

FORUM 8

Volume 82, No. 9

Eighth Judicial Circuit Bar Association, Inc.

May 2023

President's Message

By Robert Folsom



Happy May, everyone! As our current EJCBA bar year is coming to an end, I want to encourage all of you to join a committee or volunteer to assist with planning a social event in the next EJCBA bar year with incoming president Monica Perez-McMillen. It is more important now than ever for our legal

community to gather, give, and grow. We are a small legal community; your engagement with the EJCBA allows the local bar to get to know new attorneys, to network, and to make our communities, both legal and non-legal, better.

The most significant way that you can help build our local bar is by joining the ECJBA board. The EJCBA's Nominating Committee is currently seeking members for 2023-24 board positions and committee assignments. Consider giving a little time back to your bar association. Please complete the online application at <https://forms.gle/ogB7gkyaUUoW8Rfi7>. For your consideration, a list of the 2023-24 EJCBA Project/Committee Descriptions can be found [here](#). The deadline for completed applications is May 1, 2023. The 2023 Nominating Committee is The Honorable Lorelie Brannan, The Honorable Susan Miller-Jones, 2022-23 President Robert Folsom, President-elect Monica Perez-McMillen, President-elect Designate Mikel Bradley, James "Mac" McCarty, and Jan Bendik.

This month we will have the opportunity to have Chief Justice Carlos G. Muñiz as our luncheon speaker. The presentation will be a moderated discussion with the chief justice, including the opportunity to ask pre-submitted questions. So, please send any questions that you would like to be asked of the chief justice to execdir@8jcba.org. I am hoping that we pack the Woolly for the chief justice's appearance. It is an honor for us to have him join us; and that honor should be reflected by our filling the event hall.

This is a perfect opportunity for our local bar to show the Chief Justice that we are an engaged bar.

On the evening of Thursday, June 1, 2023, we will have our annual meeting and dinner at 1908 Grand, which is an exquisite and transcendent location. The theme of the event is An Evening in Rio. The event will include not only Brazilian music, but also Brazilian cuisine and decor. It will be a glorious end to our bar year, and commemorate all that we have accomplished this past year. This is an event that you do not want to miss. And we welcome you to invite your friends, family, and members of the local bar who are not currently EJCBA members. We want our annual dinner and meeting to be a monumental experience.

As a reminder, the EJCBA depends on volunteers; and needs you to flourish. Again, consider joining the board or one of our committees. Organize a social event. Sponsor a social event. Invite a non-member to a monthly luncheon. And, as always, please share your ideas and suggestions with me or the board. We want your feedback, especially now as we are winding down our 2022-23 bar year and thinking ahead to 2023-24. You are the heart of the EJCBA. And we are committed to keeping you, the EJCBA, strong and healthy. The Board looks forward to seeing all of you soon at the monthly luncheon with Chief Justice Muñiz. Have a Happy May!



2022 - 2023 Board Officers

Robert E. Folsom

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

Evan M. Gardiner

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

Dominique Lochridge-Gonzales
Secretary

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

Monica Perez-McMillen

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

Mikel Bradley

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

Sharon T. Sperling

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

Members at Large

Jan Bendik

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

Raymond F. Brady

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

Cherie Fine

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

Allison Derek Folds

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

Blake Fugate

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@normfugatepa.com

Christopher Hopkins

2815 NW 13th Street, Ste 205
Gainesville, FL 32609
(352) 373-3334
chris@knellingerlaw.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 I
Macclenny, FL 32063
(904) 239-3155
frank@frankmaloney.us

James H. McCarty Jr. (Mac)

2630 NW 41st Street, Ste A
Gainesville, FL 32606
(352) 240-1226
mac.McCarty@mccartyfocks.com

George Nelson

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

Peg O'Connor

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

Lauren N. Richardson

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

Dawn M. Vallejos-Nichols - Editor

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

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



Q & A By a Really Smart Person

We get asked a lot of questions about mediation. We decided we would get a really, really smart person to answer your questions.

We selected Marilyn Vos Savant. Ms. Vos Savant gained fame in the 1980's when the Guinness Book of World Records listed her under

"Highest I.Q." from 1985-1989. Her I.Q. score on the Stanford-Binet at age 10 was 228.

As a result of the publicity from Guinness, Marilyn was given a column in Parade magazine entitled "Ask Marilyn." Her column addressed academic subjects, mathematical or vocabulary puzzles, and she answered reader questions asking about logic in their daily lives. She also answered some legal questions and we will provide one of those questions and her answer at the end of this column.

