

# BROWARD COUNTY BAR ASSOCIATION BARRISTER

FEBRUARY 2019

## A Celebration of Women in the Legal Community Broward's Women Pioneers *International Women's Day*



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**ON THE COVER**

International Women's Day is **Friday, March 8th** join us on this day for a Celebration of Women in the Legal Community. We will be honoring Broward's Women Pioneers: The Honorable Elizabeth Athanasakos, The Honorable Miette K. Burnstein, The Honorable Melanie G. May, The Honorable Ginger Lerner-Wren, Linda A. Conahan, Esq., Carmen S. Johnson, Esq., Barbara J. Prager, Esq., Juliet M. Roulhac, Esq., Adele I. Stone, Esq. & Dianne J. Weaver, Esq. For more information visit [Browardbar.org/calendar](http://Browardbar.org/calendar).

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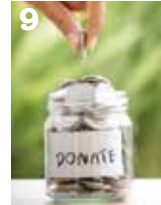
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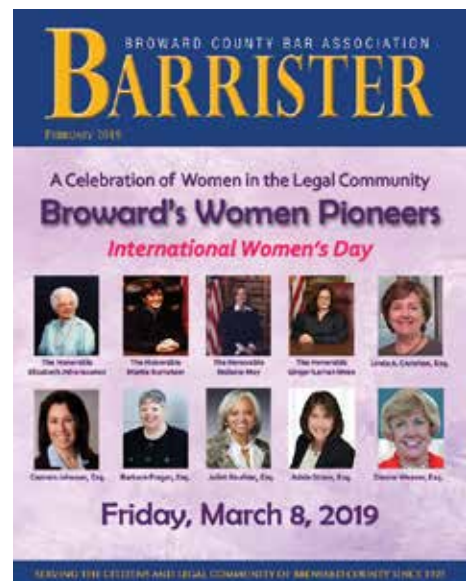
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FEBRUARY 2019

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*International Women's Day*

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*Edwina V. Kessler*

One of the great benefits of being a member of the Broward County Bar Association are the numerous opportunities it provides for every member to contribute to the betterment of the organization and our legal community, while also expanding your own professional and personal networks. One way to achieve this is by joining any of the numerous committees and sections. By joining a committee or section you have an opportunity to meet others that practice in your field. Many of the sections have begun a listserv, where people are sharing information. Each section hosts at least one CLE a year.

On the 15th of February, 2019, we will host our third Judicial Jaunt with the Honorable John B. Bowman. I have had the opportunity to attend the first two Judicial Jaunts where Judge Haury and Judge Bidwill provided us with insight to their procedures. Judge Bidwill demonstrated the manner in which

to upload your Motions to the Judge in the CMS scheduling portal in lieu of providing hard copies. I would encourage everyone to attend these events.

Our Workers' Compensation Section will be returning to the Riverside Hotel to host the 2019 Workers' Compensation Conference and Reception on Friday, February 22, 2019. During the conference we will be honoring retiring Judge The Honorable Geraldine Hogan, presenting the Vance Moore Professionalism Award to Richard Berman, Esq. & welcoming the newest member of the Broward County Judiciary The Honorable Michael Ring. Visit [browardbar.org/calendar](http://browardbar.org/calendar) for more information!

The 17th Judicial Circuit and the BCBA will present the Black History Celebration Lunch on the 22nd day of February 2019, in the Broward County Court House Jury Assembly Room. The Keynote speakers will be retired Justice James E. C. Perry and US Congressman Alcee L. Hastings. Justice Perry was the first African American appointed to the 18th Judicial Circuit by former Governor Jeb Bush. He was a Supreme Court Justice until his retirement in 2016. Congressman Alcee L. Hastings was appointed by Governor Reubin Askew to the Circuit Court. In 1979 President Jimmy Carter nominated Mr. Hastings to the United States District Court of the Southern District of Florida, where he was confirmed and served on the bench until October of 1989. He was the first African American to be appointed to the Federal Bench in Florida. Congressman Hastings was elected to the United States House of Representatives in 1992 and has continued to represent Florida. Sponsorships are still available for this event.

The BCBA is excited to announce that we have launched a new program, a legal job board. Any member or non-member can post a job listing for any legal related field at a low cost. You may search for a job free at this time.

All BCBA CLE's that take place at the BCBA center and are videotaped. They can be viewed through our B-Connected™ Portal with member & non-members rates starting at \$20. Although, attending the CLE in person always has the added benefit of being able to catch up with peers and network, however If you are unable to attend the CLE, the B-Connected™ portal is a great way to view what you have missed.

The Publicity Committee needs you! We are always looking for new members to participate in the creative process of planning The Barrister and/or those who enjoy writing articles. Writing an article is a great way to get involved and get your name recognized by other members. We are looking for folks to write segments showcasing the positive attributes and contributions of BCBA members. If you or know of someone who should be recognized, please contact Amanda Marks at [Amanda@browardbar.org](mailto:Amanda@browardbar.org). We will not ask you to write about the person so, do not let that stop you for submitting the information. Every member of the BCBA is eligible for recognition.

