

FORECLOSURE LAW

## I'll take my dismissal with prejudice, please

By Kevin R. Bruning, Esq.  
Bentley and Bruning, P.A.

There are few fundamental, absolute, and unwavering concepts in law. Until Dec. 17, 2014, I believed this to be one of them: A dismissal with prejudice means that issues raised in a case can never again be litigated, whereas a dismissal without prejudice means that the issues in that case can be brought again immediately.

As it turns out, I am wrong — at least in the case of a foreclosure action



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pending for more than five years before the dismissal with or without prejudice. In that circumstance, a dismissal with prejudice means the action can be brought again, whereas a dismissal without prejudice means that the action is forever barred. Think about that statement for a moment and then read on while I explain.

The background begins right here in our Second DCA in the 1960s. Then there was no mortgage foreclosure crisis and banks did not need assistance from the court to protect them from their own inability

to prosecute the tens of thousands of cases that they were filing. Because of that, the court was far less lenient with the banks for sleeping on their rights. In the case of *Stadler v. Cherry Hill Developers, Inc.*, 150 So. 2d 468 (Fla. 2d DCA 1963) a foreclosure action was filed alleging a default. The action was later dismissed with prejudice due to the lender's failure to comply with a court rule. The lender attempted to subsequently file a new foreclosure action alleging a subsequent default on the note and mortgage. The

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LPP

## Keeping professional standards high in Circuit

By Magistrate Deborah Bailey  
12th Judicial Circuit

On Jan. 23, I attended a state-wide meeting of Local Professionalism Panel members. Judge Ross Goodman of the First Circuit coordinated the meeting, which took place during The Florida Bar's mid-year meeting at the Hilton Lake Buena Vista. In attendance were Linda Calvert-Hanson, of the Latimer Center on Professionalism of The Florida Bar, and members of the Supreme Court Commission on Professionalism and the Standing Committee on Professionalism of The Florida Bar. The meeting was a collaborative effort to address common issues facing circuit Professionalism Panels and to exchange information on "best practices."

Prior to the meeting, Judge Goodman organized information about each circuit's Panel in spreadsheet format so participants could review how each circuit's Panel was handling professionalism complaints. He then served as moderator of the Jan. 23 meeting, where the agenda included the topics of inter-jurisdictional complaints, confidentiality, records retention, marketing, and funding.

Each circuit has marketed its Panel in similar ways — through appearances at local voluntary bar functions, publication in bar newsletters, pamphlets, and public posting. The cost of this marketing is being borne by individual circuits or local bars because no money has been appropriated for these costs. For those of you who practice in multiple circuits, The Florida Bar has published a list of contact information for filing

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MEETING NOTICE

## Play Team Trivia on Administrative Professionals' Day

OK, folks! It's time to take a shot at unseating the Bar's reigning trivia champs: "Jan's Geniuses" (Bentley & Bruning, The Byrd Law Firm, Loftus Law, Keane & Keane), "It's All About Me" (Matthews Eastmoore) and "The Google Goonies" (Grossman, Roth & Partridge & Bohdan Newsiacheny), who took home the prizes in 2014.

Mark your calendars for Wednesday, April 22, and join the fun as we once again play Team Trivia. Same rules as last year — each table will be a "team" and everyone is encouraged to create a team name. If you don't have a team, we'll put you with one. Assigned seating will be an option, and we are pleased to announce that our remarkable and exceptional Trivia Leader, Leslie Talbot, will once again be the Emcee, calling out questions and adding the scores.

So get ready! The fun begins at noon at Michael's on East. Fill out the enclosed reservation flier. It's a great way to say THANK YOU to your staff. See you there!

12TH JUDICIAL CIRCUIT MOCK TRIAL COMPETITION



## Booker High School Mock Trial Team

Assistant State Attorney Hagen Brody, right, coach of the Booker High School Mock Trial Team, shows his pride in the team after their performance in the very competitive 12th Judicial Circuit Mock Trial competition. Left to right; Kelvin Pinkney, Cellexia Foster, Cheyenne Lauterberg, Booker High School Principal Dr. Rachel Shelley, Judge John Lakin, Ryan Bausback, Kayla Marshall, Logan Smith, Michelle Anderson, Law Academy Coordinator Tavia Purdue, and Hagen Brody, Esq.

DIVERSITY

## Inclusion Summit encourages frank discussion of tough issues

By Tonya Willis Pitts, Esq.  
McIntyre, Thanasides, Briggold,  
Elliott, Grimaldi & Guito, P.A.