Now to be completely honest, we could not arrange for the Marilyn Vos Savant to answer your questions. We were able to have Chester Vos Savant, who is *not* listed in the Guinness Book of World Records for anything, field your questions.

Question #1 from Edgar Chaser: I represent plaintiffs in personal injury claims. If mediation is conducted by Zoom, should I have my client with me in my office?

Answer: Yes, you should. Why? Because your client may live in an area with poor internet service, or may have no clue about Zoom or basic technology. Also, when participating from home via Zoom, clients sometimes unload their dishwasher, wander outside, drive in their car, etc. We once had a party phone into Zoom for a mediation while on an elementary school field trip. Also, it is difficult to ensure confidentiality as one does not know who is behind the camera. Finally, don't you think your client would like to be with their lawyer on an important event in their litigation such as mediation?

Question #2 from Cassandra Avvocata: Should a participant in a Zoom mediation appear via both video and audio or just audio?

Answer: If the parties and counsel agree to attend mediation by Zoom they are agreeing to a platform that has two components: audio and video. To appear only by audio would be like agreeing to appear on a television program but only if the cameras are turned off, i.e., like radio. In ordering cases to mediation, the court should

specify that if Zoom is used for mediation *all* participants are required to appear by both audio and video. First, such a requirement just makes sense. Second, other participants often are offended when another participant does not turn on their camera. Also, it is arguably rude, without a compelling reason, to appear via audio only. By doing so you are appearing by half-Zoom not Zoom. We once had an insurance adjuster complain that the plaintiff's camera was turned off even though the adjuster's camera was also turned off.

Question #3 from Dewey Suem: Can I sign a settlement agreement at mediation on behalf of my client, or, in the alternative, can my client sign such an agreement electronically?

Answer: No and Yes. An attorney may not sign a settlement agreement at mediation for their client. This is yet another reason why you should have your client in your office for mediation. We have addressed this question in prior articles without using the *nom de plume* Vos Savant. And, yes, the agreement may be signed electronically.

Question #4 from Lisa Wendell Holmes: Can participants be required to attend mediation in person, or can they insist on appearing via Zoom?

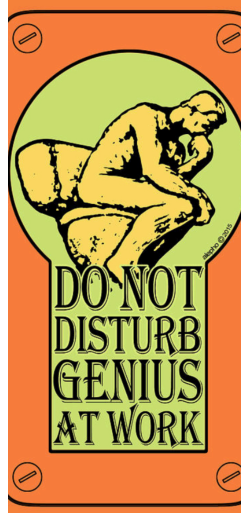
Answer: Yes, an in person appearance is what *is* required for mediation just as it was pre-Covid, *unless* the court allows Zoom or the opposing party consents to a Zoom appearance. Please take a glance at the Florida Rules of Civil Procedure on this point. Zoom is used so often lawyers seem to think they have a right to the Zoom process; however, as Lee Corso says: not so fast my friend. In person is still required absent agreement otherwise or a court order.

Question #5 from Buford Patisserie: Why doesn't a mediator provide the participants with lunch, snacks, coffee, and soda during a Zoom mediation?

Answer: Good question. After all, Uber Eats or Door Dash should be able to deliver such goodies. We see no reason why not so please ask your mediator in advance of the mediation. Be sure to request a vegan, lactose-free or gluten-free menu if needed or merely preferred.

NOW, for an *actual legal* question directed to Marilyn Vos Savant and her answer:

Continued on page 5



What About Your Mom?

By Cynthia Stump Swanson



Imagine this: You grew up in a pretty regular middle-class family. Your father worked hard to support your family, hopefully increasing his (and the family's) income year after year. This allowed you and your siblings to play sports, take music lessons, be an exchange student, and attend sleep away summer camps in the North Carolina mountains. Maybe you or your siblings needed special tutoring, speech therapy, or had a chronic illness needing lots of doctor's appointments and medication monitoring. Your father's hard work allowed your mother to stay home, arrange for and drive you to and attend all your practices, lessons, rehearsals, recitals, class plays, games, and doctor's appointments. She may have been a room mother, have brought snacks to all those sports practices, gone with you to away games, and read up on all the new advances in medicines and treatments for a certain illness. She also organized all the family birthdays, sleepovers, holidays, and vacations. Of course, your dad also came to as many of your games and recitals and doctor's appointments as he could, considering he was working full time, aiming for promotions, and earning the money that allowed you and your siblings to have a full and happy childhood.

Now, imagine this: After 20 years, your parents are getting divorced for whatever reason. Maybe your mother has spent so much time focusing on the kids and your father has spent so much time working hard that the two of them just don't have any connection with each other anymore.

