

# FORUM 8

Volume 82, No. 3

Eighth Judicial Circuit Bar Association, Inc.

November 2022

## President's Message

By Robert Folsom



November is traditionally a time for giving thanks. I would like to thank all of you who have contributed time, money, and resources to those who have been affected by Hurricane Ian. If you have not taken action to assist those in need, I would encourage you to do so at any of the following websites:

- <https://www.floridabar.org/public/consumer/hurricaneinfo/>
- <https://flayld.org/disaster-legal-services-hotline/>
- <https://www.disasterlegalaid.org/>
- <https://thefloridabarfoundation.org/florida-hurricane-legal-aid-fund/>

Having been through the trauma of Hurricane Hugo in Charleston, South Carolina, in 1989 and Hurricane Katrina in Miami in 2005, I know how important it is for people to have support and adequate, available resources to sustain themselves, both physically and mentally. To the members of the Eighth Judicial Circuit who have given of their time and resources, your generosity is greatly appreciated. The citizens of Florida need to know that the legal profession is there for them in tumultuous times, when they need our assistance the most.

Thank you to everyone who has renewed their EJCBA membership and participated in the EJCBA events in September and October. It was great seeing, and speaking with, everyone at the James C. Adkins, Jr. Cedar Key Dinner, as well as the October luncheon and Fall Family Friendly social event. More importantly, it was an honor to present the robe of office to The Honorable Lorelie Brannan during her investiture. Judge Brannan is

an outstanding jurist; and we are proud to have her as a judge in our circuit.

Thank you, as well, to Rick Knellinger for donating to our Oral History Project. Mr. Knellinger provided us with documents that once belonged to Sigsbee Scruggs, who was a cornerstone of the circuit's legal community for decades. These types of historical documents give us insight into the distant past of our local bar. And memorialize moments in time that are often forgotten over the passage of time as our more seasoned attorneys retire or pass away. The EJCBA would like any attorneys or firms who have historical material related to our local bar, or even our local communities, to consider contributing them, either in their original form or as copies, to our Oral History Project. As I've mentioned in prior messages, this is a vital endeavor for our organization. We need to honor those who have come before us, and those who are still among us, that have been foundational to our bar and community. Even if you do not have documents to give, please consider volunteering your time or resources to help us archive, either orally or materially, our local bar's history.

Looking forward, the Board is currently planning our Holiday Party, which will occur on an as-of-yet undetermined day in December; and at an as-of-yet undetermined location. If any of you would like to join the Holiday Party committee, or volunteer to assist in an informal way, please contact me. Your engagement is welcome and valued, particularly as we move into the holiday season. Hopefully, Immediate Past President Evan Gardiner will regale us with his festive Christmas suit. For those of you who don't know what that is, you are in for a treat. It is spectacular.

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## Contribute to Your Newsletter!

*From the Editor*

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

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## About this Newsletter

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

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

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

# Alternative Dispute Resolution

By Chester B. Chance and Charles B. Carter



## Things A Mediator Should Not Do

Larry Langer wrote an article on the topic of ten things a mediator should not do during a mediation. We thought we would go over some of his no-no actions.

Do not humiliate an attorney. If an attorney makes a mistake about the law or is unaware of a certain fact, try not to humiliate that attorney in front of their client. This comes up more than you think: an attorney may not be aware the other side served a proposal for settlement; or, may not know the last pre-mediation offer or demand from the other party. Lots of opportunities occur to discuss that privately, and in Zoom conferences, the opportunity may be in a separate caucus room which should always be created by the mediator just for occasions like this.

Do not be overly friendly with the attorneys in front of the lay participants. We sometimes tend to do that and forget how the lay person may perceive the joking or banter. They may perceive such action as bias. The lay person is typically nervous at mediation and kidding or being overly friendly can only confuse them. Note to self.

Do not inject your views on credibility issues. Mr. Langer suggests "you do not know what you do not know." Still, credibility can be discussed by reading the jury instruction on credibility and testimony, or, gently dealing with it if it truly is an issue. But in dealing with it, gentle is better than brutal.

Mr. Langer also suggests the mediator should leave their sense of humor at home. But he acknowledges humor can help diffuse a situation or establish rapport. Just be aware of what, when and who. Again, note to self.

