

FORUM 8

Volume 82, No. 6

Eighth Judicial Circuit Bar Association, Inc.

February 2023

President's Message

By Robert Folsom



Happy Valentine's Day! In the season of love, know that your Board loves all of you; and everything that you do to advocate for and advise your clients, as well as everything that you do to improve the legal profession and your community. One way for you to show your love for your community is to represent a litigant in a *pro bono* matter. Or participate in one of

our organization's programs, such as Ask-A-Lawyer; Law-in-the-Library; or the Driver's License Clinic. Look into one of the many *pro bono* opportunities that may be available at some of our local agencies: <https://circuit8.org/departments-services/resources-for-volunteers-and-pro-bono-opportunities/>. As my friend and former EJCBA President Phil Kabler says, as lawyers we are stewards of our communities, the law, and the public's perception of the legal profession.

And while you are here in this life, make time for yourself, your family, and your friends. As bad as life can be at times, life is awesome. However, sometimes it can be hard to go on or see a path forward. If you ever feel overwhelmed, either personally or professionally, there are resources available to help you. The Florida Bar has a great website with links to incredible mental health and wellness programs: <https://www.floridabar.org/member/healthandwellnesscenter/>. And EJCBA President-elect Monica Perez-McMillen is chairing a new EJCBA Wellness Committee. I encourage all of you to volunteer your time to help Monica in this endeavor. As lawyers, we are often required to bear the burden of seeing, hearing, and experiencing things that are emotionally difficult. When those burdens become too great, or are affecting your life in a negative way, reach out for help. And when you see others in pain, or experiencing difficulties, let them know there are resources available to them to keep

them from making a decision that could impact their life or the life of others. Most importantly, be civil.

Speaking of civility, the Board encourages everyone to put the EJCBA's annual Professionalism Seminar on their calendar. This year it will be on Friday, April 21, 2023. The seminar will include a panel of our local judiciary who will discuss the similarities and differences in professionalism related to the Court's observations of interactions with opposing counsel, clients, and the Court directly. As my friend and former EJCBA President Cherie Fine says, by acting with civility and integrity we make ourselves and those around us better. The Professionalism Seminar will be a prime opportunity for the local bar and judiciary to have a frank and open discussion of where we as a bar are succeeding and failing in the areas of civility and integrity.

Beyond the Professionalism Seminar in April, you can also look forward to the annual EJCBA Charity Golf Tournament ("The Gloria", *in memoriam of Gloria Fletcher*), which benefits the Guardian Foundation and Guardian ad Litem Program. The Golf Tournament will be held on Friday, March 10, 2023. You can find more information about the Golf Tournament, including the opportunity to be a sponsor, here: <https://www.guardian8foundation.org/news-events/2023-ejcba-charity-golf-tournament-benefiting-the-guardian-ad-litem-program/>.

Finally, your Board encourages all of you to volunteer your time, ideas, and suggestions. There are a multitude of opportunities to help the EJCBA grow and prosper. Join a committee. Sponsor an EJCBA luncheon or event. Present a CLE or a webinar. You are the heart of our organization. And your ongoing support and participation only makes us stronger as we move forward into a successful and robust 2023.

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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



A Sign from Above

Well, maybe not a celestial sign. But certainly a sign from the Rules for Mediation and the appellate courts. What kind of a sign? Sign as in ‘you must have the parties sign a mediation agreement.’

We wrote an article about the need to have the parties sign the mediation agreement some time ago. We decided we needed to address the matter yet again as it appears the appellate courts needed to address the matter yet again despite several prior decisions dealing with this issue.

In *The Parkland Condominium Assoc. v. Henderson*, 2d DCA, November 19, 2022 the court once again addressed the signing requirements for a settlement agreement at mediation. In *Parkland*, the court determined “[b]ecause the settlement agreement arose from mediation and both parties had not signed it in accordance with Florida Rule of Civil Procedure 1.730” the court affirmed the lower court’s denial of a motion to enforce settlement.

Following a court ordered mediation the parties’ attorneys exchanged several emails that included terms and drafts of the proposed settlement agreement. Then, the attorney for Henderson emailed Parkland a proposed settlement agreement that included all essential terms. Parkland’s attorney accepted the agreement via email in which was stated “I have received word from my client that they agree to the documents as drafted.”

