILS should focus on preparing to provide CLEs to take advantage of the fact that applicants will need to meet certain CLE requirements for certification.

Anthony Musto, Chair at BOG Meeting

Amanda Ingersall and Betsy Dobbins from Florida Coastal Law School attended the EC meeting to discuss the Florida Coastal Law Review's new partnership with PILS to produce a yearly issue dedicated to public interest law. The first issue will be available before the June Bar meeting and features great submissions from PILS members.

Lisa DeVitto is the Legislative Committee Chair, and Alice Vickers is a lobbyist for PILS. PILS voted on several new legislative positions advocating for hate rimes reporting to be required on all protected classes under Florida's hate crimes law and advocating for unanimous jury verdicts in death penalty sentencing. PILS also voted to support a proposal for the U.S. Congress to create a nonprofit system to provide assistance for public defender's offices. PILS also agreed to support the Legal Needs of Children's Committee's legislative position opposing the direct filing of children to adult court in Florida and supporting the use of the judiciary as being solely responsible for making the decision as to whether the child should be prosecuted as an adult. The EC also discussed other changes/issues with current legislative positions.

Musto also reported on the status of two PILS pro bono initiatives—providing legal representation to youth aging out of foster care, and providing legal representation to seal and expunge criminal records for victims of human trafficking. The substantive committees provided reports of their current activities.

Musto appointed a nominating committee to develop a list of nominees to join the EC. Musto also asked for volunteers for an awards committee to review the current awards that are given by PILS and decide whether to award them this year. Musto also suggested the committee explore the creation of a general award for service in the public interest.

Musto noted that PILS celebrates its 25th anniversary this year, and we are looking into planning a celebration at the June meeting. ▪

PILS EC Members Honored with Pro Bono Service Awards

On January 30, PILS Executive Council Members Jessica L.C. Rae (Sixth Judicial Circuit) and Nancy E. Wright (Eighth Judicial Circuit) received the Florida Bar President's Pro Bono Service Award for their judicial circuits. Florida Bar President Eugene K. Pettis presented the 2014 awards to recognize pro bono service in each of Florida's 20 judicial circuits and one Florida Bar member practicing outside the state of Florida.

Jessica Rae, Esq. — Award Recipient

Jessica Rae, 6th Judicial Circuit

By **Andrea Cepeda**
Student Writer

As a young child, Jessica Rae remembers having classmates who were from the local orphanage. "I used to hate it when they couldn't come on school trips or go to weekend birthday parties, "she said. "I didn't think it was fair then, and I still don't."

Rae is a full time children's attorney at the Community Law Program in St. Petersburg. She specializes in child welfare and dependency law in the Sixth Judicial Circuit, specifically in Pasco and Pinellas counties.

"I strongly believe that children, teens and young adults are valuable right now, and not just potentially great adults," she said. Rae has helped children attend community college, obtain legal status in Florida and secure meaningful and appropriate housing.

Through her partnership with Florida's Children First, Rae has also aided hundreds of lawyers by developing and conducting in-person trainings for volunteers who are representing children in dependency proceedings. In addition to her work, Rae volunteers with Guardian ad Litem Program in Seminole County, and she is also the chair of the Children's Rights Committee for PILS.

"I like being an advocate, and I like a level playing field,"she said. "I like it when everyone has a fair chance even if they don't win." Rae also said she likes empowering her clients to advocate for themselves.

"In short, I have the best job in the world," Rae said. ▪

> "On almost every case, my clients teach me something that helps me be a better lawyer and a better person."
> - Jessica Rae, Esq.

Nancy Wright, 8th Judicial Circuit

By **Bailey Mullins**
Student Writer

Sole practitioner Nancy Wright focuses on public interest cases mostly dealing with Medicaid, Medicaid waiver programs and special education. She is a past co-chair of the PILS Disability Law Committee.

She began her public interest work at Three Rivers Legal Services. Wright said her work at Three Rivers opened her eyes to how many people actually need legal aid.

"Coming from a legal aid organization, it's very clear that there are large groups of people that really need help from a lawyer," Wright said. "Nothing else will work. Trying to say the same things that a lawyer says doesn't work. You need an actual lawyer there following through."