Avoid legalese. It tends to intimidate a party. But, again, some legal issues *need* explanation. For example, explaining how a proposal for settlement works is difficult to do with a party. But it may be necessary. When grappling with legal concepts, slow and understanding work best.

Do not fail to give a lay party the opportunity to express themselves. It allows them to vent. It allows them to express what matters to them. Hey, it can be informative in any number of ways. Let them talk. Attorneys: that is good advice for you also when dealing with your clients.

Try not to show pessimism too early. The mediator is supposed to be the positive and confident one in the room. The success rate of mediation is very high. Always remind people of that high success rate.

Actually, we read articles and texts like the one by Mr. Langer to remind ourselves as mediators what we should and should not do. Feel free to remind us and other mediators when we get lax on some of the no-no things. Or, feel free to apply some of these maxims to yourself at mediation.



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## President's Message

*Continued from page 1*

Speaking of the holiday season, the EJCBA will soon be reaching out to everyone to solicit donations to the Annual Margaret Stack Holiday Project, which benefits schools and students within our circuit. The Holiday Project is another opportunity to show that we are invested in our local communities.

As we move into the holiday season, I encourage you to volunteer your time and expertise as mentors, presenters, gatherers of new members, and leaders. And, as I mentioned last month, consider volunteering at the circuit's Self-Help Center and law library. Volunteer for Three Rivers Legal Services or Southern Legal Counsel; or another public interest organization. Support the wellness of your peers, as well as your own health and wellness (which is also important). Be an inspiration to those who need inspiring.

The board looks forward to seeing all of you at our monthly luncheon in November. Your attendance at our monthly luncheons is important. And we welcome your ideas and suggestions, either in person, by email, or by phone for ways that we can improve your monthly luncheon experience. We welcome, as well, ideas and suggestions for events that you would like us to present and for you to participate in. Your support of our organization and community is valued by all of us on the board. You are what makes us strong and successful. Have a great month of November!



# Giving Thanks All Month Long

By Samantha Howell, Pro Bono Director



As we move into the holiday season, it is a good time to reflect on our individual bounties, our successes (and failures), and to build inspiration for the new year.

I, for one, am grateful for my family and friends who lovingly put up with me and all of my silliness (including my recent obsession with camping). I am grateful for my health, which took a very serious hit last year, and my furbabies who continue to tolerate my presence (they're cats - can you tell?). I am grateful for my job and colleagues who have become wonderful friends and mentors. And, I am thankful for you, dear reader. Even if we have never met, because you are pausing your day to read this.

A wise person once said that saying your goals out loud creates accountability and helps you achieve success (though, folks with gym memberships may disagree). But, let's give it a go: My goal for 2023 is to have 20% of the attorneys in the Eighth Circuit - there are about 1050 of you! - commit to taking one (1) pro bono referral from TRLS. So, mark your calendars and expect a call or email!

Fortunately, there are a multitude of pro bono opportunities available - literally, something for everyone, including:

**Telephonic Housing Clinic** - This advice-only clinic is offered every Tuesday from 5pm-6:30pm. 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. Volunteers complete an online form so that TRLS knows what advice was given and if any follow-up by TRLS is needed. This is the easiest way for you to assist your community.

**Pro Se Divorce Clinics** - The next clinic will be offered at the TRLS Gainesville Office on December 19 (Mon). From 9am-11am, a volunteer will guide participants through the pro se divorce packet for those with minor children. From 2pm-4pm, a volunteer will guide participants seeking a simplified divorce, or filing for divorce without minor children. TRLS will be present to assist (and notarize). Volunteers can do one or both sessions, and staff will also be on-site to assist.

**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 10am-12pm. Our next clinic is November 12th at the Civic Media Center. Volunteers should arrive by 9:45am and plan to stay till 12p.

