

FORUM 8

Volume 83, No. 5

Eighth Judicial Circuit Bar Association, Inc.

January 2024

President's Message

By Monica Perez-McMillen



Feliz Nuevo Año 2024 Eighth Bar! I wish you and your loved ones a joyful new year.

Before we dive into new business, I'd like to thank members of the 8th that contributed to two important events that took place in December. Our wonderful Dominique Lochridge-Gonzales and members of the Holiday Project team, Dawn Vallejos-Nichols,

George Nelson and Margery Wolf once again put together another successful toy drive. Phil Kabler played the special role of Santa Claus and helped us deliver those books and gifts to students across the circuit.

Cherie Fine, Chelsey Clements, Derek Folds, George Nelson, Evan Gardiner, Norm Fugate, Blake Fugate and Peg O'Connor put together an excellent Holiday Party during the month of December. We had a wonderful turnout with excellent food, beer and wine while celebrating many special holidays that occur during the month of December.

As we celebrate new beginnings and renewed goals, I'd like to take this moment to encourage you to consider joining the Board of Directors of the Eighth Judicial Circuit for the 2024-2025 fiscal year. The Board meets monthly, historically on the first Wednesday of the month, for about an hour between the months of September and May.

Serving others has always been part of my DNA, and I am grateful for the opportunity to connect with members of the bar association locally and statewide to highlight opportunities and tackle challenges that we all face within the legal community. During my time as a board member, I've also benefitted from friendships with colleagues that practice in different areas of the law and have worked closely with incredible community leaders. I highly encourage new and seasoned members of the legal

community to join and help us enhance the quality of member services, connection, CLE's and beyond.

Our incoming President-Elect, Mikel Bradley, has refreshing ideas and ways to connect us all. I look forward to working alongside her during her term. Our Young Lawyers Division also has brilliant ideas. I recently spoke to YLD and 8th Bar member Caleb Kenyon, who is interested in coordinating with the Young Lawyers Division of the Florida Bar to host a technology-focused conference in the 8th circuit during the Spring. If you are interested in supporting or helping sponsor this type of conference, please reach out to me via email at Monica@McMillenFamilyLaw.com so that I can put you in contact with our sponsorship team. The hope of this conference is to cover much more than e-discovery and focus on technology that is generally applicable to all members of the bar, not just those in litigation.

As we embark on another year together, not knowing the good or difficult times ahead, I'd like to once again encourage you to check in on your colleagues, friends and loved ones. If you are new, seasoned or are just looking to connect with other lawyers, please do not hesitate to reach out to any one of us on the Board for coffee or lunch. We would love to connect with you.

Feliz Año Nuevo

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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 Mary K. Wimsett and Ben Hutson



Inspired to Mediate

Mary K. Wimsett and Ben Hutson are certified circuit civil mediators with The Resolution Center, <https://www.resolutioncenter.org> and they have been mediating cases since 2020.

MKW: I remember the moment Ben approached me about joining him in attending mediation training. It was the end of the day and we had both been on the phone for a significant period of time with our respective clients regarding their difficult cases. We both were able to reach resolutions in these cases through an incredible amount of work and conversation. Although we practice in different areas - I primarily handle adoptions, guardianships/probate and child advocacy, and Ben specializes in injury cases and criminal law - our days are similarly filled with helping people in highly stressful situations. We discussed how incredible it would be to spend more time helping others resolve their cases, as that is truly one of the most rewarding aspects of the practice of law.

BAH: Having been to more mediations than I can recall in personal injury cases (mostly at The Resolution Center in Gainesville), I figured that becoming a certified circuit civil mediator could both sharpen my skills as a mediation participant, and also provide a means of staying involved in litigation matters whenever I decide to wind down my own litigation practice. Many of the experienced mediators at The Resolution Center—Deborah Drylie, Charlie Carter, Chuck Chance, Toby Monaco, Rick Smith—have mentored me so well in this new journey, and I was thrilled when both Mary K. and I were invited to mediate alongside them in the practice.