As attendees anxiously awaited the first panel speaker on Jan. 29 at the Stetson University College of Law *Inclusion Summit: Developing Cultural Competence*, Verna Myers made a very important announcement. She advised the attendees that the hall in which they were gathered was a "no judgment zone," and encouraged open and honest dialogue throughout the day. Myers, the keynote speaker for the day and bestselling author of *Moving Diversity Forward: How to Move from Well-Being to Well-Doing*, and *What If I Say the Wrong Thing? 25 Habits for Culturally Effective People*, asked hard questions of the audience on how to solve intractable, systemic problems that impede the acceptance of differences and the creation of fair and prosperous solutions that help reorganize our world.

What person other than Myers was



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better equipped to stretch the thinking of her audience, which consisted of lawyers, corporate presidents, administrative leaders, and students? For the last two decades, Myers and her team of consultants have helped eradicate barriers of race, gender, ethnicity, and sexual orientation at elite international law firms, Wall Street powerhouses, and the 10,000-member Fire Department of New York, with the aim of establishing a new, more productive, and just *status quo*.

Andrew Corty, President of *Florida Trend* magazine, shared statistics confirming the obvious — that Florida is becoming more diverse. When asked by an attendee what he recommended companies do to succeed, Corty recommended that businesses diversify. Tracy Johnson of Ford Harrison followed Corty by sharing her experience in starting an inclusion program 10 years ago at her firm. Her initial implementation of the program was not received with open arms, but the program has grown into

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PRACTICE

## Stepping into the data breach

By David L. Wyant, Jr., Esq.  
Shumaker, Loop & Kendrick, LLP

The days of standing behind someone at the grocery store who is paying with a personal check, or hauling physical paper files around the office, are essentially extinct. To many Americans, the cash register and filing cabinet are now antiques. The cost-effectiveness and efficiency brought by e-commerce and digital business now saturate the U.S. and will only continue to increase with time. The rise of cloud computing infinitely expands the information landscape. The reality that critical, confidential information is disseminated on a wider scale than ever before generates growing security concerns for consumers, business owners, and the government.

Approximately two-thirds of all American adults have a smartphone. A 2014 study determined that the average American spends 162 minutes per day on a cellphone and that the average individual checks the device more than 150 times per day. According to the U.S. Census Bureau, in 2013, 74 percent of all households reported Internet use. The U.S. reported over



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\$300 billion in e-commerce in 2014, and this is projected to rise by at least \$50 billion this year. These figures have all grown tremendously over the last decade.

There is a proliferation of employees having access to confidential and proprietary data in the increasingly commonplace American digital workplace. The security of this data in the employment context has become as crucial an issue as the one that has grabbed more headlines — the protection of consumer data in e-commerce. A staggering 94 percent of American jobholders are Internet users. In the workplace, employees rank the importance of email above the Internet, landline telephone, cellphone, and social networking sites. Americans are not only connected at the workplace,

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BAR ASSOCIATION NEWS

# They lied to me

## How Hollywood misrepresents lawyers

As the SCBA's resident movie columnist for the past 15 years, I am going through a bit of withdrawal and needed to take a break this month from discussing topics related to the future of our profession. Please allow me to air some grievances (and it is not even Festivus yet). I feel that, before entering the practice of law, I was misled by movies as to what being a lawyer is all about. Here are a few misconceptions due to Hollywood deception:

**Lawyering is 50 percent courtroom time and 50 percent playing detective.** Almost all legal-related films (ex. *A Few Good Men*, *A Time to Kill*) show alternating scenes of an attorney investigating the case outside of the office or examining witnesses and giving grand speeches before a judge or jury. Typically the investigation has a quasi-*Columbo* feel and is oftentimes perilous. Even when research is exhibited, it is done through a montage of late-night studying in a dark room (green and gold lamps of course) with dusty law books. As they sing in *Team America: World Police*, "The hour's approaching to give it your best. We're going to need a montage. To show it all would take too long." All of this is quite exciting when compared to my typical day sitting in my office and staring at a computer. Sadly, my life consists of the deleted scenes from a montage.

**Depositions are exciting!** In *Malice*, Alec Baldwin gave the exquisite "I am God" speech during his deposition. In *The Insider*, the deposition of Dr. Wigand (Russell Crowe) gets very interesting after he is instructed not to testify (trust me and Google "Insider deposition scene"). And several cle-

**SCBA President's Column**



**Douglas A. Cherry, Esq.,**  
*Shumaker, Loop & Kendrick, LLP*

erly constructed depositions drive the entire narrative of *The Social Network*. Whereas it is quite possible that I may have briefly fallen asleep around the seventh hour of the last deposition I attended, and I was the one asking the questions.

