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ON THE COVER

The Broward County Bar Association and the 17th Judicial Circuit wishes you Seasons Greetings! Join us for our joint event on January 24th for a State of the Circuit and Judicial Procession. More information on page 13 about this event.

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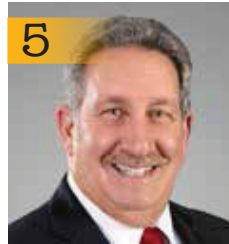
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BARRISTER
 DECEMBER 2019

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 from the
 17th Judicial Circuit & Broward County Bar Association

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Michael A. Fischler, Esq.

Holidays are truly a wonderful time of the year. We get together and celebrate with family, friends and colleagues. We have the opportunity to make year-end donations and give to charities, non-profits, educational and civic institutions, all of which benefit and make a difference in the lives of so many. We reflect and contemplate our endeavors, deeds and activities over the past year, make resolutions for the New Year (which may or may not be kept), we smile, shop (and for some shop and shop till we drop), are generally appreciative of or grateful for what we have and receive, are cheerful and joyous, and hopefully realize "life is good".

In the above spirit of the Holidays, I hope you will join fellow BCBA members and the Broward legal community at the BCBA Holiday Party, on December 12, 2019, at the beautiful NSU Art Museum. This is a Don't Miss signature event, free for all current BCBA Members (\$30.00 for member guest), with an abundance of appetizers, main dishes and libations. As always, we will be collecting new and unwrapped toys for children ages 3 to 17 as part of the Young Lawyers Section Holiday in February event. As we attend holiday parties, please reach out to members you may not know, say hello, engage in some conversation and re-enforce the concept that the BCBA is one big welcoming family. Also, please thank the Judges of the 17th Judicial Circuit, all of whom are members of the BCBA, as they are attending, participating, assisting and/or speaking at the many BCBA CLEs and other events. Thanks should also be extended to our elected officials for their service, as well as the Holiday Party and BCBA annual sponsors.

This past month the BCBA started our Judicial Jaunt Series, with Judge Jeffrey Levenson enlightening a packed house of attorneys, who wanted to receive insights and suggestions with respect to judicial procedures and the handling of various types of matters and issues before the Court. Not only was the Judicial Jaunt informative, but it was equally entertaining. Other upcoming Judicial Jaunts will feature Judge Nicholas Lopane, Judge Michael A. Robinson, Judge Carol-Lisa Phillips, Judge Carlos A. Rodriguez and Chief Judge Jack Tuter. I encourage you to take advantage of this opportunity to learn from the Judges and suggest you register early, because there are limited seats and they usually sell out.

The BCBA has a full Calendar of Events for the upcoming year. Please check the online BCBA calendar regularly, as well as read our first class Barrister, for important CLE, event and other information.

On January 24, 2020 there will be the 2020 Judicial Procession and State of the Circuit, in the Jury Assembly Room at the Courthouse. This event affords BCBA members and our community the opportunity to be informed by Chief Judge Jack Tuter of all the happenings in the 17th Judicial Circuit. The event also provides the opportunity for the BCBA and its members to thank the members of the Judiciary. Sponsorship opportunities are still available. On February 1, 2020 the BCBA and local Voluntary Bar Associations will host our second annual South Florida Legal Mentoring Picnic.

Thanks to all who attended and were involved in helping to make our Bench and Bar Convention a huge success. We have received nothing but positive feedback on the new first rate venue, Signature Grand, the food, layout and overall programming and breakout sessions. I would also like to congratulate the YLS on a fabulously successful and enjoyable Golf Tournament (our team, 14 under, no thanks 2 me).

I wish everyone an enjoyable holiday season and health, happiness and the very best in the New Year.



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Lindsay M. Massillon, Esq.

It has been a busy year for the Young Lawyers Section. December is a great time to not only reflect on the year, but also to revel in the warmth of the friends and family who surround you this holiday season. Looking back on 2019, I am in awe at all that we have accomplished. Brent Reitman started off 2019 leading our organization through June, and I have had the honor of carrying the torch for the past six months. To recap, we held a phenomenal Black History Month Luncheon in February (standing room only) with the T.J. Reddick Bar Association, Caribbean Bar Association, and the Haitian Lawyers Association. Our keynote speaker, Florida State Representative Dotie Joseph, provided us with insight on her journey in politics. We rounded out the spring with one of our premier events, our Judicial Reception, at the Museum of Discovery and Science. The Judicial Reception provided our membership with the opportunity to mingle with our esteemed bench in a lively atmosphere.

