

FORUM 8

Volume 83, No. 8

Eighth Judicial Circuit Bar Association, Inc.

April 2024

President's Message

By Monica Perez-McMillen



They say that “April showers bring May flowers”, but many of us are most excited for April showers washing away the March pollen and rolling in warm sunshine. We are excited for time outdoors without sneezing or crying and the longer days of summer. Have you had a chance to spend time outdoors yet? Whether it's spending time perusing a farmer's market, taking in a Gator

Baseball game, or going outside for a walk, can I encourage you to find an activity that brings you joy (indoors or outdoors)? On April 4th, we will be convening at Gainesville Health and Fitness Center's Main Center at 6:45 pm for a yoga class in the Outdoor ECHO pavilion. This class is free and will be led by our very own, Fierce Winner and Elder Law attorney, Shannon Miller.

We are so grateful that many of you spent time with us on March 22nd to learn from Dr. Jennifer Sager. Wellness is a topic that impacts every one of us. Spring's renewal is a great season to recommit ourselves to our physical, mental, professional and personal wellness goals.

As we start to plan for the close of our fiscal year and the beginning of the next year, the EJCBA is looking for its next slate of officers and board members. I've been a part of EJCBA for a little over a decade. As a younger attorney, it initially allowed me to network with colleagues. Over the years, many on the EJCBA board went on to become judges, magistrates, and Board of Governors' representatives. Many of us have had big life changes - from adding new members to their families, laying loved ones to rest, or moving across the country. EJCBA has not only brought us together professionally, but it has also given many of us community to do life together. Whether you are an introvert or an extrovert, we have room for you on the EJCBA Board. Please email me if you have any

questions or hesitations about joining the board. We have made it easier than ever to convene efficiently. Our President-Elect, Mikel Bradley, has fresh ideas for engaging members. President-Elect Designate, Peg O'Connor is bold and wise. The seasoned leaders on the ECJBA Board of Directors stand ready to encourage and develop new leadership. Please consider joining us and applying; applications close on May 3rd.

As we start the month of April, please don't forget to mark your calendars for April 12th's luncheon when we welcome Florida Bar President Scott Westheimer. This luncheon qualifies as a CLE credit as he addresses the State of Florida and encourages us all to lean into the future of our profession. I look forward to seeing you all throughout this month for the many events that we have organized to keep us all connected.

It's that time again!

The Eighth Judicial Circuit Bar Association Nominations Committee is seeking members for EJCBA Board positions for 2024-2025. Consider giving a little time back to your local bar association. Please complete the online application at <https://forms.gle/KD1dMBYpU2ReGtjE8>. The deadline for completed applications is May 3, 2024.

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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



Things You Hear at Every Mediation

Well, one of the first things you hear at every Zoom mediation is “Excuse me, you’re on mute.” Not critical and unique only to Zoom conferences. But, there are some other phrases heard at every mediation we would like to share and discuss.

“Our demand is for the policy limits.” In theory there is nothing wrong with this demand and in practice it may be a perfectly logical and efficacious starting point in negotiation. However, demanding policy limits is often pro forma regardless of the facts and value of the case. If you demand the policy limits of \$1 Million and end up settling for \$72,000, you might want to rethink your opening demand. Demanding policy limits in such a value scenario is, we suggest, counterproductive. The defense gets turned off to say the least and the negotiation is always prolonged. The prolonged negotiation ultimately leads to another common phrase: “But, we have come down \$500,000 and they have only come up \$40,000.” True dat, but, such a comment may not consider the *actual* case value. In truth, we suggest the psychological reaction of the defense in such a situation may be such that even when the case settles it *may* settle for less money and certainly the mediation takes longer which costs money. We could write an entire article on this point and put some flesh on these overbroad comments, but perhaps another time.

“The ball is in their court” and the similar “we are not going to bid against ourselves.” Where the ball is positioned is a valid observation; however sometimes it is only technically valid. For instance: “We demanded policy limits and the defense never responded, so the ball is in their court.” First, the defense did respond by rejecting the offer. Second, if the demand is grossly out of proportion to arguable case value, where the ball is located is merely a technical point. Again, whose court the ball is in may be quite appropriate, but, it is not always a reality based comment. Likewise, a similar phrase “we don’t bid against ourselves” may or may not be an efficacious observation. There is no statute which incorporates this statement as law. Sometimes it may be beneficial for either side to bid against themselves and nobody should resist that because of feeling eviscerated. In fact, bidding against one’s self may evoke a feeling of a need of showing reciprocity by the other side, i.e., it evokes a good

psychological feeling associated with a party who responds. In summary, both statements are often heard, are often a valid observation, but are not de rigeur.

“They need to get reasonable.”

Well, maybe they *should* use more reasonable numbers but that should not cause the side making this comment to stop, slow down, etc. At mediation, each side’s job is to *act* not *react*. Bringing things to a halt

because of either an objective or subjective appraisal of the other party’s demands or offers is truly counterproductive. Many times the ‘reasonable’ comment is linked to either “Until they get below X number we are not offering anything” or “Until they get below X number we are not making further demands.” Neither side wants to hear such ultimatums. Perhaps it may be better to use a bracket in such a situation as a more palatable alternative. Instead of saying “Tell them to be at X and we will respond,” consider saying “If they are at X we would be at Y.” Again, an entire article is needed to fully discuss various psychological aspects of such statements, etc.