So, here they are - probably about 45 years old. Your father has spent 20 years building up his career, his income, his retirement savings, and hopefully, investments for the family. Maybe the house is paid off, or close to it. Your father is at the top of his career, and the top of his earning capacity.

Your mother, on the other hand, has no career and no out-of-the-home work experience in the last 20 years. She may have a college degree that is now 20 years old, or she may not. In any event, your father is a good 20 years ahead of her in his ability to support himself.

The statutes and case law regarding equitable distribution do require that your mom will be entitled to half of all the net assets your parents have built up over the years. In this scenario, they have a house that was big enough to raise a family in, and that probably doesn't make sense for either of them to live in alone, so maybe they decide to sell it (or a court orders them to sell). With both of them so busy working and raising kids, there is likely a lot of deferred maintenance that needs to be

taken care of before the house can be sold for a good price.

But let's say it does sell, and there is \$300,000 equity to split. Your mother will receive \$150,000 cash. And she will receive half of the retirement savings, which at age 45 she can't touch without significant tax consequences. And she'll have her car which is likely several years old and may have a loan which needs to be paid off. Maybe there are some investments to split, maybe not.

With \$150,000 cash, but no income, no career, no relevant work experience, and no alimony – how is your mother going to survive for the next 25 or 30 years? Go back to college at age 45? How is she going to pay for it? And for her living expenses while she is also studying full time? And how is she going to compete in the work marketplace against 25-year-olds? Find a minimum wage job with no benefits? She might qualify for food stamps and Medicaid, though. Is that what you want for your mother? Let's say your dad pays her some alimony for five years or even 15 years. What does she do after that? She is then going to be back out on the minimum wage market, right? Only then, she'll be age 60. Meanwhile, your dad's career and his retirement savings, investments, and so on are only going to increase.

This legislative session's SB 1416 is the fifth time in the last ten years or so that alimony reform has been up before the Florida Legislature. In 2016, Gov. Rick Scott vetoed an alimony reform measure that contained an equal time-sharing provision. In his veto message, Scott wrote that the provision would "put the wants of a parent ahead of a child's best interest." Scott had previously vetoed a 2012 alimony reform measure, citing concerns about retroactivity and its potential impact on recipients. Last year, they took the equal timesharing presumption out of the bill, but Gov. Ron DeSantis vetoed the bill, also with concerns about the retroactive component.

This year, the bill does not include the retroactive provision, and this time even the Florida Bar Family Law Section has gotten on board. Family Law Section Chair Philip S. Wartenberg stated, "As drafted, the legislation provides commonsense modifications to alimony, including the elimination of permanent alimony, while also preserving the longstanding *Pimm* decision which pertains to the effects of retirement on alimony awards. We will support this legislation as it moves forward, as long as the bill is not amended to include provisions that would negatively impact existing alimony awards or otherwise be harmful to Florida's families." (The *Pimm* case, very briefly, allows the reaching of retirement age and retirement to be a basis for a possible modification to permanent alimony.)

Continued on page 5

What About Your Mom?

Continued from page 4

In the scenario above, it seems likely that your mom will be working at Walmart or Publix for minimum wage with no health insurance until she can qualify for Social Security and Medicare and start to make some withdrawals from the half of the retirement she received 15 years earlier. Your dad, on the other hand, is likely still working at an even higher rate of pay and has had 15 more years to contribute to his retirement savings. It's hard to see how this bill will NOT harm your mom in a scenario like the one posited here.

Of course, not all families fit this scenario. But an awful lot of middle-class families do. If this bill is passed and signed by the Governor, it will go into effect on July 1, 2023.

Time for all of you in 17+ year marriages who put off building up your career to raise your kids to hurry up and file for divorce now. Also, it's imperative for lawyers who are representing the spouse likely to stay home with kids in negotiating prenuptial agreements to be very proactive with your advice about alimony. Or, you know, make a provision in those prenuptial agreements to hire nannies or let grandparents raise the kids, while both parents work to build up their own careers so that neither of them ends up working at Pizza Hut after a 20-year marriage.

ADR

Continued from page 3

Question: Say one party to a lawsuit is truly in the right and the other party is wrong. Can we, as citizens, be confident that the right party will prevail in court?

Answer: No, but he or she stands a good chance of either winning outright or obtaining a compromise without bloodshed, which is one of the main reasons for the existence of court systems. Unlike battlefields in wartime, where anything goes, our judicial system attempts to impose fairness on fights without making prior judgments. That handicaps the person in the right, but it handicaps the person in the wrong even more. One can be totally in the right and still be outmaneuvered.

