

FORUM 8

Volume 81, No. 6

Eighth Judicial Circuit Bar Association, Inc.

February 2022

President's Message

By *Evan M. Gardiner*



My daughter's absolute favorite food has to be Cheerios. Not a homemade delicious meal, or a sweet treat, it's definitely Cheerios. Every time she gets them as a snack her face lights up. My wife and I make sure to have a small ration of Cheerios on us when we're out just in case Grace starts to have a meltdown. While we were traveling for the holidays there was

one point where I was giving Grace a single Cheerio at a time to keep her occupied. That was until I realized we were all out. As she gobbled the last Cheerio, I watched her head turn and look back at me with her hand reaching out expecting another. I remember the look on her face of pure disappointment and anguish when she realized there wasn't another coming. She didn't throw a tantrum, but the pure melancholy she displayed was almost worse than a full-on toddler meltdown.

COVID is making me really want to act like a pouty toddler. I really just want to have in-person luncheons! I have to remind myself, though, to not act like a toddler, and be an adult, which is why the Board came to the difficult decision to continue the luncheons by Zoom for January and February. Now I write these about a month in advance, so by the time this is published we will hopefully be looking at just the February luncheon.

I want to thank Chief Judge Moseley for not only giving the 'State of the Circuit' address, but also thank him for pivoting to Zoom with ease. For the February 'luncheon,' I'm still excited to have Mrs. Lorna Brown-Burton and Mr. Scott Westheimer share their thoughts over Zoom on why they should be selected the next President-Elect of the Florida Bar. It's disappointing to have to hold off for another month and continue to do luncheons through Zoom, but I still remain hopeful for the return to normalcy very soon.

The real lesson, though, is that I really need to stop writing about getting back together in person. Every time I write a President's message about going back to in-person luncheons I feel like a new variant pops up. Things start getting better, I get hopeful, I write about getting back to in-person events, then BOOM we get hit with a new letter of the Greek alphabet.

But enough about COVID. Some exciting news: we should be good to go on rolling out a new initiative designed to create more free CLE opportunities. The Florida Bar was kind enough to provide us with a bundle of various CLEs, and should continue to do so for years to come. We're still working out the final specifications, but essentially the goal is to have free bi-weekly to monthly CLEs over Zoom where members have the opportunity to catch up on hours, or to earn some of the harder to find credits, like technology credits. Additionally, our annual "The Gloria: In Memoriam of Gloria Fletcher" Charity Golf Tournament will be held at the end of the month. We may be hitting pause on in-person luncheons, but we're never completely still. Looking forward to seeing you all in person soon!

HAPPY
Valentine's
Day

2021 - 2022 Board Officers

Evan M. Gardiner

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

Philip Kabler

Past President
2700 NW 43rd St, Ste C
Gainesville, FL 32606
(352) 332-7688
pkabler@boginmunns.com

Dominique Lochridge-Gonzales
Secretary

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

Robert E. Folsom

President-Elect
220 S. Main Street
Gainesville, FL 32601
(352) 374-3634
folsomr@circuit8.org

Monica McMillen

President-Elect Designate
101 NW 75th Street, Ste 1
Gainesville, FL 32607
(352) 327-8251
monica@mcmillenfamilylaw.com

Sharon T. Sperling

Treasurer
PO Box 358000
Gainesville, FL 32635
(352) 371-3117
sharon@sharonsperling.com

Members at Large

Jan Bendik

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

Mikel Bradley

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

Raymond F. Brady

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

Shawn Clark

353 S. Court Street
Bronson, FL 32611
(954) 816-2130
clarks@pdo8.com

Cherie Fine

622 NW 1st Street
Gainesville, FL 32601
(352) 372-7777
cfine@ffplaw.com

Allison Derek Folds

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

Blake Fugate

PO Box 98
Williston, FL 32696
(352) 528-0019
blake@normdfugatepa.com

Norm D. Fugate

PO Box 98
Williston, FL 32696
(352) 528-0019
norm@normdfugatepa.com

Dean Galigani

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

Alexis J. Giannasoli

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

Frank E. Maloney, Jr. - Historian

445 E. Macclenny Ave., Ste 1
Macclenny, FL 32063
(904) 259-3155
frank@frankmaloney.us

James H. McCarty, Jr. (Mac)

2630 NW 41st Street Set A
Gainesville, FL 32606
(352) 538-1486
jhmcjr@gmail.com

George Nelson

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

Peg O'Connor

102 NW 2nd Ave
Gainesville, FL 32601
(352) 372-4263
peg@toklegal.com

Ian Pickens

703 N. Main Street
Gainesville, FL 32601
(352) 373-8000
ipickens@meldonlaw.com

Lauren N. Richardson

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

Dawn M. Vallejos-Nichols - Editor

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

Contribute to Your Newsletter!

From the Editor

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

About this Newsletter

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

Eighth Judicial Circuit Bar Association, Inc.

P.O. Box 140893

Gainesville, FL 32614

Phone: (352) 380-0333

Fax: (866) 436-5944

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

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

Judy Padgett

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

Dawn M. Vallejos-Nichols

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

Deadline is the 5th of the preceding month

Alternative Dispute Resolution

By Chester B. Chance and Charles B. Carter



Shaking, Billing and Mediation

It is not often we come across an article involving attorney butt shaking, over-billing issues, and mediation. When we come across such a unicorn we of course must jump on it.