I hope to see you at an event soon! **B**

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## letter from the young lawyers' president



*Brent M. Reitman*

On the second weekend in January, the Young Lawyers Division of the Florida Board of Governors held its annual Affiliate Outreach Conference in St. Augustine, Florida. This is a time where many of the voluntary bar association affiliates throughout the state gather in order to collaborate and discuss upcoming events and issues and to reflect on the previous year.

During this conference the Young Lawyers Division of the Florida Board of Governors recognizes the achievements of the various affiliate organizations and their programming for the year.

In the past, the Broward County Bar Association Young Lawyers Section has had tremendous success in being recognized at the Affiliate Outreach Conference as the Large

Affiliate of the Year. The Broward County YLS has had the tremendous fortune of winning the distinction of Large Affiliate of the Year for the past three (3) consecutive years.

This year, after our most ambitious year yet, we applied for the award yet again.

Unfortunately, our organization was the victim of its own success as the YLD sentiment was that if Broward won for an unprecedented fourth year in a row it would discourage other bar associations from participating in the competition. Instead, the award was given to another county's young lawyers section that, while praiseworthy, has a calendar that contains approximately half of the amount of events as Broward's YLS.

Although the achievement of winning a title four consecutive years would be a feat accomplished by very few (in the 1960's the Boston Celtics led by Bill Russell won more than 4 consecutive NBA titles, the UCLA Bruins did the same under John Wooden, the Houston Comets won 4 consecutive WNBA titles from 1997-2000, and in the NHL the New York Islanders achieved this feat, and the Montreal Canadiens actually had two separate runs of 4 consecutive titles); I have tried to find the positive in this year's loss despite having our best year yet.

In the realm of sports analogies – I have always argued that the greatest athlete of all time is the legendary Jim Brown. Not only is Jim Brown one of the greatest NFL running backs of all time (one of the few NFL players of all time to average more than 5 yards per carry) – but, often overlooked is that he was probably the greatest lacrosse player of all time. He is a member of the lacrosse hall of fame, a two-time All American Midfielder, a co-leader of the national scoring championship, and a collegiate national champion.

However, the feat of Jim Brown that I find most impressive is that Jim Brown was so much better than everyone else at lacrosse during his reign of dominance at Syracuse that an official rules change was made to the game to make it easier for other players to try and separate him from the ball. In other words, he was so great that he singularly inspired a change in the rules to make the game of lacrosse more competitive for others.

So, coming full circle, although winning a fourth consecutive award for the YLS would have put us in the sports pantheons of only a few sports dynasties – losing out on this award in an effort to make the competition "more competitive" for others is a historical sports feat held by only a single legend. In that end, I think we can all feel extra accomplished even in defeat. **B**





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# Why it helps to have ‘the talk’ about philanthropy

by David Ratcliffe

Talking to clients about philanthropy does not always come naturally for attorneys more accustomed to discussing wills, trusts and tax law.

But having “the talk” with a client about charitable giving does not have to feel awkward for professional advisors who help people manage their wealth and plan their estates.

Philanthropy is often a priority for people throughout their lives – giving to religious institutions, charities and other good causes. Why wouldn’t they want professional help to maximize the impact of their giving?

In fact, in a June 2018 survey commissioned by U.S. Trust and The Philanthropic Initiative, nearly 60 percent of high-net-worth individuals said they expect their professional advisors to be involved in helping plan their philanthropy.

That is why philanthropy should be on the checklist of topics to cover with clients – as routine as asking about family, assets and investments.

## Ask early about philanthropy

The conversation about charitable giving can start even before sitting down with clients. Adding a question about interest in charitable giving to client questionnaires makes philanthropy a normal part of an initial client meeting.

Having the philanthropic conversation early gets clients thinking about their legacies and the different ways their wealth can have impact. For some, that includes charitable giving. Getting a better understanding of clients’ priorities can make it easier to present the best

strategies to meet their goals.

## Triggering events to talk philanthropy

Beyond the initial client conference, there are triggering events that offer a chance to suggest philanthropy as a way for clients to make a difference, while managing tax and other wealth management objectives.

Liquidity events (such as selling a business or real estate), diversification of highly appreciated assets and required minimum distributions from retirement plans are examples of instances to remind clients about charitable-giving opportunities.

## Clients who don’t know how they want to give

Some clients are interested in philanthropy, but don’t have a particular cause or issue in mind and need help identifying ways to give.

Asking about their previous giving, past experiences and family history can help identify issues they could tackle. Ask open-ended, values-based questions such as:

- What are the charitable causes you and your family currently support and why?
- What principles guide your charitable giving?
- What do you find most fulfilling about your giving and what concerns you most?

Getting answers to questions like those can help zero in on potential strategies for giving.

## Help from local philanthropy experts

The Community Foundation of Broward

can be a valuable partner to help attorneys plan giving strategies for clients, especially clients interested in local philanthropy.

Since 1984, the Community Foundation has enabled individuals, families and businesses to create personalized charitable funds that support local philanthropy. The Foundation has a track record of ensuring that grants from the funds go to organizations and programs that further the donors’ objectives.

