

FORUM 8

Volume 81, No. 1

Eighth Judicial Circuit Bar Association, Inc.

September 2021

President's Message

By *Evan M. Gardiner*



A new year is upon us! For those who do not know me, my name is Evan Gardiner and I am the 2021-2022 President of the Eighth Judicial Circuit Bar Association. First and foremost, I sincerely want to thank Phil Kabler for his guidance and leadership during an extremely tough COVID-filled year. Thanks to his leadership, the EJCBA is still going strong and we are poised for

a fun and active year. Phil's time as President will be a tough act to follow, but I am excited to lead the EJCBA through the coming year.

Nearly all events and meetings last year were held virtually. While there is a current surge in COVID cases, I am optimistic that the EJCBA will be able to return to in-person events with the full catalog of our annual events. Favorites such as the Cedar Key Dinner, Fall Family Friendly Social, the Spring Fling, the award winning Professionalism Seminar (huge shout out to Ray Brady and Phil for this award), and more will be returning! In addition, I would also like to focus on new events, where in particular the EJCBA will be going to Baker, Bradford, Gilchrist, Levy, and Union Counties to show that our Association is committed to ensuring that the Eighth Circuit goes beyond Gainesville.

Another goal of mine is to increase the value of an EJCBA membership. I want to ensure that your dues are getting you the best possible return. In that sense, what I aim to do through the coming year is utilize Zoom for free CLE opportunities for members. Keep an eye out on the Facebook page for more information in the coming weeks.

I am also excited to announce that our monthly luncheons will be returning to The Woolly. As of now, we are on track to have our first in-person event since March 2020 on Friday, September 17th starting at 11:45 am.

From there, we are scheduled to have the luncheons on the third Friday of each month. Keep an eye on the EJCBA Facebook page for information regarding the speaker and topic. Speaking of Facebook, if you haven't already, be sure to go 'like' the EJCBA Facebook page (<https://www.facebook.com/EJCBA>) where we post information on upcoming events as well as updates on what is going on in the Eighth Circuit.

While there has been an increase in COVID cases due to the Delta variant, I remain hopeful that we will soon be able to return to a sense of normalcy. Zoom has been a great resource during the pandemic, and will remain a useful tool moving forward, but nothing can replace seeing everyone face to face.

As much as I have enjoyed Zoom, I sincerely look forward to seeing everyone in all three dimensions.

-Evan Gardiner

PS. Thank you to Dawn Vallejos-Nichols for always putting together the Newsletter, to our Executive Director, Judy Padgett, for her continued service to the EJCBA, and to my wife, Maggie, who quickly became a professional photographer in order to take my headshot photo.



2021 - 2022 Board Officers

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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:

Eighth Judicial Circuit Bar Association, Inc.

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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.

Judy Padgett

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Deadline is the 5th of the preceding month

Alternative Dispute Resolution

By Chester B. Chance and Charles B. Carter



Like Mick Jagger Said...

Every once in a while we look at quotes about mediation. Why? Because the quotes are pithy and succinct. Some of the quotes are by famous people like Abraham Lincoln, and, even more famous people like Mick Jagger.

Here are some of the quotes that apply to mediation, or, life in general.

1. "You can't always get what you want, but if you try sometimes, you might find, you get what you need." Mick Jagger

2. "Discourage litigation. Persuade your neighbors to compromise whenever you can." Abraham Lincoln

3. "Peace is not the absence of conflict, but, the ability to cope with it." Mahatma Gandhi

4. "We'll settle for \$70,000.00 and we want the insurance carrier to pay the full cost of mediation."
_____ (fill-in the blank)

5. "The courts of this country should not be the place for resolution of disputes to begin. They should be the place where the disputes end after all alternative methods of resolving disputes have been considered and tried." Sandra Day O'Connor.

6. "It does not matter how long you are spending on the Earth, how much money you have gathered, or how much attention you have received. It is the amount of positive vibration you have radiated in life that matters." Amit Ray (Actually this quote is about meditation. It really bugs us when you look up mediation on Google how it keeps directing you to meditation.)