Of course, the BCBA Installation Gala was a personal highlight of mine. Kelley Uustal (as always) had everyone in the 007 mood as we welcomed in our new BCBA and YLS Boards of Directors. In the Fall, YLS hosted a number of social events with charitable organizations, including Voices for Children and Gilda's Club. And, on November 9, we held our inaugural Walter G. "Skip" Campbell Memorial Charity Golf Tournament where we raised over \$30,000 for Nicklaus Children's Hospital. Thanks to our Title Sponsor, Krupnick Campbell Malone Buser Slama Hancock, and the efforts of our Board of Directors, we made it hard for the Florida Bar's Young Lawyers Division not to select Broward's YLS as the Large Affiliate of the Year.

We welcome the excitement of the New Year, and new decade. In February, we are holding our Second Annual Lawlapalooza! event, a one-day bench and bar convention exclusively for our members. Our Black History Luncheon, our biggest luncheon of the year, will be a testament to the rich culture we enjoy as lawyers practicing in Broward County. At our Annual Holiday in February event we will be throwing a huge holiday-themed party for foster children at the Museum of Discovery and Science. I cannot wait to see all the kids enjoy lots of pizza, games, crafts, and presents (thanks to a grant from the Florida Bar Young Lawyers Division). And, our first ever Mental Wellness series will explore what is still missing to make our profession less mentally draining. The Florida Bar has made it clear that attorneys are suffering from stress at alarming rates, driving many to substance abuse and depression. Now that we know there is a problem, and we have destigmatized the issue—what are law firms doing to create a culture of mental wellbeing?

Join me in toasting 2019, and welcoming 2020 with open arms. On behalf of the YLS Board and myself, we wish you a happy and healthy 2020. May you make your well-being a priority, grow your practice, and continue to enjoy the full slate of events we have planned for the next year. Cheers!



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How Texting Can Benefit Your Firm and Client

By *Natalie Giachos, Esq.*

For most people today, texting is their preferred method of communication and with a 98% open rate, it is also probably the most effective way to reach people.

So why are lawyers so hesitant about using text, especially when failing to communicate effectively with clients has been one of the main bar complaints brought against lawyers for years?

If you are still on the fence about it, here are some benefits texting can bring to your firm for you to consider:

1. Time

Texts are meant to be quick and easy which can save you and your staff a lot of time.

A 10-minute phone call to remind a client about an upcoming court hearing can be done in one minute via text, directions included. It is also a great tool for quickly sharing information such as documents, pictures, video, etc.

Saving time on these kinds of communications will free-up time that can be spent working on other cases.

2. Improved Communication

We are all busy and there are just not enough hours in the day to call all of our clients as often as we would like and when we do, we usually get a voicemail. Adding text would allow for a convenient and quick method to reach clients that can be done from anywhere.

It also gives clients a quicker and easier way to respond, which should improve response rates from those hard to reach clients.

3. Record Keeping

A quick internet search will reveal a variety of third-party apps that allow you to keep and maintain records of all of your texts.

Just like with email, all information can be saved and preserved for your client file.

4. Security

Since many of us communicate with clients regarding sensitive and confidential information, steps should be taken to make sure your texts are protected.

Thankfully, today there are a variety of security options available to us.

One of the main things to look for is that your messages are encrypted so that others cannot intercept or view your messages. Encryption is the process of encoding information to prevent anyone other than its intended recipient from viewing it.

There are several popular apps that allow you to send encrypted messages, many of which you may already be using and are free. Do your research, but the key is making sure you are using an app or program that encrypts your messages.

There are also other security features available such as password protected texts, the ability to prevent screen shots, and even timed texts that disappear after a specified amount of time.

You can select the level of security you feel is warranted for your firm but the options are out there so security shouldn't be a concern when it comes to texting.

5. Boundaries

Some of you may be reluctant to give out your personal cell phone numbers to clients. However, if you clearly set forth your firm's texting/phone policy with clients in advance, you should not have an issue.

The Bar rules do not require you to respond to your clients at 2am on a Saturday night just because they call or text you at that hour. If your firm's policy for responding to phone calls is that they will be returned by the next business day, there is no reason your text policy cannot be the same.

