

# FORUM 8

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Eighth Judicial Circuit Bar Association, Inc.

October 2020

## President's Message

By Philip N. Kabler, Esq.



So during October our thoughts turn naturally to autumn. To football. Leaf peeping.<sup>1</sup> Pumpkin spiced *everything*.

*And one more thing.* As you are no doubt aware from the television, mailbox, internet, and robocalls, it is election season. November 3<sup>rd</sup>, of course, is the general election, with its implications for federal, state, county, and municipal governments.

One of the hallmarks of our democratic republic is the right to vote. Period. Not specifically to vote *for*. Not to vote *against*. Not red. Not blue. Not other. Just the right to vote.

We lawyers have a special role within our constitutional order. That is, to protect and preserve our Federal and State Constitutions. We know this because at the very beginning of the Oath of Admission to the Florida Bar we each solemnly swear "*I will support the Constitution of the United States and the Constitution of the State of Florida*".<sup>2</sup>

How can we do that? Our overall 'job' as members of the Bar is outwardly-directed. We are stewards of the rights of others first and foremost. As to exercising the vote, then, we can encourage and assist all eligible people with registering to vote. We can assist them with securing their ballots, whether in-person, by mail, or absentee (*which is also by mail, of course*). We can remind them to vote on time. We can educate them *how*, *where*, and *when* to vote. Unfortunately during the ongoing pandemic we cannot necessarily drive people to polling stations as done in the past. But we can help arrange logistics. And we can help monitor the fairness of voting operations.<sup>3</sup>

As lawyers our function is not to tell people *what* to vote. Once the right to vote is secured, it is up to the polity itself to decide for whom to 'pull the lever.' We

certainly can hope that the voters have educated themselves on the candidates, their qualifications, and positions on the issues of the day, to make thoughtful and reasoned selections. It would be naïve to assume that as individuals we do not attempt to persuade others to support our personal preferences. But that is not the role of lawyers as a profession. We are societal servant leaders.

Please, then, do what you can this month to advocate in support of voting.<sup>4</sup> *Perhaps with a pumpkin spice latte in hand.*

The upcoming 'General' is not the only matter of interest to the bench and bar in our circuit. We do have our own ongoing events. This month we will welcome Perianne Boring, a University of Florida Warrington College of Business graduate who is the Founder and President of the Chamber of Digital Commerce, the country's leading blockchain and cryptocurrency professional association. Ms. Boring will give us her '30,000 foot' perspective on those evolving technologies.<sup>5</sup> And we will also hear from Dr. Richard Scher (also from UF), who is an eminent expert in elections. (*How timely.*) Please see the calendar in this issue for the dates and times of their presentations.

*Continued on page 7*

<sup>1</sup> From *The West Wing*, "And It's Surely to Their Credit", [https://youtu.be/0gl3Jh\\_cpw](https://youtu.be/0gl3Jh_cpw).

<sup>2</sup> <https://www.floridabar.org/prof/presources/oath-of-admission-to-the-florida-bar/>.

<sup>3</sup> I served as an election site monitor when I lived in Miami years ago. Frankly I recall it as a dull experience, with no controversies to report. I suppose, then, it was a successful day.

<sup>4</sup> For information about voting rights generally please visit this resource, <https://www.usa.gov/voting-laws>. And peruse our Florida Constitution, as well, <http://www.leg.state.fl.us/Statutes/index.cfm?Mode=Constitution&Submenu=3&Tab=statutes>.

<sup>5</sup> I am happy to say I met Ms. Boring approximately 10 years ago when she was a student in my undergraduate Legal Environment of Business course. I was optimistic with her prospects at that time, and I am impressed she is living up to her potential. *Go Gators!*

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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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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



## COME ON AND ZOOM!

In the 1970's there was a show on public television called "Zoom." It was Sesame Street for 9 -12 year old's. The theme song suggested you "Come on and Zooma Zooma Zoom."

And here we are.

Zoom originally aired from 1972 – 1979 but it was repeated in reruns. The cast appeared in striped

rugby shirts and jeans - (oddly) similar attire to some Zoom mediation participants.

