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While we are still in the everchanging COVID era. This issue has various law updates and video conferencing hacks.

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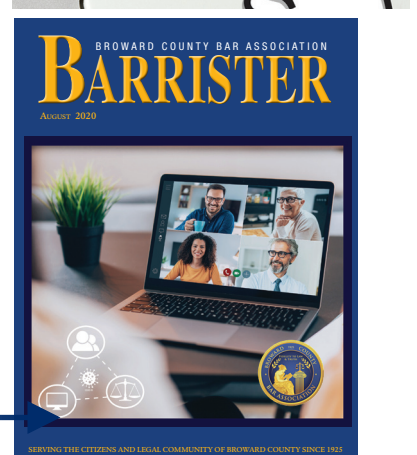
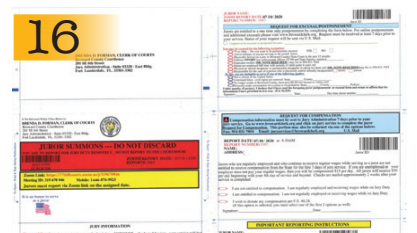
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Robert C.L. Vaughan, Esq.

I am sure that we have all heard phrases like, “you are either with me or against me”; “it’s all or nothing”; “it’s either black or white” and several other phrases that have become cliché in our everyday parlance. These phrases are all intended to convey strength of conviction by the maker of the statement or simplicity of choice on one topic or another. Unfortunately, these clichéd phrases have over time, worked their way into our social DNA, influencing our daily discourse on matters of policy, politics, religion and a host of other issues of deep social importance. This binary—all or nothing—approach, this notion of “my way or the highway” has become the norm in our daily discourse and our marketplace of ideas. As such, as a society we seemed to have lost the appreciation for nuance and with it,

the ability to really listen to each other and, yes, formulate true compromise.

But, is life really binary? Are these issues that we face really all a series of simple either/or choices? I don’t think so. There are usually many shades of grey—an entire spectrum of possibilities between any two given options. True, there are some choices that are either/or. Like “either you vote for me, or you don’t.” In many instances however, it appears that this example of a “political” choice is the root of the problem, because instead of our politics being driven by our discourse, our discourse seems to be driven by our politics. If true, this inversion is an untenable situation for an evolving society.

We see evidence of this all or nothing approach in some very basic questions that are “hot topics” today. “Black lives matter” versus “all lives matter” for example. While I by no means intend to simplify this debate to just one of “nuance”, I think we can all agree that a threshold question is, “why is it either/or?” Why does saying “Black Lives Matter” equate in the minds of many to saying someone else’s life doesn’t matter? Again, (I know I am being repetitive), this is not to suggest that this is the totality of the discussion on that issue. But it should be a fairly uncontroversial beginning to that conversation.

A conversation driven by a political agenda—followed by a vote for or against a single candidate—is ultimately binary, to be sure. Either you vote for a particular candidate, or you don’t. Because of that binary political reality, political candidates often seek to differentiate themselves—not always based upon facts and policy—but on talking points and predetermined conclusions. But that binary political choice should not drive the underlying discourse which should be driven by facts and policy. Too often, unfortunately, we have allowed ourselves to confuse the two.

The Broward County Bar Association is committed to meaningful discourse. We are committed to creating a space, free of politics, for robust and comprehensive debate—where nuance and compromise are welcome components of civil engagement.

Since March 2020, under the able guidance of our Past President Michael Fischler and our Executive Director Braulio Rosa, and along with our Executive Leadership, Board of Directors and Staff as well as our almost 4000 members, the BCBA has hosted or led in excess of 53 webinars with a total participation of more than 7000 attorneys across the State. How awesome! But, we have more to do and more to discuss. I invite you to form discussion groups and attend each one of our seminars this year. Continue those discussions and engage with as many people inside and outside of the Bar as you can. Engagement doesn’t always bring agreement, but when done right, it brings awareness, growth and enlightenment. Enlightenment brings change. Together, let’s make change happen.



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Omar A. Giraldo, Esq.

The month of August is always one of my favorite months, even though the hottest days of the year often fall in August. Despite social distancing we are kicking off our year strong, putting together a variety of events to keep us all connected. Planning for our charity golf tournament is in full swing. Be on the lookout for a save the date soon.

The 2020-2021 year is already off to a great start! Our Executive Board participated in strategic planning in our partnership with the BCBA Board. Many great ideas came as a result of our planning, for both YLS and BCBA.

This year more than most, I'm calling on our Young Lawyers to step up and get involved. If there is a charity or a passion you have, please reach out to myself or any Board member. We have the ability to turn an idea into reality very quickly due to our dedicated staff. We also need more active members that bring their thoughts to reality. Join a committee, offer to help plan our golf tournament, film a video reading a book to elementary school children, offer to help us when we move back to in person events to fill our packed calendar.

Serving as a board member and now president of this great organization is one of the most rewarding experiences I have had as a Young Lawyer.

If you are interested in participating or custom sponsorship opportunities, please contact Maria Fischer at mfischer@injurylawyers.com, or visit our website.

Lastly, if you would like to be more involved in the Young Lawyers Section, please consider signing up for one of our committees. It is a great way to meet new people and do something meaningful for the community. Committee members work directly with our Board of Directors on special projects and events throughout the year. There is a wide variety of different committees to choose from. We welcome your involvement with the Young Lawyers Section this year. If you are interested in joining YLS, partnering with us on an event, or joining a committee, please feel free to contact me at 954-500-2422 or ogiraldo@vg.law.

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Video Conference ... like a Pro!

by Natalie Giachos

Now that video conferencing is here to stay and most of us are familiar with the basics, let's take things to the next level so you can look like a pro and feel more comfortable at your next meeting, hearing or deposition.