Texting may not be the ideal form of communication for detailed or complicated legal discussions, but it is definitely something to consider as an option for keeping in touch with clients and for sharing and exchanging quick messages.

Natalie Giachos, Esq. is the Managing Attorney at The Solution Law Firm, P.A., where she practices Estate Planning, Personal Injury & Insurance Litigation. Natalie has a passion for Marketing and enjoys helping attorneys and entrepreneurs achieve success through online marketing. Natalie can be reached at Natalie@solutionlawfirm.com.



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“Necessary” Steps to Protect Your Client’s Maritime Liens

By Benjamin W. Dowers, Esq.

In 2018, Florida’s Department of Motor Vehicles reported nearly 1 million registered vessels in the state. Throughout Florida, vendors and suppliers provide materials and services, known as “necessaries,” to the vessels and failure to pay for the necessaries can give rise to maritime liens. Considering the different vessels, what qualifies as a necessary—and ultimately a maritime lien, will vary dependent on the vessel. To protect your client from a departing vessel, time is of the essence to enforce a maritime lien.

Maritime liens serve a vital role in maritime law because it allows a creditor to attach an interest in rem (or to the vessel) and exercise that interest quickly. Maritime liens arise from general maritime law and statutes. The priority of maritime liens generally descend as follows: (1) custodia legis costs, (2) seaman wage claims, (3) maintenance and cure claims, (4) salvor’s claims, and (5) tort claims. Non-maritime liens have the lowest priority. Also, the general rule is the most recent lien has higher priority than previous liens. Maritime liens are unique in that it a vessel’s sale can satisfy the lien rather than obtaining a judgment and then collecting from the vessel’s owner. *Silver Star Enters., Inc. v. Saramacca MV*, 82 F.3d 666, 668 (5th Cir.1996).

The types of necessaries are numerous and the court must evaluate the vessel’s functions, intended purposes, and the nexus between the vessel and the necessary to determine whether a lien exists. For example, a luxury yacht may require high-definition televisions with integrated satellite systems to cater to a distinct clientele. Thus, the high-end electronics would be necessary for the luxury yacht to carry out its function and intended purpose. Conversely, the same electronics on a 20’ water taxi would not be necessary to the vessel’s operation.

In *Payne v. S.S. Tropic Breeze*, 423 F.2d 236 (1st Cir. 1970), the court held that a captain’s travel expenses constituted a necessary and the master was entitled to a maritime lien since the costs were expended to ensure his seaman’s wages.

In *Total Safety US, Inc. v. Con-Dive, LLC*, 2009 WL 1794771 (S.D. Tex. 2009), the court found that equipment such as self-contained breathing

apparatuses, fixed gas detection systems, and installation services provided to vessels conducting subsea operations in a gas field were necessaries.

The initial step to protect your client’s maritime lien is to file a verified complaint with the federal district court. The court will review the verified complaint, and if probable cause exists, then the court will direct the clerk to issue a warrant for the vessel’s arrest. The U.S. Marshals will arrest the vessel and the vessel’s possession is usually assumed by a custodian or a bond is posted to release the vessel. Next, provide a detailed description of the necessary, how it got to the vessel, who authorized it, and how it fulfills the vessel’s function and intended purposes.

Extending the example of the electronics on the luxury yacht, describe the components’ model numbers and prices. Describe how and when the client delivered or installed the necessaries. Identify the vessel’s agent who authorized the necessaries. Finally, cite the Safety case with an analysis on how the necessary is relevant to the vessel’s function and intended purposes.

Generally, there is no avenue to recover attorneys’ fees and costs unless your client had a contract with the appropriate language. However, recovery of damages is better than average given the ability to force a judicial sale of the vessel and recover court costs. As with all cases, proper preparation and knowledge of local rules can save your client’s fees and achieve a beneficial outcome.

