OFFICIAL MAGAZINE OF THE SARASOTA COUNTY BAR ASSOCIATION

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MAY 2024



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MAY 2024

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THE DOCKET

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PUBLISHER

Holly Lipps, SCBA Executive Director **CO-EDITORS**

Ashley Gaillard & Christopher Hallett

DESIGN + EDITORIAL CONSULTATION

Jan Oglesby

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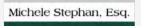






















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SCBA President's COLUMN



Since 1949, the month of May has been recognized as Mental Health Awareness Month in the U.S. What started as campaign over 70 years ago with the goal of destigmatizing mental illness, the concept of "health and wellness" is now firmly entrenched in our vocabulary and our workplace culture.

Despite "health and wellness" being part of today's nomenclature, for lawyers, mental and emotional health often takes a backseat to the demands of our profession, which is stressful, high-conflict, and involves long hours. However, our failure to prioritize our mental wellbeing in our practice has resulted in serious consequences. Studies have shown that lawyers are at a higher risk for mental health issues such as depression, anxiety, substance abuse, and burnout compared to the general population. In fact, the Florida Bar reports that lawyers are in the top ten professions for individuals who commit suicide, ranking 4th overall when the proportion of suicides among legal professionals is compared to suicides in other occupations. Other similarly concerning statistics reported by the Florida Bar include that 21-36% of attorneys qualify as problem drinkers and 28% experience depression symptoms, both of

which are experienced more frequently by men and solo practitioners. Likewise, 23% of lawyers are reported to experience stress and 19% experience anxiety, most of which are woman and solo practitioners.

In addition to the general stress that comes with the profession, lawyers and legal professionals often experience the effects of vicarious trauma and secondary traumatic stress, also referred to as compassion fatigue. When legal professionals are consistently exposed to the emotional pain, anxiety, and despair of their clients and colleagues, they can and suffer from feelings of emotional exhaustion, burnout, social and emotional withdrawal, and a reduced ability to empathize with others.

So how do we help offset the hazards of our profession? First and foremost, it is incumbent on all of us to prioritize and take ownership of our mental health and wellbeing. To that end:

• **Set boundaries:** Establishing clear boundaries between work and personal life is essential for maintaining balance and preventing burnout. Make time for activities that bring you joy and relaxation outside of work.

- **Seek support:** Reach out to trusted colleagues, mentors, or mental health professionals for support and guidance when needed. Building a strong support network can help you navigate the challenges of the legal profession.
- **Practice self-care:** Prioritize self-care activities such as exercise, meditation, mindfulness, and hobbies that promote relaxation and stress relief. Taking care of your physical and mental well-being is essential for long-term success.
- Monitor your mental health: Stay attuned to your emotions, thoughts, and behaviors, and seek help if you notice signs of distress or burnout. Regularly check in with yourself and prioritize activities that promote mental wellness.
- Advocate for change: Work towards creating a culture of wellbeing and support within your workplace or legal community. Encourage open dialogue about mental health, promote resources for support, and advocate for policies that prioritize the well-being of lawyers.

When these strategies are no longer enough, the Florida Bar has the following resources available to assist lawyers in crisis:

- Florida Lawyers Helpline: The helpline (833-351-9355) is a free and completely confidential service which connects Florida Bar members with professional counselors for five free counseling sessions per year.
- Florida Lawyers Assistance, Inc. ("FLA"): FLA provides programs and services to assist legal professionals who may be struggling with mental health issues or substance abuse. In an effort to achieve its mission, FLA has over 300 volunteer legal professionals and runs over 30 weekly support groups throughout the state.
- eVideo Counselor: eVideo Counselor provides online face-toface video counseling with licensed mental health therapists. Florida Bar members and their families save more than 20% per session.

Although the stigma, resources, and tools surrounding mental illness and substance abuse is highlighted in the month of May, remember that or physical, mental, and emotional wellbeing is essential to our abilities to function and thrive as attorneys and as human beings. By addressing mental health issues and understanding the impact of factors such as compassion fatigue, lawyers can improve their wellbeing, enhance the quality of legal services provided, and create a more sustainable and fulfilling career in the law.

(\wedge) e take an active role - (\wedge) e never give up!







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It is easy to take advantage of the fact that we live where many (many) people vacation. It is not uncommon for Sarasota locals to have a hard time recalling the last time they went to the beach or took in one of our beautiful sunsets (it does not count if you saw the sunset while stuck in traffic). With the arrival of spring and summer, we are fortunate to have extended daylight hours and Sarasota has an abundance of ways in which we can take advantage of the sunshine and get to live where so many people choose to vacation.

In my opinion, one of the biggest perks of west coast living is the sunsets. Who wants to wake up for a sunrise anyway? Luckily, we have plenty of supreme locations to watch the sun go down!

• The Bay – The Bay preserve in downtown Sarasota has a variety of outdoor spaces with a great view of the bay and sunset. Their online calendar of events outlines many activities that are open and available to the public with something happening almost every day. If none of the

events excite you, there are several seating areas with excellent views and the concession stand is now open from 8 am to 6 pm Tuesday through Sunday as well!

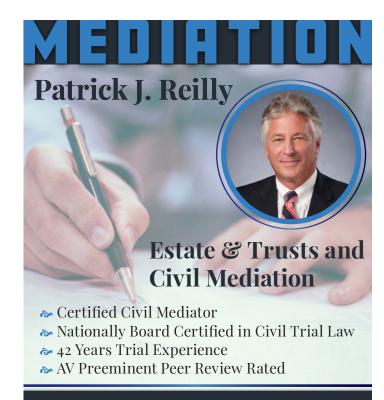
- O'Leary's Tiki Bar & Grill A Sarasota staple, O'Leary's offers a great waterfront view of the sunset, live music most nights, as well as snacks and beverages for guests of all ages. The outdoor location is familyfriendly and usually attracts a varied crowd of locals and visitors alike.
- Ernest "Doc" and Eloise Werlin Park Just adjacent to Ringling Bridge, this is both a convenient and scenic spot (albeit with limited parking) to take in the sunset.
- Beach Access Point(s) No sunset viewing list would be complete without the mention of the beach. Both Lido and Siesta Key have several beach access points, and some with parking that are a great spot to watch the sunset if you are already on the key or willing to take on one of the bridges to make it in time.

• Downtown Rooftops - Sarasota has several hotels downtown with rooftop bars that provide a phenomenal view of the sunset over the bay. If you are in the mood for a cocktail or snack with your sunset, The Westin and Art Ovation are both great options. If you prefer to stay inside, the Embassy Suites has an 8th-floor bar and restaurant with great views and the comfort of air conditioning.

