

FORUM 8

Volume 80, No. 8

Eighth Judicial Circuit Bar Association, Inc.

April 2021

President's Message

By Philip N. Kabler, Esq.



This month we open with a classic children's poem, because sometimes we just have to be reminded to 'smell the roses.' (See prior issues of *Forum 8* for discussions on wellness and mindfulness.)

*Spring has sprung
The grass has riz
Come out yourself And see how
'tiz.*

This is the Canadian version because I prefer the final line, which encourages us all to go outside and do *something*. (And since we are lawyers, the source is <https://www.mamalisa.com/blog/spring-has-sprung-the-grass-is-riz>.)

Which leads to one of our core tenets as members of the bench and bar. *We do 'things.'* Significant *'things.'* Beneficial *'things.'* We do those *'things'* for specific outcomes. To benefit our six counties. To act as servant leaders. To teach.

This month, let us celebrate just a few of our *'things.'* Because there truly are many.

- We co-hosted a Medical-Legal Partnership forum with our colleagues at the Alachua County Medical Society.
- We presented our Annual Professionalism Seminar, even when we could not do so in-person.
- We sponsored "The Gloria" charity golf tournament to support The Guardian Foundation.
- We continue to organize and present our Law in the Library public education series - and our community-based Ask-A-Lawyer *pro bono* events.
- We held our annual Margaret Stack Holiday Gift Project for the Alachua, Bradford and Union County Pre-K Exceptional Student Education (ESE) programs, even though we could not deliver the gifts and books

personally – please note the gift project will now rotate among the schools in all of our counties.

- Our Young Lawyers Division remains as active as ever, and safely; and...
- We carry on with our Mentoring Program involving EJCBA members and students from the University of Florida Levin College of Law.

We should all be quite pleased to realize those are just a 'taste' from our 'menu' of service activities. All of which are carried forward by volunteer organizers and participants. And, of course, with the work of Judy Padgett, our wonderful Executive Director.

The take-away: there are so many *'things'* we can all do. Together. To benefit all of the communities in our circuit. Please participate in all programs which interest you.

Please be sure to put these two events on your calendars. Better, register to participate.

- April 16, 2021 – Our annual Leadership/Diversity/Inclusivity Forum
- May 14, 2021 – The 2020-2021 'program year' closes-out with a visit (online) by Florida Supreme Court Chief Justice Charles T. Canady

As noted in prior columns, we will do our very best to hold live events as soon as we can. (Maybe not during this 'program year,' but soon.) And we will work to add more special programs. Be sure to regularly check *Forum 8*, our e-blasts, the www.8jcba.org calendar, and our Facebook page for event updates.

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2020 - 2021 Board Officers

Philip N. Kabler
President
2700 NW 43rd St, Suite C
Gainesville, FL 32606
(352) 332-7688
pkabler@boginmunns.com

Robert E. Folsom
President-Elect Designate
220 S. Main Street
Gainesville, FL 32601
folsomr@circuit8.org

Dominique Lochridge-Gonzales
Secretary
1000 NE 16th Avenue, Bldg 1, Ste B
Gainesville, FL 32601
(352) 415-2324
dominique.lochridge-gonzales@trls.org

Evan Minton Gardiner
President-Elect
151 SW 2nd Ave
Gainesville, FL 32601
(352) 388-7385
gardinere@pdo8.org

Sharon T. Sperling
Treasurer
P.O. Box 358000
Gainesville, FL 32635
sharon@sharonsperling.com

Contribute to Your Newsletter!

From the Editor

I'd like to encourage all of our members to contribute to the newsletter by sending in an article, a letter to the editor about a topic of interest or current event, an amusing short story, a profile of a favorite judge, attorney or case, a cartoon, or a blurb about the good works that we do in our communities and personal lives. Submissions are due on the 5th of the preceding month and can be made by email to dvallejos-nichols@avera.com.

Members at Large

Jan Bendik
3600 SW 19th Ave, Apt 13
Gainesville, FL 32607
(352) 374-4122
prague@mindspring.com

Mikel Bradley
1000 NE 16th Avenue, Building I
Gainesville, FL 32601
(352) 415-2304
mikel.bradley@trls.org

Raymond F. Brady
2603 NW 13th Street, Box #403
Gainesville, FL 32609
(352) 554-5328
rbrady1959@gmail.com

Jodi H. Cason
PO Drawer 340
Starke, FL 32091
(904) 966-6319
Casonj@circuit8.org

Allison Derek Folds
527 E. University Ave.
Gainesville, FL 32601
(352) 372-1282
derek@foldsandwalker.com

Norm D. Fugate
P.O. Box 98
Williston, FL 32696
(352) 528-0019
norm@normdfugatepa.com

Dean Galigani
317 NE 1st Street
Gainesville, FL 32601
(352) 375-0812
dean@galiganilaw.com

Alexis J. Giannasoli
151 SW 2nd Ave
Gainesville, FL 32601-6229
(352) 338-7369
giannasolia@pdo8.org

John "Eric" Hope
2506 NW 21st Avenue
Gainesville, FL 32605
(352) 872-5020
ehope@gainesville-lawyer.com

Abby H. Ivey
1524 NW 12th Road
Gainesville, FL 32605
(786) 201-8955
abbyivey@outlook.com

Frank E. Maloney, Jr. - Historian
445 E. Macclenny Ave., Ste. 1
Macclenny, FL 32063-2217
(904) 259-3155
Frank@FrankMaloney.us

James H. McCarty, Jr. (Mac)
2630 NW 41st Street, Ste A
Gainesville, FL 32606-6666
(352) 538-1486
jhmccjr@gmail.com

George Nelson
81 N. 3rd Street
Macclenny, FL 32063
(904) 259-4245
nelsong@pdo8.org

Peg O'Connor
102 NW 2nd Avenue
Gainesville, FL 32601
(352) 372-4263
peg@toklegal.com

Lauren N. Richardson
3620 NW 43rd Street, Unit B
Gainesville, FL 32606
(352) 204-2224
lauren@laurenrichardsonlaw.com

Scott Schmidt
2957 SW 39th Ave
Gainesville, FL 32608
(352) 615-7229
scottschmidtesq@gmail.com

Dawn M. Vallejos-Nichols - Editor
2814 SW 13th Street
Gainesville, FL 32608
(352) 372-9999
dvallejos-nichols@avera.com

About this Newsletter

This newsletter is published monthly, except in July and August, by:

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Eighth Judicial Circuit Bar Association, Inc.
P.O. Box 140893
Gainesville, FL 32614
Phone: (352) 380-0333
Fax: (866) 436-5944

Any and all opinions expressed by the Editor, the President, other officers and members of the Eighth Judicial Circuit Bar Association, and authors of articles are their own and do not necessarily represent the views of the Association.