Advisors get a partner and they retain their relationship with their client when they collaborate with the Foundation. And, clients feel empowered by creating a legacy of giving to the place they call home.

## Practicality as well as altruism

In addition to giving back, philanthropy can help clients accomplish other wealth management goals. For example, philanthropy can be part of an estate planning alternative for clients who do not have children, spouses or partners, or for those who have already made financial arrangements for themselves.

Asking about clients’ interest in charitable giving shows a commitment to anticipating all of their planning needs. And with professional help to guide their giving, clients can ensure they create the most impact with their philanthropy. **B**



David Ratcliffe, a philanthropic services executive for the Community Foundation of Broward, is the former managing director and national philanthropic manager for U.S. Trust. He has 35 years of experience in the financial services industry.

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# Farewell and New Beginnings: Wishing Judge Hogan All the Best in her Future Endeavors

by Amber Ruocco

Most people in the legal community know Judge Geraldine Hogan as an honorable Judge of Compensation Claims in Fort Lauderdale, Florida. As an outstanding member of the legal community and with a dedication to promote fairness and candor, it is no wonder that Judge Hogan is and will continue to be successful.

Judge Hogan, who currently resides in Miami Lakes with her husband, grew up in Tuskegee, Alabama with her two brothers and two sisters. Her parents encouraged her and her siblings to always pursue their dreams.

Judge Hogan's studies began at Johnson C. Smith University in Charlotte, North Carolina, where she studied education. She then earned a Master of Education from the University of Florida. Prior to beginning her legal career, Judge Hogan worked as a teacher in Gainesville, FL, for 11 years.

"I was contemplating a career move when I was selected to serve as a Juror" Judge Hogan recalled. "Serving as a Juror was an intriguing experience that prompted the start of my legal career." With a vision of becoming an attorney and the inspiration instilled in her from the time she was a child to always pursue her dreams, Judge Hogan decided to pursue a career in the legal profession. After graduating from the University of



Florida Levin College of Law, Judge Hogan worked as a prosecutor for the state attorney's office in Miami. She subsequently worked in the private sector as a workers' compensation attorney representing both employers and injured workers. She later worked for the City of Miami litigating workers compensation claims.

While working for the City of Miami, Judge Hogan was encouraged to apply for a position as a judge of compensation claims. With a desire to always move forward and to never give in to the fear of taking on a challenge, Judge Hogan decided to step out of her comfort zone and did just that. In 2006 she was appointed by then-governor Jeb Bush to serve as a judge of compensation claims in the Fort Lauderdale District Office where she presided for 12 years. Judge Hogan explained that, "Serving as a JCC provided an opportunity for me to utilize my experience as a

teacher and litigator in performing the responsibilities of this challenging position." When asked how her career in education helped to advance her legal career, Judge Hogan relays that being an educator taught her the importance of patience and the value of treating all human beings with dignity and respect.

Although Judge Hogan is retiring from the bench, she is not ready to slow down anytime soon. Judge Hogan will continue her work in the area of workers' compensation law as a mediator. She also plans on publishing her first book in the summer of 2019 with the working title, "Strategies for a Successful Job Change."

Judge Hogan's advice to others on and off the bench is to never allow fear or complacency to prevent you from moving forward in the pursuit of your dreams. As we wave goodbye, Judge Hogan welcomes this new chapter in her life with open arms. **E**



*Amber L. Ruocco is an associate of Lubell | Rosen in their workers' compensation defense division in Fort Lauderdale, Florida.*



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by Robin Moselle

*“If there is a book that you want to read, but it hasn't been written yet, you must be the one to write it”* Toni Morrison, author and professor

In May 1898 after studying law for two years in her father's law office, Louise Rebecca Pinnell took the oral bar examination at the Florida Supreme Court. Louise passed the unusually harsh exam, but was not admitted as the justices were struggling with a unique problem: Louise was a woman and women were not admitted to practice law in Florida. “They just didn't know what to do with me” Louise would later recount. It took an additional five months, but in October 1898 Louise Rebecca Pinnell became the first female lawyer in Florida and went on to work for Florida East Coast Railway as an attorney in the law department.<sup>1</sup>

Since Louise Pinnell's milestone, the number of women admitted to practice law in Florida has experienced a very slow growth. By 1966, there were only 175 women lawyers in the entire state, and by 1975 that num-

ber grew to 684, comprising only 3.3 percent of the Bar.<sup>2</sup> Surprisingly, in Broward County, with an entire population of just 14,242 in 1925, there were several female attorneys including Hannah Norfleet, Anne Overman Gibbons, Ella Jo Stolberg and Charlotte Farrington.<sup>3</sup> However, it would be another 40 years before Broward County had its first female jurist, with the appointment of Elizabeth Athanasakos in 1964 as municipal judge in Wilton Manors, followed by Barbara Bridge in 1972 as the first female County Court judge, and Miette Burnstein who, in 1985, was elected as the first, and so far only, female Chief Judge in Broward County.<sup>4</sup>

By 2017, women accounted for almost 38 percent of the Florida Bar membership.<sup>5</sup> This is an increase of 11 percent from 2000, but that belies the fact that the number of female law students now slightly outnumber that of men (according to 2017 data, 51.27 percent of women were enrolled in law school, compared to 48.69 percent men)<sup>6</sup>. And despite the more level playing field, women attorneys still

face situations of bias and discrimination. Adele Stone, a shareholder of Buchanan Ingersoll & Rooney PC, the office head of the firm's Fort Lauderdale office, and first Broward County female attorney to serve as President of the Florida Bar Foundation recalls, “I typically was treated with respect by my partners and did not witness overt discrimination by clients or other lawyers. It's the implicit bias that is more prevalent – the subtle differences in how a woman is communicated with, or included (or not) in the conversation. I do recall one time when I was taking a deposition, the deponent kept calling me honey – I stopped the depo and reminded him that my name was Mrs. Stone. Neither my first or last name was ‘Honey’”.