"Come on and Zoom" was the title of an album of songs by the cast. We are fearful some of you were neither parents of children who watched Zoom nor even children who watched Zoom. And thus the trepidation many of you have when asked to "Come on and Zooma Zooma Zoom Mediate" (just look it up on YouTube).

Yes, Zoom mediation conferences. Sigh. Yet despite all the trepidation, tech fear, user errors, device failures and Zoom foibles, the mediations conducted by Zoom seem to be successful at what appears to be similar to old fashioned in-person mediations. Which is pretty darn successful.

But that does not mean we cannot have some light-hearted fun about our Zoom experiences.

"Sorry, I was on mute." Yes, no Zoom mediation can occur without hearing this at least 10 times (and all 10 times from the same participant).

Next, "I haven't showered so I have my video turned off," is heard at least twice a week. Thank you, and thank goodness Zoom does not have a 'smellavision' feature.

We have been surprised when rather large law firms do not supply their attorneys with laptops with a camera. But, apparently Commodore 64's still work. We bet the partners have cameras on their laptops.

Breakout rooms. This Zoom feature is cool and participants really love the breakout room feature. The virtual breakout room has more sound integrity than Hitler's Bunker. Yet, people are compelled to mute themselves at all times despite the integrity of this feature. Which leads to "sorry, I was on mute" as a constant sound bite.

QUESTION: "Can you send me the Zoom invitation six weeks before the Zoom conference date?"

Answer: "No, because people end up ignoring it for 41 days and then can't find it in their email inbox."

QUESTION: "Can you please send the Zoom invitation to all 14 associates in our firm and six of the eight partners and 3 paralegals and 4 secretaries?"

Answer: "Ok." Tempting answer: "Why, in the name of all that is holy do you need so many people to get the Zoom invitation?????"

Now, one of your authors is not immune from Zoom foibles and errors. During the middle of the Zoom mediation young CBC managed to beam an insurance adjuster into the Plaintiff's breakout room. It was as if Scotty beamed Kirk onto the bridge of a Klingon spaceship. These things apparently happen and it is doubtful there was any user error. Young CBC immediately realized what he had done (although

tempted to blame this on Zoom software) and with the reflexes of, well, some animal with fast reflexes, beamed the adjuster back to the Enterprise, otherwise known as breakout room two. Plaintiff's room participants and the adjuster had stared at each other for two seconds as if all of them were naked. The Plaintiff room was of course on mute so they did not even have time to say "sorry, we are on mute."

See, we can laugh at ourselves.

And also at: people who think they are on mute during a Zoom conference going bat doo-doo crazy as their dog apparently runs them around the house going doo-doo.

Or, people who think it is ok to load their dishwasher as the concept of mediation confidentiality is being explained.

Or, Chris Cuomo walking on a backyard deck naked during a Zoom mediation (ok, that was during his wife's yoga class and not a Zoom mediation, but, it is still funny in a sort of "did he do that on purpose?" way).

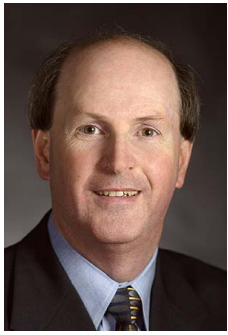
Yes, Zoom mediations are surprisingly successful and efficacious. Yes, Zoom mediations have snatched everyone's cases out of limbo. Yes, they seem to give rise to too many anecdotes. However, our informal polls suggest lawyers and mediators have been pleasantly surprised at the successful resolution results via Zoom mediation.





# Criminal Law

By William Cervone



Today we pay homage to man's best friend, and in particular to a subset of man's best friend, the cadaver dog. While one Cid Lenin Torrez, currently a life resident of Liberty Correctional Institute, may not agree with the propriety of this, these fascinating creatures (the cadaver dogs, not Torrez) have now been elevated to a lofty evidentiary pedestal not previously known to

them in Florida law.

