

FORUM 8

Volume 82, No. 8

Eighth Judicial Circuit Bar Association, Inc.

April 2023

President's Message

By Robert Folsom



Welcome to the month of April! It will be another busy month for the EJCBA. Before we talk about the events of the coming month, thank you to everyone who came out to our March monthly luncheon, which honored the living past presidents of the EJCBA. It was an honor to talk with them; and be part of the first memorial photograph of the living past EJCBA presidents since

the year 2000. We had past presidents travel from far and wide to attend. And from what I have heard from those who attended, it was a phenomenal success. The board looks forward to having similar events in the coming years which tie our organization's history with its future.

Thank you, as well, to everyone who attended the annual Charity Golf Tournament on March 10. Not only was this event filled to capacity with participants, but it also raised a substantial amount of money for the Guardian ad Litem Program. And your EJCBA was one of the event's signature sponsors.

Thank you to everyone who attended the breakfast and Leadership & Diversity Roundtable on March 31 with speaker Valerie Pasquale, Prevention Director at Meridian Behavioral Healthcare. The roundtable topic ("Headspace for Work: A Discussion of Mental Health and Its Impact on Attorneys") covered one of the most important issues currently affecting those in the legal profession today: how to maintain your mental, emotional, and physical health when faced with incivility and the pressure to succeed. The roundtable allowed us, through interactive programs and lively discussion, to learn how to care for ourselves as legal professionals, as well as for those around us, including our family, friends, and colleagues. In addition, we had the opportunity to share a wonderful breakfast together.

This coming month we have our monthly luncheon on April 14 with speaker Michael Ufferman, an appellate attorney, who will be discussing the importance of preservation of error for purposes of appeal. Mr. Ufferman is a dynamic speaker and preeminent appellate advocate with a stellar reputation in the legal community for his exceptional written and oral advocacy skills. Mr. Ufferman is a frequent participant in oral arguments in front of the Florida Supreme Court and First District Court of Appeal. Even if you do not practice appellate law, you will find his presentation highly worthwhile. This is a luncheon that you do not want to miss if you are interested in learning how to perfect your record for appeal.

On April 21, the EJCBA will have its annual Professionalism Seminar. The topic this year is "Judicial Perspectives: Does Professionalism Vary Among Practice Areas?" Our keynote will be a moderated panel discussion on the topic of professionalism across practice areas, with moderator Scott Walker, Esq. and panelists Judge William Davis (Criminal), Judge Robert Groeb (Family), Judge Donna Keim (Civil Trial), and Judge Kristine Van Vorst (Civil Non-Trial). The seminar has been approved for 3.5 General CLE hours, which includes 2.0 ethics hours and 1.5 professionalism hours. Watch your email and the Forum 8 newsletter for reservation information. Questions may be directed to the EJCBA Professionalism Committee chairperson, Derek Folds, Esq., at (352) 372-1282.

Speaking of professionalism, nominees are being sought for the recipient of the 2023 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.

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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.

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About this Newsletter

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

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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.

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Deadline is the 5th of the preceding month

Alternative Dispute Resolution

By Chester B. Chance and Charles B. Carter



Warning: Do Not Feed the Attorneys

One of your authors recently purchased a toaster oven. The package insert came with 25 "Important Safeguards." The purchaser was intimidated, i.e. confused, with the safety warnings. To be honest, we were tempted to return the toaster after reading the

safeguards. The warnings included:

"This appliance is not intended for use by persons (including children) with reduced physical, sensory or mental capabilities, or lack of experience and knowledge, unless they have been given supervision or instruction concerning use of the appliance by a person responsible for their safety."

Wow. This one warning eliminated one of your two authors from using the toaster oven. It also put in doubt whether either could operate the toaster oven. One of us lacked experience and knowledge in a wide variety of things. Neither of us knew if one of us was responsible for the other's safety.

Another warning: "Do not use outdoors." This was confusing as to what constituted "outdoors." A pool deck? The driveway? The roof of a home? Perplexing.

More: "To protect against electrical shock, do not immerse cord, plug or appliance in water or other liquid." We debated if that precluded putting it in the dishwasher as we did not think that was immersing the appliance.

We were also instructed to "...not place on or near a hot gas or electric burner, or in a heated oven." This one really confused us as the appliance was an oven, and we wanted to place it in the kitchen but would that violate the warning to not place the toaster oven near a stove burner? Could we store it in an unheated oven? We started to sweat over this obviously dangerous instrumentality being in our house and that we clearly could not keep outside.

We were instructed to use not just caution but *extreme caution* when moving the appliance if it contains hot oil or other liquids. Since one of us cannot even boil water we assumed we could toast water, but we were wrong.

We sent it back to Amazon to avoid multiple lawsuits, probably by the same lawyer who wrote the warnings.

Fearful of other appliances we were misusing, we rummaged through our junk drawers and found product inserts with other frightening warnings which we routinely violated.

We both had the Jabra Drive N Talk Bluetooth speakerphone in our car but were flummoxed to read "Never operate your speakerphone while driving." Apparently, it is only to be used when parked and truth in advertising would dictate the product would then be called Park N Talk.