Chester Vos Savant adds: The rules of evidence also level the playing field and jurors may apply their biases to one side or the other or the cost of litigation cannot be borne by the person in the right. Note: Chester Vos Savant thinks by *adding* to Marilyn's answer he should now be in the Guinness Book of World Records and was dismayed when told Guinness no longer lists the highest IQ category.

THE RESOLUTION CENTER

Is pleased to announce the addition of

MONICA J. BRASINGTON

as a resident circuit civil mediator

She is available to assist with all your
Circuit civil mediation needs.

Please call (352) 381-9991 or
view the availability of all our *resident
mediators at:

www.resolutioncenter.org

* Charles B. Carter
Deborah C. Drylie
Toby S. Monaco
Victor L. Hulslander
Ben Hutson
Mary K. Wimsett
Monica J. Brasington

Edwards v. State: First DCA Denies Pretrial Self-Defense Immunity (Part 2)

By Steven M. Harris



In last month's *Forum 8*, I briefed the trial court's denial of pretrial immunity and the DCA's denial (majority and concurring opinions) of the writ of prohibition. Part 1 concluded with an introduction to the *dissenting* opinion of Judge B. L. Thomas.

DCA Judge Thomas found that Edwards' belief in the necessity to use deadly force against one or more punches to the head could be reasonable as a matter of law and that the State failed to prove by clear and convincing evidence it was not. He concluded the trial judge had improperly shifted the burden of persuasion.^[1] He challenged the other judges' focus on a notional relationship between Edwards and the deceased.^[2] He rejected as irrelevant Edwards' failure to render aid.^[3] Disagreeing with the trial judge and the majority opinion, he noted that Edwards' demeanor actually comported with having just shot someone in self-defense.^[4] Judge Thomas also noted the lead homicide detective - called by the defense, not the State - confirmed there was no forensic or physical evidence which refuted self-defense.^[5] Besides those points of disagreement, Judge Thomas opined that Edwards was independently justified to use deadly force since the deceased was committing a forcible felony.^[6]

Like Judge Thomas,^[7] I thought the State failed to disprove deadly force self-defense justification by clear and convincing evidence. I wasn't influenced by what Edwards did or didn't say or do after shooting, or because he did not swear to his motion or testify. I thought Edwards' petition for writ of prohibition could have been granted without extensive analysis of the trial court's framing failing and the State's statutory burden of proof failure. See, e.g., *Guida v. State*, No. 5D22-2694 (Fla. 5th DCA February 15, 2023) (trial court order denying immunity quashed and writ granted per curiam without narrative detailing trial court's error). My analysis included all of the observations offered and arguments made by Judge Thomas, including his reference to burglary.^[8]

I also considered the application of § 776.041(2), *Fla. Stat.*, due to the parties' engagement in mutual combat immediately before Edwards disengaged and withdrew to his bedroom. When the other combatant followed him uninvited into the bedroom, Edwards would have been justified to use non-deadly force (including firearm display and/or gun pointing) under § 776.012(1) and § 776.013(1) (a), *Fla. Stat.*^[9] When he was about to be punched (or punched again), a deadly force response (unburdened by

a duty to retreat) would have been lawful under § 776.012(2) and § 776.013(1)(b), *Fla. Stat.*^[10] Had there been clear and convincing evidence that Edwards' retreat to his bedroom was not a "good faith" mutual combat disengagement, but was, as the majority and concurring opinions suggested, simply to retrieve his firearm and shoot the other combatant, Edwards would have been barred by § 776.041(2)(b), *Fla. Stat.*, from asserting a justification defense.

^[1]"Yet, after the State rested its presentation of evidence and the defense asked the court to grant the motion, noting the State's burden, the trial judge declined to rule . . . until the defense 'complete[d] the motion hearing.'"

^[2]"This state long ago rejected the false premise that domestic violence was not a crime. See *generally* § 741.2901(2), *Fla. Stat.* (stating the explicit legislative intent for "domestic violence [to] be treated as a criminal act rather than a private matter"); Ch. 91-201, Laws of Fla."

^[3]"No one has a legal duty to render aid to a criminal aggressor..." I have observed that those who make "failure to render medical aid" an issue almost never analyze what specific aid might have been rendered to a mortally wounded gunshot person. Nor do they consider unavailability of specific life-saving specialty trauma supplies, whether such on scene aid would have increased survivability, and the danger of close contact with a wounded malefactor. The duty to render aid to someone upon whom you have lawfully inflicted injury is properly limited to law enforcement officers, when required by statute, the Fourteenth Amendment, or policy.