7. "If the facts are on your side, pound the facts. If the facts are against you, pound the table." Anonymous; however, perhaps attributable to Adolf Hitler or Shirley Temple.

8. "Man is an animal that makes bargains. No other animal does this – no dog exchanges bones with another." Adam Smith

9. "The negotiating world often contains some razzle-dazzle and hocus-pocus, so, lighten-up and enjoy the game." Dr. Phil

10. "Never cut what you can't untie." Joseph Joubert

11. "Start out with an ideal and end up with a deal."
Karl Albrecht

12. "You can get much farther with a kind word and a gun than you can with a kind word alone." Al Capone

13. "Ever negotiate with lawyers at a huge company? If they saw you drowning 100 feet from the shore they would throw you a 51ft rope and say they went more than half way." Paul Somerson

14. "An apology is the superglue of life. It can repair just about anything." Lynn Johnston (we included this because we thought it was a quote by Lyndon Johnson.)

15. "During a negotiation, it would be wise not to take anything personally. If you leave personalities out of it, you will be able to see opportunities more objectively."
Bryan Kaslow

16. "He who has learned to disagree without being disagreeable has discovered the most valuable secret of a diplomat [negotiator]." Robert Estabrook

17. "The fellow who says he will meet you halfway usually thinks he's standing on the dividing line." Orlando A. Battista

18. "Courage is what calming down and listening requires." Winston Churchill

19. "If we do not resolve this today, I will file a proposal for settlement within an hour." _____ (fill-in the blank)

20. "Order your dumpster rental – takes less than 2 minutes." Actually that was an advertisement at the bottom of an article about mediation

we were reading. Disregard.

21. "Clients should understand that it often is to their benefit to trade hope for certainty." This is possibly attributed to Emily Dickenson or Martha Stuart – But the Dickenson reference shows we know literature.

22. "Mieux vaut un mauvais accord qu'un bon process." Better a poor agreement than a good trial. (French Expression)

23. "The greatest lesson in life is to know that even fools are right sometimes." Winston Churchill

24. "An ounce of mediation is worth a pound of arbitration and a ton of litigation!" Joseph Grynbaum

25. "Use soft words and hard arguments." English Proverb (We do not have to translate this like the above referenced French maxim).

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Criminal Law

By Brian Kramer



Does *Lange v. California*, 141 S.Ct. 2011, herald the beginning of a new era in law enforcement? Or is the Court just catching the law up with the rest of society? Or, is that the same thing? *Lange* addressed the question whether the exigent circumstances exception to the Fourth Amendment's warrant requirement applies when police are pursuing a suspect whom they believe committed a misdemeanor.

The Supreme Court answered this question with a new and yet untested standard: "In misdemeanor cases, flight does not always supply the exigency that this Court has demanded for a warrantless home entry." This holding creates the curious circumstance that the lesser the crime the greater the protection provided by the Fourth Amendment.

I do not dare to think that I can describe the facts better than the Supreme Court:

"This case began when petitioner Arthur Lange drove past a California highway patrol officer in Sonoma. Lange, it is fair to say, was asking for attention: He was listening to loud music with his windows down and repeatedly honking his horn. The officer began to tail Lange, and soon afterward turned on his overhead lights to signal that Lange should pull over. By that time, though, Lange was only about a hundred feet (some four-seconds drive) from his home. Rather than stopping, Lange continued to his driveway and entered his attached garage. The officer followed Lange in and began questioning him. Observing signs of intoxication, the officer put Lange through field sobriety tests. Lange did not do well, and a later blood test showed that his blood-alcohol content was more than three times the legal limit."

The government below argued that "the pursuit of a suspected misdemeanant always qualifies as an exigent circumstance authorizing a warrantless home entry." Noting that courts are divided over whether the Fourth Amendment always permits an officer to enter a home without a warrant in pursuit of a fleeing misdemeanor suspect, the Supreme Court set out to resolve this issue.