The above quoted comments occur during perhaps the majority of mediations. Thus, they have taken on an aura of being *required* and unfortunately as being compelling. The point of this article is sometimes the discussed comments *should* be made. The point of this article is also that sometimes the discussed comments should *not* be made. No phrase should become thought of as always appropriate, much less required.



Judge James Nilon, Judge Stan Morris, and Chief Judge Mark Moseley at the February EJCBA luncheon.

Could One Reasonably Believe A Punch or Kick Constitutes Deadly Force?

By Steven M. Harris



Yes. A person could reasonably believe an assailant armed only with fists or feet could constitute a deadly force threat.^[1] Especially in the case of a punch or kick which might land on the head, face, or throat.^[2] Common media and “legal expert” declarations — such as “you can’t bring a gun to a fist fight” or “a punch in the face doesn’t give you the right to draw your gun” — are unreasoned, and as a matter of law manifestly flawed.^[3]

A person does not have to be seriously injured or beaten before justifiably using deadly force to defend against an imminent first or follow-up punch or kick. While “context matters,”^[4] the overarching question for Chapter 776 justification is to be determined by applying the proper incident frame,^[5] then analyzing reasonable belief based on apparent circumstances, particularized to the force user’s perception of the circumstances and of the assailant. An impulsive, unjustified deadly force overreaction to a punch or kick can constitute manslaughter.^[6]

Caution should be exercised in considering actual injury suffered when challenging a defendant’s belief in the necessity to use deadly force.^[7] Force is analyzed by its nature, not by post hoc fixation on the injury suffered. See, e.g., *DeLuge v. State*, 710 So.2d 83 (Fla. 5th DCA 1998); *McComb v. State*, 174 So.3d 1111 (Fla. 2d DCA 2015); *Garramone v. State*, 636 So.2d 869 (Fla. 4th DCA

1994); *Waldo v. State*, 728 So.2d 280 (Fla. 3d DCA 1999).

It is commonly overlooked that deadly force is not only force likely to cause death. It is also force likely to cause *great bodily harm*. See § 776.06, *Fla. Stat.* *Likely* means very probable, what could reasonably be expected to be the result; it should not be taken to denote more likely than not to occur. *Great bodily harm* is injury other than that which is slight, trivial, minor, or moderate. One could reasonably believe a punch or kick, even from an untrained person, is likely to cause deadly force injury, for example, traumatic brain injury, permanent disfigurement, a loss of consciousness, a broken bone, impairment or loss of the use of sight, hearing, or speech. The resulting fall which often follows being punched or kicked must be considered as well.

The legal inquiry for justified force is often complex. A punch or kick can be reasonably believed to portend additional, more injurious punches or kicks, an unlawful disarm, the imminent commission of a forcible felony (for example, kidnapping, sexual battery, or robbery), or be perceived as an invitation to others to join in to land their own punch or kick. Especially when accompanied by verbal threat announcing criminal intent. Aggravated battery is a forcible felony to which reasonably believed to be necessary deadly force is a lawful response in defense of person under § 776.012(2), *Fla. Stat.* Resisting felony battery (for example, elder battery, § 784.08(2)(c), *Fla. Stat.*) also invokes standalone deadly force justification under § 782.02, *Fla. Stat.*^[8]

The answer in the affirmative is even more apparent when an assailant is younger, stronger, of greater size ...

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[1] FBI annual crime figures frequently indicate more homicides were committed with hands, fists and feet than with rifles.

[2] Judges have noted that a punch to the head can be fatal. See *Starks v. State*, 223 So.3d 1045 (Fla. 2d DCA 2017) (repeated punches as second degree murder); *Hall v. State*, 951 So.2d 91 (Fla. 2d DCA 2007) (single punch manslaughter). Examples of deadly force harm inflicted by a single punch can be found by internet search of the term “knockout game.” See also, e.g., *Stickney v. State*, 237 So.3d 1022 (Fla. 4th DCA 2018) (punches caused two lost teeth, broken jaw, and black eyes); *Mobley v. State*, 132 So.3d 1160 (Fla. 3d DCA 2014) (punch resulted in fractured eye socket). Law enforcement agency policy often restricts closed fist punches and bans impact weapon strikes to head, neck/throat, heart, kidney, and groin, except when deadly force is authorized. A chest punch can cause a rare, life-threatening cardiac injury — commotio cordis.

[3] See “Intimidating Firearm Exhibition is Not Deadly Force — *Little v. State* Distinguished,” [Forum 8, September 2023](#).

[4] *Edwards v. State*, 351 So.3d 1142, 1156 (Fla. 1st DCA 2022) (also noting not every blow to the head is deadly and not every fist fight justifies defending oneself with deadly force). A criminal attack should be distinguished from mutual combat. In [Sigismondi v. State, No. 2D21-2391](#) (2d DCA January 12, 2024), the State’s closing argument urged deadly force was not justifiable in response to “. . . a single punch from a guy that you fought before and that you got the better of him last time you fought.”

[5] See “Framing a ‘Deadly Force’ Self-Defense Case,” [Forum 8, January 2022](#).

