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THE HILLSBOROUGH COUNTY BAR ASSOCIATION
TAMPA, FLORIDA | MAR - APR 2024 | VOL. 34, NO. 4





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ABOUT THE COVER

For this issue, we are highlighting a courthouse on our cover that will soon rise in St. Petersburg — the Bernie McCabe Courthouse, which will be the new home of the Second District Court of Appeal. The Second District Court of Appeal hears appeals of circuit and county court decisions from three of Florida's twenty judicial circuits in the Greater Tampa Bay area, representing nearly four million people. The circuits include the Sixth Judicial Circuit (Pinellas and Pasco counties), the Twelfth Judicial Circuit (Manatee, Sarasota, and DeSoto counties), and The Thirteenth Judicial Circuit (Hillsborough County).

The 2021 legislative session produced the approval and funding to build a new courthouse for the Second DCA in Pinellas County, The Bernie McCabe Courthouse, which is named for the late, longtime, and distinguished State Attorney for the Sixth Judicial Circuit. The Courthouse is in the final stages and the site and foundation work is beginning. Visit the Second DCA website for more information: <https://2dca.flcourts.gov/>. (Thank you to the Second DCA for providing this image.)

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Past Presidents Luncheon

The Hillsborough County Bar Association was pleased to host a large gathering of our past HCBA presidents and the past presidents of the Hillsborough County Bar Foundation on December 11. These leaders of the local legal community took the time to re-connect and reminisce about their experiences with the HCBA.

Thank you to The Bank of Tampa for hosting this special luncheon.



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What I Have Learned from My Board Certification Journey

I would encourage everyone, if you look around and find the attorneys that you respect and look up to and learn from are board certified, take the plunge, apply, and take one more test.

Last year in the March-April issue of this magazine, I discussed my decision to take the exam to become board certified in Marital and Family Law. The application process was daunting, and the studying involved late nights and many early mornings. The test itself was a grueling eight hours where I felt transported back to the days of the Bar Exam that I thought I had left far behind me. After the test, I waited almost three months to get the result. When the results came, the subject line of the email could not have been more clear: Fail.

The test has a notoriously low passage rate, but I was sure that I had been as prepared as possible and put forth my best efforts. I'll be honest — the next week was brutal. Like many attorneys, I had not failed a test or exam in my entire academic

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career. Let's just say that this failure led to a lot of questions and soul searching. But looking at the past year, there is no question that the process of studying and preparing for the exam made me a better and much more knowledgeable attorney. And wasn't that the real goal all along — to increase my proficiency and skill level?

Seen in that light, the test was not a failure, but rather a victory of its own sort. And I have not given up on my goal. By the time you read this article, I will have taken the exam a second time. I've again put in the over one hundred hours of studying — rising before my kids get up in the morning to steal a couple hours of studying and preparing outlines during my lunch hour. And guess what? I am still learning; still becoming a better attorney through this process. If I pass or if I fail, it will have been worth it.

Again, I would encourage everyone, if you look around and find the attorneys that you respect and look up to and learn from are board certified, take the plunge, apply, and take one more test. The journey alone could make you a better attorney. ■



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Navigating AI With Caution: Considerations for Lawyers Using AI in Legal Practice

Overreliance on AI without a comprehensive understanding of its capabilities and constraints could lead to oversights or misinterpretations and adverse consequences for clients.

The Florida Bar Board of Governors in January voted unanimously to approve an ethics advisory opinion that gives lawyers new guidelines for using generative AI. Advisory opinions are not binding like Bar rules, but Ethics Advisory Opinion 24-1 addresses key concerns like whether a lawyer should obtain a client's informed consent before using AI, its impact on fees and costs, compliance with applicable ethics and advertising regulations, duty to competence, and ethical responsibilities to maintain confidentiality and oversight.

The opinion cautions lawyers to be aware that generative AI is "still in its infancy" and notes that the ethical concerns should not be treated as an exhaustive list. While AI offers numerous benefits, it's essential for



us to exercise caution in its adoption so we don't overlook ethical, legal, and professional considerations.

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In a Florida Bar News article about the new guidelines, Florida Bar President Scott Westheimer said the use of AI dominates most conversations he has with lawyers and judges across the state.

“You can’t imagine the phone calls we get on this issue,” he said. “Every place I go, a DCA judge comes up to me and says a lawyer filed a brief using ChatGPT and there were errors in it.”

The use of AI raises ethics concerns about transparency, accountability, and the potential for biased outcomes. It’s our responsibility to vet AI technologies to ensure they meet ethical standards and legal obligations and avoid unintended consequences that may compromise the integrity of legal representation or client confidentiality. We also need to recognize the limitations of AI tools, particularly in complex legal matters that require human judgment. Overreliance on AI without a comprehensive understanding of its capabilities and constraints could lead to oversights or misinterpretations and adverse consequences for clients.

The opinion advises lawyers to “continue to develop competency in their use of new technologies and the risks and benefits inherent in those technologies.” AI is evolving rapidly, and we have a responsibility to stay

informed about the latest developments and advancements in the field. Regular reviews of AI systems and their impact on your legal practice can help identify errors and ensure that AI is enhancing, not compromising, your quality of legal services.

Transparent communication with clients is crucial when incorporating AI into legal practice. It’s imperative that we explain the role of AI in our services and outline the benefits and potential limitations. Obtaining informed consent from clients regarding the use of AI ensures transparency and maintains the attorney-client relationship.

While the integration of AI may revolutionize legal practices, it’s our duty to approach this technology with caution. Ethical considerations, understanding limitations, prioritizing data security, ongoing education, transparent client communication, and regular assessments are crucial elements in leveraging AI’s power responsibly. By navigating with caution, we can harness the benefits of AI while upholding the integrity and professionalism of our legal services. ■

Note: Special thank you to Lisa M. Tipton, Communications and Marketing Consultant at PR Florida, Inc., for her assistance with this article.

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The Value of Persistence in a Legal Career

Young lawyers can find in the YLD, a place to practice persistence, to learn and to grow.

One of my favorite quotes is by President Calvin Coolidge who famously said that “nothing in the world can take the place of persistence.” In my early legal career, I often remembered Coolidge’s words as I experienced several challenges and tribulations with establishing my place in the practice of law. For instance, in my first evidentiary hearing I missed a crucial piece of evidence, resulting in an unfavorable ruling. In fact, my first year as an attorney was more or less characterized by constant trial and error. However, what I thought at the time was a series of setbacks and failures, actually were periods of growth and development that I now find invaluable, as they taught me lessons that I will always remember in the practice of law.

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As with the beginning of any new career, young lawyers often come face to face with new experiences that test our abilities and knowledge of the law. In those times, young lawyers could benefit from remembering the value of persistence and of learning to press on through adversity.

The importance of persistence is also prevalent before we even become attorneys. This past February, a new wave of future lawyers gathered to take the bar exam in Tampa. For those bar-takers reading this article and who received news of not passing the exam, know that a single setback does not define your future legal career, and that a number of very successful attorneys did not pass the bar exam on their first attempt.

The YLD provides valuable opportunities to young lawyers and law students for practicing persistence, through the development of legal education, a supportive network, and valuable perspectives. This past January, the YLD hosted a networking happy hour, which boasted a huge turnout of lawyers thanks to the planning efforts of our Social Events Committee. On February 6, the

YLD hosted its first quarterly luncheon of 2024, and partnered with the HCBA's Mediation and Arbitration Section to put on an informative panel on effective mediation practices. The event, planned by our Professionalism and Ethics Committee, addressed best practices and methods for young lawyers to use in their first mediations, as well as tips and advice for handling subsequent mediations. This April, the YLD will host a luncheon and roundtable discussion in furtherance of recognizing imposter syndrome in the practice of law, and overcoming it. Lastly, the YLD offers leadership opportunities in our various committees and a chance for young lawyers to stay involved in the legal community.

Young lawyers can find in the YLD, a place to practice persistence, to learn and to grow. As echoed by President Coolidge, the measure of a young lawyer's success rarely comes solely through talent, genius, or education alone. Only through constant practice can we finetune and perfect our legal careers. The YLD is here to help in that task. I would encourage all of Hillsborough County's young lawyers to become involved in the YLD, and together we will "Press On!" ■

YLD Hosts Gasparilla-Themed Happy Hour

The Young Lawyers Division hosted a fun happy hour with a Gasparilla theme on January 25 at the Pour House at Grand Central. Attendees enjoyed the casual networking and opportunity to get out of the office.

Thank you to our happy hour sponsor, Milestone Reporting.





Grace Yang Named 2023 HCBA Outstanding Lawyer

YLD Also Recognizes Outstanding Jurist and Young Lawyers at Diversity Membership Luncheon.

Grace Yang's resume is truly impressive.