MKW: I appreciate the art of mediation because it enables me to utilize my skills as an attorney in addition to my interpersonal skills in a way that is meaningful to others. As a mother of three daughters, I have fine-tuned my listening skills and developed an ability to negotiate with humans who are, at times, highly irrational. After representing people in high stress situations for most of my legal career, I have empathy and understanding for others. Because I truly enjoy meeting people and learning their stories, mediation is an experience I appreciate deeply. There is nothing better when prepping for the week to see the word “Mediation” on my calendar. I think all can agree that Charlie Carter and Chuck Chance are two of the happiest attorneys we know—I think I’m on to their secret.

BAH: That is very well said, and I frequently draw upon my experience as a dad of two teenagers, as well as my nearly 30 years of dealing with all personality types in my own practice. Listening is one of the most important skills a mediator possesses. I think a mediation has been successful where everyone has been heard, disputed issues have been discussed in a frank and open manner, and the participants feel empowered to make the best decision for themselves. Mediation is a very effective way to resolve difficult cases, but of course not every case is ripe for settlement at the time of mediation.



MKW: An unexpected perk that I did not anticipate in acting as a mediator is the opportunity to get to know so many of my colleagues. The days of hanging around in the courthouse are few and far between now that there is Zoom and we rarely spend significant time together. Working together in a mediation for a day or even several hours has enabled me to build connections with attorneys I would not otherwise encounter. I know we try to keep this a secret, but in my experience we do have the best bar in the state.

BAH: I second that. Our circuit has been a standard-bearer for years, but it has been a great experience dealing with other dedicated attorneys outside of our circuit, as well.



Chapter 776 Justified Force, Firearms and the “School Zone”

By Steven M. Harris



Similar but yet materially different Florida and federal statutes criminalize the possession, exhibition or discharge of a firearm *on or near* school property. The Chapter 776 significance of the commission of a “school zone” offense is in the context of deadly force: The loss of the “Stand Your Ground” privilege may be suffered — for being “engaged in a criminal activity,”^[1] or for not being in a place one “has a right to be.”^[2] See § 776.012(2) and § 776.031(2), *Fla. Stat.*^[3] Some judges might mistakenly disallow a defendant the right to seek “self-defense immunity” (under § 776.032, *Fla. Stat.*).^[4] The failure to satisfy either non-retreat prerequisite might even be incorrectly thought to strip an accused of a Chapter 776 justification defense.^[5]

The Florida “school zone” law is § 790.115, *Fla. Stat.* Subsection (1) makes it a felony to *exhibit* a firearm *in a rude, careless, angry, or threatening manner not in lawful self-defense*, at a school-sponsored event or on the grounds or facilities of any school, school bus, or school bus stop, or *within 1,000 feet* of the real property that comprises a public or private elementary school, middle school, or secondary school.^[6] Subsection (1) does not apply to the exhibition of a firearm on private property within 1,000 feet of a school by the “owner of such property or by a person whose presence on such property has been authorized, licensed, or invited by the owner.” Firearm *possession* at a “school-sponsored event or on the property of any school, school bus, or school bus stop” is also a felony. See § 790.115(2)(a), *Fla. Stat.* The *discharge* of a firearm when violating the possession offense is too, under § 790.115(2)(d), *Fla. Stat.* A discharge for *lawful defense of self or another* or for a *lawful purpose* is excepted.

There are also restrictions on licensed persons in § 790.06(12)(a), *Fla. Stat.* Licensed firearm carriage is prohibited at school or college athletic events and on any elementary or secondary school facility or administration building. Possession of a firearm may also be prohibited on property owned or controlled by a state college or

university. There is no exception for the recently enacted unlicensed concealed carry. A related UFPD statement is online — [HERE](#). There is an in-vehicle secured storage exception under § 790.25(4), *Fla. Stat.*, which applies, see § 790.115(2)(a)3, *Fla. Stat.*