**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. The clinics are presently being held via Zoom and will be at the Alachua Library Main Branch when they return to in-person (recordings of the sessions are available on the Library website). They are scheduled for the 1st Wednesday of each month at 5:30pm. TRLS's Kevin Rabin presented in September on Evictions/Defense and Joel Osborne and Dennis Ramsey presented earlier this month on the new traffic laws in Florida. Upcoming presentations include:

- January 4th - Estate Planning with Leigh Cangelosi
- February 1st - Car and Pedestrian Accidents with Ray Brady and Peg O'Connor
- March 1st - LITC/Taxes with Derek Wheeler

I am still working on scheduling for April. If you are interested in presenting on a legal topic, please let me know!

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

1. Levy County - Client is parent to minor child, who has physical limitations and needs constant care. Client would like to pursue guardian advocacy. (22-0343376)
2. Alachua County - Client needs to draft a will. There are two adult children and no real property. (22-0343295)
3. Alachua County - Client needs to probate mother's estate. Client is the only heir and there is real property (homestead) involved. (22-0342021)
4. Alachua County - Client would like to change the name on her deed from married name to maiden name. (22-0344214)
5. Alachua County - Client would like help with criminal expungement (arrest from several decades ago). (22-0338862)

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# The Future Looks Bright

By Rebecca Wood



The first general body meeting of the Real Estate Law Association (RELA) at the University of Florida was held on September 7, 2022. The student association was formed by David Allen, Andrew Diamond, Alexandra Guerra, and Sarah Cate Harrison during the 2021-22 academic year. The student association's mission is to expose law students to real property law and its interplay with other practice areas by presenting themed speaker panels and offering mentorship opportunities. The RELA's theme for this semester is "High Rises Gainesville: from Start to Finish." Presentations are planned with key players in the high-rise development happening near campus, beginning with "Due Diligence" on October 4, 2022. The panelists covered topics from the developer's point of view to zoning and planning hurdles and title insurance.



The Trust and Estates Legal Society at the University of Florida held its first general body meeting on September 13, 2022. The student organization is in the process of writing its bylaws and staffing its executive board. President Meghan Griffin and Faculty Sponsor, Professor Danaya Wright announced that the social organization will focus on encouraging its members to be involved with the Florida Bar and provide opportunities for students in need of completing the 40-hour pro-bono services graduation requirement. Professor Wright explained the opportunities for students to help complete summary administration forms at the county's self-help office in downtown Gainesville, or volunteer for the "Heirs Property" project she is coordinating with local leaders. The project involves interviewing people living in homes



they've inherited from their ancestors, without formal probate administration ever being done.

College of Law students, working with Professor Wright, will be volunteering in the self-help clinic at the Alachua County Courthouse to assist community members in doing pro se family law and probate and are always looking for supervising attorneys willing to help. If you are interested in providing supervision, please reach out to EJCBA Member Rebecca Wood by email at [rwood@thefund.com](mailto:rwood@thefund.com).



# “Self-Defense Immunity” Revisited

By Steven M. Harris



I wrote on the fundamentals of immunity under § 776.032, *Fla. Stat.*, in the [February 2020](#) and [May 2021](#) issues. I identified selected immunity related issues and caselaw in several other **Forum 8** articles. I write here on the trial court process for criminal prosecution immunity under § 776.032(4), *Fla. Stat.*, as outlined by recent district court opinions.

“Self-defense immunity” can be sought when a defendant claims non-deadly or deadly force was threatened or used justifiably in defense of self or another (§ 776.012, *Fla. Stat.*), for “home protection” (§ 776.013, *Fla. Stat.*), or in defense of real or personal property (§ 776.031, *Fla. Stat.*). It is not available when § 782.02, *Fla. Stat.*, is claimed to provide the legal justification for the use of deadly force.

Immunity should not be confused with “stand your ground.” That pertains only to the narrow question of duty to retreat or privilege of nonretreat before threatening or using otherwise justified deadly force. I previously explained the pretrial hearing to determine immunity is **not** a “Stand Your Ground hearing.” At least two district judges agree. See [Swift v. State, No. 1D21-799](#) (Fla.1st DCA, July 20, 2022) (pretrial hearing on defendant’s entitlement to immunity has almost nothing to do with the so-called stand your ground; judges should not refer to the provisions of § 776.032, *Fla. Stat.*, as “Stand Your Ground Immunity”).