[6] See, e.g., *Dorsey v. State*, 74 So.3d 521 (Fla. 4th DCA 2011). Despite caselaw and § 782.11, *Fla. Stat.*, it is not uncommon for murder to be charged. See “Unjustified ‘Self-Defense’ Killing: Murder as an Act of a Depraved Mind or Manslaughter?,” [Forum 8, May 2022](#).

[7] See “A Mistaken But Reasonable Belief Justifies Force Under Chapter 776,” [Forum 8, December 2023](#). Compare *Rudin v. State*, 182 So.3d 724 (Fla. 1st DCA 2015) (relying on the resulting minor injuries to find that force wielded by a “two-inch wide, four-foot long stick” was not deadly force under § 784.045(1)(a), *Fla. Stat.*).

[8] Deadly force justification under § 782.02, *Fla. Stat.*, is distinct from Chapter 776. See *Pileggi v State*, 232 So.3d 415 (Fla. 2d DCA 2008). It does not incorporate reasonable belief. The statute addresses actual in progress felony conduct, and thus it does not invoke classic imminence. The Standard Jury Instructions suggested for it are worded differently; one (SJI 3.6(f)) has incorporated “reasonable belief” and another (SJI 7.1) has not. Neither faithfully tracks the statutory language.

Recognizing and Working with Personality Disorders in Divorce

By Cynthia Swanson



After handling divorces for 40 years, I feel like I have built up an ability to recognize personality disorders within about 5 minutes! They can't fool me. Of course I am not a psychologist and I deal with people who are often going through one of the worst times in their lives,

which no doubt exacerbates every feeling of insecurity and fear and heightens anxiety like almost nothing else. Of course, I'm not making any actual diagnosis.

But some people are just definitely worse than others. And it's really interesting how disordered clients seem to seek out and find lawyers who are either afraid of them, otherwise unable to control them, or have their own disorders that get inflamed with these clients.

Red Flags:

Here are some of the red flags I've run across in handling hundreds of divorces, some short-term marriages, some long term, high net worth, complex assets, special needs children, no children, property out of state, no property and no money. Those parameters have no effect, in my opinion, on the likelihood of the existence of personality disorders.

Patterns of Manipulation and Deceit:

Individuals with certain personality disorders, such as narcissistic personality disorder (NPD) or antisocial personality disorder (ASPD), often exhibit manipulative behaviors. They may engage in gas lighting, spreading false information, or undermining the credibility of the other party. For instance, a spouse with NPD might falsely accuse the other party of neglecting the children, creating a hostile environment.

Impact on the divorce process:

- Lengthy and costly legal battles as a result of false accusations
- Difficulty in establishing facts due to constant manipulation
- Escalation of conflict, making negotiation and compromise challenging

Lack of Empathy and Cooperation:

Personality disorders characterized by a lack of empathy, such as borderline personality disorder (BPD) or narcissistic personality disorder, can hinder cooperative efforts during divorce proceedings. A spouse may be indifferent to the emotional impact on their partner or children, focusing solely on personal gain.

Impact on the divorce process:

- Strained communication and negotiation due to lack of empathy
- Difficulty in reaching agreements on child custody, support, and asset division
- Increased likelihood of court interventions to resolve disputes and thus increased fees and costs

Consistent Disregard for Court Orders:

Some individuals with personality disorders may demonstrate a persistent disregard for court orders and legal obligations. This could include violating restraining orders, refusing to attend court-mandated counseling, or concealing financial information, and failure to provide required and requested discovery.

Impact on the divorce process:

- Delayed proceedings and increased legal costs due to non-compliance
- Disruption in the enforcement of custody agreements and time-sharing schedules
- Additional stress on the opposing party and children as a result of continuous legal battles

What To Do?

Here are my best suggestions and what I encourage my clients to do to help themselves through the process:

Encourage your client to go to therapy. Consider making it mandatory if you are going to represent them. They are probably so worn down, so un-self-assured, so anxious, and so worried that they will not be able to stand up for themselves, will have difficulty themselves in complying with deadlines, and may just "want out." If you are going to help a spouse who just wants out, try to give that spouse some resources to determine if that is really what they want to do. Discuss options and alternatives, talk about long term consequences. And ask them to really talk this over with their therapist.

But if your client does decide they just "want out," be sure to document your own file, and then let it go. This is not your marriage, not your future, not your competition to win. Let it go. Closure is extremely valuable. Peace is even more so.

Never ask, "Why?" The spouse with a personality disorder cannot ever give an honest answer to that question, and any answer given will not be useful at all. It just does not matter why he won't provide copies of his retirement account statements, why he wants to keep the house when he can't afford it, or why he won't agree to a time-sharing schedule that really seems in the best interest of the child. It does not matter why she wants to

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Recognizing and Working with Personality Disorders in Divorce

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have the desk that the husband has always used for his remote work, why she wants \$100,000 from the equity in a house that only has \$70,000 equity total. The more the attorney buys into asking that question, thinking that if only you can understand the reason why, then it might be possible to come up with a solution - the more you are playing the other party's chaos game.

