

FORUM 8

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Eighth Judicial Circuit Bar Association, Inc.

December 2021

President's Message

By *Evan M. Gardiner*



The end of the calendar year always seems to be a quiet couple of months for the EJCBA, but that doesn't mean that work isn't happening. There's a lot going on behind the scenes to get ready for 2022.

Taking a quick look back to November, I want to give a big thank you to Charlie Carter for talking on non-binding arbitration and how local practitioners can take advantage of the opportunity. Additionally, thank you to Dean Galigani for once again hosting and planning the Fall Family Festival.

To end out the 2021 year, the only planned event is the EJCBA Holiday Party on December 8th at 5:30 pm. As a way of saying thank you to all the members for sticking with us during COVID, the Holiday Party will be completely free for all members. Please join us for free food and drinks as we end the year and welcome in 2022.

Once 2022 rolls around, we'll be taking off like a rocket throughout the rest of the year!

Starting in January, we'll return to having our luncheons. Once again, we'll be at the Woolly! To kick off the 2022 year, we'll be starting with our annual "State of the Circuit" address given by Chief Judge Mark Moseley. From there, February picks up with the Florida Bar President Candidate Forum. Both Lorna Brown-Burton and Scott Westheimer will be present to discuss their candidacy and platforms. March will feature Florida Bar President Michael Tanner and what the Florida Bar has planned for 2022 and beyond. Also in the works is the EJCBA Charity Golf Tournament, "The Gloria," the Professionalism Seminar, Law Day Celebration, Diversity Roundtable, and much more. Make sure to stay in touch through our Facebook page, and keep an eye out for our email blasts. We have so much planned for 2022 and I'm happy that the COVID numbers are continuing to trend

downward. As always, I'm optimistic that normalcy is right around the corner.

Stay safe everyone, and have a happy holiday and new year. I'm looking forward to seeing everyone in person again on a regular basis in 2022!



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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.

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



Light at the End of the Tunnel

As COVID is tentatively beaten back, we can leave our caves and maybe, maybe, we can take a breath of fresh air and start to travel again.

On Sundays, members of The Greatest Generation would gather their families into the car and take a drive “to let the stink blow off.” The drive was merely to see some local area and stop for a soda or an ice cream. The purpose was to get out of the house and connect with nearby sights as a family.

Obviously, we travel for a variety of reasons. We would like to talk about some of the more important reasons we travel. For instance, traveling to relax, snorkel, climb a mountain ‘because it’s there’, or to visit relatives are all good reasons to travel. Travel within the United States is wonderful. Heck, at this point traveling to an in-person mediation would be a positive step.

But we were thinking more of foreign travel and the associated benefits of exposure to different architecture, food, cultures, art, history, etc.

In the Koran, Mohammed asks a scholar to describe not what he has studied; rather, describe where he has traveled.

We do not mean to be a foreign travel snob. However, we do strongly believe that foreign travel is better than a college education. Strong words. We guess we should say that foreign travel plus a commitment to absorbing everything you can and reading about your destination before, during and after a trip, is better than a college liberal arts education.

Why? Travel allows you to appreciate what some refer to as ‘the genius of place.’ That means accepting and valuing how people in a different part of the globe adapt to an area. That area could be Manhattan, Montana, Tibet or Italy. Appreciating the ‘genius of place’ means understanding that other cultures do things differently than we do. Not better or worse necessarily; just different. The opposite of this type of understanding is expecting everything to be the same as at home. Asking: Why do the toilets flush differently? Why isn’t the menu in English? Why are these people so concerned with how much electricity is used? In other words, ethnocentrism. The ethnocentric mind is closed to the educational rewards of travel and typically disappointed rather than excited.