News, articles, announcements, advertisements and Letters to the Editor should be submitted to the Editor or Executive Director by Email. Also please email a photograph to go with any article submission. Files should be saved in any version of MS Word, WordPerfect or ASCII text.

Judy Padgett
Executive Director
P.O. Box 140893
Gainesville, FL 32614
Phone: (352) 380-0333
Fax: (866) 436-5944
execdir@8jcba.org

Dawn M. Vallejos-Nichols
Editor
2814 SW 13th Street
Gainesville, FL 32608
(352) 372-9999
(352) 375-2526
dvallejos-nichols@avera.com

Deadline is the 5th of the preceding month

Alternative Dispute Resolution

By Chester B. Chance and Charles B. Carter



Possible Ways to Unclog the Civil Trial Logjam, Now and in the Future

COVID has wreaked havoc on the civil jury trial dockets. The backlog for civil trials is both scary and real. We were trying to come up with some ways to break up, at least partially, the trial logjam both now and in the future. We found one old tool and one new tool

BIFURCATION

Bifurcation has been around for a long time. If you want to get a good handle on the efficacy of bifurcating the liability and damage issues of a trial, we direct you to the article "To B. . . . Or Not To B. . . . Means Bifurcation" at 74 Nov. Fla. B.J. 14. In the article, Judge David Tobin gives a very compelling reason for revisiting the use of bifurcation. He wrote the article in 2000 and yet the article is even more relevant today.

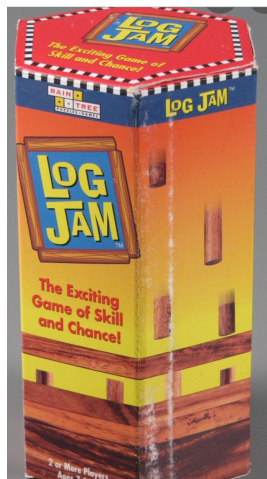
After initially considering the idea of bifurcating some cases, Judge Tobin promptly entered an order for his division bifurcating all slip and fall cases. He noted a high number of defense verdicts in such cases on the issue of liability and realized he could save a lot of time by eliminating the damages portion of such cases. He then set his sights on examining the overall benefits of bifurcating civil cases.

Judge Tobin saw many benefits in at least considering bifurcation in slip and fall cases, some products liability cases, some auto accident cases and some general negligence cases where the issue of both fault and damages existed.

The court on its own has the discretion to bifurcate a case as long as the discretion is not abused pursuant to Fla. R. Civ. P. 1.270(b). The advantage of bifurcation is "efficiently moving a case through the system" Judge Tobin goes on to explain the advantages of bifurcating liability cases:

1. The trial on liability is shorter than a trial on both liability and damages.
2. If a jury decides there is no fault on the defendant, the issues between the parties are concluded.
3. If a jury decides there is fault on the defendant, that issue is concluded.
4. If a jury finds in favor of a defendant on liability, that issue is appealable and if reversed, often leads to a settlement.

5. Without the issue of damages being tried, the court **and** the litigants will be spared the numerous pretrial motions relating to treating physicians, medical records, expert opinions, fees and costs for depositions and other matters relating to damage issues. The trial on liability is simplified.
6. If a case is not resolved at mediation, Judge Tobin opines the reason is generally because liability is contested. (Note: studies show a good percent of cases which are tried involve instances where the defense takes the position there is no liability.) If liability is determined by a jury, the jury will apportion liability among the parties and any *Fabre* defendant which allows the parties to reevaluate the case based upon the jury verdict on liability.
7. For those worried about the COVID trial logjam: Bifurcating selected cases will allow the court to try more cases in a given period of time and "thus accommodate more litigants' quest for justice in the system and reduction of the time to move a case to trial."
8. By eliminating the damages issue, "the parties will be ready for trial sooner and can be placed on an earlier trial calendar."
9. A trial on liability alone is simpler in preparation, less costly, and easier to try.



8. By eliminating the damages issue, "the parties will be ready for trial sooner and can be placed on an earlier trial calendar."
 9. A trial on liability alone is simpler in preparation, less costly, and easier to try.
- Yes, there are some disadvantages to bifurcation. The main one is possibly a second jury on the issue of damages. But: the likelihood of that second jury being needed is reduced once liability is addressed (see discussion below).

We have almost verbatim utilized the words of Judge Tobin in his article. In fact, we should have just reprinted the entire article. We *strongly* urge both lawyers and judges to read the full article which is compelling on the efficacy of bifurcation. One compelling observation: Judge Tobin noted that after setting 42 cases for liability-only trials, he only tried **one** case on damages. Potent food for thought during this COVID era.

Judge Tobin relates that after trying a liability-only case which resulted in a defense verdict, the *plaintiff* attorney thanked the judge because he saved thousands of dollars in costs and felt if the jury found some liability on the defendant the case would surely have settled.

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New Executive Director Joins Three Rivers Legal Services

By Marcia Green

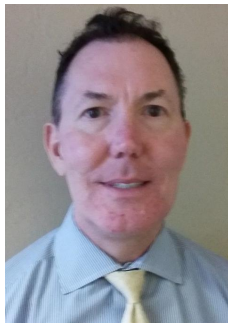
Pro Bono Director, Three Rivers Legal Services



Three Rivers Legal Services Inc. welcomes Walter "Anthony" Wisz, filling the position left by retired Executive Director Chris Larson. Wisz, pronounced "wise," comes to Three Rivers from Arizona and a long history of legal services dedication and leadership.