The story described by Adele Stone is not uncommon. In fact, male lawyers referred to their female peers as “honey” and “sweetheart” in court frequently enough that, in 2016, the American Bar Association felt compelled to pass a rule designed to curtail the use of such demeaning terms.<sup>7</sup>



Thanks to women like Louise Pinnell, there have been many more “firsts” by women and in particular firsts for female attorneys in Florida. The accomplishments of these intrepid women enabled the female attorneys who followed to continue creating milestones in the legal field and escalate cracks in the glass ceiling. On Friday, March 8, 2019, the Broward County Bar Association together with the Broward County Women Lawyers Association and the 17th Judicial Circuit, will be honoring these incredible trailblazers by presenting “Broward’s Women Pioneers: A Celebration of Women in the Legal Community”. The program will be held in the Jury Assembly Room of the Broward County Courthouse beginning at 8:30 am with a continental breakfast. The event takes place on International Women’s Day, a global day celebrating the social, economic, cultural and political achievements of women. International Women’s Day has been taking place for well over a century, with the first IWD gathering in 1911.

The program will honor some of the incomparable female attorneys in Broward County who have achieved their own “firsts”, or who are trailblazers in the law. Included as honorees are:

- Elizabeth Athanasakos – the first Broward County female municipal judge
- Ret. Chief Judge Miette K. Burnstein – The first Broward County Woman Chief Judge
- Linda A. Conahan – One of the first female attorneys to serve as managing partner of a major law firm in Broward County, as well as the first woman to serve on the

- Board of Directors at Gunster
- Carmen S. Johnson – A pioneer corporate woman leader, serving as Executive Vice President, Human Resources and Legal at JM Family Enterprises, Inc. and a member of the Executive Management Team.
- The Honorable Ginger Lerner-Wren – Founder of the Broward County Mental Health Court, the first mental health court in the nation
- The Honorable Melanie G. May – The first female judge to preside over the Broward County Drug Court, and the first and only drug court judge to be on the board of the National Association of Drug Court Professionals
- Barbara J. Prager – the first Executive Director of Coast to Coast Legal Aid
- Juliet M. Roulhac – Broward County woman pioneer in both the legal and corporate field as Regional Manager of External Affairs for Florida Power & Light Company
- Adele I. Stone – the first Broward County female attorney to serve as President of the Florida Bar Foundation
- Dianne J. Weaver – the first President of the Broward County Women Lawyer’s Association

Hosting the event will be another Broward County woman pioneer, Lori Parrish, who has had a remarkable career as a member of the Broward County School Board, Broward County Commission and who served as Broward County Property Appraiser for 13 years.

We hope that you can join us in hon-

oring these women pioneers in the Broward County legal community and celebrate their talent, perseverance, and timeless wisdom.

“The Biographies of Florida’s First 150 Female Lawyers”, compiled and edited by Wendy S. Loquasto, The Florida Bar 2000

Id.  
“History of the Broward County Courthouse”, www.browardbar.org

Id.  
“Panel Works To Change Attitudes About Gender And Diversity Issues”, by Jim Ash, The Florida Bar Journal, April 1, 2018

There are Now More Women In Law School Than Ever Before”, by Staci Zaretsky, Above the Law, March 7, 2018.

“What It Takes To Be A Trial Lawyer If You Are Not A Man”, by Laura Bazalon, The Atlantic, September 2018.



*Robin Moselle is an attorney with the RAS LaVrar Law Offices where she practices commercial litigation and debt recovery throughout Florida. Robin is also a past president of the Broward County Bar Association and offers her thanks and gratitude to those women attorneys who came before her to make that opportunity possible.*



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#### *Criteria for Nomination:*

1. Current active and contributing member of the BCBA.
2. Exhibition of the highest degree of professionalism in accordance with BCBA Standards of Professional Conduct and the Florida Rules of Professional Conduct.
3. Demonstrates respect for the law and preservation of decorum and integrity of the legal system.
4. Conduct which has enhanced the image of the legal profession either through practice or programs and activities that educate the public about the law or the American legal system.
5. Professionalism Committee members may not be nominated.