Nytol sleeping pills came with the warning that the product "may cause drowsiness." One would hope so or ask for a refund if it did not. We were hoping rather than may cause drowsiness it should be guaranteed to cause drowsiness.

We returned our chain saws as they came with a warning "Do not hold the wrong end of a chainsaw." Neither of us could figure out which was the end not to hold.

The hair dryer in the bathroom warned "do not use while sleeping." One of your authors had to admit they routinely violated this rule but thought it was all just a dream.

We both use a windshield sun-shield in our cars but now read "Do not drive with sun shield in place." We are embarrassed to say one of us took this to mean we could only sit in the car once the sun shield was in place. In the past we kept the sun-shield in place and drove with our heads out the window like a cocker spaniel.

Good advice for lawyers: The Vanishing Fabric Marker warns the product "should not be used as a writing instrument for signing checks or any legal documents." They never taught us *that* in law school.

The Huebsch Washing Machine cogently warns "do not put any person in this washer." Actually, we think doing so is ok if you use the Gentle/Delicates cycle.

We read the following warning too late: The MDW Outdoor Group's fox/bobcat urine powder advised "Not for human consumption."

The Kellogg's cereal bowl warned "Always use this product with adult supervision." Breakfast is a risky business and one could easily drown in the milk or get stuck in quicksand-like mushy Fruit Loops.

Rowenta's Irons warns "Do not iron clothes on body." Probably just a marketing scam to buy their ironing boards.

We are not sure if this applies to us, but Midol Menstrual Complete advises "ask a doctor before use if you have difficulty urinating due to an enlarged prostate."

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Florida Public Employee Relations Commission: Union Representative Can't Be Muzzled During Investigation

By Conor Flynn



A recent order from Florida's Public Employee Relations Commission (PERC) states that public employers commit an unfair labor practice and violate Florida law when they refuse to allow a public employee's representative to question the employee on the record during an investigatory interview. To ensure compliance by public employers, union members and their representatives should

bring their own recording devices to and obtain consent to record co-investigatory interviews.

The order resulted from a dispute between the Department of Highway Safety and Motor Vehicles (Department) and Florida Highway Patrol Trooper Maddux. The parties were covered by a collective bargaining agreement (CBA), the Department is a public employer per section 447.203(2), *Florida Statutes*, and Maddux is a public employee within the meaning of section 447.203(3), *Florida Statutes*.

FHP received a complaint regarding Trooper Maddux. Following review of the complaint, an FHP Lieutenant sent Trooper Maddux a memorandum notifying Maddux that he was the subject of a complaint under investigation. The memorandum directed Trooper Maddux to appear for an investigatory interview and stated that, if Trooper Maddux had a representative with him at the interview, that "Representatives may act only as observers and are not entitled to speak for you or inhibit your responses." Union-represented employees are entitled, upon request, to have a representative present during any interview that the employee reasonably believes could lead to discipline. See *N.L.R.B. v. J. Weingarten, Inc.*, 420 U.S. 251 (1975).

Trooper Maddux arrived for the investigatory interview with Martin White, his Union representative and attorney. White brought his own device to record the interview, a tactic that proved critical for next steps. While Lieutenant Burgess questioned Trooper Maddux, White remained quiet and did not interrupt. Once Lieutenant Burgess finished his questioning, Burgess sought to end the interview and turn off the recording device. White advised that he intended to ask Trooper Maddux questions on the record.

Burgess turned off the "official" recording device prior to White's questioning. White asked Burgess to resume recording, so that White's questioning of Maddux would be part of the formal record. Burgess refused. The hearing officer observed that White remained calm and

professional, even providing Burgess with caselaw: *Guevara v. School Board of Miami-Dade County, Florida*, 48 FPER ¶ 343 (2022). Burgess refused to include White's questioning of Trooper Maddux on the record; Trooper Maddux subsequently filed a charge against the Department for failing to permit White to question Maddux on the record.

The hearing officer provided the following summary of a representative's permissible scope of representation:

A representative's permissible scope of participation is examined on a spectrum between mandatory silence and adversarial confrontation. At one end of the spectrum, an employer that requires the employee's representative to serve as a passive witness or in mandatory silence violates the employee's *Weingarten* rights. At the other end of the spectrum, a representative of the employee who creates an adversarial contest is not protected by *Weingarten*. *Guevara*, 48 FPER ¶ 43, and cases discussed therein. Thus, the appropriate role of the employee's representative is to elicit facts and to take an active role in assisting the employee to present the facts. *Id.* *Weingarten* and its progeny require a fact-intensive analysis of the investigatory interview at issue to determine whether a violation has occurred. This is necessary because the conduct of both the employer and representative in such interviews requires a fact-specific approach that acknowledges the careful *Weingarten* balance between employer prerogative and employee right. *Id.*

The hearing officer – whose report PERC adopted and approved – concluded that the Department violated Maddux's *Weingarten* right to have a representative participate in representing him during the April 13 investigatory interview, and the Department violated section 447.501(1)(a), *Florida Statutes*. The hearing officer also found that Maddux was entitled to attorney's fees and costs related to the litigation.