Anthony most recently served as Deputy Director at Southern Arizona Legal Aid, a similarly funded program based in Tucson. SALA, as it is known, serves residents in very rural southern Arizona, covering 33,000 square miles, including nine counties and much of Arizona's Native American communities. Coming to Three Rivers, he is well prepared to tackle this 17-county program spanning 11,000 square miles in North Florida.

In 2004, Anthony joined the staff at SALA, leaving his home state of Pennsylvania. He became managing attorney of the Family Law and Immigration Units and then became the first Deputy Director of the program. Interested in elementary education, he joined the Board of Directors of the IDEA School, a small independent school with grades first through eighth. The IDEA School is an open classroom concept that does not assign letter grades but emphasizes collaborative learning.



Anthony's roots in the legal services community began when he worked as a paralegal at Southern Alleghenies Legal Aid. In 1992, after law school, he rejoined that staff as an attorney. He later left to work with a private law firm practicing employment law but found that he preferred non-profit work. He took a job as an attorney advocating for the rights of at-risk youth at an agency called KIDSVOICE, awaking a passion for underprivileged youth. He also became involved in Big Brothers Big Sisters and mentored at-risk males.

Anthony attended the University of Pittsburgh School of Law, inspired from his paralegal work at the legal aid program. Born and raised in Western Pennsylvania, he earned his undergraduate degree from the Indiana University of Pennsylvania where he majored in Criminal Justice. Anthony has also taught legal courses at local community colleges.

Anthony met his husband, Beau, in Tucson; the dog-loving couple have a Boston Terrier and a recently-acquired Steel Blue American Doberman Pincher.

He looks forward to meeting members of the legal community and eventually adjusting to the local humidity

while exploring Gainesville and the surrounding area. Anthony's email is anthony.wisz@trls.org.

LEGAL SERVICES CORPORATION Notice of Grant Funds Available for Calendar Year 2022

The Legal Services Corporation (LSC) announces the availability of grant funds to provide civil legal services to eligible clients during calendar year 2022. In accordance with LSC's multiyear funding policy, grants are available for only specified service areas. The list of service areas for which grants are available, and the service area descriptions are available at <https://www.lsc.gov/grants-grantee-resources/our-grant-programs/basic-field-grant/lsc-service-areas>. The Request for Proposals (RFP), which includes instructions for preparing the grant proposal, will be published at <https://www.lsc.gov/grants-grantee-resources/our-grant-programs/basic-field-grant> on or around April 15, 2021. Applicants must file a Pre-application and the grant application through GrantEase: LSC's grants management system.

Please visit <https://www.lsc.gov/grants-grantee-resources/our-grant-programs/basic-field-grant> for filing dates, applicant eligibility, submission requirements, and updates regarding the LSC grants process. Please email inquiries pertaining to the LSC grants process to LSCGrants@lsc.gov.

It's that time again! The Eighth Judicial Circuit Bar Association Nominations Committee is seeking members for EJCBA Board positions for 2021-2022. Consider giving a little time back to your local bar association. Please complete the online application at <https://forms.gle/rs7eHfi7mLHVihq18>. The deadline for completed applications is May 3, 2021.

Three Rivers Welcomes New Family Law Attorney

By Marcia Green

Pro Bono Director, Three Rivers Legal Services



Three Rivers Legal Services welcomes attorney Margery Wolf, joining our Gainesville office family law team. She leaves private practice in Polk County to fill in the gap left by the retirement of our staff attorney Jenny Seltzer.

Margery states that as she “moved further along in her career,” she wanted “to get back to where my passion is in the practice of law - helping those who are in the greatest need and who otherwise don't have meaningful access to the court system.”

During her time in private practice, Margery also served as the traffic hearing officer for the Tenth Judicial Circuit. She commented “never a dull moment in traffic court!” Prior to private practice, she spent five years as a staff attorney with Seminole County Legal Aid and then ten years as managing attorney and executive director of Heart of Florida Legal Aid. In all of her positions, Margery focused on domestic violence and family law matters.



A native of Colorado, Margery graduated from Stetson University College of Law and joined the Florida Bar in 1992. She received a Master of Business Administration from University of Central Florida in 1988 and a Bachelor of Science in Business Administration from University of Florida in 1986.

“I am glad to be back in Gainesville (though it is quite different from when I was a student here in the mid-80s!)” Margery stated. She enjoys the great nature parks and hiking trails in the area. As a lover of all types of music, she is enjoying Gainesville Orchestra concerts and is looking forward to being able to travel.

Getting settled in Gainesville, Margery is looking forward to working with Three Rivers, in-person gatherings and becoming more involved in the community. Margery's email is margery.wolf@trls.org.

NOMINEES SOUGHT FOR 2021 JAMES L. TOMLINSON PROFESSIONALISM AWARD

Nominees are being sought for the recipient of the 2021 James L. Tomlinson Professionalism Award. The award will be given to the Eighth Judicial Circuit lawyer who has demonstrated consistent dedication to the pursuit and practice of the highest ideals and tenets of the legal profession. The nominee must be a member in good standing of The Florida Bar who resides or regularly practices law within this circuit. If you wish to nominate someone, please submit a letter describing the nominee's qualifications and achievements via email to Raymond F. Brady, Esq., rbrady1959@gmail.com. Nominations must be received via email by Friday, April 30, 2021 in order to be considered. The award recipient will be selected by a committee comprised of leaders in the local voluntary bar association and practice sections.



Trial Tips from an Unexpected Source

By Krista L.B. Collins



As I type, I am listening to the House Impeachment Managers make their arguments against former President Trump in the second impeachment trial. Regardless of one's politics and feelings on the impeachment, these proceedings are serving as an object lesson in how to – or not to – present a case to a jury. What can we learn?

