FORUM 8

Volume 82, No. 10 Eighth Judicial Circuit Bar Association, Inc. June 2023

President's Message

By Robert Folsom

This is my final President's Message of my tenure as the EJCBA President. I would like to thank the members of the Eighth Judicial Circuit Bar Association for giving me the opportunity to lead you during the 2022-23 bar year. It has been an honor and a pleasure to serve you as president.

Thanks to all of you who provided me and the board with your ideas, guidance, volunteer time, and hard work. Because of you, the EJCBA has had a phenomenal year. We had exceptional luncheon speakers from the UF Levin College of Law (Raymond & Miriam Ehrlich Chair in U.S. Constitutional Law Lyrissa Lidsky, who spoke to us on First Amendment Law and the important cases on the U.S. Supreme Court's docket this term; and Senior Lecturer and Senior Legal Skills Professor Sarah Wolking, who presented on the topic of Wrongful Convictions and Conviction Integrity Review Units); from the Eighth Judicial Circuit Court (Specialty Courts Manager Sherry Browne, who spoke on the local drug, mental health, and veterans courts; and Chief Judge Mark Moseley, who spoke on the State of the Circuit); from the Innocence Project of Florida (Brandon Scheck, Staff Attorney, who spoke on the importance of postconviction advocacy); and from a stellar member of the state bar (Michael Ufferman, Esq., who spoke on the importance of preservation of error for purposes of appeal).

Additionally, the EJCBA was able to host visits from Florida Bar President Gary Lesser and Florida Supreme Court Chief Justice Carlos Muñiz. We also not only provided the opportunity to attend a panel discussion with members of the First District Court of Appeal judiciary, but also to attend an oral argument locally at the Judge Stephan P. Mickle, Sr. Criminal Courthouse.

Most significantly, in March, the EJCBA was able to bring together over three decades of past EJCBA presidents, as well as former executive director Kathy Janous, to talk about the history of our local bar; and to honor our EJCBA historian, Frank Maloney, who is a pillar of the circuit's legal community. For those of you who were able to attend the event, you know how meaningful and affecting it was to be in a room so full of history.

Our perennial events were also a great success this year. In October, we met for the Annual James C. Adkins, Jr. Cedar Key Dinner. That event is always a great opportunity to see each other and visit in a picturesque environment. Thank you to Norm and Blake Fugate for planning the event; Steamers for always being a gracious host; and The Fund for sponsoring the cocktail hour.

In December, we met for our Annual Holiday Social at the Hyatt Place Gainesville Downtown, which was sponsored by our new friends at Mainstreet Daily News. In March, we had our Annual Leadership Roundtable, where we had an interactive mental health training facilitated by Valerie Pasquale, Prevention Director at Meridian. Those of you who attended know that we had not only an exceptional training, but also a wonderful breakfast served by our friends at The Wooly. Thank you to Cherie Fine for planning the event and arranging for such an engaging speaker. Also in March, we had our Annual Charity Golf Tournament ("The Gloria") which helped raise $20,000 for the circuit's Guardian ad Litem Program. In April, we had our Annual Professionalism Seminar at Trinity United Methodist Church, where our local judiciary had a panel discussion on the topic "Judicial Perspectives: Does Professionalism Vary Among Practice Areas?" It was an informative and entertaining …

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Contribute to Your Newsletter!

From the Editor

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

About this Newsletter

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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

Mediations: Virtual, In-Person, and Hybrid

First: a shout out to Dawn who does a superb job of getting this newsletter out to everyone year after year. Thank you, Dawn, for all you do. *(Ed. – Thank you, it's my pleasure. I, in turn, give a shout out to our amazing layout person, Kaylie Padgett-Pagliai.)*

In the first year or so of COVID and lockdowns, masks and hand sanitizer, mediators were constantly asked: Are virtual/Zoom mediations as successful as in-person mediations? Comprehensive surveys across Florida and basically all the other states indicate the answer was: Yes, virtual/Zoom mediations have a similar success rate as in-person mediations, and perhaps even a bit higher success rate. Zoom mediations seem to be an efficacious alternative to in-person mediations due to many factors including cost-effectiveness, time effectiveness, comfort, and various business benefits. So many advantages that virtual mediation is here to stay. As are virtual depositions which could be the subject of an entirely separate article.

