FORUM 8

Volume 83, No. 7 | Eighth Judicial Circuit Bar Association, Inc. | March 2024

# President's Message

*By Monica Perez-McMillen*

Spring is arriving and as we start to hang up our winter coats, I can't help but wonder if everyone is as eager as I am for the sunshine we enjoy in the spring, against the endless days of rain and the perfect blend of temperatures before it's so hot that stepping outside our door feels like a hot yoga session. As a family, we enjoy spending time outdoors riding our bicycles, making treks to Crescent Beach, or enjoying a day out on the water. We live in a state with great beauty, perfect weather, and diverse outdoor activities. I love the State of Florida and encourage each member of the Eighth Judicial Circuit Bar Association to enjoy the natural resources that surround our region; be it a natural spring, river, ocean, or nature trails.

We ended the month of February on an excellent note by gathering with Former Judge Stan Morris at the luncheon. I heard from many of you who were so grateful that we could host Judge Morris and hear his stories filled with wisdom and incredible professionalism. Thank you, Judge Morris for joining us.

The month of March is busy with the hopes of Gator Basketball success in March Madness, the long and encouraging baseball season under Coach Kevin O'Sullivan (our September luncheon speaker) and Spring Break (a nod of empathy to all of our working parents who have to either work through Spring Break or for those of you who are able to take time away with your school-aged children).

The month of March will be a fast one for many of us. Please slow down enough to sign up for our March luncheon on March 22nd. I am excited to announce that we will host Dr. Jennifer Sager as our March luncheon speaker. Dr. Sager is a licensed psychologist who in addition to having a vibrant counseling practice, provides psychological and psychosexual evaluations, expert witness testimony and helps coach the Buchholz Mock Trial Team. She's been published in a variety of journals across the nation. I look forward to hearing her speak about her expertise, how wellness can impact our profession, and how we can improve the world around us by staying healthy.

We are in the process of working with our very own colleague, Shannon Miller, to host a free to EJCBA members Yoga event. I'd love to see our local bar community gather in a variety of places throughout the year for socials, wellness, and community service events. Shannon is a fantastic colleague who focuses on elder law but leads a vibrant yoga practice. If you've never been to a yoga class, please consider trying it out with us. If I can't convince you of it, read this brief article aptly titled: 5 Ways Yoga can Make you a Better Lawyer. http://tinyurl.com/3rjvnsw3

I wish you all well this month and I can't wait to gather with you again. Best regards.

## SAVE THE DATE – 12th ANNUAL LEADERSHIP DIVERSITY ROUNDTABLE

Please save the date and plan to join us at The Wooly on Friday, April 12, 2024, from 8:30 a.m. – 11:45 a.m. for the 12th Annual EJCBA Leadership Diversity Roundtable. This year's conference will focus on biases in Artificial Intelligence, identifying concerns and discussion remedies; breakfast will be included. Watch your email for registration information. For additional information, please contact Cherie Fine at cfine@ffplaw.com.

## 2023 - 2024 Board Officers

**Monica Perez-McMillen**
*President*
101 NW 75th Street, Ste 1
Gainesville, FL 32607
(352) 327-8251
monica@mcmillenfamilylaw.com

**Mikel Bradley**
*President-Elect*
1000 NE 16th Ave, Bldg. I
Gainesville, FL 32601
(352) 415-2304
mikel.bradley@trls.org

**Robert E. Folsom**
*Past President*
220 S. Main Street
Gainesville, FL 32601
(352) 374-3634
folsomr@circuit8.org

**Peg O'Connor**
*President-Elect Designate*
102 NW 2nd Avenue
Gainesville, FL 32601
(352) 372-4263
peg@toklegal.com

**Dominique Lochridge-Gonzales**
*Secretary*
1000 NE 16th Ave, Bldg. I
Gainesville, FL 32601
(352) 415-2324
dominique.lochridge-gonzales@trls.org

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

## Members at Large

**Tavara K. Andrews**
14407 SW 2nd Place, Ste F-1
Newberry, FL 32669
(352) 284-9956
tavara@tjsacctg.com

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

**Raymond F. Brady**
1719 NW 23rd Ave, #3F
Gainesville, FL 32609
(352) 554-5328
rbrady1959@gmail.com

**Cherie Fine**
622 NE 1st Street
Gainesville, FL 32601
(352) 372-7777
cfine@ffplaw.com

**Allison Derek Folds**
527 E. University Ave
Gainesville, FL 32601
(352) 372-1282
derek@foldswalker.com

**Blake Fugate**
P.O. Box 98
Williston, FL 32696
(352) 528-0019
blake@normdfugatepa.com

**Norm D. Fugate**
P.O Box 98
Williston, FL 32696
(352) 528-0019
norm@normdfugatepa.com

**Evan Gardiner**
2700 NW 43rd Street, Ste C
Gainesville, FL 32606
(352) 337-7688
egardiner@boginmunns.com

**Samantha Howell**
1000 NE 16th Avenue, Ste I
Gainesville FL, 32601
(352) 372-0519
samantha.howell@trls.org

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

**Andrew W. McCain**
120 W. University Avenue
Gainesville, FL 32601
(352) 374-3670
mccaina@sao8.org

**James H. McCarty, Jr. (Mac)**
2630 NW 41st Street, Ste A
Gainesville, FL 32606
(352) 654-1001
mac@mccartyfocks.com

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

**Celeste M. Corrales Ramirez**
120 W. University Avenue
Gainesville, FL 32601
(352) 374-3670
ramirezc@sao8.org

**Dawn M. Vallejos-Nichols - Editor**
2814 SW 13th Street
Gainesville, FL 32608
(352) 372-9999
dvallejos-nichols@avera.com