#### *Additional general characteristics:*

A role model for the legal community • Integrity • Timeliness and promptness • Mentoring of others • Zealous advocacy while maintaining civility • Decorum and demeanor • Credibility Courtesy to counsel, the court, and the parties • Preparedness

*For questions regarding nominations please contact Braulio Rosa, Executive Director at [braulio@browardbar.org](mailto:braulio@browardbar.org)*

# Law School Mentoring 101

by Brian Koch and Dana Weinstein



professional stories can also pique a student's interest as to strategies to apply to their own experiences. Mentors, while offering career advice, also gain the opportunity to reflect on their own personal goals while obtaining personal satisfaction in giving back and putting a mentee on the right track to success.

By bridging the gap between generations, a mentorship offers benefits to both parties. Millennial-mentees can learn from the attorney's professionalism and effective methods of communication. Likewise, mentors can learn about current issues facing law students, the newest technologies and insight into the next generation of lawyers with whom they may work. These skills can translate into communicating across different generations of clients while simultaneously enhancing the reputation of the legal profession. And you never know when your mentee today may be your co-worker or opposing counsel tomorrow. **B**



*Brian H. Koch is a shareholder in Greenberg Traurig's Litigation Practice in Ft. Lauderdale and is co-chair of the Broward Bar's Professionalism Committee. Brian also has the privilege of serving as Dana's mentor, and can be reached at [kochb@gtlaw.com](mailto:kochb@gtlaw.com).*



*Dana Weinstein is a law student at Nova Southeastern University where she is a member of the Nova Law Review and Moot Court Society. Dana can be reached at [dwl1414@mynsu.nova.edu](mailto:dwl1414@mynsu.nova.edu).*

There are many types of mentorships in the legal profession, and these relationships provide for professional development for both the mentor and mentee. A mentorship can develop naturally or can be arranged through a formal program within a law firm or a professional organization like Inns of Court. In an informal relationship, mentees may naturally gravitate toward attorneys based on shared interests in specific practices areas, or an attorney's reputation and accomplishments. In an established mentorship program, a firm or organization assigns an attorney to a mentee who shares similar professional interests with the attorney-mentor. There is no one-type-fits-all requirement for mentor-mentee relationships, but frequent meetings to engage discussions will make the most lasting impact. This article focuses on some basics and rewards for attorneys and law school mentees.

## 1. Why Law Students Need Mentors

Organizations that match law student mentees with practicing attorneys serve an important role in guiding student professional development. Many students have limited or no exposure to the legal field outside of law school. While internships often expose students to a particular area of law, mentors can offer a greater perspective of the legal field as a whole. While substantive law classes provide a basic legal understanding, such classes will not, in themselves, guide a student's legal career. Mentoring with an established attorney gives students an opportunity to pick an attorney's brain or help jumpstart their career. In addition to direct networking, attorney mentors can help coach a student by offering interview tips or edits to resumes.

## 2. The Initial Mentorship Meeting

A law student should treat the first meeting with an attorney mentor like an informal interview. The student should be prepared to answer basic questions about work history and aspirations, so the attorney can effectively offer guidance. For law students, like interview preparation, it is important to know the mentor's professional background. While the attorney is there to share past experiences, the conversation and relationship can proceed more quickly if the mentee is familiar with the mentor's general work history.

Mentors should have some targeted questions to gauge the professional interests of the student. By creating a more comfortable environment for mentees to address professional goals as well as concerns, mentors are able to offer guidance on how the mentee can successfully achieve those goals.

## 3. Shared Experiences and Benefits

Mentors are able to share their practical experience with mentees, such as describing challenging cases they have won or problems they have faced. The student is then able to take classroom knowledge and apply it to the mentor's real-world experience. This fosters a more fulfilling academic experience as the student can recognize that material covered in the classroom may actually be used in future practice. Hearing a mentor's intriguing



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BCBA Events and CLE Manager at [lauren@browardbar.org](mailto:lauren@browardbar.org) or (954)832-3618

# Hurricane Michael Update



by Linda M. Knoerr

Wishing all my colleagues a happy and healthy 2019!

The recent hurricanes impacting Florida the past three years have impacted the practice area of first party property damage. There are thousands of insureds, many still homeless, in the Florida panhandle in need of counsel for representation to assist them with their hurricane claims to allow them to start rebuilding their lives. While the insurers' intentions are to adjust claims timely and pay the amount they believe is owed, there are tremendous amounts of pending claims from Hurricane Michael (2018). There are also pending Hurricane Irma (2017) and Hurricane Matthew (2016) claims; it shows the carriers have not fully paid all valid claims as required.

January 10, 2019, marks the end of the carriers' 90 days (per §627.70131, Florida Statutes) to adjust claims caused by Hurricane Michael. The statistics from the Florida Office of Insurance Regulation appear to state that half of the claims are closed.<sup>1</sup> More than 125,000 claims have been filed with an estimated total insured loss at over \$3 bil. The fact that 55.3% of claims are "closed" means that the insurers have made a determination of damages or have issued denials based on their own adjustment of the loss. "Closed" does not necessarily mean that the insureds agreed with the insurance company's adjustment of the scope or amount of damages, or that the amounts paid were proper to allow the insureds to place their property in its "pre-loss" condition. Many "closed claims" may, in fact, be claims that

have been unilaterally marked closed, which can and should be supplemented with payments. The full damages must be estimated by a professional on behalf of the insureds.