If sunsets aren't your thing, Sarasota is also home to many great restaurants and the water is just as beautiful at lunch as it is at sunset. Some of my favorite waterfront dining options, which make great special occasion (hint Mother's Day) meal options are:

- Shore The view of the Longboat Key location is hard to beat, and the food never disappoints. The St. Armand's location is also a good compromise when the craving for truffle fries strikes and the drive out to Longboat is just too far.
- Dry Dock Waterfront Grill This bayfront restaurant on Longboat has great views, food, and cocktails.
- Evie's at Spanish Point (pictured left) I promise this article isn't sponsored by Evie's, but another great option for being on the water and enjoying the outdoors in Sarasota, especially if you don't want to get sandy, is Evie's at Spanish Point. The view of the water at the outdoor tiki bar makes it hard not to feel you're on vacation.

It's easy to forget all the things to do in Sarasota, especially with new things popping up what feels like weekly. And sometimes it takes an out-of-town visitor to remind you of all the reasons why people want to vacation where we live. I hope this gives you some ideas of things to do and new places to explore... perhaps even some ideas for Mother's Day on May 12th. Happy Mother's Day to all the incredible mothers and mother figures out there. Wishing you a day filled with joy, appreciation, and love! 💥



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President's COLUMN COUNTY



On March 7, the Florida Legislature passed SB 556, which, if signed into law by Governor DeSantis, would create a new statute (Fla. Stat. § 415.10341) providing financial institutions with the authorization, under certain circumstances, to delay a disbursement or transaction from an account of a "specified adult" suspected of being financially exploited.

Stickley Law

"Specified Adult" - Under the new statute, a "specified adult" is defined as a natural person 65 years of age or older or a "vulnerable adult" as defined in s. 415.102 ("a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging").

In enacting this new statute, the Legislature highlighted the following findings: (1) many persons in this state, because of age or disability, are at an increased risk of financial exploitation and loss specified adults in this state are at a statistically higher risk of being targeted for financial exploitation, regardless of diminished capacity or other disability, because of their accumulation of substantial assets and wealth compared to younger age groups.

The Legislature also noted that this statute is intended to "balance the rights of specified adults to direct and control their assets, funds, and investments and to exercise their constitutional rights consistent with due process with the need to provide financial institutions the ability to place narrow, time-limited restrictions on these rights in an effort to decrease specified adults' risk of loss due to abuse, neglect, or financial exploitation."

Therefore, under the new statute, financial institutions will be able to delay a disbursement or transaction from an account of a specified adult or an account for which a specified adult is a beneficiary or beneficial owner if they report the suspected financial exploitation of a specified adult pursuant to Fla. Stat. § 415.1034 (Florida's mandatory reporting statute for known or suspected abuse, neglect, or exploitation of vulnerable adults), and all of the following apply:

(a) The financial institution promptly initiates an internal review of the facts and circumstances that caused the employee to report suspected financial exploitation.

(b) Not later than 3 business days are the date of which the delay was first placed, the financial institution:

a. Notifies in writing all parties authorized to transact on the account and any trusted contact on the account, using the contact information provided for the account, with the exception of any party an employee of the financial institution reasonably believes has engaged in, is engaging in, has attempted to engage in, or will attempt to engage in the suspected financial exploitation of the specified adult. The notice, which may be provided electronically, must provide the reason for the

b. Creates and maintains for at least 5 years from the date of the delayed disbursement or transaction a written or electronic record of the delayed disbursement or transaction that includes, at minimum, the following information:

- i. The date on which the delay was first placed.
- ii. The name and address of the specified adult.
- iii. The business location of the financial institution.
- iv. The name and title of the employee who reported suspected financial exploitation of the specified adult pursuant to s. 415.1034.
- v. The facts and circumstances that caused the employee to report suspected financial exploitation.

Additionally, before placing a delay on a disbursement or transaction, a financial institution will be required do all of the following: (1) develop training policies or programs reasonably designed to educate employees who perform transactions on behalf of the customers on issues pertaining to financial exploitation of specified adults; (2) conduct training for the aforementioned employees as soon as reasonably practicable and maintain a written record of all trainings conducted; and, (3) develop, maintain, and enforce written procedures regarding the manner in which suspected financial exploitation is reviewed internally, including, if applicable, the manner in which suspected financial exploitation is required to be reported to supervisory personnel.

If all of the aforementioned criteria and circumstances are met, and a financial institution authorized to place a delay on a transaction or disbursement proceeds by doing so, such delay will expire 15 business days after it was first placed unless extended by the financial institution for up to 30 additional business days if the financial institution's review of the available facts and circumstances continues to support the reasonable belief that financial exploitation of the specified adult has occurred, has been attempted, or will be attempted.

Notwithstanding the above, the length of the delay may be shortened or extended at any time by a court of competent jurisdiction, and the new statute specifically provides that a financial institution is not

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prevented from terminating a delay after communication with the parties authorized to transact business on the account and any "trusted contact" on the account.

"Trusted Contact" - Under the new statute, a "trusted contact" is defined as a natural person 18 years of age or older whom the account owner has expressly identified and recorded in a financial institution's books and records as the person who may be contacted about either the account or the account owner to address possible financial exploitation or to confirm the specifics of the account owner's current contact information or health status; to determine the identity of any conservator, executor, trustee, or individual entity granted a power of attorney; or to address any other concern reasonably related to the administration of the account. The term may include a joint owner or an individual or entity who has been granted a power of attorney.

According to the National Adult Protective Services Association ("NAPSA"), one in nine seniors reported being financially exploited in the past year, and, sadly, this figure may be even higher as the NAPSA estimates that only one in forty-four cases of financial abuse is ever reported.

Since this statute will require employees of financial institutions to be better trained to spot financial exploitation, require trusted contacts (often family members who are unaware their loved one has fallen victim to financial exploitation) to be notified, and also provide immunity from administrative and civil liability for institutions that act in good faith and exercise reasonable care in complying with the statute, if signed into law, it may offer a promising solution to mitigating substantial monetary losses and providing further protection from a pervasive issue that is too often identified after it is already too late to take action. 💥

FOR A FRESH START



CHAPTER 7 & 13 **BANKRUPTCY**

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COUNCIL FOR DIVERSITY AND INCLUSION (MAN'S COLUMN



by Lisa Gallagher, Esq. Bank of America Private Bank

I remember going to church as a young girl and was told over and over, be careful what you watch, there are things you cannot un-see. Be careful who you hang out with, "water meets its own level." And, of course, we were told to watch our thoughts, for they are the root of all action. It was not until decades later I learned this last adage was actually from Lao-Tze, a Chinese philosopher and writer, credited with writing the first books on Taoism. I do not profess to know anything about Taoism, but I do like the quote from Lao-Tze, and as of late, it has crossed my mind quite a bit and given me cause to reflect.