Try to ignore the fact that there is an opposing party. Of course, you need the other party's discovery, and you have to go to mediation, and so on. But the best way to handle the case is to come up with your client's best-case scenario, be sure your client agrees, and then go about preparing your client's case as if there will be no defense to it. Just prepare to lead the Court to the outcome you want, no matter what the other side says or does. Be reasonable. Be rational. Be prepared. And, seriously, just ignore the other side. It will be very hard to convince your client that this is the way to handle things. They have been dealing with the disordered spouse for years, walking on eggshells, living with gas lighting and manipulation, and they will be hard pressed to just all of sudden completely ignore the other party.

Along this line, don't spend a lot of time negotiating with the other attorney. Do the bare minimum. That attorney will be unlikely to really get their client to ever agree to anything. The disordered client thrives on chaos. Send one email pointing out discovery is late, and asking when it will be provided. If you don't get any answer, or the promised date passes with no discovery, ignore the other side, and file your motion to compel and set a hearing right away. When you get a hearing, be sure to ask for an award of attorney's fees, or at least for a finding of entitlement to fees with a reservation to determine the amount. If you have to do it again, do it again. Press for court orders. Draft them yourself if possible and be as clear as possible. Detailed, clear, easy to determine if the order has been complied with or not.

Start preparing for trial as soon as you realize what you're dealing with. You will not settle. File your notice for trial as soon as the pleadings are closed. Try to set up a mediation as soon as you can. Even if you don't have full discovery from the other side, it doesn't matter. You're not going to settle anyway, and you just need to check off that mediation box so you can get a trial set. Set a status conference, if needed, to get that trial date set.

And then prepare your case perfectly for trial. I won't go into a whole "how to prepare your case for trial" instructional here. But remember, mostly ignore the other side, and be reasonable, be rational, be prepared.

These are just my personal observations from my years of handling divorces (and other post-divorce and custody matters). Take them all with a grain of salt and focus on educating your client and helping your client disentangle themselves and their children from the disordered spouse. Try to be the one who drafts the final judgment, and, again, make clear findings and clear, detailed orders.

Finally, really think hard and long yourself before undertaking to represent a party with a personality disorder. They will make huge demands on your time, show up unexpectedly and expect to be treated like royalty. They will likely not follow instructions, will not get all discovery in, and will treat your staff . . . at first so charming, and then like dirt. You may not recognize the problem at first, but after a while you will. Seriously consider doubling or tripling your retainer. You will not get paid at the end of the case, because at that point everything negative that happened will be your fault. And not only will you not get paid, but you will also likely get a bar grievance as your thank you note. If you start wondering why you ever took this client, it's time to get out. Do it sooner rather than later.

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, May 3, 2024, 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 "Understanding Generational Differences Affecting the Practice of Law" moderated by Scott Walker, Esq. with panel members Chief Judge Moseley, Stephanie Marchman, Kevin Jurecko and Danielle Adams.

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-5643508>; the registration deadline is April 26, 2024 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) 372-1282.

RPPTL Recap

By Rebecca Wood



The Executive Council (EC) of the Real Property Probate and Trust Law (RPPTL) Section of The Florida Bar last met on February 24, 2024, at The Ritz-Carlton, Grande Lakes in Orlando, Florida. Here is a recap of that meeting.

ACTION ITEMS –

- Trust and Estates practitioners should be aware that the Asset Protection Committee's motion to expend funds in support of the following legislative proposal that is within the purview of the Section was unanimously approved: Support the creation of a new statute within the Florida Trust Code which clarifies ambiguity in the current law as to the continuation of the protected status of tenancy by the entirety property when the property is transferred to a joint trust held by a married couple.
- Triggered by the [FinCEN Notice of Proposed Rulemaking](#), the *Residential Real Estate Industry Liaison* committee brought an urgent request for the Section to provide comment. First a little background, because those in the Eighth Circuit have not previously been impacted by the FinCEN Geographic Targeting orders (GTOs) now in place for eleven Florida counties. The current GTO applies to eleven Florida Counties and requires the reporting of information about entity-purchasers of residential properties for amounts exceeding \$300,000.00. Under the proposed rule, reporting would apply to every sale of residential property to an entity or a trust without regard to the dollar amount or location. Further, the rule, unlike prior GTOs, requires the reporting of information about the seller in those transactions. While the GTOs have been valid for only six months at a time, the proposed rule would make the reporting requirements permanent.

The time constraints on providing comments led the Executive Council to unanimously approve a motion to waive the rule under Article VIII, Section 4(a) of the RPPTL Bylaws, to allow the motion to be heard. In turn, there was unanimous approval of the substantive motion to request the RPPTL Executive Committee to approve as interim action between Executive Council meetings, a request from the Residential Real Estate Industry Liaison Committee for the Section

to submit comments on or before the comment period deadline to the Financial Crimes Enforcement Network related to the proposed Anti-Money Laundering Regulations for Residential Real Estate Transfers, to make compliance with the Regulations commercially reasonable and allowing compliance to provide FinCEN the information needed to combat money laundering in residential real estate transfers, and finding that the submission of such comments is within the purview of the Section. This motion does not request the expenditure of funds. Our circuit's own Melissa Murphy, past President of EJCBA, and General Counsel of The Fund, is leading the effort in this endeavor.