Ben Dowers, Esq. is a partner at Gunther McIntosh, PLLC in Fort Lauderdale. He practices commercial litigation, construction defect litigation, and admiralty and maritime law. He can be reached at bwd@gunthermcintosh.com





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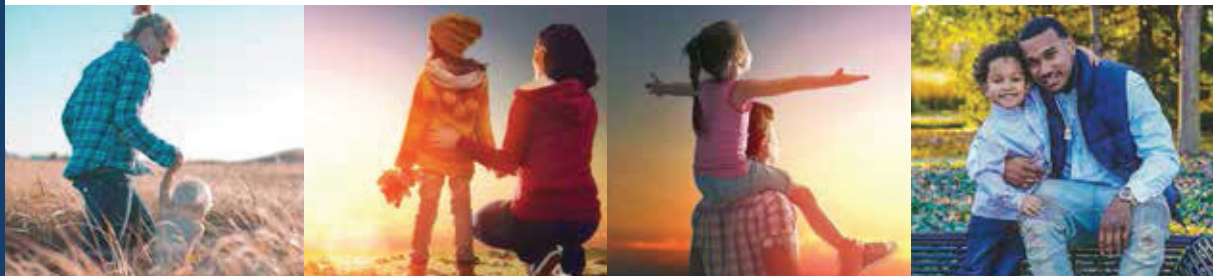
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THE BROWARD COUNTY BAR ASSOCIATION
AND 17TH JUDICIAL CIRCUIT PRESENT



2020 Judicial Procession and State of the Circuit

Judicial Procession, Chief Judge's Circuit Update, and Recognition of the Friends of the Bar Awardees

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Current Issues Facing Broward County Court With The Honorable Robert W. Lee

By Brendan A. Sweeney, Esq.

Broward County is Florida's second largest county with a population just under two million people, and the caseloads are among the highest in the state. Judge Robert W. Lee, as the presiding Administrative Judge of Broward County Court, has his finger on the pulse of everything that is going on with the thirty-two Judges presiding in Broward's County Court. This includes regular reviews of each County Court Judge's dockets to ensure that the workload amongst the Judges is evenly distributed and reviewing reports of caseloads that are greater than eighteen months old. During my recent meeting with Judge Lee he had just finished his complete review, analysis, and evaluation of every County Court division, both civil and criminal. While some of Broward's past Administrative Judges of County Court would handle a reduced caseload due to the immense administrative duties, Judge Lee handles a full caseload in addition to his duties as Administrative Judge of County Court. With the beginning of a new decade around the corner there are some new issues that Broward County Court is being faced with that Judge Lee would like all of us to know about.

On January 1, 2020 the jurisdictional limit in County Court will be increased from fifteen thousand dollars (\$15,000.00) to thirty thousand dollars (\$30,000.00) and will have a significant impact on County Court caseloads. With respect to the areas of law that are expected to increase with the new jurisdictional limit, the prognosticators all seem to agree that that there will most likely be a wave of consumer debt cases. These cases primarily concern credit card debt, as well as potentially first party insurance cases. Only the future will tell what will transpire; however, Judge Lee and his fellow Judges in Broward County Court are all well prepared for the new influx of cases.

The 2020 electoral season will most likely be one of the most important in recent history, due to many high-profile positions having open seats for the first time in years. These include, but are not limited to, State Attorney and Public Defender, as well as elections for Clerk of the Circuit Court and Sheriff. In addition to their regular duties, this 2020 electoral season brings a logistical nightmare for County Judges to preside in Court and manage their regular dockets, as well as comply with section 102.141, Florida Statutes. Section 102.141, Fla. Stat., specifically sets forth the duties of the County Canvassing Board and requires that Judges be at all voting tabulation locations and canvass the votes as soon as the votes are opened. Twenty-eight of the thirty-two sitting Broward County Court Judges will

be in the eighteen-week, four Judge per week rotation. The tabulation of votes commences with the mail-in ballots, starting at 7:00 a.m., and continues well into the very late hours of the night. Judge Lee, who cut his teeth as a Judge in the electoral process in the historic Bush vs. Gore, has already thoroughly thought everything out, and has already handled the assignment and backups for the entire eighteen-week period.

One area which has dramatically changed since Judge Lee rose to the bench in 1997 is the increased oversight by the Office of the State Courts Administrator (OSCA) based out of Tallahassee. The State Court Administrator serves under the direction of the Chief Justice of the Florida Supreme Court and the other six justices and oversees the operation of numerous court initiatives and administrative functions throughout Florida's state courts. Rule 2.250, Fla. R. Jud. Admin. sets forth what is presumptively reasonable to complete cases throughout Florida. Pursuant to Rule 2.250, Fla. R. Jud. Admin., civil jury cases shall take eighteen (18) months from filing to final disposition, non-jury cases shall be disposed within twelve (12) months, and small claims matters shall be disposed of within ninety-five days. These deadlines are for the entire state, and do not take into account the size of the jurisdiction, or the population of the area. The increased oversight by OSCA coupled with underfunding within the Judicial branch, has put a lot of pressure on Judges in Broward County, and throughout Florida.