A criminal defendant initiates the process to obtain immunity in advance of trial by filing a timely *motion to dismiss* under Fla.R.Crim.Proc. 3.190(b). The motion does **not** need to be sworn or supported by evidence or testimony. According to [Riggins v. State, No. 2D21-3627](#) (Fla. 2d DCA, August 19, 2022): The motion need only allege a “facially sufficient” claim of justifiable force. The trial court is to “assume all facts as true.” Thereafter, the defendant must “present argument in support of the motion” at a “pretrial immunity hearing.” If the alleged facts “satisfy the requirements of the applicable self-defense statute raised by the accused, the burden shifts to the State to present clear and convincing evidence to overcome the self-defense claim.” See also *State v. Cassaday*, 315 So.3d 705 (Fla. 4th DCA 2021). In *Huckelby v. State*, 313 So.3d 861 (Fla. 2d DCA 2021), the court noted the defendant has no evidentiary burden once a prima facie claim of immunity is offered. The First District has yet to consider the formulation described in *Riggins*. See *Rogers v. State*, 301 So.3d 1083 (Fla.1st DCA 2020) (“... we have not considered the question

whether a party seeking immunity must present evidence to raise a prima facie claim.”).

The trial court must adjudicate any disputed facts. *Dennis v. State*, 51 So.3d 456 (Fla. 2010), approving *Peterson v. State*, 983 So.2d 27 (Fla. 1st DCA 2008). See also *Swift*, supra. The court’s findings of fact must be supported by *competent substantial evidence* in order to be entitled to appellate deference. See *Derossett v. State*, 294 So.3d 984 (Fla. 5th DCA 2020); *Hair v. State*, 17 So.3d 804 (Fla. 1st DCA 2009).

The ultimate issue for the trial court is a mixed question of law and fact. *Bouie v. State*, 292 So.3d 471 (Fla. 5th DCA 2020). The State has to prove by clear and convincing evidence that based on the circumstances as they *appeared* to the defendant, a reasonable and prudent person situated in the same circumstances and knowing what the defendant knew would **not** have threatened or used the same force as did the defendant. See, e.g., *Craven v. State*, 285 So.3d 992 (Fla. 1st DCA 2019), and generally, *Toledo v. State*, 452 So.2d 661 (Fla. 3d DCA 1984). *Of note*: The defendant can be mistaken as to the threat or its imminence, the necessity to threaten or use force, or the victim’s commission of a forcible felony, and still be granted immunity. Thus, the State bears a heavy burden. See *Bouie*, supra. Where two credible competing versions of the event are presented by competent evidence, the clear and convincing burden has not been met, and the motion should be granted.

The above-described process might seem inaptly defendant friendly. If it actually is, that would be appropriate, being analogous to the very low evidentiary threshold imposed for a defendant to be entitled to a jury instruction on justification. See, e.g., *Martin v. State*, 110 So.3d 936 (Fla. 1st DCA 2013). Moreover, judges determining justification from an evidentiary record as a matter of law isn’t something novel. See, e.g., *Andrews v. State*, 577 So.2d 650 (Fla. 1st DCA 1991).

Defense counsel should not interpret the minimal prima facie showing described in *Riggins* as an invitation to file a perfunctory or boilerplate motion. A pretrial evidentiary hearing may be denied when a motion fails to meet the “threshold pleading requirement.” *State v. Moore*, 337 So.3d 876 (Fla. 3d DCA 2022). According to *Moore*, a defendant must allege facts sufficient to fully satisfy the particulars of the Chapter 776 provision(s) asserted for justification.

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# New Rules for Statutory Construction?

By Siegel Hughes & Ross



For decades the first principle of statutory construction has been, “[w]hen the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction.” *Holly v. Auld*, 450 So.2d 217, 219 (Fla. 1984). However, on August 25th of this year the Supreme Court declared that principle to be “misleading and outdated.” *Conage v. United States*, 22 WL 3651398, \*7 (Fla. 2022).<sup>[1]</sup> In *Conage* six members of the Florida Supreme Court elevated “traditional canons of statutory interpretation” to equal status with the language chosen by the legislature. “Viewed properly as rules of thumb or guides to interpretation, rather than as inflexible rules, the traditional canons of statutory interpretation can aid the interpretive process from beginning to end....” *Id.* at \*7. “It would be a mistake to think that our law of statutory interpretation requires interpreters to make a threshold determination of whether a term has a “plain” or clear meaning in isolation, without considering the statutory context and without the aid of whatever canons might shed light on the interpretive issues in dispute.” *Id.* at \*8.