## Contribute to Your Newsletter!

*From the Editor*

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

## About this Newsletter

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

Eighth Judicial Circuit Bar Association, Inc.
P.O. Box 140893
Gainesville, FL 32614
Phone: (352) 380-0333

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

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

**Judy Padgett**
*Executive Director*
P.O. Box 140893
Gainesville, FL 32614
Phone: (352) 380-0333
execdir@8jcba.org

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

**Deadline is the 5th of the preceding month**

# Alternative Dispute Resolution

*By Chester B. Chance and Charles B. Carter*

## An Unusual Case: Be Aware

We are revisiting a rather unusual case from 2022. Our purpose is to make you aware of the case and so you can protect yourself from its somewhat confusing implications.

The appellate case is *The Parkland Condominium Assoc. Inc v. Henderson*, 350 So. 3d 484 (Fla. 2d DCA 2022).

In *Parkland,* Plaintiff Henderson sued Parkland. *"Following"* a court-ordered mediation, counsel for the parties exchanged several emails that included terms and drafts of a proposed settlement agreement. Eventually, about 6 weeks following the mediation conference, Henderson's attorney emailed an agreement to Parkland as a proposed agreement with all essential terms. Parkland's counsel *accepted* the agreement by email a few days later and said "I have received word from my client that they agree to the document as drafted." A few days later *Henderson's* attorney filed with the court a settlement agreement and consent decree both of which had been signed by him along with a cover letter that referred to the "mutually agreed upon Settlement Agreement." Note: Plaintiff Henderson did **not** sign any documents nor had Parkland signed the settlement agreement. (Are you keeping up with this?)


About a week later following a breakdown in communication between the two attorneys, Parkland moved to enforce settlement. So we ask, what did the appellate court say? And here comes the confusion.

The court wrote an entire paragraph emphasizing that settlements are highly favored and will be enforced whenever possible. (Now take your first guess at what happens.) The court noted signatures of the parties are not required under common law principles and it is not necessary for a party to sign a contract to be bound by its terms. (Can you see where this is going?)

*However*, the court noted, when parties reach a settlement agreement at mediation, Rule 1.730 expressly provides: "If a partial or final agreement is reached it **shall** be reduced to writing **and** signed by the parties *and* their counsel, if any." (Uh, oh, something is up here.) The court noted an agreement "*resulting from"* a mediation cannot be enforced absent signatures of all parties.

The court continued by noting § 44.404(1)(a), *Fla. Stat*. 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…." (emphasis added.)

In a footnote, the court again references § 44.404, *Fla. Stat*. and added: "Mediation ***also*** ends when the mediator declares an impasse by reporting to the court or the parties the lack of an agreement, when the mediation is terminated by court order, court rule or applicable law, or by the agreement of the parties after they have complied with the court order to appear at mediation" (citations omitted). Importantly, the court then added "[**n]one** of those events occurred here." (emphasis added.)

So, the court denied the motion to enforce settlement but didn't stop there, adding in dicta: "If the purported settlement agreement had not been reached in the *context* of court-ordered mediation, we would likely conclude that it *was binding and enforceable."* (emphasis added.) Why? The court said at one point both attorneys "…appeared to have agreed on the essential terms and had indicated their clients were on board; thereafter, the attorney for the party *now* disavowing any agreement had filed the agreement" with the court, representing that there *was* an agreement. Are you confused at this point?

Then the court concludes: "But in light of rule 1.730(b), we are constrained to conclude that any settlement agreement is unenforceable because it *resulted from* mediation yet lacked the parties' signatures." (emphasis added.)

Conclusions: 1. The court, though recognizing that the proposed settlement agreement occurred "*following* the mediation," still determined the mediation was not over. 2. Why was it not over? Because the parties did not sign an agreement, or, it seems, because the mediator did not report to the court there was no agreement, or, because there was no court order ending the mediation, or, no agreement of the parties that the mediation was over. 3. We assume everyone leaving the mediation is *not* an agreement by the parties that the mediation is over. 4. Since the mediation was not over pursuant to § 44.404, *Fla. Stat*., the agreement was not enforceable because it was not signed by the parties.

*Continued on page 6*

# Examining the Chapter 776 "No Duty To Retreat"

*By Steven M. Harris*

According to Merriam-Webster online —

retreat . . .

*a(1): an act or process of withdrawing especially from what is difficult, dangerous, or disagreeable*

The Chapter 776 statutes for defense of persons, defense of personal property and real property other than a dwelling, and for "home protection" provide that a person acting in accordance with the statute does not have a "duty to retreat" and has the right to "stand his or her ground" before threatening to or using *non-deadly* force. *See* § 776.012(1), § 776.031(1) and § 776.013(1)(a), *Fla. Stat*. For a person threatening to or using *deadly* force to enjoy the privilege of non-retreat, he or she must not be "engaged in a criminal activity" and must be "in a place where he or she has the right to be." *See* § 776.012(2), § 776.031(2) and § 776.013(1)(b), *Fla. Stat*.[1] Retreat is not pertinent to the use of deadly force justifiable under § 782.02, *Fla. Stat*. *See Forum 8*, March 2020. A more nuanced duty of avoidance is applied to a person who provoked as the initial aggressor. *See* § 776.041(2), *Fla. Stat*.; *Forum 8*, June 2022.