With the new decade on the horizon, there are many new issues and matters that the Broward Judiciary is facing. Rest assured, the Broward County Court Judges are ready for the new wave of litigation due to increased jurisdictional limits, increased demand on their time due to the electoral season, and increased oversight by the OSCA to ensure that cases are being disposed of in an appropriate time frame.

Brendan A. Sweeney, Esq., LL.M., Sweeney Law, P.A. a boutique two-attorney law firm in downtown Fort Lauderdale, Florida, is an AV Preeminent Martindale Rated Attorney, which has been selected as a Florida Super Lawyer and Florida Legal Elite in 2019, and regularly handles construction, real estate, hospitality, and business transactional and litigation matters throughout Florida.



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VAPING IN FLORIDA UPDATE

By Joshua Lida

What Exactly Is Going On?

Earlier this year, reports began circulating of a mysterious lung illness afflicting young people, linked to vaping, with many ending up in the hospital and mostly under intensive care. The first reports of the illness, as it is currently analyzed, appear to go back to April of this year.

Since April, the outbreak has continued to spread and there have been cases reported throughout the country in people of all ages.

The Centers for Disease Control and Prevention (CDC) have assigned the illnesses, identified as cases of e-cigarette, or vaping, product use associated lung injury, the acronym EVALI.

As of October 29, 2019, 1,888 cases of EVALI have been reported to the CDC from 49 states (all except Alaska), Washington D.C., and 1 U.S. Territory. 37 deaths have been confirmed in 24 states.

Determining what is causing the illnesses is proving to be difficult with no single brand, chemical, or type of vape seemingly the sole culprit. Additionally, not all the lung injuries are identical.

As of the writing of this article, the CDC reports “[a]t this time, FDA and CDC have not identified the cause or causes of the lung injuries in these cases...[n]o one compound or ingredient has emerged as the cause of these illnesses to date; and it may be that there is more than one cause of this outbreak.”

What Steps Have Authorities Taken In Response?

States’ responses to EVALI have varied.

For example, on September 24, 2019, the Governor of Massachusetts declared a public health emergency and banned the sale of all vaping products in Massachusetts for 4 months.

New York, Michigan, Oregon, Rhode Island, Washington, and Montana have all entered some type of temporary ban on flavored e-cigarettes and/or flavored vaping products.

These bans appear to be the subject of fierce legal challenges as their validity are questioned.

Additionally, the Trump Administration is expected to finalize a ban on almost all flavored vaping products with exemptions only for tobacco and menthol flavors.

What Has Florida Done In Response To EVALI?

As of the writing of this article, Florida has not taken any formal steps regarding banning or limiting

vaping products (although a ban on workplace vaping, unrelated to EVALI, did go into effect earlier this year).

The Florida Department of Health, pursuant to a statement on its website, is taking the following steps: (1) coordinating with the CDC and FDA to develop a disease case definition to report cases of illness to the CDC to be part of the national investigation; (2) working with county health departments and clinicians to identify and investigate reports of lung disease associated with electronic cigarette or vaping use; and (3) monitoring and conducting surveillance of lung disease that is associated with electronic cigarette or vaping use.

With Florida taking the wait and see approach for now, the legal issues swirling around vaping in terms of bans, what types of bans, temporary prohibitions, etc. do not appear to be as prevalent in Florida. That may soon change.

A proposed bill in the house (HB 151) would ban flavored e-cigarettes and raise the purchasing age to 21. The passage of such a bill would undoubtedly lead to complex and contentious legal proceedings.

It’s All a Bit Uncertain

There is a lot we still do not know regarding the future of vaping and e-cigarettes in the country and Florida, not only regarding the safety aspects of vaping, but also the legal standing both nationally and locally.

What we do know is that it is a fascinating issue, from a legal perspective, with countless possibilities and a potentially huge impact on a growing industry.