**Big Firms are evil.** Think about how many films pit a heroic solo practitioner against a soulless big law firm (*The Rainmaker*, *Erin Brockovich*, *Philadelphia*, *The Lady from Shanghai*, *Michael Clayton*, etc.). Of course an underdog story is always more compelling. An extreme example is *The Devil's Advocate*, where (18-year-old spoiler alert!) the managing partner was Satan himself. Frankly, little has changed with how I practice law since moving from a three-attorney firm to a 240-attorney firm. The vast majority of my partners, like me, care deeply about the work they do and interact directly with clients on a daily basis. Occasionally, I get razzed by solo or small-firm practitioners about how much more expensive our firm is for clients. Ironically, those who say such things often have higher hourly rates. To date, I have never had to run down the street carrying a briefcase in fear for my life as in *The Firm*. While I keep a close eye on managing partner Ben Hanan, he seems like a real nice guy to me. No horns have sprouted — yet.

**Judges wear crazy helmets, ride motorcycles and declare "I am the Law!" while taking down bad guys.** OK, maybe it is not reasonable to feel misled by *Judge Dredd*. Could happen someday though. Just sayin'. Be prepared, Judge Boehm.

On the topic of films, I wanted to briefly plug filmmaker Judge Charles

Williams' latest work, **Newtown at 100: A Glimpse Through Our Eyes**, which will have its world premiere at 7 p.m. on April 16 at the Sarasota Opera House. Five Booker High students worked with Judge Williams and the Sarasota Film Festival's education director, Samuel Curtis, to create the documen-

tary (see story on Page 5). It is great to see our local filmmakers collaborating with the Festival to bring attention to topics of importance to our community. If Williams' prior works about our community, such as *Through the Tunnel*, are any indication, this event is not to be missed.

## LPP

Continued from Page 1

complaints in each circuit, available on the Professionalism page of the Bar's website. The page also includes links to the administrative orders establishing Panels in each circuit.

The bulk of the meeting involved discussion about inter-jurisdictional complaints, recordkeeping, public records requests, and confidentiality. Inter-jurisdictional complaints are those involving an attorney practicing primarily in one circuit (the "home circuit") who engages in unprofessional conduct in a different circuit. The issue is whether the home circuit or the circuit in which the offending conduct occurred is better suited to handle the complaint to achieve a good result. The issue typically arises when the home circuit is geographically distant from the circuit in which the conduct took place. Because of the variables attendant to such complaints, the consensus was that these issues need to be decided on a case-by-case basis.

Participants also discussed the related issue of the types of complaints Panels were and should be handling. For instance, should a Panel consider referrals by attorneys alleging unprofessional conduct by pro se litigants? Or, should a Panel consider a referral from a business person because an attorney posted a negative review of that person's business on the Internet?

Again, the consensus was that such complaints should be addressed on a case-by-case basis.

Recordkeeping policies of Panels vary by circuit. Some circuits retain no records, disposing of all paperwork associated with a complaint once resolved. Some circuits — apart from the initial complaint — create no additional paperwork, and proceed entirely on a verbal basis. Other circuits retain records for a specified time before destruction. Concerns related to recordkeeping included whether records generated in conjunction with the Panel's activities must be disclosed in response to a public records request and to what extent confidentiality and/or privilege apply to a Panel's activities and its records, if any.

The Florida Supreme Court defines a Local Professionalism Panel as "an entity independent of The Florida Bar," established at the local level to resolve complaints of unprofessional behavior. The Code for Resolving Professionalism Complaints contains a confidentiality provision; however, it is unclear whether and to what extent that provision applies to a Panel. The majority of circuit administrative orders address the issue of confidentiality in one of three ways: (a) a confidentiality provision; (b) a confidentiality provision plus participants must sign an acknowledgment of confidentiality; and (c) a combination of both (a) and (b). Five circuits do not mention confidentiality in their procedures.

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## Is \$1.53 an hour a 'reasonable' fee?

By Stefan Bunecky, Esq.  
Ingram & Bunecky, P.A.



Stefan Bunecky, Esq., Ingram & Bunecky, P.A.

Almost all the conversations I have when I run into people I have not seen for a while at SCBA events begin the same: "How's your golf game?" followed by "Are you still doing Workman's Comp?" Now I do not know if that is a playful dig at my area of practice, but typically it leads me to respond, "They call it Workers' Compensation, not Workman's Compensation, now." The next question is almost always "Didn't they get rid of all the fees in Comp a few years back?"

The latter is a fair question, but far more complicated to answer than what they think (or likely want to know). I go through the various questions in my mind: What is the date of accident of the injury? Are they referring to claimant attorney or defense attorney fees? Appellate fees, possibly? Are we talking fees paid by the employer/carrier or by the claimant? I will spare you the rest of what goes on in there, but I know what they are really asking: Didn't they get rid of hourly fees? Or, more specifically, didn't they get rid of employer/carrier paid trial level hourly fees for claimant attorneys?

The (relatively) short answer is: Yes, they did, if the date of accident is July 1, 2009, or later. Recently, I have added another caveat: But a case before the Supreme Court of Florida, challenging the constitutionality of the fees, might change all that.