When Wright went into private practice, she focused on reducing the overhead costs so that she could take pro bono cases. Her pro bono work primarily involves clients who have developmental disabilities and/or "medically complex."

Recently, Wright co-counseled with Southern Legal Counsel, a Gainesville-based statewide public interest law firm, on *Moreland v. Palmer*, a class-action federal court case challenging violations of due process in connection with reduced funding for individuals with developmental disabilities. The case resulted in systemic state-wide changes to the process by which Florida's Agency for Persons with Disabilities notifies Medicaid waiver beneficiaries of intended service reductions.

"Perseverance is a big part of this as well," Wright said, "When you do this, you're mostly fighting bureaucracy and it's not going to end." ▪

Nancy E. Wright, Esq.— Award Recipient

> "I routinely take pro bono cases. I love the clients and the caregivers of the clients."
> - Nancy E. Wright, Esq.

Committee Reports

Civil Rights Committee Update

By **Christopher M. Jones, Esq.**
Committee Chair

The Civil Rights Committee is in the process of reforming and reinvigorating itself. With so many of our members involved in exciting and cutting-edge civil rights advocacy, this committee has great untapped potential. In April, PILS members will receive an email inviting them to participate in the committee. Because the committee has been inactive in recent years, we will have the opportunity to start fresh and set its priorities and goals. For additional information or to share your ideas, contact christopher@floridalegal.org.▪

Legislation Committee—Advocacy Update

By **Lisa Kane DeVitto, Esq.**
Committee Chair

PILS currently has 33 Legislative Positions, which are available on the Florida Bar website under the tab "Legislative Activity," subheading of Section Legislative Positions. They range from children's issues to criminal justice, homelessness, and consumer protections. See link: Master List of Legislative Positions.

Three more are in development. For the second year in a row, we are fortunate to have Alice Vickers serve as our pro bono lobbyist. Ms. Vickers is a PILS member. One achievement in the 2014 Legislative Session has been to identify and work for the removal of language unfavorable to consumers in HB 413 and SB 1006. These bills revise the Florida Consumer Collection Practices Act, part of chapter 559, Florida Statutes, to strengthen the state's regulatory authority over collection entities. The bills are still working their way through the legislative process and PILS will continue to monitor them, in conjunction with other consumer organizations. As well, PILS is monitoring legislation relating to protections for consumers entering into mortgage agreements.

Any committee or PILS member may contact the Legislation Committee or other Committee chairman if they are interested in having a bill monitored that is within one of PILS adopted Legislative Positions. To propose a new Legislative Position, a PILS member should contact the appropriate PILS Committee to begin the discussion. With respect to legislative advocacy on behalf of the Section, PILS is required to notify and coordinate with The Florida Bar.

The Board of Governors approved the most recent PILS Legislative Position in December, 2013, to recommend revising the Florida nonresident Cost Bond statute, section 57.011, Florida Statutes, to provide a more meaningful amount, as well as including sanctions and an indigency waiver. This statute has not been significantly revised since 1838, before Florida became a Territory. There is no bill pending to make the change, but a general review of statutory amounts is being considered in the 2014 Session, and PILS may have an opportunity to raise the issue.

At the January 27 mid-year meeting in Orlando the PILS Executive Committee approved three additional Legislative Positions: in favor of changing Florida law to require a unanimous jury recommendation in death penalty sentencing; to update the Florida Hate Crimes Reporting act to include all protected classes under the Florida Hate Crimes laws, and also, to support federal legislation by Congressman Peter Deutch to create a private, nonprofit center for the financial support of public criminal defense systems. The next step is to submit the positions to the Board of Governors for approval, and the positions are at various steps in the process. There is legislation pending in the 2014 Session that would require unanimous jury verdicts in death penalty sentencing: SB 334 by Sen. Thad Altman, and companion bills HB 369, and HB 467, by Representatives Watson and Rodriguez. Florida is an outlier on this issue—almost all other capital punishment states (Texas included) require unanimous penalty-phase juries.

