



The Docket

SARASOTA COUNTY
BAR ASSOCIATION
APRIL 2017
VOL. 34, NO. 4

12TH CIRCUIT

Comprehensive Treatment Court becomes reality

By The Honorable
ERIKA QUARTERMAINE

It is with great excitement that, on behalf of the Twelfth Judicial Circuit, I announce the beginning of the Comprehensive Treatment Court, an expansion of Sarasota's existing Mental Health Court.

After three years of planning and the generosity of Sarasota County, the City of Sarasota, the Downtown Improvement District, the Charles and Margery Barancik Foundation, the Community Foundation of Sarasota and the Gulf Coast Community Foundation as well as a grant from the state of Florida, we are on track to be one of the leaders in our state to address the needs of the community as well as the needs of the mentally ill who end up in the crimi-

See **TREATMENT**, Page 15

MOCK TRIAL COMPETITION



Booker High Law Academy places second in 12th Circuit Mock Trial competition

On March 4, 2017, students enrolled in the Law Academy at Booker High School placed second in this year's 12th Circuit Mock Trial competition. Left to right: Shelby Swanson, Dalton Thull, Cellexia Foster, Dorian Bizeau, Hagen Brody, Alan Perez, Kiley Kilduff-Cramer, Lily Rodriguez, Gianna Paoletti, Chad Tvenstrup.

ADMINISTRATIVE PROFESSIONALS DAY

SCBA's annual tribute to legal support staff

Team Trivia is back! It's time to challenge the winning teams from 2016 – first place winner "Lax Capacity" (Boyer & Boyer, P.A.); second place "It's all about ME" (Matthews Eastmoore); and third place "The Woof Pack" (Bentley & Bruning, P.A.). So get ready! Start watching Jeopardy, tune in to the News Hour, read the paper, browse the internet, and come ready to play. Last year's winners are going to want to repeat their performance.

Mark your calendars for Wednesday, April 26, 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.

Come ready to play! The fun begins at noon at Michael's on East. We are pleased to announce that the Community Foundation of Sarasota will be the featured sponsor this year. Fill out the enclosed reservation flyer. It's a great way to say THANK YOU to your staff. See you there!

LEGAL AID

Legal aid benefits the community as a whole

By **JOHN PATTERSON, Esq.**
Shutts & Bowen LLP

As members of the Sarasota County Bar Association, most of us are familiar with the positive impact of legal aid on low-income families, but we now have powerful evidence that legal aid also benefits the economy in our community and statewide.

A new study commissioned by The Florida Bar Foundation found that every dollar invested in civil legal aid organizations by the Foundation, donors and other sources resulted in more than \$7 in economic impacts in 2015.

The study, performed by The Resource for Great Programs, found that investments in civil legal aid

See **BENEFITS**, Page 17



Experience. Trust. Personal Attention.

Now Offering 30% Referral Fees^{*}

and the Very Best Legal Representation for Your Clients

When you need to refer personal injury or malpractice cases that your firm does not handle, I can assure you that I approach each referral with the highest level of **personal attention** and that your attorney-client relationship will **always** be protected.

My Personal Pledge:

- Aggressively represent the client, drawing upon nearly 4 decades of trial experience. I will utilize my firm's significant resources to obtain the very best possible outcomes and recoveries.
- I will thoroughly analyze each client's unique situation, and ensure they fully understand their rights. I will then evaluate the most appropriate legal options with their best interests and personal goals in mind.

*Please contact me at any time to
discuss opportunities to work together.
We appreciate your referrals.*



*Florida Bar allows increased
referral fees with Court approval.



DAN DANNHEISSER
PERSONAL INJURY ATTORNEY

**Experience you can count on.
Personal attention you deserve.
A name you can trust... in your community.**

Sarasota, Florida 34236 • 941.444.9601 • dandannheisser.com

Booker High successful at mock trial competition

Administrators, staff, students and alumni of Booker High School have another reason to be proud to wear their purple and gold. Early in March, students enrolled in the Law Academy at Booker High School placed second in this year's 12th Circuit Mock Trial competition. This year's competition took place at the Judge Lynn Silvertooth Judicial Center and involved several schools within the 12th Judicial Circuit. The Law Academy's second-place finish marks its best finish in the mock trial competition. In addition to taking home the second-place prize, Booker's stellar performance earned the Law Academy a spot at the state competition in Orlando (March 23-25). The Law Academy students will get their first opportunity to showcase their skills against top teams from all over the state.

The Law Academy's mock trial team was coached by **Hagen Brody**

SCBA PRESIDENT'S COLUMN



E. Keith DuBose, Esq.
Matthews Eastmoore

and **Alan Perez**. Brody has coached the mock trial team since the start of the annual mock trial competition and has been a mainstay and constant source of support for the Law Academy's team. Perez worked with this year's team and provided the benefit of his many years of trial experience. Both lawyers are proud of the Law Academy's performance and look forward to the state competition.

In the case assigned to the students, *State of Florida v. Hunter Wilson*, college student Hunter Wilson was accused of causing the death of a fellow student. Young Mr. Wilson was in charge of the honor society's pledge process. As part of the hazing process, a student with a peanut allergy was forced to eat a brownie with nuts (I would consider that hazing only if ice cream did not accompany the brownie). The students had to argue whether the

The Law Academy's mock trial team was coached by Hagen Brody and Alan Perez. ... Both lawyers are proud of the Law Academy's performance.

actions constituted hazing and if Wilson was negligent in his duties as pledge chair. As you might suspect, the fact pattern resulted in some interesting and creative arguments.

Congratulations to the Booker High School Law Academy, and good luck at the state competition later in the month. Also, a special thanks to SCBA members Brody and Perez for working with our future jurists.

E-DISCOVERY • PART 3

Florida is first Bar in nation to require tech CLEs

In parts 1 and 2 of this 3-part series, we discussed the history of e-discovery as well as practice tips. In Part 3, we explore Florida-specific requirements, federal/state interplay, proportionality, and the future of e-discovery.

By **ILYAS SAYEG, Esq.**
Maglio, Christopher, and Toale P.A.

We can no longer afford to ignore the impact of technology on our practices. While this series has focused on e-discovery in particular, the responsibility of managing new technology in our practices is neither limited to e-discovery nor can it be divorced from it. For example, many issues that apply to the production of e-discovery also apply to preservation. Further, handling all of this electronic information puts responsibilities on our clients and our practices to handle that information effectively and securely.

As a result of the rising importance of technology in our practices, on Sept. 29, 2016, the



Ilyas Sayeg, Esq.
Maglio, Christopher, and Toale P.A.

Florida Supreme Court made the Florida Bar the first mandatory bar in the nation to require technology education as a part of its CLE requirements. See <http://www.floridasupremecourt.org/decisions/2016/sc16-574.pdf>. This opinion amends Rule 4-1.1 (Competence) to now state, "competent representation may involve a lawyer's association with, or retention of, a nonlawyer advisor with established technological competence in the relevant field. Competent representation may also entail safeguarding confidential information related to the representation, including electronic transmissions and communications."

Further, the opinion amends Rule 6-10.3 (Minimum Continuing Legal Education Standards). The rule increases from 30 to 33 the number of CLE credits required per three years and requires that those three additional credits must be technology credits. This is the first time in over 30 years that the Florida Bar has amended its CLE

requirement. We would do well to take the hint.

The Relationship Between Florida and Federal E-Discovery Rules

It is not uncommon for state rules to shadow federal rules. For example, Florida Rule 1.280(d)(2), adopted in 2012 to address e-discovery, is modeled to some degree after the 2006 amendments to Federal Rule 26(b)(2)(C)(iii). Rule 26(b)(2)(C)(iii) was amended in 2006 particularly to address proportionality and e-discovery.

In 2015, however, the Federal Rules underwent substantial (and controversial) amendments. The most controversial of the 2015 amendments was to move the proportionality analysis from Rule 26(b)(2)(C)(iii) to Rule 26(b)(1), which defines the scope of discovery. As a result of this change, in order for information to be within the scope of discovery in federal court, it must be both relevant and proportional.

Technically, proportionality has been a part of the federal rules since
See TECH, Page 15

THE JOHN CHAPMAN LAW FIRM, PA
CHAPMAN LAW
 BUSINESS AND ESTATE LITIGATION

ESTATE AND PROBATE DISPUTES

Now accepting referrals
 of estate and probate
 disputes, including
 will and trust contests,
 on contingency.

Division of fees paid in accordance
 with Florida Bar Rules.



Estate & Probate Disputes

Board Certified - Business Litigation, The Florida Bar
 1515 Ringling Boulevard, Suite 870 • Sarasota, FL 34236
 Phone: 941.877.6347 • Fax: 941.404.4605
jchapman@johnchapmanlaw.com
www.johnchapmanlaw.com



MEDIATION

JAMES ROLFES & GARY LARSEN

BOARD CERTIFIED TRIAL ATTORNEYS

Let our 60+ years of Litigation Experience work for you.
 We are available to mediate in all areas of civil litigation throughout
 Southwest Florida. We have state-of-the-art conference facilities
 centrally located at our Fruitville Road Sarasota office.



James Rolfes
 Certified Circuit Civil Mediator
 Profile Page: www.dglawyers.com
 Contact Layne to Schedule
 941.552.4602



Gary Larsen
 Certified Circuit Civil & Federal Mediator
 Profile Page: www.dglawyers.com
 Contact Carol to Schedule
 941.552.4606



DICKINSON & GIBBONS, P.A.