First the back-story. Torrez and his wife, Vilet, apparently had a tempestuous relationship and after one particular incident, he moved out of the family home. A few months later, Vilet disappeared. No cell phone use, no credit card use, no contact with family or friends, personal belongings simply left behind. Among the missing things was her body, never to be found. What was known was that neighborhood security cameras showed her entering the gated community where she lived, that her last known phone calls were to Torrez (or at least his phone number), and that at the urging of co-workers he called 911 after a couple of days to report her missing. Sure enough, detectives found numerous blood stains in her home, DNA profiling from which showed a mixture of two people: him and her.

Finding this suspicious (in the trade we call these things "clues"), a detective decided to bring his cadaver dog, Jewel, to Vilet's home to aid in searching. Sure enough, Jewel alerted several times to a grassy area by the front door, meaning that Jewel was detecting the odor of human remains having been or being in that area. But nothing more. Yet.

Several months later and with things at a standstill in the investigation, Jewel was brought to an impound lot where police had stored Torrez's car after seizing it. While they had found nothing, Jewel again alerted, this time on one of the rear doors of the car as well as on an area in the trunk. Another deputy was called in with her cadaver dog, Piper, and sure enough Piper, too, alerted to the same areas of the car. Based on this and other evidence, Torrez was arrested.

Pre-trial, of course, he vehemently opposed the cadaver dog testimony. Well, technically, he objected to the testimony of the handlers of the two dogs, one of their trainers, and an expert in volatile organic compounds given off by deceased human beings and how dogs can detect them. Regardless, the trial court found that the testimony of the dog alerts, and maybe more importantly, what it meant to their two handlers, passed *Daubert* muster and was admissible. And so, to save time and

after Torrez's conviction for murder, eventually did the 4DCA. Among its observations, the DCA mentioned that this result really wasn't all that different from dog scent or tracking testimony; that it's common knowledge that dogs, when properly trained and handled, can discriminate between various odors; that a dog's "alert" is readily understandable to a jury; and that courts need not consider the science behind testimony to find it admissible if it meets the required legal standard. Or, quoting Bob Dylan as the DCA did, "You don't need a weatherman to know which way the wind blows."

This is apparently a case of first impression in Florida, which is surprising in that cadaver dogs have been around for more than a while. For those of you who are so inclined, the opinion is a good if long read as to the methodical nature of the State's presentation of everything involved in supporting the reliability of Jewel and Piper as well as how the trial and appellate courts analyzed and applied *Daubert* and other legal principals to the case.

For those of you are not so inclined, I will mention only one other interesting tidbit from the case. You may recall from my article back in May how President Trump came into Florida criminal law through the ramblings of a drunk. Reminiscent of that, prior to being sentenced Torrez requested to speak to President Trump, stating "Commander-In-Chief, the witch hunt ends here. Please come and talk to me." He also wanted to talk to the First Lady and some other person he referred to as a "monster" and who he called the "Madi Arella." These demands got him a quick mental health examination that determined him to be delusional but competent to be sentenced. So there you have it - twice in the space of six months Donald Trump appears in Florida criminal case law without ever being a defendant.

Further, I probably should say not.



Columbus Day

# Rising to Meet the Challenge: Pro Bono Responds to COVID-19

By Marcia Green  
*Pro Bono Director, Three Rivers Legal Services*



The theme of this year's National Celebration of Pro Bono, Rising to Meet the Challenge, clearly speaks to the year it has been ... and that's just so far.

We are fortunate in the Eighth Judicial Circuit; we have a great group of volunteer attorneys who say yes when asked to volunteer and regularly take cases or assist in advice clinics. Without this help, many would be left unserved. Yet there is still so much need and so much to be done!

Together for our clients, Three Rivers Legal Services and Southern Legal Counsel have been working hard to help meet the unique needs of our local residents who are reeling from the effects of the current pandemic! As our worlds have changed dramatically in this past year, there are those whose lives have been shattered with unemployment, illness, loneliness and depression, and all manners of instability. There are those, of course, whose lives have always been difficult, experiencing, for example, domestic violence, disability, housing insecurity, and poverty, all of which are exacerbated by the pandemic. Just the opportunity to speak with an attorney, to have an attorney who will listen, to have an attorney who will respond and help - that means everything!