An insured's counsel must advocate for the proper amounts due under the policy limits while applying the policy coverage in the best interest of the insureds. Once a named storm causes damage to property, the damages are thereafter resulting from a "named peril" – which equals a valid loss under the majority of policies. Hurricane Michael claims should be adjusted properly and paid quickly.

The various Florida appeals courts are at odds with each other, and the precedent is ever-changing in first-party litigation. A number of recent cases determined whether the minimal amount insurers pay within the first 90 days of the notice of loss precludes an insured from being able to successfully bring a breach of contract action. Insurers argue that a suit cannot be brought against them for breach of contract if they pay the amount of their own estimate and allow for supplemental claims to be initiated by the insureds. The insured must show the need for more funds, the insurers argue. A critical issue is whether payment of the actual cash value versus the replacement cost value<sup>2</sup> is enough to comply with the recent law. In 2017 the 3rd DCA in *Milhomme*<sup>3</sup> entered an opinion following *Slayton*, *Francis* and *Siegel* in which it ruled that in practice the carriers cannot unilaterally write an estimate using a designated adjuster, pay the actual cash value, and thereby avoid litigation. To

assist clients in a positive manner, counsel should provide the carriers with the clients' own estimate of real damages as soon as known to provide the disputed amount to the carrier prior to filing a lawsuit. It may be necessary to file a declaratory judgment action when there is a question as to what policy language voided a scope of damages the carrier determined are not covered, or as to a denied claim, when a loss is believed to be covered. In order to trigger entitlement to attorneys' fees (per §627.428, Florida Statute) upon the insured prevailing in a lawsuit against the insurer for insurance benefits, the lawsuit must not fail. **B**

<sup>1</sup> [www.florid.com/Office/HurricaneSeason/HurricaneMichaelClaimsData.aspx](http://www.florid.com/Office/HurricaneSeason/HurricaneMichaelClaimsData.aspx)

<sup>2</sup> See *Slayton v. Universal Property & Casualty Insurance Co.*, 103 So.3d 934 (Fla. 5th DCA 2012); *Francis v. Tower Hill Prime Ins. Co.*, 224 So.3d 259 (Fla. 3d DCA 2017); and *Siegel v. Tower Hill Signature Ins. Co.*, 225 So.3d 974 (Fla. 3d DCA 2017).

<sup>3</sup> See *Milhomme v. Tower Hill Signature Ins. Co.*, 227 So.3d 724 (Fla. 3d DCA 2017)



Linda M. Knoerr, Esq. is the founder of the Law Offices of Linda M. Knoerr, P.A. She has 25 years of civil litigation experience, with a specialty in representing insureds in first party insurance damages claims. Her office is in Coral Springs, Florida. Linda may be reached at 954-749-3151 or [linda@lknorrresq.com](mailto:linda@lknorrresq.com). Please visit [www.claimhelplawyers.com](http://www.claimhelplawyers.com) for more information.





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# Case Law Update

by Debra P. Klauber

**Florida Supreme Court clarifies proximate-cause standard in medical negligence cases.** The Florida Supreme Court reversed a directed verdict in favor of an anesthesiologist, explaining that even where a defendant's conduct is not the "primary" cause of a patient's death, he may still be liable for his part if his conduct "substantially contributed" to causing it. In other words, a health care provider can be the *proximate* cause of a patient's death even if he is not the *primary* cause. *Ruiz v. Tenet Hialeah Healthsystem, Inc.*, SC17-1562, 43 Fla. L. Weekly S655 (Fla. Dec. 20, 2018).

**Fifth District notes that attorney-client privilege may apply to documents related to adverse medical incident, but refuses to address whether production is still required under Amendment 7.** In this medical negligence case, the patient asked the health care provider to produce all adverse medical incident records (i.e., Amendment 7 records). After the trial court ordered the production of the documents, including written statements provided by certain employees to its in-house counsel, the defendant sought certiorari review arguing that those particular records were protected by the attorney-client privilege. The case was remanded to the trial court for a factual determination as to whether the documents fall within the privilege, and the appellate court expressly refused to address whether Amendment 7 would mandate the production of the documents notwithstanding the privilege. *The Nemours Found.v. Arroyo*, 5D18-1969, 43 Fla. L. Weekly D2767 (Fla. 5th DCA Dec. 14, 2018).

**Interlocutory appeal of determination of sovereign immunity requires a trial court order determining, as a matter of law, that a party is not entitled to sovereign immu-**

**nity.** The district courts continue to struggle with non-final appeals pursuant to Florida Rule of Appellate Procedure 9.130(a)(3)(C) (xi), which apply to orders that "determine, as a matter of law, that a party is not entitled to sovereign immunity." The appellate courts have consistently looked only at the face of such orders, and required trial courts to explicitly include this language. However, trial courts consistently fail to use this language "either by negligence or design," resulting in the dismissal of such appeals on jurisdictional grounds. This issue remains pending before the Florida Supreme Court, and in a lengthy opinion and concurrences, the appellate judges have again urged the Florida Supreme Court and/or the Rules Committee to address, and correct, the problem. *State of Florida, Dept. of Children and Families v. Feliciano*, 3D16-2904, 43 Fla. L. Weekly D2625 (Fla. 3d DCA Nov. 28, 2018).