Yang graduated cum laude from Yale University, earned her law degree from Cornell Law School, is a shareholder with the firm GrayRobinson, and is widely recognized as one the preeminent alcohol law attorneys in the country.

For over two decades, Yang has been a constant presence and respected leader in the HCBA and multiple other local voluntary Bar organizations.

So, it was not a surprise — other than to Yang herself — that the HCBA bestowed Yang its highest honor with the 2023 Outstanding Lawyer Award at the HCBA's Diversity Membership Luncheon in January at the Tampa Marriott Water Street hotel.

The criteria for the award says it should go to someone who has exhibited superior legal ability in his or her field of practice; has demonstrated a high degree



Left to right: John Schifino, 2023 HCBA Outstanding Lawyer Grace Yang, and HCBA President Alex Caballero at the Diversity Membership Luncheon.

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Grace Yang with members of the Asian Pacific American Bar Association Tampa Bay Chapter, of which she is a member.

of professionalism and ethics; is widely recognized as a mentor to other lawyers; and someone who has been actively involved in HCBA activities.

Yang was nominated for the HCBA award by the Hillsborough Association for Women Lawyers and the Asian Pacific American Bar Association of Tampa Bay.

She is a longtime leader and has served as a board member in both Bar organizations.

“While Hillsborough County has many outstanding attorneys, Ms. Yang is truly one of the best,” Yang’s nomination statement said.

And while her professional accomplishments are impressive, the statement said, “what her resume doesn’t show is the countless hours, words of advice, guidance, and support she provides to other attorneys.”

Yang served as HCBA president in 2019-20, the first Asian American to lead the HCBA in its 123-year history.

Former HCBA President John Schifino, who served with Yang on the HCBA board, introduced Yang at the membership luncheon.

“Grace is an incredibly smart lawyer and good person who led our Bar as president with calm leadership and yes, grace, during the COVID pandemic,” Schifino said in her nomination statement. “She was the perfect person to lead during an incredibly challenging time.”

Yang also served as editor of the HCBA’s *Lawyer* magazine from 2010-12, and she continues to be actively involved in the HCBA’s 5K Pro Bono River Run Committee and the HCBA’s Diversity, Equity and Inclusion Committee.

In addition, Yang serves as the 2023-24 treasurer of the Hillsborough County Bar Foundation.

Asked about receiving this prestigious award, Yang said she was thankful to the groups that nominated her and for the HCBA for selecting her.

“I have enjoyed my service and involvement in Bar associations for many years and am deeply touched and honored to be recognized with this award,” Yang said.

Also at the membership luncheon, the YLD presented its annual outstanding jurist and lawyer awards. The 2023 award winners:

- YLD 2023 Robert W. Patton Outstanding Jurist Award: **Hon. Edward LaRose**, Florida Second District Court of Appeal
- YLD 2023 Outstanding Government/Nonprofit Lawyer Award: **Antina Mobley**, Thirteenth Judicial Circuit Public Defender’s Office
- YLD 2023 Outstanding Government/Nonprofit Lawyer Award: **Calli Burnett**, Bay Area Legal Services
- YLD 2023 Outstanding Young Lawyer Award: **Sean Bevil**, Shumaker

Congratulations to all these deserving HCBA and YLD 2023 award winners. You make the HCBA proud. ■

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DSK Law's newest Partner, Aaron joined DSK Law upon graduating Cum Laude from Florida State University College of Law in 2016. His practice includes complex commercial litigation, premises liability defense, evictions, collections, representation of creditors in bankruptcy actions, and fraud investigation, in addition to counseling medium to large businesses on transactional matters.

Aaron was born and raised in Tampa, Florida, attending both Gaither and Alonso High School. Aaron enjoys spending time with his family, attending Lightning games, and maintains an active role scouting for Major League Baseball teams.

We are honored to have you as a partner, Aaron!

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In addition to recording documents, the Recording Department collects money for documentary stamp taxes, intangible taxes, recording fees, and other miscellaneous fees.

Florida Statutes are amended from time to time to reflect the changing needs and concerns of Florida citizens. To curb the rise of property fraud, a recent amendment to Florida Statute Section 695.26, regarding the recording of documents affecting real property, went into effect at the first of the year. The changes are a result of Chapter Law 2023-238, which was House Bill 1419.

As of January 1, 2024, certain documents presented for recording in Hillsborough County Official Records require two witnesses, along with the name of each witness. These documents must also include the post office address of each witness in addition to the witness's name. The post office address of each witness must be a physical address or post office box; an email address will not suffice.

Section 695.26 authorizes the Clerk's office to not accept documents submitted for recording without the required witness address information. Documents that do not meet the statutory requirements of Section



695.26 are non-recordable documents, and presenters of those documents for recording will be given notice of rejection and removal.

What documents are affected?

The new requirement applies to any “instrument by which the title to real property or any interest therein is conveyed, assigned, encumbered, or otherwise disposed of...”

Section 695.26 will apply to, but is not limited to, the following document types:

- Affidavits “by which the title to real property or any interest therein is conveyed, assigned, encumbered, or otherwise disposed of...”
- Agreements, Affidavits, Notices, or Memorandums for Deed
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- Easements
- Agreements, Affidavits, Notices, or Memorandums of Interest in Land

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Maintaining a per se error analysis for failure to conduct hearings may have been a more effective way to conserve judicial resources.



A *Richardson* hearing becomes necessary in criminal trials when a potential discovery violation arises. The court's inquiry involves determining the violation's existence, nature, and the resulting prejudice on the affected party.¹ Prejudice, in this context, focuses on whether the violation "materially hindered" the party's trial preparation.² Ideally, the record of this inquiry should reflect the party's position on how its preparation was impacted, so the ruling court is not left to speculate on the matter.

Historically, a failure to conduct a *Richardson* hearing was a per se error, leading to automatic reversal.³ However, in 1995, the Florida Supreme Court introduced a harmless error analysis for such cases.⁴ As seen in other legal contexts, the rationale behind the shift is to conserve judicial labor by avoiding reversals on technicalities.⁵ The question arises: has this shift achieved its objective in the context of discovery violation claims?

A review of various 2023 appellate decisions suggests it has not. Despite the shift to a harmless error analysis, most cases dealing with a claim of failure to conduct a *Richardson* hearing resulted in

reversal.⁶ The courts found that the record lacked sufficient information to determine procedural prejudice without resorting to speculation.⁷ Interestingly, the Florida Supreme Court defines cases where an appellate court cannot conduct a harmless error analysis due to the need to speculate as a category of per se error.⁸ Thus, while binding precedent tells us that a failure to conduct a *Richardson* hearing is not per se reversible, the application of this rule by the appellate courts indicates the contrary.

In light of the latest cases, maintaining a per se error analysis for failures to conduct *Richardson* hearings may have been a more effective way to conserve judicial resources. As suggested by Justice Harding in his dissenting opinion in *Schopp*, designating an error as "per se" is prophylactic.⁹ Namely, it incentivizes parties to avoid discovery violations and trial courts to conduct adequate *Richardson* inquiries. Certainly, shifting back to a per se error analysis in this context has the potential to reverse cases where a party suffers no procedural prejudice. The result, in the long run, however, may be a reduction of appeals grounded

on a failure to conduct *Richardson* hearings. ■

Disclaimer: The opinions expressed in this article reflect solely the author's views and not the views of her employer.

¹ *State v. Schopp*, 653 So. 2d 1016, 1021 (Fla. 1995).

² *Scipio v. State*, 928 So. 2d 1138, 1150 (Fla. 2006).

³ *Smith v. State*, 500 So. 2d 125, 125 (Fla. 1986).

⁴ *Schopp*, 653 So. 2d at 1021.

⁵ See *Goodwin v. State*, 751 So. 2d 537, 540 (Fla. 1999).

⁶ *Tyson v. State*, 361 So. 3d 408, 414 (Fla. 5th Dist. App. 2023); *Gurolla v. State*, 370 So. 3d 694, 699 (Fla. 5th Dist. App. 2023); *Young v. State*, 369 So. 3d 1243, 1252 (Fla. 6th Dist. App. 2023).

⁷ *Id.*

⁸ See *Seadler v. Marina Bay Resort Condo. Assn., Inc.*, No. SC2022-0984, 2023 WL 8817327, at *4 (Fla. Dec. 21, 2023).



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Construction Law Section

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**Without this grace period,
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no remedy to pursue
parties who may be liable
for the owner's claims.**



When does a claim trigger the statute of repose one-year grace period?

Section 95.11(3)(b), Florida Statutes, governs the statute of repose for an action founded on the design, planning, or construction of an improvement to real property.¹ As of April 13, 2023, the statute of repose was reduced from ten to seven years. Notably, section 95.11(3)(b) affords defendants a one-year grace period to file counterclaims, cross-claims, and third-party claims that arise out of the underlying construction claims asserted, even if such claims would otherwise be time barred.² This one-year grace period is important for contractors because it provides them time to assert “downstream” claims against other parties who may have performed the work on which the claims are based.