In Florida, there has been no abandonment of Zoom mediations now that we have returned to a more normal post-COVID scenario. Of course, in-person mediation *is* the method required for mediation, however, some or all parties can select a Zoom attendance at mediation provided the parties agree, or pursuant to a court order.

Mediators are now asked: How many mediations are conducted in-person as opposed to via Zoom entirely or some hybrid combination of in-person and Zoom. Well, a recent nationwide poll of mediators may provide an answer.

The National Academy of Distinguished Neutrals surveyed its members in the United States and Canada in March 2023 to determine the ratio of in-person, virtual, and hybrid mediations. The *national* average was virtual 62.8%, hybrid 10.8%, and in-person 26.3%. By comparison, a similar survey in the summer of 2021 indicated that nationally 74.6% of mediations were performed virtually and 25.4% were in-person.

However, for ***Florida***, the March 2023 recent survey indicated 90.7% of mediations were virtual. In the experience of your authors, that strikes us as an accurate survey result. In Florida virtual mediations are not only here to stay, but they also dominate the method of conducting mediations. And the number of Florida hybrid mediations would only increase that statistic.

Given the status of virtual mediations in Florida and the nation, it is perhaps not surprising that many mediators now decline to do in-person mediations. In fact, the recent March 2023 survey indicates approximately 13% of mediators nationwide now decline to perform in-person mediations. Nationwide, less than 2% of mediators perform only in-person mediations.

This article is about statistics. Statistics, especially in Florida, favor virtual mediations. However, attorneys should still analyze whether their clients *would benefit* from an in-person scenario or a hybrid mediation. Do emotions favor in-person mediation in a particular case? Might the client react better to an in-person interaction with the mediator? Should those considerations be weighed and compared given the obvious cost savings of virtual mediation?

When you ask a mediator a question, such as those discussed above in this article, the mediator should be able to give you an authoritative answer. The National Academy of Distinguished Neutrals and its Director, Darren A. Lee, does an excellent job of providing thorough and complete answers and the work of that group and Mr. Lee should be acknowledged.

ChatGPT Wrote this Article

By Cynthia Stump Swanson

Well, most of it. I put in this prompt: Write a 1,000-word article, written at a graduate school level, about the concerns that the public, lawyers, judges, and lawyer organizations may have about the increasing use of AI to produce legal documents and give legal advice. Please focus on concerns about accuracy, ability to tailor advice to specific fact situations, and to comply with local and state statutes and rules.

Here's part of the article that ChatGPT created. I left out some of the opening general info and its responses to the three specific concerns I mentioned in my prompt. But here is what is to me the most interesting part of the article, word for word, because I did not ask about these particular issues.

* * *

<<In addition, there is concern that AI-generated advice may be too simplistic or lack nuance. Legal cases are often complex, with many different factors to consider. It is important that legal advice takes into account all of these factors and provides a nuanced understanding of the situation. AI may not be able to provide this level of detail, which could lead to incorrect or incomplete advice.>>

* * *

<<There are also concerns regarding the ethical implications of using AI in the legal profession. One of the key ethical concerns is the potential for AI to replace human lawyers. While AI can provide many benefits, it cannot replace the human element of legal work. This includes the ability to empathize with clients, understand the nuances of a case, and provide a level of personal attention that AI may not be able to provide.

<<In addition, there is concern regarding the potential for AI to be used to exploit vulnerable clients. For example, AI-generated legal advice may be used to pressure clients into accepting settlements or plea deals that are not in their best interests. This could lead to unjust outcomes, particularly for vulnerable populations such as low-income clients or those who do not speak English as a first language.

<<To address these concerns, it is important that the legal profession takes a proactive approach to the use of AI. This includes developing ethical guidelines for the use of AI in the legal profession and ensuring that AI-generated legal documents and advice are subject to the same standards of quality and accuracy as those produced by human lawyers.

<<One approach to addressing these concerns is to use AI as a tool to enhance the work of human lawyers, rather than as a replacement. This could involve using AI to streamline the legal process, such as by automating routine tasks or conducting legal research more efficiently. By doing so, lawyers can focus on the more complex aspects of legal work, such as client interactions and legal strategy.>>

* * *

<<To address concerns regarding the potential for bias in AI algorithms, it is important to ensure that the algorithms used to create AI-generated legal documents and advice are transparent and subject to rigorous testing. This could involve requiring that all AI algorithms be audited and tested for bias on a regular basis, and that the results of these tests be made available to the public.