Source: Centers for Disease Control and Prevention; Outbreak of Lung Injury Associated with Use of E-Cigarette, or Vaping Products, last updated October 31, 2019, https://www.cdc.gov/tobacco/basic_information/e-cigarettes/severe-lung-disease.html

Source: Axios, Scoop: Trump Ready To Ban Vape Flavors Except Tobacco, Menthol, November 1, 2019, <https://www.axios.com/trump-ban-flavored-vaping-products-4830652d-af8d-4c84-81b0-2174e9ad3344.html>

Josh Lida is a partner at Lida Law, PLLC primarily practicing criminal defense, family law, and professional license defense. He can be reached at Josh@lidalaw.com



Readers take note, this is a situation with ongoing development and changes. Information may change and be different subsequent to writing and publishing of this article. We encourage you to do your own research to stay informed on the facts and new information regarding EVALI and vaping laws

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CASE LAW UPDATE

By Debra P. Klaubar

Second District certifies question to the Florida Supreme Court about whether the Wrongful Death Act violates equal protection by excluding medical malpractice cases from those in which adult surviving children have a statutory right to recover noneconomic damages after the loss of a parent.

Florida's Wrongful Death Act allows an adult child to recover noneconomic damages for the wrongful death of a parent who is not married at the time of death. However, the statute precludes adult children from recovering those damages when the claim arises out of medical malpractice. The plaintiff argued that the medical malpractice exception violates the equal protection guarantees of the Florida and United States Constitutions. Because the Florida Supreme court upheld this statute in 2000, based on a determination that the statutory exclusion was "rationally related to controlling healthcare costs and accessibility", the trial court followed that law. However, in light of more recent Florida Supreme Court decisions which have concluded that there is no evidence that a medical malpractice crisis still exists, the Second District asked the Florida Supreme Court to reconsider the issue, and certified the following question as one of great public importance:

IN LIGHT OF THE SUPREME COURT'S DECISIONS IN ESTATE OF MCCALL V. UNITED STATES, 134 SO. 3D 894 (FLA. 2014) AND NORTH BROWARD HOSPITAL DISTRICT V. KALITAN, 219 SO. 3D 49 (FLA. 2017), DOES SECTION 768.21(8), FLORIDA STATUTES, VIOLATE THE EQUAL PROTECTION GUARANTEES OF THE UNITED STATES AND FLORIDA CONSTITUTIONS, NOTWITHSTANDING THE COURT'S PRIOR DECISION ON THE ISSUE IN MISRAHI V. NORTH MIAMI MEDICAL CENTER, LTD., 761 SO. 2D 1040 (FLA. 2000).

Santiago v. Rodriguez, No. 2D18-3114, 44 Fla. L. Weekly D2562 (Fla. 2d DCA Oct. 18, 2019).

An uneven floor, by itself, does not constitute a latent, hidden or dangerous condition and, rather, is an open and obvious danger about which a defendant has no duty to warn.

The plaintiff was injured at a roller-skating rink when she attempted to step off of the rink and one of her skates got caught between the skating rink floor and the floor of the common area. The trial court granted summary judgment in favor of the defendant, on the basis that the difference in the floor levels was open and obvious, rather than inherently dangerous, thus there was no duty to warn. The appellate court affirmed, citing a number of Florida decisions holding that uneven floor levels in public places, in and of themselves, do not create a latent, hidden or dangerous condition. The decision further notes that the dim lighting did not transform it into a latent danger either. Contardi v. Fun Town, LLC, No. 5D18-3518, 44 Fla. L. Weekly D2431 (Fla. 5th DCA Sept. 27, 2019).

In Florida, costs are awarded to the "party recovering judgment," as opposed to the prevailing party.

The law allowing for the recovery of costs, section 57.041(1) of the Florida Statutes, provides that "[t]he party recovering judgment shall recover all his or her legal costs and charges which shall be included in the judgment". The court receded from prior opinions where it referred to a prevailing-party standard as it pertains to the recovery of costs and recognized that although the party recovering the judgment, and the prevailing party, are often the same, the

proper standard for the recovery of costs focuses on the party recovering the judgment, which should not be confused with the prevailing party standard applicable to attorneys' fees. *Sherman v. Sherman*, No. 4D18-3578, 44 Fla. L. Weekly D2391 (Fla. 4th DCA Sept. 25, 2019).

Appellate court affirms trial court order allowing a trial following non-binding arbitration, despite the fact that plaintiff did not technically comply with the provisions of the rule for requesting a trial de novo.