For example, if the owner of a project files a lawsuit against a contractor based upon alleged construction defects six years and 364 days after the certificate of occupancy was issued for the project, the contractor may file counterclaims, cross-claims, and third-party claims that arise from the owner's claims up to one year after the owner served its pleading. Without this grace period, the contractor would have no remedy to pursue parties who may be liable for the owner's claims.

But what happens when an owner files a lawsuit against a contractor on the eve of the seven-year statute of repose, despite a contractual agreement to arbitrate? The general contractor may move to stay the lawsuit and compel arbitration pursuant to section 682.03, Florida Statutes, and the contract. To compel arbitration, the general contractor must prove an agreement between the parties to arbitrate exists and that it is enforceable.³ If the owner opposes the motion, the court must hold a hearing to decide the issue.⁴

The lawsuit is not formally stayed unless and until the court enters an order granting the motion. If the court orders the parties to arbitration, the court “*shall stay any judicial proceeding that involves a claim subject to the arbitration.*”⁵ Practically speaking, this process may take months.

Does the improperly filed lawsuit or a subsequent demand for arbitration trigger the statute of repose one-year grace period? Specifically, if the contractor waits for the owner to initiate the arbitration, does it risk the one-year grace period running on its counterclaims, cross-claims, and third-party claims that arise from the owner's claims? Alternatively, a contractor may initiate arbitration on its own against the relevant parties, without waiting for the court

to compel arbitration and the owner filing its demand for arbitration.

The timeliness of an arbitration claim is solely within the arbitrator's jurisdiction. Given the private nature of arbitration, contractors are left without guidance as to when they may timely file their downstream claims.⁷ ■

¹ See § 95.11(3)(b); § 95.11(3)(c) previously governed the statute of repose.

² See *id.*

³ See § 682.03(1), Fla. Stat.

⁴ *Linden v. Auto Trend, Inc.*, 923 So. 2d 1281 (Fla. 4th DCA 2006).

⁵ See § 682.03(7), Fla. Stat. (emphasis added).

⁶ *Gomez v. S&I Properties, LLC*, 220 So. 3d 539 (Fla. 3rd DCA 2017).

⁷ *Cox v. Village of Tequesta*, 185 So. 3d 601 (Fla. 4th DCA 2016), citing *Gren v. Gren*, 133 So. 3d 1066 (Fla. 4th DCA 2014).



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BEING A SOLO PRACTITIONER IS NOT FOR THE FAINT OF HEART

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The opportunity to serve clients who find a great fit with a firm whose leadership they can identify with, have similar backgrounds or life experiences with, is a great reward.



Entrepreneurship is not for the faint of heart, and neither is the practice of law. Despite this, a large number of practitioners combine the two by launching firms as solo practitioners. I myself am one of them.

As solo practitioners we practice law, perform technology fixes, and manage clients. Some of us also answer the phone and must clean our own offices. A truly complex experience is lived for those of us who are underrepresented persons in our profession because of our nationality, minority status or background.

“Are you really the lawyer?” is a question I am frequently asked, often with curiosity, sometimes with enthusiasm, and occasionally with suspicion when I meet new prospective clients. I always answer the question with a smile. I am well accustomed to the inquiry and anticipated it so far in advance that after entertaining several crafty trade names, I ultimately named the firm after myself to ease potential confusion!

Nevertheless, anticipating and adapting are key in law, in entrepreneurship, and some say in the minority experience. And in my personal experience, I have to say that launching a law firm has caused me to strongly agree.

Naseem Akel, of Akel Law — an estate planning firm in Tampa, calls the process “growing pains,” sharing that entrepreneurship as a female minority solo practitioner “has its challenges,” but it’s all in the name of growth, including growing professionally and learning new areas of law. Akel goes on to say it is also important on a “personal level to learn my limits and when to set them.”

Thankfully, there are a variety of resources that exist for those who are on, initiating, or considering this path. One of those resources is LegalFuel: The Practice Resource Center of The Florida Bar. It is a website which provides information on law firm management, startup, marketing, and more. As prospective solos from underrepresented groups or communities build their network, resources such as these can be utilized to bridge any gap of knowledge, connections, and resources they may face. Having these tools can secure an equitable experience for the minority lawyer who becomes an entrepreneur and ultimately improve the lives of their future clients.

“I know people looking for someone just like you!” is a

statement that I have been fortunate to hear often. This statement, or a variation, is a familiar refrain for underrepresented solos and for some is their reason for also becoming entrepreneurs via solo practice. The opportunity to serve clients who find a great fit with a firm whose leadership they can identify with, have similar backgrounds or life experiences with, is a great reward. This is especially true when the client needed these comforts and relatability in order to actually gain an understanding of their case, thus helping them recognize and appreciate the value of counsel.

As we all know every matter is a big deal to the client. Leaning into the challenges and enduring the tough days allows for positive impact to be made. In conclusion, although being a solo practitioner causes me to wear many different hats, I wouldn’t have it any other way. ■



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Coffee at the Courthouse

The YLD co-hosted a great Coffee at the Courthouse & Judicial Shadowing Day on January 30 at the George Edgecomb Courthouse. A huge thank you to the members of the judiciary for sharing their time and insights with members. Attendees enjoyed the time to network and see the daily rhythm of the judicial system first-hand. Thank you also to our co-sponsors, Hillsborough Association for Women Lawyers YLD, George Edgecomb Bar Association YLD, and Tampa Hispanic Bar Association YLD, and to The Florida Bar Young Lawyers Division, which helped make this event possible through a grant. Also, thank you to Nosh Bagels, which provided the coffee and delicious bagels.



IS FLORIDA NEXT? INCREASES IN M&A NOTICE REQUIREMENTS

Health Care Law Section

Chairs: Elizabeth "Beth" Scarola – Epstein Becker & Green, P.C. & Jennifer Touse – BayCare Health System, Inc.



Investors and sellers should work with their attorneys to carefully monitor the changing landscape around reporting.



In late 2019, House Bill 711¹ was introduced in the Florida House of Representatives, which would have required parties to provide notice to the Florida Attorney General of certain health care transactions, such as mergers and acquisitions. Although this bill was ultimately withdrawn from consideration, the trend over recent years of health care transaction oversight that has been observed in other states may signal that similar legislation may be reintroduced in Florida.

An increasing number of states are requiring advance notice of health care transactions. This year, California,² Illinois,³ and Minnesota⁴ became the latest

states to implement health care transaction reporting requirements, joining New York,⁵ Connecticut,⁶ Massachusetts,⁷ Nevada,⁸ Oregon,⁹ Rhode Island,¹⁰ and Washington¹¹ as states that already required notice of certain health care transactions. This recent increase in reporting requirements reflects a growing concern among regulators that healthcare mergers and acquisitions, especially private equity-backed acquisitions, may require additional oversight or approval. States are implementing these reporting requirements with a variety of goals, such as enforcing anti-competitive laws and ensuring transactions do not have a material impact on the cost and quality

of health care services provided in the state.

While many of these requirements are new or even still evolving, it is important for any purchaser or seller to take these requirements into account and to consult with counsel to ensure additional states, including Florida, have not introduced reporting requirements and to strategically plan how to mitigate the impact of an applicable reporting requirement. These reporting requirements require the disclosure of sensitive information to state agencies, increased transaction costs, and can result in significant

Continued on page 27

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Continued from page 26

transaction delays. Investors and sellers should work with their attorneys to carefully monitor the changing landscape around reporting and take steps to modify deal timelines and strategically assess what information must be disclosed and identify mechanisms to protect the confidentiality of such reports. ■

Note: We would like to thank our colleague, Ashley Creech, for her contributions to this article.

¹ 2020 Fla. H.B. No. 711 (N.S.), 122 Reg. Sess. (West)

² Cal. Health & Safety Code §§ 127500 *et seq.*

³ Illinois HB-2222.

⁴ Minnesota HF 402.

⁵ *See also*, N.Y. Pub. Health L. §§ 4550-4552.

⁶ Conn. Gen. Stat. § 19a-486i.

⁷ Mass. Gen. Laws Ch. 6D §13.

⁸ Nev. Rev. Stat. § 598A.370.

⁹ Oregon Revised Statute §§ 415.500 *et seq.*; Oregon Admin. Rules 409-070-0000 *et seq.*

¹⁰ *See* the State of Rhode Island Hospital Conversions Act.

¹¹ Wash. Rev. Code Ann. § 19.390.030.



Author: Kathleen Premo & Enrique Miranda – Epstein Becker & Green, P.C.