This pandemic has brought about trauma not much different from the aftermath of a hurricane, without the flooding and tree damage. Even if we are secure in our employment, income and access to services, who hasn't stressed about the influx of college students to Gainesville? Who hasn't been concerned about our children and grandchildren attending school? Who hasn't missed our summer vacation rituals and isn't wondering how to handle the fall gatherings? The challenges we face as a community are enormous and the efforts of our legal aid programs and pro bono attorneys need to scale up to meet these challenges.

Three Rivers Legal Services provides direct delivery of civil legal services to low income residents throughout the Eighth Judicial Circuit and additional counties in North Florida. Volunteer attorneys can assist these clients in many different ways, for example:

- advising a client telephonically who has concerns about eviction;
- assisting in the preparation of life and estate planning documents amid fears of illness;

- representing a parent in securing guardian advocacy of their adult disabled child in order to secure continued medical and other needs;

- representing an individual in the expungement or sealing of records in order to gain employment;

- representing a family to establish home ownership;

- representing an individual dealing with unscrupulous companies.

As many of you have, Three Rivers has shifted to limited access offices with most advocates working remotely. Although arrangements are made for clients lacking virtual capabilities, we realize that there are those who can and will fall between the cracks. We are grateful for your continued support of our program, your acceptance of pro bono referrals and your participation in our clinics.

I miss the in-person contact, interactions with my co-workers, sharing of treats and stories in the break room, and talking at the same time in meetings (something that cannot be done on Zoom). I miss the EJCBA luncheons with handshakes, hugs and chatter. I miss our in-house clinics and in-person Ask-A-Lawyer events with attorney and law student volunteers. I miss traveling to rural senior centers with enthusiastic volunteer attorneys to provide advance directives.

So once again, let's celebrate and acknowledge how we are Rising to the Challenge of COVID-19 and recognize there is more to be done.

Are you interested? Will you participate during these challenging times? Will you volunteer your skills, time, expertise and knowledge? Please contact me at [marcia.green@trls.org](mailto:marcia.green@trls.org) or visit Three Rivers' website <https://www.trls.org/volunteer/> to sign up or obtain additional information.



# Pro Bono in the Age of COVID: A New Pro Bono Program Emerges During a Pandemic

By Samantha Howell, Esq.

Director of Pro Bono, Southern Legal Counsel, Inc.



When I decided to relocate from Upstate New York last summer, I was ready for a new adventure (despite having to take another bar exam). So, I hired movers, put my house on the market, and headed down to the Sunshine State.

I moved to Florida to join Southern Legal Counsel as their new Director of Pro Bono, where I was tasked with developing a formal pro bono program. Starting a pro bono program is like putting together a giant puzzle. You need to identify the landscape (find your edge and corner pieces), zero in on the major needs (pick a color scheme or landmark to ground your work), and build from there. Of course, when a global pandemic ends all in-person contact, strains telecommunications, limits access to rural and indigent populations, and forces all volunteers to work remotely, it's more like a puzzle with no edge pieces and a color scheme that is entirely ombre orange.

Needless to say, the last 7 months have not quite been what I expected. Under "normal" conditions, I would have met many of you in person by now at an EJCBA function. I would have asked you about your interests, your thoughts about pro bono, your concerns about the legal profession. I probably would have said something hokey like "Pro bono not Yoko Ono!" I might have asked you to come meet with our clerks/interns to talk about what it's like to practice. I might have attended a CLE with you. Because, in the end, a pro bono program is about building community.

Pro bono programs bring together, particularly people who are willing and able to give of themselves and those who are in the greatest need. This year, more than ever, both of those groups have faced extraordinary challenges. Small firms and solo practitioners have faced devastating losses in business – even large firms have been forced into layoffs and hiring freezes – and our client communities are living each month facing the end of the eviction moratorium, delays in court hearings, challenges of at-home education, and their own economic crises.

