

FORUM 8

Volume 82, No. 2

Eighth Judicial Circuit Bar Association, Inc.

October 2022

President's Message

By Robert Folsom



Happy Fall Everyone! This month we can look forward to our Annual James C. Adkins, Jr. Cedar Key Dinner – which this year is Thursday, October 6th. Cedar Key is a wonderful opportunity for us to come together and enjoy the company of our fellow members; and spend a delightful evening in a scenic location. Please bring a dessert to share! We have some

great bakers (beyond the great Magistrate Bridget Baker) in our circuit. And those attending should look forward to an ambrosial end to an already delicious meal.

After the monthly luncheon on Friday, October 21st, we will be celebrating the investiture of The Honorable Lorelie Brannan at the Baker County Courthouse in Macclenny at 3:00 p.m. Let's support our new judge, and her community, by filling the seats. There will be a reception afterwards. And I look forward to seeing all of you there!

On Sunday, October 23, 2022, we will have our Annual Fall Family Friendly Festival social event. Please come out with your families, or just yourself, to enjoy a day of play. There is no Gator football that weekend. So, we hope to see everyone there well-rested and ready to participate in the fun and games at First Magnitude Brewing.

In addition to our regularly scheduled events, our Social Committee is planning on some additional fun, outdoor activities over the coming months. We want to gauge your interest in the types of events and activities that you would like to have; so, please let us know by emailing Cherie Fine, our Executive Director Judy Padgett, or me with your ideas and suggestions. Additionally, we are looking for members to participate and help organize and plan these social events. We welcome your thoughts, ideas, and participation!

In that vein, as we continue to move forward into the bar year, I encourage everyone to become more actively involved in our organization. Join a committee. Present a CLE. Volunteer to mentor newer attorneys. Help your local bar by building professional relationships with attorneys outside of your area of practice, and with your local community. Most importantly, help our organization grow and develop as we move into the future. As mentioned in the September newsletter, our organization is working on succession plans for many of our key positions, like historian and committee chairs for our perennial events (like the golf tournament). Additionally, we are looking for attorneys who are interested in participating, or contributing, to our Oral History Project. This is a vital endeavor for our organization. So many attorneys and judges have made our organization the pillar of professionalism, community, and diversity that it is today. We need to honor those who have come before us, and those who are still among us, who have driven our local bar's growth.

Our organization needs your participation and your professional commitment to succeed. I encourage you to volunteer your time and expertise as mentors, presenters, gatherers of new members, and leaders. Assist pro se litigants by 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). Share civics education with local schools and organizations. Grow and develop our future legal community by mentoring, and encouraging, law school and undergraduate students. Be an inspiration to those who need inspiring.

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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.

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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



Words of Wisdom

Will and Ariel Durant were historians who wrote a multi-volume treatise on *The Story of Civilization*. One volume, *Rousseau and Revolution*, received the Pulitzer Prize for General Non-Fiction and that volume basically covered the 18th century and in part addressed one of the leading figures of that era, Catherine the Great of Russia.

The Durants said of Empress Catherine: "Her faults were the faults of her time, her good points were her own."

The words describing Catherine the Great are compelling and apply to almost every noteworthy person in history, but, perhaps apply in a most compelling fashion to Thomas Jefferson.

President John F. Kennedy hosted a dinner at the White House on April 29, 1962 honoring that year's Nobel Prize Winners of the Western Hemisphere. Kennedy remarked that it was the greatest gathering of intellects at the White House since when Thomas Jefferson dined there alone.

Jefferson's accomplishments are numerous because he was a true Renaissance person. He was an architect, an inventor, an agriculturalist, the author of the Declaration of Independence, founder of the University of Virginia, our first Secretary of State, and, President of the United States (to state a brief list of his accomplishments). In answer to the dinner question, "What historical figure would you invite to dinner?" our answer is Thomas Jefferson, although oddly, we would hope he brought along Steve Spurrier who is both historical and viable.