Before I get into the case, let me explain generally how attorneys get paid in workers' compensation cases. I will start with the easy ones. Employer/Carrier or "Defense" attorneys (like me) get paid by the hour regardless of the date of accident. You work 20 hours; you get

paid your hourly rate times 20. The hourly rate is negotiated with the employer (if uninsured) or insurance company. Appellate attorney fees are also paid hourly regardless of the date of accident, but garner a higher rate. Claimant attorney fees are not so simple. It is basically a contingency arrangement but if the date of accident is before July 1, 2009, you could potentially get paid your hourly rate for the number of hours reasonably extended to secure benefits for the injured worker or a statutory guideline fee. The statutory guideline fee since 1994 has been 20/15/10/5 (i.e.: 20% of the first \$5,000 of benefits secured, 15% of the next \$5,000 and 10% of the remainder up to 10 years then 5%). Therefore, if you settle a case for an injured worker for \$30,000, you would get paid \$3,750. If you went to trial and secured \$20,000 in back indemnity benefits (think lost wages), you would get \$2,750. The Legislature determined that this guideline structure is fair regardless of the number of hours it took to litigate these benefits. I will spare you the lengthy discussion of why the Legislature took the word "reasonable" out of the fee statute to limit it to a guideline.

"A lawyer's time and advice are his stock in trade," Abraham Lincoln is often quoted as saying. I am not sure what Abraham Lincoln's hourly rate was, but I can tell you that under the current rendition of the law, if he practiced workers' compensation, it could be \$1.53 per hour. Yes, the decimal point is in the correct spot and I can assure you it has not gone unnoticed by the claimants' Bar that the current minimum wage in Florida is \$8.05 per hour.

In *Castellanos v. Next Door Company SC 13-2082* the Judge of Compensation Claims (JCC) awarded

\$822.70 in benefits to the injured worker and determined that the 107.2 hours the attorney for the claimant had incurred to obtain these benefits was reasonable. However, the JCC was constrained to award only a statutory guideline fee despite the large number of hours put into the case and awarded an attorney fee of \$164.54 (\$822.70 times 20%) resulting in a fee of \$1.53 per hour. The case was brought to the First District Court of Appeal. Among the many arguments made was that defense attorneys are not limited in the number of hours they incur in defense of claims. The First District Court of Appeal agreed with the JCC's decision and upheld the award but certified the following as a question of great public importance: *Whether the award of attorney's fees in this case is adequate, and consistent with the access to courts, due process, equal protections, and other requirements of the Florida and Federal Constitutions.*

We "comp lawyers" do not get that many constitutional cases before the Supreme Court of Florida, but at present there are a few with *Castellanos* joining *Wesphal v. City of St. Petersburg SC13-1930* in challenging the constitutionality of different sections of the Statute. Until recently, I had no reason to know their opinions come out every Thursday at approximately 11:00 a.m. I also never considered (or knew) the difference between a "facial" versus an "as applied" constitutional challenge. As of the submission deadline for this article, the Court had not entered its ruling in either case. However, all those connected to the workers' compensation industry are taking notice. Employers fear higher premiums with an unfavorable ruling. Insurance companies see higher premiums as more money to invest while recognizing the potential exposure for "unfunded claims," having in part

calculated risks based on fees limited to the guideline. Injured workers argue that they are unable to obtain counsel to take their case for low dollar benefits and their attorneys argue that the fees are unreasonably low.

As far as the question of how my golf game is, let's just say it has been better (and possibly better than Lincoln's). Am I still doing Workers' Compensation? Yes, I am. The future of attorney fees in Florida Workers' Compensation is yet to be seen, but likely will be heavily influenced by the Supreme Court of Florida in the very near future.

## LPP

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At the time the January meeting took place, the Florida Supreme Court had not yet issued its opinion adding an immunity provision to the Code for Resolving Professionalism Complaints. In light of the Court's addition of an immunity provision, meeting participants resolved to request additional guidance from the Court on the public records, confidentiality, privilege and inter-jurisdictional complaint issues discussed at the meeting. Members of the Commission on Professionalism and the Bar's Standing Committee on Professionalism indicated they would be willing to bring those requests to the Court.

Overall, the meeting was a good opportunity to meet others involved at the both the circuit and state level promoting the goals of professionalism and to share experiences and ideas. I am hopeful that the Court will further amend the Code for Resolving Professionalism Complaints, and provide additional guidance on the issues raised at our meeting to strengthen the Local Professionalism Panel model.

# WE VALUE

the power of teams.

For Richard and Jennifer Gans, the Community Foundation of Sarasota County's value is in bringing like-minded donors, volunteers and causes together. As an estate-planning attorney whose clients need ideas about how and where to give, Richard sees the Foundation as the perfect resource. It is "right at the heart" of the community, with deep insight into local issues and challenges. Jennifer values the fact that the Foundation provides information and then anyone can participate. "It's up to you how much you give. I like that."