President's Message

Continued from page 1

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 A. Derek Folds, Esq., derek@foldswalker.com. Nominations must be received via email by Friday, April 28, 2023, 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.

On April 28, Circuit Judge Sean Brewer will be having his investiture. I encourage everyone to come out and celebrate our new circuit judge. Once again, the EJCBA will be presenting the robe of office to the judge, as is our local bar's tradition.

In May, the EJCBA will be welcoming Carlos G. Muñiz as our monthly luncheon speaker. The presentation will be a moderated discussion with the chief justice, including the opportunity to ask pre-submitted questions. So, please send any questions that you would like to be asked of the chief justice to execdir@8jcb.org. I am hoping that we pack the Woolly for the chief justice's appearance. It is an honor for us to have him join us; and that honor should be reflected by our filling the event hall.

Finally, it's that time of the year again. The EJCBA's Nominating Committee is seeking members for 2023-24 board positions and committee assignments. Consider giving a little time back to your bar association. Please complete the online application at <https://forms.gle/ogB7gkyaUUoW8Rf7>. For your consideration, a list of the 2023-24 EJCBA Project/Committee Descriptions can be found [here](#). The deadline for completed applications is May 1, 2023. The 2023 Nominating Committee is The Honorable Lorelie Brannan, The Honorable Susan Miller-Jones, 2022-23 President Robert Folsom, President-elect Monica Perez-McMillen, President-elect Designate Mikel Bradley, James "Mac" McCarty, and Jan Bendik.

We encourage you to register for, and participate in, all of our events. Your participation and commitment are what drives our organization. As a local bar that depends on volunteers, the EJCBA needs you to flourish. Consider joining the board or one of our committees. Organize a social event. Sponsor a social event. Invite a non-member to a monthly luncheon. And, as always, please share your ideas and suggestions with me or the board. We want your feedback. You are the heart of the EJCBA. And we are committed to keeping you, the EJCBA, strong and healthy. The Board looks forward to seeing all of you soon. Have a happy April!

NOMINEES SOUGHT FOR 2023 JAMES L. TOMLINSON PROFESSIONALISM AWARD

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 **Column**



Edwards v. State: First DCA Denies Pretrial Self-Defense Immunity (Part 1)

By Steven M. Harris



Each member of the panel wrote. ¹ All three opinions touched on subjects I discussed in previous **Forum 8** articles: On “self-defense immunity” ([May 2021](#)), the related pretrial hearing procedure ([November 2022](#)), and most prominently, on proper temporal and behavioral framing of a deadly force incident ([January 2022](#)).

The trial court held an evidentiary hearing and took written argument. The record included testimony, scene photographs, and recordings (audio of 911 call and deputy sheriff’s in-car audio and video) of the defendant. Edwards did not testify. The court made oral findings of fact and denied immunity. It found Edwards and the victim engaged in an altercation with some physical contact. Edwards then disengaged and went into his bedroom and retrieved a firearm from a lock box. The victim followed, seconds behind. During a follow-on confrontation in the bedroom, the victim punched Edwards to the head “on more than one occasion” and Edwards responded by shooting the victim at point blank range. The court noted that the evidence could suggest Edwards shot the victim prior to a punch. A single punch was witnessed by the victim’s mother, but she didn’t see or hear a gunshot. The trial court framed the ultimate issue poorly, focusing on the relationship between the parties as an “extraordinarily critical and weighty factor” to determine that Edwards was not in “fear” such that a “reasonable and prudent stepfather or father” situated in the same circumstances with his stepson or son, would have “felt” deadly force had to be used to prevent great bodily harm or death. The court also questioned the demeanor of Edwards as being not reflective of someone who had just killed in self-defense.

The First DCA *majority* opinion suggested it was questionable whether Edwards “raised” a *prima facie* claim of self-defense immunity sufficient to shift the burden of proof to the State. Since the State never challenged Edwards’ motion on that basis, the appellate court didn’t weigh in on the low threshold *prima facie* analysis used by other DCAs. It left “for another day” what is required of a defendant under § 776.032(4), *Fla. Stat.*, as it did in *Rogers v. State*, 301 So.3d 1083 (Fla. 1st DCA 2020).

The details recounted by the *majority* opinion included that Edwards and the victim, whom he treated as his stepson (but who wasn’t actually his stepson), had engaged in “mutual combat” on the porch outside the trailer where Edwards lived with the victim’s mother.

Edwards went inside and was followed by the victim. The victim’s mother followed seconds behind. When she came into the bedroom where Edwards and the victim had relocated, she observed her son punching Edwards in the head. When she tried to separate them, she discovered her son was bleeding. Edwards then declared he had shot him. Edwards (a surgical nurse) did not attempt to render medical aid. He called 911 and falsely described the incident as him being attacked while sleeping. He repeated the false narrative to an EMT who treated him on the scene. Forensic evidence confirmed the shot was made in contact with the victim’s clothing. Edwards did not suffer any significant injury. The *majority* also took note of deterioration in the relationship between Edwards and the victim in the days prior to the shooting.