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Diversity Membership Luncheon

Approximately 300 members attended the annual Diversity Membership Luncheon on January 16 at the Tampa Marriott Water Street. Our featured speaker Onchantho Am, JD, the daughter of Cambodian refugees, a former foster youth, and now an attorney, provided an inspiring message of perseverance, mentorship, and diversity to the attendees.

We also were honored to recognize several leaders in our legal community with annual awards, including Grace Yang, who received our 2023 Outstanding Lawyer Award (*read more about Yang and her achievements on page 10*).

The Young Lawyers Division also presented its annual awards.

Congratulations to these winners:

- Sean Bevil, Shumaker - YLD Outstanding Young Lawyer of the Year Award
- Judge Edward LaRose, Second District Court of Appeal - YLD Robert Patton Outstanding Jurist of the Year Award
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Holiday Open House

The Hillsborough County Bar Association hosted a festive gathering of lawyers, judges, family members and friends at the Holiday Open House on December 6. Attendees enjoyed a cheerful atmosphere as they gathered to celebrate, socialize, and re-connect before the year came to an end. The attendees also donated to a good cause, bringing presents for Toys for Tots.

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See additional Holiday Open House
photos on page 36.









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Mediation is a major part of a labor and employment practice — most of our cases end in settlement, and many of those settlements are reached at mediation. But the skills we use in the courtroom are very different from the skills we use in mediation, or at least they should be.

While making the transition from litigator to mediator, I have seen a number of cases involving race and disability discrimination — both of which are the type of cases that lend themselves to a more evolved type of mediation. If you have reviewed the *Florida Mediation Best Practices Handbook*, you may have learned that mediation has transformed a great deal over the years.

For example, in the past, litigators selected mediators who pushed their clients toward settlement. They wanted “tough” mediators. Now, litigators are more often looking for mediators that understand people and that listen to the parties. Empathy is most important in cases where emotions run high, and we know that

Continued on page 39

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Continued from page 38

discrimination cases fall into that category. Sometimes one side is detached emotionally, but we almost always have a plaintiff who is emotionally invested and, frankly, an emotionally invested defendant is not uncommon. So, what can you do to improve the chances of a successful mediation for your client? Be present and aware.

Lawyers typically walk into mediations comfortably. You know who the players are, and you know what to expect. It is not unusual for all the lawyers (mediator included) to shake hands and engage in small talk while they wait for everyone to get there. This level of comfort for the lawyers can translate to a level of discomfort for the clients. While

unintentional, it makes them feel like outsiders. Your client wanted to show up as a team with you, but now you seem to be on a team with the other “suits” in the room. Be cognizant of this. Prioritize bonding with your client over catching up with your colleagues. Make sure they get introduced to everyone and feel included.

Also, consider your client’s point of view. If your client (whether plaintiff or defendant) feels they are the victim of discrimination, they likely find it hard to trust anyone — even you and the mediator. Being “nice” does not necessarily overcome that. Let them know, in no uncertain terms, that you understand their recalcitrance and that it is okay for them to tell you when they feel unsure or unsafe. Make sure to reinforce the

mediator’s instructions that they are the decisionmakers in the mediation and that they have the protection of confidentiality. And remember, if your client is in the minority at the mediation, whether by race, gender, disability or other characteristic, their discomfort level can be even higher when discussing their claims or defenses. Acknowledge this, too.

Ultimately, it is important for us all to remember that mediation belongs to the parties and to come

to mediation as problem-solvers rather than warriors. ■



Author: Mandi Ballard Clay – Miles Mediation & Arbitration

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THE ROLE OF A GUARDIAN AD LITEM IN FAMILY COURT

Marital & Family Law Section

Chair: Andrew D. Reder, B.C.S. — Sessums Black, P.A.



A Guardian ad litem can help shield the child from the distressing impact of litigation while providing vital insight to the court.



Children are often the ones who are most impacted during high-conflict custody proceedings. Florida law allows a Guardian ad litem (GAL) to be appointed by the court to represent the best interest of the child(ren) involved, which may help shield the child from the distressing impact of litigation.¹

Appointment of a GAL in a family case is highly discretionary and typically arises when the parties are unable to come to an agreement on the creation or modification of a parenting plan. When there are verified allegations of child abuse, abandonment or neglect, a GAL is required to be

appointed.² A GAL is appointed by one party filing a motion requesting the appointment of a GAL or by the parties' stipulation. This appointment can happen at almost any stage in the proceedings. Once appointed, the GAL becomes a party to the proceedings and is entitled to be present and fully participate in all hearings, depositions, mediations, and other proceedings in the matter.³

Most commonly, GALs are tasked with making recommendations to the Court regarding a parenting plan. The GAL investigates the allegations in the pleadings affecting the child(ren).⁴ The investigation includes interviews of the parties, child(ren), and other collateral witnesses

identified throughout the investigation. A GAL may also request medical and mental health records, educational records, or other records unique to the parties.⁵ Typically, the GAL visits the home of the child(ren) to observe the living environment. The GAL may also recommend or request examinations of the child or parties by medical or mental health professionals.⁶

The GAL makes written recommendations to the court about what's in the best interest of the child(ren), their mental health, and physical well-being. Sometimes there are specific allegations the

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GAL will address in the report. Usually, a proposed parenting plan will be included in the recommendation.

Typically, the GAL in a family law proceeding is an attorney in good standing with The Florida Bar. Non-attorneys may receive appointment if they are either certified by the Statewide Guardian Ad Litem Program or certified by a not-for-profit legal aid organization.⁷ Generally, the non-attorney GALs are social workers or other mental health professionals already familiar with the legal system.

The court will determine what percentage of the GAL's fee each party will pay based upon their

proven financial ability to pay. However, if you are the requesting party, be prepared to incur the expense up front, subject to future reallocation.

Each judge weighs the recommendation of a GAL differently, but all agree that the information provided is essential to the final decision. While courts are prohibited from blindly adopting a recommendation of a GAL, they rely on the GAL to give perspective into the best interest of the child(ren) that they would not otherwise receive because public policy favors keeping the child(ren) out of the courtroom. Individuals appointed in these roles are qualified and well-respected members of the community. Therefore, they're likely to provide

vital and unbiased insight into the family situation. More often than not, a court will give great weight to a well-informed GAL who has completed a thorough investigation. ■

¹ See F.S. s. 61.401.

² *Id.*

³ See F.S. s. 61.403(5) & (6).

⁴ See F.S. s. 61.403(1).

⁵ See F.S. s. 61.403(2).

⁶ See F.S. s. 61.403 (3) & (4).

⁷ See F.S. s. 61.402.



Author: Elizabeth Burchell – Busciglio, Sheridan & Schoeb

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GETTING PAID FOR MEDIATION: A FEW STRATEGIES TO MAXIMIZE COLLECTION

Mediation & Arbitration Section

Chairs: Gerald Albrecht – Albrecht Mediation Services, Amber Boles — Law Office of Amber Boles & Lara Tibbals — Tibbals Mediation, LLC



Most of the time, one or both parties (counsel) pay mediation fees promptly, but not always.

Unless you only mediate *pro bono*, you probably like to get paid for your mediation services. We all know how it goes: you work hard to help the parties try to reach a deal and then you present the parties (or, more likely, their counsel) with invoices for your services after the conclusion of the mediation conference. And then, you wait to get paid. Most of the time, one or both parties (counsel) pay within 15 – 30 days, but not always. This article is intended to help you by offering some strategies to increase your prompt collections rate.

Engagement Letter

One strategy is to have the parties (or their counsel) sign an engagement letter, specifying the minimum fee and, possibly, requiring parties to bring checks with them for at least that minimum fee. Engagement letters can also include prevailing party attorney's fee/cost of collection terms in the event of failure to pay (or to pay promptly). Some Engagement Letters purport to place the burden of payment on counsel, instead of the client.¹ Personally, if I used engagement letters,² I would avoid this term, because I wouldn't want it to lead some attorneys not to use me.

Require Deposits

Another strategy is to require

the parties to submit deposits in advance of the mediation for the amount of your minimum charge or for a larger amount (with your promise to refund any unused amounts). I personally have not tried this approach because of my sense that the market would not bear it; perhaps your experience is different.³ You also will have to be careful about how you hold such deposits. For example, I would NOT place them in my attorney trust account, since these are not funds received in connection with my representation of a client.⁴

Require Payment Authorizations

This is what I have done for the past 18 months, to great success. Immediately after parties select me for mediation, I send them two documents: the mediation confirmation (date, time, location/mode; recitation of mediation fees calculation, split, and applicable minimum; and late cancellation/postponement fees); and a Payment Authorization form. In that latter form, counsel (or the party) is required to identify how they intend to pay their share of the mediation fees (check; credit card; Zelle®; PayPal®), AND they are

required to provide me with a signed credit card authorization as back-up. The form states that the credit card will only be used if (a) that is what they selected above or (b) I have not received payment through the other selected means within 15 calendar days after I have sent the invoice. Since I have begun requiring these forms — and, if I don't have a signed form with the credit card info before the mediation, I require it to be completed before the mediation starts — I have had essentially no collections that went past 16 days after invoice.⁵

In conclusion, any (or a mix) of these strategies can help you increase your prompt collections rate. Just find the way that works for you. ■

¹ Recall that, typically, as a matter of agency law, since counsel is the disclosed agent of a disclosed principal, counsel is not on the hook for expenses counsel incurs on behalf of the client.