Subsequently, Henderson’s attorney filed with the court a settlement agreement and a consent decree, both of which had been signed by him, along with a cover letter that referred to the “mutually-agreed Settlement Agreement.” The party, Henderson, had not signed either of the documents nor had Parkland signed the settlement agreement.

After a breakdown in communications between the parties, Parkland moved to enforce the settlement agreement.

The appellate court noted Rule 1.730 expressly requires that a final settlement agreement at mediation shall be reduced to writing and signed by the parties and their counsel. If the rule is not complied with an agreement “cannot be enforced absent the signature of all parties.”

The 2d DCA cited to several prior cases which reached the same conclusion.



Interestingly, the court referenced Section 44.404 Fla. Stat. which states “A court ordered mediation begins when an order is issued by the court and ends when ... a partial or complete settlement agreement, intended to resolve the dispute and end the mediation, is signed by the parties, and, if required by law, approved by the court.” The District Court also noted mediation also ends when the mediator declares an impasse which is reported to the court or reports the lack of an agreement, or, when the mediation is terminated by court order, court rule, or applicable law, or, by the agreement of the parties. (Please note: the District Court said “. . . none of those events occurred here.”



The reference to the statute is important as the District Court noted if the purported settlement agreement had not been reached in the context of a court ordered mediation, “we would likely conclude that it was binding and enforceable.” Read that again as it is important.

However, the District Court was forced to conclude that the agreement resulted from mediation yet lacked the parties’ signatures and thus was not enforceable.

Despite the plethora of similar appellate holdings and opinions by the MEAC Committee of the Supreme Court ADR division, lawyers still ask if it is ok if they sign for their clients or if it is ok for just the lawyer to sign. The answer is “NO!” As the Court stated in *Parkland*: “...the lack of a written agreement signed by both parties was more than a mere technical deficiency.” Also see: *Mastec Inc. v. Cue*, 994 So. 2d 494 (Fla. 3d DCA 2008).

As we discussed in our prior article on this subject, we believe that if the mediator does not receive a settlement agreement, whether as a result of an in-person mediation or one conducted via Zoom, the mediator should allow 2 days to receive a rule-compliant agreement, and, if not, report to the court the lack of an agreement. If you question why, please read the *Parkland* decision and the cases cited in the decision as well as other similar non-cited case opinions.

Of further interest: in MEAC Opinion 2022-002, the Ethics Committee notes the agreement may be signed via electronic signature and the Rules of Procedure allow that process. Suffice it to say, attorneys and mediators keep trying to accommodate a process which does not comply with the Rules and each time any process does not comply, it is rejected. Word to the wise.

Black History Month Encourages Reflection on Legal System

By Samantha Howell, Pro Bono Director, TRLS



"In recognizing the humanity of our fellow beings, we pay ourselves the highest tribute."

—Thurgood Marshall, first African American U.S. Supreme Court Justice

As we celebrate Black History Month, let us take heed of Justice Marshall's words and recognize the humanity in each member of our community - the rich and the poor, the well and the ill, the content and the troubled.

This month - which includes the birthdays of Abraham Lincoln and Frederick Douglass - also serves as a good time to reflect on how our legal system works for different groups of people. For example, a 2020 survey showed that black individuals experienced significantly more evictions than any other racial category. In Alachua County, black individuals constituted 22% of renters, but 35% of defendants in eviction proceedings. (Eviction Lab, 2020). Indeed, black renters were the only category to constitute a greater percentage as defendants than as renters. (Eviction Lab, 2020).

Other studies have found that only 44% of black families own their own home, compared to 73.7% of white families (Ezell, n.d.), and that 1.6 million acres of land in the Black Belt South is held as heirs' property. (Carpenter & Stein, n.d.). Furthermore, only 20% of black adults have a will in place. (*Id.*).

These are but a couple of reasons why your help is so imperative. For our community members to protect themselves and their families, they need access to the courts and the legal system. This is where you come in! You can help balance the scales for families in need.

So, now is the time to work on those new year resolutions and join TRLS in one of our many pro bono opportunities.

Volunteer attorneys are referred cases in their area(s) of expertise. But, if someone wants to try a new area of practice (like guardianship or sealing/expunging criminal records) we will provide training and mentorship throughout the case.

We also provide malpractice insurance coverage and reimbursement for some litigation costs, as well as office space for you to meet with your referred client.

We will make every effort to ensure you have a positive experience volunteering with TRLS.