The *majority* denied Edwards the writ of prohibition because it found competent, substantial evidence supported the trial court’s factual findings and that the State presented clear and convincing evidence to overcome Edwards’ self-defense claim. It correctly recited the formulation to defeat deadly force justification under § 776.012(2), *Fla. Stat.*, i.e., the State must show it was not objectively reasonable for Edwards to have believed he was in imminent danger of great bodily harm or death, and a reasonably prudent person in the same position would not believe that the use of deadly force was necessary to prevent imminent death or great bodily harm. The *majority* noted that “not every blow to the head is deadly” and “not every fist fight justifies defending oneself with deadly force.” It concluded that “Edwards shot his stepson, who was half his size, who had no history of violence as far as Edwards knew, who had never threatened Edwards, who did not have specialized fighting knowledge, and who had just injured his shoulder in a motor vehicle accident.” It also commented that Edwards did not present any evidence in support of his motion to dismiss, that his unsworn allegations lacked evidentiary value, and that he had failed to “point to facts” demonstrating his use of force was justifiable.

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¹*Edwards v. State*, 351 So.3d 1142 (Fla. 1st DCA 2022) (opinion by Rowe, C. J., Osterhaus, J., concurred, B. L. Thomas, J., dissented). Edwards asserted both procedural defect (invoking *certiorari* jurisdiction) and substantive legal error (invoking prohibition jurisdiction) in his challenge to the trial court’s denial of immunity. The majority determined the trial court correctly applied the statutory burden of proof and thus made no procedural error. Edwards sought discretionary review, see FSC [Case No. 22-1790](#). The panel denied a stay and Edwards went on trial for manslaughter and aggravated battery in late February.

Charging Flat Fees in Family Law Matters

By Cynthia Swanson



I recently realized I've been practicing law for more than 40 years. Unbelievable. In 40 years, I think I have gotten some things OK, and some things not so great. I think I have a pretty good handle on the family law rules. I know not to bring a child into the courthouse without a prior court order. I think I am pretty good on the rules of evidence, even hearsay. I know that it's not only OK but often appreciated when I highlight the important facts or ruling in case law I'm citing. I surely know not to ask a question on cross-examination I don't already know the answer to. I also have figured out how to reserve and use the NOMAD thing for showing photos and videos in trials. I can usually connect to the courthouse's sketchy internet so that I can do most of my trial work from my laptop instead of lugging two assistants and five or six banker's boxes full of papers into the courtroom.

But one thing that has been really tough for this entire 40 years – billing, getting paid, keeping track of time contemporaneously, keeping clients' retainers topped up so we don't go into difficult hearings without enough funds in trust to see us through. I hate this stuff. But I like to be able to pay my mortgage payment. I like that a lot.

Over the years, I have tried everything from just keeping yellow pads at my desk to try to remember to write down things, to getting assistants to track my time, to purchasing and installing software that promises to track my time. In my experience, it's all baloney. Yellow pads get misplaced this month, pages get ripped, four or five new ones get started in a month and it's a hassle to flip every page in every pad to see if any time was memorialized on one. The best and most well-meaning assistants just cannot know about emails I sent or received when they weren't copied on them. And the wild promises of software vendors . . . meh. While it's true that they can give you a list of matters you "touched" or contact cards you opened, they still cannot generate an actual timesheet which lists out the actual stuff you did or talked about or plans you made with clients, witnesses, and so on.

When I have occasionally had a drink or two and start to really think about this, I stop pretty quickly. Because then I go down these rabbit holes where I remember something I did for a client six months ago that I never charged for, and I get really depressed. I don't want to know how much money I have cheated myself and my family out of because I have not been a really excellent time keeper over the years.

So, how come we can't think of something better? Family law matters are almost exclusively billed on an hourly basis. One reason is that sometimes there is some

likelihood that the opposing party will have to pay my fees. In that case, I have to present detailed timesheets that show what I did when and how long it took me to do that. I have to present those timesheets in writing, under oath, and to the opposing party far enough ahead of the hearing on fees so that the opponent can scrutinize those timesheets with a big, red Sharpie. You have not known humiliation until you have had another attorney testify under oath that he or she reviewed your timesheets, and, surprise!! He/she has a few problems with some of the entries. I once sat through a hearing where the opposing expert (local attorney) said about 59 times, "I just don't see how an experienced and expert attorney like Ms. Swanson would need to take 30 minutes to prepare that motion (review that pleading, prepare for that deposition, get those exhibits ready, etc.). I would think that an attorney with her knowledge and expertise could have done that in 20 minutes." Maybe humiliation isn't the right word. I know perfectly well exactly why it took exactly as long as it did. And I can explain all that in my rebuttal testimony. But it is particularly cringe-worthy testimony to have to sit through.