Richard and Jennifer Gans



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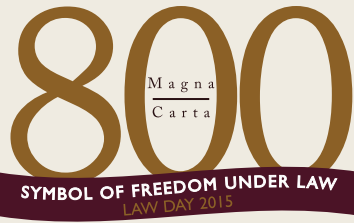
LAW WEEK 2015

*Volunteers sought to help present new mock trial script*

**C**alling all attorneys! Please join us and volunteer a few hours of your time to Law Week 2015.

A new mock trial script, "Nurseryland v. Roy L. Kingsman," will be offered April 27 to May 1 to fifth-graders throughout Sarasota County to introduce them to the law and how our court system works. The trial itself is a performance, acted out by students portraying the roles of judges, attorneys, witnesses, bailiffs and jurors. Local attorneys volunteer to be on hand to comment on our legal system and answer students' questions after the jury has rendered its verdict.

To volunteer a few hours of your time for this fun event, please complete the enclosed flyer and return to: Hagen Brody, [hbrody@scgov.net](mailto:hbrody@scgov.net).



Attorney Tom Avrutis speaks to students in the Booker High School Law Academy about credit and collections.

Twenty years ago, Attorney Kim Walker and Judge Stephen Walker met for their first date at the YLD St. Patrick's Day Party. The couple celebrated this happy occasion again at this year's YLD St. Patrick's Day social at the Old School Bar & Grill.



Members of the Suncoast Chapter of the Paralegal Association of Florida served as timekeepers at the Mock Trial competition at Booker High School. Seated, Janet Gadoury, CP; standing, left to right: Leslie Meyer, FRP, Veronica Barfield, CP, Marcia Muldoon, CP, and Chapter President Liz Sahagian, CP.

DIVERSITY

**Inclusion**

Continued from Page 1

a culture at the firm. This culture of inclusion has offered opportunities for the lawyers to progress along the cultural competence continuum. She believed that the test for diversity success was not so much recruitment as it was retention.

Myers noted that sustainable growth required great infrastructure, and that the infrastructure is the people. The benefits from cultural competence were recognizing the needs of the human capital — the people. Key points made at the Summit were simple principles such as remembering what made you feel included and to do the same, as well as understanding that everyone has a different life experience that creates their expression in life. The need for written inclusion policies was also noted at the Summit, but implementation of those policies was emphasized as the catalyst for the policies to be effective. Representatives from PNC Bank and PricewaterhouseCoopers both agreed that middle management played a pivotal role in the implementation of those policies. They also pointed out that they have been told by some major account holders that they must have diversity at all levels of their company for those account holders to obtain or keep their business.

At the Summit, there were no excuses, only open dialogue among the attendees. Myers spoke truthfully and from experience when she said that barriers and overcoming barriers are mostly self-imposed due to lack of connection. In other words, we find a way to do what is important to us rather than others. Myers noted that there is always a need for ongoing education until focusing on inclusion of others becomes natural. It is a lifelong process.

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## Prejudice

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Second District determined that res judicata barred the second action. In short, once the case was dismissed with prejudice, the lender could no longer take any efforts to collect that particular note and mortgage on any alleged “subsequent default.”

Flash forward to 2004 and the case of *Singleton v. Greymar Assocs.*, 882 So. 2d 1004 (Fla. 2004). *Singleton* involved a similar fact pattern filed in the Fourth District. A lender filed a foreclosure action. The lender failed to comply with court orders, and its action was dismissed with prejudice. The lender attempted to file the same action again, but this time the Fourth District claimed that the bank could refile the action and that res judicata did not apply. The case was accepted by the Florida Supreme Court, due to the direct conflict with *Stadler*. The Supreme Court sided with *Singleton* on the theory that a note paid in monthly installments is a continuing obligation. When a bank files a foreclosure action, it accelerates the note and sues on the entire indebtedness. However, when the case is dismissed with prejudice, according to *Singleton*, the note is somehow magically unaccelerated, even without any action by the bank or ruling by the court, simply as a matter of law. Because the note is unaccelerated by operation of law, again according to the logic of *Singleton*, the borrower’s obligation to pay monthly installments recommences on the day after the dismissal and, therefore, the bank can sue again based on the new breach. As bizarre as this logic is (try to pay a bank a current monthly installment when a loan has been accelerated and no payment has been made for three years, and see what happens), it was the ruling in *Singleton* and it was the law.

Now, the case of *Deutsche Bank Trust Company Americas v. Beauvais*, 2014 WL 7156961 (Fla. 3d DCA 2014) has taken the twisted logic once step further. In *Deutsche Bank*, the lender bought a foreclosure action and failed to move its case forward for many years. The court dismissed the case without prejudice as a result of the bank’s failure to take action. In the meantime, a community association foreclosed its lien on the property and took title to the property subject to the bank’s lien. When more than five years had passed from the filing of the foreclosure by *Deutsche Bank*, the association filed an action against Deutsche Bank attempting to clear the title to the property, asserting that Deutsche Bank’s interest in the property was a cloud on the title because more than five years had run since acceleration. Therefore, the Statute of Limitations on the enforceability of the note was gone and the bank could never foreclose its interest. The trial court agreed with the association.