^[4]"[A] responding deputy and the lead homicide detective testified that Petitioner was distraught, crying, and emotional because of what had happened."

^[5]Edwards' motion for immunity averred that the responding ACSO Watch Commander concluded similarly.

^[6]"[O]nce the decedent criminally attacked Petitioner inside his home, the decedent's invitation to Petitioner's home was rescinded. Therefore, the decedent was in the commission of ... a burglary ..." See § 776.012(2) and § 776.013(1)(b), *Fla. Stat.* Deadly force is also justifiable by someone present in a dwelling house to resist any felony being committed upon or in the dwelling house. See § 782.02, *Fla. Stat.* However, Ch. 776 immunity is not available for deadly force justified under § 782.02, *Fla. Stat.*

^[7]"It is not within the province of the judiciary to diminish the legal right under the law of such persons to defend themselves when it is clear that they reasonably believe they are in imminent danger of death or great bodily harm." It isn't novel for self-defense justification to be determined as a matter of law. See, e.g., *Andrews v. State*, 577 So.2d 650 (Fla. 1st DCA 1991); *Brown v. State*, 454 So.2d 596 (Fla. 5th DCA 1984).

^[8]Edwards' motion also alleged the decedent attempted to suffocate him by covering his mouth so he couldn't call out and took away his cell phone so he could not call police, a felony (and under § 914.22(1)(e), *Fla. Stat.*, possibly a forcible felony).

^[9]The deceased combatant would not have been justified to use any force against Edwards' lawful non-deadly force (see § 776.012(1) and § 776.041, *Fla. Stat.*), and even if he was, would have been burdened with the duty to retreat (for lack of righteous location) to be justified to use force. See § 776.013(1) and § 776.012(2), *Fla. Stat.* Analysis of an incident from a "victim's perspective" must be cautiously made. See [October 2021 Forum 8](#).

^[10]Edwards' motion noted that medical examiner personnel confirmed the deceased's knuckles were bruised and bloody.

Continued on page 7

Edwards v. State

Continued from page 6

Alternatively, under § 776.041(2)(a), Fla. Stat., the State would have to prove (it didn't) Edwards could have but did not satisfy the imposed burden (other reasonable means exhaustion) before using deadly force. *Of note:* A person attacked in his own home is not constrained by a "meet force with force" paradigm. *Quaggin v. State*, 752 So.2d 19 (Fla. 5th DCA 2020).

It is beyond question that deadly force is justifiable to oppose force which is likely to inflict great *bodily harm*. A punch to the head (recognized by the majority opinion as being sometimes deadly), often results in permanent disfigurement, impairment of vision or hearing, intracranial hemorrhage or subdural hematoma. All are more likely to occur in an older person with existing health issues. They should be considered great bodily harm as a matter of law. See, e.g., *State v. Quevedo*, No. 3D21-2450 (Fla. 3d DCA March 15, 2023) (grant of pretrial immunity affirmed for defendant with blood clotting disorder who used deadly force to defend against threatened attack by unarmed younger person).

There seemed to be a lack of direct evidence of Edwards' state of mind because Edwards didn't testify or swear to his motion. It appears the majority and concurring opinions drew impermissible adverse inferences because of that. I thought Edwards' motion with its numerous incorporated references to the evidence clearly made out a prima facie case for Edwards' good faith belief of impending harm. Other than as would apply to my mutual combat analysis (see above), I was not concerned by the possible presence of a subjective motivation incompatible with lawful self-defense. It is true a defendant who asserts self-defense is required to have held an actual good faith (subjective) belief of impending harm. The belief component of self-defense has been a two-part inquiry for a very long time. See *Wilson v. State*, 11 So. 556 (Fla. 1892). See also, e.g., *Oquendo v. State*, No. 2D21-2408 (Fla. 2d DCA February 10, 2023) (based upon appearances the defendant must have actually believed that the danger was real). However, the heart of the defense of self-defense is an *objectively reasonable* belief in the imminence of the peril and the necessity for the force threatened or used. Blackstone's Ratio ("It is better that ten guilty persons escape than that one innocent suffer") and the objectively reasonable standard ought to cabin any reservation or speculation about a legally justifiable force user's contemporaneous ill-will, animosity or bitterness toward an unlawful attacker. A state of mind suggesting something other than lawful self-defense should be legally inconsequential when there is evidence the defendant suffered or was about to suffer an unlawful attack from the alleged victim.^[11]

^[11]Consider *Jefferson v. State*, 264 So.3d 1019, 1029 (Fla. 2d DCA 2018): "We are mindful that there will be situations where the accused is the only available witness to the events leading to an act that is claimed to be justifiable use of force. This may result in great difficulty for the State to overcome the accused's prima facie claim by clear and convincing evidence. But our result here is mandated by the text of section 776.032(4)." (Footnotes omitted).