So, if not hourly billing, what about other methods? Well, family law matters may not be charged for on a contingent fee basis. Fla. R. Prof. Conduct 4-1.5(f)(3)(A).

So, what about charging a flat fee? As always, there are pros and there are cons. Some benefits:

Clarity and Transparency: A flat/set fee model provides clear and transparent pricing for legal services. Clients are aware of the cost upfront, which can help them make informed decisions about whether and how doggedly to pursue a particular legal matter.

Predictability: Flat fees offer predictability for both the client and the attorney. Clients know exactly how much they will pay, and attorneys can predict how much they will earn for the work they do. This can help to manage expectations and reduce potential misunderstandings.

Incentive to be Efficient: With a flat fee model, attorneys have an incentive to be efficient with their time and resources. They may be more likely to work efficiently and avoid unnecessary expenses because they have a fixed fee to work with.

Fairness: Flat fees can be perceived as fairer than hourly rates because they are based on the specific legal service being provided. This can help to avoid any feelings of unfairness that may arise if hourly rates result in clients paying more than they expected.

As good as that all sounds, here are some difficulties:

Difficulty in Estimating Workload: It can be difficult for attorneys to accurately estimate the workload required for a particular legal matter.

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Florida's New Insurance Laws' Effect on Litigation

By Krista L.B Collins



By now, everyone in Florida is aware that Florida has a homeowner's insurance problem. In many parts of the state, homeowners are unable to obtain insurance from any company other than Citizen's, the "insurer of last resort." Others are facing annual premiums that have doubled, or more. While we are fortunate here in Gainesville not to be subject to the extremes of hurricanes and tripling premiums, we are still affected by the state's attempt to "reform" the homeowner's insurance industry. On December 16, 2022, Gov. DeSantis signed Senate Bill 2A, enshrining certain changes into law. As I write, the Florida legislature is contemplating further changes to the insurance laws. What will all these changes mean for litigation?

Several of the changes are likely to make it harder for the average homeowner to successfully challenge any decisions of their insurer. First, new Sec. 62.70154, *Fla. Stat.*, will allow insurers to offer policies with mandatory binding arbitration under certain conditions. Homeowners must be given a premium discount and must sign a form that notifies the policyholder of the rights, including a jury trial, being given up and elect to accept mandatory binding arbitration.

While there are certain features of arbitration that could benefit homeowners – looser rules of evidence and a quicker timeline for resolution – this is undeniably a benefit to insurers. The cost of an arbitrator can far outweigh the costs associated with litigation, which costs are more easily borne by insurance companies than an individual homeowner (particularly one who chose the option in order to secure a discounted premium). And statistics already show that in consumer arbitrations that proceed to an award, the award is most often *not* in the consumer's favor. *Dispute Resolution Statistics*, FINRA available at <https://www.finra.org/arbitration-mediation/dispute-resolution-statistics>.

Second, assignment of benefits contracts have been banned for any policy issued on or after January 1, 2023. Sec. 627.7152(2)(a), *Fla. Stat.* This means that homeowners will no longer be able to assign their claim to a contractor who then seeks payment from the insurance company. While it is clear that the ability to assign a contract has been abused (how many of us have had roofers knocking on our front door, offering a "free roof" if we simply let them deal with the insurance company?), this means that homeowners will bear the cost of an attorney to negotiate with or ultimately sue the insurance company. For a homeowner with limited financial

resources, this may put their ability to litigate with their insurance companies completely out of reach.

Finally, homeowners' ability to litigate with their insurance companies will be especially limited because there is no longer a statutory right to an award of attorneys' fees. Several statutes, including Sec. 626.9373, Sec. 627.428, Sec. 627.70152, and Sec. 627.7074, *Fla. Stat.*, have been amended to remove the "one-way" right of homeowners to obtain an award of attorneys' fees against the insurer. Of course, the ability to obtain an award of fees under a proposal for settlement or Sec. 57.105, or if the policy provides for fees, remains. But for homeowners whose only hope of bringing an action is the ability to recover their fees at the conclusion of the cases, the removal of the statutory right to fees will be a huge impediment and may ultimately preclude many homeowners from filing suit against their insurers.

So what do these changes mean for us, the civil litigators? It means we will see fewer cases against insurers, fewer opportunities to help a homeowner right a wrong, and more conversations with clients in which we have to tell them that their options against their insurer are more limited than they used to be—and more limited than they should be.

ADR

Continued from page 3

This must be a result of a legal committee dealing with the men that can have babies so follow the science discussions.

We believe the sign in our office kitchen is the ultimate warning sign: *Notice, for your own safety, please do not feed the attorneys!*

If you feed the attorneys, they will come up with more warnings on packages to make us wonder who really has "reduced physical, sensory or mental capabilities."

If you have a client who somehow, somehow violates one of these warnings, or even does one of these things without a warning, then mediation rather than trial should be given strong consideration.