On appeal, the Bank cited to *Singleton* for the proposition that a note and mortgage is an ongoing obligation and, when its case was dismissed, the note and mortgage were automatically unaccelerated. The Third District disagreed with the bank, but for reasons that had never been suggested before. The Third District distinguished *Deutsche Bank* from *Singleton*, and the other cases that interpret *Singleton*, by pointing out that all of the *Singleton* cases involve situations where the case had been dismissed *with prejudice*. Whereas, the *Deutsche Bank* case involved a dismissal *without prejudice*. The court rationalized *Singleton*’s outcome by claiming that a dismissal with prejudice against the bank was

a determination on the merits that everything that the bank had alleged in its action was wrong, including the bank’s allegation of acceleration. Therefore, when the court dismissed the suit with prejudice, it was a finding by the court that there was no acceleration. Because the debt had not been accelerated, neither res judicata nor the Statute of Limitations applied because there were still ongoing payment obligations.

In *Deutsche Bank*, however, the dismissal had been without prejudice, which means that the court made no finding as to the bank’s allegation regarding acceleration. In other words, the bank’s statement that the loan had been accelerated was still accepted as a true statement. Because the bank had never unaccelerated the loan, the borrower had never taken steps to unaccelerate the loan, and there was no finding that the bank, by operation of law, had unaccelerated the loan via a dismissal with prejudice, the acceleration was unaffected. Therefore, the Statute of Limitations had run and the bank could no longer bring an action on its note.

Simply put, in cases where a lender’s case is dismissed more than five years after acceleration, if the case is dismissed with prejudice, the loan is automatically unaccelerated and the bank can sue again on all subsequent breaches. If the suit is dismissed without prejudice, the original acceleration stands and it is not possible for the bank to ever enforce that note again in a subsequent action. So, I can tell everyone with confidence that a dismissal with prejudice means that a case can immediately be brought again and a dismissal without prejudice means that it is barred for all time — at least in the circumstance of a foreclosure filed more than five years after acceleration.

### SARASOTA FILM FESTIVAL

## Judge Williams leads production of film on Newtown’s history

The Honorable Charles E. Williams, who is no stranger to filmmaking, donated his time and talent to the Sarasota Film Festival’s Summer Film Academy. The community will be able to see the world premiere of *Newtown at 100: A Glimpse Through Our Eyes* on April 16 at the Sarasota Opera House at 7 p.m.

“The students were outstanding,” said Judge Williams. “They were very focused and motivated, and they did a terrific job.”

Five Booker High students worked with Judge Williams and SFF Education Director Samuel Curtis to create the documentary. They interviewed several Sarasota residents who reflected on the past, present and future of Newtown as the historically relevant community turns 100 years old.

Judge Williams has worked on documentaries that were featured at the Sarasota Film Festival last year and in 2012. He had been volunteering his time for diversity initiatives at Booker High School and, given his interest in documentaries, he gladly signed on as a consulting producer.

What makes the Newtown documentary so special is that the students are able to tell the story of their community through their eyes, said Judge Williams.

“We wanted to do something that recognized the community and talked a little bit about the history of the community,” he said. “We thought if we could get the community involved, the people who never experienced Newtown would be able to see it through their eyes.”

“I also teach the students who partake in the academy to learn more about careers in film and television,” he said.

The evening will also feature American Idol finalist Syesha Mercado and the Booker High School Gospel Choir. After the screening, Judge Williams and SFF Director of Programming Michael Dunaway will engage in a panel discussion.

The Sarasota Film Festival is seeking sponsors. Proceeds from this event will fund future film academies and enable students to attend the event free of charge. To learn more, visit [NewtownAt100.SarasotaFilmFestival.com](http://NewtownAt100.SarasotaFilmFestival.com). To inquire about sponsorship opportunities, call Charlie Ann Syprett, Development Director, at (941) 364-9514 ext. 105, ([development@sarasotafilmfestival.com](mailto:development@sarasotafilmfestival.com)).

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SOUTH COUNTY DIVISION

# Legal Aid of Manasota shares ideas on assisting veterans

At our March meeting the SCD board spent a great deal of time discussing the idea of an organization-wide project to provide legal services to the many veterans who call our area home. The news is replete with stories of the struggles these heroes are dealing with as they transition back to civilian life. Our older veterans have their issues, too, as they live out their retirement years here in Southwest Florida.