The quote to which I am referring is:

Watch your thoughts; they become words. Watch your words; they become actions. Watch your actions; they become habits. Watch your habits; they become character. Watch your character; it becomes your destiny. -- Lao-Tze

This quote feels alarming. It feels all too accurate. This quote, this idea that ideas or thoughts I'm allowing to enter my mind, for better and worse, are laying the foundation for my future, my destiny, is frightful. Between the news I watch, the social media I scroll, the shows and movies I watch, the music I listen to, and even the books I read, I do so almost impulsively, haphazardly. It's usually just a matter of what's on now. It's what's available in the moment. I cannot say when I sit down to binge-watch a season of Peaky Blinders that I am consciously aware of the influences the show may be playing on my mind. But, according to Lao-Tze, I am definitely letting my guard down.

With the upcoming election at hand, we are all fast approaching a period of time when (more than normal) our minds, our thoughts, will be inundated with negativity, anger, criticism, judgment, polarizing rhetoric, newscasters talking over each other, yelling at one another, shoving hands and fingers in each other's faces, belittling, namecalling, etc. It will literally be a mental assault on all of us. And I can feel the dread. We all know it's coming. It doesn't matter who you want to win the election, I have talked to no one who is looking forward to the next six months and the process we are collectively going to have to go through to get to the end of it.

So, in an effort to protect myself, to protect my thoughts, I am determined to be more mindful about what I watch and to that which I listen. I do not want my thoughts to turn to despair, or my words to become bitter, my actions to lack empathy, my habits to allow me to turn a blind eye to those around me, my character to become selfabsorbed, and ultimately my destiny to be... well, small.

I will endeavor to embrace the next six months as an opportunity to grow, to learn, to evolve, and to practice Mr. Lao-Tze's teaching. I will push through the inevitable noise and choose to think positively, I will speak words of hope, I will seek to act on behalf of others, I will practice a habit of expressing my gratitude each day, I will be mindful of the thoughts, needs, and feelings of others, and I will embrace a destiny of inclusion.

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luncheon before his Florida Bar presidency ends. His presentation will include the "State of the Florida Bar," what's coming up, and information on AI initiatives.

The program will also include the membership vote on 2024-25 SCBA leadership.

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SCBA BOARD OF DIRECTORS **PROPOSES** 2024-2025 OFFICER AND DIRECTOR NOMINEES



BY SARA CASTRO GOVERNANCE COMMITTEE CHAIR

The SCBA Board of Directors nominates the following members to serve as officers of the organization for the 2024-2025 term: Bryan Kessler, President; Sara Castro, President-elect; Alan Perez, Secretary; and Jay Castle, Treasurer. Amanda Kison will remain on the board as Immediate Past President.

The board also nominates the following SCBA members to serve as Directors-at-Large for a three-year term: Barbara Bush and John Getty. Current directors, Caroleen Brej, William Motherway, Anthony Mowry, Cyndi Riddell, Michele Stephan, and Tamara Williams will continue to serve on the board until the expiration of their respective staggered terms. The Young Lawyers Division will be represented on the SCBA board by Incoming President Warren Chin, and the South County Division will be represented by Incoming President Jacqulyn Mack-Majka.

The above slate of director and officer nominees shall be elected by voice acclamation of the regular members present at the SCBA Annual Membership Meeting on June 13, 2024, at Sarasota Yacht Club. Any regular member wishing to contest a nominee must submit a petition for a contested election signed by forty (40) regular members to the SCBA office no later than April 15, 2024, resulting in election for any contested position by written ballot of a majority of the regular members present at the annual meeting.



During this interactive event, the three circuit civil judges will address the current state of civil case management as well as the potential impending rule changes affecting circuit civil cases. The judges will address common and repeated errors they see and discuss strategies to successfully present cases to the court. The judges will solicit feedback on the operations of the Circuit Civil Division and answer attorneys' questions.



May 9, 2024

Program: 5:30 - 7:00 pm Social: 7:00 - 8:00 pm

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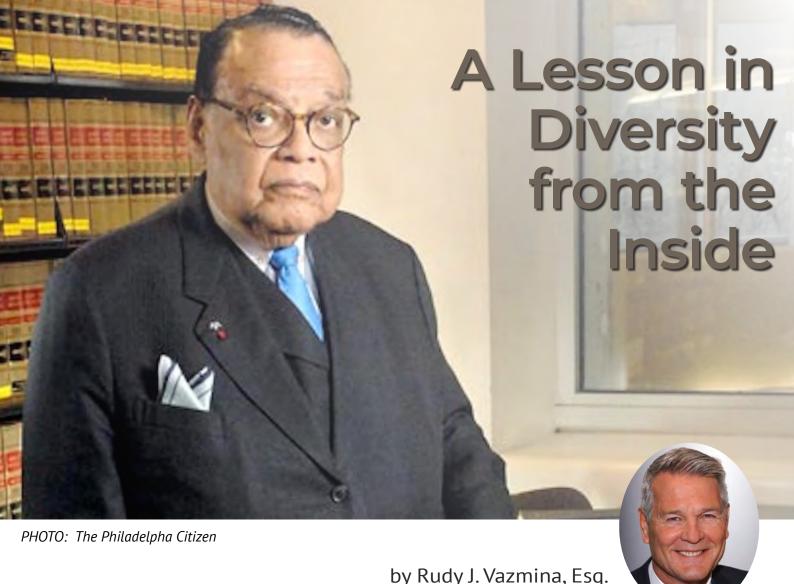
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Mr. William T. Coleman, Jr. (July 7, 1920 - March 31, 2017) was in his essence a lawyer throughout his illustrious career in government, private practice, and corporate leadership. He, in every situation, exhibited his commitment to equal justice by combating racial discrimination.

Coming from segregated elementary schools, he faced racism early when he decided to try out for the high school swimming team being an accomplished competitive swimmer. When he introduced himself to Philadelphia's Germantown High School swim coach, Coach Schwartz informed him, "Unfortunately, Bill, Negroes cannot be members of the swimming team." After protests by his parents, the school not wanting to carry the label of racist quickly eliminated its swimming team. Contemporaneously with Mr. Coleman's graduation from Germantown High and his letter of admission to the University of Pennsylvania, a notice went up on the school bulletin board: "Tryouts for the school swimming team begin on February 1." He acknowledged that his firsthand experiences with racial discrimination and profiling compared little to the violent versions of the South but nonetheless propelled his desire to effect change.

After graduating summa cum laude from Penn and first in his class at Harvard Law School, Mr. Coleman clerked for federal appellate Judge Herbert F. Goodrich and became the first American of color to clerk for a federal appellate judge.