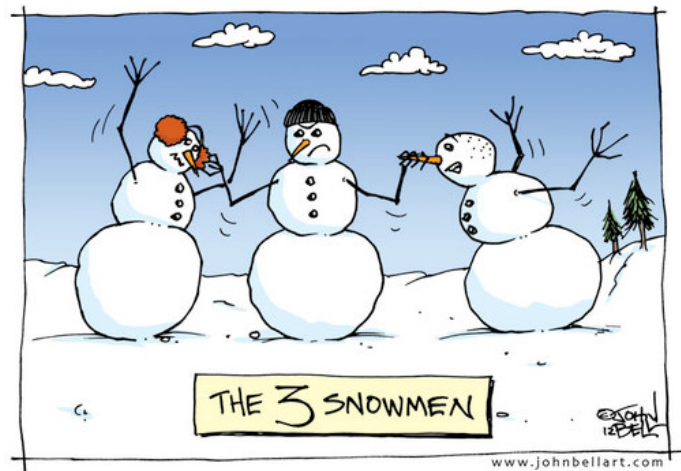
The secret to learning from travel is seeing more by seeing less. Developing a sense of place no matter where you are. Rushing from museum to museum is not

only exhausting but negates any hope of getting a sense of a place. Returning to a café because in a few days it has become ‘our café’ is developing a sense of place.

Some have said that travel makes life memorable. The person who returns with the most memories ‘wins’ as long as those memories are not a series of selfies in front of famous sites. Travel also tends to make you humble. Brad Paisley sings about ‘I know what it’s like to talk and have nobody understand’ as he explains about leaving his “southern comfort zone.”

The response to the COVID virus made us experience fear and confinement. What better way to offset over a year of isolation than to travel. Travel is a cure-all for apathy. New sights, food and voices stimulates you. And we certainly need stimulation.

Perhaps our next in-person local Bar Association luncheon should be in Rome. Or Tibet. Or Maine.



Criminal Law

By Brian Kramer



I hate to sound like an old man shouting from the porch for the kids to get off his grass, but I really do miss the days when fists were for fighting, and guns were for hunting. Our community is experiencing gun violence amongst juveniles at a rate and intensity that I have never seen before. I don't pretend to understand why, and I don't pretend to have all of the answers. I do know that the loss of so many young

lives is devastating and a true tragedy.

In the United States, firearm violence is the third leading cause of death and the second leading cause of injury-related death among 0-17-year-old children; boys account for 82% of all firearm deaths among children, and those youth aged 13-17 have a firearm injury rate that is 12 times higher than that of children below age 13ⁱ. While firearms were related to 74% of all homicides during 2015-2016, they were the cause of death in 87% of all youth homicides; firearm deaths have shown a recent increase in frequency, with the highest rates measured in large metropolitan areasⁱⁱ.

In our community, we have employed a multi-faceted strategy to combat youth gun violence. This is an overview: Sheriff Clovis Watson, Jr. and Gainesville Chief of Police Tony Jones have made combating youth gun violence a priority for their respective administrations. As State Attorney, I support their efforts by establishing a dedicated gun violence unit staffed with my most experienced prosecutors, investigators, and support personnel. When we receive a juvenile case that involves gun violence, we review the case carefully to determine if it is appropriate to treat that juvenile offender as an adult.

Chief Jones has instituted multiple innovative and traditional efforts to combat juvenile gun violence. He works hard to understand the origins of the violence in the city. Right now, there are geographically diverse groups that are having ongoing disputes. I hesitate to use the word "gang" here because there is insufficient intelligence to indicate that the violent crime is that organized, though it may well be. Chief Jones is implementing a program called "violence interrupters." Violence interrupters focus on facilitating communication amongst groups to stop retaliatory crimes. Chief Jones is working with the City of Gainesville and writing grant proposals to fund as many of these positions as possible.

The City of Gainesville, Gainesville Police Department, and the State Attorney's office have partnered to continue the gun buyback program. Recently, we had a very successful buyback. The City of

Gainesville provided \$15,000.00 to purchase firearms. I granted immunity from prosecution to anyone who participated in the program for any offense that may have been committed by a person's participation. Community partner, Big Daddy's Guns contributed by providing free, high quality gun safes and gun locks. This program was so popular that we ran out of funds in 90 minutes. We are looking forward to another gun buyback in the City of Gainesville soon, and I am working to bring this concept to our surrounding communities.