ATTORNEYS AT LAW

Established 1937

Gateway Professional Center 401 N. Cattlemen Road, Suite 300
 Sarasota, Florida 34232
 941.366.4680

When Experience Counts and your client's Results Matter

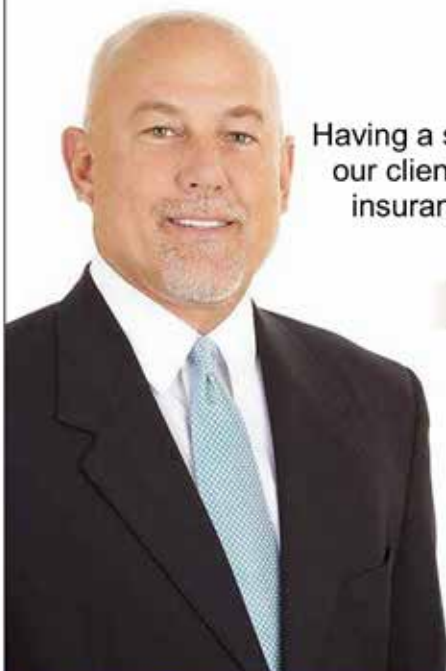
WITTMER | LINEHAN

Having a strong track record with insurance companies means
 our clients obtain recoveries that often exceed the available
 insurance policy limits. Larger recoveries frequently yield

LARGER REFERRAL FEES.

PRACTICE AREAS INCLUDE

AUTO ACCIDENTS
 MOTORCYCLE ACCIDENTS
 WRONGFUL DEATH
 PREMISES LIABILITY
 INSURANCE BAD FAITH
 INSURANCE CLAIM DENIALS
 SOCIAL SECURITY
 WORKERS COMPENSATION



Steven T. Wittmer



Gregory P. Linehan

941-365-2296

2014 Fourth Street, Sarasota, FL 34237

www.sarasotalitigator.com

Momentous excitement builds for Law Week

By **ERIK J. ARROYO, Esq.**
Band, Gates & Dramis, P.L.

What do you get when you combine a group of attorneys, magistrates and judges, fifth-grade students, Brian Goodrich, and an educational trial transcript? The answer is Law Week 2017.

In order to promote the Sarasota County Bar Association's commitment to equal justice, the Law Week Committee has an eventful week planned to celebrate the national holiday.

The celebration known today as Law Week began in 1957 when ABA President Charles S. Rhyne created Law Day to provide an opportunity for lawyers, judges, legislators, educators, social workers, and others to collaborate on community-based activities that will increase access to our courts and promote democracy. With the success of the initial Law Day, many communities have expanded the holiday to an entire week.

Now, in celebration of 60 years of Law Day, the Sarasota Bar



Erik J. Arroyo, Esq.
Band, Gates & Dramis, P.L.

Association has worked tirelessly to prepare a phenomenal experience for the participants, and most importantly, for the children. The theme for Law Day 2017 is "The 14th Amendment Transforming American Democracy."

Here's how it works: we pair the volunteers to a local fifth-grade class and provide them with an engaging and educational trial script. This trial script will transform the classroom into a courtroom. The volunteer attorneys, judges, and magistrates will observe the mock trial, speak about the functions of the judicial branch, discuss the yearly topic with the children, and take any questions.

There are still spots available for volunteers! Therefore, if you'd like to contribute some hours on May 5 or between May 15 and May 19 to networking, giving back to the community, ~~eating some delicious donuts~~*, and educating the younger generations about our democratic republic, please contact Law Week Committee Chair **Brian**



Goodrich ASAP at bgoodrich@bentleyandbruning.com or by phone at (941) 556-9030.

**Donuts have not been approved as part of this event. No part of this publication should be construed as a guarantee of the presence of donuts at the Law Week 2017 celebration. If, however, any participants demand donuts after volunteering, please contact Erik Arroyo at EArroyo@BandGatesDramis.com and he will supply a reasonable quantity of complimentary donuts.*

COACH'S CORNER • PERSONAL DEVELOPMENT

Some tools for getting more done with less stress

By **MARTY HURWITZ**
Transitioneering

The number of hours in a day is limited. The amount of work we can accomplish in an hour is not. The question is: How does one maximize productivity and minimize stress? The following are some suggestions to do just that.

1. Remain aware and vigilant of the five main productivity minimizers: cell phones and texting; the internet; office gossip; social media, and email.

2. When working on a specific task, turn off not only your phone's ring but also the buzzer.

3. Wait for your phone, office or cell, to ring three times before answering. This will help you be settled when you do answer and help create the frame of mind where you control the phone and not the other way around.

Do not let the urgent overshadow the important.

4. Set a time limit on those "time black holes." What is a time black hole? It is those trivial activities that people are so comfortable with that they lose track of time and just keep doing them.

5. Keep focused on "HVA." High value activities leverage your strengths and create impact or change. Delegate activities that feel like a struggle. Let go and get more accomplished.

6. Protect at least one hour a day. Schedule protected time for the most important tasks. If you protected just one hour, that would be only 12.5 percent of an eight-hour day.

7. Declutter your desk and work environment. Dial down the visual noise. Studies have shown that people who work in neat and uncluttered environments are more persistent, less weary, and less frustrated, and stay with a task more

than one and one-half times longer.

8. And, finally, email. What is one to do? Try to maintain no or next to no emails in your inbox. How to do this:

- Create a short-cut archive key. Archive any emails that are an fyi or that you need to revisit later
- Send all action items to a calendar
- Unsubscribe from recurring emails at which you rarely look
- Any email that you can respond to in 5 minutes or less should be handled immediately.

Topping the list of habits to form if one is to enhance productivity is prioritization. Remain aware of and remove potential distractions.

Do not let the urgent overshadow the important. Be mindful and make intentional choices. A good night's sleep and regular exercise will help to ensure that your mindful choices will lead to enhanced productivity.

Frank Strelec, Esq., Mediator & Arbitrator

Mediation, Arbitration and Private Trials

- 20 years experience as mediator and arbitrator in Federal and State courts, including trust and estate matters, professional liability and partnership disputes, and employment cases
- Florida Certified Circuit and Appellate Mediator and Qualified Arbitrator
- 25-year Board Certified Civil Trial Lawyer
- Graduate, Harvard Mediation Program



**Call Frank at
941-321-7763 to
schedule a conference.**

Frank Strelec, PLLC · 941-321-7763
FStrelecMediator@gmail.com
www.FrankStrelecMediator.com



A Comprehensive Center for Alcohol & Drug Rehabilitation

- 28-Day & Long Term Residential Jail Diversion Programs
- DUI Court Services
- Involuntary Detox Through Marchman Act
- Additional Residential & Outpatient Services Available

941.366.5333 · www.fsos.org

**Changing Lives,
Saving Families.**



Creating an alternative for Pro Se litigants

- Assistance with legal form preparation
- Explanation of legal rights and responsibilities
- Limited appearances
- Legal coaching and strategy / Hearing and mediation prep
- Ghostwriting of motions/pleadings
- Assistance with obtaining ID, birth certificates
- Family law, landlord-tenant, small claims, county and circuit matters
- **Hourly or flat-fee structure — No large retainers**



Michele S. Stephan, Esq.
Florida Bar Licensed Attorney
Florida Supreme Court Certified
Circuit Court Mediator



LegalOnYourOwn, P.A.
HELPING YOU REPRESENT YOURSELF
www.LegalOnYourOwn.com

677 N. Washington Blvd. · Sarasota, Florida 34236 · 941.329.1199 office · 941.957.3630 fax
Michele S. Stephan, Esq. · mstephanesq@gmail.com

Bar offers resources for young lawyers

In March I had the pleasure of attending The Florida Bar YLD Board of Governors' out-of-state meeting, held this year in Dallas, Texas. It was great meeting with fellow Governors, and I was able to spend a lot of time discussing and brainstorming ways to inform our local YLD members about the resources available through The Florida Bar. We also had the chance to visit the George W. Bush Presidential Library and Museum (including a life-size replica of the Oval Office!), as well as The Sixth Floor Museum at Dealey Plaza, dedicated to the life and memory of John F. Kennedy. We also had dinner with Texas Bar President Frank Stevenson and Past Texas Bar President Harriet Miers, who discussed the similarities and historic ties between the Texas and Florida Bars, as well as the ethical representation of clients.

One of my goals this year has been to help inform my fellow local YLD members about the opportunities and resources available through The Florida Bar. To that end, I encourage you to come out to the Quick Chat at Cinebistro on April 13. The YLD normally holds this event every two years, and it is a fantastic chance to market with and meet other young lawyers in a fast-paced and fun format. I am also happy to announce that for the first time, we will be having a guest speaker at this year's Quick Chat. **Zack Zuroweste**, President-Elect of the Florida Bar Young Lawyers Division will be presenting opening remarks about The Florida Bar YLD. I invite you to come out to what will surely be a great evening.

YLD PRESIDENT'S COLUMN



Jesse R. Butler, Esq.
Dickinson & Gibbons, P.A.