The righteous behavior prerequisite is properly examined just before deadly force was threatened or used. The righteous location prerequisite is properly examined at the moment when deadly force was threatened or used.[2] Perfection in ascertaining the availability of safe retreat should not be demanded of a defendant. Rather, the global reasonable but mistaken belief analysis should be applied.[3]

Almost 20 years have passed since enactment of the statutory "no duty to retreat" and "stand his or her ground." Yet, the finer details of those phrases and the criminal behavior and righteous location prerequisites remain mostly unexamined.[4] That is likely because most defensive deadly force incidents do not implicate the duty to retreat as a factual or legal matter. Moreover, the justification elements of necessity and imminence can act to dilute the practical consequence of the privilege of non-retreat.

A jury should ordinarily receive a short and simple instruction that the defendant had no duty to warn, threaten deadly force, or to retreat before using deadly force.[5] To avoid improper dilution of the privilege of non-retreat, a no duty to retreat instruction should include broad cautionary language; perhaps, something like this:

> (Defendant) did not have any duty to warn, threaten the use of deadly force, or to flee in retreat before using deadly force. You must not consider in any manner evidence relating to whether (defendant) had an opportunity to flee or retreat in deciding whether the State has proved beyond a reasonable doubt that (defendant) was not justified in using deadly force.

*Continued on page 9*

---

[1] For related discussion *see Forum 8*, June 2023 and March 2023. The criminal behavior prerequisite isn't applicable to a person righteously present in a dwelling or residence. The language of the two prerequisites used in Chapter 776 to denote no duty to retreat is derived from *Beard v. United States*, 158 U.S. 550 (1895), at 563-64. Under *Beard*, one need not consider whether safe retreat was available. Thereafter, the Supreme Court relied on *Beard* when Justice Holmes authored this well-known passage: "Detached reflection cannot be demanded in the presence of an uplifted knife. Therefore in this Court, at least, it is not a condition of immunity that one in that situation should pause to consider whether a reasonable man might not think it possible to fly with safety or to disable his assailant rather than to kill him." *Brown v. United States*, 256 U.S. 335, 343 (1921).

[2] *See State v. Quevedo*, 357 So.3d 1249 (Fla. 3d DCA 2023). District court language hasn't been precise or uniform. *See, e.g.*, *Jimenez v. State,* 353 So.3d 1286 (Fla. 2d DCA 2023)(criminal behavior prerequisite at time of defendant's firearm discharge); *Garcia v. State*, 286 So.3d 348 (Fla. 2d DCA 2019) (righteous location prerequisite at "time of the incident"); *State v. Kirkland*, 276 So.3d 994 (Fla. 5th DCA 2019) ("involved in criminal activity just prior"); *Fletcher v. State*, 273 So.3d 1187 (Fla. 1st DCA 2019) (righteous location prerequisite analyzed at time when defendant formed belief danger necessitated defensive force); *Dorsey v. State*, 74 So.3d 521 (Fla. 4th DCA 2011) (prerequisites analyzed at the time defendant was attacked); *State v. Chavers*, 230 So.3d 35 (Fla. 4th DCA 2017) (prerequisites examined at time defensive force was used).

[3] Some 50 years ago the First DCA recognized the impossibility of "detached reflection" with this: "A person acting in self defense is not held to the same course of conduct which might have been expected had he been afforded an opportunity of cool thought as to possibilities, probabilities and alternatives." *Price v. Gray's Guard Service, Inc*., 298 So.2d 461, 464 (Fla. 1st DCA 1974). See *Forum 8*, December 2023.

[4] I found no appellate opinion explaining the statutory phrase "place where he or she has a right to be." The righteous location prerequisite would seem to be met when the defendant was on public property, his or her own property, or any other place where he was then authorized, licensed, or invited. The criminal behavior prerequisite has been invoked where the State has asserted felon-in-possession, unlicensed carriage of a concealed firearm, or licensed concealed carriage in a prohibited location.

[5] *See Mobley v. State*, 132 So.3d 1160 (Fla. 3d DCA 2014).

# Navigating Complex, High-Asset Divorces

*By Cynthia Swanson*

This column will provide some advice to family law trial practitioners who may find their final judgments going up on appeal. While most family lawyers hope to help their clients work out their issues via settlement discussions, mediation, collaboration, and so on, many cases do end up being tried. If so, you should think as much about trying your case for the appellate court as for the trial court. So, herewith, some advice on that.

You're likely to know which issues are the ones that will be most hotly contested at trial, and thus the ones more likely to be appealed if they don't go the way one party or the other hopes. Thus, you want to have your record as clear as possible and as detailed as possible. So, first things first – create a record. This means you must have a court reporter. While it is theoretically possible to create a stipulated set of facts to send up instead of a transcript, this is really difficult in practice. Really, if you couldn't agree on how to settle a case, do you think it will be easy to stipulate as to exactly how this witness or that testified? Or whether a certain document that was shown to the Judge was ever actually admitted into evidence in case the Judge made an error in writing down exhibit numbers?