INFORMATION ITEMS –

- Being home to UF's Levin College of Law, we attorneys in this circuit may have interest in the fact that the proposed changes to the Florida Bar exam include removing Trusts and Estate and Future Interests from the topics tested. The Probate Law and Procedure Committee is seeking authorization to advocate for maintaining both as tested topics on Florida's bar exam.
- The Trust Law Committee introduced two legislative proposals that are expected to be raised as action items when the Executive Council meets in June at the Hyatt in Bonita Springs, to wit:
 - Adopt a new statute to reconcile differences between the Florida Probate Code and Florida Trust Code by adopting a statute in the Trust Code that is consistent with Sec. 732.609 of the Probate Code regarding Ademption by Satisfaction.
 - Modify the Florida Uniform Directed Trust Act (FUDTA) to add a definition of "willful misconduct" which is the standard of care a trust director and a directed trustee are subject to under FUDTA. Defining that standard of care achieves greater clarity for fiduciaries acting pursuant to the FUDTA.
- The Condo and Planned Development committee introduced three legislative positions that the Executive Council will be asked to adopt when it meets in June, as follows:
 - Expansion of "Alternative Funding Method" — RPPTL supports legislation allowing any association that must obtain SIRS to utilize an alternative funding method which (i) may reasonably be expected to fully satisfy ...

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RPPTL Recap

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- the association's reserve funding obligations and (ii) is approved by the Division.
- Code of Borrowing Authority — RPPTL supports legislation authorizing associations to borrow money or levy special assessments notwithstanding any requirement for membership approval in furtherance of the association's performance of necessary maintenance, repairs and replacements, including capital replacements.
- Financing of Special Assessments — RPPTL supports legislation permitting unit owners to "finance" special assessments in the form of a payment plan with interest.

TO REGISTER FOR AVAILABLE RPPTL CLE's, [Click Here](#) –

April 3, 2024	Webcast	Justice Meets AI: Reshaping the Legal Frontier
April 11, 2024	In Person	Litigation & Trust Law Symposium
April 12, 2024	In Person	Attorney Banker Conference
April 12, 2024	In Person	Guardianship Seminar
April 18, 2024	Webcast	Mobile Homes
April 24, 2024	Webcast	Formula Gifts
April 25, 2024	Webcast	Technology in Disasters

8TH CIRCUIT ACTIVITIES:

Section representatives Jeff Dollinger, Norm Fugate, and Rebecca Wood participated in a panel discussion with students at UF's Levin College of Law on January 31, 2024.

For more information about the Real Property Probate & Trust Law Section of The Florida Bar, contact one of the At Large Members – 8th Circuit:

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Punch or Kick Constitutes Deadly Force?

Continued from page 4

or weight, or the intended recipient of the punch or kick is taken by surprise off guard, knows of his or her fragility due to a medical condition, or is on an anticoagulation regimen.^[9] A defendant's knowledge that his or her attacker previously inflicted bodily harm with fists or feet on anyone is also informative.

It is imperative (and required under the U.S. Constitution) the jury be properly and fully instructed when deadly force has been used opposing fists or feet, or when the use of fists or feet opposing non-deadly force resulted in unintended death or great bodily harm. Those circumstances will almost always require the jury to be instructed beyond standard instructions.^[10] The instructions must be thorough and adequately reflect the theory of the defense.^[11] The giving of both non-deadly and deadly force instructions will often be appropriate.^[12]

^[9] See, e.g., *State v. Quevedo*, 357 So.3d 1249 (Fla. 3d DCA 2023) (defendant was aware of his Von Willebrand's disease bleeding disorder and that a punch to the nose or mouth could result in life threatening injury); *McKnight v. State*, 492 So.2d 450 (Fla. 4th DCA 1986) (single blow caused extremely serious brain injury to 70-year old victim).

^[10] Standard Jury Instructions are not precedent, nor are they presumed correct. They are not adopted or endorsed by the Florida Supreme Court. Additional instructions should be given in self-defense cases. See "Deadly Force in Self-Defense: Venire Enlightenment and Jury Instruction," [Forum 8, April 2022](#).

^[11] See, e.g., *Radler v. State*, 290 So.3d 87 (Fla. 4th DCA 2020); *Spurgeon v. State*, 114 So.3d 1042 (Fla. 5th DCA 2013); *Gregory v. State*, 937 So.2d 180 (Fla. 4th DCA 2006); *Parker v. State*, 908 So.2d 1099 (Fla. 1st DCA 2005); *Byrd v. State*, 858 So.2d 343 (Fla. 1st DCA 2003).

^[12] See, e.g., *Thompson v. State*, 257 So.3d 573 (Fla. 1st DCA 2018).

AI is Terrifying—Because It’s Not Skynet

By Krista L.B Collins



All the recent talk of artificial intelligence (AI) and chatbots bring to mind Skynet from the Terminator movies or the HAL-9000 from 2001: A Space Odyssey: AIs that end up taking control from humans. By now, we’ve all heard the stories of attorneys who purposefully gave up control and farmed out their research or motion writing to the AI chatbot ChatGPT and lived to regret it, learning from their opposing counsel that the caselaw they cited wasn’t real.^[1] Hearing stories about AI in the news and experiencing it for yourself are two different things.