Alphabet Soup

By Rebecca L.A. Wood, Fund Sr. Underwriting Council

Members of the EJCBA participated in “Alphabet Soup” on February 21, 2023, at Ballyhoo. Alphabet Soup was hosted by the North Florida Association of Real Estate Attorneys (NFAREA) with financial support from the Law School Programming Committee of the Florida Bar’s Real Property Probate and Trust Law Section (RPPTL). Several mentees from the EJCBA mentoring program chaired by Magistrate Jodi Cason were in attendance.

The following EJCBA members participated in the panel:

- Rebecca Wood emceed the event and pointed out how her role as a title insurance underwriter plays into the practices of other speakers. Rebecca is a Sr. Underwriting Counsel at Attorneys’ Title Fund Services, LLC. (The Fund) and RPPTL’s Liaison to UF.
- Blake Fugate rose to the occasion as the first speaker of the night; sharing the advantages of combining a real estate practice with a probate and estate planning practice. Blake is a partner at Fugate & Fugate in Williston FL. His partner is 8th circuit ALM, Norm Fugate.
- Stephanie Emrick talked about how she came to be a real estate litigator with a thriving practice after graduating number one in her class from the University of Florida in 2017. Stephanie is an associate at Scruggs, Carmichael & Wershow, in Gainesville, Florida.
- Patrice Boyes shared her career story and how environmental law led her to practice in land use. She provided sage advice about work-life balance as she talked about how her interest in the environment spills over to her painting hobby and how that hobby inspires her practice. Patrice is a small firm owner and practices at Patrice Boyes, PA, in Gainesville, Florida.
- John Roscow talked about how his residential transaction practice is run through his law firm and how the pricing is competitive with title companies, but how important it is to have an attorney at the closing table. John is a partner at Holden, Roscow & Caedington, P.L. in Gainesville.
- Jeff Dollinger talked about the importance of participating in the RPPTL Section, recommending membership to students and increased participation to lawyers in the room. Jeff is a partner at Scruggs, Carmichael & Wershow, in Gainesville, Florida.

This event was developed by the At Large Members (ALMs) of RPPTL’s Executive Council serving as

representatives to the 8th circuit: Jeff Dollinger, Norm Fugate, and Rebecca Wood, who look forward to providing similar programming with EJCBA members in the future. The ALMs extend special recognition and appreciation to Rene Rutan, Fund Affiliate and Real Estate Council Relations Manager for her support in planning the event with backing from Attorneys’ Title Fund Services, LLC. The Fund is a general sponsor of RPPTL and Attorney’s Real Estate Councils of Florida (Florida ARECS), of which NFAREA is the local chapter, is the sponsor for the Section’s Residential Real Estate Industry Liaison (RREIL) committee.



EJCBA Mentee, Richard (Alex) Daughterty talks with Patrice Boyes



EJCBA Member and RPPTL Liaison to UF, Rebecca Wood emceed the event.

The Gloria 2023 - A Success Once Again

By Mac McCarty

The 15th Annual EJCBA Charity Golf Tournament—The Gloria—named to honor the memory of the late Gloria Fletcher, Esq., who during her life and practice worked tirelessly to help children, was held on Friday, March 10, 2023, at UF’s Mark Bostick Golf Course. Working together with The Guardian Foundation, Inc., a 501(c)(3) organization, the proceeds of the tournament are used to supplement the efforts of our Circuit’s Guardian ad Litem Program and support the children who are assisted by that organization. Playing on a blustery but essentially rain free day—a blessing given the forecast—a record 100 golfers signed up to play along with a record number of sponsors supporting the event.

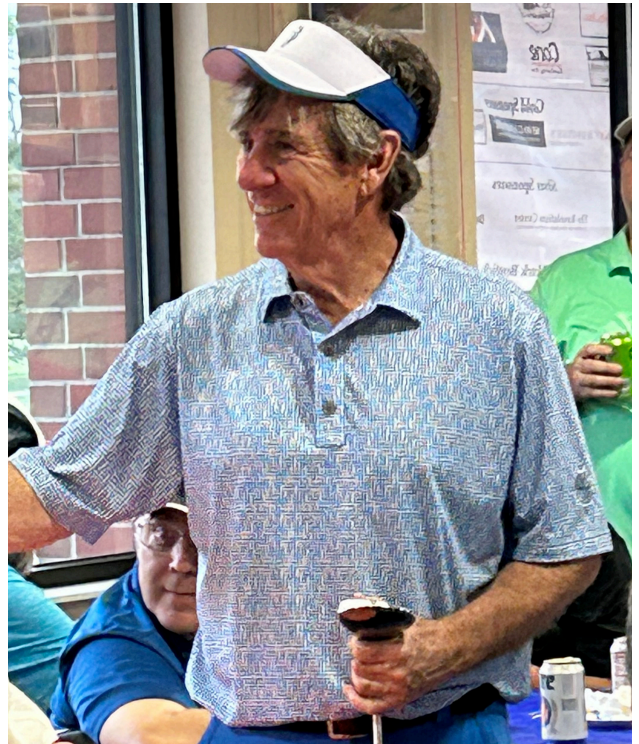
Success for a charity golf tournament can be defined in a number of ways, but this year’s event checked all of the boxes: great volunteers, new highs for golfers and sponsors, plenty of food and drink for the participants, really good weather, seemingly fun had by all and, most importantly, when the average charity golf tournament nets \$5,000, this year’s Gloria will net approximately \$20,000 to help those kids in our Circuit who need the help most.