Suffice to say, such an article would be found in the fascinating website "Lowering the Bar." That website is a goldmine for articles on every area of law and professionalism and we encourage lawyers and judges to peruse the site for several hours of bizarre but real, frustrating but real, and comical but real, articles about cases, clients, lawyers and judges. Notice how we used 'but' three times in that last sentence.

Shaking

The article began with a quote from the Federal District Judge assigned to the case of *White v. Chevron Phillips Chem. Co.*:

"One of the sentences a judge does not imagine much less welcome writing includes the words 'butt shaking' in describing a lawyer's alleged actions at a mediation. Sadly, those words fit here." Chief District Judge Lee Rosenthal (S.D. Tex.)

The quote initiates the court's order of May 4, 2020 in the case, which ended a several month series of volleys by both attorneys regarding the alleged shaking activity of a Chevron attorney.

Plaintiff's counsel filed a motion for sanctions in February 2020 asserting the defense attorney made "obscene and threatening comments and gestures" at a mediation in 2019. Butt shaking was alleged and combined with allegations of verbal obscenities by defense counsel.

The court's order noted the judge had received sealed declarations from both lawyers and the mediator about the matter and added there was significant disagreement about what occurred. The court also noted that "neither counsel was a role model of professional conduct." The court concluded that defense counsel's behavior was "clearly outside professional bounds" and potentially sanctionable.

However, the court declined to award sanctions finding it not necessary given the evolving circumstances.

Billing

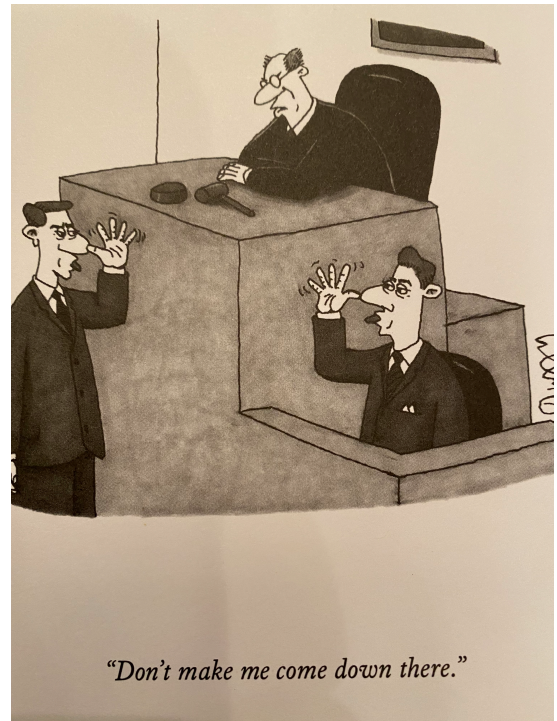
The court questioned plaintiff counsel's claim that \$10,000 in billable time was spent on the four page motion for sanctions, along with a couple of scheduling issues. In addition, the judge noted the defense counsel

had been sanctioned by perhaps a higher celestial court and had been sanctioned enough in fact. The defense attorney had withdrawn from the case after receiving national press coverage of the alleged booty gesture and the court felt his "professional reputation, and the closely related ability to attract business, will no doubt suffer . . . and they should."



The aforementioned web site opined that in this instance, a couple of F-bombs combined with some amount of butt-shaking, may or may not have been held sanctionable had circumstances warranted. The web site noted that in a prior separate and unrelated case, 73 F-bombs during a deposition was definitely held sanctionable without any butt-shaking. The moral: "But, this sort of thing is impossible to predict in advance, so you should probably avoid any combination of these actions." One of your authors thought he recalled receiving similar prescient advice during a law school ethics class, long before shaking and twerking were apparently popular.

Again, it is not often there is an article with a perfect storm of shaking, over-billing, and mediation. We assure you if another case arises which is on all fours with *White v. Chevron Phillips Chem. Co.*, we will be all over it.



Expansion of the “Apex Doctrine”

By Siegel Hughes & Ross



The “Apex Doctrine” is a judicially created doctrine that traditionally has protected high level government officials from intrusive discovery. It holds that a high-level government official should not be subject to deposition over objection unless and until the opposing parties have exhausted other discovery and can demonstrate that the official is uniquely able to provide relevant information which cannot be obtained from other sources. *Department of Agriculture & Consumer Services v. Broward County*, 810 So.2d 1056 (Fla. 1st DCA 2002). The doctrine is based on the separation of powers as well as an attempt to prevent undue harassment of government officials who have no unique knowledge of the underlying facts of the case in dispute.

In August the Florida Supreme Court, *sua sponte*, issued an opinion amending Rule 1.280, Fla. R. Civ. Pro., to expand the apex doctrine to include a current or former high level corporate officer. *In re: Amendment to Florida Rule of Civil Procedure 1.280*, 324 So.3d 459 (Fla. 2021). Recognizing the doctrine had previously been applied only to government officials, the Court stated the purpose of the amendment was to codify the doctrine and extend its protections to the “private sphere.”

The amendment added section (h) to Rule 1.280. This section allows a current or former high-level government or corporate officer to seek a protective order from being subject to deposition by filing an affidavit that the officer “lacks unique, personal knowledge of the issues being litigated.” The burden of establishing that the person seeking the protective order is “high level” lies with the party objecting to the deposition. If that is established, the burden then shifts to the party seeking the discovery to demonstrate:

1. It has exhausted other discovery;
2. The prior discovery is inadequate; and,
3. The officer has unique, personal knowledge of discoverable information.