U.S. Supreme Court Justice Felix Frankfurter broke convention by

hiring Mr. Colemen as his law clerk in 1948. The first American of color in its 158-year history. During his tenure in that clerkship, he wrote a memorandum about graduate school segregation for Frankfurter. He focused on the factual and procedural issues that illustrated that the two schools in question were not equal (Sweatt v. Painter). He wrote, "that nothing short of equality of facilities would satisfy the Equal Protection Clause of the Fourteenth Amendment." That memorandum provided the pathway to overrule Plessy v. Fergurson's "separate but equal" doctrine. Justice Frankfurter wrote to Mr. Coleman after his clerkship: "What I can say of you with great confidence is what Justice Holmes's ultimate praise of a man: 'I bet on him.' I bet on you, whatever choice you may make and whatever the Fates have in store for you."

Rudy J. Vazmina, P.L.

After his clerkship and despite his first-rate credentials, Mr. Coleman searched unsuccessfully in Philadelphia, Boston, Washington, and on Wall Street to find a law firm job. Finally, he landed an associate position with the New York firm of Paul, Weiss, Wharton, and Garrison and became the first American of color to join a major law firm in 1949.

In late 1949, Mr. Thurgood Marshall, as chief counsel of the NAACP Legal Defense and Educational Fund (LDF), telephoned Mr. Coleman to invite him to a meeting of a group of twenty-five lawyers to talk strategy to attack racial segregation in public schools in the South. Mr. Coleman responded. "Let me know the time and place, Mr. Marshall.

I'll be there." With the blessing of the partners at Paul, Weiss, he would work there full time and then spend evenings and weekends researching the law on segregation and traveling to New York or Washington to work with Mr. Marshall and the team pro bono. Having worked on the brief and argument preparation for the rehearing of Brown v. Board of Education before the Supreme Court, he sat at the counsel table next to Mr. Thurgood Marshall. On May 17, 1954, the U.S. Supreme Court declared state-sanctioned segregation illegal under the Fourteenth Amendment.

In 1952, the law firm of Dilworth, Paxson, Kalish, and Green became the first Philadelphia law firm to offer an attorney of color an associate position. Mr. Coleman accepted that offer, became head of their Litigation Department, and later was elected partner and his name was put in the firm's title.

In the arena of government service, Mr. Coleman accepted President Gerald Ford's offer of transportation secretary after resisting Ford's initial offer of secretary of housing and urban development.

As transportation secretary, Mr. Coleman issued the nation's first national transportation policy and decided on controversial issues such as the introduction of airbags, granting conditional landing rights for the Concorde, and opening the Coast Guard Academy to women.

In 1977, Mr. Coleman joined the Washington, D.C. law firm of O'Melveny & Myers as a full share partner and member of its management committee. In building its practice, it pursued cases in auto safety, class actions, aviation, and energy. Working pro bono, Mr. Coleman accepted the invitation of Supreme Court Chief Justice Warren Burger to serve as amicus curiae appointed by the Court to defend the decision of the Fourth Circuit's decision denying taxexempt status to private schools that practice racial discrimination. Mr. Coleman won the argument in an 8-1 decision in Bob Jones University v. United States.

In the corporate arena, Mr. Colemen accepted invitations from IBM, PepsiCo, Pam Am, and Chase Manhattan Bank among others to join their board of directors.

Mr. Coleman's opportunities placed him in a position to effect change from the inside. He stated in an oral history, "You accomplish things by being in the room when the deal is made, and it is not in your interest to take positions where you're not going to get in the room."

Mr. Coleman shunned the word affirmative action and championed diversity. He saw, "The major law firms compete for talented law students of color because they recognize that diversity is critical to obtaining and retaining business from government and private entities that serve a diverse population."



SEARCHES

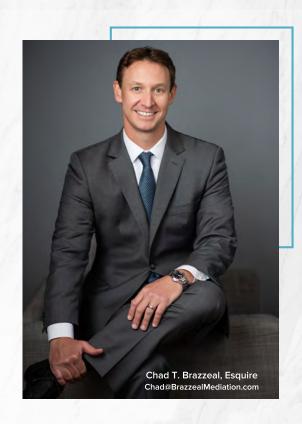
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I have represented vaccine injured petitioners, in DC's little-known national "Vaccine Court" for more than 20 years. Last week, I attended a hearing before the House Committee on Oversight and Accountability's Select Subcommittee on the Coronavirus Pandemic. The topic was "Assessing America's Vaccine Safety Systems." The focus of the inquiry was the disparate treatment of the COVID-vaccine injured, from those who are injured by traditional vaccines.

Most vaccine injury claims are covered by the National Childhood Vaccine Injury Act of 1986, which was enacted by Congress to protect the vaccine supply. This was necessary after vaccine manufacturers faced large jury verdicts and threatened to take their business elsewhere. Vaccine injury claims are filed in the United States Court of Federal Claims "Vaccine Court," by attorneys like me, and are decided by special masters with specialized knowledge in this science-heavy venue. An excise tax on vaccines more than covers claims related to these rare adverse events; the trust fund contains about \$4 billion. The US Department of Justice, representing the US Department of Health and Human Services, defends the claims. The claims are nofault, although causation must still be proven unless an injury meets strict criteria warranting a presumption of causation. Some damages are capped, like the death benefit and pain and suffering, but wages and future medical care are unlimited. Reasonable attorneys' fees and costs are awardable under the Act, to encourage access to counsel in this remedial program.

by Anne Toale Esq. *mctlaw*

In contrast, COVID vaccines are covered under the PREP Act, which granted broad immunity to manufacturers of countermeasures virtually anything related to the diagnosis, treatment, or prevention of COVID. Injury and death claims arising from covered countermeasures are administered in the Countermeasures Injury Compensation Program. Although this program is also administered by HHS, that is where the similarity ends. These claims are heard, if they are heard at all, before unidentified government officials - a star chamber not a court of law. There are no attorneys' fees, or even a role for attorneys, as there are no proceedings in which to introduce evidence, such as expert witnesses on causation. The "process" is simply this - a claimant submits a PDF form online, medical records are collected, followed (eventually?) by a review of the claim by an unknown person or persons. Despite this limited-access venue, these claims require "compelling" evidence to be compensated, a higher standard than Vaccine Court, which employs the traditional preponderance standard. There is no right of appeal of a denial to the courts. Even those who are eligible cannot receive damages for pain and suffering

and economic damages are limited. Worst of all, claims are subject to a one-year statute of limitations! Currently, 13,000 COVID-related countermeasures claims have been submitted, but only 11 have been compensated. Awards have ranged from \$1000-\$9000.

I represent the family of a woman who died from thrombocytopenia, a life-threatening blood disorder which caused blood clots throughout her brain. A study of 99 million COVID-vaccinated individuals found a statistically significant risk of thrombocytopenia following mRNA COVID vaccines. This family's claim should be compensated. Yet it has been pending for 3 years in "the queue," and nothing has been done, despite check-ins by me, and by their Congresswoman. This program is truly a black hole.