Rule #1 - Have a court reporter present at all contested hearings in which the ruling may have some effect on the eventual final judgment. Get money from your client and hold it in trust to pay for the reporter's attendance and for the eventual preparation of the transcript (as well as the appellate filing fees).

The appellate court is only able to review the written transcript of what was said and the documents or other records that were admitted into evidence. So, as important as having a court reporter present is actually getting your documents admitted into evidence. Sometimes a lawyer may hand a document to the Judge, may show it to the witness, may ask questions about it, may mention it in closing argument, and forget to actually admit it into evidence. If it's not in evidence, it does not go up to the appellate court to see it on appeal. It's also important to get the evidence clearly marked and then to be scrupulous in identifying the document correctly when you are asking questions about it from a witness. If it's a bank statement, ask the witness to look at the SunTrust bank statement from December 2014 which was admitted into evidence as the Husband's Exhibit #3. It may seem awkward or cumbersome to say all that, and especially when you have 59 different bank statements that you are reviewing with a witness, but it is imperative that the appellate court be able to tell from the written transcript what bank statement the witness was looking at when he tried to explain just who made that $50,000 withdrawal.

I encourage you to bring an assistant to trial to keep track of both your and your opponent's evidence. Your assistant can help organize paperwork, keep track of the number that has been assigned to an exhibit, and double check that a document was actually admitted. If you don't have an assistant, make yourself an evidence chart or table and print it out on neon orange paper or something like that, and keep it on the very top of all the stuff you have in front of you. Have every document that you intend to offer into evidence already listed on it, and make yourself take 30 seconds after each document is admitted to write down the number of the exhibit, and to check that you have every exhibit properly identified and numbered. If a document you offer was not admitted, write that down, too (and why not), so that later you don't wonder whether you got your numbers off, or you forgot to offer it, or what.

Rule #2 - Be scrupulous about identifying your documents and be sure they are actually admitted into evidence.

Now, on to actually presenting your case. It's extremely important that you know what your client is asking for, and that you communicate that to the Court in your opening statement, and that every question you ask of every witness and every document you offer into evidence is calculated to lead the Judge inexorably to the conclusion that your client deserves exactly what your clients wants. When you are preparing your case, think of all the facts you might be able to present to the Court, and then pare them down to only the facts you need to get the results. Leave the other crap out.

In family law cases, it can sometimes be hard to resist your client's (or their family's) desire to bring up irrelevant matters. But try to think of all this information from both the trial judge's standpoint and from the point of view of the appellate panel who may be reading a very dry 1,000-page transcript of the trial. Constantly ask yourself - what result does my client want and what is necessary and relevant and important to the Court to determine whether or not to award that to my client?

Here's an example: One of the things we hear so often is that when the child comes back from spending time with the other parent, the child's clothes are dirty, the child has not had a bath, the clothing that the child wore when they left was not returned, and so on. And yet, in over 30 years of contested family law hearings and trials, I have never, ever, ever, ever once heard a trial judge say that this was an important factor in making a time-sharing decision, and I have never, ever read an appellate decision where an appellate panel said that. Sure, …

*Continued on page 6*

# High-Asset Divorces

*Continued from page 5*

don't we all wish the other parent would give the child a bath, wash and return clothes, etc.? Of course. But, really, this kind of thing is a good part of the reason you're separating from that parent, right? You just don't share the same values, right? You are not going to change that parent's personality because you're getting a divorce. And the trial and appellate courts are much more interested in the factors listed in Fla. Stat. §61.13(3), and baths and clean clothes are just not listed there. So, resist the push by your client to include reams of material about the lack of a bath. At least, don't ask more than one question to one witness about this if your client just can't let it go.

Also, if the Court has no authority to make a certain award, don't ask the Court to do that. For example, unless you have some extremely special circumstances (which you don't), don't ask a Court to order a parent to pay for college expenses. Just don't spend any time on that.

Rule #3 - Pare down your issues and really, really pare down the information you want to present to lead the Court to the result you want. Don't overload the Judge with information that is not important. On the other hand, be aware of the facts that the Court needs to hear in order to give a certain result. If you're asking for alimony, but you don't put on evidence of your client's expenses, then no matter how fabulously wealthy the other party may be, the Court has no basis on which to make a finding of need on your client's part, and thus can't award alimony.

Finally, for purposes of this column, you must ask the Court for a rehearing when you believe the Court has made a mistake of fact or law in rendering the final judgment. You must make an objection when testimony or documentary evidence is being offered if you have a good basis for an objection and if an error in admitting that evidence might later be the subject of an appeal. If the trial judge fails to make sufficient findings of fact on which to base the ruling, you must bring that up in a motion for rehearing if you later want to appeal that ruling.

Rule #4 – Make proper objections. Even if you seem to be overdoing it. Even if the opposing attorney is getting annoyed. Be polite and respectful, but state the basis for your objection on the record. Get a ruling on your objection from the judge. And file a timely motion for rehearing if the trial judge has made an error, or has failed to make sufficient findings of fact on which to base his or her ruling. See, e.g., *Owens v. Owens*, 973 So. 2d 1169 (Fla. 1st DCA 2007). Otherwise, you are S.O.L.