The amendment specifically authorizes an amendment or vacation of the order after further discovery if the party seeking the deposition can then meet its burden under the rule.

The new section (h) is an alternative to section (c) authorizing the issuance of protective orders, which

remains available when the requirements of section (h) cannot be met.

EJCBA Margaret Stack Holiday Project



Baker County School Superintendent Sherrie Raulerson and EJCBA Board Members Frank Maloney and George Nelson celebrate the EJCBA Margaret Stack Holiday Project in Macclenny.



EJCBA Board Member Frank Maloney enjoying Christmas with recipients of the Margaret Stack Holiday Project in Macclenny.

Probate Section Report: Community Property Trusts

By Blake Moore



In 2021, the Community Property Trust Act came into effect in Florida. This new law allows married couples in Florida to create trusts in which all assets are community property. The purpose of this act is to allow Floridians (or out-of-state residents who create Florida trusts) to take advantage of the full step-up in tax basis given to owners of community property at the death of the first spouse. If jointly-owned assets are not community property, those assets are limited to a half step-up in basis at the death of the first spouse. The difference between the half step-up and the full step-up can make an incredible difference when the property in question has large amounts of unrealized taxable gain. The Probate Section discussed this legislation and its implications in its last meeting.

To convert non-community property into community property in Florida, all a married couple must do under the new law is create a community property trust and move the property into that trust. Once in the trust, the property is automatically converted into community property. Then after the first spouse dies, all property in the trust is eligible for the full step-up in basis, regardless of which spouse contributed the property to the trust.

A community property trust has to meet four requirements in addition to the ordinary requirements for creating a trust. First, the trust must expressly state that it is a Florida Community Property Trust. Second, the trust must include a disclaimer at the beginning of the trust agreement in capital letters. Section 736.1503 of the Florida Statutes provides the language that should be used to satisfy this requirement. Third, at least one trustee must either be located in Florida or be a corporate trustee that has the authority to act as a Florida trustee. Finally, both spouses must sign the trust.

However, there are drawbacks to consider. The first is that the promised tax savings have yet to be tested. We simply do not know if the IRS will challenge the new law or whether that challenge would be successful. There are good reasons to be optimistic though. One of those reasons is Revenue Ruling 77-359, in which the IRS itself said, “[W]here a husband and wife . . . agree in writing that all presently owned property and all property to be acquired thereafter, both real and personal, will be community property, such agreement changes the status of presently owned separate property and subsequently acquired separate property to community property.” However, this ruling only applied to states that allow for the creation of community property by written agreement. This is consistent with section 1014(b)(6) of the Internal

Revenue Code, which states that the full step-up in basis applies to “community property held by the decedent and the surviving spouse under the community property laws of any State.” Thus, because under Florida law community property may be created by written agreement, those agreements ought to result in the full step-up in basis. Another reason for optimism is that Alaska and Tennessee have had similar community property laws for years and the IRS has yet to challenge them. Therefore, despite the uncertainty, we should be optimistic about this law achieving its tax goals.

Another drawback is the lack of asset protection given to community property. Tenants-by-the-entirety (TBE) property is immune from the creditors of one spouse alone. However, property held as community property receives no such asset protection. Thus, converting TBE property into community property can open the door to creditor claims. Thus, it may be beneficial to leave assets without taxable gain, such as a checking account, as TBE while using a pay-on-death designation to move them into the trust at death. That way the client can take full advantage of the community property tax benefit while retaining the TBE asset protection benefits on property that has no unrealized taxable gain.

The final large drawback is that nonmarital property will be converted into marital property once placed into the community property trust. Thus, assets that were obtained from sources unconnected to the marriage, such as an inheritance, that have been kept separate from marital property will lose their nonmarital status the moment they are moved into the community property trust. This means a community property trust is not ideal for spouses that have significant nonmarital property and are worried about a potential future divorce.

Despite the disadvantages, community property trusts provide an incredible opportunity for married couples with large amounts of real estate, stock, or other property with unrealized capital gains. For those couples, these trusts could result in a tremendous tax benefit. Thus, Florida estate planning practitioners need to present those clients with an honest assessment of the risks and benefits of the community property trust. We should also consider reaching out to past clients to let them know about the new opportunity.

Use of Force by Police: Fundamentals and Common Misconceptions

By Steven M. Harris



Prosecution of a police officer for unlawful use of force was once an extremely rare event. For better or for worse, that is no longer the case. Recent prosecutions have embraced disfavored second-guessing, and like ordinary “self-defense” trials, have included excessive reliance on expert opinion, slow motion video and/or still photo captures from video, or totality of the circumstances or other inapt framing (see [January 2022 Forum 8](#)). Even more troubling, legal misconception (in charging decision, rulings, closing argument, and jury instruction) seems commonplace. [Auth. Note: In [Drejka v. State](#) (2d DCA, December 29, 2021), the court held it was not an abuse of discretion to admit narrow expert testimony and slow motion video.]

