

FORUM 8

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Eighth Judicial Circuit Bar Association, Inc.

September 2022

President's Message

By Robert Folsom



Welcome members to the 2022-2023 EJCBA new bar year! We hope that everyone has had a restful and delightful summer. The Board of Directors met over the summer to discuss our goals and plans as an organization for the coming year. Our primary goals this year are to increase engagement by the membership; and, in that vein, bring value to your

membership.

First off, you can look forward to our perennial events. Our monthly luncheons this year will continue to be held at The Woolly, which has been a phenomenal partner to our organization (particularly as we weathered the uncertainties of in-person luncheons due to COVID). Beyond the monthly luncheons, The Woolly hosted our holiday social in December 2021, our diversity roundtable this past April, our spring fling in May (via the Boxcar Beer & Wine Garden at Depot Park), and our annual dinner this past June. Best of all, The Woolly has been renovated this year, creating new spaces which are available for more intimate social events. Moreover, there is the possibility this year for valet parking. The board has not discussed that yet (so no promises), but it will be on the agenda at the September board meeting. Upcoming luncheon speakers include Florida Bar President Gary Lesser, who will be speaking to us in February 2023. And Florida Supreme Court Chief Justice Carlos G. Muñiz will be speaking to us at a yet-to-be-determined date. Speaking of Chiefs, Eighth Judicial Circuit Chief Judge Mark W. Moseley will be giving the State of the Circuit address at our January luncheon, where we will be sure to hear about our new Baker County judge, The Honorable Lorelie P. Brannan, as well as our new circuit judge who will be filling the vacancy left by the retirement of The Honorable Monica J. Brasington.

Beyond the monthly luncheons, you can look forward to our annual James C. Adkins, Jr. Cedar Key Dinner, the fall social event, the spring social event, the professionalism seminar, the diversity/leadership roundtable, the golf tournament, and many other events at which we can come together in a fun and casual environment. As part of our planning for upcoming social events, the board is looking to implement additional opportunities for networking and mentoring between seasoned attorneys and newer attorneys, as well as similar events which would facilitate more interaction between our members and the local judiciary.

Another goal of the board this year is to create and implement succession plans for outgoing board members who have been an invaluable resource to the EJCBA, but who need others to come forward to help maintain what they have built. Looking ahead this year, we need a new Historian. Frank Maloney, who has been a bedrock for the EJCBA since its beginnings, is ready to entrust this important position to the next generation of attorneys. The board is encouraging anyone who is interested in becoming our Historian to contact Frank Maloney, directly, or the board (<https://www.8jcba.org/Contact>) generally. Another need that the board has this year is for a member to take over as chair of the Golf Tournament. Mac McCarty, who has traditionally chaired this popular event, is looking to co-chair the event with a successor over the next year as the new chair learns the ropes. Ideally, we can find someone who is conversant in the world of golf. And, if you did not already know, judges love to play golf.

As part of the transition to a new Historian, we will also be returning to growing the EJCBA's Oral History Project. So many of our members and local judges are architects of this bar association who have grown and maintained it for the past several decades. Our bar association is more than what we do as an organization any given year. It is more than tradition.

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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

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

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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



Negotiation Ethics

We were reading an interesting chapter in a book entitled Lawyer Negotiation: Theory, Practice and Law. One of the chapters was on “Negotiation Ethics” and part of that chapter included a discussion on “Client Control v. Lawyer Integrity (Conflict of Interest.)”

The sub-chapter notes that ethical issues in negotiation are compounded for lawyers because their interests are seldom in complete congruity with those of their client. As noted:

“When lawyers are employed to negotiate for principals, the interests in the timing, costs, trade-offs, goals, and relationships involved in a settlement may be different for the lawyer than for the client.” Lawyer Negotiation, p. 217.

But, lawyers work for clients and in large part, clients get to determine settlement.

ABA Model Rule 1.2(a) states: A lawyer shall abide by a client’s decisions concerning the objectives of representation... and shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client’s decision whether to accept an offer of settlement of a matter.

The *application* of the above Rule is less clear according to the authors of the referenced book.

The authors further note that lawyers have long-term relationships with one another and repeatedly interact in ways that have their own norms of behavior. However, the client more than likely has an isolated or singular relationship with the legal system. A lawyer has or should have a long term interest in maintaining a credible relationship with other lawyers. A client, however, is interested in maximizing gain from a one-time transaction/ case.