While traveling this summer we came across a book in an Old Salem, North Carolina bookstore entitled [Quotations of Thomas Jefferson](#). We would like to share a few on a wide variety of topics:

"Information is the currency of democracy." And: "The liberty of speaking and writing guards our other liberties." We wonder how Jefferson would apply that to the age of the internet and social media.

"On matters of style, swim with the current, on matters of principle, stand like a rock." Indeed, as we still have a bunch of yellow ties from the 1980s.

"One man with courage is a majority." Would that were always true.

"A wise and frugal Government, which shall restrain men from injuring one another, shall leave them otherwise

free to regulate their own pursuits of industry and improvement, and shall not take from the mouth of labor the bread it has earned. This is the sum of good government." Could Jefferson ever conceive of the current government bureaucracy and if so, which parts would he deem necessary and which unnecessary?

"Great innovations should not be forced on slender majorities."

And in related fashion: "All, too, will bear in mind this sacred principle, that though the will of the majority is in all cases to prevail, that will to be rightful must be reasonable; that the minority possess their equal rights, which equal law must protect, and to violate would be oppression."

"The natural progress of things is for liberty to yield and government to gain ground." Lucky guess?

"Laws are made for men of ordinary understanding and should, therefore, be construed by the ordinary rules of common sense. Their meaning is not to be sought for in metaphysical subtleties which may make anything mean everything or nothing at pleasure." Of course, Jefferson never contemplated the IRS regulations.

"If people let government decide what foods they eat and what medicines they take, their bodies will soon be in as sorry a state as are the souls of those who live under tyranny." Consider that Jefferson was exposed to a plague or two and enjoyed a glass of wine or

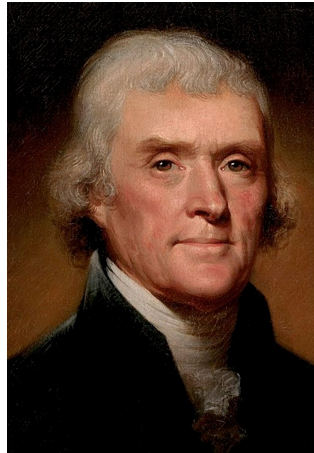
two.

"No free man shall ever be debarred the use of arms" and, "The beauty of the second amendment is that it will not be needed until they try to take it." The mind boggles how Jefferson would grope with the Second Amendment in 2022 but we all could certainly profit from his wisdom and where he evolved and where he stood traditional were he available.

We are fond of this quote: "State a moral case to a ploughman and a professor. The former will decide it as well, and often better than the latter, because he has not been led astray by artificial rules." Jefferson probably wrote that while enjoying a Ploughman's Lunch.

On personal matters: "Honesty is the first chapter in the book of wisdom." Ethics 101. "The sovereign invigorator of the body is exercise, and of all the exercises walking is the best. Walking is the best possible

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Huzzah for our Pro Bono Heroes!

By Samantha Howell, Pro Bono Director



Greetings! I am excited to have you reading this article at the beginning of October because it means several things: (1) Halloween is just around the corner (ask me about my favorite costume ever); (2) I've started my scary movie marathon; and (3) National Pro Bono Week is approaching!

I realize that only one of the above may be of interest to you (though, maybe not), so I'll focus on #3.

National Pro Bono Week is a time to honor and celebrate the volunteers that make so much of our work possible. National Pro Bono Week was created by the American Bar Association in 2009 and, since then, has exploded into a month-long series of events nationwide.