Following these four basic rules will make the appeal of your final judgment much more likely to have some success.

# ADR

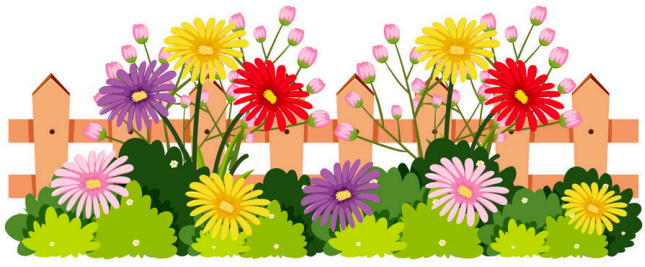
*Continued from page 3*

So what should you take from this? 1. Insist the mediator file a disposition report to the court **before** you engage in negotiations after grabbing some snacks and leaving the mediation. Note: Under Rule 1.730, the mediator must report the results of the mediation, without commenting, within 10 days of the mediation. Urging the mediator to file the report pronto eliminates foot dragging for 10 days. 2. Get the attorneys, mediator and parties to sign something that says the mediation is over *before* grabbing some snacks and leaving the mediation conference. Yes, we know, all involved will think you are crazy so maybe you should have a copy of *Parkland* with you. Better to go with #1 above. 3. If you continue negotiations after you leave the mediation without complying with Sec. 44.404, you better be sure to have the attorneys and especially the clients sign that agreement, because the Second DCA says you are still mediating. That means those negotiations are still confidential even if not enforceable, so choose which is better for your client. Yes, even more confusing.

We think this case is very important. Keep your guard up. For example: If you reach an agreement to keep an offer or demand open at mediation, even if it is in writing, *Parkland* says it is not an agreement unless the parties signed it, or the mediator entered a disposition report before you memorialized such an agreement. Suggestion: confirm a party is leaving something open *after* the disposition report is entered.

Again, we assume the 6 weeks of back and forth by the attorneys occurred without the mediator ever filing a disposition report, otherwise the decision doesn't make much sense. The court also seems to be saying leaving a mediation is not an agreement the mediation is over and in fact sometimes a party leaves a conference while the other party does not consent the conference is over.

We would be interested in your take on this case and some of our conclusions and suggestions. The key take away is: Be aware of this case and don't risk being bitten by this decision, and gird your loins.



# Refugees, Asylum and Other Humanitarian Relief

*By Linda M. Kaplan*

Many news articles talk about refugees and asylum. Do you know the difference? This article was written to explain the terminology relating to available U.S. humanitarian relief. I hope that this provides information that will allow my readers to better understand what is happening at this time.

## Refugee

A refugee is a person who has been forced to flee their home country due to persecution because of their race, religion, nationality, political opinion, or membership in a particular social group (e.g., members of the LGBTQ community). The persecution a refugee experiences may include harassment, threats, abduction, or torture. A refugee is often afforded some sort of legal protection, either by their host country's government, the United Nations High Commissioner for Refugees (UNHCR) or both. In the United States, refugees are hand-selected by the U.S. government and are screened in advance. They are subject to background checks and security screenings by multiple U.S. agencies. Only after everything is approved are they brought to the U.S. to reside permanently.

The President of the US has the sole authority to decide how many refugees will be accepted each year. For the fiscal year ending September 30, 2023, President Biden authorized up to 125,000. The regional allocations and the number actually admitted as reported by the Refugee Council USA (rcusa.org) were:

| | Allocated | Admitted |
|---|---|---|
| Africa | 40,000 | 24,481 |
| East Asia | 15,000 | 6,262 |
| Europe and Central Asia | 15,000 | 2,765 |
| Latin America/Caribbean | 15,000 | 6,312 |
| Near East/South Asia | 35,000 | 20,194 |
| Unallocated Reserve | 5,000 | |
| Total | 125,000 | 60,014 |

The goal of 125,000 was not reached. The U.S. actually resettled 60,014 refugees – 48% of the goal.

## Asylum Seeker

An asylum seeker is a person who has fled persecution in their home country and is seeking safe haven in a different country but has not yet received any legal recognition or status. In several countries, including the U.S., asylum seekers are often detained while waiting for their case to be heard.

## Internally displaced person

An internally displaced person, or IDP, is a person who fled their home but has not crossed an international border to find sanctuary. Even if they fled for reasons similar to those driving refugees (armed conflict, generalized violence, human rights violations), IDPs legally remain under the protection of their own government – even though that government might be the cause of their flight.

## Migrant

A migrant is a person who chooses to move from their home for any variety of reasons, but not necessarily because of a threat of persecution or death. Migrant is an umbrella category that can include refugees but can also include people moving to improve their lives by finding work or education, those seeking family reunion and others.

## Temporary Protected Status (TPS)

TPS is a status that can be granted by the Secretary of Homeland Security due to conditions in the country that temporarily prevent the country's nationals from returning safely. Those who are found to be preliminarily eligible are not removable from the U.S., can obtain work authorization and may be granted travel authorization. TPS is a temporary benefit that does not lead to lawful permanent residence status, but it does not prevent one from applying for nonimmigrant status, filing for adjustment of status based on an immigrant petition or applying for any other immigration benefit or protections for which one may be eligible. While this is granted for an initial period of 18 months, it is often extended many times. I have clients who have had TPS so long that they have married and now have adult (over 21 years) children who are U.S. citizens having been born in the U.S. In some circumstances these adult children can petition for permanent residence for their parents.