By way of example: Consider that your client in the sale of a business instructs you as lawyer to make a first offer of \$1 Million but to eventually sell for \$500,000. Can you as lawyer refuse because you feel the higher offer is unreasonable and compromises your integrity? Can you

make the first offer to opposing counsel with a wink and not breach the client’s confidence?

Does Model Rule 1.2 which divides bargaining decision responsibility along an ‘end-means’ line (client decides the end goal and the lawyer decides the means of obtaining the client’s goal) provide some help in your decision? And ask yourself: Is there a cleaner end-means line when representing an injured person than when representing a business person in a commercial scenario?

Other potential conflicts include a client’s rejection of a reasonable offer in a case where the lawyer thinks the client stands a good chance of losing or gaining significantly less than an offer if the case goes to trial. The lawyer may end up incurring significant costs as well as no fee or a much smaller fee. Yet, the client has their own personal economic needs or wants and thus wants to maximize value.

All lawyers have encountered a conflict in their own interests versus the interest of their client. The lawyer may feel that in negotiation his client’s demands are jeopardizing the lawyer’s image and reputation. Or, the lawyer may feel a personal economic risk versus the client’s desire for economic gain.

Happily, at mediation, many of these examples and considerations occur and it is the job of the mediator to assist in resolving the participants’ interests whether those interests be ‘across the V’ or between the members of the same side. We observe that at mediation, more likely than not, resolution encompasses all of these considerations.



THOUGHTS ON PROPOSALS FOR SETTLEMENT

By Siegel Hughes & Ross



As many probably know, the Supreme Court amended Rule 1.442, Fla. R. Civ. Pro. which addresses Proposals for Settlement effective July 1, 2022. I recently attended a very informative webinar co-chaired by Julie Fine of Fine, Farkash & Parlapiano. The presenters raised some interesting points in that webinar which I think will be interesting and useful to civil practitioners.

1. The Amendment requires a proposal to exclude all nonmonetary terms except the voluntary dismissal of all claims with prejudice unless other nonmonetary terms are specifically permitted by statute.
2. For example, this eliminates the ability to condition the proposal on execution of a confidentiality clause and/or a hold-harmless or indemnity provision.
3. This would seem to prohibit the requirement that a party execute a Release. A Release that is limited to the claims dismissed would obtain nothing more than that inherent in the dismissal. A Release which goes beyond the claim presented would seem to involve "nonmonetary terms."
4. Can the Plaintiff demand actual payment or only a judgment? Payment does not seem to be a nonmonetary term. However, see *State v. Lightfoot*, 2022 WL 1653412 (Fla. 1st DCA 2022). How about the agreement to make payment by a specific date?
5. A proposal must be served on each party separately. The exception to this rule is that a proposal served on an active tortfeasor may also include a defendant who is "solely vicariously, constructively, derivatively, or technically liable." However, a defendant who is alleged to have both active and derivative liability may not be included in the proposal with another defendant who is actively liable.
6. Acceptance of a proposal by one party may not be conditioned on acceptance of a separate proposal served on another party.
7. Fla. Stat., §627.4265, may allow the nonmonetary provision requiring payment within 20 days of acceptance and a release in a proposal to or from an insurance company.
8. Filing a Notice of Service of Proposal for Settlement is not proper.

9. In order to determine whether the judgment allows the serving party to recover fees one must first determine the judgment obtained:
 - a. In evaluating a Plaintiff's offer the judgment obtained is the amount of the net judgment entered, plus any post-offer settlement amounts by which the verdict was reduced.
 - b. In evaluating a Defendant's offer the judgment obtained is the amount of the net judgment entered, plus any post-offer collateral source payments received or due as of the date of the judgment, plus any post-offer settlement amounts by which the verdict was reduced.
 - c. The "net judgment entered" includes pre-offer attorneys' fees (if you have a statutory right to fees), pre-offer costs (taxable costs only), and pre-offer prejudgment interest.
10. A recovering party is not entitled to a multiplier for fees recovered under Rule 1.442. This makes sense because a multiplier is designed to encourage attorneys to accept cases they otherwise would not consider. However, at the time the party serves a Proposal for Settlement the attorney will already have accepted the case.

Thank you, Julie, and your fine group of attorneys who presented this information.



Ch- Ch- Changes at Three Rivers Legal Services, Inc.

By Samantha Howell, Pro Bono Director



Greetings! My name is Samantha Howell and I am the new Pro Bono Director at Three Rivers Legal Services, Inc. (TRLS). As you may know, Marcie Green retired in May, after 43 years of service! She left some big shoes to fill and I am grateful for her ongoing support and guidance.