Speaking of Florida Bar programs available to assist YLD members, did you know about Lawyers Advising Lawyers? Lawyers Advising Lawyers (LAL) is a free, peer-to-peer service of The Florida Bar through its Young Lawyers Division, giving members across the state access to veteran attorneys who can help answer procedural and substantive legal questions across more than 60 practice areas! You can even request assistance on non-substantive areas of the law, such as legal technology or legal organizations. LAL is super easy to use. If you have a question, or need just a little help about a legal issue or an aspect of your practice, just log in to www.lawyersadvisinglawyers.com to be matched with a more experienced attorney in your practice area. With a 48-hour turn around, you will be able to call or email the attorney for help and information, and hopefully make an invaluable connection. If you have at least five years of experience in the area of counsel, you can earn up to five CLE credits per year simply by registering to provide advice through LAL to other young lawyers. This is a tremendous, but little known, resource that I urge you to take advantage of.

For young lawyers thinking of venturing out on their own, there is absolutely no better resource than The Florida Bar YLD's How to Start Your Own Law Firm website, at www.startmyfloridalawfirm.com. Starting a law firm can be a daunting task, but with this website, The Florida Bar YLD has made it as simple as following a basic step-by-step guide, covering aspects covering corporate

structure, to business generation, to law firm technology, and many other subjects. Launched in May 2016, the website has won accolades, including a national award from the ABA for service to the bar, and has become a model for bar associations around the country. For anyone even thinking about starting a law firm, this is the definitive resource.

These are just a couple of the resources out there available to YLD members. Please register and come out on April 13 to the Quick Chat to learn even more.

Join us for a Speed Networking Event!

Thursday, April 13, 5:15 – 7:30 p.m.
Cinebistro, Westfield Southgate

Come meet new and old friends at this great speed networking event! Over the course of the evening, you will enjoy lively one-on-one discussions with other young lawyers practicing in a variety of areas. This is a fabulous opportunity to expand your referral base and learn about others' practices in a casual and fun environment.

Attendees will be treated to tasty appetizers and happy hour drink specials.

Register online at www.sarasotabar.com.

Sponsored by



LEFT: Docket co-editor Rob Young, Dana Keane, and Jim Toale enjoy the YLD St. Patrick's Day Party at The Shamrock.

RIGHT: Rob Young looks festive in his St. Patrick's Day orange with YLD immediate past president, Adam Portnow.





MICHAEL FRASSETTI

- Former NYPD officer
- Licensed and professional investigator
- Each case is handled with the utmost discretion
- B.A. in Law
- Free consultations provided

Why Hire CAPITAL PROTECTION AND INVESTIGATIONS?

Attorneys may not realize how big an asset a private investigator can be in developing a case. There are many tasks that **private investigator Michael Frassetto** can undertake that might be unsafe, difficult or even illegal for an attorney to perform on their own. Here are just some of the services that **Capital Protection & Investigations** offers the legal community:

- LOCATING HIDDEN ASSETS
- PREPARING FOR CROSS-EXAMINATION
- RECONSTRUCTION
- PHYSICAL SURVEILLANCE
- PREDICTING AN OPPONENT'S NEXT MOVE
- PUBLIC RECORDS SEARCH AND RETRIEVAL
- LOCATING WITNESSES, HEIRS, AND VICTIMS
- ENFORCING JUDGMENTS
- "CONNECTING THE DOTS"
- JAC APPROVED PRIVATE INVESTIGATOR

CALL TODAY FOR A FREE CONSULTATION — (941) 525-0177

Capital Protection & Investigations
Michael Frassetto, Licensed Investigator
3947 Clark Road, Unit M, Sarasota, FL 34233
www.cpinvestigations.net

FL LIC #A1500031



CAPITAL PROTECTION & INVESTIGATIONS
FLORIDA PRIVATE INVESTIGATOR



A consignment store like no other!

12,000-square-feet filled to the brim with hidden yet affordable treasures like Baccarat Crystal, Tiffany Silver, Gucci, Prada, Chicos, 14k-22k Gold Jewelry, high-end furniture, hand-made Persian rugs and great household items.

- **Volunteer**
- **Donate**
- **Consign**
- **Shop**
- **SAVE!**

An itemized tax donation slip will be provided.

The Woman's Exchange is a 501(c) 3

WOMAN'S
EXCHANGE INC.



NON-PROFIT CONSIGNMENT SHOP
SUPPORTING the ARTS of SARASOTA

*Now Handling
Off-site*

ESTATES



The ART of Giving...

Simplify things for you, your clients and their loved ones.

Experience the ROYAL TREATMENT!

Not only will the Woman's Exchange simplify the process by coming into your clients home, packing and removing everything you wish to donate but we'll also provide you with an itemized list detailing their gift. There's no charge for this service and you'll have the added satisfaction of knowing your donation will be put to good use, benefiting the arts of our community for generations to come.

The Woman's Exchange also offers an option that pays clients 50% of the sale price. We use the most sophisticated system in the industry, which includes bar-coding merchandise even when conducting an off-site estate sales.

www.sarasotawex.com | 539 S. ORANGE AVE 941-955-7859
MON-FRI 9-4 & SAT 10-4 | 1st FRIDAYS TIL 5PM

**MORE THAN \$7.8 MILLION AWARDED
IN GRANTS AND SCHOLARSHIPS**

*Unfortunately, there may be a times when an estate does not qualify for the "Royal Treatment" program due to unsaleable merchandise.

House bills “fix” individuals’ right to due process

By **CHRISTINA E. UNKEL, Esq.**
Maglio, Christopher & Toale, PA

“In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.”

— Seventh Amendment to the Constitution of the United States of America



Christina Unkel
Maglio, Christopher, and Toale P.A.

Expecting to be cheated — a lot or a little — in every consumer transaction. Watching helplessly as human rights and workplace rights go unprotected or are actively attacked. Paying high prices for dangerous, ineffective, or counterfeit drugs. Driving unsafe cars. Remaining powerless as environmental depredations take a toll on one’s life and health and family. These are alarming potential realities for every citizen. These are not partisan issues nor do they discriminate. Unfortunately, these are the foreseeable consequences of a series of bills the House will vote on in early March that will make it difficult — if not impossible — for Americans harmed by corporate misconduct to seek justice in our nation’s courts.

Plaintiffs’ lawyers and consumer-rights advocates are raising the alarm regarding a series of bills that are headed to the House Floor that would severely limit the ability of citizens to join in lawsuits to fight grievances in court. In what is dubbed as Lawsuit Abuse Week, the House will vote on each of one of these bills, which were rushed through the House’s Judiciary Committee without a single hearing (trust me — I watched several days of streaming). No testimony was heard from anyone impacted by any of these bills. There was no testimony given as to why any change in the law is reasonable and necessary nor why current jurisprudence does not effectively handle class action issues the bills purport to address. Rightfully so, the American Association for Justice, American Bar Association, Public Justice, 120 civil rights organizations, 37 disability rights organizations, and over 80 consumer, environmental, and work-

ers’ rights organizations oppose these bills.

The bills up for vote in the House during Lawsuit Abuse Week are:

H.R. 725, the Innocent Party Protection Act, which allows corporate defendants to more easily move a case into a favorable forum for them by making it more difficult to remand an improperly removed state case and taking away the harmed citizens’ right to choose an appropriate forum, including state court.

H.R. 720, the Lawsuit Abuse Reduction Act, which forces a court to impose sanctions on attorneys who bring novel legal cases. The bill requires a mandatory Rule 11 sanctions.

H.R. 732, the Stop Settlement Slush Funds Act, which prohibits non-profits and charities from being able to receive compensation from corporations found to have committed widespread harm to the public.

H.R. 1215, the Protecting Access to Care Act, which undermines state law and eliminates the rights of Americans to bring certain health care claims when they are injured by medical malpractice and dangerous drugs and devices, or when they or their families are injured or killed in a nursing home. This bill caps non-economic damages, eliminates joint liability for economic loss, caps fees, prohibits lawsuits against providers in product liability cases plus more; and there is sweeping reform against healthcare lawsuits. Further, “healthcare lawsuits” are broadly defined and this impacts many practice areas.

H.R. 985, the Fairness in Class Action Litigation Act, and **H.R. 906, the Furthering Asbestos Claims Transparency Act**, rolled together into **H.R. 985**, which strips Americans of the ability to join with others to bring consumer, worker, or civil rights class actions, or multidistrict litigations against corporations, by requiring an unfair and impossible standard for proposed class members to have the exact same type and scope of injury as the named representative (see Section 1716 of the Bill). For example, this would require, in cases involving dangerous drug and medical devices, all the victims to have suffered the same exact harm and to have the same

exact amount of damages and for the same duration — a completely impossible standard. And in cases where businesses are seeking damages for losses associated with data breaches, each business must suffer the same type of data breach and suffer the same losses. The bill also interferes with attorneys’ ability to represent clients and the freedom to contract (see Section 1717 and 1718). For example, it prohibits only plaintiff attorneys from representing a family member or law firm employee in a class action and requiring that no plaintiff lawyer may represent a client in a class action if that plaintiff lawyer previously represented the client in another matter. Further, the bill attempts to circumvent the Rules Enabling Act, which sets the protocol for amendments to the Federal Rules of Civil Procedure. If Rule 23 governing class actions truly deserves an amendment, it should be done by the federal judiciary through its Rules Advisory Committee and then reviewed and approved by the U.S. Supreme Court, as the Rules Enabling Act specifically requires (and has been done since the Federal Rules of Civil Procedure were implemented in the 1930s). Also this bill is *retroactive*, taking away the existing rights of consumers, employees and small businesses.