Finally, Congress took notice of the problem. A bill with bipartisan support has been pending since 2021, which would shift COVIDvaccine-injuries to the Vaccine Court where they belong. In the context of critiquing the overall response to the pandemic by government officials and agencies, this subcommittee realized the inequity that the countermeasures program has created, and the damage that is being done to public confidence in vaccines. I was encouraged to see lawmakers engaging with stakeholders to resolve this major injustice and hope that they will take swift action. Without a legislative fix, these claims will end up in civil courts, where trial judges have already found the waiver of immunity to be invalid, due to the inadequacy of the remedy provided. If this continues, our nation's vaccine supply will be threatened once again. **

Ann Toale is a past-president of the national Vaccine Injured Petitioner's Bar Association and co-chair of the AAJ Vaccine Litigation Group.

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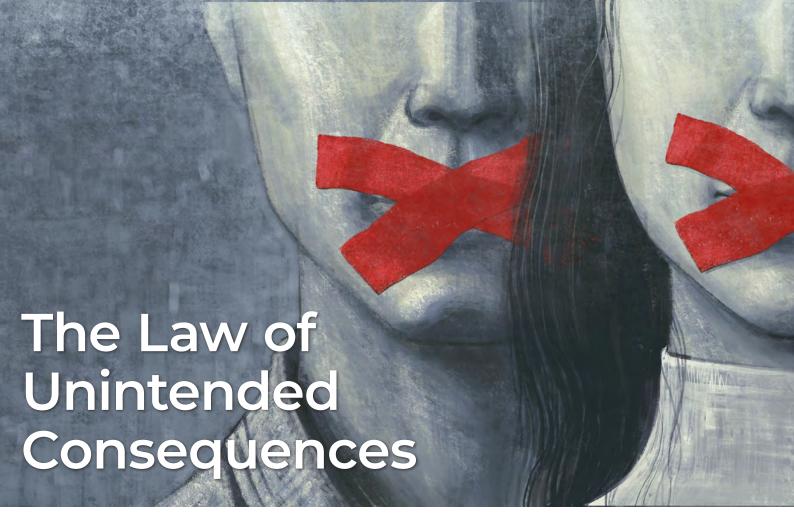
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Analysis of Florida's Stop WOKE in Honeyfund.com, Inc. v. Ron DeSantis

Pitts Law Firm

by Tonya Willis Pitts, Esq.

The "law of unintended consequences" is often used by economists and in government to describe the theory that the actions of government or people always have unintended or unanticipated consequences. The State of Florida is no exception. In an effort to protect the expansion of the Stop WOKE Act a/k/a Individual Freedom Act ("Act") to private employers, the state recently made arguments in federal court which would limit the freedom of speech of private employers.

In the case of Honeyfund.com, Inc., et al. v. Ron DeSantis, Governor, State of Florida, et al., Case No. 22-13135 (11th Cir. 2024), the U.S. Eleventh Circuit Court of Appeals affirmed the lower court's decision which prohibited the expansion of the Act to the Florida Civil Rights Act of 1992 ("FCRA"). The Act overhauled the definition of unlawful employment practice under the FCRA by making it unlawful for private employers to engage in certain speech specifically outlined in the statute during mandatory workplace events such as trainings.

This case began when two employers and a diversity and inclusion consultant sought an injunction against the Act. The plaintiffs challenged the portion of the Act which overhauled the FCRA by expanding the definition of unlawful employment practice to include "required activity," such as mandatory trainings that promote forbidden concepts specifically outlined by the state. The Act essentially added new prohibitions intended to target diversity, equity, and inclusion trainings to restrict the speech of such trainings.

On August 18, 2022, the US District Court for the Northern District of Florida issued a preliminary injunction preventing enforcement of the provision of the Act that prohibited employers from requiring employees to attend any workplace training that "espouses, promotes, advances, inculcates, or compels" employees to believe a specified list of ideas related to race, color, sex, or national origin, holding that it violated the First Amendment's right to freedom of speech, as it was an impermissible "viewpoint-based" regulation on speech.

On appeal before the Eleventh Circuit, the state attempted to convince the court that the Act only prohibits "the conduct" of the private employers by prohibiting mandatory trainings on diversity, equity, and inclusion concepts and not the speech of the private employers on the topic of DEI. However, the argument fell flat under strict scrutiny by the Eleventh Circuit. The appellate court determined, after challenging the legal arguments of both sides, that the Act would only allow mandatory DEI trainings if the training promoted the perspective of the state's current administration. As a result, the Act is an "an illegal per se ban on speech the state disagrees with."

The state went even as far as contending that the state "has a compelling interest in protecting individuals from being forced, under the threat of losing their jobs, to listen to speech 'espousing the moral superiority of one race over another, 'proclaiming that an individual, by virtue of his or her race, is inherently racist, or 'endorsing the racially discriminatory treatment of individuals because of past racist acts in which they played no part," and that "[t]hese categories of speech qualify as 'invidious discrimination' that the state can regulate." The appellate court acknowledged that many people would find those types of views outlined by the state "deeply troubling," but such legislative ban does not mean that the state is targeting discrimination.

In fact, the appellate court found that the Act was too broad in scope. It reasoned:

"Still, even if we presumed that the Act served the interest of combating discrimination in some way, its breadth and scope would doom it. Banning speech on a wide variety of political topics is bad; banning speech on a wide variety of political viewpoints is worse. A government's desire to protect the ears of its residents 'is not enough to overcome the right to freedom of expression."

The state's argument was paternalistic in nature by proffering the idea that the state has a right to limit speech related conduct of private employers to protect its citizens from hearing undesirable speech. Of important note is the fact that nearly all DEI trainings promote togetherness, understanding, and embracing differences as it relates to race, color, sex, and national origin. Fortunately, the appellate court established quardrails which prevented the Act from impeding the constitutional right to free speech of the citizens and upheld the injunction.

In all, the state had to position itself as the opponent of free speech in an attempt to protect the political motive of the Act. This was an obvious unintended consequence of the Act. Judge Mark Walker summed it up best in the lower court's opinion when he wrote:

"Normally, the First Amendment bars the state from burdening speech, while private actors may burden speech freely. But in Florida, the First Amendment apparently bars private actors from burdening speech, while the state may burden speech freely."





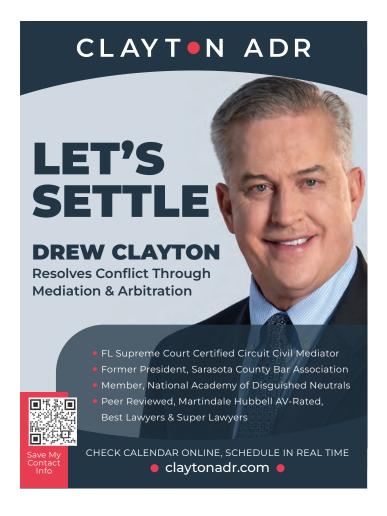
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by Alan Perez, Esq.