Since this is my first letter to you, I thought I would start by sharing a little about myself. I was born in Kentucky and lived in New York State for 12 years before moving to Florida in 2019. I am admitted to practice in New York and Florida, and have managed pro bono programs for about a decade - I REALLY enjoy the work.

I have two cats (one of whom was a frequent Zoom guest for the last two years) and enjoy traveling, kayaking, reading, and Law & Order marathons. I am also a big fan of 80s hair metal and greatly enjoy conversations about politics and history.

While I am working to maintain the fabulous work that Marcie did, I will also be expanding pro bono opportunities throughout the entire TRLS service area. This includes restarting in-person clinics, expanding our virtual clinic offerings, and ramping up our volunteer recruitment, training, and support efforts.

Over the next five months, TRLS will be hosting weekly telephonic eviction clinics and monthly pro se divorce clinics, and the Ask-A-Lawyer Clinic and Law in the Library program will restart in September; the schedule is below, with brief descriptions of the available opportunities. If you can volunteer, please contact me at samantha.howell@trls.org. We will provide training, support, guidance, client screening, liability coverage, and can even offer reimbursements for litigation expenses!

Telephonic Eviction 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 - This clinic will be offered at the TRLS Gainesville Office on September 22nd (Thurs) and 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 September 10th at Peaceful Paths.

Law in the Library - These events are community outreach events, wherein a volunteer presents on a legal topic for 30-40 minutes. 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 will be presenting in September on Evictions/Defenses and Ray Brady and Peg O’Connor will present in February on Car/Pedestrian Accidents. In March, Derek Wheeler, the new LITC Clinic Director at UF, will present on tax/LITC issues. I am still working on scheduling events for October, November, January, and April.

Finally, we still make referrals for **limited scope and full representation** cases 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.

And, just a friendly reminder that, as attorneys, we are strongly 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.

You can select an available case and learn more about TRLS’s Pro Bono Legal Assistance Program (PBLAP) at <https://www.trls.org/volunteer/>.

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.



Non-Deadly Force Defense of Property: Trespassers and Other Bad Actors

By Steven M. Harris



Almost all cyber and legacy media discussions of “self-defense” are about the use of *deadly* force. (Often in the context of an incident or pending criminal case erroneously identified as a “Stand Your Ground” something or other. See [February 2020 Forum 8](#).) Use of *non-deadly* force in defense of property gets little attention,

including by the courts, with two exceptions; when there was firearm display or gunpointing, see *Garrido v. State*, 97 So.3d 291 (Fla. 4th DCA 2012), or a pet dog or cat was being defended, see *Mann v. State*, 135 So.3d 450 (Fla. 5th DCA 2014).

The right to use non-deadly force to expel a trespasser or otherwise protect real and personal property from tortious or criminal actors has longstanding common law roots. See, e.g., *Holley v. Kelley*, 91 So.2d 862 (Fla. 1957). See also *Model Penal Code* § 3.06. Defense of property is governed by a specific statute in many states. Some are similar to Florida’s. See, e.g., Illinois, 720 ILCS 5/7-3; Montana, M.C.A. § 45-3-104; Georgia, O.C.G.A. § 16-3-24.

Justification to threaten or use non-deadly force in defense of property has been the subject of § 776.031, *Fla. Stat.*, since 1975. A 2014 rewrite corrected its longstanding inaccurate catchline (“**Use of force in defense of others.—**”) and separated non-deadly and deadly force justification by subsection. The statute doesn’t apply to the defense of all property, or to everybody’s property. Under § 776.031(1), *Fla. Stat.*, a person may threaten or use non-deadly force with no duty to retreat when and to the extent reasonably believed necessary to

prevent or terminate the other’s trespass on, or other tortious or criminal interference with, either real property other than a dwelling or personal property, lawfully in his or her possession or in the possession of another who is a member of his or her immediate family or household or of a person whose property he or she has a legal duty to protect.

The privilege of nonretreat is unconditional. It is not required that one not be engaged in a criminal activity or be in a place where one has a right to be. The righteous location condition was inserted in 2005, but was removed by the 2014 revision. *Of note:* Justification for *deadly* force in the protection of property is determined per §

776.031(2), *Fla. Stat.* That subsection does not include the possession or legal duty to protect language. Instead, it invokes a forcible felony prerequisite and conditions the privilege of nonretreat on righteous behavior and location.