Overall, the proposed bills have several common themes — applying restrictions only to individual Americans and the attorneys who represent them by eliminating class actions and multidistrict litigations, violating contractual rights, overreaching into core state functions such as professional license regulation and state courts jurisdiction, imposing one-sided requirements on plaintiffs, and eliminating existing rights. Pushing bills with this kind of limiting language on citizens’ abilities to access justice is another shot across the bow of an independent judiciary — courts know how to deal with many of these issues the new bills are proposing to “fix.” The courts can and most often do reject the bad. When this occurs, no one on the plaintiffs’ side is paid or reimbursed when cases are dismissed or lost at trial, or settlements are disapproved.

See “ABUSE”, Page 11

Need Construction Litigation Support???

FOREMAN & ASSOCIATES, INC.

COMMERCIAL • RESIDENTIAL • INDUSTRIAL

- Expert Witness
- Investigations
- Detailed Reports
- Building Code Interpretation
- Forensic Analysis DE / NDE
- Improper Design / Installation
- Negligence / Accidents
- Developer Turn-Over Study



MICHAEL S. FOREMAN
PRESIDENT
941-955-8111

2511 BEE RIDGE ROAD
SARASOTA, FLORIDA 34239
www.constructionguru.com
construction-guru@comcast.net

Mediation Services

BOB HOYLE



25 YEARS EXPERIENCE

- Certified Circuit Civil Mediator
- Certified County Civil Mediator
- Certified Appellate Mediator
- Florida Arbitrator
- Federal Mediator
- Harvard College, B.A., 1975
- Capital University Law School, J.D., cum laude, 1986
- Harvard Law School Mediation Program

- Probate matters
- Will and trust contests
- Real estate
- Homeowners and condominium associations
- Foreclosures
- Commercial and residential leases and tenancies contract
- Business and commercial litigation

D. Robert Hoyle, P.A.
941-745-1124

bhoyle@hoylefirm.com

1001 THIRD AVENUE W., SUITE 260, BRADENTON, FL 34205
www.hoylefirm.com - Email: bhoyle@hoylefirm.com
Calendar availability and full bio at floridamediators.org/roberthoyle

BUSINESS LITIGATION

Eight Lutz, Bobo & Telfair trial lawyers have handled business litigation matters for over 25 years.

REFERRALS & ASSOCIATIONS ARE WELCOME

941-951-1800 | www.lbtlaw.com



TRIAL LAWYERS

"Over 300 years of combined legal experience"

se habla Español

SARASOTA | PUNTA GORDA | BRADENTON | TALLAHASSEE

South County courthouse gets OK to proceed

Greetings from South County! It's that time of year when we are all looking forward to being able to go to our favorite restaurants, get from point A to point B or go out to the beach without hordes of tourist and spring breakers descending upon us. But, for a lot of us, it is also our busiest time of the year, which is a good thing. Hang in there — summer is just around the corner!

Things are moving along quite well in South County. The County Commission voted to proceed with the construction of a new courthouse building at the R.L. Anderson site and approved the funding of the initial design work, which should commence shortly. A big thank-you to everyone who has helped

SOUTH COUNTY PRESIDENT'S COLUMN



Stephen K. Boone, Esq.
*Boone, Boone,
Boone &
Koda, P.A.*

move this process along and I would encourage you to continue to encourage our County Commissioners when you get the opportunity, to make sure this does not fall to the back burner.

During March and April we are having a series of "brown bag" lunch meetings with Judges **Don Hall** and **Kimberly Bonner** to make sure everyone is on the same page procedurally with our full South County Circuit Civil Division. We held a very successful and entertaining clay shoot in March and will be hosting another happy hour social event on April 18 at the Wine Bar & Bistro in Englewood. Y'all Northerners are always welcome to attend our social functions — they are quite entertain-

ing and, in this instance, you would get a chance to come to beautiful Englewood.

That's all for now. I've got to see if I can find a parking space at Publix!

Save the Date

APRIL 18, 2017

Happy Hour Social, Beach Road
Wine Bar & Bistro, Englewood
5:30 p.m. – 7:30 p.m.

MAY 16, 2017

SCD Membership Luncheon
Venetian River Club
12:00 – 1:00 p.m.
1.0 Technology CLE included

SCENES FROM OUR ANNUAL SPORTING CLAYS EVENT



"ABUSE"

Continued from Page 9

But no court can do justice in cases of compelling merit or social importance if the courthouse door is barred by insurmountable cost. Lacking access to the courts for our clients resigns us to live in a society where the following cases would never have been heard: Holocaust victims cases against the Swiss banks

**Call and write
members
of Congress
regarding
your concerns**

and others, *Brown v. Board of Education*, Exxon Valdez oil spill, and Volkswagen "clean diesels," to name only a very few.

So what can you do as a trusted advocate for our society? Have your voice heard and spread the word! Call and write members of Congress regarding your concerns, inform others to increase awareness, and inspire them to do the same. It is not too late! If any and/or all of

the bills being heard are passed at the House level, the bill(s) will still need to be voted on by the Senate. As attorneys and judges who instill justice in society, and as famously acknowledged by Shakespeare in *Henry VI* with the line "Let's kill all the lawyers," this is where we as lawyers need to stand up to protect the rights of consumers, workers, patients, and small businesses in our society.

FOR A FRESH START



CHAPTER
7 & 13
BANKRUPTCY

FAMILY LAW

RICHARD V. ELLIS, P.A.

PHONE (941) 351-9111

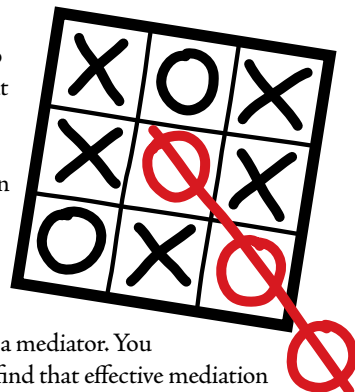
FAX (941) 351-9804

3202 NORTH TAMiami TRAIL
SARASOTA, FLORIDA 34234

SARASOTABANKRUPTCY.COM

Mediation “outside the box”

The mark of a an effective mediator is the ability to find solutions to a dispute that the parties have not explored. Norman Vaughan-Birch has put that philosophy to work in 40 years of resolving the most complex disputes as a trial attorney and mediator. Put his experience and expertise



to use the next time you need a mediator. You will find that effective mediation can be cost-effective, too.



**Norman
Vaughan-Birch**

· Florida Supreme Court-certified mediator
· Florida Bar Board-certified in civil trial and
business litigation

MediationOutsideTheBox.com · 941-364-2405

240 S. PINEAPPLE AVE., 6TH FLOOR, SARASOTA FL 34236

SOCIAL SECURITY DISABILITY & SSI HEARINGS/APPEALS



SERVING
SARASOTA
AND MANATEE
COUNTIES

MORE THAN
35 YEARS
EXPERIENCE

**JONATHAN E.
HAUSBURG, ESQ.**

3202 N. TAMiami TRAIL • SARASOTA, FL 34234
941-351-9111 • socialsecuritysarasota.com

The Docket



The Docket is a publication of the Sarasota County Bar Association. All articles printed herein are the property of the Sarasota County Bar Association and may not be reprinted without permission.

PUBLISHER: SCBA Executive Director
Holly Lipps

CO-EDITORS: Brian D. Goodrich, Esq., Bentley & Bruning, P.A., and Robert L. Young, Esq., Icard, Merrill, Cullis, Timm, Furen & Ginsburg, P.A.

DESIGN AND EDITORIAL CONSULTATION: Peter M. Gentile, petermichael associates

The Docket encourages submissions of interest to SCBA members. Contact the SCBA office via e-mail (scba@sarasotabar.com) or phone (861-8180) for further information. The Docket is published 10 months a year. Deadline is the first Friday of the month preceding the month of publication.

ELDER LAW

CHAIR: **Jeanne M. Bennett, Esq.,** *O'Brien and Bennett, P.A.*

Changing Climate of Guardianship

Join us on Thursday, April 20, when attorney Gerald L. Hemness Jr., Law Office of Emma Hemness, P.A., will have a candid discussion regarding the changing perspectives on guardianship as a whole, as well as the role of professional guardians within the system. Topics will include emergency temporary guardianships, contested guardianships, the scope of a guardian's duties, the new OPPG Standards of Practice, interaction with third parties, and compensation.

The luncheon will be held at Michael's on East from noon to 1:30 p.m. CLE credits have been approved.

SOLO PRACTICE

CHAIR: **Scott Petersen, Esq.,** *The Law Office of Scott K. Petersen, PLLC*

Spring Networking Event

Come join the Solo and Small Firm Section on Thursday, April 27, for our spring networking event. Members will be introduced and practice area information exchanged to develop effective referral relationships. Be sure to bring plenty of business cards.

The evening will include appe-

tizers and complimentary drinks. The event is for solo and small firm attorneys, defined as a true solo or attorney in a law firm with no more than three attorneys. Don't miss this opportunity to socialize with your fellow Bar members.