Mallard Perez PLLC

Every year, Law Day is centered around a specific theme reflective of contemporary legal issues and challenges. The 2024 Law Day theme is "Voices of Democracy." The American Bar Association described this year's theme as recognition that in democracies, the people rule. My mind typically defaults to the concept of voting in elections when it comes to speaking our minds and expressing our political views.

In an effort to make our voices heard, my law partner, **Damian Mallard**, and I make an annual trek to Tallahassee during the legislative session to lobby for or against proposed law changes, adoptions, or repeals. We encourage our associates to carve out several days during the legislative session to make the trip as well. Each year, we walk alongside groups of people in different industries who are there to advocate for or against whatever change might be coming their way if the legislative committee votes come down a certain way.

The city is truly alive during legislative session. It's a beehive of people filling the sidewalks in front of the offices of trade organizations like the Florida Realtors' Association, Florida Association of School Administrators, Association of Early Learning Coalitions, Florida Dental

Association, Florida Association of the American Institute of Architects, Florida Retail Federation, and my favorite – the Florida Justice Association.

Law Day, initiated by President Dwight D. Eisenhower in 1958, honors the rule of law in our society and is intended to promote reflection on its importance for the foundation of our country. It is a day to promote the awareness of the legal system, encourage civic engagement in our democracy, and uphold the principles of justice and equality under the law.

As we approach May 1, the annual national celebration of Law Day, I am reminded of how lucky we are as a nation to get to participate in this legislative process. To see "how the sausage is made" so to speak. Not only do we get to see the process, but we also get to talk with the people who are charged with representing us when they cast their votes for or against a change. They hear our voices. We get to answer questions from our senators and representatives and provide them with input about practical effects of a proposed bill.

As I write this, I find myself thinking about all the times that I've walked along South Adams Street, catching a brief view of the Florida Supreme Court (which is directly across the street from the Florida State Capitol) as I make my way to the Florida House and Senate chambers to use my voice. I relate to legislators by letting them know that in my practice, I also represent people. I represent people all over the State of Florida. I let them know that not only do I come to them to express my views, but I come to them having represented hundreds

of Florida citizens who will be affected by the things that happen in these buildings. I think about the times that I've filled out speaker forms so that I can testify in front of one of the various committees about what a proposed law change means to the people I represent.

This year's Law Day provides an excellent opportunity to discuss the legislative process with associates, colleagues, family, and clients. (Cue the "I'm Just a Bill" Schoolhouse Rock track.) I encourage each of you to help empower at least one other person with knowledge about how our system is designed, about how it allows us all to use our voices throughout the law-making process, and about the fact that every law starts with a simple idea or concept. If you're so inclined, I encourage you also to make a trip to Tallahassee, even if it's just a day, to either watch or participate in our legislative process. The 2025 legislative session is scheduled to start on March 4, 2025, and will end on May 2, 2025. One of the best ways to experience the process is to go along with a trade association during their "Lobby Days" when they help with accommodations and guidance on various issues and proposals that affect your industry. Participating in the law-making process is a truly humbling experience, regardless of the final outcome.

Law Day reminds us that the rule of law is fundamental to a free and democratic society. It all starts with how laws are made, changed, or repealed. By fostering greater awareness of legal principles among citizens, Law Day helps to strengthen the fabric of our society and ensure that justice prevails for all.





PICTURED ABOVE (from left):

Past client Jonathan Reichenbach from Sarasota and Dr. Taras Kochno from Bradenton, both traveled with Alan to testify before congress about the effects of a proposed law change affecting injury victims.

PICTURED LEFT:

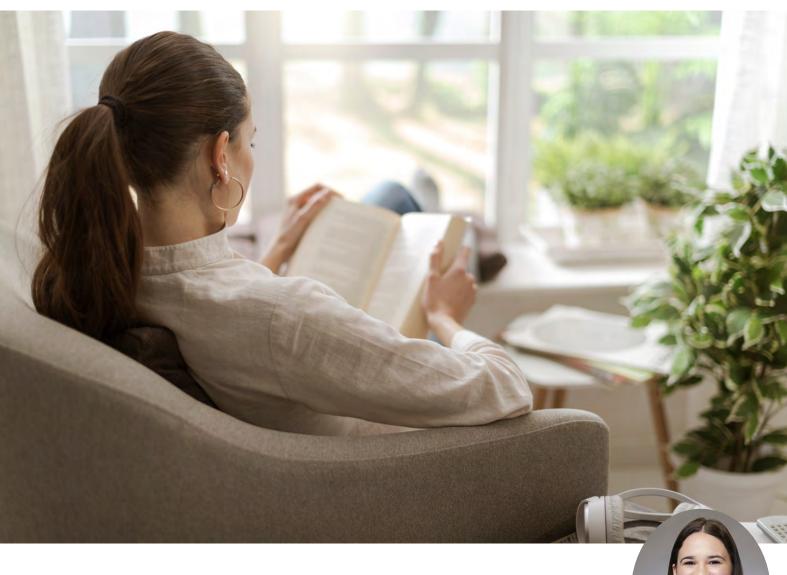
Alan speaking during the 2023 Legislative Session about House Bill 837.

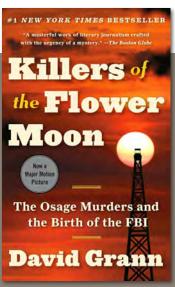
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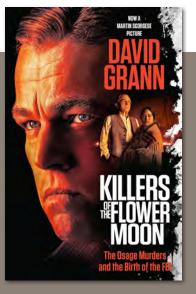
Alan and Damian Mallard at the Florida Capitol.



BOOK REVIEW







by Nicole S. Peet, Esq. Farr Law Firm

Our office recently started a monthly book club, and one of our recent picks was David Grann's "Killers of the Flower Moon." The overall sentiment at our meeting was that the novel was the best nonfiction mystery story many of us had ever read. The story honestly had us on the edge of our seats. Many felt the book opened our eyes to a largely unknown period of American history that will not be easily forgotten now.

Grann's "Killers of the Flower Moon" is a nonfiction account that uncovers one of US history's most atrocious overlooked crimes. The book sheds light on a dark time in America's past when tribe members of the Osage Nation in northern Oklahoma began to be systematically murdered.