At SLC, we have tried to build our program with these realities in mind which, in the end, will provide for a more responsive and adaptable program. For example, we decided in March that we would not have any in-person volunteers throughout the calendar year. This meant shifting our workload for clerks/interns, as well as thinking about how we could recruit volunteers beyond a city or

county's borders. We thus paused our volunteer recruitment until the courts began issuing plans for reopening and integrating video conferencing so that we could announce, with confidence, that all of our pro bono cases could be handled remotely. We also focused on developing a series of limited-scope projects that volunteers could handle remotely.

We next developed a robust program for on-boarding remote clerks/interns that involved ten (10) hours of training. One silver lining to having the legal world go remote is that our clerks were able to attend many court hearings/depositions over the summer which, normally, they would not be able to do. We developed work-arounds to have clerks work on assignments that, pre-COVID, could only be done in the office, and invested in software so we could develop and record training videos that they could access throughout each term.

We are presently getting ready to launch a series of public-facing videos to educate the public on a variety of issues, including parental and child rights in special education hearings, how to obtain a name change, and understanding impact litigation. We are constantly exploring ways to reach populations in need and connect them to the wonderful attorneys and volunteers so willing to give a few hours to help. It has been an interesting year but, as they say, necessity is the mother of invention and I dare note we have been rather inventive these past seven months.

So, in closing, I want to say thank you for welcoming me to the Sunshine State! Thank you for your support of pro bono programs – past, present, and future – and thank you for helping our clients. I look forward to getting to know more of you in the upcoming year!





# What Hasn't Changed in the Pandemic

By Krista L.B. Collins



The Covid-19 pandemic has upended much about our society, and the practice of law is no different. We've all had to learn new technologies (Zoom, anyone?) while also resorting to well-worn, time-proven methods to cope (e.g. bribing the kiddo with Hot Wheels to stay quiet during hearings and conference calls. Just me?). Conducting hearings and trials remotely certainly presents new logistical challenges – ensuring that every witness has the documents needed for his/her testimony or conducting an effective cross-examination when you can't quite look the witness in the eye. In fact, I would argue that practicing remotely will make us all *better* lawyers. We're like Ginger Rogers, doing the same thing but backwards and in heels. From what I have seen, we are rising to the occasion.

However, for all the new challenges that we are facing and no matter how strange it might feel to give an opening statement while sitting comfortably at your desk, I am reminded that much of the practice of law has *not* changed. Preparation and organization are still key. Litigators still need to be able to present complicated legal concepts or factual scenarios clearly and concisely. We need to be sure that we have thoroughly researched the legal issues and Shepardized our cases. We must analyze the issues and consider how to best present the facts on behalf of our clients. Witnesses still must be truthful, as the camera lens will not disguise a disingenuous witness any more than it hides a bad actor in a Razzie-worthy movie. We should still carefully plan the presentation of our case – which witness should be called first? What are the strongest points of the case? How will we deal with opposing counsel's star witness?

In fact, while many of the trappings of the practice of law – Zoom, Westlaw and Lexis – have changed, much of what is so vital to our profession has remained constant for centuries. Respect for precedent. Acting in the best interest of our clients. Questioning witnesses to uncover the truth. Speaking truth to power. Clarence Darrow, Abraham Lincoln, Laura de Force Gordon,<sup>1</sup> and Alexander Hamilton would all still recognize our profession today. Zoom trials may feel kind of weird, but whether we are sitting at our desks or standing in a courtroom, we must prove the same elements to establish our clients' claims.

In a way, we lawyers are lucky during the pandemic. We are essential, yet (in most instances) not required to be on the front lines of exposure. The heart and soul of what we do can be done whether we are in a courtroom, an office, at home, or online. As long as we keep doing what good lawyers have *always* done, we'll get through – even if we have to do it backwards and in heels.

<sup>1</sup> If you are not familiar with Laura de Force Gordon, I highly suggest spending a couple of minutes Googling her life and accomplishments, which include being the first woman in California to argue a case before a jury and being the second woman admitted to the bar of the United States Supreme Court.