The event will be held at Regency House, 435 S. Gulfstream Ave. (Community Room). Space is limited to the first 40 reservations. Thank you to Gateway Bank for sponsoring the event.

2nd Annual Employment Law Guidance Workshop

CHAIR: **Gail E. Farb, Williams Parker Harrison Dietz & Getzen**

Plan to attend the Labor & Employment Law Section's Workshop on Thursday, April 27, at Michael's on East. This annual seminar will provide additional guidance in important areas of employment law to assist law firms as employers.

Experienced labor and employment law practitioners will cover recent developments and current trends with special focus on best practices from a legal compliance and human resources perspective. This seminar is intended to be an interactive presentation with the aim of providing solutions to troublesome employment issues confronting law firms.

Three hours of CLE have been applied for.

ePortal update: Stats and helpful hints

Hard to believe it has been over three years since the ePortal went live — and that it is now a common part of business both in law firms, and in the Clerk's office. One of your fellow Sarasota County Bar members wondered if there were current stats available about the portal. Our records show some interesting 2016 data, and some helpful tips for navigating the Florida Courts e-Filing Portal's many features.

What was 2016's average number of submissions per month? 56,934, with Sarasota County's average submissions hitting 19,129.

Which month received the most e-filings? August was a banner month, with 1,306,627 statewide; 21,175 were submitted to the Sarasota County Clerk's office.

Which day was the busiest? December 19 was the busiest ePortal day in Florida, with 64,157 submissions. In Sarasota County, the busiest day was March 8, with 1,120 submissions.

Which time was the busiest? Statewide, a mid-afternoon in June received the heaviest volume at 7,843 filings. Sarasota had its greatest volume mid-morning on December 20, with 274 submissions in one hour.

Which month received the most initiated cases? Statewide, August 2016 tallied the highest number of cases initiated at 65,148; same for Sarasota, with 1,300 new cases filed.

Questions about the ePortal and helpful hints

How do I file through the ePortal? Go to myflcourtaccess.com, or when you log onto SarasotaClerk.com, you'll see that we added a convenience hyperlink to the ePortal. Look for the e-Filing button on our home page. Once there, choose E-FILING PORTAL.

How do I register? Once inside the e-Filing Portal, you are able to register for an account (choose your filer role, and follow prompts to provide basic registration information), watch training videos, see FAQs, and more.

How do I learn more about eService? Perhaps one of the most frustrating issues Bar members and other e-filers contact us about is when they encounter difficulties with e-service. The Portal has created a variety of resources to assist filers with e-service questions. From the E-Filing Portal home page, click the "HELP" tab, and you will be presented with a list. E-service information is in the FAQ, Training Videos and Training Manuals options. These tools should address most questions you may have about using e-service.

As we finish up the first quarter of 2017, we are eager to make e-filing even more convenient. Even with these training and tips available, we will continue to support members of the Bar and all our e-filing customers to become more comfortable and efficient when using the ePortal.

CLERK'S CORNER



Karen E. Rushing
Clerk of Court and County Comptroller

MEMBERSHIP

Welcome, new members!

The following represents each new member's name, law school, date of admission to The Florida Bar, and law firm association.

■ **Susan M. Budowski:** Barry University; 2004; *The Law Offices of Susan M. Budowski, LLC*

■ **Jennie Lascelle-Famiglio:** Georgetown University; 2001; *The Murphy Law Group*

■ **Galen Flynn:** Florida State University; Class of 2017; *Student Member*

■ **Joseph A. Gugino:** Thomas M. Cooley; 1989; *Law Offices of Wells | Olah, P.A.*

■ **Amanda Hynds:** Thomas M. Cooley; Class of 2019; *Student Member*

■ **John Murrell Jr.:** Thomas M. Cooley; Class of 2018; *Student Member*

■ **Lindsay D. Turner:** Stetson; 2013; *Loftus Law*

Your ad here

reaches the movers and shakers in Sarasota's legal community. Call today to get your firm or business in front of our elite readership.

The Docket

To advertise in the Docket, please see the rate card at the Bar's web site, sarasotabar.com, or call the office at 941-861-8180.



Where in the world is Lugalo?

The village in Tanzania is just one of many international destinations our students visit virtually during the school year. By interacting regularly with classrooms worldwide, Saint Stephen's students experience different cultures, customs and languages. It's part of our goal to create responsible global citizens.

Saint
Stephen's
Episcopal School



Saint Stephen's is an independent, college-preparatory school providing a world-class education for students in grades Pre-K3 to 12. Schedule a tour today.

315 41st St. W., Bradenton, FL 34209 | (941) 746-2121
www.saintstephens.org | Welcoming all faiths

CAN THE LAW FIRM YOU REFER YOUR PERSONAL INJURY CASES TO ANSWER YES TO THESE 10 QUESTIONS?

1. Does the attorney try cases several times each year?
2. Does the attorney have the ability to show you recent trial results?
3. Does the attorney have over 20 years of experience working **for** the insurance companies so that they have gained an insight into how to oppose and/or sue the insurance companies?
4. Is the attorney Board Certified in Civil Trial Law?
5. Is the attorney AV rated by Martindale Hubbell?
6. Does the attorney have the financial strength to take on significant injury cases?
7. Is the attorney located in the 12th judicial circuit?
8. Will the attorney pay you a referral fee in accordance with the rules regulating the Florida Bar on every case no matter how big or small?*
9. Is the attorney available to speak with you at any point during the referral to give you status updates as you request?
10. Is the attorney willing to take on challenging cases that other law firms or attorneys may not be willing to handle or would turn down due to the amount of work involved?

REFER YOUR CASES TO THE MALLARD LAW FIRM, BECAUSE OUR ANSWER TO THESE 10 QUESTIONS IS YES.



DAMIAN MALLARD, ESQ.

Mallard Law Firm, P.A.

889 North Washington Blvd.

Sarasota, Florida 34236

(P) 941-952-1682

www.MallardLawFirm.com

*Rules regulating the Florida Bar permit a 25% referral fee without any involvement of the referral attorney other than making the introduction to the client. Any additional fees require court approval and involvement of the referring attorney in the handling of the personal injury matter.

TREATMENT

Continued from Page 1
nal justice system.

Those who have worked in the criminal or behavioral health system over the last 20 years will tell you how we got to a place where the county jails are the de facto mental health institutions: the closure of the state's mental health hospitals. The intent in closing such facilities was to move the behavioral health care from the state and into the communities in an effort to save the state money. Unfortunately, the closure of mental hospitals was not accompanied by any meaningful method of transition for the patients. One result is that many seriously mentally ill individuals cycle in and out of jail. Oftentimes these individuals have dozens of nonviolent misdemeanor convictions and can spend as much as two thirds of a given year in jail. Their conditions deteriorate during this seemingly never-ending cycle. While the humanity of this situation is paramount, the community sees the reverberating effects in the increased costs of crisis stabilization and homelessness and crime, as well as other issues.

This problem is not unique to Sarasota or Florida. Last year, our legislature, at the urging of Steve Leifman, a Miami Judge who has dedicated decades to this problem, passed major reform to our mental health laws, via Senate Bill 12, which included mental health criminal case diversion. In doing so, the Legislature's intent, as set forth in Section 394.47892 of the Florida Statutes, was for criminal courts to "process



**Judge Erika
Quartermaine**

[criminal defendants] in such a manner as to appropriately address the severity of the identified mental illness through treatment services tailored to the individual needs of the participant."

In accordance with this intent, Mental Health Court in Sarasota has been expanded with the specific goals of: improving public safety and the quality of life of the participants, ensuring restitution is paid to victims, and reducing recidivism all while decreasing the amount of incarceration. Participants receive professional, accessible, quality treatment and support services at little or no cost while remaining accountable to the Court. Mental Health Court is governed by statutes and the Administrative Order and is overseen by the Planning Council which is a subcommittee of the Criminal Justice Committee, a committee under County Commission. It utilizes evidence-based practices as promulgated by the Stepping Up Initiative (Steppinguptogether.org) and the Louis de la Parte Florida Mental Health Institute (Floridatac.org).

Mental Health Court is now comprised of two different programs each with its own eligibility criteria: Health Care Court (HCC) and Comprehensive Treatment Court (CTC). HCC is for those individuals charged with a qualifying offense and who suffer from a mental illness that likely led to the criminal charge. The individual must be able to meaningfully engage in outpatient treatment (including but not limited to: therapy, case management and drug test-

ing). Participants receive psychiatric services, therapy, case management and assistance with issues as appropriate or possible (for example, assisting an individual in obtaining housing or a job or in enrolling in government services). HCC accepts felonies as a condition of probation or as a condition of Pretrial Intervention only. A defendant must have been screened by HCC and deemed appropriate by HCC prior to sentencing or the signing of the Pretrial Intervention Agreement. HCC accepts misdemeanors (no DUIs) as a condition of probation or as diversion.

CTC is designed for individuals who are charged with a misdemeanor (no DUIs), suffering from a serious mental illness and whose basic needs cannot be met without support. Expedited jail release is available through this program. Centerstone of Florida (formerly Manatee Glens) operates the program and provides complete wraparound treatment including housing, all basic needs, intensive psychiatric services including all prescriptions, obtaining government benefits and assistance with a long-term transition. CTC participants enter through diversion and if the participant is ultimately successful in the program, the case will be dismissed.