Grann combines personal stories, investigative journalism, and historical accounts to unveil the sequence of events that led to the murders of more than several dozen Osage. In the early 1920s, after being displaced from their ancestral lands, the Osage found themselves in oil-rich land. This discovery led to the Osage becoming the wealthiest people per capita in the world. They rode in chauffeured cars and lived in mansions. This newfound wealth was a cause for other greedy members of the community to prey on the newly oil-rich tribe. Unscrupulous individuals sought to strip the Osage of their rights and fortunes, and one by one, the Osage began to be killed.

The story primarily focuses on Mollie Burkhart, a member of the Osage whose family became a prime target of the murders. Before delving into the details of the murders, Grann provides information on Mollie's personal life and even weaves in photographs of Mollie and her family provided by Mollie's living descendants. Several years before the murders, Mollie married Ernest Burkhart, a man from Texas who moved to Oklahoma to work for his uncle, William Hale. Ernest was enchanted by the tales of the Osage and even learned to speak with Mollie in her native language. Ernest and William were a few non-native individuals whom the Osage allowed into their close-knit community. Eventually, Mollie's family members were shot and poisoned. Other Osage began to die under mysterious circumstances. Many of the individuals who investigated the crimes were murdered. As the murders of the Osage continued, the case was eventually taken up by the newly established FBI. Grann tells the story of the Osage investigation with a gift for suspense. He navigates many layers of deception and corruption and exposes a conspiracy that surprises readers at their core.

This era is often referred to as the Osage Reign of Terror, a strange description that wrongly implies the Osage were responsible for the horrible acts committed against them. Grann highlights the resilience of the Osage people in the face of exploitation, greed, and institutionalized racism. The novel also provides the backdrop of the United States guardianship system that the government instituted to control both tribal members and the wealth from their mineral rights. For example, full-

blooded American Indians were declared "incompetent" and appointed white guardians. Grann challenges readers to review uncomfortable truths and question whether these inequalities and injustices persist today.

Recently, Martin Scorsese wrote and directed a film inspired by these events and Grann's novel. Scorsese's three-and-a-half-hour historical epic stars Lily Gladstone, Leonardo DiCaprio, and Robert DeNiro as Mollie, Ernest Burkhart, and William Hale. The film draws on various genres, including romance, western, whodunit and drama, that all mix and flow together to bring Grann's account to the big screen. The film draws on the mysterious nature of the murders and the viewer never really knows where the story is headed or why, much like the way Grann's story makes the reader wonder how and why these events occurred. The film was nominated for multiple Academy Awards, including Best Picture, Best Actress, Best Director, Best Original Score, Best Cinematography and Best Costume Design. Lily Gladstone was the first Native American performer to be nominated for a Best Actress Oscar.

The story is a vivid portrayal of the experiences of the Osage people. Through personal and historical accounts, Grann provides an outlet for the victims to amplify their voices and ensures that their stories are not relegated to the annals of forgotten history. Grann's writing shows us the hardships endured by the Osage people and the profound impact of the crimes committed against them.

In conclusion, David Grann is a talented storyteller, and this novel is a masterpiece that outshines the traditional true crime narratives. It casts a light on this dark period of American history and reminds us how important it is to learn from the injustices of the past. David Grann's combination of historical storytelling and investigative journalism deserves the highest recognition.



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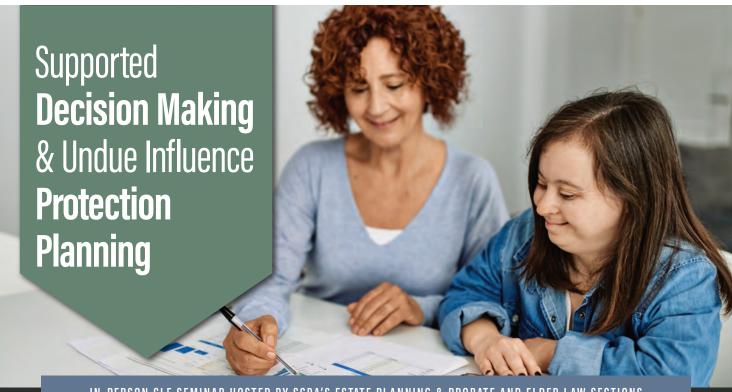
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So, esteemed members of our local bar association, are you fully engaged in reading this, or are you juggling a multitude of tasks? Multitasking, the act of handling numerous tasks simultaneously, seems like a superpower, right? Well, recent studies suggest there's a fine line between multitasking and what humans actually do: task switching. Multitasking entails seamlessly transitioning from one thought to another without sacrificing speed or accuracy. However, research indicates that unlike machines, humans can't truly multitask in this sense. Instead, we engage in task switching - shifting from one task to another, pausing, and then returning to previous tasks. This constant switching incurs "switching costs," slowing productivity and increasing errors. Perhaps not surprisingly, many of us, the undersigned included, overestimate our multitasking prowess.

Despite our claims of being maestros of multitasking, studies reveal a different reality. Multitasking leads to more errors, heightened stress, reduced cognitive ability, and hindered productivity. We often deceive ourselves into believing we've handled multiple tasks proficiently and enhanced productivity when, in truth, the opposite occurs. In simple terms, attempting to perform two tasks simultaneously may result in completing both, but our divided attention compromises performance and efficiency.

Nevertheless, there's a glimmer of hope! While true multitasking might elude us mere mortals, we can multitask when tasks become automatic. For instance, driving a familiar route while listening to music. However, altering our routine may require lowering the volume or paying deliberate attention. Interrupting the autopilot mode allows us to focus better.

Researchers have demonstrated that multitaskers actually work more slowly. Conversely, focusing on a single task enhances productivity by freeing up mental resources. Unfortunately, our brains aren't wired for true

multitasking. While mundane tasks may not pose a problem, productivity and safety are compromised in critical situations, such as heavy traffic.

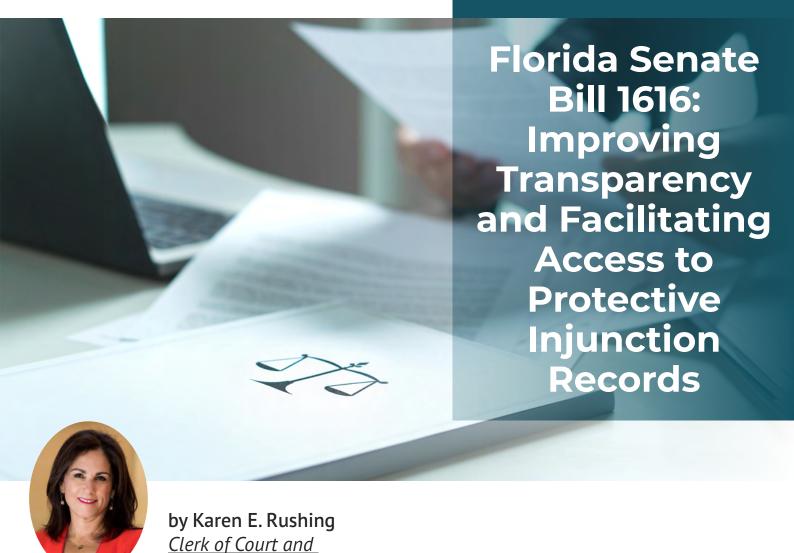
So, how can we become more intentional about managing work and home stressors to enhance focus and productivity?