The Court started its analysis by reciting many well-established exceptions to the warrant requirement for the government entry into a home. The exception at issue here is, of course, exigent circumstances. "It applies

when "the exigencies of the situation make the needs of law enforcement so compelling that [a] warrantless search is objectively reasonable." The exception enables law enforcement officers to handle "emergencies"—situations presenting a "compelling need for official action and no time to secure a warrant." The Supreme Court has identified several such exigencies. "An officer, for example, may "enter a home without a warrant to render emergency assistance to an injured occupant[,] to protect an occupant from imminent injury," or to ensure his own safety. So too, the police may make a warrantless entry to "prevent the imminent destruction of evidence" or to "prevent a suspect's escape." (Citations omitted.)

At the heart of the "exigency" exception is the concept that a "now or never situation" actually exists. The Supreme Court noted that this analysis has traditionally been done on a case-by-case basis. The question in *Lange* is whether to use a categorical approach, or apply a case-by-case analysis, when a suspected misdemeanant flees from police into his home. The categorical approach rests on the concept that "flight alone" is sufficient proof of sufficient exigency. The case-by-case analysis recognizes that "misdemeanors run the gamut of seriousness, and they may be minor." Deciding any issue concerning a Fourth Amendment right starts and ends with reasonableness. What is reasonable is foremost driven by the place to be searched.

The Supreme Court gives us a potent refresher on the sanctity of the protection that Fourth Amendment provides for the home:

"The place to start is with our often-stated view of the constitutional interest at stake: the sanctity of a person's living space. '[W]hen it comes to the Fourth Amendment, the home is first among equals.' At the Amendment's 'very core,' we have said, 'stands the right of a man to retreat into his own home and there be free from unreasonable government intrusion.' Or again: 'Freedom' in one's own 'dwelling is the archetype of the privacy protection secured by the Fourth Amendment'; conversely, 'physical entry of the home is the chief evil against which [it] is directed.' The Amendment thus 'draw[s] a firm line at the entrance to the house.'" (Citations omitted.)

The Supreme Court finds that the citizen's right to be free from governmental intrusion in one's own home outweighs the public interest in a *per se* rule that flight alone is a sufficient exigency to justify a warrantless intrusion where the offense is a misdemeanor.

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Criminal Law

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“The flight of a suspected misdemeanant does not always justify a warrantless entry into a home. An officer must consider all the circumstances in a pursuit case to determine whether there is a law enforcement emergency. On many occasions, the officer will have good reason to enter—to prevent imminent harms of violence, destruction of evidence, or escape from the home. But when the officer has time to get a warrant, he must do so—even though the misdemeanant fled.”

I write not to criticize the Supreme Court or its decision. I write to note that there is a trend in society and the law to give less concern to what happens in the moment and more credence to the hindsight that is 20/20. We need look no further than our undying passion for sports to see this trend in society. While we can fairly debate the value of “instant replay” we cannot fairly debate its rise and prevalence in sports. So is true in life and the law. It seems that nearly every public space is recorded. As prosecutors, the first question we ask is “is there video?” More and more frequently, the answer is “yes.” Clearly, jurors rightly expect that it is likely that a crime that occurred in public was captured on video, and that the government will furnish it for their review.

I write this to observe that this “instant replay” culture is creeping into the law and into our practice. What law enforcement officers know is that they often don’t know if a defendant has committed a misdemeanor or a felony at the beginning of an investigation. They may need time, reflection, and advice before making the decision to arrest for a misdemeanor or a felony. Even more concerning is the notion that an officer will be able to fairly evaluate the circumstances in mid-chase to determine if she is seeing “flight alone” or something more that justifies a Fourth Amendment intrusion into a suspect’s home. Here, I think we ask too much from officers. I suspect that the result of this decision will be hesitation.

Robert K. Greenleaf told us: “On an important decision one rarely has 100% of the information needed for a good decision no matter how much one spends or how long one waits. And, if one waits too long, he has a different problem and has to start all over. This is the terrible dilemma of the hesitant decision maker.”