The federal statute, the 1990 Gun Free School Zone Act (GFSZA), is codified at 18 U.S.C. § 922(q)(2) and (3). The GFSZA conflicts with active and retired LEO firearms carry under LEOSA (H.R. 218). It also conflicts with Florida “school zone” firearm provisions to the extent Florida permits lawful (when justified) exhibition and discharge. Federal prosecutions under the GFSZA are surprisingly rare, likely because it was ruled unconstitutional by the U.S. Supreme Court.^[7]

The GFSZA makes it a felony to knowingly possess a firearm at a place that the *individual knows or has reasonable cause to believe*, is a “school zone.” The definitions found in 18 U.S.C. §§ 921(a)(25) and (26) provide: A “school zone” includes “in, or on the grounds of, a public, parochial or private school” or “within a distance of 1,000 feet from the grounds of a public, parochial or private school.” A “school” means a school which provides elementary or secondary education, as determined under State law. There are statutory exceptions: *Private property* not part of school grounds, possession on public property within 1,000 feet by an individual having a Florida concealed weapons license, an *unloaded* firearm properly secured in a vehicle, and a law enforcement officer when acting in his or her “official capacity.” *There is no statutory allowance for lawful defense of self, another, or of property.* See 18 U.S.C. §§ 922(q)(2)(B)(i)-(iii) and (vi). It is also unlawful (other than on private property not part of school grounds) “knowingly or with reckless disregard for the safety of another, to discharge or attempt to discharge a firearm . . . at a place that the person knows is a school zone.” The private property and LEO official capacity exceptions noted above apply. *There is no justified use exception.*

Continued on page 5

^[1] I last wrote on the “engaged in a criminal activity” righteous behavior prerequisite for “Stand Your Ground” in the [June 2023 Forum 8](#).

^[2] As to the righteous location prerequisite and schools, see § 810.095, *Fla. Stat.*, a felony armed trespass provision, § 810.097, *Fla. Stat.*, a general misdemeanor school trespass provision, and § 810.0975, *Fla. Stat.*, a “school safety zone” misdemeanor provision. These provisions contain no express exception for presence sought to be justified under Chapter 776.

^[3] Deadly force under § 782.02, *Fla. Stat.*, is not burdened with a “duty to retreat” and hence the prerequisites have no application.

^[4] See [Forum 8, March 2023](#).

^[5] See *Bolduc v. State*, 279 So.3d 768 (Fla. 2d DCA 2019).

^[6] See [Std.J.Instr. \(Crim.\) 10.21](#).

^[7] *United States v. Lopez*, 514 U.S. 549 (1995). The GFSZA was later amended to permit exception for in-state licensees. See 18 U.S.C. § 922(q)(2)(B)(ii).

Report from RPPTL

By Rebecca Wood



The Executive Council (EC) of the Real Property Probate and Trust Law (RPPTL) Section of The Florida Bar last met on *November 11, 2023*, at *The JW Marriott Water Street* in *Tampa*, Florida. The meeting convened on Veterans Day with a tribute to those who served.

ACTION ITEMS –

In a timely action, prompted by SB 48 (Karilyn’s Law), the EC voted to support legislation that provides for the continued rights of a ward to receive visitors and communicate with others when such contact would not be potentially harmful to the ward, and to oppose legislation that would (1) allow for jury trials in certain proceedings or (2) require reevaluation of wards without the filing of a suggestion of capacity or (3) require a guardianship to be transferred to a new judge without a substantive basis, or (4) provide for access to guardianship inventories, accounting or other financial information of the ward to every person related by blood, marriage or adoption.

In recognition of the diversity in the legal community and in the spirit of inclusivity, the EC approved an amendment to Standard 00 of the Uniform Title Standards removing the masculine pronoun.

INFORMATION ITEM –

RPPTL’s Asset Protection Committee is proposing legislation to enact new Florida Statutes Section 736.05057 to provide that spouses may validly maintain the creditor protection characteristics of tenancies by the entirety (“TBE”) property within the context of a joint revocable trust that meets the requirement of the proposed statute.