Justification under § 776.031(1), *Fla. Stat.*, typically evokes the notion of actual possession. See *Ulysse v. State*, 174 So.3d 464 (Fla. 4th DCA 2015). However, the statute sanctions defender action to “prevent” or “terminate.” Hence, the possession requirement would seem not to demand that the force user or offending actor actually be on the subject real property or in actual contact with the personal property at the moment non-deadly force is threatened or used. Constructive possession, or actual possession just before the offending conduct, should be sufficient. Possession by another is sufficient to invoke § 776.031(1), *Fla. Stat.*, if there exists either a household or immediate familial relationship with the possessor or a legal duty of protection to the property.

A dwelling is excluded real property. See *Garcia v. State*, 286 So.3d 348 (Fla. 2d DCA 2019). The associated curtilage should not be excluded. An attached covered porch would be excluded as part of the related dwelling if one accepts the dicta in *Garrido v. State*, 97 So.3d 291 (Fla. 4th DCA 2012), suggesting § 776.013(5)(a), *Fla. Stat.*, might be applied to all of Chapter 776. *Personal* property inside a dwelling is within the scope of § 776.031(1), *Fla. Stat.* See *Falco v. State*, 407 So.2d 203 (Fla. 1981). The common law should continue to apply to permit non-deadly force to eject a person who entered a dwelling with permission and is thereafter (for whatever reason) requested to leave but refuses to do so.

Florida’s “home protection” statute includes § 776.013(1)(a), *Fla. Stat.*, a paragraph which addresses threatening or using non-deadly force from within a dwelling or residence in defense of self or another person. It is a justifiable force against unlawful force provision, not a defense of property provision corresponding to § 776.031(1), *Fla. Stat.* If there is forceful resistance to a lawful attempt to repel or eject a dwelling or residence trespasser or otherwise stop offending conduct, § 776.013(1)(a), *Fla. Stat.*, could also provide the authority to threaten or use non-deadly force. *Of note:* A trespasser or other bad actor is not justified to threaten or use any force to oppose justified non-deadly force. This is because § 776.012(1), *Fla. Stat.*, provides justification for non-deadly force only against *unlawful* force. But, a trespasser’s self-defense perspective should not be admitted, argued, or be the subject of a jury instruction. See [October 2021 Forum 8](#).

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Criminal Law

By Brian Kramer



Judicial notice isn't usually a hot topic in the world of evidence. The addition to the Florida Evidence code of *Florida Statute* 90.2035 may just be the hottest evidence issue of the near future, or maybe not. I'll let you decide.

Florida Statute §§ 90.201-90.203 provide what matters may and must be judicially noticed and the process to change a may to a must.

Suffice it to say that judicial notice has been a steady, calm, reliable aspect of the evidence code for some time. Many of the matters that may be judicially noticed are ubiquitous. Matters such as statutory law, laws of foreign countries, records of the court are regularly judicially noticed with little fanfare. The code has also contained these hidden gems: "Facts that are not subject to dispute because they are generally known within the territorial jurisdiction of the court" and, "Facts that are not subject to dispute because they are capable of accurate and ready determination by resort to sources whose accuracy cannot be questioned." When litigation occurs over judicial notice, this is the hot spot.

This year the Florida Legislature kicked over the judicial notice appletart with this blockbuster: "Upon request of a party, a court may take judicial notice of an image, map, location, distance, calculation, or other information taken from a widely accepted web mapping service, global satellite imaging site, or Internet mapping tool, if such image, map, location, distance, calculation, or other information indicates the date on which the information was created." *Fla. Stat.* §90.2035(1)(a). I suggest that this seemingly innocuous statute could have profound impacts throughout criminal and civil litigation.

I'll start with the archaic. In 1967, the First District Court of Appeal addressed the issue of judicial notice of an element of an offense. In *Wright v. State*, 199 So.2d 321, (Fla. 1st DCA 1967), the DCA found reversible error in the trial court's special jury instruction taking judicial notice that "the previous chaste character of the prosecuting witness that the law presumes that every unmarried female is of chaste character until she has shown to be otherwise." The DCA held that "The law is well settled in this state that this essential element of the offense must be proven and not presumed, and in requiring that this allegation of the indictment be proven..." Setting aside that, thankfully, the State no longer need prove the chaste character of a 10-year-old, the underlying premise has up to now been a sound legal principle. For example, in *Graves v. State*, 587 So.2d 633, (Fla. 3rd DCA 1991), the appellant argued that the trial