Since the beginning of this year, our volunteers have provided 4 00+ hours of service, and helped dozens of clients. Our 2022 volunteers included:

Amy Abernathy	William Galione	Tee Lee	Frank Saier
Natasha Allen	Gary Grunder	Natalie Maxwell	Paul Sanders
Cole Barnett	Marynelle Hardee	John McPherson	Sharon Sperleng
Marilyn Belo	Brent Hartman	Frank Maloney, Jr.	Elika Stimpson
Sam Boone, Jr.	John Haswell	John McPherson	Cynthia Swanson
Levi Bradford	Leslie Haswell	Susan Mikolaitis	Scott Toney
Raymond Brady	Bennett Hutson	Peg O'Connor	Teresa Ward
Judy Collins	Adriane Asenberg	Tammie Purow	Richard White, Jr.
Michael Elyanow	Mauy Ivey	Lauren Richardson	Mary Wimsett
Kathleen Fox	Aaron Kelley	Jack Ross, Jr.	Elyot Xia-Zhu
Dean Galigani	Parker Lawrence, II	Jacob Rush	

TRLS wants to send a heartfelt thank you to all of our volunteers - current and former, attorney and student - who have given so much of their time and energy to help our clients. We really could not do what we do without your support.

TRLS offers a variety of opportunities, for all skill and interest levels. Additionally, all of our volunteers are covered by our malpractice insurance, have access to training materials and staff support, can get reimbursed for litigation expenses, and even get a shoulder to cry on or ear to vent to. Check out some of our opportunities below:

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. Rental assistance has run out, evictions are skyrocketing, and folks are in financially dire straits. Just 45 minutes once a week can make a HUGE difference.

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 both sessions or one.

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. UF Law students (and TRLS staff) screen applicants to identify legal issues, and volunteers will not be asked to consult on areas of law with which they are not familiar. These clinics are held one Saturday a month, typically between 10am-12pm. Our next clinic is October 15th at Grace Marketplace. Volunteers should arrive by 9:45am and plan to be there till 12p.

Law in the Library - These events 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. They are scheduled for the 1st Wednesday of each month at 5:30pm. TRLS's Kevin Rabin presented in September on Evictions/Defense. Future presentations are:

November 2nd - New Traffic Laws with Joel Osborne and Dennis Ramsey
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

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Huzzah for our Pro Bono Heroes!

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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. Alachua County - Client needs to probate mother's estate. There is one other heir, who also lives in Alachua County. (22-0342800)
2. Alachua County - Client needs to draft a will. There are two adult children and no real property. (22-0343295)
3. Alachua County - Client would like help with criminal expungement (arrest from several decades ago). (22-0338862)
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 needs to probate mother's estate. Client is the only heir and there is real property (homestead) involved. (22-0342021)
6. 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)

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

President's Message

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The board looks forward to seeing all of you over the next month. We welcome your ideas and suggestions, either in person, by email, or by phone. 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 October! See you in Cedar Key!

ADR

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exercise. Habituate yourself to walk far." (Jefferson had to walk or ride a horse as he did not own a car, electric or otherwise.) "I am a great believer in luck, and I find the harder I work, the more I have of it." And: Do not bite at the bait of pleasure till you know there is no hook." Keep this maxim in mind during all infomercials. Interestingly, Sheriff Andy Taylor expressed a similar observation to Opie.

"Every difference of opinion is not a difference of principle."

"I find as I grow older that I love those most whom I loved first." Interesting.

"The most valuable of all talents is never using two words when one will do."

And on that thought, we shall end.

Defense of Others: Some Fundamentals

By Steven M. Harris



Many states have a justified force statute dedicated to the defense of others or the so-called third person. The statute may or may not mimic the state's self-defense statute. Consider New Jersey, N.J.S.A. § 2C:3-5; Hawaii, Haw. Rev. Stat. § 703-305; Arizona, Ariz. Rev. Stat. § 13-406; Nebraska, Neb. Rev. Stat. § 28-1410; Texas, Tex. Pen. Code § 9.33; North Dakota, N.D.C.C. § 12.1-05.04; Tennessee, Tenn. Code § 39-11-612.