Continuing Legal Education: Committees in both divisions work diligently, and your participation is encouraged. Meetings are accessible to all of you via Zoom and there are opportunities for CLE credits. At the Tampa event there were several presentations, including a program on Ethics in Real Estate Transactions and a program about how the Federal Law’s limitations on Foreign Investment can impact Florida real estate transactions.

Legislative Proposals: Participating in the Section allows you to keep current on and even influence the development of the law.

8th Circuit Activities:

Section representatives Jeff Dollinger and Rebecca Wood attended the North Florida Association of Real Estate

Attorneys meeting on November 14, 2023, at the offices of Holden, Roscow & Caedington, PL, where a presentation on preventing fraud in real estate transactions was made.

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Chapter 776

Continued from page 4

The “school zone” intersection of Chapter 776 justification and firearms has not been examined by Florida’s appellate courts. Uncertain constitutional status and the existence of state law justified force exceptions suggest a violation of the GFSZA should not summon either the deadly force righteous behavior or righteous location prerequisite. However, situations involving the duty to retreat and defense of another or to prevent the commission of a forcible felony on another remain unaddressed generally.^[8] The State’s burden (when disproving justification beyond a reasonable doubt) to affirmatively prove the application of the righteous behavior or righteous location prerequisite (to impose the “duty to retreat”) has likewise not been judicially analyzed.

^[8] See *Forum 8*, October 2022 and January 2023, respectively.

2024 Pro Bono Puzzler - by Samantha Howell

Pro Bono Director, TRLS

Use these clues to complete the crossword puzzle on the following page.

Down

1. Low-risk pro bono engagement
2. Housing transfer method
3. Topic of Rule 4-6.1
4. Maj. legal aid funder
5. TRLS home since 2004
6. Clients can do this with your help
7. A way for law firms to do pro bono
8. Who makes a difference
9. You can do pro bono work in these
10. Namesake River #1
11. A way to get a fresh start
12. You may be or write this
13. Number of counties in the Eighth Judicial Circuit
14. Monthly clinic in Alachua County
15. Type of desert with less than 1 attorneys per 4000 citizens
16. We appreciate you this much!
17. We hope our clients feel this
18. Our staff attorneys and volunteers can be described as this
19. What pro bono clients pay for services

Across

3. Relief program for helpers
4. Namesake River #2
5. National Pro Bono Mo.
6. One of two states that does not include legal aid funding in its state budget
7. A housing agreement
8. County - not country - seat
9. We'll give you some if you ask
10. Pro bono attorneys _____ helping others
11. You better pass this!
12. Stay away!
13. _____ million Floridians have a suspended driver license
14. End-of-_____ planning
15. Helper
16. Namesake River #3
17. You can _____ with a law student on pro bono cases
18. One of two states that does not include legal aid funding in its state budget
19. Home of the Gators
20. The U.S. has 1.3 mil.
21. Recent disaster in the Eighth Judicial Circuit
22. Percentage of low-income persons who are un(der)represented in civil legal cases