court should not have taken judicial notice of a map because "it could not judicially notice a fact which constitutes an element of the crime charged." The *Graves* court found that the judicial notice was acceptable because "[t]he map was used at trial only to aid the officer testifying to the jury as to the actual site he had made his measurements." Given *Fla. Stat.* §90.2035(1)(a), I question that this holding remains sound. Does any witness now need to testify to any location, distance, or calculation, in any trial? In fact, and perhaps more to this point, §90.2035(3) states "In criminal cases, the court must instruct the jury that the jury *may* or may not accept the noticed facts as conclusive." Google Maps says that it's 756.01 feet from my office front door to the statue in front of the Public Defender's Office. Seems pretty conclusive. Does conclusive mean proven?

In a civil case, it seems that any such matter is conclusively proven. Using the principal of *expressio unius est exclusio alterius*, I read §90.2035(3) to mean that in a civil case the court may not instruct the jury that the facts are not conclusive, or more simply, that the court must instruct the jury the facts so noticed are conclusively proven. Further, in a civil case, there is now a presumption that any such fact will be judicially noticed and that any party disputing the proposed fact to be noticed has the burden of disproving the fact.^[1]

At least as it relates to "an image, map, location, distance, calculation, or other information," the world of trial evidence has been profoundly changed. I can only imagine that the changes that this will bring in both civil and criminal court will create unexpected results.

^[1] *Fla. Stat.* 90.2035(3): In civil cases, there is a rebuttable presumption that information sought to be judicially noticed under this section should be judicially noticed. The rebuttable presumption may be overcome if the court finds by the greater weight of the evidence that the information does not fairly and accurately portray what it is being offered to prove or that it otherwise should not be admitted into evidence under the Florida Evidence Code.

President's Message

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It is an enduring fellowship that has an essential history. That history needs to be documented, archived, and shared so that we as a local bar can know not only what we are and who has come before us, but also help us decide what we value as we move towards our future. In that regard, Frank Maloney, Lauren Richardson, and I are soliciting those of you who have remembrances, both physical and oral, from our local bar's past to share them with us over the next year as we work to record them and create a repository for these treasured mementos. And we encourage those of you, like Frank, who have been foundational figures in our local bar to allow us to document your stories and historical accounts for the current and future generations of attorneys who will be part of our bar. Hopefully, at some point, maybe not this year, we can find a permanent home for these pieces of history to be displayed. Having a permanent display would demonstrate the value our organization has to the local community, the local bar, and the legal profession.

Next, we are looking to make the Driver's License Clinic a year-round opportunity. New board member Samantha Howell will be spearheading this effort.

One of our aspirational goals this year is to have more continuing legal education opportunities for our members, either in-person or via Zoom. We are reaching out to speakers beyond the local community and beyond the State of Florida to find a diverse range of potential CLE topics. It is important to your board to bring value to your membership; and this is a great way to do so. If you would like to recommend a potential speaker or topic to us, please do so. We love hearing from you!

Finally, as part of our efforts to reach out to Baker, Bradford, Gilchrist, Levy, and Union counties, the board is planning to have some of our board meetings in those counties. And, to encourage engagement with local attorneys in those counties, we are looking to have networking/social events either prior to or after those board meetings. And we welcome everyone to join us.

The state of our local bar is strong. And your Eighth Judicial Circuit Bar Association is here to continue to strengthen it. We are committed to your success as attorneys and as members of your communities. You are what makes the Eighth Judicial Circuit Bar Association successful. And we look forward to seeing every one of you, and working with every one of you, over the next year.

Non-Deadly Force of Property

Continued from page 6

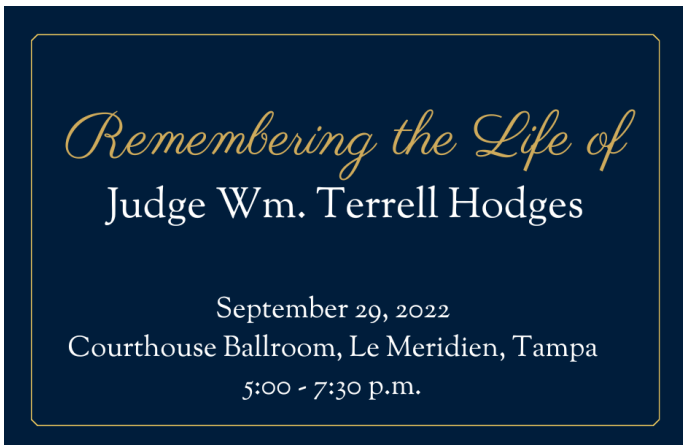
Threatening or using non-deadly force which is justifiable under § 776.031(1), *Fla. Stat.*, makes one *immune* from detention, arrest, criminal prosecution and any civil action. See § 776.032(1), *Fla. Stat.* Award of costs, attorney's fees, compensation for lost income, and reimbursement for other expenses is mandatory when a civil defendant is determined to be immune. See § 776.032(3), *Fla. Stat.*