TPS is currently available to nationals of Afghanistan, Burma (Myanmar), Cameroon, El Salvador, Ethiopia, Haiti, Honduras, Nepal, Nicaragua, Somalia, South Sudan, Sudan, Syria, Ukraine, Venezuela, and Yemen. https://www.uscis.gov/humanitarian/temporary-protected-status

## Humanitarian or Significant Public Benefit Parole for Individuals Outside the U.S.

This is a process that allows persons to be admitted to the U.S. for a temporary stay for a wide variety of humanitarian reasons. These requests may be based …

*Continued on page 11*

# THREE RIVERS LEGAL SERVICES: NEEDS ASSESSMENT

*By Samantha Howell, TRLS Pro Bono Director*

*"I alone cannot change the world, but I can cast a stone across the waters to create many ripples."*
~Mother Teresa~

Happy March and spring! As we embark on the season of rebirth, I thought it would be a good time to ask you, dear reader, for your input on pro bono opportunities. As you may know, legal aid organizations have to do needs assessments every so often to make sure that their services align with the needs of the communities they serve. In that vein, I am doing my own version of needs assessment to make sure that we are offering the opportunities that interest you (while also aligning those opportunities with client needs).

Please take two minutes to complete this six-question survey. You can scan the QR code or click on this link to access the survey. If you are more of a paper person, I have also provided the questions below; you can email your responses to samantha.howell@trls.org or mail them to TRLS, 1000 NE 16th Ave., Bldg. I, Gainesville, FL, 32601.

Your opinion is important to us and will help ensure that we are doing the best we can to serve you and our clients. Thank you for your time!

1. When did you last accept a pro bono referral for full representation?

- ☐ within the last year
- ☐ between 2-4 years ago
- ☐ 5 or more years ago
- ☐ never

2. When did you last engage in a limited scope pro bono project (clinic, etc.)?

- ☐ within the last year
- ☐ between 2-4 years ago
- ☐ 5 or more years ago
- ☐ never

3. If you have not accepted a pro bono referral in the last year, what would convince you to do so?

- ☐ CLE training
- ☐ Mentorship/co-counsel
- ☐ A magic wand so I have enough time
- ☐ Liability coverage for pro bono work
- ☐ Other: _____

4. How do you find out about pro bono opportunities?

- ☐ Florida Pro Bono Matters website
- ☐ Directly from a legal aid organization
- ☐ Other: _____

5. From whom do you accept pro bono referrals?

- ☐ Three Rivers Legal Services, Inc.
- ☐ Guardian ad Litem
- ☐ Southern Legal Counsel
- ☐ Other: _____

6. Which of the following opportunities would be of interest to you?

- ☐ Co-counseling on litigation
- ☐ Representing a client in litigation
- ☐ Conducting a community presentation on a law topic
- ☐ Learning a new area of law to provide advice/brief services (ex. Driver license reinstatement)
- ☐ Calling clients in the evening to advise them on their rights (housing)
- ☐ Working with clients 1-on-1 to complete pro se forms (divorce)
- ☐ Attending a clinic where I help clients complete pro se forms (divorce)
- ☐ Working with clients 1-on-1 to complete pro se forms (small claims)
- ☐ Attending a clinic where I help clients complete pro se forms (small claims)
- ☐ Attending a clinic where I help participants complete advance directives
- ☐ Other: _____

# A Basic Guide to the DOL's 2024 Rule on the Classification of Independent Contractors

*By Laura A. Gross*

On March 11, 2024, the United States Department of Labor's new rule on independent contractors goes into effect. Because the rule rescinds the more business-friendly version from 2021, it makes it more difficult for employers to hire and maintain independent contractors and gig workers. This change is likely to create classification challenges from employees and increase the litigation of misclassification and unpaid overtime lawsuits. Employers who misclassify workers can be liable for unpaid overtime going back three years, double damages, attorney fees and costs.

While the new rule does limit the use of independent contractors, it is generally consistent with earlier judicial precedent and the DOL's earlier interpretative guidance. It applies the following six factors to analyze employee or independent contractor status under the FLSA:

1. opportunity for profit or loss depending on managerial skill;
2. investments by the worker and the potential employer;
3. degree of permanence of the work relationship;
4. nature and degree of control;
5. extent to which the work performed is an integral part of the potential employer's business; and
6. skill and initiative.

The rule includes details regarding the application of each of these six factors. No factor has a predetermined weight, and additional factors may be relevant if they assist in the determination of whether the worker is in business for themself, as opposed to being economically dependent on the employer for work.

Not surprisingly, two federal court challenges have been filed seeking to stop the implementation of this new rule. Meanwhile, employers should review their independent contractor agreements and classification policies in light of the new rule to be prepared for its implementation.

# Examining the Chapter 776

*Continued from page 4*

Jury instruction on the duty to retreat prerequisites should not be routinely given. A jury should receive an instruction explaining the criminal behavior or righteous location prerequisite only if there is sufficient evidence (for example, a video of the incident) offered by the State for the jury to find the prerequisite was violated and there was a reasonably ascertainable manner of safe retreat which was not attempted. The jury should be instructed that the defendant would be relieved of the duty to retreat if a reasonable person would have concluded retreat was unavailable, although available, likely unavailing, or if the manner to effect retreat would have itself been unsafe. A person who was being threatened with a firearm, or one who came to the aid of another,[6] should be relieved of the duty to retreat as a matter of law.