² Whether this last term is enforceable may be moot, as I imagine relatively few lawyers would happily agree to shoulder the cost of mediation

Continued on page 47

GETTING PAID FOR MEDIATION: A FEW STRATEGIES TO MAXIMIZE COLLECTION

Mediation & Arbitration Section

Continued from page 46

for their client if they haven't already agreed to advance client costs otherwise. Indeed, I don't use an engagement letter as such, for one-off transactions like mediations; I only use them for private arbitrations.

³ I only ever require deposits for arbitrations, where such deposits are common. Even then, I only require deposits when the parties are asking me to hold more than one day for hearings

and/or if they have been slow to pay interim bills (for arbitration processes spanning months).

³ While I have not done so, I am aware of two Florida lawyers who have requested informal opinions from The Florida Bar; in both instances the attorneys were told they did not need to place these funds in their attorney trust accounts. But, feel free to consult with the Bar yourself.

⁴ Remember that, per Fla. R. Med., you cannot charge a credit card fee or

the like for that method of payment (a) above the actual cost you bear or (b) unless you have disclosed, in writing and in advance of the mediation, that you will charge such a fee.

Author:
Christopher M. Shulman – Shulman ADR Law, PA



Mediation & Arbitration Section Hosts ADR Panel Discussion

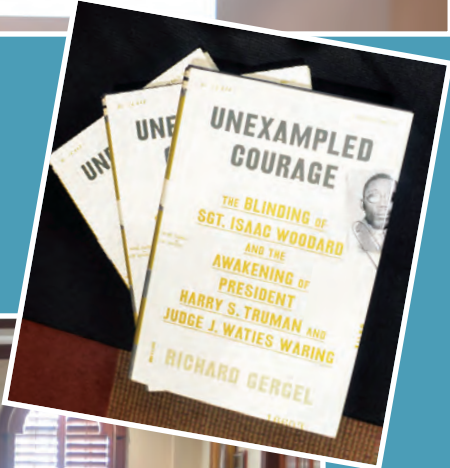
On January 17, the Mediation & Arbitration Section hosted an insightful judicial panel on Alternative Dispute Resolution (ADR). The panelists, Judge Jennifer Gabbard, Judge Paul Huey, Judge Anne Leigh Moe, and Judge Christopher Nash of the Thirteenth Judicial Circuit Court and moderator Harold Oehler of Oehler Mediation, discussed a variety of topics, including opportunities to adopt early mediation to eliminate cases that are not discovery intensive; what types of cases are ripe for early resolution; do the panelists order virtual or live mediations or leave it to the parties; how conflicts are handled when parties disagree on virtual vs. live mediation; and mediated settlement agreements. We thank the panelists for speaking to the Section members.





MVAC, DEI and GEBA Host Joint Luncheon

In honor of Black History Month, the HCBA Military & Veterans Affairs and Diversity, Equity & Inclusion Committees hosted a joint luncheon/CLE with the George Edgecomb Bar Association on January 26 at the Chester Ferguson Law Center. The CLE featured a virtual presentation by author Judge Richard Gergel, who wrote “Unexampled Courage and the Awakening of President Harry S. Truman and Judge J. Waties Waring: A Story of Justice in the Segregated South” that inspired the 2021 PBS American Experience documentary, The Blinding of Isaac Woodard. Judge Gergel is a United States district judge who presides in the same courthouse in Charleston, South Carolina, where Judge J. Waties Waring once served. The first 25 in-person RSVPs to the luncheon received a free copy of the book. We thank Judge Gergel for speaking to our attendees on this important historic event.



OUR NATION'S VETERANS: WHO ARE THEY AND WHAT WE CAN DO TO HELP THEM

Military & Veterans Affairs Committee

Chairs: Robert Barton — Rumberger/Kirk & Steve Collins — Law Office of Rory Weiner



This article serves as an overview of our nation's veteran population in order to better serve them.



This article serves as an overview of our nation's veteran population in order to better serve them. To accomplish this, it is important to understand who is considered a veteran, the composition of our veteran population, and their needs.

Under Title 38 of the Code of Federal Regulations, a veteran is defined as “a person who served in the active military, naval, air, or space service, and who was discharged or released therefrom under conditions other than dishonorable.”¹ Veterans come from one of the six branches of the military — the Army, Navy, Air Force, Marine Corps, Coast Guard, and Space Force. They serve as part of active duty, reserve, and/or National Guard forces and are afforded different benefits based on the character of their military service.

The majority of veteran benefits today are derived from the Servicemen's Readjustment Act of 1944, or G.I. Bill, which was enacted to help the 12.1 million World War II veterans returning home. The G.I. Bill provided veterans with low-cost mortgages, business loans, unemployment benefits, and tuition assistance for college and vocational schools.

These benefits, coupled with a government veteran health care

system, continue to provide a critical platform to assist veterans returning from America's wars with their transition to civilian life and with their medical care.

According to the U.S. Census Bureau, there are approximately 16.1 million veterans in the U.S. today.² Within this population exist several groups, each unique based on their period of service.

The first group consists of our aging WWII, Korean War, and Vietnam War-era veterans. Many were drafted in their youth, fought overseas under extreme hardships, and returned home needing assistance to transition back to civilian life. They comprise almost 60% of America's veteran population today — almost 9 million veterans.³ Many are in their late-60's to 90's and need assistance regarding long-term medical care, disability benefits, housing, estate planning, survivor benefits and elder law.

The other group of veterans, almost 7 million, consists of those who served during the period between the First Gulf War (1990-91) through the War on Terrorism (2001-2021) — America's longest conflict.⁴ Approximately 3.7 million veterans served in Iraq, Afghanistan, and elsewhere after the 9/11 attacks.⁵ These newer veterans, many in their late-30's and 40's,

have a variety of different legal needs from assistance with filing disability claims and post-9/11 education benefits with the Department of Veterans Affairs, to seeking employment and housing assistance. Unfortunately, many are unaware of the benefits for which they qualify and need assistance navigating the bureaucracy and laws to obtain them.

In summary, this is our veteran population today, and they could use our legal help. ■

¹ 38 U.S.C.S. § 101; *see also Paulson v. Brown*, 7 Vet. App. 466 (U.S. 1995).

² Fact Sheet, America's Wars. [Washington D.C.] Office of Public Affairs, Department of Veterans Affairs, November, 2020.

³ Vespa, Jonathan E. Those Who Served: America's Veterans From World War II to the War On Terror. [Washington, D.C.]: U.S. Department of Commerce, U.S. Census Bureau, 2020, vol. 43, Table 1, p. 2.

⁴ *Id.* Table 2, p. 8.

⁵ *Id.*



*Author:
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Tips to avoid common mistakes:

1. Choice of Bank Matters!

Meet with a branch manager to evaluate familiarity with Interest on Trust Accounts (IOTA) bank accounts and The Florida Bar Foundation reporting requirements. The opening bank and the lawyer must file notices with the Florida Bar Foundation and if the account is overdrawn for insufficient funds, a lawyer must affirmatively direct the bank to make that disclosure. Overdraft protection for IOTA accounts is prohibited.

How long will the bank maintain its records? Lawyers must keep trust account records, including copies of the front and back of cancelled checks for six years. If the lawyer's copies are mistakenly incomplete, will the bank have copies?

2. Protect access.

If you grant access, invest in a FDLE background check and consider fidelity bonding.

3. Liens and obligations to others.

A lawyer must promptly notify

the client or third person of receipt of funds and promptly deliver the funds to the person entitled to receive them. The lawyer must refuse to surrender the property to the client when there is a non-frivolous third-party claim.

Failing to honor a known Letter of Protection or valid lien or attempting to unilaterally resolve a dispute between a client or third party can result in discipline. Consider depositing the funds into the court registry and having the dispute adjudicated.

4. Back to basics.

No commingling.

No misappropriation.

Trust funds should only be disbursed for their specific intended purpose and with client agreement or court approval. Even settlement funds containing attorney's fees should not be disbursed without a client's agreement and, in a personal injury case, a closing statement signed by the client and participating lawyers.