SUBMIT PUBLIC & LEGAL NOTICES ONLINE

MAINSTREET DAILY NEWS HAS PARTNERED WITH COLUMN AND FLORIDA PRESS TO DELIVER A BETTER WAY FOR PLACING NOTICES IN ALACHUA COUNTY.

SAVE MONEY.
SAVE TIME.
PAY ONLINE.
PLACE 24/7.

↓

mainstreetgainesville.column.us



**MAINST
DAILY NEWS**
GAINESVILLE, FL







Know Your Legal History

By Krista L.B Collins



I have to say, I did not have Disney invoking the rule against perpetuities on my legal bingo card, but here we are. For those who somehow missed the story: in the ongoing legal drama between the DeSantis administration and the House of Mouse, Disney made an end run around the state's efforts to take control of the Reedy Creek

Improvement District by enacting a Declaration of Restrictive Covenants with a number of terms designed to protect Disney from interference from the new board and with a term described as follows:

This Declaration shall...continue to be effective in perpetuity unless all or certain portions of the provisions of this Declaration are expressly terminated as provided elsewhere herein; provided, however, that if the perpetual term of this Declaration is deemed to violate the "Rule Against Perpetuities," or any similar law or rule, this Declaration shall continue in effect until twenty one (21) years after the death of the last survivor of the descendants of King Charles III, King of England living as of the date of this Declaration.

Declaration of Restrictive Covenants, recorded in the Official Records in and for Osceola County, Florida, BK 6356, PG 302 on Feb. 8, 2023.

I'm sure most of us have fuzzy memories of learning the rule against perpetuities in law school and wondering "when am I ever going to need to know this?" Now we know! But what does this really mean for civil litigators? Are we all going to need to brush up on our Real Property 101 and get familiar with the rule against perpetuities, springing interests, and other bits of legal arcana? Probably not. While there will almost certainly be a significant amount of litigation over the Declaration and its

terms, it's unlikely that this is going to result in the rule against perpetuities being used on a regular basis where it wasn't before.

It is, however, an excellent reminder of the history of the legal profession. The common law on which we still rely today goes back hundreds of years—older than our state, older than our nation. As we consider the implications of developments in artificial intelligence on the legal profession, knowing and understanding that history becomes even more important. We learn some of that history in law school and many of us are fortunate to participate in organizations like the Inns of Court that call on that history in fostering a collegial environment as we continue to learn, mentor, and grow with each other. When we remember that history, use it and apply it to the problems we face today, we are all better off for it.

It's that time again!

The Eighth Judicial Circuit Bar Association Nominations Committee is seeking members for EJCBA Board positions for 2023-2024. Consider giving a little time back to your local bar association. Please complete the online application at <https://forms.gle/ogB7gkyaUUoW8Rfi7>. The deadline for completed applications is May 1, 2023.

Become a Safe Place

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

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



Report from RPPTL

By Rebecca L.A. Wood, Fund Sr. Underwriting Council



The Executive Council of the Real Property Probate and Trust Law (RPPTL) Section of The Florida Bar last met on February 25, 2023, at Sandestin Beach Resort in Miramar Beach, Florida.

As part of an awareness campaign, the Disaster and Emergency Preparedness and Response Committee brought a representative from the South Walton Fire District to provide a CPR refresher course, which emphasized the need for automated external defibrillators (AED) to be strategically located in public spaces. While the speaker emphasized the need to be trained on CPR and AED, he did say the AEDs are very user friendly and people should embrace, not fear them.

Proposed revisions to the Rules of Civil Procedure were expected to greatly impact the practices of those in both real property and probate and trust law practices. The Supreme Court of Florida adopted both of RPPTL's primary recommendations. Case Management under Rule 1.200, and classifying lawsuits into three tracks, streamline, standard and complex, will not apply to probate, guardianship, or trust cases. The Workgroup has been asked to propose amendments to the rule on mandatory disclosures modeled after the Federal Rules.

The committee on Professionalism and Ethics has proposed an amendment to Chapter 4 of the Rules Regulating The Florida Bar. Because they imply a fanatical and uncompromising approach, the proposal is to remove the words "zealously" and "zealous" from the preamble to Chapter 4 and the word "zeal" from the comment to Rule 4-1.3.