Researchers offer some practical tips:

- **Practice mindfulness:** Recognize when we're multitasking and acknowledge our limited attention span. Focusing on one task at a time increases productivity and, according to experts, makes tasks more enjoyable.
- Limit distractions: In today's hyperconnected world, distractions abound. Turn off phones or find ways to make your workspace as quit as possible to minimize interruptions. A study at the University of California at Irvine revealed it takes an average of 23 minutes to refocus after a distraction, resulting in quantifiable loss of productivity and billable time for hourly billing practitioners.
- **Rule of 20:** Allocate 20 minutes of undivided attention to each task before switching. You should be able to note your increased focus.
- **Simplify:** Efforts to limit simultaneous tasks may require considerable exertion.

In conclusion, while true multitasking may elude us, adopting the aforementioned practices can enhance our skills to be more effective in tackling tasks one at a time. Perhaps along the way, and once I finish this article, we can even... Oh, excuse me, I need to take this call!





Each year, Florida's Clerks of Court help tens of thousands of vulnerable people suffering from harmful or threatening interactions apply for protective injunctions. Clerk's offices throughout the state receive and process domestic violence injunctions at no cost to the recipients of the service. As the county recorder, clerks are then responsible for recording, maintaining, protecting, and disseminating official public records related to this process, including final judgments for protective injunctions. These responsibilities place the clerk at the forefront of legislative initiatives relating to transparency and accessibility. Florida Senate Bill 1616 is a significant step forward in this initiative, aiming to streamline the process of identifying adults against whom protective injunctions have been issued. Effective July 1, 2024, the bill amends current law to enhance accessibility and userfriendliness in searching for records relating to protective injunctions using the online resources provided by the clerk.

County Comptroller

Senate Bill 1616 seeks to alleviate challenges faced by individuals when attempting to ascertain whether a protective injunction has been issued against a specific individual. One of the pivotal provisions of the bill mandates that the clerk include a standalone link to the official records index on their homepage. This link will lead users to a searchable database, the Official Records of Sarasota County, where final judgments for injunctions are recorded pursuant to Florida law.

The Sarasota Clerk of the Circuit Court, as county recorder, is ahead of the curve in many respects regarding implementing this new law. When a Final Judgment of Injunction or Protection of a Minor, or related order is recorded in the Official Records of Sarasota County, the document is indexed by the name of the respondent, as presented on the document. The description that is included to find the document is "Injunction for Protection," plus the assigned case number. When searching by name, individuals can access relevant records pertaining to adults for whom a final judgment for an injunction or protection of a minor was issued. In the upcoming months, the Sarasota Clerk will update its webpage to comply with the notice requirements of the new law.

The Sarasota Clerk of the Circuit Court actively and proudly works to assist victims and ensure justice and safety for them and their families. If you or someone you know is suffering from any form of violence, urge them to reach out to this office for help.







The meeting will be held hybrid, so you and your staff may attend either in person or via Zoom. The judges will be discussing new and updated procedures, as well as upcoming programs and projects that affect the Family Law Division. Participants will have the opportunity to ask questions and are encouraged to submit those questions in advance to Holly Lipps to have those topics ready to discuss.







12:15pm -1:15pm



In-Person Locations:

Manatee County Judicial Center, Courtroom 8B Sarasota County Judicial Center, Courtroom 3A South County Courthouse, Courtroom D Zoom information will be emailed to all **Family Law Section members**





EMAIL QUESTIONS

To facilitate open conversation, all questions submitted in advance will remain anonymous.



- > ITINERARY
- > SIGN UP!



November 7-10, 2024

The SCBA will travel to Cuba on Thursday, November 7, 2024, through Sunday, November 10, 2024. There is a cap of 40 people for this trip. Members' spouses and significant others are welcome to travel along. The travel director will facilitate all the necessary paperwork for the trip - the only thing you need is a valid US Passport.

This is a trip you don't want to miss!



WE RECOGNIZE OUR **MEMBERS**

Adams and Reese, LLP Belle Law Firm Bentley Goodrich Kison, P.A. Berlin Patten Ebling, PLLC Bowman, George, Scheb, Kimbrough, Koach & Chapman, P.A. Teresa K. Bowman, P.A. Boyer & Boyer, P.A. Burgess, Harrell, Mancuso, Colton & La Porta, P.A. The Byrd Law Firm, P.A. Dickinson & Gibbons, P.A. Dunlap & Moran, P.A. Eastmoore, Crauwels & DuBose, P.A. The Edwards Law Firm, PL Law Firm of James L. Essenson Fergeson Skipper Ferrari, Butler & Moneymaker, PLLC Garcia | Dell Gaskill Law Firm Goodman McGuffey, LLP Hale Law, P.A. Hausburg & Ellis Horlick & Corbridge, P.A. Hutton, Dominko, Swaim & Stall, PLLC Icard, Merrill, Cullis, Timm,

Klingbeil & Roberts, P.A. Lancaster & Eure, P.A. Law Office of Annette Z.P. Ross, P.L. Ledbetter Law Group Loftus Law Luhrsen Goldberg, LLC Mack Law Firm, Chartered Maglio Christopher & Toale, P.A. Mallard | Perez Mellor & Backo LLP Muirhead, Gaylor, Steves & Waskom. P.A. O'Brien & Bennett Paderewski & Dannheisser, P.A. The Payne Law Group, PLLC Reegler & Tornese, P.A. Roberts Law, PLLC The Roknich Law Firm, P.A. Shutts & Bowen LLP Syprett, Meshad, Resnick, Lieb, Dumbaugh, Jones, Krotec & Westheimer, P.A. Ulrich, Scarlett, Watts & Dean Van Winkle & Sams, P.A. Wiesner Smith, PLLC Williams Parker Harrison Dietz & Getzen Wills, Trusts, Probate & Elder Law Firm, PLLC Zimmerman and Zimmerman

The Sarasota County Bar Association 100% Club is a special category of membership that demonstrates an extraordinary commitment to the legal profession and our community from law firms, law departments and legal organizations that enroll 100 percent of their attorneys (two or more) as members of the Sarasota County Bar Association. If you think your firm qualifies, email a list of your associates to scba@sarasotabar.com.

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SARASOTA COUNTY BAR ASSOCIATION

As a leader of the local legal community,
the Sarasota County Bar Association serves our membership
by advancing professionalism, promoting practice
development, and fostering fellowship.