## President's Message

*Continued from page 1*

A unique note. Due to the cancellation of the UF Homecoming this year, we will postpone our traditional and much beloved James C. Adkins, Jr. Cedar Key Dinner. But do not despair. Board member and perennial host Norm Fugate will be working to arrange a one-time 'off calendar' event. *So please be on the lookout.*

Now, onward we go together into the future. The EJCBA is very much a members-centric association. Accordingly, if you as a member have suggestions for programs, this is an open invitation to bring them forward. Please do that by sending your ideas to [pnkejcb@gmail.com](mailto:pnkejcb@gmail.com). For updates please regularly visit our website ([www.8jcb.org](http://www.8jcb.org)) and consider joining our Eighth Judicial Circuit Bar Association Facebook page.

*See you at the voting booth.*

Phil

## Candy-Counting Contest!

In celebration of National Pro Bono Week, Three Rivers Legal Services and Southern Legal Counsel will be hosting a candy-counting contest. Later this month, we will post a picture of a pile of candy (it is almost Halloween, after all) and whoever guesses the amount of candy in the picture (using The Price is Right rules: closest without going over) wins all the candy and the beautiful blanket crocheted by Samantha Howell in the picture below! To register your guess, you need only agree to take one pro bono assignment from either Three Rivers or SLC in 2021. Guesses can be submitted to [marcia.green@trls.org](mailto:marcia.green@trls.org)



# A PRIMER ON THE FLORIDA “CITIZEN’S ARREST”

By Steven M. Harris



The so-called “citizen’s arrest” has become a much-discussed topic in state legislatures and the news media. Its ancient roots and whether it is essential (or wise) in the modern era are analyzed in legal publications from time to time. See, e.g., Robbins, Ira P. (2016) “Vilifying the Vigilante: A Narrowed Scope of Citizen’s Arrest,” *Cornell Journal of Law and Public Policy*: Vol. 25: Issue 3, Article 1.

Available at: <http://scholarship.law.cornell.edu/cjlp/vol25/iss3/1>.

The “citizen’s arrest” entails a nonsworn’s warrantless taking of another person into physical custody and detaining/restraining the arrested person against his or her will until custody is transferred to sworn law enforcement personnel. Threat or actual use of physical force may be employed. (A private citizen may appear before a State Attorney, swear an affidavit, obtain an arrest warrant, and effect the related arrest. See *State v. Crum*, 323 So.2d 673 (Fla. 3d DCA 1975)). The gravity of the act is obvious; an improper arrest may constitute a serious felony (e.g., aggravated assault/battery, false arrest/imprisonment, kidnapping) and/or result in tort liability for false arrest/imprisonment.

Florida’s law of “citizen’s arrest” is longstanding. It exists in both statute and common law. The *common law* appears to be lacking any extant substantial legal controversy. The appellate case law almost entirely addresses arrest by an out-of-jurisdiction law enforcement officer. Absent a warrant, fresh pursuit, exigent circumstances, or a mutual aid agreement, a law enforcement officer outside his or her jurisdiction has only “citizen’s arrest” authority. See, e.g., *State v. Price*, 74 So.3d 528 (Fla. 2d DCA 2011); *State v. Sills*, 852 So.2d 390 (Fla. 4th DCA 2003). (Federal law enforcement officers are authorized by Florida statute to make a warrantless arrest (while engaged in the exercise of federal law enforcement duties) for a state defined felony or misdemeanor which involves violence. See § 901.1505(2)(a), *Fla. Stat.*)

Florida’s statutory law anticipates ordinary citizen involvement in arrests. Notably, § 901.18, *Fla. Stat.* provides: “A peace officer making a lawful arrest may command the aid of persons she or he deems necessary to make the arrest. A person commanded to aid shall render assistance as directed by the officer. A person commanded to aid a peace officer shall have the same authority to arrest as that peace officer and shall not be civilly liable for any reasonable conduct in rendering assistance to that officer.”

A citizen who has lawfully taken someone into custody may use force that he or she “reasonably believes to be necessary to prevent the escape of the arrested person from custody.” § 776.07(1), *Fla. Stat.* A citizen’s use of force is not justifiable, however, when aiding in an arrest which “is unlawful and known by him or her to be unlawful.” § 776.051(2), *Fla. Stat.* Chapter 776 provisions relating to use of force to prevent the imminent commission of a forcible felony (see articles in the March and April 2020 *Forum* 8) do not expressly provide for “citizen’s arrest” authority or any related immunity when justified in using non-deadly or deadly force.