Recently, as a member of the James C. Adkins, Jr. American Inn of Court, I was fortunate to take part in preparing a presentation on AI and the law.^[2] Working on this presentation was an eye-opening experience. It’s easy to see how an unsuspecting, not-tech-aware attorney could be sucked in by something like ChatGPT. For purposes of our presentation, we asked ChatGPT about undue influence in the execution of a will under Florida law. We chose this topic for several reasons: (1) Florida has a long-standing seminal case on the issue (*In re Estate of Carpenter*, 253 So.2d 697 (Fla. 1971)); (2) there is a set list of “*Carpenter* factors”; and (3) all of this information should be readily available on the internet and therefore, available to ChatGPT.^[3]

As you might have guessed from the news stories, ChatGPT got it all wrong. When provided with the prompt “Write a memo on undue influence in the execution of a will under Florida law and include legal citations,” ChatGPT created a memo quoting §732.5165, Fla. Stat., and citing to three cases: *In re Estate of Carpenter*, 253 So.3d 1097 (Fla. 2018), *Reiter v. Fells*, 194 So.3d 1017 (Fla. 4th DCA 2016), and *Mann v. Dillard*, 26 So.3d 772 (Fla. 4th DCA 2010). The citations all appear legitimate on first glance – ChatGPT certainly gets the Blue Book format correct. However, a quick visit to Westlaw (or other legal database of your choice) reveals that the *Carpenter* citation is wrong and the other cited cases simply don’t exist at all.

Where it really starts to get scary is when ChatGPT is asked whether the statute and cases are real. ChatGPT confessed that *Reiter* and *Mann* were not real cases, but insisted that *Carpenter* was real. As we all know, there is a real *Carpenter* case, but it can’t be found using the citation ChatGPT provided. ChatGPT also insisted that “there isn’t a specific statute with the number ‘732.5165’ in the Florida Statutes related to undue influence in the execution of a will.” Spoiler alert: there is a §732.5165, it

just doesn’t contain the language that ChatGPT supposedly quoted from it.

The uncanny valley of legal citations continued when the same prompt was given a second time, this time with new made-up citations. And while ChatGPT did finally get the *Carpenter* citation correct, it then insisted that *Carpenter* is not a real case.

In addition to wrong citations and made-up case names, ChatGPT did not get the law right. It sounded good and was often pretty close to the actual substantive law. But what I had expected would be an easy task for it – listing out the *Carpenter* factors – simply didn’t happen. ChatGPT invented other factors instead. And that is the real danger for unsuspecting attorneys (or, more likely, unsuspecting *pro se* litigants): incorrect citations are bad enough, but relying on ChatGPT to provide correct statements of the law is worse.

Quite simply, ChatGPT and other AI bots are not Skynet and this is not the rise of the machines. And that is, in part, what is so scary. The AI that exists today and that many people are relying on, is not the AI that we’ve been conditioned to expect from the movies. AI is not a short cut—and it is most definitely not a substitute for real legal research.

[1] For anyone who missed it, here are a few news articles: Sara Merken, *Another NY Lawyer Faces Discipline After AI Chatbot Invented Case Citation*, Reuters, Jan. 30, 2024, at <https://www.reuters.com/legal/transactional/another-ny-lawyer-faces-discipline-after-ai-chatbot-invented-case-citation-2024-01-30/>; Pranshu Verma, *Michael Cohen Used Fake Cases Created by AI in Bid to End His Probation*, Washington Post, Dec. 29, 2023, at <https://www.washingtonpost.com/technology/2023/12/29/michael-cohen-ai-google-bard-fake-citations/>; Benjamin Weiser and Nate Schweber, *The ChatGPT Lawyer Explains Himself*, N.Y. Times, June 8, 2023, at <https://www.nytimes.com/2023/06/08/nyregion/lawyer-chatgpt-sanctions.html>.

[2] The presentation, titled *The Law, AI and Barbie* (yes, that Barbie) took place at the February 15, 2024, meeting of the Adkins Inn. If you’re interested in joining the Inn and getting some CLE for watching amazing presentations like this one, what are you waiting for?

[3] Including an extremely insightful article from the Jan./Feb. 2019 edition of the Florida Bar Journal: Larry E. Ciesla and Jack M. Ross, *Twelve Ways of Proving the Negative and Overcoming the Carpenter Presumption of Undue Influence*, Vol. 93, No. 1 Fla. Bar Journal, available at <https://www.floridabar.org/the-florida-bar-journal/twelve-ways-of-proving-the-negative-and-overcoming-the-carpenter-presumption-of-undue-influence/>.

Become a Volunteer!

By Samantha Howell, TRLS Pro Bono Director



"The solution to each problem that confronts us begins with an individual who steps forward and who says, 'I can help.'"