We were honored to have as guests at our meeting Legal Aid's Linda Harradine and Pam Fields, who brainstormed with us regarding possible areas of outreach to veterans that our members could be involved in. It was a free-flowing and fruitful discussion where many ideas were shared. It was great to have Linda and Pam with us to share valuable input. They are reaching out to other pro bono providers in the state in an effort to find successful programs offered to assist veterans, to see if any can be replicated here. Our goal is to have a program up and running sometime this year.

Another great development is that Legal Aid has now opened an office here in Venice, at 245 North Tamiami Trail, "under the bridge." As they get organized, opportunities will be offered for South County attorneys to perform "client intake," whereby a new client's issues are identified to determine what Legal Aid services, offered through its many volunteers, will best meet this person's needs. We will be putting out the call for our members to consider volunteering perhaps one afternoon per quarter for this worthwhile endeavor. Stay tuned.

Our board continues its active involvement in the process of planning the renovations of the R.L. Anderson Building, with the end goal being a

**South County President's Column**



**Robert T. Klingbeil, Jr., Esq.,** *Klingbeil & Roberts, P.A.*

dedicated court services building here in South County. It is a project whose time has come, particularly when you consider the population shift in our county over the past several years. For one-half of the Sarasota County population to have to travel 45 minutes to an hour *one way* to participate in the legal process, whether as a juror, witness, party litigant or criminal defendant, is neither just nor cost-effective. We are encouraged by our recent meetings with county commissioners and staff, as well as other constitutional officers, that progress is being made. Beth Waskom continues to spearhead our efforts and work tirelessly on this matter. I have told her, half-way jokingly, that when our new courthouse is completed we're going to have to name one of the restrooms after her. Time will tell . . .

If you have not already done so, make your reservation now to attend our April Membership Luncheon at the Plantation Golf & Country Club on April 23. There is a handy flier in this month's Docket. Tom Harmer, County Administrator for Sarasota County, will present a "State of the County" address. Because we feel this program will be of great interest to the general public and the venue can accommodate a big crowd, we have opened it to guests. Please invite your non-lawyer friends and associates to what promises to be an interesting and informative program. Reservations can be made through the SCBA office and credit cards are accepted. Thanks to Steve Boone for arranging for Harmer to be our speaker.

One of my favorite Jimmy Buffett songs is "Trying to Reason With Hurricane Season." After enduring the traffic and crowds of the last few months, I think it may have been more

aply named "Trying to Reason With Snowbird Season." As you read this, traffic should be starting to ease up as we near the end of another "season." A final topic of conversation at our March board meeting was the possibility of reprising our very successful Friday afternoon Happy Hour at the Casey Key Fish House Tiki Bar sometime in May or early June. The Tiki Bar is just across the "swing bridge" on Blackburn Point Road, pretty much centrally located in the

county. We were pleased last year to be joined by a number of our North County colleagues, and hope many of you will come out this year. For the truly adventurous, come by boat up or down the waterway. The date is not yet set, but we'll get the announcement out in plenty of time. It's a totally informal "come as you are" event for members and their guests to relax and ease into the weekend, and wish a belated *bon voyage* to our northern visitors.

MEETING NOTICE

## County administrator to speak at SCD luncheon

County Administrator Thomas A. Harmer will present "A Snapshot of Sarasota County" at the South County Division's Membership Luncheon Meeting on Wednesday, April 23, at the Plantation Golf & Country Club.

Harmer has 30 years of experience in local government, including nearly eight years as city manager of Titusville. Before joining Sarasota County in August 2012, Harmer was Senior Vice President of the Pizzuti Companies, a high-quality real estate company, overseeing the development of industrial and commercial projects in the Southeast.

This meeting is open to all Bar members. Please invite guests, associates and community members who have an interest in future development. Make your reservation at [www.sarasotabar.com](http://www.sarasotabar.com).



**Thomas A. Harmer will speak at the April 23 meeting, which is open to all members of the Sarasota County Bar Association.**

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## Data

Continued from Page 1

but are very often also connected via electronic devices in their pockets or homes (employer-issued or not), be it a cellphone, computer, tablet, or other Internet-capable device.

In 2014, companies reported a 10 percent increase in “insider” incidents perpetrated by employees or former employees, solidifying such incidents as the most common of all regarding data breaches. In addition to the highly publicized consumer data breaches in the last six months at large retailers Target and Home Depot, the recent news of breaches at the second-largest U.S. health insurance company, Anthem Inc., as well as the breaches at major financial institutions like JPMorgan, has compromised millions of Americans’ most sensitive information. In 2013, 19 percent of U.S. businesses reported losses of \$50,000 to \$1 million due to data breaches. Regardless of breach size, the American government recognizes that data security is a pressing issue.