- Prepare, prepare, prepare. Know your case inside and out. Anticipate and be ready to address the points you think your opposing counsel will raise. And get there first – show the jury you're right and refute the opposing points *before* the other side can even bring them up.
- Paint a picture. Every case involves a story, whether of a car accident, the breakup of a business partnership, or a deal gone bad. Show, don't tell: don't tell the jury "the defendant breached the contract." Show the jury *how* the defendant broke his promise.
- Think about structure. How will you tell the story of your case? Chronologically? By claim? Different cases will lend themselves to different structures, but one thing will remain constant: the sooner you can hit'em with your best evidence, the better.
- Drop the weak arguments; they detract from your credibility on the stronger issues. An 80% and a 20% are not added for 100%; they are averaged for 50%.
- Prepare some more. As one of my old bosses liked to say, "if you're winging it, you're winging it wrong." Lack of preparation leads to rambling, incoherence and forgetting to include important points.
- Visual aids are your friends. Got pictures or documents? Use them liberally. Blow them up big and show them off to the jury.
- Histrionics aren't necessary. The old adage says that if you have the facts on your side, pound the facts. If you have the law, pound the law. If you don't have either, pound the table. I would argue that pounding the table is not actually helpful. The jury is smart enough to catch on. Calm, cool, and collected will win the day over overwrought emotion.
- Dress well. It may seem silly in this day and age, but your appearance will matter to the jury. It helps to look like a winner to be a winner, so look as well-put-together as your case. An ill-fitting suit can present the wrong impression: if the jury thinks you look sloppy, they may feel the same about your presentation of the case.
- No, seriously, keep preparing. Do the work and know your stuff.

- Focus on what matters. Don't include fluff or irrelevant facts. A good opposing counsel won't let you get away with it anyway.
- Don't talk down to the jurors and don't engage in personal attacks. Do use simple, clear language to tell the story of your case.
- Sometimes, less is more. The managers chose not to have live witnesses testify. While obviously a real trial will always involve witness testimony, the decision is still instructive: don't gild the lily just for the sake of it. Make your case and sit down.
- Sometimes, less is less. The key point in the prior tip is "make your case." No juror *wants* to sit through more trial than they have to, but don't keep it so short that you are unable to present a coherent narrative or lay out all the necessary facts.
- Finally, prepare. There is no such thing as knowing your case *too* well.



GERALD T. BENNETT
AMERICAN INN OF COURT

The Gerald T. Bennett American Inn of Court is accepting applications for its 2021-2022 session. Applications can be submitted online at bennettinn.com.

The Bennett Inn of Court was established in 2011 to foster a cooperative learning environment between law students, attorneys, and judges, with a strong emphasis on exploring cutting-edge legal issues, mentoring, and interactive learning. The Inn is part of the American Inns of Court, America's oldest, largest and fastest-growing legal mentoring organization. For over twenty years, American Inns of Court have provided judges, lawyers, and law students an opportunity to participate actively in developing a deeper sense of professionalism, achieving higher levels of excellence and furthering the practice of law with dignity and integrity.

Meetings are held monthly from September to April at Blue Gill Quality Foods, with dinner provided. Continuing legal education credits are available for participation in each meeting. Scholarships are available for public interest attorneys and attorneys employed by the State of Florida.

For additional information, please visit www.bennettinn.com or contact the Membership Chair, Magistrate Katherine L. Floyd at floydk@circuit8.org.

Probate Section Report

By Cole A. Barnett



The Probate Section meets via Zoom on the second Wednesday of each month, beginning at 4:30 p.m. Matters of interest, including those specifically discussed during recent meetings, are set forth below (in no particular order).

JUDGE MONICA BRASINGTON'S EMAIL

At the section meeting in January, special guests Judge Brasington, Judge Ferrero, Judge Wilson Bullard, Magistrate Floyd and Magistrate Baker discussed a shift in the processing of probate and guardianship cases away from staff attorneys and toward judicial assistants and case managers. Judge Brasington followed-up with Larry Cielsa by email regarding this shift and the shift's effect on procedural questions, proposed orders, hearing time requests, and newly updated probate and guardianship assignments (effective February 3, 2021).

Here is a brief summary of her Honor's email to Larry (for a full copy of the email and a copy of the judicial assignments, contact Jackie Hall; see below for her contact information). For procedural questions, Judge Brasington directed practitioners to the court's divisional instructions at www.circuit8.org. She requested that attorneys utilize the court's probate and guardianship checklists and that the applicable checklists be submitted with proposed orders, <https://circuit8.org/self-help/forms-and-checklists/>. She noted that the answers to many questions attorneys pose to staff attorneys can be found on the checklists. Her honor also requested that the section review the checklists and provide suggested edits. Requests for hearing times should be directed to the case manager or judicial assistant assigned to the county where the matter is pending. All proposed orders should be submitted in Word doc format to guardianship-orders@circuit8.org or probate-orders@circuit8.org, as appropriate, but not filed, and don't forget to submit the applicable checklist.

PROBATE AND GUARDIANSHIP CHECKLISTS

Consistent with Judge Brasington's request that the section provide proposed amendments to the probate and guardianship checklists, volunteers and appointees were selected to propose edits. Four section members (Larry Ciesla, Sam Boone, Adam Towers, and Cole Barnett) will propose initial edits to the probate checklists and four members (Marynelle Hardee, Shannon Miller, Lynn Belo, and Mary K. Wimsett) will propose initial edits to the guardianship checklists. Loosely, we have a probate

checklist committee and a guardianship checklist committee.

Cole and Marynelle are the respective chairs of the probate checklist committee and the guardianship checklist committee and may be contacted with any questions. Proposed edits will be submitted by the committees to the section on an ongoing basis and once all proposals have been reviewed by the section, they will be submitted to the Court via Bridget Baker. A target date of May for submitting the proposals to Bridget is set. Interested practitioners who may have suggested edits to the checklists are encouraged to submit the same to Cole for probate or Marynelle for guardianship.

AMENDMENTS TO THE PROBATE RULES

The Florida Supreme Court adopted amendments to the Florida Probate Rules on December 31, 2020. The proposals by the Florida Probate Rules Committee to the Supreme Court were in response to legislation enacted after the 2020 session. The amendments are "conforming" amendments. Because the amendments were not published for comment prior to their adoption and were the product of a "fast-track" process, interested persons had until March 16, 2021 to comment on the amendments.