The 2023 legislative session is underway, and Section leadership meets weekly to track the progress of its own initiatives, and of other legislation that might impact the practices of RPPTL members. Efforts are underway to finalize proposals for the 2024 legislative session by July 2023, and there are already suggestions under consideration regarding possible legislative initiatives for the 2025 legislative session. Anyone interested in the soup-to-nuts process of lawmaking should consider becoming active in the Section.

8th Circuit Activities: More than 15 EJCBA attorneys came out for "Alphabet Soup" on February 21, 2023. This was a networking event with students from the UF Levin College of Law hosted by the North Florida Association of Real Estate Attorneys with sponsorship from RPPTL.

Next Executive Council Meeting:

May 31 – June 4, 2023

Executive Council Meeting & Annual Convention
Opal Grand Delray Beach, Florida.

Interested in becoming more involved with the RPPTL Section? Please contact an At Large Member – 8th Circuit:

Lead ALM: Rebecca Wood, BCS
Sr. Underwriting Counsel
Attorneys' Title Fund Services, LLC
rwood@thefund.com

Jeff Dollinger, BCS
Scruggs, Carmichael, & Wershow, PA
dollinger@scwlegal.org

Norm Fugate, BCS
Fugate & Fugate, a Law Firm
norm@normdfugatepa.com



Three Reasons to Celebrate Spring

By Samantha Howell, Pro Bono Director, TRLS



After my birthday season (Labor Day to Halloween), April and May are my favorite times of year. The weather starts warming up, plants are in full bloom, Gainesville traffic will be easing up in a few short weeks (haha), and I have three opportunities to celebrate the

amazing folks I work with!

The first is National Volunteer Week, which was April 16-22, 2023, and a chance to spotlight amazing volunteers. And, gosh, do we have a lot of amazing volunteers! In the last year, nearly 200 people volunteered with Three Rivers Legal Services, including over 150 attorneys! These folks took on full representation cases, advice/brief services, took calls with our virtual Housing Clinic, attended Ask-A-Lawyer events, and drafted memos on legal issues. I'm not sure it will ever be possible to say "THANK YOU" enough to these amazing people who help TRLS staff and the community so selflessly.

The next event is Well-Being Week in Law, which is May 2-6, 2023. If you have had a ten-minute conversation with me, you probably picked up on my concern for the health of the profession and its practitioners. When I work with law students, I strongly encourage engaging in healthy self-care practices as early as possible in the profession. Unfortunately, the legal profession has a pretty bad reputation when it comes to mental wellness. Studies have shown that:

1. While about 6.7% of the U.S. population has reported issues with depression, more than 45% of attorneys experience depression.
2. More than 36% of attorneys have indicated that they struggle with alcohol abuse.
3. More than 9% of attorneys struggle with prescription drug abuse.

Fortunately, there are some fantastic resources for lawyers, including the Institute for Well-Being in Law (lawyerwellbeing.net), Florida Lawyers Assistance (fla-lap.org), and The Florida Bar's Mental Health and Wellness Center (Florida Lawyers Helpline: 833-351-9353; floridabar.org/member/healthandwellnesscenter).

Finally, the first week of May is the ABA/NLADA Equal Justice Conference. I describe this conference as the public interest/pro bono lovefest. Hundreds of pro bono professionals, volunteer attorneys, bar leaders, and firm pro bono counsel converge for three days of training, networking, and fun. It is a great opportunity to learn

about projects from around the country, emerging hot trends and best practices, and to brainstorm responses to disaster-related issues.

Through these events, I get to celebrate and honor volunteers, colleagues, and friends. I hope you will take a moment to honor the volunteers in your life, too!

Of course, your decision to volunteer is an important one. Not only can you help the community, you can learn new skills and areas of the law that can increase your business. In addition to training materials and mentorship, Three Rivers Legal Services provides liability coverage, recognition for service, and reimbursement for litigation costs. ***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.

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: May 20th at GRACE Marketplace (Gainesville), June 17th in Gilchrist County (location TBD), and July 22nd at Peaceful Paths (Gainesville).

Law in the Library - These are community outreach events, wherein a volunteer presents on a legal topic for about 40 minutes and then answers a few audience questions. We have concluded the 2022-2023 season and will provide more information later this summer on up-coming sessions.