A "citizen's arrest" may be made when trespass on or tortious or criminal interference with property constitutes a breach of the peace. See [October 2020 Forum 8](#). An *armed* trespasser may be detained and arrested by statute. See § 810.08(2)(c), § 810.09(2)(c) and § 790.02, *Fla. Stat.* *Of note:* Mere trespass is not a felony. Armed trespass is a felony, but is not a forcible felony. See *Montgomery v. State*, 291 So.3d 170 (Fla. 2d DCA 2020).

In such case, § 782.02, *Fla. Stat.*, could make the use of deadly force justifiable for "dwelling house" protection (from felonious attack "upon" or "within"). While commonsense suggests non-deadly force would be lawful whenever deadly force is justified, there is no on point case under § 782.02, *Fla. Stat.*

In order to be entitled to a defense of property instruction, a defendant must specifically assert the defense based on evidence force was threatened or used in defense of property, not in defense of person, and that a reasonable juror could believe the "victim" was or was about to become a trespasser or other bad actor. See *Bedell v. State*, 752 So.2d 1232 (Fla. 4th DCA 2000). [Std.Jur.Inst. \(Crim\) 3.6\(g\)](#) somewhat tracks § 776.031(1), *Fla. Stat.* It changes "tortious or criminal interference" to "wrongful interference," and refers to the offending conduct sought to be remedied generally with the phrase "wrongful behavior." Since preemptive non-deadly force may be lawful, the instruction includes trespasses and interferences "about to occur." Some of the instruction refers to "danger" since it is focused on defending against unlawful force. Other phrasing may be preferable in a defense of property case, perhaps, "hazard to property." *Of note:* If not stipulated or determined as a matter of law, additional instructions are probably necessary to explain some words and phrases in § 776.031(1), *Fla. Stat.*, e.g., "lawfully in possession" and "legal duty to protect."

The Tampa Bay Chapter of the Federal Bar Association will be holding an event entitled "Remembering the Life of Judge Wm. Terrell Hodges" on September 29, 2022. This event is also sponsored by the North Central Florida Chapter of the Federal Bar Association. The registration information for those who would like to attend the event is below:



Registration will be subject to venue capacity limits. In the event capacity is reached, you will be notified with the option to stay on a Wait List in the event additional capacity opens up.

The Chapter is working on determining whether a Zoom option to view the formal program will be available to those unable to attend in person. If you are interested in utilizing the Zoom option, please email President@federalbartampa.org

RSVP before September 15, 2022

THE RESOLUTION CENTER

Is pleased to announce the addition of

Leonard E. Ireland, Jr.

as a resident civil mediator and arbitrator

He is available to assist with all your mediation and arbitration needs.

For scheduling, please contact Trish Brehm via email at: tbrehm@clayton-johnston.com

or Leonard Ireland at: lireland@clayton-johnston.com
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Visit our website to view the availability of all our
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Ben Hutson
Mary K. Wimsett



EJCBA Annual Dinner 2022

Below are a few snapshots from the June EJCBA Annual Dinner, the first time an in-person annual dinner has been held since June 2019.



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.



September 2022 Calendar

- 3 UF Football v. Utah, 7:00 p.m.
- 5 LABOR DAY Holiday – County and Federal Courthouses closed
- 6 Deadline for submission to October 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.
- 10 UF Football v. Kentucky, 7:00 p.m.
- 14 Probate Section Meeting, 4:30 p.m. via ZOOM
- 16 EJCBA Luncheon, Speaker TBD, The Woolly, 11:45 a.m.
- 17 UF Football v. South Florida, 7:30 p.m.
- 24 UF Football at Tennessee, TBA
- 26 Rosh Hashanah Holiday – County Courthouses closed

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
- 14 EJCBA Luncheon, Speaker TBD, The Woolly, 11:45 a.m.
- 15 UF Football v. LSU, TBA
- 21 Investiture of Baker County Court Judge Lorelie Brannan
- 29 UF Football v. Georgia, Jacksonville, FL, 3:30 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.