A summary of the amendments are as follows:

- New subdivision (b)(6) was added to Rule 5.240 Notice of Administration, which requires that a notice of administration state that, under certain circumstances and by failing to contest the will, the recipient of the notice may be waiving his or her right to contest the validity of a trust or other documents incorporated by reference into a will (contact Jackie Hall at Larry's office for a form);
- New Rule 5.425 was added to implement newly enacted section 735.304, *Florida Statutes* (2020) and includes subdivision (a) Administration Not Required; subdivision (b) Affidavit; subdivision (c) Service; and subdivision (d) Writing Under Seal of Court;
- Subdivision (a)(2) Contents was added to Rule 5.630, which establishes a process for a guardian to obtain authorization or confirmation of an act required under section 744.441(2), *Florida Statutes* (2020); and
- Lastly, Rule 5.850, Expedited Judicial Intervention Concerning Medical Treatment Procedures, was renumbered as Rule 5.900.

AMENDMENT TO THE FLORIDA SUMMARY JUDGMENT RULE

Also on December 31, 2020, the Florida Supreme Court amended Florida Rule of Civil Procedure 1.510, Summary Judgment. The effective date is May 1, 2021 and comments were due on March 2, 2021.

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Probate Section Report

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The amended rule is now aligned with the federal summary judgment rule and with the supermajority of states that have already adopted the federal standard. The amendment itself is simple.

First, the word “issue” in the sentence “The judgment sought must be rendered immediately if the pleadings and summary judgment evidence on file show that there is no genuine **issue** as to any material fact and that the moving party is entitled to a judgment as a matter of law” has been changed to the word “dispute.” The amended rule will now read, effective May 1, “The judgment sought must be rendered immediately if the pleadings and summary judgment evidence on file show that there is no genuine **dispute** as to any material fact and that the moving party is entitled to a judgment as a matter of law.”

Second, a construction and application sentence was added to the rule’s end: “The summary judgment standard provided for in this rule shall be construed and applied in accordance with the federal summary judgment standard articulated in *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986); and *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986).”

The Court’s opinion explaining the impetus for this amendment is not long but what it lacks in length it makes up for in density. But with that said, it’s fair to say that our summary judgment rule will be aligned with the federal rule as of May 1.

As we file motions for summary judgment after May 1 and as our judges write orders on our motions, we can expect citations to and reliance on federal case law and the standards thereunder, including the use of the new term “dispute” in amended Rule 1.510. Here’s a possible example as you consider updating the legal standards for your motions and proposed orders:

Summary judgment is appropriate only “if the movant shows that there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). A movant carries her burden by showing that there is an absence of evidence supporting the non-movant’s case. *Denney v. City of Albany*, 247 F.3d 1172, 1181 (11th Cir. 2001). The burden then shifts to the non-movant, who must go beyond the pleadings and present affirmative evidence to show a genuine issue for trial. *Porter v. Ray*, 461 F.3d 1315, 1320 (11th Cir. 2006). Affidavits submitted in relation to a summary judgment motion must be “based on personal knowledge and must set forth facts that would be admissible under the Federal Rules of

Evidence.” *Josendis v. Wall to Wall Residence Repairs, Inc.*, 662 F.3d 1292, 1314-15 (11th Cir. 2011).

A genuine dispute of material fact exists if “the evidence is such that a reasonable jury could return a verdict” for the non-movant. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Which facts are material depends on the underlying substantive law. *Id.* The Court must view the evidence and all reasonable inferences drawn from the evidence in the light most favorable to the non-movant. *Battle v. Bd. of Regents*, 468 F.3d 755, 759 (11th Cir. 2006). However, “[a] court need not permit a case to go to a jury . . . when the inferences that are drawn from the evidence, and upon which the non-movant relies, are ‘implausible.’” *Mize v. Jefferson City Bd. of Educ.*, 93 F.3d 739, 743 (11th Cir. 1996).

Props. of the Vills., Inc. v. Kranz, No. 5:19-cv-647-Oc-30PRL, 2021 U.S. Dist. LEXIS 13907, at *3-4 (M.D. Fla. Jan. 25, 2021).

PROBATE SECTION DROPBOX

The section maintains a “Dropbox” account (created by Peter Ward) for documents the group wishes to share. Sharing is voluntary and any member can “delete” documents from the account. As Peter Ward reminded members during the meeting, the ability of any member to delete items from the accounts is intentional and allows each member the freedom to eliminate items that the member feels may be improperly shared.

But with that freedom comes risk—an accidentally deleted document is deleted for everyone. Peter asks members to be mindful that “dragging and dropping” an item from Dropbox to your machine (or desktop) basically (though accidentally) eliminates and deletes the document from the account and that using other methods of copying documents is required. Please see the Dropbox instructions in the account or contact Peter for further guidance on how to copy documents from the account.

The Probate Section meets via Zoom on the second Wednesday of each month at 4:30 p.m., and all interested parties are invited to attend. Please contact Jackie Hall at (352) 378-5603 or jhall@larryciesla-law.com to be included on the e-mail list for notices of future meetings.

WHEN AN ANIMAL ATTACKS: “SELF-DEFENSE” OR SOMETHING ELSE?

By Steven M. Harris



It's almost always something else. Whether one uses defensive force against an attacking animal to protect another animal (property), or to protect a person, it invokes a different aspect of justification; the doctrine/defense of “necessity.” There are exacting prerequisites for that common law defense. Included are reasonable belief, lack of fault, impending significant harm, no realistic means of avoidance, necessity for the act, and a balancing of harms. See [Florida SJI \(Criminal\) 3.6\(k\)](#). (Of note: Some of the language there is similar to what is found in the neighboring “self-defense” jury instructions, 3.6(f) and 3.6(g).)

“Self-defense” statutes (Chapter 776, *Fla. Stat.*), the related notions and definitions of deadly and nondeadly force, and the so-called (and usually misstated and distorted) “Stand Your Ground” raise the issue of justification when defensive force is used against persons. Not animals. Except (perhaps) when a firearm is displayed or discharged in the presence of another person. In the rare case when “self-defense” law concepts are thereby implicated, nondeadly defensive force could be lawful in defense of one’s animal, and deadly force could be lawful in defense of human life. (See §§ 776.012(1) and (2), *Fla. Stat.*). The pretrial procedure for immunity under Chapter 776 is not triggered when a common law necessity defense is asserted. (See § 776.032(1), *Fla. Stat.*).