The staff of Mental Health Court and I welcome inquiries and suggestions. Please feel free to contact my office or the staff at (941) 861-8120. There is more information available on the Mental Health Court webpage of the Twelfth Judicial Court's website.

TECH

Continued from Page 3

1983. Until 2015, however, it was never a gateway consideration as part of the "scope" of discovery. While the committee notes for this change indicate that the committee's goal was not to shift burdens onto the requesting parties, it remains to be seen whether this is not, in effect, what actually results.

Given this recent change, and the history of state rules shadowing federal rules, we may soon see a push for the Florida rules to also redefine the scope of discovery. The Pound Civil Justice Institute

recently held a forum for state court judges on whether state courts should follow the federal courts' lead in doing this. In short, doing so would be a mistake. See <http://poundinstitute.org/sites/default/files/docs/2016%20Forum/pound-forum-report-2016-final.pdf> for a great analysis of this issue.

What is "proportionality"?

The scope of discovery under Federal Rule 26(b)(1) is now defined as information that is both relevant and proportional. To analyze proportionality, the rule requires the following factors be analyzed:

- The importance of the issues at

The scope of discovery under Federal Rule 26(b)(1) is now defined as information that is both relevant and proportional.

stake in the action

- The amount in controversy
- The parties' relative access to relevant information
- The parties' resources
- The importance of the discovery in resolving the issues
- Whether the burden or expense of the proposed discovery outweighs its likely benefit

Conversely, under Florida Rule 1.280(d)(2), upon any motion involving electronically stored information (ESI), a Florida court may limit discovery if it is unreasonably cumulative or duplicative, or can be obtained

See **TECH**, Page 18

Brain Frye'd: Where do we go from here?

By **AMANDA KISON, Esq.**
Bentley & Bruning, P.A.

Since the Legislature's 2013 adoption of *Daubert* to the Florida Evidence Code, a quiet battle has been waging among members of The Florida Bar.

Last September, this battle was played out before the Supreme Court when the Court heard oral argument in *In re: Amendments to the Florida Evidence Code* regarding whether the Expert Witness Procedure Amendments — or the revised Sections 90.702 and 90.704, Florida Statutes, adopting the *Daubert* standard — should be adopted as a Rule of Court.

On February 16, the Florida Supreme Court declined to adopt the *Daubert* Amendment (chapter 2013-107, sections 1 and 2, Laws of Florida), which amended sections 90.702 (Testimony by experts) and 90.704 (Basis of opinion testimony by experts), “to the extent it is procedural.”

As you may recall from law school, while the Legislature is empowered with determining substantive law, the Court determines procedural law — or the form, manner and methods by which substantive rights are enforced. Many casually refer to this as the “what vs. how.” While it is generally the policy of the Court to adopt, to the extent they are procedural, the provisions of the Florida Evidence Code as they are enacted by the Legislature, the Court has, on occasion, declined to do so.

Why has the enactment of *Daubert* been so darn controversial? Since its adoption of *Frye*, the Florida Supreme Court has consistently and steadfastly refused to replace the *Frye* standard with *Daubert*. As recently as 2007, in its opinion in *Marsh v. Valyou*, 977 So.2d 543 (Fla. 2007), the Court determined that a medical expert's causation testimony, which was based on the expert's training and experience, was not subject to a *Frye* analysis where the opinion was not based on new or novel scientific tests or procedures. In reaching this conclusion, the Court cautioned that “[t]rial courts must resist the temptation to usurp the jury's role in evaluating the credibility of experts and choosing



AMANDA KISON, Esq.
Bentley & Bruning, P.A.

between legitimate but conflicting scientific views.” *Id.* at 549 (Fla. 2007).

Ask a seasoned litigator how many *Frye* hearings they have conducted in the 30-plus years since *Frye* was adopted, and I imagine the answer will be few to none. That's because opinion testimony derived from an expert's training and experience is not subject to *Frye* unless the opinion is based upon new or novel scientific techniques. *U.S. Sugar Corp. v. Henson*, 823 So.2d 104, 109 (Fla. 2002). As a result, *Frye* was historically inapplicable in the vast majority of cases.

In spite of the Court's unwavering preference for *Frye*, in 2013, the Florida Legislature rejected the *Frye* standard when it codified the *Daubert* standard in Sections 90.702 and 90.704, Florida Statutes. In doing so, the Legislature specifically stated its intention to prohibit the use of pure opinion testimony as provided in the Court's 2007 decision in *Marsh*. See chapter 2013-107, sections 1.

While practitioners may disagree about their preference for *Daubert* or *Frye*, it is difficult to dispute that the practical result of *Daubert* has been a significant rise in challenges to the admissibility of expert testimony. This is perhaps unsurprising for two reasons: 1) under *Daubert*, the court, rather than the jury, is charged with the role of acting as gatekeeper to ensure that an expert's testimony rests both “on a reliable foundation and is relevant to the task at hand.” See *Daubert*, 509 U.S. at 597; and 2) *Daubert*, as was the Legislature's intent, resulted in the exclusion of pure opinion testimony which was commonly utilized prior to 2013.

This sizeable increase in the number of challenges made to the admissibility of expert testimony was part of the driving force behind the Florida Bar's Code and Rules of Evidence Committee (“Committee”) recommendation to the Court that it not adopt, to the extent it is procedural, the revised Sections 90.702 and 90.704 of the Evidence Code. The Committee, which is responsible for ensuring that the Supreme Court's Rules of Evidence are in accordance with the law of evidence

established by the Legislature and codified in the Florida Statutes, is tasked with making recommendations to the Court on proposed legislative changes. In presenting their position at oral argument, the Committee argued that the practical effect of *Daubert*, since its passing in 2013, is that it acts as a financial and procedural barrier to getting a case to jury. This is due, as they argue, to the utilization of *Daubert* as a tactical tool which significantly increases the time and costs associated with litigation.

Among those who lobbied for the adoption of *Daubert* was the Florida Public Defenders Association, who argued that the Court is better equipped to act as the gatekeeper for expert testimony, and that *Daubert* ensures more reliable evidence.

Ultimately, however, in a 4-2 decision, the Court declined to adopt *Daubert*, “to the extent it is procedural,” citing what they describe as “grave constitutional concerns,” which include undermining the right to a jury trial and denying access to the courts. See *In re Amendments to Florida Evidence Code*, ___ So.3d ___, 2017 WL 633770 (Fla. Feb. 16, 2017).

While the Court's rejection of these amendments was unequivocal, its decision leaves many questions unanswered. For starters, the decision was reached in the limited context of a rules case that addresses the very limited matter of whether or not the Court should adopt a procedural rule. Accordingly, as the Court was quick to emphasize in its decision, the determination of whether the revised 90.702 and 90.704 are constitutional must be left for a proper case or controversy. However, the decision is likely foretelling of what's to come.

So what does the Court's decision mean for us? The answer is that no one knows for sure. Unfortunately, the Court's decision generates more questions than it answers — namely to what extent are the revised Sections 90.702 and 90.704 substantive and to what extent are they procedural in nature? Until such time as that question is answered by the Court, our trial courts will likely be burdened with making that determination, and the expert testimony standard will vary among circuits.

Programs offer dispute settlement prior to litigation

By the Honorable **PHYLLIS GALEN**
and **MICHELLE ARTMAN SMITH**,
ADR Director

Mediation is an informal and non-adversarial process that provides the opportunity for the parties to reach a mutually acceptable agreement as an alternative to litigation. Twelfth Circuit Courts encourage parties to try mediation prior to seeking judicial determination and regularly refer cases to mediation through a court program or private mediation.

In addition to court-ordered mediation, did you know that the 12th Circuit currently has two free mediation programs available to individuals residing within the Circuit who wish to resolve a dispute prior to filing a legal action with the court? Both the Citizen Dispute Settlement Program and the Pre-filing Family Program are FREE! All mediators for these programs are



Judge Phyllis Galen

Florida Supreme Court certified and volunteer their time and expertise. Currently, the 12th Judicial Circuit has 50 volunteer mediators.

The *Citizen Dispute Settlement Program* facilitates all types of disputes, including: landlord/tenant, contracts, debts, neighborhood, condominium, employer/employee, and nuisances. The *Pre-Filing Family Program* mediates family disputes before any lawsuits are filed (provided that the parties have not been involved in prior litigation involving the same parties and/or children). A pre-filing family mediation offers an opportunity to work out issues such as a parenting plan or partial settlement agreement prior to filing an uncontested divorce or seeking the limited services of counsel.

It's difficult to turn away potential clients when they cannot afford your fees, so attorneys have the option to refer them to the court's free mediation programs, if appro-

priate. These programs are wonderful resources for individuals who cannot afford an attorney or who can only afford the limited services of an attorney. Attorneys are invited to participate in pre-filing mediation with their clients.

The opportunity to arrive at an agreement in a peaceful and confidential setting has been shown to result in better communication and understanding between the parties, and in agreements that are more likely to be adhered to by the parties to a dispute. Prior to litigation, I encourage you to explore the alternative of mediation.

For more information about the 12th Circuit's Mediation Programs, please contact Pam E. McLeod in Venice, Sarasota, and DeSoto at (941) 861-7833, and Susan Gardner in Manatee at (941) 749-3660, or visit our website at www.jud12.flcourts.org.