<<Finally, it is important to ensure that clients are fully informed about the use of AI in the legal process. This includes explaining how AI is being used, what its limitations are, and what steps are being taken to ensure that it is used ethically and responsibly. By doing so, clients can make informed decisions about the use of AI in their legal cases and can be assured that their legal rights are being protected.

<<In conclusion, the increasing use of AI in the legal profession has raised concerns regarding the accuracy of AI-generated legal documents, the ability of AI to tailor advice to specific fact situations, and the ability of AI to comply with local and state statutes and rules. These concerns are shared by members of the public, lawyers, judges, and lawyer organizations. To address these concerns, it is important to take a proactive approach to the use of AI in the legal profession, including developing ethical guidelines, ensuring rigorous quality control measures, and using AI as a tool to enhance the work of human lawyers rather than as a replacement. By doing so, the legal profession can harness the benefits of AI while ensuring that clients receive the highest quality legal services possible.>>

* * *

I have been playing around with AI for a few months and have found it to be interesting and a little fun. For example, I got it to create a meal plan for several days, using the FODMAP plan (look it up; I had to when my doctor suggested it), and then got it to create a shopping list for the menu plan. It wasn't very efficient. For example, half a cup of grapes was used in one meal only, with nothing suggested for the rest of the bag of grapes you would have to buy. However, it was better than what I had been able to find just googling around myself.

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Chapter 776 — "Engaged in a Criminal Activity"

By Steven M. Harris

A person in a place he or she has a right to be who threatens or uses *deadly* force is granted the privilege of having no duty to retreat (the ubiquitous, habitually misunderstood and/or distorted "Stand Your Ground") if such person is not "engaged in a criminal activity."[1] A person rightfully inside a dwelling or residence is not burdened with the noncriminal behavior prerequisite to have the privilege of nonretreat. *See* § 776.013(1), *Fla. Stat*. The "home protection" evidentiary presumption — "reasonable fear of imminent peril of death or great bodily harm" — cannot be invoked by a person who threatens or uses "defensive force" if the person was "engaged in a criminal activity" or was using the dwelling or residence, or *occupied* vehicle, to "further a criminal activity." *See* § 776.013(3)(c), *Fla. Stat*., and *Derossett v. State*, 294 So.3d 984 (Fla. 5th DCA 2020) (analyzing to further a criminal activity).

The behavioral prerequisite "engaged in a criminal activity" should not be confused with independent criminal conduct (attempting to commit, committing, or escaping after the commission of, a forcible felony) which results in the complete loss of the defense of justification under § 776.041(1), *Fla. Stat*.; *see, e.g*., *Peterson v. State*, No. 5D22-173 (Fla. 5th DCA March 24, 2023), or the deadly force limitation imposed because of unlawful initial provocation and aggressor status under § 776.041(2), *Fla. Stat*. Failure to satisfy the prerequisite does not affect the right to a pretrial self-defense immunity hearing under § 776.032, *Fla. Stat*. *See* *Forum 8*, March 2023.

Common examples of being "engaged in a criminal activity" in a deadly force case include the unlicensed concealed carry of a firearm, licensed concealed carry of a firearm in a prohibited location, criminal trespass, firearm possession by a prohibited person, and unlawful possession of or trafficking in narcotics. The legislature likely meant to limit the phrase to statutory felonies and misdemeanors (*compare* § 775.08(4) and § 775.04, *Fla. Stat*.), and thus county and municipal ordinance violations should be considered excluded. See § 775.08(3), *Fla. Stat*.

Other states (for example, Texas, Pennsylvania, Wisconsin, South Dakota) have force justification statutes which contain the phrase. Pennsylvania has 18 Pa. C. S. § 505(d), which provides: "… the term "criminal activity" means conduct which is a misdemeanor or felony, is not justifiable under this chapter and is related to the confrontation between an actor and the person against whom force is used." Texas excludes traffic offenses, s*ee* Tex. Pen. Code § 9.31(a)(3). South Carolina's iteration of "Stand Your Ground" uses the phrase "unlawful activity." Its Supreme Court has required a proximate cause analysis connecting the unlawful activity to the use of force and has noted the burden rests upon the State to prove beyond a reasonable doubt that the unlawful act in which the accused was engaged was at least the proximate cause of the alleged crime to which self-defense is asserted. See *State v. Glenn*, 429 S.C. 108 (S.C. 2019). Wisconsin caselaw also requires a nexus of the criminal activity to the use of force.