ADR

Continued from page 3

26. “One of the best ways to persuade others is with your ears – by listening to them.” Dean Rusk

27. “You can’t shake hands with a clenched fist.” Indira Gandhi

28. “By failing to prepare you are preparing to fail.” Benjamin Franklin (We included this because we always say preparation is the key to a successful mediation.)

29. “You got to know when to hold ‘em, know when to fold ‘em, know when to walk away, know when to run.” Kenny Rogers, or maybe Paul Brockway, who always tries to fill an inside straight.

30. “Could you make a fresh pot of coffee?” Al Bacharach

JOB ANNOUNCEMENT: Three Rivers Legal Services Housing Attorney

Three Rivers Legal Services, Inc. has an opening for a full-time housing attorney based out of Gainesville or Lake City, serving the 3rd and 8th Judicial Circuits. A desire to represent the needs of low income clients is essential. Initial types of cases include eviction defense, unlawful detainer, foreclosure defense, replevin, and administrative hearings. All experience levels are invited to apply, from law school graduates pending admission to The Florida Bar, to experienced attorneys in good standing with The Florida Bar. Bilingual preferred but not required. Salary \$52,652+ DOE. Full benefits package including health insurance and paid leave. EOE and ADA compliant. To be considered please send cover letter with resume and a minimum of three (3) references to jobs@trls.org.

****Three Rivers Legal Services, Inc., is an Equal Employment Opportunity Employer and does not discriminate on the basis of race, color, religion, sex, sexual orientation, national or ethnic origin, age, disability or veteran status.****

TRLS invites all applicants to include in their cover letter a statement about how their unique background and/or experiences might contribute to our staff's diversity, cultural vitality, and perspective, and practice.



*You are cordially invited to attend
the Investiture of the*

Honorable

George M. Wright

Eighth Judicial Circuit Judge

**Friday, September 10, 2021
3:00 p.m.**

**Alachua County Criminal Justice Center
Courtroom 1B
220 South Main Street
Gainesville, Florida 32601**

Reception immediately following



INVITATION TO RENEW / JOIN THE 2021-22 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 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 to your email address book and/or safe senders list.

EJCBA Membership Dues:

Free - If, as of July 1, 2021, you are an attorney in your first year licensed to practice law following law school graduation.

\$70.00 - If, as of July 1, 2021, 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, 2021, 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, 2021, 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: 2021 - 2022

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

**JOB ANNOUNCEMENT:
Three Rivers Legal Services
Public Benefits Attorney**

Three Rivers Legal Services, Inc. has an opening for a full-time public benefits attorney based out of Gainesville or Lake City, serving the 3rd and 8th Judicial Circuits. A desire to represent the needs of low income clients is essential. Initial types of cases include cessation of social security benefits, overpayments, and administrative appeals. All experience levels are invited to apply, from law school graduates pending admission to The Florida Bar, to experienced attorneys in good standing with The Florida Bar. Bilingual preferred but not required. Salary \$52,652+ DOE. Full benefits package including health insurance and paid leave. EOE and ADA compliant. To be considered please send cover letter with resume and a minimum of three (3) references to jobs@trls.org.

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TRLS invites all applicants to include in their cover letter a statement about how their unique background and/or experiences might contribute to our staff's diversity, cultural vitality, and perspective, and practice.