There is widespread mistaken belief that *Graham v. Connor*, 490 U.S. 386 (1989), and the vast body of “qualified immunity” case law it produced prescribe the paradigm for prosecution of an officer. They do not. Nor do agency best practices, training, policies, or standards. See *City of Miami v. Sanders*, 672 So.2d 46 (Fla. 3d DCA 1996); *City of St. Petersburg v. Reed*, 330 So.2d 256 (Fla. 2d DCA 1976). Some states have a statute which incorporates *Graham* concepts for police use of deadly force, for example, [Minn.Stat. § 609.066 \(2021\)](#). Florida does not. Thus, incident framing (temporal and behavioral) to determine justification remains narrow.

A state criminal prosecution of an officer is not a balancing of the officer’s intrusion on Fourth Amendment rights against governmental interests. Nonetheless, *Graham* suggests a suitable instruction to enlighten grand and petit jurors about the use of force in the context of police service, perhaps this: *In considering the reasonableness of and necessity for the defendant’s use of force you should allow for the fact that police officers are required to make split-second decisions about the amount of force necessary in circumstances that are tense, uncertain and rapidly evolving. Reasonableness and necessity are not capable of precise definition or mechanical application. You must judge the defendant’s use of force at the moment the force was used, from the perspective of a reasonable officer on the scene, not with the 20/20 vision of hindsight.*

Another misconception relates to “aggressor” provocation. It is expected and the sworn duty of police officers to cause trouble. That is, to do things which often result in the necessity to use force. *Livermore v. Lubelan*, 476 F.3d 397, 406-7 (6th Cir. 2007). Use of force and

injury are common in the making of arrests. *Rodriguez v. Farrell*, 280 F.3d 1341 (11th Cir. 2002). Thus, it isn’t appropriate to apply a provocation notion to an officer lawfully discharging his or her official duties. Cf. *County of Los Angeles v. Mendez*, 581 U.S. – (2017) (rejecting a look back to whether an officer intentionally or recklessly provoked a violent confrontation). Use of force when making an arrest under § 776.05, *Fla. Stat.*, is, by wise legislative choice, not subject to the deadly force provocation constraint of § 776.041(2), *Fla. Stat.* Moreover, under § 776.051(2), *Fla. Stat.*, the defense of justification is lost only when an officer’s arrest or execution of a legal duty is unlawful and known to be unlawful.

The use or threat of force by an officer is governed by traditional law of justification, § 776.012 and § 776.031, *Fla. Stat.* When making a lawful arrest, § 776.05, *Fla. Stat.*, overlaps. The process for pretrial immunity under § 776.032(1), *Fla. Stat.*, can be invoked by an officer whether or not an arrest was being made and justification under § 776.05, *Fla. Stat.*, is also claimed. However, justification under § 776.05, *Fla. Stat.*, is not immunity, it is a defense, and is not by itself subject to pretrial determination when there are facts in dispute. *State v. Peraza*, 259 So.3d 728 (Fla. 2018). The standalone justification provision, § 782.02, *Fla. Stat.* (see [March 2020 Forum 8](#)), has application to police use of deadly force. A limitation is found in § 782.11, *Fla. Stat.*, which provides that an unnecessary killing is manslaughter. *Cobb v. State*, 376 So.2d 230 (Fla. 1979).

An officer making a *lawful* arrest “has no duty to retreat or desist,” and is justified using “any force” the officer “reasonably believes to be necessary” to defend the officer or another from bodily harm. An officer is justified to use “any force necessarily committed” when “retaking felons who have escaped,” or when apprehending “felons fleeing from justice.” See §§ 776.05(1)-(3), *Fla. Stat.* [Std. Jury Inst. \(Crim\) 3.6\(h\)](#) tracks the statute. There is no distinction made by statute for whether a person to be arrested is armed or unarmed. Nor is there a requirement to use the least amount of force that might be effective, or to apply incremental levels of force based on a force continuum. The first standard stated above applies to force used to prevent escape of an arrestee, a sentenced person committed to a penal institution, or a detained person awaiting trial. See §§ 776.07(1) and (2), *Fla. Stat.*

The defense provided by § 776.05, *Fla. Stat.*, is not available in a civil case to justify deadly force used on a fleeing felon, unless deadly force was necessary, a warning was given if feasible, and either the officer reasonably believed that the fleeing felon posed a ...

Continued on page 7

Covid Chronicles and Labor Update: Welcome to 2022

By Conor Flynn



OSHA's Emergency Temporary Standard at the Supreme Court

By the time you read this article, the Supreme Court likely will have heard appeals related to the OSHA Emergency Temporary Standard (ETS) and the Center for Medicare and Medicaid Services (CMS) healthcare vaccination mandate. By way of reminder: OSHA's ETS mandates that employees working at a company with 100 or more employees must be vaccinated or mask and submit to weekly testing.

On December 30, the U.S. Solicitor General submitted a lengthy filing on behalf of OSHA, outlining the argument we may expect to hear at the Supreme Court: OSHA estimates the ETS will save 6,500 worker lives and prevent 250,000 hospitalizations over a six month period; non-regulatory options have proven thoroughly inadequate; and employers remain free to elect whether workers must be vaccinated or whether to require masking and a negative Covid-19 test at least once every seven days. Those appeals are scheduled to be heard on January 7, 2022.

Minimum Wage: "Bounty Law" Against Local Government Minimum Wage Increases and a New \$4.25 Training Wage?