There is no Chapter 776 provision which defines either "engaged in" or "a criminal activity."[2] As a single phrase, it would seem to be a mixed question of fact and law. Trial courts in several cases have applied the "engaged in" language to the moment just before deadly force was used, probably since that is the moment the duty to retreat arises and the assessment of the defendant's ability to safely retreat is made. A common usage or dictionary definition of the phrasal verb "engaged in" is when someone is occupied with an activity or taking part in something occurring. The statutory phrase does not explicitly suggest or require a causal nexus of the engaged in criminal activity to the interaction of the parties or the force threatened or used. See, e.g., *Dorsey v. State*, 74 So.3d 521, 527 (Fla. 4th DCA 2011) (firearm possession by convicted felon is "unlawful activity").

The February 2023 proposed amendments to SJI (Crim.) 3.6(f) included a new instruction on the phrase and the duty to retreat, associating the phrase with the commission of a crime:

> If (defendant) was not committing any crime other than the (insert the charged crime(s) for which the defendant is claiming self-defense or defense of others) for which the defendant is claiming [self-defense] [or] [defense of others] . . . then the defendant had no duty to retreat before [using] [or] [threatening to use] deadly force.

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[1] *See* § 776.012(2) and § 776.031(2), *Fla. Stat*. Prior to 2014 amendment, the righteous behavior prerequisite was phrased "unlawful activity" in § 776.013, *Fla. Stat*. "Duty to retreat" is generally taken to mean one must use every reasonable means within his or her power, consistent with his or her own safety, to avoid the danger before threatening or using deadly force.

[2] There is a definition of "criminal activity" in § 772.102, *Fla. Stat*., which applies to Ch. 772: "… to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit" a crime. Florida appellate courts will have to decide issues on which the statutory phrase is silent. Should a victim of a robbery who is unrelatedly in illegal possession of narcotics or a stolen credit card have a duty to retreat before using lawful deadly force to prevent the imminent commission of the robbery or great bodily harm? Is a possession crime a "criminal activity?"

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Chapter 776

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> However, … if at the time (defendant) [used] [or] [threatened to use] deadly force, [he] [she] was committing a[n] (insert the defendant's criminal activity, but that criminal activity cannot be the charged crime(s) for which the defendant is claiming self-defense or defense of others) … then the defendant had the legal obligation to use every reasonable means within [his] [her] power and consistent with [his] [her] own safety to avoid any danger before [using] [or] [threatening to use] deadly force.
>
> *If necessary, define the relevant criminal activity of the defendant.*

Some thoughts on the proposed standard instruction: The first paragraph is unnecessary and will engender confusion.[3] The typical instruction of no duty to retreat should be given, and reiterated when clarification is desirable to correct misstatement or improper argument by counsel during trial. Reference to "engaged in a criminal activity" should only be instructed when the State asserts failure to meet the behavioral prerequisite and a jury could find from the evidence proof of every element of the criminal offense that the defendant was alleged to have been committing the moment before he or she threatened or used deadly force. Instruction language must remain clear that the burden to prove an unmet legal duty to retreat on account of being "engaged in a criminal activity" is on the State, beyond a reasonable doubt, as part of its burden to disprove justification.[4] Moreover, the jury should be instructed that the State must also offer and prove a known or obvious available means by which "retreat" could have been safely accomplished.

Must a defendant know he or she was "engaged in a criminal activity?" I think not. A defendant's knowledge of his or her legal "duty to retreat" is also not required. Sometimes a defendant does not contest the charge which invoked the "engaged in a criminal activity" behavioral prerequisite for justified deadly force. A plea to the charge should remove the issue from the jury, which should then simply be given an affirmative duty to retreat instruction without mention of the defendant's being "engaged in a criminal activity."

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[3] The ellipsized words state the righteous location prerequisite. My observations here might be considered for any instruction on that prerequisite as well.