LEGAL AID

BENEFITS

Continued from Page 1

resulted in \$600 million in total economic benefits, including more than \$264 million in income for Floridians obtained with the help of legal aid and pro bono attorneys.

The direct dollar impacts come from sources such as Social Security and Social Security disability, Medicare and Medicaid reimbursements, veterans' and other federal benefits, as well as child and spousal support, unemployment compensation and wages. This income generates an additional \$274.8 million in impacts resulting from the economic multiplier effect as that income flows into Florida communities like ours.

In addition, the savings for communities are substantial, with about \$60.4 million of costs avoided statewide from positive trends such as reduced homelessness, fewer police calls and reduced burden on the court system. Avoided costs from domestic violence alone account for \$6.9 million in savings.

The extraordinary findings are impressive and demonstrate the

importance of supporting legal aid in Sarasota County.

Unfortunately, total funding for civil legal aid in Florida is at a 10-year low.

Locally, The Florida Bar Foundation provided \$23,500 to support Legal Aid of Manasota for the fiscal year 2016-17, whose service area includes Sarasota County. In addition the Foundation is one of several funding sources for the Gulf Coast Legal Services, providing a general support grant in 2016-17 of \$461,437 for a service area from St. Petersburg to Sarasota.

But these grants are a fraction of what they once were. Because of the near-zero interest rates since the Great Recession, the Foundation's grants to civil legal aid organizations statewide have fallen by about 80 percent since 2010 and are expected to fall even further. And total legal aid funding from all sources in Florida has fallen from \$100 million in 2010 to \$83 million in 2015. The impact measure from the peaks prior to the recession is even more dramatic and drastic.

We have a big responsibility



John Patterson, Esq., *Shutts & Bowen LLP*

in that as attorneys we alone can provide legal services to those in need, and we have a unique understanding of the importance of civil legal aid to our community. We know the satisfaction that we get from touching the life of a pro bono client, and now we also know the economic ripple effects that extend throughout our community when we do.

By taking pro bono cases through legal aid and by donating to our local legal aid organizations or to The Florida Bar Foundation, we can help ensure that Sarasota County continues to thrive and to be the kind of prosperous and caring community we want it to be.

Getting involved and helping promote legal aid funding for programs that provide access to justice will ensure positive economic stability statewide and locally.

Through our support as lawyers and as humanitarian leaders, we can strengthen the economic impacts of legal aid.

This is the time for us to lead.

■ Walters Levine & Lozano is pleased to announce that **Heather A. DeGrave** and **Thomas C. Valentine** have become partners of the firm. DeGrave practices in the areas of construction, collections and business litigation. Valentine practices in the areas of commercial and construction litigation and insurance disputes.

■ Williams Parker attorney **Erin Hope Christy** participated in Teen Court of Sarasota's inaugural Making HERstory event on March 29. The panel discussion, moderated by Joey Panek of ABC 7's Suncoast View, included Christy as well as Christine Robinson of The Argus Foundation, and Tonya Willis Pitts of McIntyre Thanasides.

■ **Williams Parker** recently published its eighth edition of *Requisite*, the firm's thought-leadership publication offering insights on legal issues. The current edition focuses on various issues and challenges encountered by business owners and senior executives within the private sector.

■ **Jennifer Fowler-Hermes**, a labor and employment attorney with Williams Parker, recently participated in a panel discussion hosted by Sarasota Tiger Bay Club titled *The Business of Marijuana*. The panel, moderated by Kevin Cooper, CEO of The Greater Sarasota Chamber of Commerce, focused on how Sarasota will implement medical marijuana into the community.

■ **Carmen R. Gillett, Esq.**, of Carmen R. Gillett PLLC, was recently retained by the Swedish government to represent a Swedish citizen in a child abduction case, pursuant to the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction. The case was filed by Gillett on January 5 in Federal Court in the Middle District of Florida. The hearing was held on February 9, and the child, who had been wrongfully removed

from his habitual residence in Sweden and was living in Bradenton, was ordered to be returned home to Sweden immediately; he was flown to Stockholm on February 11. Gillett is privileged and honored to be one of only 30 Florida lawyers with membership in the International Academy of Family Lawyers, a worldwide association of practicing lawyers who are recognized by their peers as the most experienced and skilled family law specialists in their respective countries.

Gillett is grateful for the translation services provided by attorney **Hanna M. Simonson** of Harrison & Kirkland, P.A. in Bradenton.

■ Williams Parker is pleased to announce it has appointed shareholder **Peter T. Currin** to lead the firm's real estate practice. Currin succeeds shareholder Patrick W. Ryskamp, who has served in the role since 2010.

■ Transaction and Litigation Real Estate attorney **Nancy E. Cason** and Plaintiff's Personal Injury Law attorney **F. Scott Westheimer** have been named Managing Partners for the Sarasota law firm of Syrett, Meshad, Resnick, Lieb, Dumbaugh, Jones, Krotec & Westheimer, P.A. Both attorneys hold the AV Preeminent rating, the highest possible rating from the Martindale-Hubbell Peer Review Ratings.

■ **E. John Wagner II**, a shareholder with Williams Parker, recently participated as a panelist in an American Bar Association Section of Taxation webinar regarding techniques to sell land or air rights to a real estate developer and receive back finished condominiums from the same project tax-free.

■ **Michael P. Infanti** has been named a Partner of Norton, Hammersley, Lopez & Skokos, P.A. Mr. Infanti is a member of the Real Estate Practice Group. His experience includes the representation of individuals, developers and landowners in the acquisition, sale, development and leasing of condominiums in Florida. Our offices are located at 1819 Main Street, Suite 610, Sarasota, FL 34236.

Email your "News of Note" items to scba@sarasotabar.com.

TECH

Continued from Page 15

from another source or in another manner that is more convenient, less burdensome, or less expensive; or the court may undertake a proportionality analysis using the following factors:

- the needs of the case,
- the amount in controversy,
- the parties' resources,
- the importance of the issues at stake in the action, and
- the importance of the discovery in resolving the issues.

The Evolution of E-Discovery Jurisprudence

Whether state or federal, courts deciding motions on e-discovery related issues rely heavily upon guidance put forth by The Sedona Conference (Sedona). Sedona is a non-partisan and consensus-based think-tank for cutting-edge issues, including the preservation and production of e-discovery. For well over a decade, Sedona's publications have nearly single-handedly shaped e-discovery jurisprudence around the country. In short order, Sedona's positions tend to become law. In fact, courts routinely adopt Sedona's guidance verbatim.

Unfortunately, there is a palpable imbalance in the membership of Sedona. While a number of prestigious judges are members, the membership otherwise skews very heavily toward in-house counsel for the largest corporations, "big-law" firms, and discovery vendors. Very few plaintiffs' attorneys are involved. Further, most of the firms represented only practice complex litigation. Forgotten among this group are the largest chunk of lawyers and firms out there — those who represent individuals and small to medium-sized businesses.

This is not to imply some nefarious intent by Sedona. The problem is simply that most small to medium-sized firms and most plaintiff firms are not built to invest money and time in organizations like Sedona. We are too busy staying on top of our everyday workload and too focused on keeping on the lights. Meanwhile, the firms and corporations more able to invest enjoy the benefits of shaping the future of our practice.

If we truly care about having a say in the evolution of the practice of law, we must shift our thinking. We must be prepared to make long-term investments in our profession by getting involved in organizations such as Sedona. Having read these articles on e-discovery, if your interest in this area of law has been piqued, I urge you to become involved in Sedona as I have. Let your voice be heard. Help ensure that the evolution of e-discovery jurisprudence, which implicates the evolution of the entire practice of law, does not exclude the interests of your clients, your firm, and your practice areas.

E-discovery is certainly a complex issue. The issues discussed in this 3-part series barely scratch the surface. However, understanding e-discovery is not beyond your grasp. Overall, the trick to effectively handling e-discovery issues is to have a productive relationship with opposing counsel and to be informed about the types (and scope) of information that you seek or that is sought from your client. Early communication is critical. If you have any questions at all, please do not hesitate to reach out to me at isayeg@mctlawyers.com.

CLASSIFIED ADS

2389 Ringling Blvd., 1,215 sq. ft. professional office. Excellent location, parking. \$2,000 per month gross rent (includes CAM and R.E. taxes). Available. Call (941) 954-0303

**Sarasota County Bar Association
presents its annual tribute to the legal support staff with**

**T E A M
T R I V I A**

Happy
ADMINISTRATIVE PROFESSIONALS DAY!

Wednesday, April 26, 2017

12 noon

Michael's on East

Emcee:

SCBA Team Captain

Leslie Talbot, Esq.

**Each table is a "team" and everyone
is encouraged to create a team name!**

**Join us for an hour of fun, food, prizes, and dozens of entertaining and
challenging trivia questions on movies and TV, history, geography,
literature, current events and sports.**

We gratefully
acknowledge our sponsor



Preferred seating will be offered. See reverse side of flyer to reserve your table.

Administrative Professionals' Day Luncheon

Wednesday, April 26, 2017

\$25.00 p/person

Firm _____

RSVPs _____

Email contact _____

\$ Enclosed _____

Register online at www.sarasotabar.com

Deadline for reservations: Wednesday, April 19, 2017

Mail with payment to: SCBA, PO Box 507, Sarasota FL 34230

"No Shows" and cancellations within 48 hours of event will be invoiced.

