

SPEAKING OF JUSTICE

News From The Florida Bar Foundation
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INSIDE

2 NOW: An urgent appeal to Florida attorneys

3 Foundation suspends law student assistance grants

Legal aid organizations struggle to retain attorney positions

5 Foundation thanks its new Fellows

Fla. Gov. Rick Scott vetoes \$2 million FACLA appropriation



COURTESY OF THE TRIAL LAWYERS SECTION

Back row: Ted Eastmoore, Bob Palmer and Wayne Helsby, all of the Trial Lawyers Section, and Paul Doyle, director of the Foundation's Legal Assistance for the Poor Grant Program. Front row: Immediate Past American Bar Association President Stephen Zack, Community Law Program Executive Director Kimberly Rodgers, Trial Lawyers Children's Legal Services Fellow Jessica Rae, and Craig Gibbs, Trial Lawyers Section chair.

Trial Lawyers and Family Law sections each give \$75,000 to alleviate cuts to children's legal services programs

by Nancy Kinnally

The Trial Lawyers and Family Law sections of The Florida Bar have each made a \$75,000 charitable gift to The Florida Bar Foundation to alleviate cuts in the Foundation's children's legal services grants.

The gift from the Trial Lawyers is supporting a Trial Lawyers

Children's Legal Services Fellowship, while the gift from the Family Law Section supplemented the funds that were awarded March 16 to the Foundation's children's legal services grantees generally.

The two donations will effectively prevent the loss of two full-time attorneys serving needy, low-income children. The Foundation is hoping other sections will follow with similar charitable gifts.

see CHILDREN, p. 4



Leadership and Funding for Justice in Florida

NOW: An urgent appeal to Florida attorneys

To Our Fellow Florida Bar Members:

Legal aid funding in Florida is headed off a cliff, and Florida's poor are going to pay the price – unless we act.

You can help alleviate this urgent situation, which is expected to last for only a few years, by making a multi-year pledge to The Florida Bar Foundation at: www.floridabarfoundation.org/now.

If every Florida Bar member would give \$100 or more for each of the next three years, the Foundation would be able to restore at least \$9 million in legal aid funding annually during this crisis.

The revenue shortfall is a consequence of the Federal Reserve having held short-term interest rates close to zero since 2008 in an effort to stimulate the economy. For this reason, IOTA revenue, The Florida Bar Foundation's chief source of revenue, has dropped 88 percent from \$44 million annually in 2007 to just to \$5.5 million annually since 2010. And that is where it is expected to stay until at least 2014.

The Florida Bar Foundation, which has been providing about a third of the funding for 31 local legal aid organizations covering all 67 Florida counties, had prepared for a slump in IOTA revenue by setting aside a reserve fund, but this recession has outlasted the reserve.

The Foundation, by 2014, will have cut its funding to Florida's legal aid programs by 71 percent in three years. At the same time, the federally funded Legal Services Corporation, another important source of legal aid funding, has been cut by Congress. This means Florida's low-income children, elderly, families, disabled, recently unemployed and other vulnerable populations will have fewer legal aid attorneys to whom they can turn for help; nearly 30 percent fewer by our best



Florida Bar President Scott A. Hawkins



Florida Bar Foundation President
Michele Kane Cummings

estimates. The layoffs have already begun, both at legal aid and at the Foundation.

So, as the presidents of The Florida Bar and The Florida Bar Foundation, respectively, we are asking you to act. Now.

If you have given to The Florida Bar Foundation before, now is the time to increase your support. If you've never given before, now is the time to start. With your help, we can minimize the long-term damage to Florida's legal aid infrastructure between now and the time when interest rates return to pre-recession levels and the Foundation is able to restore legal aid funding.

We realize many of you already give to your local legal aid organization, and we thank you for that. We hope that you will also give to The Florida Bar Foundation, which provides important statewide funding, leadership and technical support to Florida's local legal aid organizations.

The special "Now" campaign form at the link below will enable you to make automated credit card payments over time to fulfill your pledge to this timely and

critically important campaign.

The Florida Bar Foundation, with advocacy support from The Florida Bar, has in the past received anywhere from \$1 million to \$2.5 million from the Florida Legislature through the Florida Access to Civil Legal Assistance Act and will continue to seek legislative funding, but it is not guaranteed, and it is not enough.

If we, as lawyers, do not step up to fill this urgent need for legal aid funding, then who will? Please visit www.floridabarfoundation.org/now to make your pledge. And please do it "Now."