The White House has taken the lead on the proposal of federal legislation to address cybersecurity and data breach. Currently, 46 states (and the District of Columbia) have data breach notification statutes. The hodgepodge of state notification laws creates uncertainty, which spurs the proposal of federal legislation to clear up the differences and create a national standard. The White House’s proposal includes a 30-day-from-discovery notification requirement, and the Federal IT budget recently requested \$14 billion for cybersecurity. In addition to the notification requirement, the White House will also unveil a “Consumer Bill of Rights” and will support the Federal Trade Commission in its development of a resource for victims of identity theft.

Many of the state data breach notification laws have been passed in

the last few years. By the very nature of the laws’ recent establishment and unseasoned enforcement, consumers and business owners are still uncertain as to how the laws work and whether they provide adequate protection. So far, there is considerable bipartisan support in Congress for federal cybersecurity regulations. In fact, several bills have been proposed in recent past legislative sessions. Regardless of whether Congress continues to make cybersecurity a top policy issue for the current legislative session, the safety of confidential information has never been more of a nationwide concern.

By way of example, in 2014, Florida passed its version of data breach notification laws called the Florida Information Protection Act. FIPA requires that all companies take reasonable measures to protect personal data, such as encrypting it or removing personally identifiable information. Any data breach that affects 500 or more individuals must be reported to the Florida Department of Legal Affairs within 30 days, and companies must also supply forensic reports and their internal breach policies. In many circumstances, individuals whose information is compromised must also be notified by the company within 30 days. If the breach involves more than 1,000 individuals, all credit reporting agencies must be informed. There are serious consequences for failure to comply with the new rules, as companies may face fines of up to \$500,000.

In light of the varying state regulations, the concept of a uniform federal law governing data breach notification and enforcement is sensible. A federal standard could remedy the current pitfalls of the state-by-state approach. Regardless, this area of the law is building momentum out of necessity and can no longer be overlooked by consumers, business owners, and legal practitioners.

## CLERK’S CORNER

# Your place in the “Matrix” determines level of access to electronic records

As you recall, AOSC 14-19 lifted the 2004 moratorium placed on electronic access to court records by defining standards for access through adoption of the “Standards for Access to Electronic Records,” and the “Access Security Matrix.” In order to provide access, Clerks had to apply through the Office of the State Courts Administrators (OSCA) for approval of their access systems by the Florida Court Technology Commission (FCTC). On Feb. 17, Sarasota, along with 56 other counties, had the applications approved.

The matrix defines user groups, access levels, access levels for each group based on case type, and access levels for docket descriptions. Certain groups will be allowed secure access through a username and password they create — once they have been authenticated to establish their role and associated access levels and provide a written notarized statement verifying their identity. Attorney of record is one of these groups.

The attorney of record will have secure access to all records (indexes, progress dockets, and images of Court Records), except those that are expunged or sealed, automatically confidential under 2.420(d)(1), or made confidential by court order. What this means is that while in the past, all attorneys — regardless of whether they were attorney of record — had access to everything the attorney of record could see (excluding confidential information, of course), but once the implementation phase of AOSC 14-19 is completed, attorney access will change.

Although the matrix does not provide a special class for attorneys,



**Karen E. Rushing,**  
Clerk of Court  
and County  
Comptroller

**The attorney of record will have secure access to all records in a case, but other attorneys’ access will be limited.**

they will now be categorized as *Public Internet* (anonymous). This group is limited in what they can view. Specifically, Family Law, Juvenile, and Probate images will not be accessible remotely.

The Standards allow individuals to become “Registered Users” and view cases and images related to Family Law and Probate. Attorneys currently using remote access to view cases may want to consider becoming a registered user, as this will not change their current access to case information.

The impetus behind the 10-year moratorium was protecting confidential information. In addition to limiting access based on the user group, standards include a *User Maintenance* section. Commonly known as the “Gatekeeper Agreement,” this section allows the gatekeeper attorney (or, administrator) of a law firm to manage user accounts. This ensures that only those authorized to access certain documents are accessing them.

Standardizing access to electronic court records has been a long time coming, and we appreciate the legal community working with the Clerk’s office throughout the development of this process. You can look forward to receiving additional communications from us on this topic, and we welcome the opportunity to assist those with continued interest in access via the web.




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■ **Russ Young** of Eraclides, Gelman, Hall, Indek, Goodman & Waters recently presented The 4 Essential “C’s” of PEO Claims Handling at the National Association of Professional Employer Organization’s Risk Management Workshop in Tampa.

■ Hultman Sensenig + Joshi attorneys **Lori Hultman, Christine Sensenig** and **Nikhil Joshi** presented an executive briefing on the topic of “Employers Beware! The Pitfalls and Perils of ‘Bring Your Own Device’ and Social Media in the Workplace” to the Lakewood Ranch Business Alliance on Wednesday, March 11. Hultman and Joshi will be speaking to employers about “Discipline and Documentation” at the Non-Profit Learning Network Seminar to be held at the United Way of Manatee County on April 14.

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