Alachua County Driver License Reinstatement Clinic -

This annual event is hosted in conjunction with Operation Green Light, which is coordinated by the Clerks' offices in

each county, to allow people to pay court costs - while getting late/collection fees waived - in order to get their driver licenses back. Volunteers will receive substantial training materials on license reinstatement and access to mentors to guide them through their cases. Volunteers can also be assigned law clerks to assist. While the clinic is not yet scheduled, it is expected to be in late March or early April, with cases getting assigned in February.

Telephonic Housing Clinic - This advice-only clinic is offered every Tuesday from 5 pm - 6 pm. Appointments are scheduled for 45 min. TRLS staff screen and schedule clients, notifying volunteers of their assignments on the Friday (or Monday) prior to the clinic.

Issues involve private landlord/tenant issues (eviction, repairs, and security deposits, usually). Volunteers complete an online form during the call so that TRLS knows what advice was given and if any follow-up by TRLS is needed.

Pro Se Divorce Clinics - These clinics are offered every three months in Gainesville and involve a morning session (for petitioners with minor children) and an afternoon session (for petitioners without minor children). TRLS will pre-fill much of the forms with the clients; volunteer attorneys will participate for the limited purpose of providing counsel/advice. The next pro se clinic in Gainesville is March 28, 2023.

Ask-A-Lawyer - These "pop-up" clinics are hosted at local shelters including Grace Marketplace, St. Francis House, Peaceful Paths, and the VA Honor Center. Volunteers will meet with individuals in need of legal assistance, and provide advice/counsel and, perhaps, even a brief service. These clinics are held one Saturday a month, typically between 10 am -12 pm. Upcoming clinics include:

January 28, 2023 at Grace Marketplace (Gainesville) (10a-12p)

February 25, 2023 at the Peaceful Paths Office (Starke) (10a-12p)

March 25, 2023 at the Civic Media Center (Gainesville) (10a-12p)

We need attorneys with experience in family law, probate/wills, criminal, housing, and personal injury for each event.

Law in the Library - These are community outreach events, wherein a volunteer presents on a legal topic for about 40 minutes and then answers a few audience questions.

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Black History Month Encourages Reflection on Legal System

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The clinics are presently being held via Zoom and will be at the Alachua Library Main Branch when they return to in-person (recordings of the session are available on the Library website). They are scheduled for the 1st Wednesday of each month at 5:30 pm. Recent presentation topics include Evictions/Defense, new traffic laws, and estate planning.

Upcoming presentations include:

February 1st - Car and Pedestrian Accidents with Ray Brady and Peg O'Connor
March 1st - LITC/Taxes with Derek Wheeler

We are seeking a presenter for April to discuss paternity and child support.

Finally, you can take on a client matter for **limited scope or full representation** in a variety of areas including bankruptcy, special education, family, housing/property, consumer, income maintenance, and trusts & estates. We are in particular need of attorneys to assist with probate cases, guardianship and guardian advocacy, and landlord/tenant. Summaries of a couple of available cases (as of the writing of this article) follow:

1. Alachua County – The client needs to probate the mother's estate. The client's siblings are surviving heirs and there is real property (homestead) involved. (22-0342800)
2. Alachua County – The client is the named beneficiary in a trust. The client needs an attorney to review the trust and to advise on how it might impact benefits. If additional work is needed to protect benefits, the volunteer can take on the matter or TRLS can refer to another attorney. (22-0346069)
3. Alachua County – The client would like guidance in seeking temporary relative custody of a grandchild. The child's parents are both incarcerated. (22-0344834)
4. Alachua County - Client has guardianship over grandson but is no longer able to care for him and would like her friend to have guardianship. Child is a minor. (22-0344943).
5. Alachua County - Client is a veteran and needs assistance to become a guardian advocate over 18 year old child.

If you would like to take on any of the above, please contact me and include the identification number (XX-XXXXXXX).

And, just a friendly reminder that, as attorneys, we are encouraged to provide at least 20 hours of pro bono service each year. Volunteering with TRLS is a great - and easy - way to take care of this duty while meeting colleagues and learning more about our client communities. It is also an effective way to dip your toes into a new area of law.

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/>.