A person who in good faith and of necessity injures or kills an attacking animal does not commit an “animal cruelty” offense. See §§ 828.02, 828.12, *Fla. Stat.* Where a dog “had been or was killing” a “domestic” animal or “livestock” (see § 585.01, *Fla. Stat.*), a tort provision, § [767.03, Florida Statutes](#), provides a “good defense” (not immunity) to both criminal charges and any civil action for *injuring or killing* the attacking dog. The statute requires the tender of “satisfactory proof.” Such proof is somewhat subjective; it is likely more than the mere assertion of the actor. Analogous caselaw to construe such proof might be found in insurance coverage and claim litigation. Proof of actual injury to a protected animal (photographs, video, veterinarian’s records, expert opinion) and eyewitness accounts should suffice. *The statute does not apply to dogs attacking people.*

When a firearm is used defensively against an animal, there are non-animal related misdemeanor offenses that are pertinent for consideration. Florida Statute § 790.10 (first degree) may apply if another

person is present, and the firearm *display* is “not in necessary self-defense.” Note that statute is curiously silent on defense of another or defense of property. Section 790.15 (first degree, for public or residential property) applies to the *discharge* of a firearm. That provision contains different exclusion language. It is inapplicable when one is “lawfully defending life or property.” (See §§ 790.15(1), 790.15(4)(a), *Fla. Stat.*). A second-degree felony offense, § 790.19, *Fla. Stat.*, for shooting into a dwelling or private building might come into play in defending against an animal attack. It contains no stated exception for lawful defense of human life or property. However, conviction requires wanton or malicious conduct.

What if a person is accidentally wounded or killed when a person is otherwise lawfully using a firearm to stop an attacking animal? The “transferred intent” doctrine applies if the underlying event was the protection of human life. See the related caselaw discussion in my [November 2020 Forum 8](#) article, and [SJI \(Criminal\) 3\(o\)](#).

Is “self-defense” a viable defense if one injures or kills an animal which is a federally protected species? (Readers might want to consider the status of Key deer, Florida panther, alligators, and crocodiles.) It is indeed, pursuant to statutory provisions which protect certain species, but provide a defense to a civil penalty and prosecution where a person violated the law “based on a good faith belief that he was acting to protect himself or herself, a member of his or her family, or any other individual, from bodily harm from any endangered or threatened species.” See 16 U.S.C. § 1540(a)(3), § 1540(b)(3). See also *United States v. Wallen*, 874 F.3d 620 (9th Cir. 2017) (prosecution for killing three grizzly bears). For a 2021 development in *Wallen* (conviction again reversed), go [HERE](#).

Of note: Florida law protecting alligators has no express defense of person exception. (See § 379.409, *Fla. Stat.*). An internet search will thus disclose many incidents where self-defense was asserted for the wounding or killing of an alligator, but the FWC rejected a necessity-based defense. These include cases where only concern for harm to a pet was asserted, the alligator was on the property of another, non-permitted hunting was suspected, or escape was readily available (such as when an unarmed person retrieved a firearm and unnecessarily returned to challenge an alligator).

Criminal Law

By Brian Kramer



Abuse of the elderly is one of the most underreported and under-prosecuted crimes in the State of Florida. My administration is embarking on an effort to increase detection and prosecution of these devastating offenses. Abuse of the elderly takes many forms. Elder abuse can be physical, sexual, or emotional abuse, neglect or financial exploitation. Multiple forms of abuse may occur simultaneously in the life of one of our aging population. Only 1 in 23 cases of elder abuse is ever reported and even fewer are referred to law enforcement or ever prosecuted. With the U.S. population of people age 65 and older on the rise, this issue must become a priority in our community.

Many lawyers are familiar with the idea of “mandatory reporters” in terms of child abuse. Few of us know that all citizens in the State of Florida are mandatory reporters when it comes to abuse of the elderly. *Florida Statute 415.1034* requires that anyone who has reasonable cause to suspect abuse must report the abuse to the central abuse hotline. While citizen reporting may be anonymous, professionals must give their information. To report by phone - call Florida Abuse Hotline at 1-800-96-ABUSE (1-800-962-2873) or electronically at <https://www.myflfamilies.com/service-programs/abuse-hotline/report-online.shtml>. Florida has expanded the definition of who can be charged with exploitation of the elderly to include persons who stand in trust and confidence or maintains a business relationship with an elderly person. This expansion is a continuing step in the right direction in protecting our elder or vulnerable adults.

Lawyers play a key role in detecting, protecting, and preventing abuse of the elderly. Lawyers performing service for, and on behalf of, the elderly are uniquely positioned to see potential abuse, neglect, or exploitation. We should exercise great care to insure that elderly clients have appropriate capacity to make decisions and should consider making particular inquiries into the circumstances surrounding any caregiver’s financial interest in the elderly client. Our aging adults should be treated with the respect they deserve; however, we, as their advocates, should not hesitate to decline to undertake requested actions if there is a reasonable possibility that the elder person is not capable of consent, or if the caregiver is engaged in exploitation.

The Office of the State Attorney Eighth Circuit is involved in national, state, and local initiatives to detect and prevent abuse of the elderly. The State Attorney’s Office is a partner in the Elder Options’ **End Abuse in Later Life Project** which is funded by a grant from the

Office on Violence Against Women. The target populations for services are victims of all genders aged 50 and older who have been abused. In addition to Elder Options, we are partners in this grant with the Alachua County Sheriff, Clovis Watson, and Peaceful Paths. This grant initiative and partnership began in 2018 and is designed to offer training, education and locate gaps in our services to these citizens. In 2020, the Florida Legislature passed *Florida Statute 415.1103* permitting the state attorney in each circuit to initiate an Elder Abuse Fatality Review Team. In conjunction with our community partners, we have begun exploring starting a review team for the Eighth Judicial Circuit. Anyone interested in participating in the workgroup charged with exploring and developing this team should contact Kimberly Henderson, Elder Options, 100 SW 75th Street, Suite 301 Gainesville, FL 32607, (352) 692-5228, or Chief Assistant State Attorney Heather Jones, at 352-374-3670.