Sheriff Watson runs a "gun bounty" program through his school resource deputies. This program promotes turning in illegal firearms by communications between the deputies and the students. This program is critical in getting stolen guns out of the hands of juveniles and returned to their rightful owners.

As good as all of this may be, it is not enough. While it is hard to measure crimes that never happened, we can clearly see that juvenile gun violence continues more or less unabated. What more can we do?

- We need court based diversionary programs that are focused not just on the juveniles, but on the family, to educate families about the risks of gun violence. Other programs could originate from referrals from the schools or from hospitals.
- We need to have better opportunities for positive outcomes for children within the community including mentoring, job readiness programs, and after school programs.
- We need our schools to use educational strategies that focus on resolving conflicts without violence, resisting peer pressure to carry guns, and educating children on the differences between the violence seen in the entertainment / gaming industry and real life.
- We need a public information campaign that communicates to children the dangers and consequences of gun violence, and that promotes positive activities taking place in the community.

If we are going to be successful in combating juvenile gun crimes, we must employ a holistic community-based strategy. As State Attorney, I am committed to doing just that.

ⁱ Juvenile Justice Information Exchange (<https://jjie.org/hub/youth-gun-violence/>) citing Fowler, K. A., Dahlberg, L. L., Haileyesus, T., Gutierrez, C., & Bacon, S. (2017). *Childhood firearm injuries in the United States*. Pediatrics, 140(1).

ⁱⁱ Id. citing Kegler, S. R., Dahlberg, L. L., & Mercy, J. A. (2018). Firearm homicides and suicides in major metropolitan areas – United States, 2012-2013 and 2015-2016. *Morbidity and Mortality Weekly Report*, 67(44).

The Rise of American Economic Sanctions

By Robert S. Griscti and Morgan Zwirn*

Sanctions Summary

This article addresses “economic sanctions,” which are laws and regulations that prohibit a United States person or entity from engaging in activities involving designated countries, regions, and parties. Economic sanctions frequently are used by the United States to further national security, foreign policy, or economic objectives. Although economic sanctions are directed primarily at overseas targets, domestic companies and individuals, including academia, are subject to compliance with sanctions laws. Violation of economic sanctions laws can result in serious consequences in the United States.

In today’s global economy, economic sanctions have become a hallmark of national foreign policy. The United States and other countries increasingly have used economic sanctions to achieve specific agendas, which, arguably, avoid military conflict. Notably, over the past 20 years, the use of economic sanctions increased 933%. Following the September 11, 2001 attacks, economic sanctions have been used by American administrations to further humanitarian and environmental efforts, discourage the proliferation of weapons of mass destruction, discourage drug and arms trafficking, and further other foreign policy objectives. In the past decade, the Trump Administration administered approximately 3,800 distinct sanctions. Under the Biden Administration, as of October 18, 2021, President Biden has imposed sanctions on approximately 450 entities and individuals.

Overview of American Sanctions Enforcement

Economic sanctions prohibit targets from accessing the financial system of the United States market, including any elements of trade, transactions, services, businesses, or individuals. Sanctions may be either comprehensive, meaning that they restrict those subject to the jurisdiction of the United States from engaging in business activities with entire countries or regions, or they may be targeted to affect designated companies, organizations, governments, or individuals. Sanctions may also be limited to certain sectors of a country’s economy such as the Russia Sectoral, which prohibits United States persons or entities from engaging in any transactions related to Russia’s financial, energy, or defense sectors. Finally, sanctions may restrict United States persons or entities from conducting specific types of transactions with certain individuals or entities, such as import and/or export sanctions and loans sanctions. OFAC maintains lists of all active economic sanctions imposed on countries, entities, and individuals.

United States persons or entities found to have violated an economic sanction may be subject to both criminal and civil penalties. OFAC has the authority to investigate and impose civil penalties on violating parties, such as monetary fines and administrative actions that restrict the ability of parties to engage in activities with other United States persons. Furthermore, if notified by OFAC of a knowing or willful regulatory violation, the Department of Justice (DOJ) may pursue a range of criminal sanctions, such as substantial monetary fines and up to 20 years in prison.