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Column

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Gun Pointing as Threatening Deadly Force: Chapter 776 Makeover Needed (Again)

By Steven M. Harris



I wrote on gun pointing in the [April 2020 Forum 8](#), and about *Little v. State*, 302 So.3d 396 (Fla. 4th DCA 2020), in the [November 2020 Forum 8](#), where the Fourth District departed from the longstanding treatment of gun pointing as *non-deadly* force. According to the district court: “When a person points a loaded firearm at another person and issues a command to do

something, this is generally an implied declaration that the failure to abide by the command will result in the discharge of the firearm, i.e., deadly force.” The opinion also contains this conclusion: “. . . threatening to discharge one’s firearm is a threat of deadly force regardless of an intent to actually cause death or great bodily harm of the recipient of the threat.” The court held that giving a deadly force jury instruction was proper since Little was *threatening* deadly force.^[1] *Little v. State* has been cited in later cases, but not for the threatening deadly force issue.

The principal justifiable force provisions in Chapter 776 (§ 776.012, § 776.013 and § 776.031) were revised in 2014 to change “using” force (non-deadly and deadly) to “using or threatening to use.” The language change was intended to ensure that someone who threatened but did not actually use force would nevertheless be entitled to assert the defense of justification.^[2] That seems consistent with desirable moral and social policy – to encourage the threatening of force as an alternative to its actual use.

In prior *Forum 8* articles (see above) I cited the caselaw holding gun pointing without a discharge is non-deadly force as a matter of law. Those cases implicitly recognize that death is not the natural, probable and foreseeable consequence of gun pointing. I have found nothing expressing the intent to overrule the caselaw.^[3] However, the House documentation on the 2014 changes is unclear.^[4]

The first impression holding of the Fourth District is supported by simple reading of the statutory language and by the non-Florida authority the court cited. However, there is equally persuasive authority for treating gunpoint threatening of deadly force as non-deadly force. See, e.g., *Texas Penal Code* § 9.04 (“. . . a threat to cause death or serious bodily injury by the production of a weapon or otherwise, as long as the actor’s purpose is limited to creating an apprehension that he will use deadly force if necessary, does not constitute the use of deadly force.”); *People v. RA*, No. 343202 (Mich. Ct. App.

Aug. 20, 2019) (per curiam) (a threat of deadly force is itself non-deadly force, citing both *Black’s Law Dictionary* and the Lafave & Scott treatise); *Model Penal Code* § 3.11(2) (“A threat to cause death or serious bodily injury, by the production of a weapon or otherwise, so long as the actor’s purpose is limited to creating an apprehension that he will use deadly force if necessary, does not constitute deadly force.”); *Iowa Code* § 7.04(2) (deadly force does not include a “threat to cause serious injury or death, by the production, display, or brandishing of a deadly weapon, as long as the actions of the person are limited to creating an expectation that the person may use deadly force to defend oneself, another, or as otherwise authorized by law.”).

^[1]Little gunpointed a person he thought was about to burglarize his truck. He ordered the person to the ground to wait for police, and used his foot to restrain the person from turning over to face him. (Such conduct is tantamount to a citizen’s arrest, an aspect not discussed in the opinion. See [October 2020 Forum 8](#)). The court took note of a racial epithet defendant allegedly included in his command which was admitted in the State’s rebuttal case. Little was convicted of aggravated assault with a deadly weapon and battery. He was sentenced to time served, probation and community control. Little claimed ineffective assistance for counsel’s arguing threatening deadly force to prevent a forcible felony under § 776.031(2), *Fla. Stat.*, instead of asserting non-deadly force defense of property justification under § 776.031(1), *Fla. Stat.* The State’s closing argument included: “When someone points a gun and orders someone with a loaded gun, that type of force is deadly. Scott Little can use whatever justification he’d like, but he better be at least willing to admit that he chose to use deadly force when the gun was loaded, and that he threatened it in a way that could cause death or great bodily harm.”

^[2]The House “Summary Analysis” ([HERE](#)) contains this statement: “The bill amends ch. 776, F.S., to specify that the justifications contained therein apply to threatened uses of force as well as actual uses of force.”

^[3]The Fourth District identified *Copeland v. State*, 277 So.3d 1137 (Fla. 5th DCA 2019), and *Marty v. State*, 210 So.3d 121 (Fla. 2d DCA 2016), as post-2014 gun pointing cases where district courts opined without making a threatening deadly force analysis.

^[4]Part of the House “Final Bill Analysis” ([HERE](#)) can be fairly read to state that when a person’s gun pointing is justified as the use of non-deadly force, the legal question of justification is resolved. However, another portion of the document has language suggesting that threatening deadly force is justifiable only when using deadly force would be justifiable.