However, it is fair to ask how closely this new approach to statutory construction will be followed. Justice Labarga, concurring in the result, took issue with the majority’s holding that the principle articulated in *Holly v. Auld*, *supra*, was “misleading and outdated.” *Id.* at \*22. He correctly pointed out that on May 26, 2022, a mere 92 days previously, a unanimous Court had quoted *Holly v. Auld*, *supra* at 219 that, “When the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction.” *Id.* at \*22-23, quoting *Shim v. Buechel*, 339 So.3d 315, 317 (Fla. 2022).

Raising even more questions about the general applicability of the approach taken by the Court in *Conage* is the decision of the Court in *1944 Beach Boulevard, LLC, v. Live Oak Banking Company*, 22 WL 3650803 (Fla. 2022).<sup>[2]</sup> That opinion was issued on August 25, 2022, the same day the *Conage* opinion was issued, yet a unanimous Court took a different approach stating, “Thus we begin with the statute’s text.” *1944 Beach Boulevard, LLC*, at \*8. In the *Beach Boulevard*

case the Court stated that the task begins with the text itself, with no reference to “considering the statutory context” or “whatever canons might shed light on the interpretive issues in dispute.” In *1944 Beach Boulevard, supra*, the Court stated the process is to determine “how a reasonable reader, fully competent in the language, would have understood the text at the time it was issued.” *Id.* at \*8, quoting *Ham v. Portfolio Recovery Assocs., LLC*, 308 3d 942, 947 (Fla. 1920).

A cynic might conclude there are different approaches to statutory interpretation of criminal statutes and commercial statutes.

Another interesting question is to what extent the new approach to interpretation of statutes will be applied to contractual language. Construction of contractual language has also traditionally begun with the language of the contract. “In contract interpretation, the words used by the parties must be given their plain and ordinary meaning, and one looks to the dictionary for the plain and ordinary meaning of words....” *Beans v. Chohonis*, 740 So.2d 65 (3<sup>rd</sup> DCA 1999). “It is fundamental that where a contract is clear and unambiguous in its terms, the court may not give those terms any meaning beyond the plain meaning of the words contained therein....” *Dows v. Nike, Inc.*, 846 So.2d 595 (Fla. 4<sup>th</sup> DCA 2003). Is that approach now “misleading and outdated?” Are we now to determine the plainness or ambiguity of contractual language not only by reference to the language itself but also to “the specific context in which that language is used, and the broader context of the statute as a whole?” *Conage* at \*7. Will the holding of *Conage* be applied to interpretation of contractual language as well as statutory language? In construing a contract should the court continue to look first at the “plain language” of the document or can the traditional canons of contractual interpretation aid the interpretive process “from beginning to end”?

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<sup>[1]</sup> *Conage* addressed the interpretation of the word “purchases” as used in Florida’s drug trafficking statute, §893.135(1), *Fla. Stat.*, in response to a question certified by the U.S. Eleventh Circuit Court of Appeal.

<sup>[2]</sup> The *Beach Boulevard* case also addressed a question certified by the Eleventh Circuit asking about the interpretation of the words “standard search logic” as that term is used in Florida’s commercial code, §679.5061(3), *Fla. Stat.*

# Florida Awarded \$13 Million to Phase Out Subminimum Wage

By Laura A. Gross



Our tight US labor market has kept upward pressure on wages for most employees. As I mentioned last month, one example is the increased minimum wage for direct care employees of Florida Medicaid providers which became \$15/hr as of October 1. But some employees receive less than minimum wage. How is that possible? Workers with intellectual or physical disabilities can be hired to work under

certificates that allow employers to pay them subminimum wage. According to the Department of Labor, 100,000 people in the United States are paid subminimum wage. According to the United States Commission on Civil Rights, the average wage of a person with a disability who was working under such certificates between 2017 and 2018 was only \$3.34 per hour.