Sincerely,

A handwritten signature in black ink that reads "Scott G. Hawkins". The signature is written in a cursive style.

Scott G. Hawkins, President
The Florida Bar

A handwritten signature in black ink that reads "Michele Kane Cummings". The signature is written in a cursive style.

Michele Kane Cummings, President
The Florida Bar Foundation

Foundation suspends law student assistance grants

The Florida Bar Foundation has suspended its Law Student Assistance Grant Program temporarily due to severely reduced revenue from Florida's Interest on Trust Accounts (IOTA) Program. The Foundation intends to restore its funding of law student assistance grants when IOTA revenue rises to pre-recession levels.

"Unfortunately, when we are forced to cut funding to our legal aid grantees, who in turn are having to cut staff attorney positions, it just doesn't make sense to put resources into programs that encourage law students to pursue public interest law careers," said Maria Henderson, chair of the Foundation's Legal Assistance for the Poor Grant Program. "Right now we are doing all we can to preserve legal aid funding."

The 1983-84 grant year marked the start of the Foundation's Law Student

Assistance Grant Program. Since then the Foundation has funded various projects to promote public interest and pro bono activities among law students and in their subsequent legal careers. Among those projects are the Legal Aid Summer Fellows Program, Public Service Fellows Program and the Law School Civil Clinic Grant Program.

The Children & Youth Law Clinic at the University of Miami is one of 10 law school civil clinics in Florida that has been receiving \$25,000 annual grants from the Foundation.

Bernard P. Perlmutter, associate clinical professor and director of the clinic, said the Foundation's support has helped pay attorney salaries, litigation and other expenses, and has funded the publication of client "know your rights" manuals. For the past six years, the clinic has shared

its grant with the law school's Health and Elder Law Clinic.

"The suspension of Civil Clinic grant funding comes at a time when our school's budget is being cut back due to declining tuition revenues," Perlmutter said. "We're also budgeting for the anticipated 20 percent reduction in our Bar Foundation children's legal services grant. Fortunately, our law school and its dean strongly support the advocacy performed by our student interns on behalf of the clinics' clients and will make up for the lost Bar Foundation funding. But these funding cuts remind us how vulnerable the legal services community, including law school clinics, is to the volatile national economy, and these losses are ultimately borne by our clients who rely on the essential services that we provide in ensuring their access to justice."

Legal aid organizations struggle to retain attorneys cultivated by The Florida Bar Foundation and Equal Justice Works

by Gabrielle Davis and Nancy Kinnally

As an Equal Justice Works Fellow advocating for mentally ill prisoners, Cassandra Capobianco uncovered a startling overuse of tear gas and pepper spray in Florida prisons, resulting in serious burns to inmates already suffering from diagnosed psychiatric disorders.

"A lot of these clients were burned so badly they required extensive medical treatment," said Capobianco, whose two-year EJW Fellowship at Florida Institutional Legal Services (FILS) was funded by The Florida Bar Foundation with support from the Advocacy Center (now Disability Rights Florida).

One prisoner, 38-year-old Jeremiah Thomas, a diagnosed schizophrenic, became the main plaintiff in a 2004 impact lawsuit against the Florida

Department of Corrections (DOC) after he was severely burned and traumatized by chemical agents that had been used on him five times in six days. While in his isolation cell, Thomas was hit with so much pepper spray that he ended up with first- to third-degree burns on his back, abdomen, arms, elbows and buttocks.

"The Department of Corrections had a policy that non-spontaneous use of force had to be videotaped *unless* you were using chemical agents," said FILS executive director Christopher Jones, explaining that the use of pepper spray and tear gas had come to replace brute force after the 1999 beating death of an inmate by corrections officers and subsequent scrutiny of the Florida DOC by federal authorities.

Thomas was one of 10 mentally ill inmates FILS attorneys originally

represented in a case Jones said was aimed at stopping the "systematic torture" of severely mentally ill inmates with chemical agents while confined virtually 24 hours a day, seven days a week, in 9-by-7-foot isolation cells where they posed no threat to themselves or others.

After working the case for seven years, Capobianco was part of a litigation team, including the law firm of Holland & Knight and the Florida Justice Institute, that won the lawsuit. Four days before appellate oral arguments, Thomas – one of two remaining plaintiffs – died in custody. His father, although suspicious that his death could have been related to the repeated use of chemical agents, took some solace in the association of his name with a lawsuit that would bring change. The victory resulted in the rapid and steep

see ATTORNEYS, p. 6

"The Florida Bar Foundation is thrilled to see this tremendous support from the Family Law Section and the Trial Lawyers Section," said Michele Kane Cummings, president of The Florida Bar Foundation and a member of the Family Law Section. "How far we are willing to go to protect and uphold the legal rights of children says a lot about who we are as a profession. The support these two groups have shown in the midst of this legal aid funding crisis speaks volumes about what lawyers truly stand for. We are so very grateful."