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Gainesville’s “Fair Chance Hiring” Ordinance: What to Know and What to Do

By Conor Flynn



At the close of 2022, Gainesville’s City Commission amended its Code of Ordinances and enacted a new business regulation titled “Fair Chance Hiring.” The Fair Chance Hiring adoption bears strong similarity to a decades-old movement to “ban the box,” meaning employers’ ability to solicit information concerning criminal history on the front end of the hiring process is greatly restricted, and consideration of criminal history is necessarily delayed until later in the hiring process.

Proponents of “Fair Chance Hiring” and “ban the box” practices cite to research showing the regulations lead to lower rates of recidivism for recent releasees and increased participation in the workforce. Critics of the practices cite, in part, the potential for increased litigation from negligent hiring actions.

Who does the regulation apply to?

The language of the “Fair Chance Hiring” article is found in Chapter 14.5 of Gainesville’s Code of Ordinances. The ordinance applies to employers as defined in the article, meaning “any person, company corporation, firm, labor organization, or association with fifteen (15) or more employees whose primary work location is in the City for each working day in each of four (4) or more calendar weeks in the current or preceding calendar year.” Gainesville, Fla., Rev. Ordinances ch. 14.5, art. 9, § 180(H) (2022). The definition of employer under the ordinance does not include 501(c)3 clubs, childcare facilities, or other facilities. The regulation does not apply to any job opportunity for which a federal, state, or local law disqualifies an applicant based on criminal history.

What do I have to do if I want to conduct a criminal background check on an applicant?

While employers are not blocked or barred from ever considering criminal history, the Gainesville ordinance contemplates a hiring process where (1) a candidate applies without needing to provide any information concerning criminal history, (2) a prospective employer makes a decision on whether or not to extend a conditional offer based exclusively on the information provided by the job candidate, (3) following issuance of a conditional offer, the employer conducts an “individualized

assessment” as defined in the ordinance. See Gainesville, Fla., Rev. Ordinances ch. 14.5, art. 9, § 180(I) (2022).

The ordinance provides the following direction for how a review of criminal history is to be conducted:

Individualized assessment means an evaluation of the criminal history of an individual that includes, at a minimum, the following factors:

- (1) The nature and gravity of any offenses in the individual’s criminal history;
- (2) The age of the individual at the time of the offense;
- (3) The length of time since the offense and completion of the sentence;
- (4) The nature and duties of the job for which the individual has applied; and
- (5) Any information demonstrating the individual’s rehabilitation and good conduct since the occurrence of the criminal offense.

Id.

What if I (1) made the conditional employment offer, (2) conducted an individualized assessment, and (3) determined that the applicant is not suitable for the position?

The ordinance does not – and cannot – override an employer’s ability to decline to hire an applicant for any lawful reason. This includes an employer’s determination that an applicant is unsuitable for a job based on the individualized assessment. If an employer determines that an applicant who has received a conditional offer is unsuitable for the position following the individualized assessment, the ordinance does require strict compliance with written notice requirements. See *id.* at § 181(G-H).

What to know about advertising a position

The ordinance states that employers “may not publish or cause to be published” information about a job opportunity “that states or implies” that an individual’s criminal history is an automatic disqualification. Perhaps most critically, the ordinance states that “an employer may not solicit criminal history information about an individual or consider an individual’s criminal history unless the employer has first made a conditional employment offer to the individual.” Employers are not prohibited, however, from explaining to applicants the individualized assessment that is used by the employer once a conditional offer of employment is extended.

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Zoom is Here to Stay

By Siegel Hughes Ross & Collins



The COVID pandemic brought a sea change in the use of audio-video equipment to conduct legal proceedings. In recognition of those changes the Supreme Court recently amended Rule 2.530, Fla. R. Gen. Prac. & Jud. Admin, to govern the use of “communications technology” in legal proceedings. Since Zoom is here to stay, it may be useful to review the formal requirements of the amended rule. Communication Technology includes both audio and audio-video technology. The rule allows multiple forms of communication technology. The one specific requirement is that the audio technology permit all participants to hear and speak to one another in real time and that audio-video technology allow all participants to see, hear and speak to one another in real time.