[4] The February 2023 proposed SJI amendments introduced a direct burden of proof instruction to negate justification. See *Forum 8*, December 2022.

President's Message

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event. Thank you to Derek Folds for chairing the Professionalism Committee and to Scott Walker for moderating the panel discussion. In May, we had our Annual Spring Fling at Boxcar Beer and Wine Garden in Depot Park in Gainesville. It was an incredible evening of discourse and ebullience (and craft beer and wine).

This month we will have our Annual Dinner and Meeting at 1908 Grand in Gainesville, which has the theme of "An Evening in Rio." Thank you to Monica Perez-McMillen, Chelsey Clements, and Judge Susan Miller-Jones for all their hard work planning the meal and decorations. And special thanks to Judge Miller-Jones for the beautiful invitation and to Cherie Fine for corralling our evening's musical entertainment. It looks to be an evening of merriment and gourmandizing.

Finally, I want to thank the Board and committee members who gave their time and resources to ensure that we had a successful year. Dominique Lochridge-Gonzales brightened the holiday season for children in Alachua, Bradford, and Union counties by leading our Holiday Project. Jan Bendik, Peg O'Connor, and Samantha Howell educated and assisted our communities with the EJCBA's "Law in the Library", "Ask-A Lawyer", and Driver's License Clinic events. Mac McCarty, Mikel Bradley, and John Kelly worked to put on one of our most successful Annual Golf Tournaments this year. Dawn Vallejos-Nichols produced monthly newsletters that equal in substance and quality any newsletter that a voluntary bar association much larger than our own generates. Samantha Howell, Evan Gardiner, and Baker County Judge Lorelie Brannan did amazing work planning and supporting our Annual Law Day event. Special thanks to Judge Brannan for her work on the essay contest, which gave three high school students the opportunity to be recognized for their interest in civics, civility, and collaboration. As always, Dominique Lochridge-Gonzales and Sharon Sperling continued their exceptional service as EJCBA Secretary and Treasurer respectively. And many thanks to our Executive Director, Judy Padgett, for her never-ending patience with me as I learned the ropes of President. If there is anyone that I have forgotten to thank, please forgive me for the oversight. Your hard work and dedication to the board is valued and appreciated.

I am deeply grateful for everyone who has attended our events this year and engaged with the EJCBA generally. It has been a privilege to serve you. You are what makes the Eighth Judicial Circuit the finest judicial circuit in the State of Florida. And I look fondly toward continuing to get to know all of you and counting you as my trusted friends and colleagues.

When is a Final Judgment *Not* Final

By Siegel Hughes Ross & Collins

Rule 1.540, *Fla. R. Civ. P.,* provides a party may obtain relief from a Final Judgment on any one of six grounds. This article addresses one of the circumstances under which relief may be granted under subsection (b)(5), which allows relief when "it is no longer equitable that the judgment, decree, or order should have prospective application."

This rule may not be used as another avenue of appeal. To justify relief, a judgment debtor must establish facts occurring after entry of the judgment which make it inequitable. *Gregory v. Connor,* 591 So. 2d 974 (Fla. 5th DCA 1991). *See also, Castro v. Sun N Lake Improvement District,* 334 So.3d 663, 666 (Fla. 2nd DCA 2021) ("At its core, there must be some new postjudgment fact or occurrence that requires the trial court, in equity, to recede from its prior order or judgment.")

While a judgment may be assigned to another party, there are circumstances when such an assignment may constitute an event occurring after the judgment that renders the judgment subject to relief as inequitable under Rule 1.540(b)(5). The epitome of such circumstances is demonstrated by the decision of the Third District Court of Appeal in *Weitzman v. F.I.F. Consultants, Inc.,* 468 So.2d 1085 (Fla. 3rd DCA 1985). The original plaintiff, Dishy Easton & Co., had obtained a judgment against Appellant Weitzman for failure to pay for securities he had purchased from them. Weitzman then received a New York judgment against Stein and some associates for fraudulently inducing him to purchase the securities. F.I.F. Consultants, a company controlled by Stein, then purchased and sought to enforce the Dishy Easton judgment against Weitzman. When Weitzman sought relief from the judgment the trial court inexplicitly denied relief. The Third District had no difficulty reversing the decision, holding:

> It starkly appears in this case that a party, Stein, who has been held responsible in tort, indeed in fraud, for bringing about the entry of a judgment against the defendant, Weitzman, has himself acquired and is now seeking to enforce that very judgment against Weitzman. Such a state of affairs cannot be countenanced. While we have, perhaps not surprisingly, discovered no case quite like this, we have no doubt that it constitutes an archetypical example of the situation for which Fla.R.Civ.P. 1.540(b)(5) was designed.
> *Id*. at 1086.