Florida's Chapter 776 justification statutes -- for defense of person and for home protection -- embrace both self-defense and the defense of *another*. Until 2014, § 776.031, *Fla. Stat.*, carried the erroneous catchline - "**Use of force in defense of others**" although it was (and still is) a defense of *property* statute. See [September 2022 Forum 8](#). The statutes of New York ([NY Penal Code § 35.15](#)) and Georgia ([O.C.G.A. § 16-3-21](#)) might be compared to Florida.

Non-deadly or deadly force may be justifiably threatened or used in defense of another or to prevent the commission of a forcible felony on another under § 776.012 and § 776.013(1), *Fla. Stat.* The defender must be in a dwelling or residence in which the defender has a right to be in order for § 776.013(1), *Fla. Stat.*, to apply. There is no requirement that a defender be related or owe a legal duty of protection to the person being defended. Deadly force (and perhaps non-deadly force) used in a "dwelling house" to thwart another's commission of a felony on a third person could be justifiable under § 782.02, *Fla. Stat.* See *Hancock v. State*, 276 So.2d 223 (Fla.1st DCA 1973).

A person who has threatened or used force in defense of another or to prevent a forcible felony on another raises the same affirmative defense as one who acted in self-defense. See *Mosansky v. State*, 33 So.3d 756 (Fla. 1st DCA 2010). See also *Grant v. State*, 266 So.3d 203 (Fla. 4th DCA 2019), which held it was error to instruct the jury on the forcible-felony exception (§ 776.041(1), *Fla. Stat.*), based on the conduct of the person defended and not of the defendant. Such person is eligible for criminal and civil immunity under § 776.032(1), *Fla. Stat.* The statutory language and legislative intent are unquestionably to that effect, despite that such immunity is referred to as "self-defense immunity" in § 776.032(4), *Fla. Stat.* *Of note:* The *civil* immunity provided by § 776.032(1), *Fla. Stat.*, appears not to preclude suit by or on behalf of a third party bystander who is unintentionally harmed or killed.

A person who threatens or uses force in defense of another does not "stand in the shoes" of the person

defended. The common law "alter ego" rule has not existed in Florida since 1890. See *Grant v. State*, 266 So.3d 203 (Fla. 4th DCA 2019). See also *Montanez v. State*, 24 So.3d 799 (Fla. 2d DCA 2010) (defense of others analyzed by the statutory reasonable person standard used in other justifiable use of force inquiries). *Of note:* Only a few states continue to follow the "alter ego" rule. Wyoming recently reconsidered and abandoned it, finding the common law rule inconsistent with its statutory reasonable belief standard. See [THIS](#) discussion of *Smith v. State*, 480 P.3d 532 (Wyo. 2021).

The initial aggressor-provocation rule (§ 776.041(2), *Fla. Stat.*) has been held inapplicable where an aggressor provokes another who attacks a third person and the aggressor then defends the third person. See [June 2022 Forum 8](#). Although duty to retreat or privilege of nonretreat ("stand your ground") scrutiny could be raised when deadly force is threatened or used in defense of another, it is properly considered irrelevant. In *Fletcher v. State*, 273 So.3d 1187 (Fla. 1st DCA 2019), Judge Winokur made this insightful observation: ". . . it seems nonsensical that a person who is not facing death or great bodily harm but is merely protecting someone who is facing such a threat has a duty to retreat. Because such a person can almost always retreat (as they are not facing death or great bodily harm) imposing this duty would gut the defense-of-another claim."

The doctrine of "transferred intent" provides that unintended harm to or even the killing of a bystander in the "proper and prudent exercise" of self-defense is deemed justifiable. *Brown v. State*, 94 So. 874 (Fla. 1922); *V.M. v. State*, 766 So.2d 280 (Fla. 4th DCA 2000). It should also be applied when § 782.02, *Fla. Stat.*, is the legal basis to justify the use of deadly force. See *Nelson v. State*, 853 So.2d 563 (Fla. 4th DCA 2003). Transferred justification also applies to the defense of another. In *David v. State*, 306 So.3d 228 (Fla. 3d DCA 2020), the defendant sought to transfer his defense of others claim. The court observed that ". . . unintended injury to a bystander is indeed justifiable if resulting from shots fired in the proper and prudent defense of another."