Here in Florida, the 2022 legislative session is set to address some of the biggest issues concerning employers and labor. With the 2022 legislative session beginning on January 11, employers large and small should keep an eye on the Capitol. Two senate bills merit special attention:

- SB 1124 seeks to preclude local governments from enforcing minimum wage mandates for any amount greater than the state minimum wage rate, currently \$11 an hour.
- SB 620 would authorize businesses to pursue damages from a county or municipality if any local regulation or mandate can be shown to have reduced profits by at least 15 percent. Notably, if enacted as written, this bill would function in the same manner as the controversial "bounty law" out of Texas concerning abortion.

In addition, a Pinellas state senator has advanced Senate Joint Resolution 382, which would amend the state's constitution to permit for a "training wage" which would potentially permit for wage rates as low as \$4.25 an hour. Lawmakers would first have to pass the resolution; it would then face the voters and need 60% approval.

Use of Force by Police

Continued from page 6

threat of death or serious physical harm to the officer or others, or the fleeing felon committed a crime involving the infliction or threatened infliction of serious physical harm. See § 776.05(3), *Fla. Stat.* That provision, which is like the holding of *Tennessee v. Garner*, 471 U.S. 1 (1985), is not the law for prosecution of deadly force used on a fleeing felon. There is no legal requirement to see a weapon, brandish a firearm, issue a verbal warning, or take a warning shot before using deadly force. *Mobley v. State*, 132 So.3d 1160 (Fla. 3d DCA 2014).

Unlike § 776.012 and § 776.031, § 776.05, *Fla. Stat.*, contains no imminence prerequisite or stated distinction when deadly or nondeadly force is lawful to defend against deadly or nondeadly bodily harm. Nor is the threatening of force mentioned. Hence, when making an arrest, an officer is allowed wide-ranging discretion with respect to the use of verbal commands and threats (see § 901.16 and § 901.17, *Fla. Stat.*, as to duty to inform arrestee and effect of flight or forcible resistance), unholstered firearm display, and gunpointing. (All are the use of *nondeadly* force as a matter of law. See [April 2020 Forum 8](#) and [November 2020 Forum 8](#)). The felony references in § 776.05, *Fla. Stat.*, do not distinguish between a forcible or other felony.

Deadly force may be justifiable to effect a *misdemeanor* arrest under § 776.05(1), *Fla. Stat.*, only when it becomes necessary in otherwise lawful defense of self or others or in the case of a freshly committed felony predicate, according to dicta in *Light v. State*, 796 So.2d 610 (Fla. 2d DCA 2001). However, the statute's flush language and subsection (1) don't distinguish felony and misdemeanor arrests in authorizing the use of "any force." Cf. [Std. Jury Inst. \(Crim\) 3.6\(h\)](#). See [Advisory Legal Opinion AGO 76-178](#) for discussion of some related legislative history. Of note: Resisting arrest with violence, § 843.01, *Fla. Stat.*, a third degree felony, has a minimal threshold.

Use of less-lethal munitions is not deadly force. A "less-lethal munition" is a "projectile that is designed to stun, temporarily incapacitate, or cause temporary discomfort to a person without penetrating the person's body." See § 776.06(2)(a), *Fla. Stat.* An officer who uses such munitions in good faith within the scope of duty is "not liable in any civil or criminal action" arising out of such use. See § 776.06(2)(b), *Fla. Stat.* I have not found Florida appellate case law applying or rejecting § 776.06(2)(b), *Fla. Stat.*, to TASER use, either by darts or drive-stun mode.

Sharon Sperling receives 2022 Florida Bar President's Pro Bono Service Award for the Eighth Judicial Circuit

By Marcia Green, Pro Bono Director
Three Rivers Legal Services



Florida Bar President Michael Tanner recognized Gainesville attorney Sharon Sperling with the Pro Bono Service Award for the Eighth Judicial Circuit at a ceremony held January 20th at the Florida Supreme Court.

Sperling's nomination, submitted by Three Rivers Legal Services, notes that she "is a strong and enthusiastic advocate for those facing financial hardship." A volunteer since approximately 1994, she has provided hundreds of hours representing clients in full Chapters 7 and 13 bankruptcies and makes herself available to consult with those who do not need representation. Sperling has also participated in the Ask-A-Lawyer project, an outreach clinic for those facing homelessness.

Many of Sperling's pro bono clients are facing the loss of their homes, through foreclosure or repossession. Many are just overwhelmed by debt due to illness, divorce, age and complicated life situations. Sperling is one of very few attorneys in the Eighth Circuit who makes herself available for pro bono bankruptcy referrals. The need is great and the resources are few; Sperling's services are extremely valuable and greatly needed. She often tells those who approach her directly for help, that if they are eligible for services through Three Rivers, she will handle their case pro bono.



Sperling's "tireless service to those who need it most is exceptional" notes Stephanie Marchman, Florida Bar Board of Governors member for the Eighth Circuit.

Ray Brady, recipient of the 2022 Tobias Simon Pro Bono Award, states that Sperling is "so deserving of this great honor, for the countless hours of pro bono legal services provided for so many years to the under-resourced and deserving residents of the 8th Circuit." He notes that Sperling makes us all look good, and makes us proud.

In his letter of support, Evan Gardiner, President of the Eighth Judicial Circuit Bar Association, wrote "Beyond being a major asset for the EJCBA, she has been a staple of the Eighth Circuit Pro Bono scene for several decades. Ms. Sperling is a past-president of the Eighth

Judicial Circuit Bar Association, and has been the association's Treasurer before I was ever involved in the EJCBA. Her continued support serving as the Treasurer and handling the association's finances has been an invaluable help."