Courts have relied on Rule 1.540(b)(5) to provide relief from assigned judgments in less egregious circumstances. A guarantor is entitled to seek contribution from a co-guarantor but is not allowed to seek indemnity. *Curtis v. Cichon,* 462 So.2d 104 (Fla. 2nd DCA 1985). A guarantor may not avoid this prohibition by creating another entity to purchase the judgment and attempting to enforce the entire judgment against a co-guarantor. This was the exact situation addressed by the 5th District in *Collection and Recovery of Assets, Inc. v. Patel,* 276 So.3d 494 (Fla. 5th DCA 2019). In that case the Court prevented the enforcement of the entire judgment against a guarantor by a company formed by a co-guarantor to which the original judgment creditor had assigned the judgment. The Court ruled that the assignment of the judgment was a change in circumstances that rendered enforcement of the entire judgment to be inequitable.

When facing enforcement of an assigned judgment, it seems prudent to explore the relationship between the assignee and any other parties who might be liable for the judgment.

The Status of Pro Bono in the Eighth Judicial Circuit

By Samantha Howell, Pro Bono Director, TRLS

As this is my last article for a couple months (HELLOOOOOOO, SUMMER!), I want to make sure you are not left wondering about the status of pro bono in the Eighth Judicial Circuit.

This year, we expanded our Ask-A-Lawyer Clinics to every county in the Circuit. We hosted events in Bradford (February), Levy (April), and Alachua (May). Events for the remainder of the year include:

Gilchrist County Public Library (Trenton) - June 17th
Peaceful Paths (Gainesville) - July 22nd
Location TBD (Union County) - August 19th
Grace Marketplace (Gainesville) - September 30th
No Clinic in October because it is National Pro Bono Month! Stay tuned for other events!!
Location TBD (Baker County) - November 18th
Civic Media Center (Gainesville) - December 9th

We can always use more volunteers, particularly attorneys knowledgeable in family, criminal, guardianship, and housing issues.

TRLS also hosted a successful Sealing/Expungement Clinic at the Alachua County Library Headquarters and has been asked to provide monthly clinics. We are working on finding times for clinics in June-December. If you would be interested in taking a case, or just learning more about this area of the law, let me know.

Law in the Library is on hiatus till the fall, but we hope to bring it back in September. Going forward, we are exploring changes to the format so that we can make programming accessible to the greatest number of people, while also being respectful of volunteer time.

It's also time to renew your bar license! As you probably know, Florida attorneys are encouraged to perform 20 hours of pro bono service per year or donate $350 to a civil legal aid organization. If you opt for the latter, please consider Three Rivers Legal Services as your chosen organization.

Finally, bear with me for the following reminder that, if you are interested in pro bono, there is a project or case out there for you. Three Rivers Legal Services screens all cases for eligibility. We also provide liability coverage, access to our staff attorneys and other mentors, office space, and reimbursement of litigation-related expenses. ***We will make every effort to ensure you have a positive experience volunteering with TRLS.***

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 Gainesville clinic will be June 27, 2023. We are still in need of a volunteer to meet with clients for both sessions.

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. Our upcoming events include: June 17th in Gilchrist County at the Library, July 22nd at Peaceful Paths (Gainesville), and August 19th in Union County (location TBD).

Advice and Counsel/Brief Services - Attorneys can provide limited scope assistance to individuals. Current opportunities include:

1. We are in constant need of volunteers to work with clients, one-on-one, to complete pro se divorce packets.
2. We also generally have folks in need of advance directives.
3. **Alachua County** (22-0346519) - draft living will for senior citizen
4. **Alachua County** (23-0347460) - help client establish QIT/special needs trust
5. **Alachua County** (23-0348487) - prepare will and quit claim deed

Finally, you can take on a client matter for **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. **Union County** (23-0346949); **Alachua County** (23-0348108); **Bradford County** (22-0341608) - represent client in criminal record expungement

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What Termination “for just cause” Means When Included in an Employment Contract

By Conor Flynn

Whether through negotiation or standard company policy, many employers include a “termination for cause” provision in their employment contracts. Collective bargaining agreements, individual employment contracts, and in some jurisdictions even the implied covenant of good faith and fair dealing trigger just cause protection. “Proper cause,” “just cause,” and “good cause” are three of the most common terms used to describe this principle, and all have the same effect. So, what is the import of a “for cause” clause?