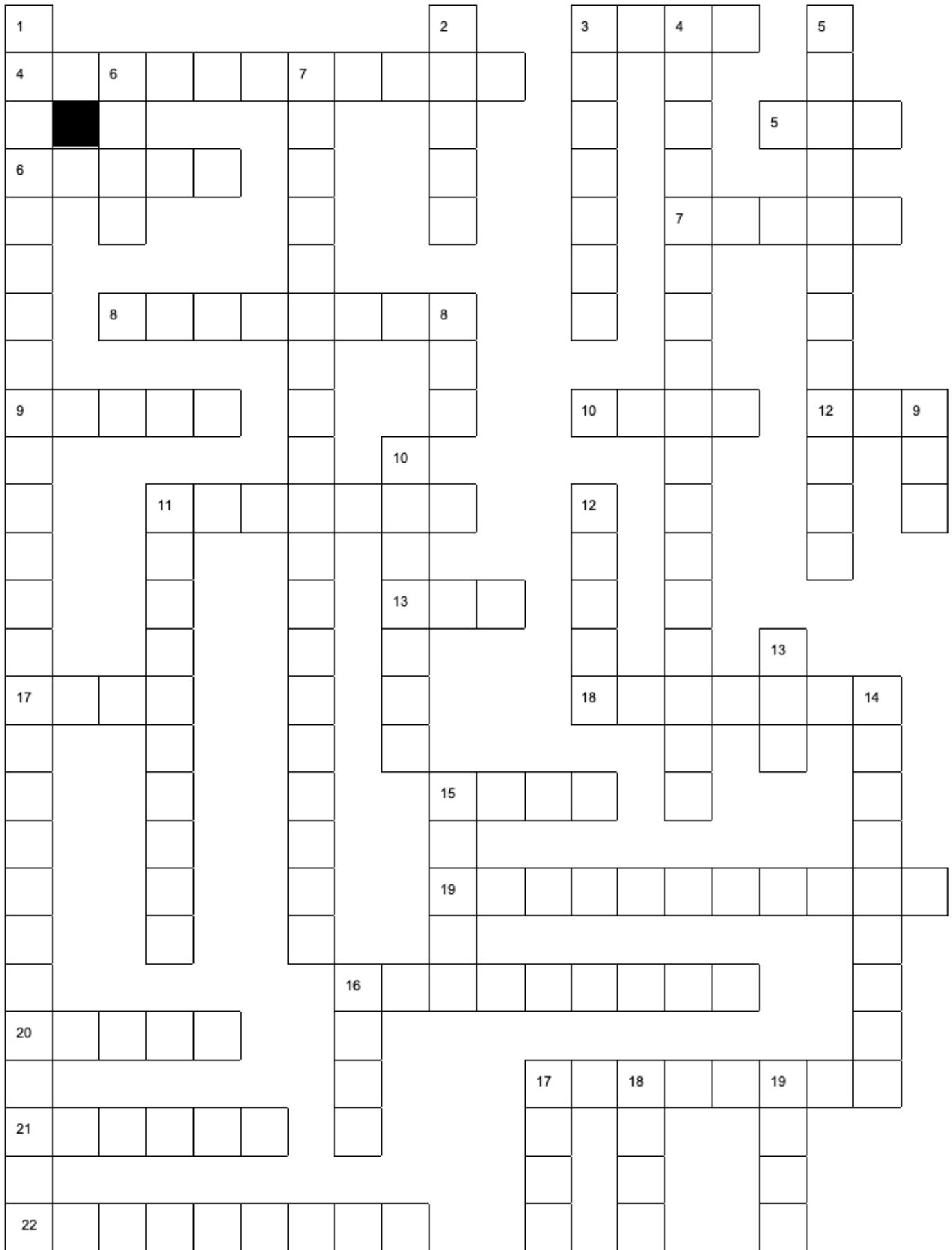
Become a Safe Place

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

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



2024 Pro Bono Puzzler - by Samantha Howell



January 2024 Calendar

- 1 New Year's Day, County & Federal Courthouses closed
- 3 EJCBA Board of Directors Meeting via ZOOM, 5:30 p.m.
- 5 Deadline for submission to February Forum 8
- 10 Probate Section Meeting, 4:30 p.m. via ZOOM
- 15 Martin Luther King, Jr. Birthday, County and Federal Courthouses closed
- 19 EJCBA Monthly Luncheon Meeting, Chief Judge Moseley, "The State of the Circuit," The Woolly, 11:45 a.m.

February 2024 Calendar

- 5 Deadline for submission to March Forum 8
- 7 EJCBA Board of Directors Meeting via ZOOM, 5:30 p.m.
- 9 EJCBA Monthly Luncheon Meeting, Speaker TBD, The Woolly, 11:45 a.m.
- 14 Valentine's Day – *show the love!*
- 14 Probate Section Meeting, 4:30 p.m. via ZOOM
- 19 President's Day (observed) – Federal Courthouse closed

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