As an example of enforcement, Virgil Griffith, an expert on cryptocurrencies, sought permission and was denied permission to give a presentation on cryptocurrency in North Korea because the presentation would violate economic sanctions against North Korea. In April 2019, Griffith traveled to North Korea despite being denied permission and gave a presentation on blockchain and cryptocurrency technology that would help North Korea evade sanctions. Subsequently, he was indicted and on January 18, 2021, Griffith pled guilty to conspiring to violate the International Emergency Economic Powers Act, which carries a potential prison sentence of 20 years.

Even seemingly accidental transmission of software to countries or entities subject to economic sanctions can prove costly for violators. In 2010, a software company began to release software originating from the United States without using geolocation filters to identify and block downloads from economically sanctioned countries. Between 2010 and 2017, the software and its upgrades were downloaded over 20,000 times to users located in Iran. In addition, from 2011 to 2017, the software company knowingly allowed 2,360 Iranian users to access United States cloud-based services from Iran. Even after voluntarily disclosing the violation, the software company was required to spend over \$27 million to institute GeoIP blocking, remove Iranian users from the cloud-based services, and put effective compliance measures in place.

Economic sanctions imposed by OFAC operate under a complicated set of regulations and foreign policy developments. Persons or entities engaged in the export of goods, exchange of technology, or proliferation of software should exercise particular care when operating within the global economy. To prevent accidental violations of economic sanctions, entities should maintain a comprehensive compliance regime and frequently educate pertinent employees on protocols for operating within global networks.

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* Morgan Zwirn is a Senior Law Clerk for Robert S. Griscti, P.A. and Senior Forum Editor of the Florida Law Review. Research citations for this article are available by contacting Robert Griscti at Robert.griscti@grisctilaw.com or Morgan.zwirn@grisctilaw.com.

Another Form of Prejudice

By Siegel Hughes & Ross

All trial lawyers are familiar with the requirement to file and serve witness lists, exhibit lists, and other pretrial disclosures by a specific date. What are the consequences for the failure to comply? The Florida Supreme Court outlined the framework with which to address this question four decades ago in *Binger v. King Pest Control*, 401 So.2d 1310 (Fla. 1981). In that case the Court affirmed the district court's order of a new trial based on the trial court's allowing the testimony of an undisclosed witness. While such a decision should be addressed to the discretion of the court, that discretion "must not be exercised blindly," *Id.* at 1314, and must be guided by whether there is prejudice to the objecting party. Prejudice refers only to "unfair surprise" and not the adverse nature of the testimony. *Id.*

One factor which must be considered is the ability to cure the prejudice. One procedure for such cure that often is suggested is a continuance of the trial and/or extension of the discovery period. Is such a response to late disclosed evidence or witnesses a cure for the prejudice? At least one commentator suggests a continuance is not a cure for prejudice but is itself another form of prejudice forcing the opposing party to choose between keeping a trial date and adequate preparation for that trial. This "Hobson's Choice" was recognized by the Fourth District in *Florida Marine Enterprises v. Bailey*, 632 So.2d 649 (Fla. 4th DCA 1994). The Fourth District held trial courts may decline to "prevent the objecting party from being forced to choose between frantic last-minute discovery and an unjustified delay of her trial. This is not a fair manner in which to 'cure the prejudice'" *Id.* at 652. See, Wasson, The Problem of the Late-Listed Witness-Prejudice is the Key, Florida Justice Association Journal, Issue 622, Sept. Oct. 2021, p. 46.