Never use IOTA trust accounts for any personal or law firm reason, including office renovation or holiday bonuses. Law firms may only keep a nominal amount, usually \$200, in the trust account to cover bank fees. Ideally, IOTA



We all know the presumptive discipline for mishandling trust funds is disbarment. Even though many lawyers delegate trust accounting functions to others, our law licenses are on the line.

costs are deducted directly from the operating account.

Consider using different colored checks for each account and keep them in different locations to avoid using the wrong check or deposit slip. Simple human error can overdraw the account resulting in a Bar audit.

5. Housekeeping.

Mistakes happen. Monthly review and established procedures catch errors while they are still manageable.

Many software packages exist for trust accounting. Bar auditors use QuickBooks but comment favorably on the new NOTA program offered to Florida Bar members for free. Before purchasing or implementing any new system, confirm it will generate required monthly reports in the proper format. Ensure you understand the reports. Review them monthly.

Respect but do not fear the trust accounting rules. Trust accounting is only intimidating when you do not know the rules. ■



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GIFTS OF BUSINESS INTERESTS AS PART OF YOUR CLIENT'S TAX PLAN

Real Property, Probate & Trust Law Section

Chairs: Lauren A. Taylor – Fogarty Mueller Harris & Melodie Khosrovani - Shutts & Bowen, LLP



A gift of closely-held business interests could be a game-winning play, especially when a business sale or other tax event is contemplated.



Growing up in West Virginia, I played marbles as a mandatory PE activity in grade school. Students participated in organized marble competitions ranging from school-wide to statewide. (I think I became the PE “gunner” when I won the county championship two years in a row.)

Like a game of marbles, there are various “moves” you recommend when working with tax and estate planning clients to accomplish their personal and philanthropic goals. A gift of closely held business interests (whether organized as a C or S corporation, limited liability company, or limited partnership) to an IRC Section 501(c)(3) public charity could be a game-winning play, especially when a business sale or other tax event is contemplated.

Pick a Shooter: Which Asset?

Tax implications for your client and the willingness of the charity to accept the gift depend on whether the business entity is a C corporation, S corporation, limited liability company, or limited partnership. For example, if the business is an S Corporation, the charity will likely have unrelated business income tax (UBIT) issues to consider. If the business has debt and is taxed as a pass-through entity, your client may have to recognize capital gains.

Aim Carefully: Review the Governing Documents and Financials

As a player sets up to shoot the smaller marbles (called “ducks”) out of the ring, the player carefully reviews the marble setup and aims with precision. Likewise, when structuring a gift of a business interest, discernment is important. The first step is reviewing the governing documents (i.e., Articles of Incorporation, Operating Agreement, Partnership Agreement, Bylaws, etc.) and financial information.

Are there any restrictions on transfers of the interest that will prevent your client from assigning ownership? Does the interest hold debt? Are there hold requirements that will delay the charity’s ability to sell or redeem its interest as soon as possible after the gift is completed? Any of these issues could knock the business interest out of the “ring” as a desirable asset to gift.

Keep Your Shooter in the Circle: Obtain a Qualified Appraisal

Creating backspin on the shooter to knock out a marble while

simultaneously keeping the shooter in the ring will afford you another turn to shoot. However, it’s tricky. The same balancing act is required for the qualified appraisal your client must obtain to deduct the value of their charitable gift. The appraiser arrives at a defensible fair market value of the business entity as a whole and must also apply the proper discounts to determine the value of the client’s charitable gift. Failure to do either could risk loss of the charitable deduction, among other penalties.

Collect the Most Marbles to Win: Maximum Tax Savings and Funds for Charity

Making a charitable gift of a business interest may not be “Playing for Keeps,” but with the right asset and plan, your client can both

support a charitable cause and reduce their tax bill. ■



Author: Nicolette Rea – Community Foundation Tampa Bay

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All Americans can thank John Jay for his service as a diplomat negotiating with strength, as an advocate urging the people to ratify the constitution, and as a jurist leading the way for an independent judiciary.

In the early years of our republic, John Jay served the United States as a diplomat, skillfully negotiating the Treaty of Paris at the end of the war, as an advocate assisting in writing the Federalist Papers urging the ratification of the Constitution, and as the first Chief Justice of the Supreme Court, leading the federal judiciary to establish its equal position among the three branches of the government.

In October of 1781, British General Cornwallis surrendered at Yorktown. The Revolutionary war was over. Now the details of the peace treaty had to be resolved. Peace negotiations began in Paris in the summer of 1782. The American delegation included Benjamin Franklin, the American minister to France; John Adams, the minister to Holland; and John Jay, who would skillfully advance the interests of the new nation.

The American commissioners were instructed to proceed in cooperation with France. But Jay feared that the French would sacrifice the interests of the United States and that the Spanish had designs to extend their influence in their Florida territories and along the Mississippi River. So, Jay began to favor a separate agreement with England. Eventually, Jay and Franklin not only agreed to a separate treaty with England,

but also convinced the French and Spanish to agree to this separate peace treaty.¹ Thus, by the 1783 Treaty of Paris, it was resolved that the boundaries of the United States extended from the Atlantic Ocean to the Mississippi River, north to Canada and south to Spanish Florida. This was more territory than the United States actually controlled at the war's end.² This was the first of many contributions of John Jay.

In 1787, delegates from several states met at Independence Hall in Philadelphia and adopted the United State Constitution. But now it had to be ratified by the states. Once again, John Jay was there to help. The Constitution had to be ratified by at least nine of the thirteen states. In the first seven months of 1788, John Jay, along with Alexander Hamilton and James Madison, worked to write the Federalist Papers, a series of eighty-five essays, published under the pseudonym *Publius*, in support of ratifying the Constitution.³ By 1790, all thirteen states had finally ratified the Constitution.⁴

The process of organizing the federal government had begun. Once again, John Jay played a key role. In 1790, Jay was appointed by

President George Washington as the first Chief Justice of the Supreme Court of the United States. As Chief Justice, Jay led the federal judiciary to assume its place along with the legislative and executive branches, including asserting the power of judicial review over both state and federal laws. It was not quite “*Marbury v. Madison*,” but it was the genesis of judicial review.⁵

All Americans can thank John Jay for his service as a diplomat negotiating with strength, as an advocate urging the people to ratify the constitution, and as a jurist leading the way for an independent judiciary. ■

¹ *The Oxford History of the American People*, Samuel Elliot Morison, p.266, Oxford University Press (1965).

² *Ibid.* p. 267.

³ *First Principles*, Thomas E. Ricks, p. 206, Harper Collins, Publishers. (2020).

⁴ *First Principles*, Thomas E. Ricks, p.216, Harper Collins, Publishers. (2020).

⁵ *The Oxford History of the American People*, Samuel Elliot Morison, p.322, Oxford University Press (1965).

Author: Thomas Newcomb Hyde – Attorney at Law

ENHANCING FIRM OPERATIONS THROUGH ADVANCED SYSTEMS & AUTOMATION

Solo & Small Firm Section

Chairs: David Carter – Carter Injury Law, PA & Dawn Myers – Myers Law, P.A.



Enhance operational efficiency and overall client satisfaction by utilizing detailed systems and automation.



A system refers to a structured collection of processes or a defined methodology for executing tasks. In the context of legal practices, numerous law firms have adopted various types of systems to streamline their operations. These include Case Management systems, Document Management systems, Billing systems, and Client Relationship Management systems. Equally critical are Knowledge Management systems, which revolve around how a firm efficiently captures, organizes, and disseminates key information relevant to their cases. The implementation of standardized templates, well-documented policies, and user-friendly documentation or research processes not only fosters better collaboration but also enhances operational efficiency and elevates client satisfaction levels. The following are some implementations every law firm should consider.

1. Optimizing Case

Management: Crafting a Detailed Workflow

Implementing a comprehensive 'Case Map' is essential. Break down every phase of case handling into a written workflow

and clearly delineate responsibilities and methods for each team member. Embrace technology to automate repetitive tasks. Such a system not only ensures consistency in case handling but also aids in tracking progress and accountability.

2. Efficient Email

Management Techniques

Email management is pivotal in legal practice. Employ email automation workflows to systematically sort and prioritize incoming emails. Set rules to redirect less urgent emails, such as automated notifications, to designated subfolders for later review. Additionally, crafting templates for routine correspondences — such as acknowledgments, meeting confirmations, or status updates — and automating responses for common inquiries saves substantial time and maintains communication standards.

It can be as simple as using the automation features in email clients like Outlook or Gmail.