In this medical negligence action, the trial court sent the case to non-binding arbitration. Following the entry of an award, neither party formally moved for a trial de novo. However, the plaintiff did file a statement of facts, identification of disputed facts and identification of issues of law, and the defendant did the same. The trial court subsequently granted the defendant-hospital's request to enforce the non-binding arbitration decision. The Fourth District reversed, holding that even though the plaintiff had not technically complied with the procedural rule, by filing a formal motion for trial, she had timely indicated her rejection of the arbitrator's decision and her wish to proceed with the trial. The appellate court's ruling was based on the facts that: (1) the hospital-defendant had also filed its own acknowledgement that there were disputed issues of fact and law; (2) the defendant had arguably engaged in "gotcha" tactics; and (3) the defendant had not been prejudiced by the lack of a formal request. Ultimately, the court found that the hospital had, by its own actions, waived the plaintiff's strict compliance with the rule, thus allowing the trial to proceed. *DeAcosta v. Naples Community Hospital, Inc.*, No. 2D18-423, 44 Fla. L. Weekly D2402 (Fla. 2d DCA Sept. 25, 2019).

Fourth District explains that a legal malpractice case must be stayed until the underlying litigation is resolved.

A former client sued his attorneys for negligently drafting documents related to a hedge fund transaction and failing to warn him of the risks of the transaction. His attorneys moved to stay or abate the legal malpractice action until the underlying litigation - between the former client and those who purchased the shares in question - was resolved. The trial court denied the motion to stay and the appellate court granted a writ of certiorari, holding that the legal malpractice claim could not proceed until the underlying litigation determined whether the plaintiff incurred any damages as a result of the purported negligence on the part of his attorneys. *Kasowitz Benson Torres, LLP v. Mariano*, No. 4D19-1209, 44 Fla. L. Weekly D2353 (Fla. 4th DCA Sept. 18, 2019).

Debra P. Klaubar, Esq., a partner with Haliczzer Pettis & Schwamm, oversees the firm's trial support and appellate practice and provides guidance to litigators throughout Florida. Debbie can be reached at: 954-523-9922 or dklaubar@hpslegal.com





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Reflection: More Than Just An Image

We all have heard the infamous saying: “history repeats itself.” But the question is, why? Are we not learning from our mistakes and those of others? Are we not implementing important lessons and necessary changes? Are we stuck in a belief that things will not change? Or, are we simply just not taking time to evaluate these questions in the first place?

Reflection is more than just an image. It is an active process that allows us to learn and grow by evaluating our past experiences. The benefits of reflection are extensive and apply to both the personal and professional arenas. Some of the advantages include improvement in the areas of relationships, thought clarity, decision making, and focus.

Professionally, we should take time to evaluate and reflect on processes, projects, and outcomes. This should be done individually and as teams to identify what went well, what did not go well, and what needs to be implemented in the future. Encouraging teams to work together in a positive environment leads to progressive change and growth.

Reflecting on a personal level is also important. Taking time to evaluate ourselves allows us to reconnect with our values, identify what is important to us, and improve self-awareness. This leads to significant benefits including improved relationships, better sleep, and helps reduce stress and anxiety.

The following steps can be followed to assist you in implementing the reflection process effectively:

1. Schedule a time
 - a. This can be personal time or a meeting time for your team
2. Start Small
 - a. Work on small topics first, then expand as you see fit
3. Describe
 - a. Describe the topic/experience you are evaluating
 - b. Write down your thoughts
4. Analyze
 - a. Analyze your experience from start to finish
 - b. Write down your thoughts
5. Create an Action Plan
 - a. Outline a plan of action that will promote positive change
 - b. Create an action plan even if things went well, so you can stay on track
 - c. Make sure the plan is simple and easy to understand

6. Implementation
 - a. Implement your Plan
7. Repeat or Reassess
 - a. Repeat the reflection process with another topic or reassess topics you have already evaluated

The following key elements should be considered and applied to achieve optimal results:

1. Reflection should be an ongoing process throughout the year; make it a habit
2. Reflection should be done even if things are going well
3. Evaluate yourself, including your mindset
4. Be honest
5. Be open-minded to feedback
6. Keep your ego in check
7. Do not be judgmental
8. Allow and encourage others to be involved in the process (especially teams)

John Dewey, an American philosopher, psychologist, and educator who was influential in the theory of learning, discussed in his work the concept that “we learn by reflecting on our experiences, not from experience alone.” It is true we cannot rewrite our own history and actions, but we can reflect on them to promote positive change and growth for the future. If we are not learning, we become stagnant, or, even worse, fall behind.