Perhaps Florida courts should consider the approach taken by at least one court in Canada, which has recognized the potential unfairness of a delay of the trial includes prejudice beyond the legal proceeding alone. The appellate court in Alberta, Canada, recognized that stress associated with the litigation and impact of the litigation on the defendant's business were also factors to be considered in evaluating prejudice. In that case the defendant had been accused of fraud. Upholding a dismissal for "inordinate" delay, the court stated:

[P]laintiffs allege that the appellants have engaged in fraudulent acts. This exacerbates the stress normally associated with being a defendant in a lawsuit. Common sense supports the conclusion that such claims probably have damaged the appellants' business reputation in



the community in which they operate and have harmed their interests in the short or long term or both. It is more likely than not that enterprises familiar with the defendants and these claims have been unwilling to do business with the defendants. This causes financial hardship. *Humphreys v. Trebilcock*, 2017 ABCA 116 (2017).

Delay of the case to accommodate untimely disclosure or discovery may not be a cure for the prejudice but simply another form of prejudice.

Professionalism Seminar – SAVE THE DATE Inexpensive & Enlightening CLE Credits

By Ray Brady

Mark your calendars now for the annual Professionalism Seminar. This year the seminar will be held on Friday, April 1, 2022, from 9:00 a.m. (registration begins at 8:30 a.m.) until Noon at Trinity United Methodist Church on NW 53rd Avenue or via Webcast if necessary. Our keynote will be a moderated panel discussion on the topic of "Has Professionalism Evolved (or #Devolved)?" The moderator will be Stephanie Mickle, Esq., and the panelists will be Charles "Chic" Holden, Esq., Frank Maloney, Jr., Esq., AuBroncee Martin, Esq., and Mary K. Wimsett, Esq.

We expect to be approved, once again this year, 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 chairman, Ray Brady, Esq., at (352) 554-5328.

Is Self-Defense a Defense to Felon in Possession Charge?

By Steven M. Harris



Both federal and Florida law prohibit a convicted felon from possessing a firearm. It is a felony. See 18 U.S.C. § 922(g)(1) and § 790.23, *Fla. Stat.*

The *federal* prohibition applies to a person convicted in any court of a crime punishable by imprisonment for a term exceeding one year. It bans actual and “constructive” possession. The latter happens when a person lacks actual physical custody, but has the “power and intention to exercise dominion or control” over a firearm. See *Henderson v. United States*, 575 U.S. - (2015); *United States v. Perez*, 661 F.3d 568 (11th Cir. 2011); *United States v. Gunn*, 369 F.3d 1229 (11th Cir. 2004).

The *Florida* prohibition is wide-ranging as to offense conduct and disqualifying conviction. The statute bars more than possession, and more than firearms. A prohibited person may not “own” or “have in his or her care, custody, possession, or control any firearm, ammunition, or electric weapon or device” or carry a “concealed weapon, including a tear gas gun or chemical weapon or device.” Florida, federal and other states felonies and certain delinquent act convictions are assimilated. See §§ 790.23(1)(a)-(e), *Fla. Stat.* The prohibition does not apply when civil rights and firearms authority have been *restored*, or when a criminal history has been *expunged*. See §§ 790.23(2)(a) and 790.23(2)(b), *Fla. Stat.*

Prohibited felons frequently assert firearm possession was a spur-of-the-moment reaction to defend against imminent danger, or resulted from an otherwise lawful disarm of another in self-defense. However, “self-defense” is *not* a defense to a *federal* felon in possession charge. See *United States v. Vereen*, 920 F.3d 1300 (11th Cir. 2019) (“innocent transitory possession” defense instruction refused). The Eleventh Circuit rejects the case law of other circuits which might allow the defense. See *United States v. Faircloth*, 770 Fed. Appx. 976 (11th Cir. 2019) (motive or intent in possessing firearm is irrelevant). In *extraordinary circumstances* a *necessity* affirmative defense (also referred to as choice of evils) might be permitted. *United States v. Deleveaux*, 205 F.3d 1292 (11th Cir. 2000) recognized four required elements for the defense: 1) the defendant was under unlawful and present, imminent, and impending threat of death or serious bodily injury; (2) the defendant did not negligently or recklessly place himself in a situation where he would be forced to engage in criminal conduct; (3) the defendant had no reasonable legal alternative to violating the law;

and (4) that there was a direct causal relationship between the criminal action and the avoidance of the threatened harm. The defendant bears the burden of proof to establish the defense by a preponderance of the evidence. See [Eleventh Circuit Pattern Offense Instruction 34.6 and Special Instruction 16](#).