As you can see, PILS Legislative Positions cover a wide range of issues. If you are interested in being active in the Legislation Committee, please contact the Chair. Lisadevitto@gmail.com. ▪

Homelessness Committee Update

By **Kirsten Clanton, Esq.**
Committee Chair

The PILS Committee on Homelessness met at the January meeting of The Florida Bar Convention on January 24. The Committee proposed a new legislative position, advocating for changes to Florida's Hate Crimes Reporting Act to require reporting on all protected classes under Florida's Hate Crimes Law. This position was approved by the Legislative Committee and the PILS Executive Council.

The Committee awards the Jane Shaeffer Outstanding Homeless Advocate every two years that was established to honor the founder of our Committee. The first award was given to Jane Shaeffer posthumously, and accepted by her family in 2010 at an awards lunch. The second was given to the Honorable Bob Dillinger, Public Defender for the Sixth Judicial Circuit 2012 and he was honored along with outstanding finalists at an awards breakfast. The Committee plans to give the third award this year.

To join the PILS Committee on Homelessness, contact Kirsten.clanton@southernlegal.org. ▪

Disability Law Committee Update

By **Sarah Sullivan, Esq.**
Committee Chair

The PILS Disability Committee has been tracking statewide developments on the iBudget Florida as well as Medicaid managed care developments via a listserv developed by Florida Legal Services. Additionally, Chair, Sarah Sullivan, submitted an article on how DOMA's abrogation affects public benefits. Members are also vetting ideas for Florida Bar Journal article topics. There is still room for more Disability Committee members. If you are interested, please contact Sarah Sullivan via electronic mail at ssullivan@fcsl.edu. ▪

Children's Rights Committee Update

By **Jessica Rae, Esq.**
Committee Chair

The Children's Rights Committee has long supported the extending foster care through age 21 and enhancing services for young adults who are transitioning out of foster care. In 2013, Florida joined a number of other states in recognizing that many young adults are not ready to be fully independent simply because they turned 18. Although the new laws went into effect in January 2014, regulations have not yet been promulgated and young adults involved in the system need competent legal advice to navigate the complex and bureaucratic child welfare system. During the 2013-2014 year, the CRC began working with Department of Children and Families and legal services providers around the state to develop ONE LAWYER ONE LIFE – a project designed to link older teens in foster care with a pro bono attorney. Stay tuned for further information on how to sign up for CLEs and get involved in this exciting project.

The CRC is made up of advocates,from diverse backgrounds and organizations, who are dedicated to ensuring access to justice for Florida's children and youth, particularly those youth who are involved in the juvenile justice or child welfare systems. We welcome new members. For more information about the CRC or if you are interested in joining, please contact Jessica Rae at jrae@lawprogram.org. ▪

Consumer Law Committee Update

By **Alice Vickers, Esq.**
Committee Chair

The Consumer Law Committee doubled in size after our meeting during the winter Florida Bar meeting in Orlando. We also have filled most of the committee positions, with Lizzie Johnson stepping up to serve as vice chair and Bert Savage filling the legislative liaison position.

Energized by our new members, we look to working on more tasks. First, as the committee has done in the past, we have established legislative positions on several bills pending before the Florida Legislature. HB 413/SB1006 amends the Florida Consumer Collection Practices Act and contained two provisions that eroded important consumer protections: it effectively removed the assignment of debt requirement leaving consumers more vulnerable to junk debt buyers; it released first party debt collectors (creditors) from inclusion in the Act subjecting consumers to unrestricted and abusive collection practices by creditors. Our committee opposed the bill unless amended and joined a group letter, that included the United Way, NAACP, Florida Prosperity Partnership, Navy and Marine Relief Society and several legal services programs, raising our concerns. We are pleased that the bill has been amended to remove all the provisions we opposed. We will continue to watch this bill, and others, closely as the session progresses.

Another project we are pursing is co-sponsoring an event at the upcoming National Consumer Law meetings in Florida. The annual NCLC – National Association of Consumer Advocates meeting will take place in Tampa, Florida on November 6-9, 2014. This is the premier gathering of attorneys who represent consumers. Our committee hopes to work with several private attorneys to host an event during the meetings; we strongly encourage any PILS members who represent consumers to plan to attend this important meeting November.