About 120 of the state's 410 legal aid attorney positions are subject to elimination due to a sharp decline in revenue from Florida's Interest on Trust Accounts (IOTA) program, the chief funding source for The Florida Bar Foundation. Of the 29 legal aid attorneys who specialize in children's legal services, the positions of about 10 are still vulnerable.

"The Trial Lawyers Section recognizes the vital role Foundation-funded children's legal services attorneys play in protecting the rights of low-income children," said Craig Gibbs, chair of the Trial Lawyers Section. "We were alarmed when we learned of the potential loss of career children's legal services attorneys due to the slump in IOTA revenue, and we wanted to do our part by enabling one of the Foundation's grantees to retain its children's advocate."

Since the early 1990s, the Foundation has funded special annual grants for legal services to children. The Foundation's priorities for its Children's Legal Services Grant Program include representation of foster-care children and access to special education, medical, developmental and mental health services that are required under law.

"A core mission of the Family Law Section is to be at the forefront of efforts to protect children's rights," said David

Manz, chair of the Family Law Section. "It is the essence of who we are as a Section. We are proud to be able to provide this contribution to the Foundation's Children's Legal Services Grant Program as a way to effectuate our mission."

The Foundation distributed \$2.8 million to 23 legal aid programs through its Children's Legal Services Grant Program in 2010, but had to cut those grants by 21 percent in 2011 after low interest rates brought about an 88 percent drop in annual IOTA revenue since 2008. The Foundation used funds from its reserve to prevent even deeper cuts. But with reserve funds running low and interest rates not expected to rise until 2014 or later, the Foundation anticipates that it will have to cut its total children's legal services grant funding to \$1.2 million by 2013. This will represent further cuts to the program of 42 percent over three years.

Paul Doyle, director of the Foundation's Legal Assistance for the Poor Grant Program, said the cuts will result in a 40 percent reduction in the number of children being served, which translates to 750 fewer children than the nearly 1,900 served in 2010.

Doyle is hoping to use the gifts from the Trial Lawyers, the Family Law Section and possibly others to prevent the loss of some of the state's most effective children's advocates, particularly those employed by smaller legal aid programs that are least capable of absorbing the loss of grant funds and therefore most likely to eliminate their children's legal services projects altogether.

"A big concern we have is that once these attorneys and projects are gone, they may never come back," Doyle said. "But if we can preserve them for several years until IOTA revenue rises again, we might be able to save these children's legal services projects from extinction."

The Foundation's board of directors March 16 approved funding for Jessica



David Manz, chair of The Florida Bar's Family Law Section

Rae of the Community Law Program in St. Petersburg to be The Florida Bar Trial Lawyers Section Children's Legal Services Fellow. Rae, a graduate of the Washington College of Law at American University, will be serving children through the Transitioning Dependent [Foster] Youth Project, which represents about 30 to 40 needy children a year.

Kimberly Rodgers, executive director of the Community Law Program, called the gift from the Trial Lawyers section "the most magnificent gesture of support for the importance and impact this project has had in the lives of vulnerable children in Pinellas County since we started it in 2007."

"We are so thankful to the Trial Lawyers Section and to The Florida Bar Foundation for making it possible for us to continue this work," Rodgers said. "And with Jessica's help, I am confident we will be able to help even more children aging out of foster care get better prepared to live on their own."

Please join us in thanking our new Foundation Fellows

Fellows are life members of The Florida Bar Foundation; core supporters who believe in the value of justice and the importance of the Foundation's leadership and charitable programs. Between Jan. 1 and Dec. 31, 2011, the following individuals generously made their \$1,000 Fellows pledge (payable over multiple years) in support of the Foundation's mission to provide greater access to justice:

John D. Agnew	Brian Gilchrist	Ryon M. McCabe	David Sigalow
Babette Bach	Valory Greenfield	Dionne L. Meyers	Michael Slick
Dorene P. Barker	Amy K. Guinan	Stephen Milbrath	Theodore W. Small, Jr.
Jaime A. Bianchi	Thomas H. Gunderson	Denis H. Noah	Anne L. Swerlick
Jeffrey Boyles	Miriam Harmatz	Gregory M. Noonan	Michael Tanner
Jose Chanfrau	Michael S. Hooker	Michael F. Orr	Michael Taylor
William M. Chanfrau	Cindy L. Huddleston	Jennifer J. Perez	Robert Thornburg
Samuel J. Comer	Carlos A. Kelly	Jorge L. Piedra	Sandra C. Upchurch
Jodie D. Cooke	George Knott	Toni Powers	Cody B. Vaughan-Birch
Robert D. Critton, Jr.	Jeffrey T. Kuntz	Shannon Puopolo	Cathy S. Viccellio
Sean T. Desmond	Kimberly Law	Michael D. Randolph	Richard Warther
Benjamin Diamond	Dick Lee *	David K. Reading	Guy E. Whitesman
Isabel C. Diaz	Michael Lockamy	Christopher Regan	Randall Wilson
Robert E. Doyle	Thomas H. Loffredo	J. J. Rice	John F. Woodson, II
Laurence Eger	Stephen Luther	Harley E. Riedel, II	Jason N. Zakia
Charles Elsesser	Frank E. Maloney, Jr.	Arthur J. Rosenberg	Carlo F. Zampogna
Robert M. Fournier	John W. Manuel	Jacob Rush	
Shayna A. Freyman	Chrystal S. Martin	Patrick S. Scott	* Deceased
Shari Gerson	Margaret Mathews	Marcy L. Shaw	

Become a Fellow or continue your support after completing your pledge by giving online at:

www.floridabarfoundation.org

Fellows pledges are gifts of \$1,000 payable over five years (or 10 years for young, nonprofit and government lawyers)

Fla. Gov. Rick Scott vetoes \$2 million FACLA appropriation

A \$2 million appropriation for legal aid through the Florida Access to Civil Legal Assistance Act was vetoed in the budget announced April 17 by Fla. Gov. Rick Scott. The Legislature included the money in the 2012-13 budget approved in the closing days of the regular session.

Administered by The Florida Bar Foundation, FACLA funds help low-income Floridians with civil legal needs, such as protection from domestic violence, elder and child abuse, and entitlement to federal benefits, including veterans' benefits.

Foundation officials expressed gratitude to Rep. Rich Glorioso, R-Plant City, chair of the House Justice Appropriations Subcommittee; Sen. Ellyn Bogdanoff, R-Ft. Lauderdale, chair of the Senate Criminal and Civil Justice Appropriations Subcommittee; and Sen. Mike Fasano, who was succeeded by Bogdanoff as chair of the Senate panel, for funding the act in their respective budgets. They also praised House Speaker Dean Cannon, R-Winter Park, for increasing the appropriation from \$1 million to \$2 million during budget negotiations between the House and Senate.

"We are deeply disappointed that Gov. Scott did not recognize the tremendous return on investment FACLA funding provides," said Foundation President Michele Kane Cummings. "Based on a recent study The Florida Bar Foundation commissioned from Florida TaxWatch, 2008-09 FACLA funding of \$1 million created 170 non-legal-aid jobs in the state economy, produced \$13 million of economic output, provided \$22 million of disposable income, and generated \$13.86 of economic impact for every \$1 spent on legal aid by the state for FACLA funding. That's a pretty good return."

“A lot of these clients were burned so badly they required medical treatment.”

– Cassandra Capobianco

**Florida Institutional Legal Services
Staff Attorney and former EJW Fellow**



Through her Equal Justice Works Fellowship, Cassandra Capobianco led a successful lawsuit against the Florida Department Corrections involving excessive use of chemical agents that left a number of inmates, such as the one pictured above, with serious burns.

“I really think the Foundation and Equal Justice Works showed strength in supporting a project like this. My project focused on an unpopular population, but it impacted hundreds, if not thousands of people through litigation.”

– Kristen Lentz

**Florida Institutional Legal Services
Staff Attorney and former EJW Fellow**

decline of pepper spray and tear gas being used against mentally ill inmates.

Capobianco was also part of a team that litigated a separate lawsuit, which resulted in DOC hiring mental health staff to monitor mentally ill inmates in extended confinement. She is one of 68 EJW Fellows the Foundation has funded to work at 21 different Florida legal aid organizations since 1999, with a total investment since then of \$2.7 million dollars. The mission of the Washington D.C.-based Equal Justice Works is to create a just society by mobilizing the next generation of lawyers committed to equal justice. In partnership with the Foundation, the law firm of Greenberg Traurig and The Florida Bar have consistently helped support EJW Fellows working at legal aid organizations providing assistance to low-income Floridians in areas such as health-care and immigration law and children’s rights.