There are few more noble things we as a community can do than to protect our vulnerable citizens. Those citizens include our aging family members and neighbors. For more information, please visit <http://www.sao8.org/PDF/LRRM-updated%2011-2-20.pdf> for a guide to legal resources and remedies regarding elder abuse. I look forward to the bar members of the Eighth Judicial Circuit joining me in this effort.

President’s Message

Continued from page 1

The EJCBA is a members-focused association. Accordingly, if you as a member have suggestions for programs, this is a standing invitation to bring them forward. Please do that by sending your ideas to pnkejcb@gmail.com. For updates please regularly visit our website (www.8jcb.org) and consider joining our Eighth Judicial Circuit Bar Association Facebook page.

With best wishes for a productive, enjoyable, and meaningful April (maybe even outdoors...),

Phil

So they are always readily at-hand, the following are links to:

The U.S. Constitution: <https://constitution.congress.gov/constitution/>

The Florida Constitution: <https://tinyurl.com/FloridaConstitution>

Southern Legal Counsel Expands UF Healthy Kids Medical Legal Partnership

By Nancy Kinnally and Samantha Howell



Southern Legal Counsel recently expanded its UF Healthy Kids Medical Legal Partnership (MLP) to UF Health's Pediatric Endocrinology and Pediatric Hematology/Oncology divisions.

Since launching the MLP in 2018 as a pilot in the UF Severe Asthma Clinic, SLC staff attorneys have met with 47 patients and their families and have identified 114 health-harming legal needs. Its early success was chronicled in UF Health's [The Post](#) in 2019.

The most prevalent issues have been problems with school accommodations and special education services, housing conditions, denial of public benefits, and energy insecurity. SLC represents families on issues that fall within its attorneys' expertise, including education, housing, identification documents and Medicaid.

For other issues, SLC is developing a pro bono referral system. And since SLC cannot staff all of UF's pediatric clinics all the time, its attorneys have designed release forms for parents, as well as legal screening tools for UF Health staff. SLC also provides ongoing training to doctors, medical students, and other medical personnel on how to identify health-harming legal needs using the screening tool.

"Our Healthy Kids Medical-Legal Partnership is an invaluable resource for not only my patients but also for our pediatric residents, medical students, and faculty. The trainings Chelsea has put together serve as a practical way to teach about the impact of health-harming legal needs on our patients' lives, while also giving concrete tools that can be used to address those needs," said Dr. Rachel Coleman, clinical assistant professor at the UF College of Medicine and medical ambassador for the Healthy Kids MLP.

SLC attorneys take referrals for legal services from doctors and providers in UF's pediatric sickle cell and diabetes clinics and at UF Pediatrics. SLC attorneys are also embedded weekly in the Severe Asthma Clinic and the Youth Gender Clinic, attending either virtually or in person at Friday clinic hours. Patients in the Youth Gender Clinic most often need assistance with name and gender marker change and school issues related to their gender identity.

SLC's Pro Bono Program partners volunteers with clients on individual cases/matters. Over the last two years, we have recruited volunteers for adoption cases, real estate/property matters, end of life planning, and special education advocacy. In addition to conducting the

Initial screening and assessment for each case, SLC provides volunteers with training on a variety of substantive legal issues and assistance/mentoring throughout the life of the matter.

We especially have a need for lawyers to help pediatric patients and their families achieve stability by assisting with child support modification petitions and advocating for children with individualized education plans (IEPs).

If you are a licensed Florida attorney interested in volunteering your services on behalf of UF Health's pediatric patients, please contact SLC Pro Bono Director **S a m a n t h a H o w e l l** at samantha.howell@southernlegal.org.

April 2021 Calendar

- 2 Good Friday – County Courthouses closed
- 5 Deadline for submission of articles for May Forum 8
- 7 EJCBA Board of Directors Meeting via ZOOM, 5:30 p.m.
- 14 Probate Section Meeting, 4:30 p.m. via ZOOM
- 16 EJCBA Leadership Roundtable and Monthly Meeting via Zoom, 11:30 a.m. -1:30 p.m.
- 30 Deadline to deliver nominations for 2021 James L. Tomlinson Professionalism Award

May 2021 Calendar

- 5 Deadline for submission of articles for June Forum 8
- 5 EJCBA Board of Directors Meeting via ZOOM, 5:30 p.m.
- 13 Probate Section Meeting, 4:30 p.m. via ZOOM
- 14 EJCBA Monthly Meeting via Zoom with Florida Supreme Court Chief Justice Charles T. Canady, 11:45 a.m.
- 31 Memorial Day, County & Federal Courthouses closed

ADR

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SUMMARY JUDGMENT

Something old: Bifurcation; something new: Summary Judgment.

The Supreme Court of Florida has amended the Florida Rules of Civil Procedure to adopt the federal summary judgment standard “that is expected to make it easier for judges to grant summary judgment motions.” The Florida Bar News, Volume 48, Number 2, February, 2021. The changes are effective May 1, 2021.

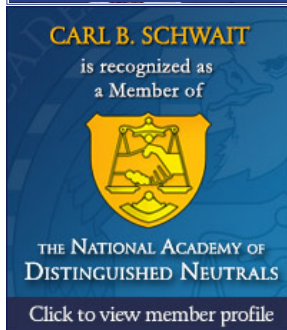
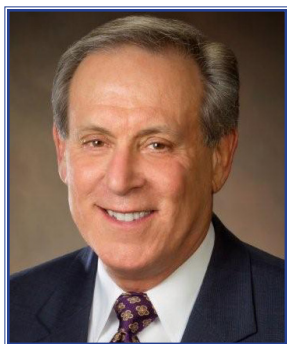
The Florida Supreme Court noted that a supermajority of states use the federal standard. “...Our Rules of Civil Procedure are meant ‘to secure the just, speedy, and inexpensive determination of every action. . . . Yet Florida courts’ interpretation of our summary judgment rule has unnecessarily failed to contribute to that objective.’”