When the State asserts either prerequisite was violated and there was an unmet duty to retreat negating the defense of justification, it is the State's burden to prove beyond a reasonable doubt the basis for imposition of the duty to retreat and the defendant's failure to satisfy that duty.[7]

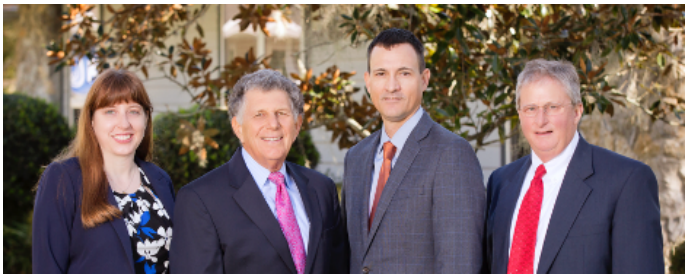
[6] *See Forum 8*, October 2022.
[7] *See Forum 8*, December 2022.

## NOMINEES SOUGHT FOR 2024 JAMES L. TOMLINSON PROFESSIONALISM AWARD

Nominees are being sought for the recipient of the 2024 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 26, 2024 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.

# Absence Procured by the Party

*By Siegel Hughes Ross & Collins*



I. INTRODUCTION

Of course, all shareholders have the rights articulated in the Corporate By-Laws under §607.0206, *Fla. Stat.*, and by any Shareholders' Agreement under §607.0732, *Fla. Stat.*, signed by all shareholders at the time of the Agreement. Beyond that, this will be a short article because there are few rights of a minority shareholder. However, under certain circumstances a minority shareholder may have rights it can assert against the majority and/or the corporation.

II. DIVIDENDS

The most well-known is the right to a proportionate share of dividends. However, there is no obligation that the majority shareholders vote to declare dividends. This can be particularly problematic if the majority shareholders work in the corporate business. In that case, any "profits" can be distributed to the majority as salary and/or bonuses to avoid dividends which must be shared with the minority. If that occurs, what is the minority shareholder to do? As stated above, the remedies are limited.

III. INFORMATION

All shareholders are entitled to inspect and copy specific records of the corporation at the corporation's principal office on five business days written notice. §607.1602, *Fla. Stat.* Review of more extensive records is required only if the demand is made in good faith and for a proper purpose, the shareholder describes the purpose and the records to be inspected, and the records are directly connected with the shareholder's purpose. §607.1602(3), *Fla. Stat.*

IV. DISSOLUTION

A minority shareholder may ask the Court to dissolve a corporation if the shareholder can prove that those in control of the corporation are causing damage to the corporation by wasting or misapplying corporate assets or that they have, are, or are reasonably expected to engage in fraudulent or illegal conduct. §607.1430(1)(b)(3) and (4), *Fla. Stat.*

V. ALTERNATE REMEDIES

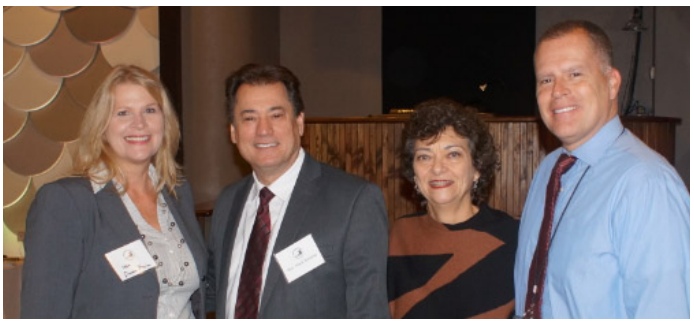
Unfortunately, even if there are grounds for judicial dissolution of a corporation such a remedy may be of little value to a minority shareholder. A corporate dissolution may yield only a fraction of the true value of the corporation. Fortunately, the law does provide alternate remedies. §607.1434, *Fla. Stat.* The Court may appoint a provisional director under §607.1435, *Fla. Stat.* Such provisional director must be an "impartial person who is neither a shareholder nor a creditor of the corporation or of any subsidiary or affiliate of the corporation…." §607.1435(1), *Fla. Stat.*

Also, if an action for dissolution is filed, the corporation or the other shareholders may elect to purchase the shares of the dissenting shareholder. §607.1436, *Fla. Stat.* If the election is made, the parties have sixty (60) days to agree on a price. If the parties cannot agree, the Court will determine the price by the value of the shares on the day before the petition was filed. This may be the best possible solution to the dispute. The dissenting shareholder received a fair price for his/her shares and the corporation and remaining shareholders are relieved of a disgruntled shareholder. However, even in this situation the minority shareholder is at a disadvantage. In determining the fair value of a corporation's shares, a discount for lack of marketability is a proper consideration. *Munshower v. Kolbenheyer,* 732 So.2d 385 (Fla. 3rd DCA 1999). Finally, if the Court determines there is "sufficient merit to warrant such a remedy" the Court may order the corporation and/or the other shareholders to purchase the dissenting shareholders' shares.