____ Please check here if you have a disability that may require special attention or services. To ensure availability of appropriate accommodations, attach a general description of your needs. We will contact you for further coordination.

SCBA Administrative Professionals' Day



April 26, 2017

Please print clearly. List attendees' names according to their table preference and indicate any special dietary requests.

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____

Young Lawyers Division Speed Networking Event



Maximize your time and create new business relationships! Speak one-on-one in a fast-paced format with young attorneys both in and out of your practice area(s).

Bring plenty of business cards!

Thursday, April 13, 2017

5:15 p.m.—7:30 p.m.

CinēBistro Southgate

Opening address by Zack Zuroweste

President-elect of the Florida Bar Young Lawyers Division

Hors d'oeuvres will be provided—Cash bar!

We gratefully acknowledge the
support of our sponsor



YLD Speed Networking Event

Thursday, April 13, 2017

\$10 per person

Name: _____ Email: _____

Please indicate your practice area(s): _____

If paying by credit card, please go to our secure website to register: www.sarasotabar.com

Deadline for reservations is Thursday, April 6, 2017

Mail with payment to: SCBA, PO Box 507, Sarasota FL 34230

"No Shows" and reservations canceled within 48 hours of event will be invoiced.

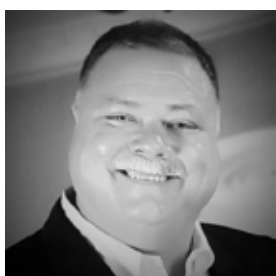
____ Please check here if you have a disability that may require special attention or services. To ensure availability of appropriate accommodations, attach a general description of your needs. We will contact you for further coordination.



The ADR Section of the Sarasota County Bar Association *presents*

“How to Get From Here to There: Developing a Mediation Practice”

Wednesday, April 19, 2017
5:30 to 8:00 p.m.
Bijou Cafe



Speaker:

Christopher Shulman, Esq.
Shulman ADR Law, P.A.

Two hours of CLE/CME Credit are pending approval by the Florida Bar.
The course is also eligible for one hour of mediator ethics.

ADR Section Meeting
Wednesday, April 19, 2017 ~ Bijou Cafe
SCBA Members \$30/Non-Members \$40

Name: _____ Email: _____

Entrée Selection (pick one)

☐ Chicken Paillard	☐ Pasta with Shrimp
☐ Crab Cakes w/ French Fries	☐ Pork Schnitzel

To pay by credit card, visit www.sarasotabar.com

Deadline for reservations: Wednesday, April 12, 2017
Mail with payment to SCBA, PO Box 507, Sarasota FL 34230

“No Shows” and reservations canceled within 48 hours of event will be invoiced.

Please check here if you have a disability that may require special attention or services. To ensure availability of appropriate accommodations, attach a general description of your needs. We will contact you for further coordination.

The Elder Law Section

Presents

"The Changing Climate of Guardianship"

Thursday, April 20, 2017

12 noon to 1:30 p.m.

Michael's On East



Presented By:

Gerald L. Hemness, Jr., Esq.

Law Office of Emma Hemness, P.A.

Topics Covered:

- Emergency temporary guardianships
- Contested guardianships
- The Scope of a guardian's duties
- New OPPG Standards of Practice
- Interaction with Third Parties
- Compensation

CLE has been approved

Elder Law Section

Thursday, April 20, 2017

\$30.00 for SCBA Members

\$40.00 for Non-Members

Name: _____ Email: _____

Please indicate if you require a vegetarian selection _____

**If paying by credit card, please go to our secure website to register:
www.sarasotabar.com**

Deadline for reservations is Thursday, April 13, 2017

Mail with payment to: SCBA, PO Box 507, Sarasota FL 34230

"No Shows" and reservations canceled within 48 hours of event will be invoiced.

____ Please check here if you have a disability that may require special attention or services. To ensure availability of appropriate accommodations, attach a general description of your needs. We will contact you for further coordination.

**Sarasota County Bar Association
Labor and Employment Section
*Presents***

**ANNUAL EMPLOYMENT LAW GUIDANCE FOR LAW FIRMS
AND OTHER PROFESSIONAL SERVICE PROVIDERS**

Gail E. Farb, Esq.
Williams Parker

Jessica M. Farrelly, Esq.
Icard Merrill

Jennifer Fowler-Hermes, Esq.
Williams Parker

Benjamin H. Yormak, Esq.
*Yormak Employment
& Disability Law*

**Thursday, April 27, 2017
8:00 a.m. to 12:00 p.m.
Michael's on East
1212 East Avenue, Sarasota**

Continental Breakfast Included

CLER: 3.0 General & Labor & Employment Law Certification Credit Application Pending

AGENDA:

8:00-8:15 a.m. - Registration and Continental Breakfast

8:15-8:45 a.m. - Introduction and Sponsor Spotlights

8:45-9:30 a.m. - Wage and Hour Compliance

Overtime; exemption classification issues; meals and other breaks

9:30-10:15 a.m. - Employee Criminal Conduct

Both pre and post hire - i.e., background checks; how to handle an employee's arrest;

employee theft; potential employer liability; post-termination reference requests

10:15-10:30 a.m. - Break and Networking with Sponsors

10:30-11:15 a.m. - Spotlight on Sexual Orientation and Gender Identity

Including sex discrimination and Equal Pay Act

11:15 a.m.-Noon - Avoiding Mistakes That Make Employees' Lawyers Smile

Including employee leave issues/ADA-FMLA-workers' compensation triangle

We gratefully acknowledge the support of our sponsors



**Annual Employment Law Guidance for Law Firms
and Other Professional Service Providers
Thursday, April 27, 2017 ~ Michael's on East**

Name: _____ Phone: _____

Firm: _____ Email: _____

\$50 SCBA Member _____ \$40 Each Additional Firm Member _____ \$60 Non-Members _____

***If paying by credit card, please go to our secure website to register:
www.sarasotabar.com***

Deadline for reservations is Tuesday, April 20, 2017.
Mail with payment to: SCBA, PO Box 507, Sarasota FL 34230
"No Shows" and reservations canceled within 48 hours of event will be invoiced.

____ Please check here if you have a disability that may require special attention or services. To ensure availability of appropriate accommodations, attach a general description of your needs. We will contact you for further coordination.

SOLO & SMALL FIRM SECTION

Spring Networking



Thursday, April 27, 2017

5:30 p.m.—7:30 p.m.

Regency House
435 S. Gulfstream Ave.
(Community Room)

Join your colleagues for spring networking!

Drinks and appetizers will be served.

Attendance is limited to the first 40 members who RSVP.

Don't miss this opportunity to socialize with your fellow Bar members.

This event is FREE!

Be sure to bring plenty of business cards!

We gratefully acknowledge
our sponsor

GatewayBank
How Banking Should Be!

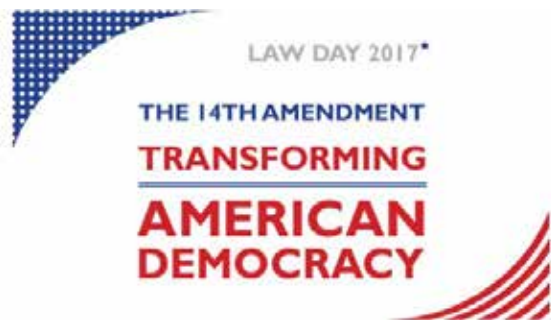
Solo & Small Firm Section Networking Social
Thursday, April 27, 2017
Free of charge

Name: _____ **Email:** _____

Register online at www.sarasotabar.com

Deadline for reservations: Thursday, April 20, 2017
Mail to: SCBA, P.O. Box 507, Sarasota FL, 34230

____ Please check here if you have a disability that may require special attention or services. To ensure availability of appropriate accommodations, attach a general description of your needs. We will contact you for further coordination.



LAW WEEK 2017

May 15-May 19

**Due to testing, a few schools have elected to participate on May 5 instead.*

"The 14th Amendment: Transforming American Democracy"

The 2017 theme provides the opportunity to explore the many ways that the Fourteenth Amendment has reshaped American law and society. Through its Citizenship, Due Process and Equal Protection clauses, this transformative amendment advanced the rights of all Americans. It also played a pivotal role in extending the reach of the Bill of Rights to the states.

Ratified during Reconstruction a century and a half ago, the Fourteenth Amendment serves as the cornerstone of landmark civil rights legislation, the foundation for numerous federal court decisions protecting fundamental rights, and a source of inspiration for all those who advocate for equal justice under law.

5th grade students will present the script "State of Florida v. Pat Morton". To volunteer a few hours of time for this fun event, please complete the form below and return to:

bgoodrich@bentleyandbruning.com

List of schools participating:

(at time of publication)

Alta Vista Elementary
Brentwood Elementary
Emma E. Booker
Fruitville Elementary
Lakeview Elementary
Laurel Nokomis School
Out of Door Academy
Sarasota Academy of the Arts
Wilkinson Elementary

Committee Members

Erik Arroyo
Philistine Hamdan
Alan Perez
Natasha Selvaraj

For questions or inquiries, please contact chairperson:

Brian Goodrich

bgoodrich@bentleyandbruning.com

941-556-9030

LAW WEEK MOCK TRIAL 2017

Name: _____

Phone: _____

Email: _____

School Preference: _____

** If no school preference, please indicate "none"*