George H.W. Bush

• National Volunteer Week is April 21-27, 2024. This week of recognition was established in 1975 by the United States Government, though events are now organized through the Points of Light program. In that vein, I want to give a special shout out to some of our Eighth Judicial Circuit volunteers:

- **Amy Abernethy** and **Elyoy Xia-Zhu**, who both volunteer regularly with our weekly Telephonic Housing Clinic.
- **Michelle Farkas**, **Michael Merhar**, and **Susan Mikolaitis**, who have each handled numerous estate planning and advance directive cases.
- **Peg O'Connor**, who has advised clients across numerous subject areas, including expungement, guardianship, collections, and driver license reinstatement.
- **Mary Kay Wimsett**, **Marcie Green**, and **Kimber Tough**, who are always willing to share their expertise to help our clients with adoptions, SSI, and accessing benefits.
- And ALL of our current student volunteers:
 - **Megan Beery** (Paralegal Studies, Santa Fe College)
 - **Katelyn Brunson** (Senior at University of Florida)
 - **Lola Correch** (Senior at University of Florida)
 - **Naiara da Rocha** (2L at University of Florida Levin College of Law)
 - **Dalia Dooley** (Junior at University of Florida)
 - **Rainer Dybevick** (Paralegal Studies, Santa Fe College)
 - **Karissa Dzurik** (3L at University of Florida Levin College of Law)
 - **Dani Hernandez-Gil** (Graduate student at University of Florida)
 - **Kate Stoops** (Senior at Whitman College, in Walla Walla, Washington. So nice they named it twice).
 - **Alex Wagenberg** (Senior at University of Florida)

In 2023, our volunteers worked on some 300 cases and reported over 1000 hours of service (though I can guarantee that much, much more time was contributed, though not reported).

You can join these elite ranks! Not only can you help the community, you can learn new skills and areas of the law that can increase your business. In addition to training materials and mentorship, Three Rivers Legal Services provides liability coverage, recognition for service, and reimbursement for litigation costs. **We will make every effort to ensure you have a positive experience volunteering with TRLS.**

Telephonic Housing Clinic - Advice-only clinic offered on Tuesdays from 5 pm - 6 pm. Cases are limited to private landlord/tenant issues.
Time Commitment = 45 minutes

Pro Se Divorce Clinics - in-person pro se assistance clinics, offered every three (3) months in Gainesville. TRLS will pre-fill much of the forms with the clients; volunteer attorneys will participate for the limited purpose of providing counsel/advice on parenting plans, alimony, and support.
Time Commitment = 1 to 3 hours

Ask-A-Lawyer - "Pop-up" clinics at Grace Marketplace, Civic Media Center, and Peaceful Paths. Volunteers will provide advice/counsel. Clinics are held one (1) Saturday a month.
Time Commitment: 2-3 hours

Law in the Library - Community outreach events, wherein a volunteer presents on a legal topic for about 40 minutes and then answers a few audience questions. In 2023-2024, these sessions are on the 2nd Wednesday of the month at 5:30pm.
Time Commitment: 1 hour

Pro Bono Referrals: Advice and Counsel/Brief Services or Full Representation
Volunteers will NOT be bombarded with emails. We generally try to reach out to volunteers one-by-one, after determining that volunteer skills and client needs match up. You can tell us what kinds of work you want to do (subject matter area, transactional vs. litigation), where you want to do it (by county, remote (video/telephonic), at clinics), and how you want to do it (solo, co-counsel with TRLS staff, obtain a mentor). Just let us know what you are looking for!

Continued on page 14

Calling all attorneys!

We have our monthly Ask-A-Lawyer Clinics scheduled for the rest of the year and need your help! In just two hours a month, you can help someone improve their situation. Importantly, NO ONGOING REPRESENTATION IS REQUIRED. These are truly advice-only or brief service engagements that end with the clinic.

These are also a great opportunity to meet with other attorneys who can mentor and support you! Please contact samantha.howell@trls.org if you plan to attend any of the clinics or have questions

NEED PRO BONO HOURS?

**PARTICIPATE IN THE
ASK-A-LAWYER CLINIC!**

Attorneys will meet with clients one-on-one to help ID legal issues and provide advice and counsel.

We are in particular need of attorneys with experience in the areas of: family, housing (L/T), criminal, personal injury/torts, and public benefits.

1/20/24 - Grace Marketplace (10a-12p)

2/17/24 - Civic Media Center (11a-1p)

3/16/24 - Cedar Key Library (10a-12p)

4/13/24 - TBD

7/20/24 - Grace Marketplace

5/18/24 - Grace Marketplace

8/17/24 - TBD

6/22/24 - Civic Media Center

9/28/24 - Grace Marketplace

10/26/24 - Civic Media Center

11/9/24 - Grace Marketplace

12/7/24 - TBD

NO ONGOING REPRESENTATION EXPECTED!

This clinic provides free legal advice and brief services to members of the community who are houseless.

To participate, contact samantha.howell@trls.org





“THE GLORIA”

In Memoriam of Gloria Fletcher

Benefiting the Guardian ad Litem Foundation

Format: Four-Person Scramble

Mark Bostick Golf Course Friday, April 5th, 2024

\$135/golfer (\$125/golfer early registration)



2800 SW 2nd Avenue
Gainesville, FL 32607
Phone: 352-375-4866

Cost: \$135 per golfer
\$125 Early Registration

Registration and Outdoor
Lunch: 11:00 AM
Tee Time: 12:30 PM
Outdoor Reception following
the round.