A 1987 graduate of the University of Florida Levin College of Law, Sperling is a member of the Florida Bar Business Law Section. She is active in the Northern District of Florida Bankruptcy Bar Association, National Association of Consumer Bankruptcy Attorneys, the Federal Bankruptcy Bar, Gainesville Chapter and an emeritus member of the James C. Adkins Inn of Court. She has lectured and conducted seminars and participated in developing continuing education seminars for bankruptcy attorneys in North Florida. Sperling serves on the board of the Healthy Learning Academy charter school and formerly served on the board of Girls Place of Alachua County.

SAVE THE DATE! "THE GLORIA" CHARITY GOLF TOURNAMENT RETURNS

EJCBA Charity Golf Tournament--The Gloria--benefiting The Guardian Foundation, Inc., in support of the 8th Judicial Circuit's Guardian ad Litem Program is back!

When: Friday, February 25, 2022 - Box Lunch Served starting at 11:30am; Shotgun Start Tee Time at 12:30pm

Where: The Mark Bostick Golf Course at the University of Florida

Cost: Early registration on or before February 18th: \$115

Registration after February 18th: \$130

Format: Four person scramble (captain's choice)

Note: Please watch for an email blast with the online registration information

Ray Brady receives the 2022 Tobias Simon Pro Bono Service Award

By Marcia Green, Pro Bono Director
Three Rivers Legal Services



Florida Supreme Court Chief Justice Charles Canady presented the State's most prestigious pro bono award to Gainesville attorney Ray Brady at a ceremony held January 20. The Tobias Simon Pro Bono Service Award recognizes an attorney's extraordinary contributions in ensuring the availability of legal services to the poor. Named for the late Miami civil rights lawyer Tobias Simon, the

award represents the Supreme Court's highest recognition of a private lawyer for pro bono service.

For the Eighth Judicial Circuit and a legal community consisting primarily of solo, small and medium-sized firms, the recognition of one of our attorneys is huge! The expanse of the six rural counties that make up the Circuit presents a challenge to the local legal community. With approximately 1100 members of the Florida Bar practicing in the circuit and a very large poor population, the legal needs of the community are not easily met.



Ray Brady, who has dedicated his legal skills to help others for more than 35 years, is a perfect addition to the list of Tobias Simon Award recipients. He has been a pro bono volunteer with Three Rivers Legal Services since the early 1990s, an organizer of pro bono projects and a strong advocate for the needs of the poor, less advantaged and disenfranchised. Brady's conscious and creative recognition that lawyers can do more, have the ability to do more and want to do more, make him an invaluable asset to our community.

In 2018, Brady received the Florida Bar President's Pro Bono Service Award for the Eighth Judicial Circuit, an honor he previously won in 1997. The award recognizes attorneys from each of the judicial circuits who provide outstanding pro bono services. Although his area of expertise is primarily personal injury and wrongful death cases, his ability to negotiate with hospitals and health and automobile insurance companies makes him particularly valuable to those unable to navigate the corporate power of the insurance and health care industries.

The Eighth Judicial Circuit Bar Association won the Florida Supreme Court Chief Justice's Voluntary Bar Association Pro Bono Service Award in 2016. That award recognizes a voluntary bar association that demonstrates a "significant contribution in the delivery of legal services on a pro bono basis to individuals or groups that cannot otherwise afford the services." Events leading up to that award occurred during the years that Brady served on the Board, most importantly, as President and immediate Past-President of the EJCBA.

Highlights of Brady's collaborative efforts:

- Ask-A-Lawyer Project – started in January 2015 as a collaboration with the EJCBA, Three Rivers Legal Services, Southern Legal Counsel, the Office of the Public Defender and UF law students. The team recognized that attorneys have the unique ability to provide advice and/or assistance that could mean the difference between housing and homelessness and provides volunteer services at locations to reach out to the homeless. Brady recruits volunteer attorneys to provide assistance in a variety of legal issues that may create barriers to housing. Pre-pandemic, AAL events were held in conjunction with the annual Veterans Stand Down, at a local domestic violence shelter, library partnership locations, a local church, a veterans' domiciliary and some rural locations. As we are hoping to emerge from the pandemic, Brady and the AAL team are working together with the shelters to provide services and modify the project to most effectively serve this vulnerable population.
- 2021 Virtual Driver's License Clinic – deeply involved in the coordination and success of this collaborative effort of the Court, the EJCBA, Florida Department of Revenue, Office of the State Attorney, Sheriff's Office, Office of the Public Defender, Regional Counsel, Tax Collector's Office, Florida Highway Safety & Motor Vehicles, Court Services, Florida Bureau of Administrative Review, Southern Legal Counsel and Three Rivers Legal Services. The purpose was to assist drivers in the restoration of their licenses, often lost due to unpaid court fines, traffic tickets, child support and other debts. 25 attorneys met virtually with more than a hundred individuals; two county court judges participated and held hearings for 19 individuals; ten drivers received reinstated licenses and 25-50 drivers expected to finalize...

Continued on page 10

Ray Brady Pro Bono Service Award

Continued from page 9

their plans for reinstatement. With the groundwork in place, the 2022 Clinic is moving forward with training and recruitment of attorneys.