This year, the federal Subminimum Wage to Competitive Integrated Employment (SWTCIE) pilot program is providing five-year grant awards for states to help employers transition to paying competitive, fair wages to people with disabilities. Florida, one of the fourteen states to be awarded funds, will receive \$13 million. The grants will be distributed by the US Department of Education to the states' vocational rehabilitation programs and their partners. These agencies will endeavor to link people with disabilities to green jobs and opportunities in essential worker industries, the transportation industry and the arts where they will work alongside their peers without disabilities for comparable wages. Meanwhile, subminimum wage conditions continue as we await details on the distribution of these funds.

# Giving Thanks All Month Long

Continued from page 4

6. Alachua County - Client is in need of guidance for guardian advocacy case. Client is elderly veteran seeking to be guardian advocate of an adult son with autism.

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](mailto:samantha.howell@trls.org) or 352-415-2315. You can also select an available case and learn more about TRLS's Pro Bono Legal Assistance Program (PBLAP) at <https://www.trls.org/volunteer/>.



## 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](mailto:Paula_moreno@cdfsfl.org) or (352) 244-0628, extension 3865.





## “Self-Defense Immunity” Revisited

Continued from page 6

Thus, a defendant’s motion should (as applicable) address the nature of, imminence and necessity for the force threatened or used, the foundation of the defendant’s reasonable belief, aggressor provocation (see [June 2022 Forum 8](#)), the righteousness of his behavior and/or location (as would pertain to a duty to retreat or privilege of nonretreat), and the particulars of any forcible felony asserted to have compelled his or her intervention to threaten or use deadly force. See [May 2020 Forum 8](#). Actual and/or constructive possession, relationship to an owner or possessor, or the basis for a legal duty to protect should be detailed in a non-deadly force defense of property case. See [September 2022 Forum 8](#). If “home protection” is the basis for immunity and the evidentiary presumptions are invoked, the unlawful and forceful particulars (required under § 776.013(2) and § 776.013(4), *Fla. Stat.*) should be set forth in the motion.

It is critical (no matter the defense invoked under Chapter 776) that the motion firmly frame the behavioral and temporal boundaries of the event. See [January 2022 Forum 8](#). That can be done by providing the trial judge with proposed jury instructions, requested findings of fact, and a pre-hearing legal memorandum. See [April 2022 Forum 8](#).

The prayer for relief in the motion should include a request for court directed expungement. A dismissal based on a grant of immunity should be considered a finding that the arrest of the defendant was contrary to law. Section 776.09(2), *Fla. Stat.*, requires the court to maintain a record of its justification/immunity finding. The State’s dismissal upon its determination of justification/immunity is the subject of § 776.09(1), *Fla. Stat.* A defendant granted immunity is entitled to expungement under § 943.0578 and § 943.0585, *Fla. Stat.*, if the arresting agency is unwilling or the court does not require the State to initiate administrative expungement as provided in § 943.0581, *Fla. Stat.* [An FDLE webpage](#) explains sealing and expungement application processes, and provides the related forms.

## EJCBA Monthly Luncheons are Back



Constitutional Law Professor Lyrissa Lidsky provided a dynamic presentation on First Amendment law and the current U.S. Supreme Court at EJCBA’s September luncheon.



Three former students of Professor Lyrissa Lidsky were in attendance for the September luncheon – from left to right: Katherine Mockler, Stephanie Marchman, Professor Lidsky, and Mary K. Wimsett.

# Cedar Key 2022



Past President Evan Gardiner, Alexis Giannasoli, and EJCBA President Robert Folsom



Norm Fugate (left) once again hosted a pre-dinner open house at his Cedar Key office; here he is with Judge Craig DeThomasis



EJCBA Executive Director Judy Padgett and President Robert Folsom share a relaxed moment at Steamers



Judges Gloria Walker, Meshon Rawls and Robert Groeb enjoy the hospitality at Fugate & Fugate



Jack and Cherie Fine at Steamers



Judge Sheree Lancaster and EJCBA Historian and Board Member Frank Maloney

# INVITATION TO RENEW / JOIN THE 2022-23 EJCBA

The Eighth Judicial Circuit Bar Association (EJCBA) cordially invites you to either renew your membership or join the EJCBA as a new member.