Florida case law is similar to the federal. In *Coleman v. State*, 345 So.2d 1093 (Fla. 4th DCA 1977), the court held “self-defense is not a viable defense to the offense of possession of a firearm by a convicted felon.” See also *Dardy v. State*, 324 So.2d 178 (Fla. 1st DCA 1975); *Thorpe v. State*, 377 So.2d 221 (Fla. 1st DCA 1979). However, a form of the defense of *necessity* can be available as an affirmative defense to § 790.23, *Fla. Stat.* In *Marrero v. State*, 516 So.2d 1052 (Fla. 3d DCA 1987), the court observed the law has recognized circumstances under which a convicted felon's possession of a firearm could be justified. It determined five necessary elements for the defense: (1) the defendant must be in present, imminent, and impending peril of death or serious bodily injury, or reasonably believe himself or others to be in such danger; (2) the defendant must not have intentionally or recklessly placed himself in a situation in which it was probable that he would be forced to choose the criminal conduct; (3) the defendant must not have any reasonable, legal alternative to possessing the handgun; (4) the handgun must be made available to the defendant without preconceived design, and (5) the defendant must give up possession of the handgun as soon as necessity or apparent necessity ends. The court held “the jury must be instructed that where the defendant retains the weapon after the necessity ends, he may not be convicted unless the jury finds that he continued to possess the weapon after he had sufficient time to reflect on the consequences of his possession.”

Marrero remains the approach to analyze the application of the defense. See, e.g., *Watson v. State*, 314 So.3d 728 (Fla. 5th DCA 2021) (jury instruction properly refused where no evidence of one element); *Knight v. State*, 187 So.3d 307 (Fla. 5th DCA 2016) (probation revocation context); *State v. Chambers*, 890 So.2d 456 (Fla. 2d DCA 2004) (motion to dismiss urging collateral estoppel arose from a self-defense based acquittal for related attempted murder); *Smith v. State*, 729 So.2d 496 (Fla. 5th DCA 1999) (necessity based instruction sufficient, rejecting self defense; dissent would require instruction on Castle doctrine's no duty to retreat as well, based on facts).

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OSHA on Vaccines and Testing: Employers with 100 or more Employees

By Conor Flynn



The Labor Department's Occupational Safety and Health Administration issued its emergency temporary standard (ETS) on November 4, 2021 addressing COVID-19 vaccinations and testing for larger employers to counter the spread of the coronavirus. The ETS covers any private employer with 100 or more employees. Part-time, full-time, and

remote employees are all included in the count. If related companies share management control of occupational safety and health measures, then their employees should be combined for the count.

Employers subject to the ETS should develop, adopt, and enforce policies compliant with the ETS. The policy should either (1) mandate full vaccination for all employees, or (2) provide a choice to either (A) be vaccinated, or (B) undergo weekly testing and wear mask in the workplace. Full vaccination means two doses of Moderna or Pfizer-BioNTech or one dose of Johnson & Johnson.

The ETS requires strict compliance with record keeping and logistics. Notable elements of an ETS-compliant policy include maintenance of vaccine records for all employees, weekly testing for unvaccinated employees, and mandatory notice requirements for COVID-positive employees.

Starting December 5, the mask mandate for employees who are not fully vaccinated will be in effect and employers will be required to pay for time off for vaccination (up to 4 hours) and to recover from the side effects of vaccination. This provision incentivizes employers to begin the vaccination effort before December 5. In contrast, the rules do not require employers to pay for time off for testing or the costs of testing.

The rules apply across the board to all employees except employees who work remotely or outdoors. For healthcare employers, they apply to employees who are not covered by the healthcare ETS. For covered employees, exemption from mandatory vaccination, where implemented by the employer, is allowed for medical and religious reasons only.

The ETS-compliant policy must be in effect by December 4, 2021, and employers will be required to comply with testing requirements by January 4, 2022.