- Senior Medical Legal Partnership with Three Rivers Legal Services, the Florida Department of Elder Affairs and UF Health - promoted increased and enhanced access to legal services for elderly patients who were at risk of abuse, neglect or exploitation and addressed legal needs that contributed to poor health outcomes. Brady's passionate advocacy and interest in the project brought the partners together for a holistic approach exploring civil legal remedies. Unfortunately, hospital priorities changed and funding dried up.
- Pitch in for the Kitchen - instrumental in creating and promoting a challenge to members of the EJCBA and the Alachua County Medical Society to raise money to rebuild the kitchen at Grace Marketplace, raising more than \$20,000 for equipment for the kitchen, which now has the capacity to serve meals to over 70,000 individuals annually.
- Dinner at Grace Marketplace - Pre-pandemic, AAL volunteers and others got together to serve annual dinners. Brady was instrumental in organizing the meals and participated, along with his wife, in cooking and serving food to the approximately 200 residents of the shelter. Participants are looking forward to resuming the meals once the shelter reopens to volunteers.
- Active involvement in the EJCBA – Brady has served as president, organized the professionalism committee, leads the annual professionalism CLE seminar, chairs the association's pro bono committee and serves on the Eighth Circuit Pro Bono Committee.

Examples of cases in which Brady provided significant pro bono assistance are:

- Brady assisted a woman staying at Grace Marketplace to secure title to her van, which served as her vehicle and her home. After paying off the loan, she struggled to get the title from the original owner who lived in California. With Brady's advocacy and intervention, this very grateful woman obtained title to her van.
- After a woman's violent and mentally ill estranged husband had an altercation with law enforcement, she was concerned about her liability as co-owner of the vehicle. Brady's advocacy on her behalf left her without debt from the incident.

- Brady assisted a homeless man living in the woods to secure a \$40,000+ inheritance from his mother's estate in California.
- Brady assisted another homeless individual who had been injured by a car while riding his bike. Brady's advocacy provided a small settlement and a new bike.
- At many of the AAL events, attorneys with needed areas of expertise are not available. Brady is always willing to interview clients and assist in finding follow up advice or assistance from an appropriate attorney.
- Brady has been an impassioned advocate on behalf of families who suffered the negative effects of early childhood vaccinations. In the 90s, he provided more than 300 hours of uncompensated and difficult to obtain legal representation for an individual with a brain injury that caused blindness and profound developmental disabilities. As an example, after many years of litigation, he obtained a damages award to provide the young man with the lifelong support to meet his many rehabilitation needs.

Brady's nomination was supported by EJCBA President, Evan Gardiner, and Immediate Past President, Phil Kabler, who noted "simply put, Mr. Brady is a true servant leader role model to which all members of the Bar should aspire. Anecdotally, the attorneys and other community members in our Circuit marvel at his ability to engage in all of those activities at once while being engaged in an active law practice, as well." They further commented "what makes Mr. Brady's level of commitment even more impressive is the fact that he is a sole practitioner while doing all of those activities in support of our Circuit and communities."

Board of Governor's representative, Stephanie Marchman, commented in support of Brady's nomination and, more specifically, about his involvement in the Driver's License Restoration Clinic. She stated "Ray capably coordinated the agencies, trained and paired pro bono lawyers with law students, and paired Clinic participants with counsel, so at end, the participants either received their license or had a clear roadmap as to what they needed to accomplish to reinstate their license. While this may seem like a small success, I can attest that being able to drive to work, pick up kids from school, drive to the doctor, or pick up groceries is essential in our relatively rural community in which public transportation is limited."

Continued on page 11

The Honorable William Terrell Hodges Passes on January 4, 2022

The Honorable William Terrell Hodges passed away on January 4, 2022. He was 87 years of age. Born on April 28, 1934 in Lake Wales, Florida, Judge Hodges received a Bachelor of Science in Business Administration from the University of Florida in 1956, and a Juris Doctor from the UF College of Law in 1958. He engaged in the private practice of law in Tampa from 1958-1971, and additionally taught business courses at the University of South Florida from 1961 to 1966.

In 1971 Judge Hodges was nominated to the United States District Court for the Middle District of Florida by President Richard Nixon; he was confirmed by the US Senate three days later and received his commission on December 15, 1971. He served as Chief Judge of the Middle District from 1982-1989 and was the Chair of the Judicial Panel on Multidistrict Litigation until June 13, 2007 when his term on that body ended. Judge Hodges assumed senior status on May 2, 1999. Through 2018, he was a member of the Committee on Court Administration and Case Management (CACM) of the Judicial Conference of the United States, which he chaired through October 1, 2018. His leadership of CACM followed a long career of distinguished service to federal judiciary committees, including service as Chair of the Eleventh Circuit Committee on Pattern Jury Instructions and Chair of the Executive Committee of the Judicial Conference.

Judge Hodges was honored on December 4, 2018 for his service as Chair of CACM with a reception and dinner hosted at the United States Supreme Court by United States Supreme Court Associate Justice Sonia Sotomayor and incoming CACM Chair United States District Judge Audrey Fleissig. Present at that dinner was one of Judge Hodges' former law clerks, Stephanie Marchman, this Circuit's Representative to the Florida Bar Board of Governors. In an article for the *Forum 8* following the tribute, Stephanie wrote, "It was evident from the dinner program that Judge Hodges' quiet leadership, gift for storytelling, ability to think outside the box, and kindness to all people left an indelible impact on CACM's members and staff."