As far as tournament results—probably the least important “wins” of the day—the team from Signature Sponsor Campus USA Credit Union was first in the low gross category with a stunning 16 under par 54 on the par 70 course. In second place was the combo Gold Sponsored teams of Steven Bernstein and Capital City Bank. In the low net category, attorneys Ron Kozlowski and Charlie Hughes teamed with the Gold Sponsor team from Colliers International to win, with second place in low net going to the team including Signature Sponsor Bogin, Munns & Munns, led by Adam Towers, Esq., along with a player from Gold Sponsor Preston Link Electric. Last but not least were the “Closest to the Pin” prizes, which were won by Avera & Smith Signature Sponsor’s own Rod Smith on hole 15, and on hole 8, Judge William Davis.

A huge THANK YOU from the EJCBA to all of those who participated this year, all of you who have participated in past years, and all of the sponsors who contributed money, in kind goods, and a bunch of nice door prizes.



Mac McCarty and daughter Kayla have been instrumental in the success of the annual golf tournament for years and make a great team!



Attorney Rod Smith won a golf club donated by attorney Stephen Rappenecker.

It’s that time again!

The Eighth Judicial Circuit Bar Association Nominations Committee is seeking members for EJCBA Board positions for 2023-2024. Consider giving a little time back to your local bar association. Please complete the online application at <https://forms.gle/ogB7qkyaUUoW8Rfi7>. The deadline for completed applications is May 1, 2023.

Edwards v. State

Continued from page 6

The *concurring* opinion provided another interpretation of the evidence. It noted Edwards was "irate" and "furious" with the inebriated victim with whom he lived (and considered his stepson) and that "raw anger" motivated him to leave the porch, retrieve the gun, and fire the fatal shot. It also noted Edwards' injuries were mild and not serious, that Edwards himself "seemed to realize from the start the weakness of his self-defense theory" and that Edwards "was in full cover-up mode" such that he "fabricated a sympathetic story" when alerting 911 and when reporting what happened to a responding EMT. It found the only evidence supportive of "a self-defense theory" was that "the victim responded to the gun-draw and shot by punching Appellant's head before falling to the ground and dying on the bedroom floor." The *concurring* opinion concluded that the State produced convincing evidence at the hearing that Edwards "shot the victim not because of any objectively reasonable threat to his life or body, but because he was furious about a wrecked car and the victim's non-contrite, belligerent response towards him on the front porch of their home."

A lengthy and vigorous *dissent* followed. It began with: "The majority opinion reads as though the Legislature never amended section 776.032, Florida Statutes, to place the burden on the State to prove by clear and convincing evidence that a defendant is not entitled to self-defense immunity." (Footnote omitted). It properly framed the incident: "The key dispositive fact in this case, as specifically found by the trial court . . . is that the decedent repeatedly punched Petitioner in the head in Petitioner's bedroom, and Petitioner shot him in response at point-blank range. Therefore, based on the factual findings, Petitioner is entitled to immunity."

In Part 2, I will provide more details on the dissent and my thoughts on all three opinions.

Note: On February 23, 2023, James Dwight Edwards was acquitted of all charges by an Alachua County jury.

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EJCBA March Luncheon



Former EJCBA Presidents Judge Meshon Rawls and Ray Brady at the March luncheon honoring past presidents



Former EJCBA President Gloria Walker with EJCBA Board member Peg O'Connor



Current EJCBA President Robert Folsom, Judge Joe Williams (Ret.) and Judge Thomas Jaworski



*You are cordially invited to attend
the Investiture of the*

Honorable

Sean Brewer

Circuit Judge

Eighth Judicial Circuit of Florida

Friday, April 28, 2023

3:00 p.m.

Judge Stephan P. Mickle, Sr.

Criminal Courthouse

Courtroom 1B

220 South Main Street

Gainesville, Florida

Reception immediately following



The Federal Court Practice Committee of The Florida Bar

By Robert S. Griscti, Committee member

The Federal Court Practice Committee of The Florida Bar serves as the Bar's liaison to the federal courts, federal bar organizations in Florida, the Eleventh Circuit Judicial Conference, and others interested in federal practice. This "Standing Committee" of the Bar has developed and maintains the "Federal Corner" to provide practitioners and others easy access to current information relevant to federal practice in Florida, including CLE events, proposed or adopted rules changes, and other news. The Committee also publishes the useful "Guide to Judicial Practices in Florida's Federal Courts," which provides information from members of the Federal bench ("know thy courtroom"), and hosts the "[Federal Judicial Roundtable](#)" at the Annual Convention of the Florida Bar. The Roundtable is a popular, informal and educational afternoon event attended by federal jurists, practitioners, federal court Clerks, law faculty and students to meet in person to discuss topics about practice, procedure, ethics and professionalism in our federal courts. The Roundtable will be held on June 22, 2023 at the Annual Convention in Boca Grande. All of these resources, including registration information for the Roundtable, are available on the Committee's website at <https://www.floridabar.org/about/cmtes/cmtes-cm/cmte-cm565/>.