Economic Sanctions

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Economic sanctions investigations have occurred in the Eighth Judicial Circuit. Numerous private entities in the innovation corridors of this jurisdiction deal with the research and production of sanctioned technology and goods. Effective compliance programs are necessary to maintain current sanction lists. Failure to do so may invite at least a "knock on the door" by federal officials, if not administrative or judicial enforcement.

Similarly, a research-based academic institution such as the University of Florida necessarily generates the technology that may be scrutinized by federal agencies for sanction compliance. Only recently, such a concern was publicized about UF and other academic institutions that have worked with Chinese academic institutions and colleagues that, in turn, could disclose sanction-protected research and technology to their global counterparts and colleagues.

Summary

There has been a dramatic increase in the use and variety of economic sanctions in the United States. A key to avoiding enforcement is not only knowledge of the breadth and detail of these laws, but also effective industry-specific compliance programs.

FREE BOOKS

Free to good home: complete sets of CJS, West's FSA, FlaJur2nd, Bender's SE Transactions and some other sets of forms. Takes up about 65 feet of shelf space and looks quite impressive. Full disclosure: pocket parts are not current and I do not know the cost of updating, but has to be less than the approximately \$98,000 it would cost for new sets from the publishers. If interested or have suggestions, please call John Winn at (352) 468-1669 or email him at generaljohnwinn@gmail.com.

Self-Defense

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Is a similar affirmative defense available on the charge of unlawful concealed weapon carry, § 790.01(2), *Fla. Stat.*? It seems it should not be, but see *Williams v. State*, 937 So.2d 771 (Fla. 1st DCA 2006), where the court adopted a generic version of the *Marrero* elements. See also *Ambrister v. State*, 462 So.2d 43 (Fla. 1st DCA 1984). Can the pretrial immunity process (§ 776.032, *Fla. Stat.*) accorded defendants asserting justification under Chapter 776 be invoked for a necessity based defense? No, based on the language and intent of § 776.032(1), *Fla. Stat.* See *Miles v. State*, 162 So.3d 169 (Fla. 5th DCA 2015), which suggests that result.

Jury confusion seems likely when Chapter 776 justification is asserted to an underlying charge and felon in possession necessity is asserted to defend against a joined § 790.23, *Fla. Stat.*, count. Severance would seem appropriate. See *State v. Vazquez*, 419 So.2d 1088 (Fla. 1982). However, considerations are different when the duty to retreat could apply because “engaged in a criminal activity” is at issue. See *Pierce v. State*, 198 So.3d 1051 (Fla. 4th DCA 2016); *McGriff v. State*, 160 So. 3d 167 (Fla. 1st DCA 2015); *Darling v. State*, 81 So.3d 574 (Fla. 3d DCA 2012).

December 2021 Calendar

- 1 EJCBA Board of Directors Meeting via ZOOM, 5:30 p.m.
- 4 SEC Football Championship, Atlanta, GA – 4:00 p.m.
- 6 Deadline for submission to January Forum 8
- 8 Probate Section Meeting, 4:30 p.m. via ZOOM
- 8 EJCBA Holiday Event, The Woolly, 5:30-8:30 p.m.
- 23 Christmas Eve Holiday, County Courthouses closed
- 24 Christmas Day (observed), County & Federal Courthouses closed
- 31 New Year’s Day (observed), County Courthouses closed

January 2022 Calendar

- 5 Deadline for submission to February Forum 8
- 5 EJCBA Board of Directors Meeting, Office of the Public Defender, 151 SW 2d Ave., (or via ZOOM), 5:30 p.m.
- 12 Probate Section Meeting, 4:30 p.m. via ZOOM
- 14 Criminal Courthouse Renaming Ceremony in Honor of Judge Mickle (TBD)
- 17 Birthday of Martin Luther King, Jr. observed, County and Federal Courthouses closed
- 21 EJCBA Monthly Luncheon Meeting, Chief Judge Moseley, “The State of the Circuit,” The Woolly, 11:45 a.m.

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 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.