Among other things, just cause requires due process, fairness, the forewarning of the possible and probable disciplinary consequences of the conduct, competent substantial evidence that the rule at issue was violated, equal treatment, progressive discipline, and consideration of the employee’s employment record. *See* Abrams & Nolan, *Toward a Theory of Just Cause in Employee Discipline Cases*, 1985 Duke L.J. 594 (1985); *see also Enterprise Wire Co. and Enterprise Independent Union*, 46 LA 359 (Daugherty, 1966). In the employment arbitration context, an employer has the burden of proof to establish just cause to support the discipline imposed. The burden of proof applied is generally a preponderance standard, but where the discipline is more severe, some tribunals have applied a clear and convincing standard. There have been some exceptional cases where tribunals have applied the “beyond a reasonable doubt” standard, but it is highly unusual. Parties can reasonably anticipate application of the preponderance standard.

“Just cause” or “cause” includes several procedural and substantive elements. To establish that discipline was imposed for just cause, an employer must prove the following: the disciplined employee engaged in prohibited conduct; the employee was on notice and understood the conduct at issue was prohibited; the employee was aware of the possible consequence of the conduct; and the employee was provided with notice of the discipline and provided an opportunity to respond. When defending the imposition of discipline before a tribunal, the employer is limited to the four-corners of the notice of discipline issued.

The just cause analysis resembles a “totality of the circumstances” analysis in that it draws upon numerous sources in reaching a conclusion, and the weight afforded to the evidence rests with the neutral. Just cause analyses may be informed by excerpts from a company handbook, emails, text messages, common knowledge of past practice, enforcement or non-enforcement of a rule, the public-facing nature of the conduct at issue, whether there exists a nexus between the activity and the employer’s ability to effectively carry out its duties, and analogous cases and how prior transgressions have been handled.

The principle of “just cause” is traditionally a creature of contract. Many states provide statutory “just cause” protection to public employees. Before disciplining or terminating an employee with a “for cause” provision in their contract, employers should consult with experienced counsel to determine if an early severance resolution could be cost effective and advantageous for all parties. While an employee’s conduct may appear at first to be a cut and dry case for suspension or termination, if an employee contests the discipline, the costs of defending the disciplinary action should be considered in the broader context of the business.

Employees should familiarize themselves with their individual employment contracts or collectively bargained agreements, and ensure they remain familiar with the procedural protections in the event discipline is imposed.

Status of Pro Bono

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2. ***Alachua County*** *(multiple cases) - represent client in filing modification to parenting plan*
3. ***Baker County*** *(20-0328644) - represent client in probate (summary administration)*
4. ***Alachua County*** *(22-0345601) - represent client in a BAR hearing seeking a hardship driver license*

If you would like to take on any of the above, please contact me and include the identification number (XX-XXXXXXX). If you are interested in another kind of case, just let me know!

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 TRIS's Pro Bono Legal Assistance Program (PBLAP) at https://www.trls.org/volunteer/.