It can constitute fundamental error not to properly charge the jury on the defense of another (distinct from any self-defense instruction) when the evidence reflects the possibility of the defense. See *Dawson v. State*, 597 So.2d 924 (Fla.1st DCA 1992). [Std. Jur. Inst. \(Crim\) 3.6\(o\)](#) does not address transferred intent specifically in the context of justified self-defense or defense of another. A jury should be more specifically instructed that transferred justification exonerates the defendant from accidentally causing harm or death to a bystander when acting in justified defense of self or another.

The Devil is in the Details

By Krista L.B. Collins



As we go about our daily lives, we often see instructions, headlines, or other written communications in which the language and grammatical choices make the sentence confusing, funny, with multiple meanings, or altogether nonsensical. As I was writing this article, our bookkeeper stopped by my office to ask what I thought the instructions to heat for “60 seconds per side” on her cylindrical frozen burrito meant.^[1] In the practice of law, disputes often arise because of different readings of the same language, whether in a contract, statute, or jury instruction. As attorneys we know that the devil is in the details—we know how vitally important it is to be precise, accurate, clear, and unequivocal in the written word. Numerous cases have shown just how important.

Recently, in an entertaining decision, the Fifth Circuit Court of Appeal affirmed entry of summary judgment in favor of a collective of seven affiliated brewers. The brewers contended that a Texas statute that limited beer to-go sales to brewers and manufacturers who produced no more than 225,000 barrels annually “at all premises [they] wholly or partly owned” did not apply to them because the vast majority of their beer was produced at leased premises. *CANarchy Craft Brewery Collective, L.L.C. v. Texas Alcoholic Beverage Comm’n*, 21-50195, 2022 WL 2195796 (5th Cir. June 20, 2022).^[2] The Texas Alcoholic Beverage Commission argued that “premises wholly or partly owned” included leased premises. The legislature’s failure to define the term “owned,” coupled with the ordinary meaning of the word and the usage of the terms “owned” and “leased” in other statutes, gave CANarchy a clear win: “we conclude that the Legislature intended for “owned” and “leased” to be distinct (and mutually exclusive) within the Code.” *Id.* at *4. Whether or not that is in fact what the legislature intended, their failure to be clear in the statute left the courts with little choice.

We need not go all the way to Texas to find decisions based on a lack of precision, from something as small as the placement of a comma. In *Talley v. State*, 106 So.3d 1015 (Fla. 2d DCA 2015), the Second District Court of Appeal held that the inclusion of a comma after the phrase “including deadly force” in the standard jury instruction, where there was no comma in the statutory section upon which the instruction was based, was fundamental error because it changed the meaning of the phrase. The comma rendered the phrase a nonessential part of the sentence and “change[d] the meaning by indicating that a defendant has no duty to retreat and has the right to stand his ground and meet force with

force *only if* he reasonably believed that it was necessary to do so to prevent death or great bodily harm to himself or to prevent the commission of a forcible felony.” *Id.* at 1017.

In *Principal Life Ins. Co. v. Halstead as Tr. of Rebecca D. McIntosh Revocable Living Tr. Dated September 13, 2018*, 310 So. 3d 500, 503 (Fla. 5th DCA 2020), *reh’g denied* (Jan. 29, 2021), *review denied sub nom. Halstead v. Principal Life Ins. Co.*, SC21-313, 2021 WL 2774746 (Fla. July 2, 2021), the interpretation of an insurance policy provision also turned on the inclusion of a comma: did the phrase “if applicable” apply to both “Part D” and “any amendment” where the policy stated “sign **the Part D of this Adjustment Application and any amendment form, if applicable**, and return such forms...”? *Id.* at 501–02 [emphasis in original]. The Fifth District answered yes.