With the new year approaching, it is a perfect time to implement the process of reflection and create a habit for the future. Reflecting on our experience is how we learn. This is an important practice to propel yourself forward in the right direction. Acknowledge your thoughts honestly and consider what might be holding you back; mindset can be one of the most important factors. Consider the concept that “failure” is only an opportunity to grow. As you move forward, hopefully history is only repeated in a positive manner, in all aspects of your life.

Deborah Ward, APRN, LNC is a board-certified nurse practitioner working as a legal nurse consultant. Her nursing expertise and legal nurse consultant services assist attorneys with full case development of a wide range of medical related cases. Deborah can be contacted at deborah@drwardconsulting.com or (954) 290-7311.



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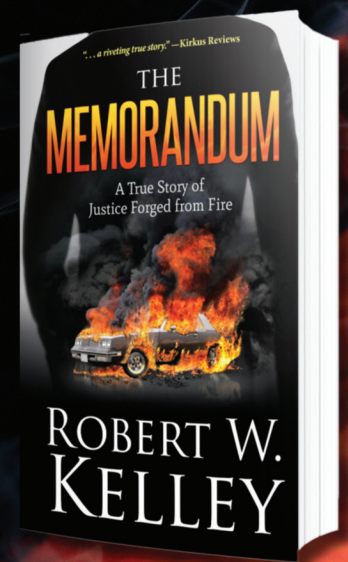
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**December 3
Northeast Broward Holiday Party**

*Sponsored by: ProTranslating, Inc.
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Time: 5:30 p.m. – 8:00 p.m.

Venue: Funky Buddha Brewery

Cost: Free Northeast Broward Section;
\$10 BCBA Member; \$25 Non-Member

**December 5
County Court Insurance
CLE: Navigating
the 17th Circuit Website**

Time: 12:00 p.m. – 1:30 p.m.

Venue: BCBA Conference Center

Cost: Free BCBA County Court Section
Member; \$20 BCBA Member;
\$45 Non-Member

**December 5
Northwest Broward Holiday
Party**

Time: 5:30 p.m. – 7:30 p.m.

Venue: The Law Office of Alice Reiter Feld

Cost: Free to all, *Feel free to bring
a local friend!*

**December 10
Dade County Bar: Mediation
Settlements & Proposals
for Settlement Avoiding
Malpractice Pitfalls**

*Sponsored by: Florida Lawyers
Mutual Insurance Company*

Time: 12:00 p.m. – 1:30 p.m.

Venue: Dade County Bar Association

Cost: Free DCBA Member; \$15 Future

Register: www.dadecountybar.org/events

**December 11
Admiralty CLE:
Who's Responsible**

Time: 12:00 p.m. – 1:30 p.m.

Venue: BCBA Conference Center

Cost: \$20 BCBA Member;
\$40 Non-Member



**December 12
2019 BCBA Annual Holiday Party**

Time: 5:30 p.m. – 8:30 p.m.

Venue: NSU Art Museum Fort Lauderdale

Cost: No Charge BCBA Member;
\$30 Member Guest

*Please bring an unwrapped gift for
YLS Holiday in February*

**December 13
Judicial Jaunt Series:
Judge Nicholas Lopane**

*Sponsored by: Rissman, Barrett, Hurt,
Donahue, McLain & Mangan, P.A.*

Time: 12:00 p.m. – 1:30 p.m.

Venue: BCBA Conference Center

Cost: \$20 BCBA Member;
\$45 Non-Member

**December 16
ASFMA CLE: Judges Perspective
on Mediation**

Time: 12:00 p.m. – 1:30 p.m.

Venue: BCBA Conference Center

Cost: \$25 ASFMA/BCBA Member;
\$40 Non-Member

**December 19
YLS Holiday Luncheon**

*Join us for a Holiday Luncheon and
Choir Presentation from
Dillard High School Chior*

Time: 12:00 p.m. – 1:30 p.m.

Venue: Timpano Las Olas

Cost: \$25 BCBA Member;
\$30 Non-Members

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Date: January 24, 2020

Time: 1:00 p.m.

Venue: Broward County
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**2020 South Florida Legal
Mentoring Picnic**

Date: February 1, 2020

Time: 12:00 p.m.

Venue: C.B. Smith Park

**2020 Workers'
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Date: February 28, 2020

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