COVID has put a monkey wrench into the cogs of our civil trial system. The implementation of the federal standard associated with motions for summary judgment or motions for partial summary judgment may be a tool to advance cases and can be utilized by either party to an action.

We could spend a lot more time addressing the new summary judgment standard but to save time direct you to the referenced Florida Bar News article for a more extensive discussion and analysis.

Of all the potential tools for dealing with the backlog of cases due to COVID, and to perhaps streamline future cases when COVID is a distant dot in our rear view mirrors, concepts such as bifurcation and summary judgment should be tools for consideration in addition to mediation and non-binding arbitration. At this point, we need all the tools we can put our hands on.

Upchurch Watson White & Max Mediation Group



is pleased to announce

Mediator Carl Schwait

is now a member of the National Academy of Distinguished Neutrals.

Carl B. Schwait began mediating full-time in 2015 and joined UWWM in 2016. He has built his statewide mediation practice on his trial, legal, business and teaching expertise. He joins 30 fellow UWWM mediators who also have achieved NADN membership. All are distinguished by their commitment to excellence in the field of dispute resolution and are among the most in-demand ADR practitioners in the state. Only 17 Florida mediators/arbitrators were invited to become NADN members this year.



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A Successful Driver's License Reinstatement Clinic!

By Ray Brady, Chairman of the EJCBA's Pro Bono Committee

Did you know that in Florida there are more than 100 ways to lose your driver's license? And as easy as it may be to lose your license, it is that much harder to figure out how to get it back. The loss of a driver's license often leads to a lost job, compounded indebtedness, and serious criminal charges for those who, in desperation, resort to driving without a license.

Help was offered to these unfortunate citizens in Alachua County for the past two years by way of the annual "Driver's License Reinstatement Clinic" (known as "the DL Clinic"). The DL Clinic team includes court personnel, more than ten agencies/groups, and countless individuals. The team is led by The Honorable Kristine Van Vorst, with the help of the Honorable Thomas Jaworski and Christy Cain, the Court Administration Communications Coordinator. Key participating groups include the Alachua County Tax Collector's Office (special thanks to Maureen Johnson and Kyle Lindsey), and our Clerk of Court's Office (special thanks to J.K. "Jess" Irby and Lisa Moore). This year, the EJCBA and its Pro Bono Committee joined the team by enlisting the pro bono services of 25 local lawyers and 15 UF law students (special thanks to Samantha Howell of Southern Legal Counsel for her help in enlisting the law students). Please take a moment to read their names listed below.

This year the team began soliciting and registering participants in December 2020. When 115 participants eagerly signed up, registration had to be capped! The volunteer lawyers and law students underwent "crash course" Zoom training sessions to understand the maze of Florida laws and regulatory processes that control the loss and reinstatement of driver's licenses. The lawyers and law students were then paired, and each pair accepted at least 4 participants. Through the month of January, the volunteers worked with their participants, via Zoom and telephone, to identify and untangle why they had lost their licenses, and then chart a path for them to work to achieve the reinstatement of their licenses. The DL Clinic ended on February 5th with a day of 19 hearings held by Judge Jaworski and Judge Van Vorst, who went above-and-beyond by holding the hearings via Zoom, back-to-back. As of this writing, 17 participants had their licenses reinstated, and dozens of others are on their way to getting their licenses back. The number of pro bono hours donated by the volunteer lawyers and UF law students for their legal services totaled more than 450! The hours dedicated to this event by the Judges, court personnel, and participating agencies and groups, is equally impressive.

We who live and work in the 8th Judicial Circuit are privileged to know so many people who are dedicated to assisting and improving the lives of the citizens of our Circuit who are without resources and in need of our assistance.

Volunteer Lawyers:

Scott Anderson
Eric Atria
Scott Anderson
Eric Atria
Jan Bendik
Harvey Baxter
Ray Brady
Pamela Dunmore
Byron Flagg
Peter Focks
Genna Fasullo LaPeer
Samantha Howell
Kevin Hublou
Ben Hutson
Kris Lier
Stephanie Marchman
Jennifer Meiselman Titus
George Nelson
Peg O'Connor
Bernard O'Donnell
Jeff Price
Cynthia Swanson

Volunteer Lawyers:

Lakesha Thomas
Robert Williams
Mary K. Wimsett
Elyot Xia-Zhu
Nick Zissimopoulos

Volunteer U.F. Law Students:

Mark Atwater
Sanique Balan
Mark Atwater
Sanique Balan
Adam Bramski
Andrew Del Real
Logan Eagen
Emily Greentree
Harvey Halprin
Maria Haralambis
Hannah Harley
Keani Knight-Walker
Alexa Menashe
Skylar Nocita
Kaitlyn Sibson
Samantha Spandau
Elizabeth Tubbs

9th Annual Leadership Roundtable:
The Eighth Judicial Circuit's Diversity Conference
**Local Leaders on How the Legal Profession Can Help
Effectuate Community Change**

Please join us on Friday, April 16, 2021 for our 9th Annual Leadership Roundtable, the Eighth Judicial Circuit's Diversity Conference. The program will feature an interactive panel discussion with local community leaders and breakout workshop sessions.

Admission is free as the cost of this year's event is covered by the Eighth Judicial Circuit Bar Association. Space is limited and pre-registration is required. CLE and CJU credit is anticipated.

Friday, April 16, 2021

Register Online: www.8jcbba.org

11:30 a.m. - 1:30 p.m. via Zoom

For more information contact:
Mary K. Wimsett:
mkwimsett@adoptionlawfl.com



Natalya Bannister
Pace Center for Girls



Eric Godet
Gainesville Chamber



Nicole Harris
Teacher of the Year



Chanae Jackson
Community Organizer



Michelle Jacobs
Levin College of Law



Tony Jones
Gainesville Police Chief



Clovis Watson, Jr.
Alachua County Sheriff



Sponsored by: Eighth Judicial Circuit Bar Association, Florida Association For Women Lawyers, Eighth Judicial Circuit Chapter, The Florida Bar Diversity Leadership Grant, Josiah T. Walls Bar Association, North Central Florida Chapter of the Federal Bar Association