VI. CONCLUSION

While the law does provide some protections and some remedies for minority shareholders, such shareholders may well find themselves in a difficult situation in which the remedies are both uncertain and expensive. We will want to make sure our clients are aware of the risk before investing in a minority interest in a closely held corporation without the protection of a shareholder's agreement.

---



Judge Keim, Chief Judge Moseley, Judge Lancaster, and Judge Pena at January's EJCBA luncheon.

# Refugees, Asylum

*Continued from page 7*

on the need to obtain medical care not available in their home country, to be an organ donor to a person in the U.S, to care for a seriously or terminally ill relative in the U.S, to attend a funeral or settle the affairs of a deceased relative, or to participate in civil legal proceedings. These applications are discretionary and must be well documented. A person seeking parole to obtain medical treatment must document how the cost of the medical treatment will be covered – by insurance, personal funds or otherwise.

See https://www.uscis.gov/humanitarian/humanitarian-parole/guidance-on-evidence-for-certain-types-of-humanitarian-or-significant-public-benefit-parole-requests

### Deferred Action for Childhood Arrivals (DACA)

This program was established in 2012 to allow people brought to the U.S. as children to obtain work permission and to be protected from removal for 2 years, subject to renewal. You may be aware of the term Dreamers when thinking of DACA, but the term Dreamers often includes people not eligible for DACA. Due to an injunction, new DACA applications will not be approved but those with DACA status can still renew their status and continue to obtain work permission. https://www.uscis.gov/DACA

Over the years, there have been many proposals to grant permanent status to Dreamers but none of these have been enacted despite having popular support.

### Conclusion

Immigration law has been termed second only to the Internal Revenue Code in complexity. See *Baltazar-Alcazar*, 386 F.3d at 948 . This discussion of Humanitarian provisions in immigration law reflects only a small part of this complex body of law but it is my hope that my readers will now be better able to digest the news regarding immigration issues.

## 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, May 3, 2024, 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 "Understanding Generational Differences Affecting the Practice of Law" moderated by Scott Walker, Esq. with panel members Chief Judge Moseley, Stephanie Marchman, Kevin Jurecko and Danielle Adams.

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

## 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@cdsfl.org or by telephone at (352) 244-0628, extension 3824.

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, April 5th, 2024

$135/golfer ($125/golfer early registration)

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

Cost: $135 per golfer
$125 Early Registration

Registration and Outdoor Lunch: 11:00 AM
Tee Time: 12:30 PM
Outdoor Reception following the round.

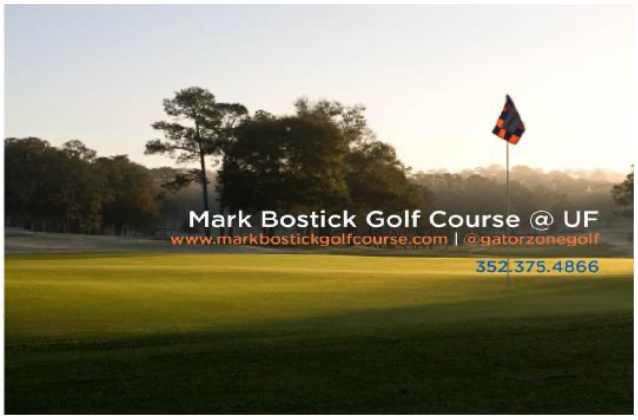
To register online please go to:

https://www.guardian8foundation.org/2024-ejcba-charity-golf-tournament-registration/

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
March 29th, 2024




The cost of this event is **$135 per golfer with an early registration discount of $125 per golfer** for those who register and pay by March 29th, 2024. 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,

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: $135 per golfer ($125 if registered & paid by March 29th, 2024)**

| | |
|---|---|
| Name (Golfer 1) | Name (Golfer 2) |
| Email | Email |
| Phone No | Phone |
| Name (Golfer 3) | Name (Golfer 4) |
| Email | Email |
| Phone | Phone |

## March 2024 Calendar

5 Deadline for submission to April Forum 8
6 EJCBA Board of Directors Meeting in Union County, 5:30 p.m.
13 Probate Section Meeting, 4:30 p.m. via ZOOM
20 Construction Law CLE with Brice Miller, Miller Building Group, LLC, 3-5pm, Location TBD
22 EJCBA Monthly Luncheon Meeting, Jennifer Sager, Ph.D., The Wooly, 11:45 a.m.
29 Good Friday, County Courthouses closed

## April 2024 Calendar

3 EJCBA Board of Directors Meeting via ZOOM, 5:30 p.m.
5 EJCBA Annual Charity Golf Tournament, "The Gloria" in Memoriam of Gloria Fletcher, UF Mark Bostick Golf Course, 11:00 a.m. lunch, Tee time 12:30 pm
5 Deadline for submission of articles for May Forum 8
10 Probate Section Meeting, 4:30 p.m. via ZOOM
12 EJCBA Leadership & Diversity Roundtable & Breakfast, "Bias In, Bias Out," The Wooly, 8:30 am – 11:45am
12 EJCBA Monthly Luncheon Meeting, Florida Bar President F. Scott Westheimer, The Wooly, 11:45 a.m.
26 Nominations due for 2024 James L. Tomlinson Award; email derek@foldswalker.com

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.