In fact, there are numerous cases in which the discussion is more of grammar than of law. See, e.g., *Imhof v. Walton Co.*, 328 So.3d 32 (Fla. 1st DCA 2021). And while “one of the most fundamental tenets of statutory construction requires that we give statutory language its plain and ordinary meaning” (unless the words are otherwise defined), courts still regularly disagree on the meaning of words. *Brittany’s Place Condo. Ass’n, Inc. v. U.S. Bank, N.A.*, 205 So.3d 794, 798 (Fla. 2d DCA 2016). For instance, in *State v. Burris*, 875 So.2d 408 (Fla. 2004), the Florida Supreme Court noted conflict between the First District and the Fifth District in the meaning of the word “carry” – even when ascribing its plain and ordinary meaning.^[3]

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The Devil is in the Details

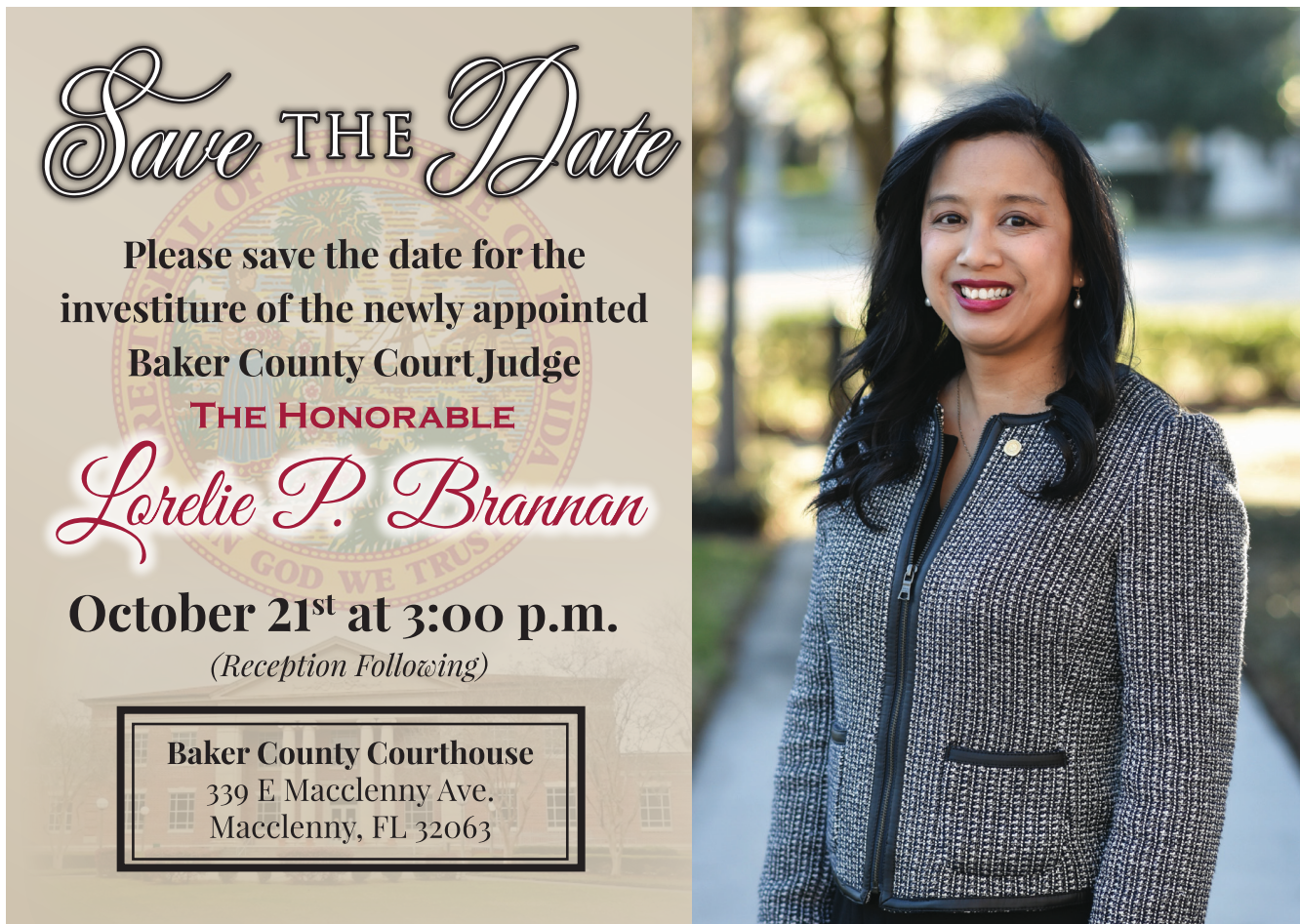
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What lessons should we take from these cases? I can think of several:

1. We should always carefully review what we have drafted. Just because something makes sense to me does not mean it will make sense to everyone.
2. Ask a colleague – preferably someone with a different writing style – to review drafts of important documents.
3. Finally, if grammar rules just don't come easily, stay in touch with your high school English teacher!

[1] The obvious conclusion being that one must stand the burrito on end, heat for 60 seconds, then stand it on the other end and repeat.
[2] The decision, though obviously not binding in Florida, is a fun read, as the Court has filled it to the brim with beer and drinking puns, even going so far as to refer to the Appellant's attempt to raise an issue on appeal that it failed to raise before the District Court as a "party foul." *Id.* at *6.

[3] Recently, the Florida Supreme Court has stated that 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 '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." *Conage v. United States*, SC20-1441, 2022 WL 3651398, at *2 (Fla. Aug. 25, 2022). In other words, the plainness of the language is determined by reference to itself, as well as the specific context in which it is used and the broader context of the statute. Might this have changed the outcome of the cases described above?



The image is a promotional poster for the investiture of a new judge. On the left, there is a text-based graphic with a light beige background. At the top, the words "Save THE Date" are written in a mix of elegant cursive and bold serif fonts. Below this, the text reads: "Please save the date for the investiture of the newly appointed Baker County Court Judge THE HONORABLE Lorelie P. Brannan". The name "Lorelie P. Brannan" is in a large, red, cursive font. The date and time are listed as "October 21st at 3:00 p.m." with "(Reception Following)" in italics below. At the bottom, a black-bordered box contains the address: "Baker County Courthouse, 339 E Macclenny Ave., Macclenny, FL 32063". A faint seal of the Florida Judicial System is visible in the background of the text area. On the right side of the poster is a photograph of Judge Lorelie P. Brannan, a woman with long dark hair, wearing a grey and black patterned jacket, smiling at the camera.

FLORIDA MEDICAID MINIMUM WAGE INCREASES TO \$15/HR

By Laura A. Gross



The minimum wage for direct care employees of Florida Medicaid providers will increase to \$15 per hour on October 1, 2022. Lawmakers appropriated \$600 million dollars solely for this purpose to the Agency for Health Care Administration (AHCA). AHCA will distribute the funds to providers via enhanced Medicaid reimburse rates and fee-for service schedules.

By October 1, 2022, providers must enter into a supplemental wage agreement with AHCA to ensure compliance. Participation is mandatory and will be enforced by audits and recoupment of funds associated with the minimum wage increase.

The increase also applies to 1099 contractors who provide direct care. Providers have expressed some confusion about who qualifies as a direct care worker. Recently, AHCA issued FAQs on the new wage requirements including one which specifically answers this question.

Question 12: Which employees of a Medicaid provider qualify as direct care employees?

A Direct Care Worker is defined as an individual that has direct contact with a Medicaid recipient for purposes of providing a Medicaid reimbursable service. Direct care workers do not include individuals who do not provide a Medicaid reimbursable service, whose primary duty is maintaining the physical environment of the workplace, or whose duties are primarily administrative.