Commenting on Judge Hodges' passing, Stephanie said, "he is simply one of the most exceptional humans I have ever known and to say he will be missed is an understatement." Even though Judge Hodges' seat was always in the Middle District, he set up an office in the Gainesville federal courthouse in recent years and assisted with cases in the Northern District. Gilbert Schaffnit, President of the North Central Florida Chapter of the Federal Bar Association, issued a statement saying "Judge Hodges will be long remembered for his brilliant mind and his gentle heart."



Ray Brady Pro Bono Service Award

Continued from page 10

Brady also received the 1999 James L. Tomlinson Professionalism Award which recognizes an attorney in the Eighth Judicial Circuit who demonstrates "consistent dedication to the pursuit and practice of the highest ideals and tenets of the legal profession."

Three Rivers Legal Services, Inc. provides legal services to 17 counties in North Florida, including some of the most rural counties and communities in the state. Brady served as President of the Three Rivers' Board of Directors, playing a major role in helping the program bring in our former and current Executive Directors, updating policies in a challenging financial climate and navigating the move of the Gainesville office.




2022 FLORIDA PRO BONO LAW SCHOOL CHALLENGE BEGINS

The 2022 Florida Pro Bono Law School Challenge, run by The Florida Bar Foundation, begins on Jan. 31, 2022. The statewide competition, now in its fourth year, connects Florida law students with lawyers to partner on pro bono cases from legal aid organizations. Students and lawyers can visit www.FloridaLawSchoolChallenge.org to pick a case. Florida's law schools will compete to see which can take the most cases through March 25, 2022.

This year, the Foundation has made several changes to the Challenge based on feedback from lawyers, law students and schools, and legal aid programs. Students will have early access to the site beginning Jan. 19, two weeks before lawyers, so that lawyers will have a larger number of student-selected cases to choose from on the first day of the competition. In addition, legal aid programs will be able to tag cases as #ChallengeReady, #remote and #virtual to help students and lawyers pick pro bono opportunities that fit their needs.

A core part of the Foundation's mission is to promote public service among lawyers by making it an integral part of the law school experience. More than 800 pro bono cases have been taken through the Challenge. Last year, 309 cases were taken, and Stetson University College of Law won the top honor.

"The Challenge has resulted in better relationships with law schools, an increase in the number of pro bono cases taken, and promotion of public interest work while fostering connections between law students and lawyers," Hon. Suzanne Van Wyk, the Foundation's president-elect, said. "Even through a pandemic, we've seen a lot of success. This is a worthy program."




January 31 - March 25, 2022



CONNECTING students with lawyers to partner on **PRO BONO CASES** from **LOCAL** legal aid organizations.

- All Florida law schools are competing to see which can take the most pro bono cases!
- Students will have early access to the site to pick a case beginning January 19
- Visit the site to pick a case and match with a student.

THE COMPETITION:

-  Satisfies lawyers' pro bono obligations
-  Gives students real world experience
-  Introduces lawyers and students to local legal aid programs
-  Allows students to network with lawyers

FloridaLawSchoolChallenge.org



SCAN TO VIEW FAQs

NOMINEES SOUGHT FOR 2022 JAMES L. TOMLINSON PROFESSIONALISM AWARD

Nominees are being sought for the recipient of the 2022 James L. Tomlinson Professionalism Award. The award will be given to the Eighth Judicial Circuit lawyer who has demonstrated consistent dedication to the pursuit and practice of the highest ideals and tenets of the legal profession. The nominee must be a member in good standing of The Florida Bar who resides or regularly practices law within this circuit. If you wish to nominate someone, please submit a letter describing the nominee's qualifications and achievements via email to Raymond F. Brady, Esq., rbrady1959@gmail.com. Nominations must be received via email by Friday, April 29, 2022 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.

Professionalism Seminar – REGISTER NOW

Inexpensive & Enlightening CLE Credits

By Ray Brady

Mark your calendars and register 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.

Register online at <https://8jcba.org/event-4631807> ; the registration deadline is **March 25, 2022** in order to set up breakout rooms for the group discussions. Questions may be directed to the EJCBA Professionalism Committee chairman, Ray Brady, Esq., at 554-5328.

February 2022 Calendar

- 2 EJCBA Board of Directors Meeting via ZOOM, 5:30 p.m.
- 4 Deadline for submission to March Forum 8
- 9 Probate Section Meeting, 4:30 p.m. via ZOOM
- 11 EJCBA Monthly Luncheon Meeting, Candidates for Florida Bar President-Elect, (via Zoom), 11:45 a.m.
- 14 *Valentine’s Day – show the love!*
- 21 President’s Day (observed) – Federal Courthouse closed
- 25 EJCBA Charity Golf Tournament – “The Gloria” – Mark Bostick Golf Course at UF, 11:30 a.m. – 5:00 p.m.

March 2022 Calendar

- 2 EJCBA Board of Directors Meeting, Office of the Public Defender, 151 SW 2d Ave., (or via ZOOM), 5:30 p.m.
- 4 Deadline for submission to April Forum 8
- 4 EJCBA Monthly Luncheon Meeting, Speaker TBA, The Woolly, 11:45 a.m., (or via ZOOM)
- 9 Probate Section Meeting, 4:30 p.m. via ZOOM

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.