We welcome new members to our group. Please contact committee chair, Alice Vickers (alicevickers@flacp.org), if you would like to learn more about the Consumer Law Committee. ▪

Elections Committee Update

By **Robin Rosenberg, Esq.**
Committee Chair

After notice to the section and receipt of nominees, the Elections Committee has proposed the following slate for PILS for 2014-15. Since the number of eligible and willing nominees for at-large members equals the number of proposed slots on the Executive Council, the Elections Committee recommends that the Executive Council adopt the proposed slate by acclamation at the June 27, 2014 meeting. The newly elected Executive Council will then vote, after taking any additional nominees of eligible Executive Council members, on the new officers for the Section.

Officers
Chair-Elect: Alice Vickers
Secretary: Jessica Rae
Treasurer: Fran Tetunic

Term Expiring in 2015
*Carlos Gonzalez
*Kimberly Sanchez
* Bert Savage

Term Expiring in 2016
*Christie Bhageloe (formerly ex officio)
Mertella Burris
Kirsten Clanton
*John Copelan
Jeffrey Fromknecht
Lizzie Johnson
Christopher Jones
Tamesha Keel
Robin Rosenberg
Therese Truelove

* New to the EC. ▪

PILS Members Treated to Free CLE at Bar Meeting

By **Kirsten Clanton, Esq.**
Executive Editor

PILS members who attended the midyear meeting at The Florida Bar Convention on January 24 were treated to a free CLE presentation on Ethical and Professionalism Considerations in the Practice of Public Interest Law. Jan Jacobowitz, Lecturer in Law and Director of the Professionalism and Ethics Program at the University of Miami School of Law, and PILS Chair Tony Musto facilitated a highly interactive presentation on various hypothetical scenarios that implicated the Florida Rules of Professional Conduct on conflicts, client confidentiality, candor to the tribunal and meritorious claims and contentions. The room buzzed with opinionated discussion during this thought provoking presentation. PILS Executive Council Member Robin Rosenberg commented, "The CLE posed interesting fact scenarios from the public interest realm that sparked very lively conversation. It was fun to hear colleagues from a variety of backgrounds tackle these problems". All PILS members who attended received 1.5 hours of free CLE Ethics credits. Encouraged by the success of the CLE presentation, Musto stated, "This program was tailored for the needs of our members. I hope that we will continue to offer such programs in the future and that section members will avail themselves of CLE that will truly be relevant to what they are doing." ▪

SAVE THE DATES:

Florida Guardian ad Litem Program
Disabilities Training Conference
ADVOCATING FOR CHILDREN IN FLORIDA'S DEPENDENCY SYSTEM
JW Marriott, Grande Lakes Orlando | May 22 - 23, 2014

The Florida Bar 2014 Annual Convention
at the
Gaylord Palms Resort & Convention Center, Orlando
PILS Meetings
Friday, June 27, 2014
Committees and Executive Council
All members are invited to join us!

Get on board: *Join a Committee*

The Executive Council of PILS has established a **Long-Range Planning Committee** to develop a strategic plan to guide our Section over the next several years. Contact Anthony Musto, Chair, for more information (amusto@stu.edu).

The **CLE Committee** works to put together quality continuing legal education as a section service. Additional programs are in the planning stages. Contact Anthony Musto, Representative, if you are interested in joining the Committee (amusto@stu.edu).

The **Legislative Committee is** responsible for the Section's legislative advocacy efforts. Contact Lisa Devitto, Chair, if you are interested in joining this Committee (lisadevitto@gmail.com).

Our substantive committees are an excellent way to connect to other public interest lawyers and work together on relevant legal issues.

Please contact the Chair of the Committee you wish to join for further information:

Consumer Protection
Alice Vickers: alice.vickers623@gmail.com

Disability Law
Sarah Sullivan: ssullivan@fcsl.edu

Homelessness
Kirsten Clanton:
Kirsten.clanton@southernlegal.org

Children's Rights
Jessica Rae: jrae@lawprogram.org

Interested in developing a new committee in an area of law not listed here? Contact Anthony Musto, Chair of the Section. ▪

The Florida Public Interest Journal: *Call for Submissions*

Do you have a topic you want to write about? PILS is seeking interested members willing to write about public interest law issues. Send us tips about cases, issues, or topics we should be covering.

Contact Kirsten Clanton, Esq. if you are interested at Kirsten.clanton@southernlegal.org.

THE FLORIDA PUBLIC INTEREST JOURNAL

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