Of all Foundation-funded EJW Fellows, 68 percent have remained in Florida and 81 percent remain in public interest law. FILS, where Capobianco completed her EJW Fellowship and where she continues her impact work today, is a prime example of how well the partnership has worked.

Four of FILS’ six current staff attorneys – Capobianco, Kristen Lentz, Andrea Costello and Katy DeBriere – were EJW fellows.

Unfortunately, declining revenue from Florida’s Interest on Trust Accounts Program now limits the number of EJW fellows the Foundation can sponsor and also threatens the viability of some of the projects begun by the former EJW Fellows. The Foundation anticipates that it will have cut FILS’ grant to \$296,000 by the 2014-15 grant year, a 71 percent drop from its \$1 million grant in 2010-11.

Costello, who came to FILS after serving as an EJW fellow at Southern Legal Counsel in Gainesville, Fla., recently accepted another public interest job in Washington, D.C., where her career outlook is better. Highly specialized in Medicaid law, Costello will be hard to replace. Jones is not sure where he will find someone to carry on her project, which advanced the rights of people with physical disabilities so they could receive long-term, in-home healthcare and supportive services through Medicaid, rather than being institutionalized or put in nursing homes in violation of their rights under the Americans with Disabilities Act and federal Medicaid laws.

Costello’s EJW project resulted in significant reforms to the state’s policies and procedures for the Medicaid program that provides community-based services, including ensuring due process and a commitment from the state to put adequate funding into the program to



From left, Florida Institutional Legal Services staff attorneys and former Equal Justice Works fellows Kristen Lentz, Cassandra Capobianco and Katy DeBriere.

meet the need.

"We have recruited and retained some of the best legal aid advocates in the country and now we are in a crisis where we may not be able to maintain their positions," said Jones. "EJW Fellowships themselves are likewise no longer as readily available."

Jones is hoping he will be able to hold onto the other former EJW Fellows whose projects – like Costello's – have expanded the scope of FILS' work. Once regarded as a "prison" legal aid program, FILS now offers legal services to other populations, such as the developmentally disabled and veterans. Jones cites Lentz' work in *Mobley v. Department of Veterans Affairs*, which he said "improved the VA's treatment of institutionalized and homebound veterans across America."

Lentz came to FILS as an EJW Fellow who, like Capobianco, advocated for some of the most vulnerable people in the state; mentally ill people who were civilly committed. Her fellowship was co-sponsored by Miami attorney Bruce Rogow.

"I really think the Foundation and Equal Justice Works showed strength in supporting a project like that," Lentz said. "My project focused on an unpopular population, but it impacted hundreds, if not thousands of people through

litigation."

DeBriere's EJW project focused on trying to prevent the institutionalization and incarceration of people with physical and developmental disabilities by advocating for access to community-based services. She developed an 82-page handbook that provides insight on how defense attorneys can identify and communicate with their developmentally disabled clients, document their disabilities and seek special sentencing considerations.

Now as a FILS attorney, DeBriere focuses more on direct advocacy on behalf of the developmentally disabled who are at-risk or are already incarcerated or institutionalized. She has succeeded at diverting at-risk clients from the system by working together with law enforcement, the courts and the social support system.

"That is the reason my fellowship was started," DeBriere said. "Getting everyone working together to get that person what they needed."

Jones is hoping that the funding will be found to help his organization and others avoid the loss of such competent and committed lawyers and to seek new EJW fellows.

"Now more than ever we need to recruit and retain this caliber of advocate, but that is getting harder to do," he said.



"We have recruited and retained some of the best legal aid advocates in the country and now we are in a crisis where we may not be able to maintain their positions."

– Christopher Jones, Executive Director
Florida Institutional Legal Services

FOUNDATION FACT

The Florida Bar Foundation rates among the best-run charities in the nation, according to Charity Navigator, the leading independent evaluator of U.S. nonprofits.

The Foundation, the only statewide organization that funds civil legal services for the poor, received a four-star rating, the highest possible, for the 2010 fiscal year.

It has received the top rating for four of the past five years. More than 90 cents of every dollar spent by the Foundation go directly to programs that carry out the organization's mission.

Charity Navigator issues ratings from zero to four stars for sound fiscal management and commitment to accountability and transparency.



SPEAKING OF JUSTICE

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we help legal aid help those least able to afford a lawyer.

We are The Florida Bar Foundation,

and we believe the justice system works best when it works for everyone.



Leadership and Funding for Justice in Florida