Florida Statutes include a retail/merchant/farm theft detention provision under which a narrow set of described persons may effect a custodial detention when endeavoring to recover stolen property. Manner and time of detention are limited to what is reasonable. See § 812.015(3)(a), *Fla. Stat.* When the statute is invoked and all of its requirements met, an arrestor is not “criminally or civilly liable for false arrest, false imprisonment, or unlawful detention,” if there existed *probable cause* to believe that the person detained committed a requisite offense. § 812.015(3)(c), *Fla. Stat.*

The *common law* of “citizen’s arrest” was acknowledged in *Phoenix v. State*, 455 So.2d 1024 (Fla. 1984) thusly: “A private citizen does have the common law right to arrest a person who commits a felony in his presence, or to arrest a person where a felony has been committed, and where the arresting citizen has probable cause to believe, and does believe, the person arrested to be guilty. Even though there was time to obtain a warrant, a private citizen may make such an arrest and justify his failure to obtain a warrant by proving the person arrested was actually guilty of a felony.” (Citations omitted). The common law also permits a “private citizen” to “arrest a person who, in the citizen’s presence, commits a ‘breach of the peace.’” See *Steiner v. State*, 690 So.2d 706 (Fla. 4th DCA 1997). A “breach of the peace” is any violation of the public peace, order or decorum. According to *Mattos v. State*, 199 So.3d 416 (Fla. 4th DCA 2016), “[a] breach of the peace includes the violation of any law enacted to preserve peace and good order.” Such laws may be misdemeanors. § 877.03, *Fla. Stat.* (disorderly conduct), and note various offenses within Chapters 856, 861, 870, 871, and 876.



# COVID-19 AND FLORIDA: ON IMPLEMENTING WORKPLACE SAFETY PLANS

By Laura A. Gross



With a lack of governmental guidance on how to operate business safely during the pandemic, Florida businesses are relying on themselves to determine what safety measures are appropriate for their workplaces. Implementation of a comprehensive workplace safety plan can protect the health of employees, customers, and visitors and help avoid operational disruption and shutdowns.

A workplace safety plan should include provisions on health screening for potential COVID-19 symptoms, self-isolation, contact tracing of potential exposure, cleaning and disinfecting, face coverings, social distancing, hand-washing and hygiene, ventilation, specifics about visitors, risk mitigation for people at higher risk of severe illness, accommodations for people with disabilities, and how the plan and any updates will be communicated to employees. Social distancing might be addressed through telework, videoconferencing, staggered workdays to reduce personal contacts, contactless business practices, separation of workspaces, reduced occupant capacity and installation of physical barriers. High-touch surfaces might be addressed through increased environmental cleaning, reductions to the number of common surfaces that must be touched (e.g. prop doors open and no-touch water faucets, toilets, and trash cans), restricted access to non-essential shared equipment and common areas, and contactless payment methods.

Unlike Florida, 14 states have adopted comprehensive worker safety protections from COVID-19. Many of these states require employers to implement a written workplace safety plan, ensure physical distancing of at least six feet between employees and coworkers and customers, provide face masks and require their use when physical distancing is not possible, and ensure hand sanitizer is readily available. When COVID-19 cases are found in these states, the employers must notify coworkers and do a deep cleaning of the workplace. Compliance is monitored by state OSHAs, departments of health, and attorneys general. These states are California, Illinois, Kentucky, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Virginia and Washington State.

Unlike Florida, 34 states plus the District of Columbia and Puerto Rico have mandated facial coverings in public, which also protects employees and customers from COVID-19. These states are Alabama, Arkansas, California, Colorado, Connecticut, Delaware, Hawaii,

Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nevada, New Jersey, New Mexico, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, Texas, Vermont Virginia, Washington, West Virginia, and Wisconsin.