The amendment to the rule allows the “court official^[1]” to permit the use of communication technology in all proceedings except for civil proceedings for involuntary commitment. The use of communication technology must be implemented by a motion of a party or at the discretion of the court official. The motion or notice from the court official must state the specific form of communication technology to be used and must provide directions for access to the technology. If a party objects to the use of the communication technology it must file an objection within ten days of the Motion or Notice and must provide a courtesy copy of the objection to the court official. The ultimate decision is left to the discretion of the court official, with the exception that the court official must grant a motion to use communication technology for a non-evidentiary hearing scheduled for 30 minutes or less absent “good cause” to deny the motion.

There are additional requirements for requests to use communication technology to present testimony. The party seeking to present testimony by communication technology must file a written motion which establishes “good cause” for the use of the requested technology. The rule lists multiple specific factors for the court official to consider in determining whether good cause exists:

1. The technological capabilities of the courtroom;
2. How the presentation of testimony through communication technology advances the proceeding to resolution;

3. The consent of the parties;
4. The time-sensitivity of the matter, the nature of the relief sought and the amount in controversy;
5. The resources of the parties;
6. The anticipated duration of the testimony;
7. The need and ability to review and identify documents during testimony;
8. The probative value of the testimony;
9. The geographic location of the witness;
10. The cost and inconvenience in requiring the physical presence of the witness;
11. The need to observe the demeanor of the witness;
12. The potential for unfair surprise; and, of course
13. “Any other matter relevant to the request.”

The manner of administering the oath to a remote witness also is addressed in the amendment. The oath may be administered by a person physically present with the witness. The person administering the oath must be authorized to administer oaths in the witness’s jurisdiction and the oath must be administered in accordance with the laws of that jurisdiction. If the oath is administered remotely through the communication technology the person administering the oath must be authorized to administer oaths in Florida and the oath must be administered consistent with Florida law. Also, if the witness is not present in Florida, the witness must consent to be bound by an oath administered under Florida law.

Finally, the rule provides that the expense of the communications technology is initially born by the requesting party subject to being taxed as a cost at the conclusion of the case.

^[1] Court official is defined to include a county or circuit court judge, general magistrate, special magistrate, or hearing officer.



Report from RPPTL

By Rebecca Wood, BCS, Fund Sr. Underwriting Counsel



The Executive Council of the Real Property Probate and Trust Law Section of The Florida Bar (RPPTL) last met on December 10, at The Four Seasons in Orlando, Florida.

Action Items:

Amendments to the FR/BAR Contract Condo Rider were unanimously approved. The changes focus on the buyer's right to the Milestone Inspection Report and the Structural Integrity Reserve Study created by SB-4D amending the condominium statute in response to the Champlain Towers collapse in Surfside.

Information Items:

RPPTL seeks to introduce newer attorneys to the practice of dirt and death law. The Communications committee has been formed with Michael V. Hargett as its Chair; a presentation was given by the vendor retained to improve section branding. The Membership and Inclusion committee introduced the "Senior Partners Program," intended to match experienced with new lawyers for mentoring opportunities.

Featured Continuing Legal Education:

Corporate Transparency Act

5996 1 hr. Live Webcast

What Family-Law Lawyers Need to Know about Dirt Law

6000 1 hr. On Demand

Legislative Proposals:

Referred to as the "Right to Sell bill," a proposal to adopt Sec. 689.011, F.S., is a response to the Hayslip decision (336 So.3d 207 (2022)) and an increasing trend in companies paying homeowners a modest flat fee for the exclusive right to list their property for sale if the owner opts to sell at any time within the next 40 years. The proposal seeks to redefine the word "covenant," and enumerate certain prohibited restraints on alienation.

The recording bill proposes amendments to Secs. 28.223, F.S., to allow for the recording of more probate pleadings, because in the current situation there is not enough information about estate beneficiaries recorded in the land records. The proposed legislation will require the recording of petitions for administration and more.

The Business Law Section is proposing statutory amendments to Ch. 605, F.S., to allow for Series LLCs in Florida; the proposal is modeled after the uniform act, and is quite different from the Delaware structure, under which most Series LLCs seem to be formed, presently. The RPPTL Section is providing comments.

A proposal to adopt statutory provisions recognizing the validity of a revocable transfer on death deed has been held up over debate regarding how creditors' claims should be treated.

A title-cure provision is being contemplated to address the problem of mobile homes transferred only by deed and the DMV showing a prior owner on those unretired titles.

Student Engagement:

UF Law Students Juan Quintero Bornas (1L), Max Gossman (2L) and Meghan Griffin (2L) attended several committee meetings on Thursday, December 8, 2022. Rebecca Wood is the RPPTL Liaison to UF; if you have internship or employment opportunities for students, please email rwood@thefund.com.