3. Maximizing Existing Technological Resources

A key aspect often overlooked

is the full utilization of existing software capabilities. For instance, use the 'Find and Replace' feature in Microsoft Word to swiftly customize templates for specific cases. Activate advanced reporting functions in your case management system to auto-generate critical reports, keeping you informed of vital firm metrics and case progress. Or use the templates feature so many programs already include. Many practice management systems offer document automation that goes beyond simple templates. This can include auto-filling client information, case details, and relevant dates into documents, thereby reducing manual data entry and the potential for errors. During the software vetting and implementation process, it's really important to take the time to truly learn the ins and outs of the included features.

4. Calendar and Appointment Automation for Enhanced Scheduling

Utilize tools like Calendly, FreeBusy, HoneyBook, or

Continued on page 55

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Continued from page 54

Doodle for automating scheduling tasks. These applications facilitate efficient organization of client meetings, consultations, or court dates by allowing parties to select from your available time slots, thus eliminating the hassle of continuous email exchanges for scheduling.

Integrating these sophisticated systems and automation strategies allows your law firm to enhance its operational efficiency. These advancements lead to more streamlined task management, improved collaboration among team members, and heightened client satisfaction. Embrace these systems to deliver exemplary legal services and maintain a competitive edge in the legal sector. ■



Author: Dawn Myers & Katelyn Dougherty – Myers Law and Harbour Law



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TIME TO START PLANNING FOR THE SUNSET

Tax Law Section

Chair: Christopher Dingman – Johnson, Pope, Bokor, Ruppel



As a result of the 2017 Tax Cuts and Job Act, beginning on January 1, 2026, the federal estate tax exemption will expire.



As a result of the 2017 Tax Cuts and Job Act (TCJA), beginning on January 1, 2026, the federal estate tax exemption will expire (the “Sunset”).¹ The current exclusion amount is \$13.61 million for individuals (the “Exclusion”).² This amount will go down to \$5.49 million as adjusted for inflation.³ The effect of the Sunset is expensive, as the maximum estate tax rate is 40%. This equates to \$400,000 of tax for every \$1,000,000 of an estate value over the Exclusion amount.⁴

For example, a married individual who dies with an estate that is valued at \$10 million without an estate plan before the Sunset, owes no tax. This is because the total value of the individual’s estate falls under the current Exclusion amount. For purposes of this example, let’s assume that the Exclusion after the Sunset is \$6 million. If the married individual dies without an estate plan after the Sunset, \$4 million will be taxable at a rate of 40%.⁵ After the Sunset, the married individual will be responsible for

\$1,600,000 worth of tax on the total value of the estate that is not excluded under the Exclusion.

Given how the Exclusion amount has been increasing since 2018, most taxpayers did not need estate plans to account for such harsh tax consequences. These taxpayers may now need to begin planning for the Sunset, which could include gifting away assets. In doing so, it is important to note that taxpayers will not lose the benefit of the higher Exclusion amount in effect before the Sunset for gifts made now.⁶ For instance, an individual taxpayer who gifts \$10 million in 2024 when the Exclusion amount is \$13.61 million, and dies in 2026 when the Exclusion amount is \$6 million, will be permitted to use the Exclusion amount of \$13.61 million in effect at the time the gift was made.

The Sunset of the Exclusion may be modified by Congress; however, such a modification has not happened yet and may never

happen. So, it is important not to delay the review and strategic tax and estate planning of clients with an estate value over such exclusion amounts, as estate planning attorneys know such a process takes time and involves at the very least the efforts of a client’s estate attorney and financial planner, the amendment of multiple documents, including wills and trusts, updates to various accounts, and preparation of instruments of transfer. ■

¹ H.R. 1 - 115th Congress (2017-2018): Tax Cuts and Jobs Act, H.R.

² 26 C.F.R. 601.602; RP-2023-34

³ I.R.C. §2010

⁴ I.R.C. §2001(c)

⁵ I.R.C. §2001(c)

⁶ C.F.R. §20.2010-1(c)



Author:
Cortney J. Harrington - James A. Schmidt, P.A.

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Trial & Litigation Section Hosts Annual “State of the Courts” Luncheon

On January 25, the Trial & Litigation Section hosted its ever-popular “State of the Courts” luncheon, with a distinguished panel of our local judicial leaders. Thank you to our panelists for their time and insight: Julianne Holt, Public Defender for the Thirteenth Judicial Circuit; Susan Lopez, State Attorney for the Thirteenth Judicial Circuit; The Honorable Christopher Sabella, Chief Judge for the Thirteenth Judicial Circuit; The Honorable Daniel Sleet, Chief Judge for the Second District Court of Appeal for the State of Florida; and Cindy Stuart, Clerk of Court & Comptroller for the Thirteenth Judicial Circuit.



AVOIDING PRE-SUIT ATTORNEY FEES BY CONSIDERING PRE-SUIT SETTLEMENT

Trial & Litigation Section

Chair: Jason Whittemore – Wagner McLaughlin Whittemore



A recent Florida case held that Plaintiffs are not entitled to attorney fees if an insurer tenders the policy limit in response to a Notice of Intent to Initiate Litigation.



A recent Florida case¹ held that Plaintiffs are not entitled to attorney fees if an insurer tenders the policy limit in response to a Notice of Intent to Initiate Litigation (“NOI”). Tendering policy limits to an insured in response to an NOI under section 627.70152, Florida Statutes (2021), precludes policyholders from recovering pre-suit attorney’s fees from their property insurance company in a subsequently filed litigation for the same claim.

In *Vazquez*, Citizens Property Insurance Corporation (“Citizens”) issued a homeowners’ insurance policy with effective coverage dates beginning on December 30, 2019, and ending on December 30, 2020. The policy contained a \$10,000 coverage limit for covered losses caused by accidental discharge of water from a plumbing system.

Plaintiffs’ home sustained an accidental discharge of water in June of 2020. Citizens acknowledged coverage and issued payment in the amount of \$3,517.70. Plaintiffs filed an NOI with demand of \$7,482.30, which included \$3,982.30 in damages and \$3,500 for attorney’s fees. Citizens timely acknowledged receipt of the NOI and issued payment in the amount of \$6,482.30,

which represented the remainder of the \$10,000 policy limit.

Despite having received policy limits which exceeded plaintiffs’ demand, the insureds filed suit for breach of contract demanding full payment for damages to the insureds’ property and attorney fees. The Complaint alleged that Citizens breached the contract when it initially underpaid the claim and then breached again when it did not issue payment for plaintiff’s attorney’s fees in response to the NOI.

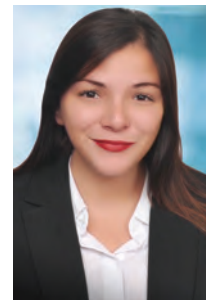
Prior to serving the lawsuit, plaintiffs moved for attorney fees pursuant to section 627.70152, Florida Statute. Plaintiffs asserted that while Citizens had paid the full amount of damages, it completely ignored their attorney’s fees request. They went on to assert Plaintiffs were entitled to those fees, arguing that the clear intent of section 627.70152, Florida Statute, was to require payment of attorney’s fees when the claimant has to file an NOI. The trial court agreed and awarded plaintiffs \$13,500 in attorney’s fees. Citizens appealed.

On appeal, the Fourth District Court of Appeal reversed the award of attorney’s fees, holding that plaintiffs were not entitled to

attorney’s fees because the trial court did not render a judgment against Citizens on the contract claim nor did Citizens confess judgment. The court concluded that Citizen’s pre-suit payment in response to the NOI did not amount to a confession of judgment. Although settlement of a lawsuit can be seen as a confession of judgment, the confession of judgment doctrine applies only when an insured must sue for benefits. Here, Plaintiffs did not have to sue to recover benefits and resolve the dispute. Citizens even issued payment in response to the NOI which exceeded plaintiffs’ demand. The court concluded that Citizens’ pre-suit settlement was not a confession of judgment and therefore did not trigger entitlement to attorney’s fees.

¹ *Citizens Property Insurance*

Corporation, v. Vazquez, No. 4D22-1611, 2023 WL 4917156 (Fla. 4th DCA Aug. 2, 2023).



Author: Amy Currotto – Banker Lopez Gassler

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COVID-19 AND DEATH BENEFITS RULINGS FOR FIRST RESPONDERS

Workers' Compensation Section

Chairs: Anthony V. Cortese – Anthony V. Cortese, Attorney at Law, Irene Rodriguez – Irene M. Rodriguez, PA & Ya'Sheaka Williams – Quintairos, Prieto, Wood & Boyer



COVID-19 and death benefit claims were evaluated under Section 112, Florida Statutes.



In two recent firefighters' appeals, COVID-19 and death benefit claims were evaluated under Florida Statute Section 112, and the opinions are instructive.

In *Sienna v. Orange County Fire Rescue*, 1D2022-0958 (1 DCA Oct. 25, 2023), a firefighter was diagnosed with cancer on April 23, 2020, and requested and received benefits under Florida Statute 112.1816(2), which provides medical care and a \$25,000 indemnity payment. He died on May 11, 2021.