**Third District reiterates the rules applicable to appeals of partial final judgments.**

As every appellate lawyer has learned along the way, an order granting a motion for summary judgment is not a final, appealable order. Rather, the order must include language that enters judgment, and the language of "finality" necessary to invite appellate review. Relatedly, an order dismissing some claims, but not all, is only reviewable as a partial final judgment if the claims being appealed are wholly independent from any claims that remain to be litigated below. Florida disfavors piecemeal appeals, and where the claims that have been dismissed are intertwined with the claims that remain, a partial interlocutory appeal will not be permitted. *Libman v. Florida Wellness & Rehab. Ctr., Inc.*, 3D18-1568, 43 Fla. L. Weekly D2760 (Fla. 3d DCA Dec. 12, 2018).

**Kozel remains the law and it would serve**

**litigators, and trial judges, to include the factual findings as to each of those factors in orders dismissing claims as a sanction.** In *Kozel v. Ostendorf*, 629 So. 2d 817 (Fla. 1993), the Florida Supreme Court set forth a six-factor analysis trial courts should utilize when determining whether dismissal is an appropriate sanction for the misconduct of trial counsel. The purpose of the test is to ensure that a party is not improperly punished for the conduct of its attorneys. *Kozel* requires "express findings" concerning "each" of those factors. Twenty-five years later, the Florida appellate courts continue to remand appeals and order trial courts to consider those factors in orders dismissing a party's claims. It would behoove counsel seeking dismissal as a sanction to make sure that the express findings are included in any order. *Deutsche Bank Nat'l Trust Co. v. Sombrero Beach Road, LLC*, 3D16-2884, 43 Fla. L. Weekly D2621 (Fla. 3d DCA Nov. 28, 2018). *See also, Vento v. Balboa Ins. Co.*, 4D17-3342, 43 Fla. L. Weekly D2740 (Fla. 4th DCA Dec. 12, 2018)(also noting the trial court's refusal to address the *Kozel* factors, but reversing where it was clear from the record that the conduct at issue did not justify the extreme sanction of dismissal). **B**



*Debra P. Klauber, Esq., a partner with Haliczner 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 [dklauber@hpslegal.com](mailto:dklauber@hpslegal.com).*



# Your Heart Should be Your Most Important Valentine

by Deborah Ward

In its 2018 statistics report, the American Heart Association (AHA) reminded us cardiovascular disease is the worldwide leading cause of death, 'claiming more lives each year than all cancer and chronic lower respiratory diseases combined', along with being the leading cause of death in women, and underlying cause of death in 1 out of 3 Americans. With staggering statistics which go on to discuss how cardiovascular disease results in countless deaths each day and substantial medical expenditure in our country, everyone should take the time to evaluate their health and make positive changes to stay healthy.

Detrimental patterns of our culture including the struggle to conquer a proactive and preventative approach to our healthcare has led us to damaging effects. The consequences include high rates of obesity, diabetes, high blood pressure and cholesterol, all risk factors for cardiovascular disease and stroke. Although genetic and family history play a role, poor lifestyle choices are known to be a significant harmful risk for cardiovascular disease, one that can be modified and changed.

The AHA has outlined 7 key lifestyle changes which should be implemented and maintained to reduce one's risk of cardiovascular disease. These "Simple 7" lifestyle changes include:

#### ◆ Quit Smoking

- Tobacco use is one of the most preventable causes of disease and death in the US, including second hand smoke
- E-cigarettes or vaping still have risks as they contain nicotine and numerous harmful chemicals. The AHA advises 'there is little conclusive scientific evidence' which demonstrates e-cigarettes help with smoking cessation and advise to stick to proven methods
- Talk to your healthcare provider about developing a plan to quit

#### ◆ Eat Better/Healthy Nutrition

- Consume a balanced diet of healthy proteins, grains, fruit, vegetables, and fat/oils
- Avoid processed foods, sugars, excessive calories, and salt

#### ◆ Increase Physical Activity

- The AHA recommendations include 150 minutes of moderate aerobic activity or 75 minutes of vigorous aerobic activity weekly
- Tips for success include creating a schedule of days and times during the week to work-

out, workout with a partner for motivation and accountability, participate in activities you enjoy, and keep it simple

#### ◆ Weight Loss

- Consequences of obesity include cardiovascular disease, stroke, diabetes, sleep apnea, gallbladder disease, body and joint pain, and decreased quality of life
- Improving nutrition and increasing physical exercise are key to weight reduction and maintenance

#### ◆ Blood Pressure Management

- High blood pressure is known to cause detrimental health effects including stroke, heart, and kidney failure
- The AHA describes high blood pressure, stage I, as a systolic blood pressure of 130-139 or diastolic blood pressure of 80-90
- Management includes following a healthy diet low in sodium, weight management, exercise, and smoking cessation

#### ◆ Cholesterol Management

- Avoid foods containing saturated fats and trans-fats such as animal fat, butter, and shortening
- Stick to healthier fats such as fish, avocado, olive oil, and plant-based sources such as nuts and seeds
- Tip: fats which are solid at room temperature usually contain saturated and/or trans fats where as fats which are liquid at room temperature usually contain healthier, monounsaturated, and polyunsaturated fats.