8th Circuit Events:

RPPTL is a sponsor of the upcoming panel discussion hosted by The Fund and The North Florida Association of Real Estate Attorneys for UF law students on February 21, 2023, at Ballyhoo. The following Section and EJCBA Members are on the panel:

- Patrice Boyes
- Jeff Dollinger, BCS, ALM
- Stephanie Emrick
- Blake Fugate
- John Roscow
- Rebecca Wood, BCS, ALM

Next Executive Council Meeting:

February 22 – 26, 2023

Sandestin Golf and Beach Resort

Destin, Florida

Grand Complex 1 Bedroom: \$195

Hotel Effie Standard Guest Room Rate: \$244

Do you know someone in the 3rd Circuit who may be interested in becoming an ALM for RPPTL? Are you interested in becoming more involved with the RPPTL Section? Please contact an At Large Member – 8th Circuit:

Lead ALM: Rebecca Wood, BCS

Sr. Underwriting Counsel

Attorneys' Title Fund Services, LLC

rwood@thefund.com

Jeff Dollinger, BCS

Scruggs, Carmichael, & Wershow, PA

dollinger@scwlegal.org

Norm Fugate, BCS

Fugate & Fugate, a Law Firm

norm@normdfugatepa.com

More Changes Come to Florida Public Notice Law

By J.C. Derrick, Publisher of Mainstreet Daily News

The new year brought a slate of new laws, and some got more coverage than others. One that may have slipped below your radar is House Bill 7049. The Legislature passed it during the 2022 session to change the requirements—again—for publishing public notices in Florida.

It is important to understand these requirements, which went into effect Jan. 1, so that you place public notices with local publications that fully comply with the law.

This past October, Mainstreet Daily News was certified to publish public notices in Alachua County by the Florida Press Association, following an audit by the Circulation Verification Council. This process was eye-opening not only for the hoops we had to jump through, but also because we discovered not all newspapers running legal notices are in full compliance.

Here is a recap of the law's requirements:

- Publishes at least once a week.
- In business for a minimum of two years.
- If the publisher does not have a USPS periodical permit, it must meet or exceed a 10% audience threshold with its print and digital editions.
- If the publisher does not have a USPS periodical permit, it must have a minimum 25% of print copies delivered to individuals' home or business addresses.
- Publication must be audited by an independent auditing firm that verifies print and digital circulation.
- Contains information of interest and value to the general public.
- Each legal notice that is published in a newspaper must also be posted on the newspaper's website on the same day, and at no additional charge.
- Notices must be searchable on newspaper website.
- Site must allow citizens to sign up to receive legal notice alerts via email.
- Newspaper must place the notice on the free, searchable public notice repository website (floridapublicnotices.com) maintained by the Florida Press Association (FPA) for 18 months after the first day of posting.

Mainstreet Daily News is pleased to meet all these requirements. But we did not set out to give Alachua County simply another option—we wanted to offer a better option.

The legal notice process is often plagued with long email threads, phone tag and payment issues. We are trying to solve that with an automated, self-serve system that no other paper in Alachua County is using. You can try it at mainstreetdailynews.com.

Regardless of where you choose to place a notice, we encourage you to use the checklist above to make an informed decision—to protect you and your clients.

Gun Pointing

Continued from page 6

Little v. State created an unintended and unneeded deadly force standard. It will prove problematical for law enforcement. LEOs routinely go to gunpoint and issue commands when there is reason to fear danger to themselves or others, even though the use of deadly force would not be justifiable at the moment the decision to gunpoint is made. A related concern is whether *any* verbal command (e.g., a command *not* to do something, or one made with a firearm displayed at a “ready” position) is considered threatening deadly force under the court's analysis.

Florida legislators should promptly revisit the threatening of deadly force. They should find non-deadly force gun pointing caselaw remains valid and that *Little v. State* is contrary to legislative intent. (Compare, e.g., § 810.015, *Fla. Stat.*). They should rewrite § 776.06, *Fla. Stat.*, to apply to the sworn and the non-sworn, providing therein that gun pointing without a discharge is only the use of non-deadly force. Finally, legislators should amend § 790.10, *Fla. Stat.* to specifically include gun pointing, and to include all forms of Chapter 776 justification, not just “necessary self-defense.”

Fair Chance Hiring

Continued from page 7

What's the bottom line?