To join, please visit : [www.8jcba.org](http://www.8jcba.org) to pay online or return the below application, along with payment, to the EJCBA at PO Box 140893, Gainesville, FL 32614. The EJCBA is a voluntary association open to any Florida Bar member who lives in or regularly practices in Alachua, Baker, Bradford, Gilchrist, Levy or Union counties.

Remember, only current EJCBA members can edit their own information online, post photos and a website link, and be listed on results for searches by areas of practice. Additionally, our Forum 8 Newsletter, event invitations, and updates are all sent electronically, so please ensure we have your current email address on file and add [execdir@8jcba.org](mailto:execdir@8jcba.org) to your email address book and/or safe senders list.

## EJCBA Membership Dues:

**Free** - If, as of July 1, 2022, you are an attorney in your first year licensed to practice law following law school graduation.

**\$75.00** - If, as of July 1, 2022, you are an attorney licensed to practice law for five (5) years or less following graduation from law school; or

- If, as of July 1, 2022, you are a public service attorney licensed to practice law for less than ten (10) years following graduation from law school. A "public service attorney" is defined as an attorney employed as an Assistant State Attorney, or an Assistant Public Defender, or a full-time staff attorney with a legal aid or community legal services organization; or
- you are a Retired Member of the Florida Bar pursuant to Florida Bar Rule 1-3.5 (or any successor Rule), who resides within the Eighth Judicial Circuit.

**\$100.00** - All other attorneys and judiciary.

## Optional – YLD Membership Dues (*in addition to your EJCBA dues above*):

**\$35.00** - EJCBA Young Lawyers Division (eligible if, as of July 1, 2022, you are an attorney under age 36 or a new Florida Bar member licensed to practice law for five (5) years or less)

\* EJCBA voting membership is limited to Florida Bar

members in good standing who reside or regularly practice law within the Eighth Judicial Circuit of Florida. EJCBA non-voting membership is limited to active and inactive members in good standing of the bar of any state or country who resides in the Eighth Judicial Circuit of Florida, and to UF College of Law faculty.

## EJCBA Renewal/Application for Membership

Membership Year: 2022 - 2023

Check one: Renewal  New Membership

First Name: \_\_\_\_\_ MI: \_\_\_\_\_

Last Name: \_\_\_\_\_

Firm Name: \_\_\_\_\_

Title: \_\_\_\_\_

Street Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Eighth Judicial Circuit Bar Association, Inc.

Telephone No: (\_\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

Fax No: (\_\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

Email Address: \_\_\_\_\_

Bar Number: \_\_\_\_\_

List two (2) Areas of Practice:

\_\_\_\_\_  
\_\_\_\_\_

Number of years in practice: \_\_\_\_\_

Are you interested in working on an EJCBA

Committee?  Yes  No

## **November 2022 Calendar**

- 2 EJCBA Board of Directors Meeting, Stephan P. Mickle, Sr. Criminal Courthouse, 220 South Main Street, 3d Floor Conference Room, or via ZOOM, 5:30 p.m.
- 5 Deadline for submission to December Forum 8
- 5 UF Football at Texas A&M, TBA
- 9 Probate Section Meeting, 4:30 p.m. via ZOOM
- 11 Veteran's Day Holiday – County & Federal Courthouses closed
- 12 UF Football v. South Carolina, TBA
- 18 EJCBA Luncheon, Sherry Brown, Specialty Courts Manager, Eighth Judicial Circuit, “Specialty Courts,” The Woolly, 11:45 a.m.
- 19 UF Football at Vanderbilt, TBA
- 24 Thanksgiving Day – County & Federal Courthouses closed
- 25 Friday after Thanksgiving Holiday – County Courthouses closed
- 25 UF Football at FSU, 7:30 p.m.

## **December 2022 Calendar**

- 3 SEC Football Championship, Atlanta, GA – 4:00 p.m.
- 5 Deadline for submission to January Forum 8
- 7 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.
- 14 Probate Section Meeting, 4:30 p.m. via ZOOM
- 23 Christmas Eve (observed), County Courthouses closed
- 26 Christmas Day (observed), County & Federal Courthouses closed

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