#### ◆ Blood Sugar Management

- Consequences of uncontrolled blood sugar and diabetes include heart disease, vascular disease, stroke, kidney damage, and nerve damage
- Management includes healthy diet low in sugar, weight loss, and exercise

In addition to a healthy lifestyle, maintain regular checkups with your healthcare provider.

It is also important to note the warning signs of heart attack and stroke as quick evaluation and treatment can improve survival and outcomes.

Common warning signs of heart attack include, immediately call 9-1-1:

#### ◆ Chest or Upper Extremity Discomfort

- Can be described as pain, pressure, fullness, discomfort, squeezing, and tightness
- Discomfort or radiation to the arm, jaw,

back, or abdomen

- Lasts minutes or longer, can go away and return, can occur with or without exertion

#### ◆ Shortness of Breath

- With or without chest pain or discomfort

#### ◆ Cold Sweats

#### ◆ Nausea and/or Vomiting

#### ◆ Lightheadedness

Warning signs of stroke, described as F.A.S.T. by AHA, immediately call 9-1-1:

#### ◆ F-- Facial Drooping

#### ◆ A --Arm Weakness

#### ◆ S --Speech Difficulty

#### ◆ T--Time to Call 9-1-1

With the vast prevalence of cardiovascular disease in our country, chances are you or someone you know will be affected. Consider taking the time for yourself, family, and staff to become trained in CPR as these lifesaving techniques can improve chance of survival and outcomes. Become familiar with the warning signs of heart attack and stroke, never hesitate to call for emergency help, and always follow-up with your healthcare provider.

#### References & Resources

**American Heart Association-** [www.heart.org](http://www.heart.org)

**American Heart Association, Heart Disease & Stroke Statistics 2018 At-a-Glance, & Statistical Fact Sheet 2018 Update**

**American Heart Association**

#### Life's Simple 7

<https://www.heart.org/en/professional/workplace-health/lifes-simple-7>

**American Heart Association**

#### Heart Attack and Stroke Symptoms

<https://www.heart.org/en/about-us/heart-attack-and-stroke-symptoms>



Deborah Ward, ARNP, 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](mailto:deborah@drwardconsulting.com) or (954) 290-7311.

**1 BIG Lunch: AMERICA'S ZONECOACH® Jim Fannin**  
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**Venue:** BCBA Conference Center

**8 Investiture of The Honorable Gina Hawkins**  
**Time:** 1:30 p.m.  
**Venue:** Broward County Courthouse - Jury Assembly Room (#03320)

**9 YLS Holiday in February**  
**Time:** 9:00 a.m. – 1:15 p.m.  
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**Sponsorships Available!**  
**Time:** 11:00 a.m. – 1:00 p.m.  
**Venue:** Broward Courthouse Jury Assembly Room 3320  
**No Cost**

**22 2019 Workers' Compensation Conference**  
**Sponsorships Available!**  
**Time:** 11:00 a.m. – 6:00 p.m.  
**Venue:** Riverside Hotel  
**Cost:** \$85.00 BCBA Member; \$100 Non-Member

**27 YLS Annual Diversity Luncheon**  
**Time:** 12:00 p.m. – 1:30 p.m.  
**Venue:** BCBA Conference Center  
**Cost:** \$20 BCBA Member; \$30 Non-Member

**28 ADR Family Law Mediation CLE Luncheon**  
**Time:** 12:00 p.m. – 1:30 p.m.  
**Venue:** BCBA Conference Center  
**Cost:** \$20 BCBA Member; \$30 Non-Member

## Save the Date!

*Visit our online Calendar for more information.*

March 8, 2019  
**International Women's Day: A Celebration of Women in the Legal Community**  
**"Broward's Women Pioneers"**  
*Sponsorships Available!*  
**Time:** 8:30 a.m. – 11:00 a.m.  
**Venue:** Broward Courthouse Jury Assembly Room  
**No Cost**

March 13, 2019  
*The Stephen R. Booher American Inn of Court proudly presents:*  
**Maintaining an Island of Civility: Professionalism in a Time of Incivility presented by Chief Justice Charles T. Canady**  
**Time:** 12:00 p.m.  
**Venue:** Lauderdale Yacht Club  
**Cost:** \$40 Non-Member Law Students & Government Attorneys; \$50 Non-Member

April 5, 2019  
**2019 Raising the Bar**  
*Sponsorships Available!*  
**Time:** 8:30 a.m. – 11:00 a.m.  
**Venue:** Bahia Mar Fort Lauderdale Beach Hotel

May 3, 2019  
**2019 Law Day Luncheon**

June 22, 2019  
**2019 Annual Installation Gala Dinner**

October 18, 2019  
**2019 Bench and Bar Convention**

Register for BCBA Events  
[www.browardbar.org](http://www.browardbar.org) • 954-832-3618





BROWARD COUNTY BAR ASSOCIATION  
**BARRISTER**

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