The answer continues with an illustrative list of direct care worker job titles. However, and in contradiction to this definition, the supplement wage agreement that providers are being asked by AHCA to sign apparently does not make the distinction between direct care and other employees.

Beginning January 1, 2023, an employee of a provider who is not receiving a wage of at least \$15 per hour may bring a civil action against the provider for back wages, an equal amount of liquidated damages and reasonable attorney fees and costs, along with injunctive relief including reinstatement. Such actions may be brought as class actions under Florida law.

Associate Attorney Position

The Miller Elder Law Firm, a law practice specializing in elder law, is seeking candidates for an associate attorney position in its Gainesville, Florida office. We seek a motivated, smart, newer attorney who would like to litigate probate, trust, and exploitation cases. The practice also provides estate planning, probate, guardianship, and life care planning.

Salary commensurate with skills and experience (\$55-65k)

Interested candidates should submit the following to debim@millerelderlawfirm.com

- Cover Letter
- Resume
- References
- Salary Requirements

Litigation Paralegal

The Miller Elder Law Firm in Gainesville, Florida is looking for a full-time or part-time litigation paralegal:

Salary Range:

- Salary Range \$55-65k commensurate with experience (health insurance and bonus structure included.)

Please respond by email to: debim@millerelderlawfirm.com, with a cover letter, resume, and three (3) references.





Weiss Serota Helfman Cole + Bierman Brings Together Education Law Attorneys Across Florida

Weiss Serota Helfman Cole + Bierman (WSHC+B), a Florida-based law firm, is pleased to announce that we've expanded our education law practice with the addition of Gainesville-based law firm **Dell Graham**. We are excited to welcome attorneys [David M. Delaney](#) as a new partner at the firm and [Ayanna Hypolite](#) as an associate.

Delaney and Hypolite will continue to represent clients throughout the State, specializing in litigating matters on behalf of public schools and advising them in all aspects of education law.

For more information on our firm contact David M. Delaney, Chair of the Education Practice Group at ddelaney@wsh-law.com.

(352) 416-0066

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THE NORTH CENTRAL CHAPTER OF THE FEDERAL BAR ASSOCIATION
PRESENTS

A VIEW FROM THE OCALA DIVISION BENCH

Senior District Judge Gregory A. Presnell

Magistrate Judge Philip R. Lammens

Thursday, October 13, 2022, Noon to 1

United States District Court, Middle District of Florida, Ocala Division
Golden-Collum Memorial Federal Building and U.S. Courthouse
207 N.W. Second Street, Ocala, Florida 34475

\$20.00 for members, North Central Florida Chapter, Federal Bar Association
\$30.00 for non-members

Lunch included starting at 11:30

*For more information and to RSVP, please contact
Gilbert A. Schaffnit, President, North Central Florida Chapter FBA
gaslaw@gmail.com
352/378-6593 office*

CLE Request Pending

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 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 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

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.



October 2022 Calendar

- 1 UF Football v. Eastern Washington, 12:00 Noon
- 4 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 November Forum 8
- 5 Yom Kippur Holiday – County Courthouses closed
- 6 Annual James C. Adkins, Jr. Cedar Key Dinner, sunset at Steamers
- 8 UF Football v. Missouri (Homecoming), TBA
- 10 Columbus Day – Federal Courthouse closed
- 12 Probate Section Meeting, 4:30 p.m. via ZOOM
- 15 UF Football v. LSU, TBA
- 21 EJCBA Luncheon, Professor Sarah Wolking, “Wrongful Convictions/4th Circuit State Attorney’s Office Conviction Integrity Review Unit,” The Woolly, 11:45 a.m.
- 21 Investiture of Baker County Court Judge Lorelie Brannan
- 23 Annual Fall Family Friendly Festival at First Magnitude Brewing, 3-6 pm
- 29 UF Football v. Georgia, Jacksonville, FL, 3:30 p.m.

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.

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.