CELEBRATING FIFTY (Yes, that's 50!) YEARS

Congratulations to the following members of the Class of 1971 – now part of The Florida's Bar's 50-Year-Members. The EJCBA celebrates your service to the profession and to the Eighth Judicial Circuit:

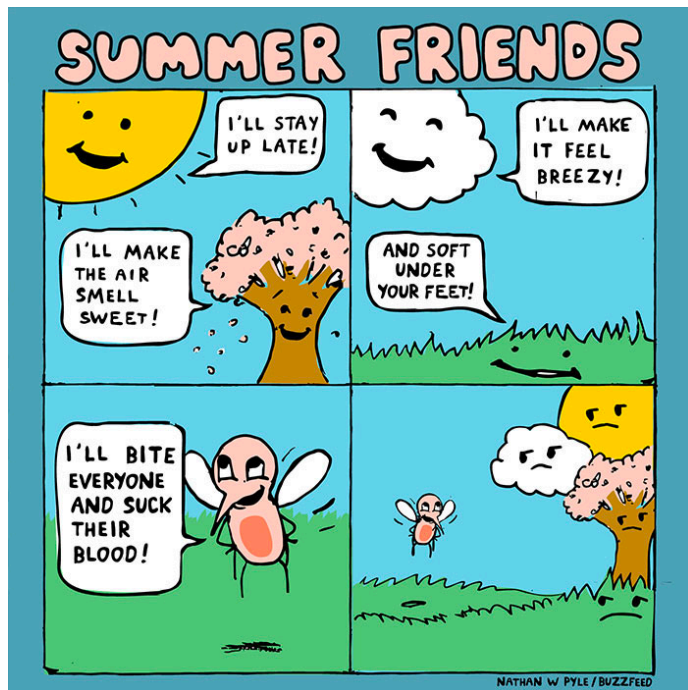
- Roger Lloyd Blackburn
- Jeffrey Lee Meldon
- Gary Moody
- Francis Paul Saier
- Robert Alan Stern
- Ronald Edward Young

Positions Available: TRLS

Director of Advocacy: Based in Jacksonville but with service responsibilities throughout the service area of Three Rivers Legal Services, the Director of Advocacy will be responsible for supporting high quality client representation in substantive legal areas of specialized practice through planning; facilitation; case/project management and implementation; and, in coordination with the Director of Litigation the training/professional development of legal staff.

Director of Litigation: Located in Gainesville, the Director of Litigation will provide general supervision of systemic litigation in state, federal, and appellate courts, and administrative proceedings, as well as general support, mentoring and supervision of litigation conducted by newer and less experienced advocates. The Director of Litigation will also be responsible for ensuring a strategic focus on program litigation and will provide technical assistance, co-counseling, and appropriate training. The position will provide strategic support for litigation. Additionally, a successful candidate will support, teach and model effective trial advocacy skills and promote professional development and training opportunities.

To learn more about these positions and how to apply, contact jobs@trls.org.



September 2021 Calendar

- 1 EJCBA Board of Directors Meeting, Office of the Public Defender, 151 SW 2d Ave., Conference Room (or via ZOOM), 5:30 p.m.
- 3 Deadline for submission to October Forum 8
- 4 UF Football v. Florida Atlantic, 7:30 p.m.
- 6 Labor Day Holiday - County and Federal Courthouses closed
- 7 Rosh Hashanah Holiday – County Courthouses closed
- 8 Probate Section Meeting, 4:30 p.m. via ZOOM
- 11 UF Football at South Florida, 1:00 p.m.
- 16 Yom Kippur Holiday – County Courthouses closed
- 17 EJCBA Luncheon, Speaker TBD, The Woolly, 11:45 a.m.
- 18 UF Football v. Alabama, 3:30 p.m.
- 25 UF Football v. Tennessee, TBA

October 2021 Calendar

- 2 UF Football at Kentucky, TBA
- 5 Deadline for submission to November Forum 8
- 6 EJCBA Board of Directors Meeting, Office of the Public Defender, 151 SW 2d Ave., Conference Room (or via ZOOM), 5:30 p.m.
- 7 Annual James C. Adkins, Jr. Cedar Key Dinner, sunset at Steamers
- 9 UF Football v. Vanderbilt (Homecoming), TBA
- 11 Columbus Day – Federal Courthouse closed
- 13 Probate Section Meeting, 4:30 p.m. via ZOOM
- 15 EJCBA Luncheon, Speaker TBD, The Woolly, 11:45 a.m.
- 16 UF Football at LSU, TBA
- 30 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.