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

Continued on page 11

Three Reasons to Celebrate Spring

Continued from page 10

1. **Alachua County** (multiple cases) - draft living will for senior citizen
2. **Alachua County** (23-0348765) - prepare will and quit claim deed for client
3. **Alachua County** (23-0347386) - assist adult client in obtaining name change
4. **Alachua County** (23-0347460) - help client establish QIT/special needs trust
5. **Alachua County** (23-0346852) - assist client with completing pro se divorce forms

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) - represent client in criminal record expungement
2. **Alachua County** (23-0346973) - represent client in filing modification to parenting plan

3. **Alachua County** (22-0345601) - represent client in a BAR hearing seeking a hardship driver license
4. **Alachua County** (23-0348108) - represent client in criminal record expungement
5. **Bradford County** (22-0341608) - represent client in criminal record expungement (client is located in Alachua County)

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

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

If you have any questions or would like to participate in any of the above, please contact me at samantha.howell@trls.org or 352-415-2315. You can also select an available case and learn more about TRIS's Pro Bono Legal Assistance Program (PBLAP) at <https://www.trls.org/volunteer/>.

Upchurch Watson White & Max Mediation Group



John D. Jopling
jjopling@uww-adr.com

welcomes John Jopling
to its distinguished panel of neutrals.

- » Longtime practice focused on defense of medical malpractice cases and including various other civil litigation cases, such as personal injury, civil rights, commercial and governmental liability.
- » Recognized repeatedly by Florida Super Lawyers® and admitted into the American College of Trial Lawyers in 2002.
- » Past president of the North Florida Chapter of the American Board of Trial Advocates.

MEDIATION | ARBITRATION | E-DISCOVERY | SPECIAL MASTERS
Successfully Resolving Conflicts in Florida,
Alabama & Nationwide Since 1988

CALL TOLL FREE: 800-264-2622 | READ MORE & SCHEDULE: WWW.UWW-ADR.COM



[linkedin.com/company/upchurch-watson-white-&-max](https://www.linkedin.com/company/upchurch-watson-white-&-max)



www.facebook.com/UWWMMediation



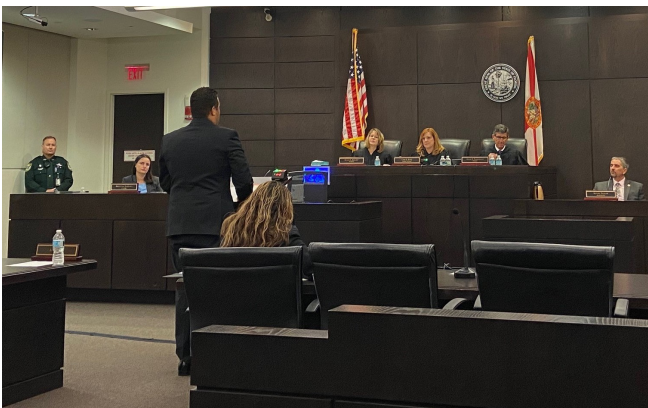
[@UWWMmediation](https://twitter.com/UWWMmediation)



Food4Kids Mentoring Event with UF Law Students, February 2023



First DCA Comes to Gainesville for Oral Arguments on February 22, 2023



Michael J. Schwartz, Esq. of Vecchio, Carrier, Feldman & Johannessen, PA in Lakeland before First DCA Judge Susan Kelsey, Chief Judge Lori Rowe, and Judge Adam Tanenbaum



Mathew R. Kachergus, Esq. of Sheppard, White, Kachergus, and DeMaggio, PA of Jacksonville argues his case before Judges Kelsey, Rowe and Tanenbaum



Local attorneys, magistrates and judges welcome First DCA judges to Gainesville on February 22, 2023



**SCRUGGS, CARMICHAEL
& WERSHOW, P.A.**

Attorneys at Law

**We've moved!
Our new address is now
4923 NW 43rd Street
Gainesville, Florida 32606**

May 2023 Calendar

- 1 Deadline for completed applications for EJCBA Board of Directors or committee membership
- 3 EJCBA Board of Directors Meeting, Stephan P. Mickle, Sr. Criminal Courthouse, 220 South Main Street, 3d Floor Conference Room, or via ZOOM, 5:30 p.m.
- 5 Deadline for submission of articles for June Forum 8
- 9 EJCBA Annual Spring Fling, 6-10pm, Boxcar Beer & Wine Garden
- 10 Probate Section Meeting, 4:30 p.m. via ZOOM
- 12 EJCBA Monthly Luncheon, Florida Chief Justice Carlos G. Muñoz, The Woolly, 11:45 a.m.
- 29 Memorial Day, County & Federal Courthouses closed

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 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.