Flat Fees in Family Law

Continued from page 7

This can result in overcharging or undercharging clients, which may harm the attorney-client relationship.

Incentive to Cut Corners: With a flat fee model, attorneys may have an incentive to cut corners or rush through legal work in order to complete it more quickly and increase profitability. This can potentially harm the client's case and the attorney's reputation.

Difficulty in Handling Complex Cases: Flat fees may not be suitable for handling complex legal matters that require a significant amount of time and resources. Attorneys may be hesitant to take on such cases under a flat fee model.

Unforeseen Circumstances and Unpredictable Parties: For 40 years, this one for me has canceled out all the pros. Emotional conflict, nosey parents and siblings, know-it-all friends, and new relationships can all result in additional work that was not initially anticipated. Clients get demanding and unreasonable. They hide things; they outright lie. Opposing attorneys can't control their own clients or their clients' expectations. Witnesses flake out. Trials get continued, resulting in the need to prepare a second time.

And, if you're looking for an award of fees from the opposing party, you have to keep all those timesheets anyway.

As much as I would love to quit sending out monthly bills, I just don't see a way to do it. If you have conquered this challenge, I would love to hear about it.

Professionalism Seminar – REGISTER NOW

Inexpensive & Enlightening CLE Credits

By A. Derek Folds

Mark your calendars and register now for the annual Professionalism Seminar. This year the seminar will be held on Friday, April 21, 2023, from 9:00 a.m. (registration begins at 8:30 a.m.) until Noon at Trinity United Methodist Church on NW 53rd Avenue. Our keynote will be a moderated panel discussion on the topic of professionalism across practice areas, with moderator Scott Walker, Esq. and panelists Judge William Davis (Criminal), Judge Robert Groeb (Family), Judge Donna Keim (Civil Trial), and Judge Kristen Van Vorst (Civil Non-Trial).

We have been approved, once again this year, for 3.5 General CLE hours, which includes 2.0 ethics hours and 1.5 professionalism hours.

Register online at <https://www.8jcba.org/event-5196327>; the registration deadline is **April 14, 2023** in order to set up breakout rooms for the group discussions. Questions may be directed to the EJCBA Professionalism Committee chairperson, Derek Folds, Esq., at (352) 372-1882.

Become a Safe Place

Please consider becoming a Safe Place location. All your office will need to do is complete a few questions and a training. If a runaway youth or a child feels endangered, they can easily spot the sign at your door and seek safety. Your role is to make them comfortable, give us a call, and we will take it from there. You will be doing a true service with a recognized national program and at no cost to your organization.

For information, please call Paula Moreno of CDS Family & Behavioral Services, Inc. at paula_moreno@cdfsfl.org or (352) 244-0628, extension 3865.



April 2023 Calendar

- 5 Deadline for submission of articles for May Forum 8
- 5 EJCBA Board of Directors Meeting, Stephan P. Mickle, Sr. Criminal Courthouse, 220 South Main Street, 3d Floor Conference Room, or via ZOOM, 5:30 p.m.
- 7 Good Friday – County Courthouses closed
- 12 Probate Section Meeting, 4:30 p.m. via ZOOM
- 14 EJCBA Monthly Luncheon, Michael Ufferman, Esq. – Preservation of Error/Criminal Appeals, The Woolly, 11:45 a.m. – 1:00 p.m.
- 21 EJCBA Annual Professionalism Seminar, Trinity United Methodist Church, 4000 NW 53rd Ave., 9-12 noon (registration begins at 8:30)
- 28 Investiture of Circuit Judge Sean Brewer, 3:00 p.m., Courtroom 1B, Judge Stephan P. Mickle Criminal Courthouse; reception immediately following
- 28 Nominations due for 2023 James L. Tomlinson Award; email derek@foldswalker.com

May 2023 Calendar

- 3 EJCBA Board of Directors Meeting, Stephan P. Mickle, Sr. Criminal Courthouse, 220 South Main Street, 3d Floor Conference Room, or via ZOOM, 5:30 p.m.
- 5 Deadline for submission of articles for June Forum 8
- 10 Probate Section Meeting, 4:30 p.m. via ZOOM
- 12 EJCBA Monthly Luncheon, Florida Chief Justice Carlos G. Muñiz, The Woolly, 11:45 a.m.
- 29 Memorial Day, County & Federal Courthouses closed

Have an event coming up? Does your section or association hold monthly meetings? If so, please fax or email your meeting schedule to let us know the particulars, so we can include it in the monthly calendar. Please let us know (quickly) the name of your group, the date and day (i.e. last Wednesday of the month), time and location of the meeting. Email to Dawn Vallejos-Nichols at dvallejos-nichols@avera.com.