To register online please go to:

<https://www.guardian8foundation.org/2024-ejcb-charity-golf-tournament-registration/>

OR please return this form
with payment to:

The Guardian Foundation, Inc.
3919 W. Newberry Rd, Ste 3
Gainesville, FL 32607

SIGN –UP
DEADLINE FOR
EARLY DISCOUNT
March 29th, 2024



The cost of this event is **\$135 per golfer with an early registration discount of \$125 per golfer** for those who register and pay by March 29th, 2024. This price includes 18 holes of golf, riding cart, lunch, reception, and various awards and/ or prizes. All net proceeds of this charity tournament benefit the Guardian ad Litem Program of the 8th Judicial Circuit through the Guardian Foundation,

The EJCBA Charity Golf Tournament benefiting The Guardian Foundation, Inc. has been named in honor of the late Gloria Fletcher. While the names of major golf tournaments, such as “The Masters,” are synonymous with the best in the field, Gloria Fletcher’s name, and her legacy, represent the pinnacle for children’s advocacy. Gloria was a dedicated champion for vulnerable children in the 8th Circuit and across Florida. The EJCBA tournament bears Gloria’s name to ensure her example, passion, and work on behalf of abused, neglected, and abandoned children will continue.

To register, please see the link above or return this form with payment. All checks must be made payable to the Guardian Foundation, Inc. We strongly encourage online registration and payment! However, if you prefer, please fill out the corresponding number of spaces below. Don't worry if you don't have a full foursome--we'll find you some playing partners (even maybe a ringer)! Also, per course rules, no metal spikes are allowed.

Entry Fee: \$135 per golfer (\$125 if registered & paid by March 29th, 2024)

Name (Golfer 1)

Name (Golfer 2)

Email

Email

Phone

No

Phone

Name (Golfer 3)

Name (Golfer 4)

Email

Email

Phone

Phone

The Eighth Judicial Circuit's Leadership Diversity Roundtable
ARTIFICIAL INTELLIGENCE AND THE LAW

A.I. IS COMING FOR LAWYERS

What is A.I.? How will it impact the profession?

This program is aimed at discussing, educating, analyzing artificial intelligence, privacy, data protection and other areas where law and technology intersect.

“It is important for the legal profession to be aware of the safety concerns and other risks associated with generative AI, including privacy and cybersecurity risks, the generation of inaccurate content, and copyright infringement and other intellectual property issues.” The American Bar Association

This program, led by Professor Thomas Haley, will present an interactive approach in addressing everyday concerns and the trends of generative A.I.

Friday, April 12, 2024

8:30 AM – 11:30 AM

Check-in and Breakfast begin at 8:00

Register Online: <https://www.8jcba.org/event-5661430>

Full Breakfast Included

The Woolly-20 N. Main Street



Thomas Haley
Assistant Professor of Law

The cost for breakfast and roundtable is free for EJCBA members and law students, \$18 for non-members. Space is limited and pre-registration is required. CLE and CJE credit are anticipated.

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

Become a Volunteer!

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If you have any questions or would like to participate in any of the above, please contact me at samantha.howell@trls.org or 352-415-2315. You can also select an available case and learn more about TRLS's Pro Bono Legal Assistance Program (PBLAP) at <https://www.trls.org/volunteer/>.

Finally, please take two minutes to complete this six-question survey. You can scan the QR code or click on [this link](#) to access the survey. Your opinion is important to us and will help ensure that we are doing the best we can to serve you and our clients. Thank you for your time!



NOMINEES SOUGHT FOR 2024 JAMES L. TOMLINSON PROFESSIONALISM AWARD

Nominees are being sought for the recipient of the 2024 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 A. Derek Folds, Esq., derek@foldswalker.com. Nominations must be received via email by Friday, April 26, 2024 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.

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 contact Phil Kabler of CDS Family & Behavioral Services, Inc. at philip_kabler@cdfsfl.org or by telephone at (352) 244-0628, extension 3824.



April 2024 Calendar

- 3 EJCBA Board of Directors Meeting via ZOOM, 5:30 p.m.
- 5 Deadline for submission of articles for May Forum 8
- 5 EJCBA Annual Charity Golf Tournament, "The Gloria" in Memoriam of Glora Fletcher, UF Mark Bostick Golf Course, 11:00 a.m. lunch, 12:30 p.m. tee time
- 10 Probate Section Meeting, 4:30 p.m. via ZOOM
- 12 EJCBA Leadership & Diversity Roundtable & Breakfast, "Bias In, Bias Out," The Woolly, 8:30 am – 11:45am
- 12 EJCBA Monthly Luncheon Meeting, Florida Bar President F. Scott Westheimer, The Woolly, 11:45 a.m.
- 26 Nominations due for 2024 James L. Tomlinson Award; email derek@foldswalker.com

May 2024 Calendar

- 1 EJCBA Board of Directors Meeting via ZOOM, 5:30 p.m.
- 3 Annual EJCBA Professionalism Seminar, Trinity United Methodist Church, NW 53rd Avenue, 9am-Noon (registration begins at 8:30am)
- 3 Deadline for completed applications for EJCBA Board of Directors or committee membership
- 6 Deadline for submission of articles for June Forum 8
- 8 Probate Section Meeting, 4:30 p.m. via ZOOM
- 10 EJCBA Monthly Luncheon, Speaker TBD, The Woolly, 11:45 a.m.
- 27 Memorial Day, County & Federal Courthouses closed