While Florida does not have a mask mandate, its 20 most-populated metropolitan areas do, except for Lee County. Local mask ordinances like the one in Alachua County protect workers, but they do not provide comprehensive workplace safety solutions. The best way to keep our businesses open and workers employed at this time is to think ahead on safety—to implement a workplace safety plan.

## Professionalism Seminar – SAVE THE DATE

### Inexpensive & Enlightening CLE Credits

By Ray Brady

Mark your calendars now for the annual Professionalism Seminar. This year the seminar will be held on Friday, February 26, 2021, from 9:00 a.m. (registration begins at 8:30 a.m.) until Noon at the Trinity United Methodist Church on NW 53<sup>rd</sup> Avenue or via Webcast if necessary. Our keynote speaker will be The Honorable Karen K. Specie, Chief United States Bankruptcy Judge for the Northern District of Florida, speaking on “COVID: 19 Professionalism Lessons for Lawyers.”

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 in December. Questions may be directed to the EJCBA Professionalism Committee chairman, Ray Brady, Esq., at 373-4141.

# INVITATION TO RENEW / JOIN THE 2020-21 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 access a printable version of the complete member directory, 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, 2020, you are an attorney in your first year licensed to practice law following law school graduation.

**\$70.00** - If, as of July 1, 2020, 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, 2020, 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.

**\$90.00** - 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, 2020, 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: 2020 - 2021**

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

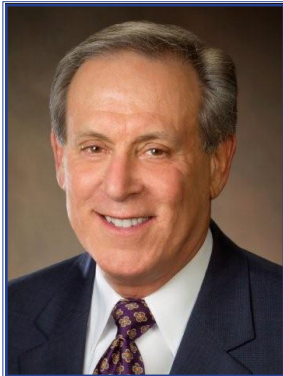
No

## October 2020 Calendar

- 2 EJCBA Special Event: The Gainesville Entrepreneurship Initiative with speakers Sean McIntosh (GNVei/Celebration Pointe) & Michael Dermer (*The Lonely Entrepreneur*) via Zoom
- 3 UF Football v. South Carolina, TBA
- 5 Deadline for submission to November Forum 8
- 7 EJCBA Board of Directors Meeting, Gainesville Chamber of Commerce, 300 E. University Avenue (or via ZOOM), 5:30 p.m.
- 9 EJCBA Monthly Meeting, Perianne Boring, founder and CEO of the Chamber of Digital Commerce & Brian Estes, CIO, Off the Chain Capital, "Turbulent Times: How Money, Finance and Investment is Being Transformed by Blockchain Technology," 11:45 a.m. via ZOOM
- 10 UF Football v. LSU, TBA
- 12 Columbus Day – Federal Courthouse closed
- 14 Probate Section Meeting, 4:30 p.m. via ZOOM
- 16 EJCBA Special Event – Richard K. Scher, Ph.D., Emeritus Professor, UF Political Science Department, "Reflections on Elections, Past and Present," Noon-1:00 p.m. via ZOOM
- 17 UF Football at Ole Miss, TBA
- 31 UF Football v. Georgia, Jacksonville, FL, TBA

## November 2020 Calendar

- 4 EJCBA Board of Directors Meeting, Gainesville Chamber of Commerce, 300 E. University Avenue (or via ZOOM), 5:30 p.m.
- 5 Deadline for submission to December Forum 8
- 7 UF Football at Vanderbilt, TBA
- 11 Veteran's Day Holiday – County & Federal Courthouses closed
- 11 Probate Section Meeting, 4:30 p.m. via ZOOM
- 12 Annual James C. Adkins, Jr. Cedar Key Dinner, sunset
- 14 UF Football v. Missouri, TBA
- 20 EJCBA Monthly Meeting with Dori Foster-Morales, Florida Bar President (includes pro bono recognition), 11:45 a.m. via ZOOM
- 21 UF Football v. New Mexico State, TBA
- 26 Thanksgiving Day – County Federal Courthouses closed
- 27 Friday after Thanksgiving Holiday – County Courthouses closed
- 28 UF Football at FSU, TBA



Carl Schwait  
cschwait@uww-adr.com

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