ChatGPT

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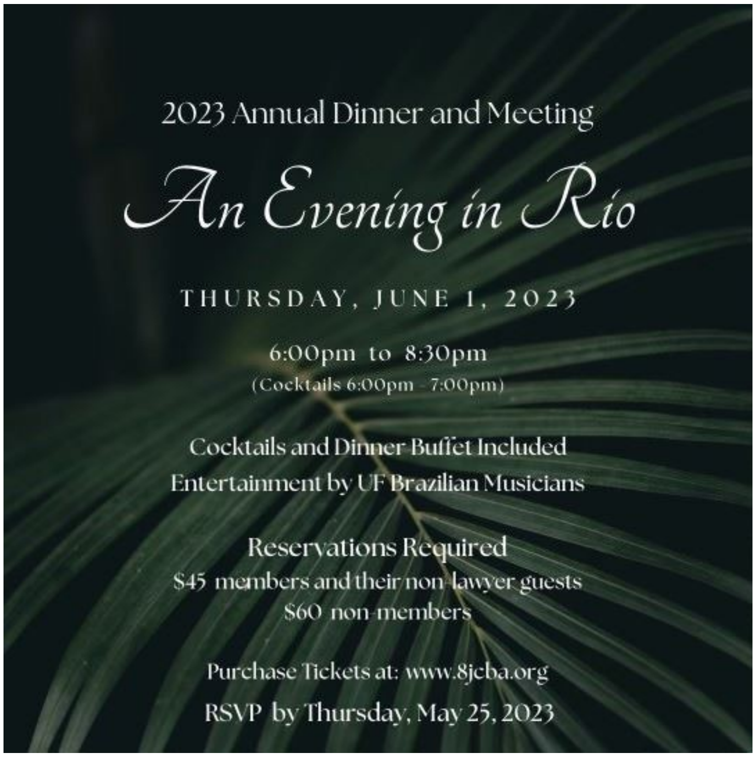
One day, I typed in only that “I am bored.” It queried me back, “What are some kinds of things you like to do?” I answered, and it gave me a very specific list of ten things I could do utilizing the answer I gave (crafts, small DIY projects). I asked it to refine its answer, using specific supplies I had on hand. It did a great job.

I asked it to make up a road trip itinerary to visit at least three state parks on a five-day trip, driving no more than two hours each day, excluding a couple parks we have already visited, and ending up back where we started. We’ll be following that itinerary later this year. I have found that using as many pertinent details in your prompt as possible will result in better output.

I haven’t asked it to create a will or a deed yet, or a motion to compel discovery, or a petition for writ of certiorari. But now that I have my road trip planned, those are next on my list.

It is ironic that ChatGPT was the one to bring up the concerns about implicit bias and ethics in the use of AI in law practices. I’m not worried about that when I ask ChatGPT to create a road trip itinerary. But we must be really careful about using an AI bot in our practices. We still have the obligation to check the AI output against our own knowledge, as well as the actual statutes and rules that we work under. And maybe most important, we are the ones inputting prompts. So, we are the ones inputting the factual basis for our queries. And remember the old computer adage, “Garbage in, garbage out.” We are the garbage gatekeepers for AI.



2023 Annual Dinner and Meeting

An Evening in Rio

THURSDAY, JUNE 1, 2023

6:00pm to 8:30pm
(Cocktails 6:00pm - 7:00pm)

Cocktails and Dinner Buffet Included
Entertainment by UF Brazilian Musicians

Reservations Required
$45 members and their non-lawyer guests
$60 non-members

Purchase Tickets at: www.8jcba.org
RSVP by Thursday, May 25, 2023

THE FLORIDA BAR

CONTINUING LEGAL EDUCATION (CLE)

Settlement Conferences in Federal Court

presented by

The Federal Court Practice Committee

May 19, 2023 • Noon - 1 p.m.

U.S. Magistrate Judge Hope Cannon
U.S. Magistrate Judge Embry Kidd
U.S. Magistrate Judge William Matthewman
U.S. Bankruptcy Judge Jacob Brown

Moderators: Bernice Lee & Ginger Boyd

This program will include magistrate judges & a bankruptcy judge from around the state discussing settlement conferences in federal court.

This course has been approved by The Florida Bar for 1 hour of General CLE credit, including .5 Ethics credit.

Zoom Webinar, Registration Required

REGISTER

floridabar.org/federalcorner

Submitted by Robert Griscti, member, TFB Federal Court Practice Committee

May 2023 Luncheon

Florida Supreme Court Chief Justice Carlos Muñiz (right) was the guest speaker at this year's final EJCBA luncheon on May 12 at The Wooly. He answered questions pre-submitted by attendees and asked by EJCBA President Robert Folsom (left).

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@cdsfl.org or
(352) 244-0628, extension 3865.

June 2023 Calendar

1 EJCBA Annual Meeting & Dinner, 6:00 p.m., 1908 Grand, 215 N. Main Street
14 Probate Section Meeting, 4:30 p.m. via ZOOM
21-24 2023 Annual Florida Bar Convention, The Boca Raton

Have a Great Summer!!

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.