The city commission has made findings that denying employment opportunities to otherwise qualified applicants based exclusively on criminal history is unjust and harms the local economy. See *id.* at § 179(A). Those hiring with a primary place of business in Gainesville should familiarize themselves with the newly enacted regulations.

Remember, however, that the new city ordinance does not, and cannot, supplant state- and federal-level protections for employers. Florida maintains a statutory presumption against negligent hiring and conducting a proper background check is a fundamental component of the statutory presumption. See Fla. Stat. § 768.096(1)(a).

NOMINEES SOUGHT FOR 2023 JAMES L. TOMLINSON PROFESSIONALISM AWARD

Nominees are being sought for the recipient of the 2023 James L. Tomlinson Professionalism Award. The award will be given to the Eighth Judicial Circuit lawyer who has demonstrated consistent dedication to the pursuit and practice of the highest ideals and tenets of the legal profession. The nominee must be a member in good standing of The Florida Bar who resides or regularly practices law within this circuit. If you wish to nominate someone, please submit a letter describing the nominee's qualifications and achievements via email to A. Derek Folds, Esq., derek@foldswalker.com. Nominations must be received via email by Friday, April 28, 2023 in order to be considered. The award recipient will be selected by a committee comprised of leaders in the local voluntary bar association and practice sections.

Become a Safe Place

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

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



A brief note of gratitude.

On behalf of CDS Family & Behavioral Health Services and our 100 Team Members, we thank the Eighth Judicial Circuit Bar Association for your support during 2022 of our Safe Place and other programs serving the children, youth, families, and young adults of this Circuit (and beyond). We value the EJCBA as a core community partner and look forward to continuing that partnership long into the future.

Phil Kabler
CEO

EIGHTH JUDICIAL CIRCUIT BAR ASSOCIATION CHARITY GOLF TOURNAMENT



“THE GLORIA”

In Memoriam of Gloria Fletcher

Benefiting the Guardian ad Litem Foundation

Format: Four-Person Scramble

Mark Bostick Golf Course

Friday, March 10, 2023

\$130/golfer (\$115/golfer early registration)



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

Cost: \$130 per golfer
\$115 Early Registration

Registration begins at 11:00 AM

Lunch: 11:30 AM

Tee Time: 12:30 PM

Outdoor Reception following
the round.

Reception and prizes following
the round

To register online please go to:

[Click here to register!!!](#)

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
FEBRUARY 25, 2023



The cost of this event is **\$130 per golfer with an early registration discount of \$115 per golfer** for those who register and pay by February 25, 2023. 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, Inc.

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: \$130 per golfer (\$115 if registered & paid by February 25, 2023)

Name (Golfer 1)

Name (Golfer 2)

Email

Email

Phone

Phone

Name (Golfer 3)

Name (Golfer 4)

Email

Email

Phone

Phone



Florida Bar President Gary Lesser provided a snapshot of the priorities of The Florida Bar on a trip to Gainesville on January 11, 2023.

Professionalism Seminar – SAVE THE DATE

Inexpensive & Enlightening CLE Credits

By A. Derek Folds

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

We 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, Derek Folds, Esq., at (352) 372-1282.

February 2023 Calendar

- 1 EJCBA Board of Directors Meeting, Stephan P. Mickle, Sr. Criminal Courthouse, 220 South Main Street, 3d Floor Conference Room, or via ZOOM, 5:30 p.m.
- 5 Deadline for submission to March Forum 8
- 8 Probate Section Meeting, 4:30 p.m. via ZOOM
- 10 EJCBA Monthly Luncheon Meeting re Innocence Project of Florida, The Woolly, 11:45 a.m.
- 14 Valentine's Day – show the love!
- 20 President's Day (observed) – Federal Courthouse closed

March 2023 Calendar

- 1 EJCBA Board of Directors Meeting, Stephan P. Mickle, Sr. Criminal Courthouse, 220 South Main Street, 3d Floor Conference Room, or via ZOOM, 5:30 p.m.
- 3 EJCBA Monthly Luncheon Meeting, Panel of EJCBA Past Presidents, The Woolly, 11:45 a.m.
- 5 Deadline for submission to April Forum 8
- 8 Probate Section Meeting, 4:30 p.m. via ZOOM
- 10 EJCBA Charity Golf Tournament "The Gloria" Benefiting The Guardian Foundation/ Guardian ad Litem Program, UF's Mark Bostick Golf Course, 11:30 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 (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.