His widow then pursued death benefits through chapter 440 and through chapter 112, specifically sections 112.191(2)(a) and 112.1816(4)(c). The chapter 112 death benefits were paid voluntarily, but the chapter 440 death benefit was denied.

There is specific statutory language that says that if an employee elects benefits under Florida Statute 112.1816(2), the employee may not also receive benefits under Chapter 440. The Employer/Carrier argued that the statute also prevents the widow from receiving benefits after the death of the employee, or alternatively, that the widow was not permitted to receive benefits

under Chapter 112.191(2)(a) and 112.1816(4)(c), and also make an additional claim for benefits under Chapter 440. The Judge of Compensation Claims reviewed the language and held that the receipt of benefits by her husband during his lifetime did not bar her from a death benefit claim after he died. The Judge then noted that there was no exclusionary language which would prevent a claim under Chapter 440 after receipt of the other benefits under Chapter 112. The Judge did not address the question of whether the firefighter or his wife could have waived the Chapter 440 benefits for a dependent such as a wife before his death. (In *Longshore* cases, a widow's cause of action is independent and cannot be waived or settled prior to death. *Cortner v. Chevron Oil*, 20 BRBS 218 (1989)).

COVID-19 was found to be the cause of another firefighter's heart attack and heart transplant in *Seminole County and Johns Eastern v. Braden*, 1D2021-3530 (1 DCA, December 13, 2023). The injured worker proved that he worked during two 24-hour shifts with three other firefighters who later tested positive during the six days before the injured worker tested positive for COVID-19. There was also

evidence that the injured worker lived with his girlfriend and was visited by his son and daughter and none of them ever tested positive.

The injured worker started as a firefighter in 1993 after a clean physical and had cardiac problems in the early 2000's, which Seminole County accepted as compensable. He received treatment including ablation of the heart, followed with yearly heart evaluations, and was always released to full duty work. Seminole County argued that COVID-19 was the cause of the heart attack and need for transplant, and the Judge agreed. The parties agreed that the elements for the statutory presumption for a first responder of work causation of the heart condition were met. Seminole County argued that the evidence it provided rebutted the presumption. There was conflicting expert evidence, but the Judge considered all the evidence and held that the presumption of causation under F.S. 112 applied to this first responder, and that it had not been rebutted. Therefore, the heart attack and transplant were compensable, and the First District affirmed. ■

Author: Anthony V. Cortese – Anthony V. Cortese, Attorney at Law

Join the Workers' Compensation Section at hillsbar.com.

Workers' Compensation Section Hosts CLE on Practice/Professionalism

On January 24, the Workers' Compensation Section held an informative luncheon/CLE on Best Practices and Professionalism. The featured speakers included Judge Mark A. Massey, JCC; Judge Rita Young, JCC; Judge Brian Anthony, JCC; Judge Robert Arthur, JCC; Judge Erik Grindal, JCC; and Judge John Moneyham, JCC.

The panelists provided an overview of DOAH/OJCC mission and statistics; the importance of knowing and following the 60Q Rules; the effects of changes in rules of procedure and consolidation of districts and effect on everyday practice; ethics and professionalism in your everyday practice; and timely completion of discovery. Thank you to our distinguished panel.



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Spencer Fane LLP is pleased to announce **Nick Alman** has joined the Tax, Trusts, & Estates practice group as a partner in the firm's Tampa office.

Christopher Cascino has been promoted to shareholder in **Ogletree Deakins'** Tampa office. Cascino devotes himself to helping employers faced with the risks of Fair Labor Standards Act (FLSA) collective action and workplace class action litigation.

Shutts & Bowen LLP announced the elevation of three new partners at the beginning of 2024, including **Alyssa L. Cory** in the Tampa office, where she is a member of the Appellate Practice Group.

Spencer Fane LLP welcomes **Quentin Cumings**, who has

joined the Real Estate Practice Group as an associate in the firm's Tampa office.

Bradley Arant Boulton Cummings LLP is pleased to announce that several of the firm's attorneys have been elevated to partner, including **Diana N. Evans** in the Tampa office. Evans concentrates her practice on commercial litigation in both state and federal court in areas including product liability and employment law.

Hill Ward Henderson congratulates **Robert "Bob" M. Fulton**, who has been appointed managing shareholder, succeeding R. James "Jim" Robbins, Jr., who served more than 20 years in the role.

Hall Booth Smith welcomes the addition of Partner **Bruce**

Peisner and Associates **Alexis S. Duffey, Charlie Chin, Kiernan S. O'Keefe**, and **Emily K. Lehman** to its Tampa office.

Hill Ward Henderson is pleased to welcome **Sarah Gunn** to the firm. Gunn's practice focuses on Bankruptcy and Creditors' Rights and Commercial Litigation.

Congratulations to **John Tucker** of **Tucker Disability Law, P.A.**, who was elected as the Treasurer of the Board of Directors of the National Organization of Veterans Advocates (NOVA).

Hill Ward Henderson is pleased to announce promotion of **Andriy Lytvyn, Fred "Kip" Marshall, Ryan McConnell**, and **Anisha Patel** to shareholder.

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Judge: Hon. Claudia R. Isom

Parties: Lesley Waite and Andrew Waite, as co-personal representatives de son tort of the Estate of Hannah L. Waite, deceased v. Rabia Shaikh, M.D., Andrew C. Daley, M.D., and Advanced Care Hospitalists, PL., No. 17-CA-010281

Attorneys for plaintiff: C. Steven Yerrid; David D. Dickey; Evan C. Gilliam

Attorneys for defendant: Tyler E. Batteese; Edwin P. Gale

Nature of case: Medical Malpractice

Verdict: \$30,007,250

Judge: Honorable Alissa Ellison

Parties: Christopher Jordan vs. The Falls at New Tampa Condominium Association, Inc.

Attorneys for plaintiff:

Gregory Jackson and Noah Rosenbaum of Dan Newlin Injury Attorneys

Attorneys for defendant: Jody Valdes and Megan Collins of Weekley Schulte Valdes Murman Tonelli

Nature of case: Premises

liability. Plaintiff claimed Defendant was negligent and caused injuries requiring two back surgeries and the need for a spinal cord stimulator.

Verdict: Defense verdict



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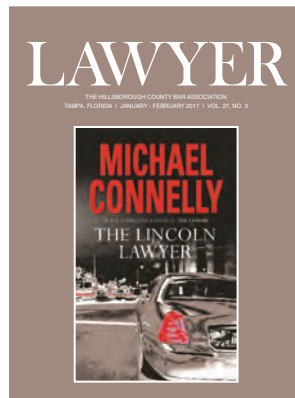
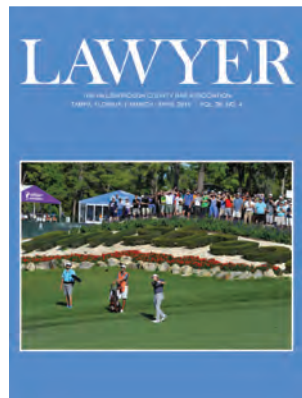
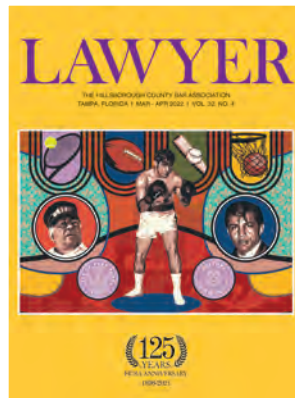


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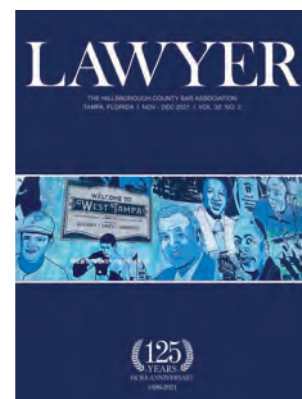
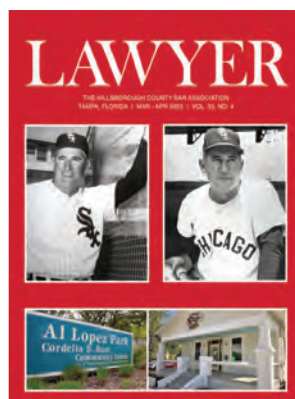
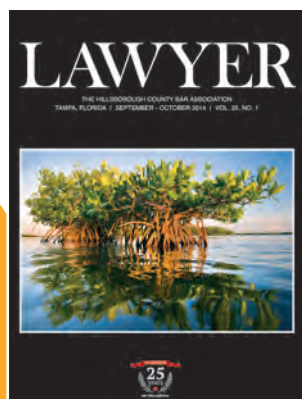
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