By now we have all surely seen some meeting attendees that did not look professional because of their set up. With little adjustments here and there, you don't have to be one of them.

The easiest and quickest way to look more professional on Zoom or any video platform is to pay some attention to your video angle, lighting, and background.

VIDEO ANGLE

If you've attended any Zoom meetings, you've probably seen more ceiling fans than ever before. This is a result of using an upward facing camera angle. There is nothing professional or flattering about this angle and it should be avoided. For a more professional appearance you can either position the camera lens at eye level in front of you or for a more flattering angle, position the camera lens just above eye level with the camera angled slightly down. You may have to prop your computer/camera up to achieve this angle, but it's worth it.

You should also make sure you are close enough to the camera, but not too close. You want to fill the frame and position yourself in the middle. Ideally, there should be no more than an inch of space above your head.

Side Tip: Be sure to turn on the "touch up my appearance" filter that Zoom offers. It's not a major touch up, but it makes a difference.

LIGHTING

Lighting is everything when it comes to video and with the right amount of light you will look more professional and feel more confident on camera.

There's nothing better than natural light so if you can, set up your video area in front of a window or other location where there's a lot of natural light. The key is to make sure the light source is in front of you and not behind you or it will have the opposite effect.

If you don't have enough natural light, invest in some

lighting. You want to make sure you have enough light to cover you and the room you are in to avoid shadows. Depending on how dark the room is, this may require more than one light. There are a lot of affordable lighting options to choose from so be sure to check them out.

BACKGROUND

Your background says a lot about you so it is something you should consider. If possible, consider setting up a designated area so that you can have everything set up and ready for when you attend video conferences. If that is not an option, be sure to clean up your area so that it is free of clutter and other distractions. Your background does not have to be bare. In fact, feel free to add some wall art or other accents to make your background look nice but the key is to make sure it is not distracting.

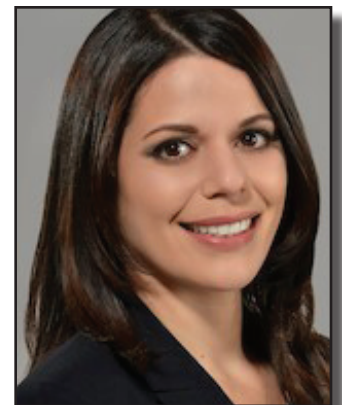
If you do not want anyone to see your surroundings, or if you want everyone at your firm to have a consistent look, virtual backgrounds may be the way to go. Zoom provides you with some default options and allows you to upload your own pictures and videos to use. There is some distortion when you use a virtual background so you may want to consider using a green screen if you plan to go this route.

Do not be that person with the dark room and ceiling fan at your next Zoom meeting. Making these small adjustments will go a long way.

Whether it's meeting with new clients or attending a hearing, improving your camera angle, lighting, and background will ensure you appear professional and prepared.



Natalie Giachos 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



ZONING LAWS

by Ryan A. Abrams

ZONING IN FLORIDA AND BROWARD COUNTY

Zoning is a process by which local government determines how land within its jurisdictional boundaries can be used. The idea is to plan for future growth and development in a sensible way. It is an important tool for creating sustainable and livable communities.

Statutory Authority

Florida has been a leader in growth management laws for decades,ⁱ although it has begun to stray away from this in recent years for reasons beyond the scope of this article. Still, Florida's municipalities and counties continue to have "broad statutory and constitutional powers to plan for and regulate the use of land."ⁱⁱ Each jurisdiction is encouraged to "maintain, through orderly growth and development, the character and stability of present and future land use and development."ⁱⁱⁱ To this end, the state requires every municipality and county to adopt a "comprehensive plan" to guide and restrict future development.^{iv} Jurisdictions are required to adopt land development regulations to implement this plan. At a minimum, all regulations must be consistent with the comprehensive plan.

As part of the comprehensive plan, a future land use map must be adopted that designates areas for permitted uses such as "Low Residential" or "Commercial."^{vii} With the regulations, a zoning map is adopted that is consistent with the use map but more specific.

Local Considerations

Land development regulations can vary greatly. An attorney may become an expert in one Florida county, but this expertise likely will not transfer to another. It is crucial to know the type of County in which the subject property is located. If in a charter county, the county's regulations and comprehensive plan may control in municipalities to the extent authorized in the charter.^{viii}

Broward County is a charter county, and its comprehensive plan and use map apply to the entire county by virtue of the county's charter.^{ix} Incorporated areas have their own regulations that must comply with the county and city comprehensive plans. Broward and most of its cities publish their regulations in "Municode", a user-friendly website that can easily be found on Google. Comprehensive plans and maps can usually be found on the jurisdiction's website (make sure it is an updated version).

The Broward County Property Appraiser website (www.bcpa.net) has a helpful map feature which allows for a quick site-analysis. It also includes map overlays

that can be selected to identify the property's zoning and county use-map designation.

Attorney's Role

Attorneys involved in land development must ensure that a proposed use complies with applicable law. Use maps and comprehensive plans are treated by courts as statutes, so attorneys need to understand how they apply.^x If a jurisdiction illegally issued a permit, there is little to prevent the permit from being revoked after a project is started or even completed.^{xi}

If a proposed use is not permitted on a property, there may be a chance to obtain special exception approval or a "rezoning." Such site-specific approvals go before elected or appointed boards for quasi-judicial hearings (i.e. informal trials with evidentiary burdens).^{xii} It is important to establish a clear record at such hearings should an appeal become necessary.

Conclusion

Many professionals are involved in the process of developing land, each having a distinct role. Counsel's role is to ensure that use restrictions are understood by the client and that necessary approvals are obtained. Many nuanced issues were not covered in this overview, but the take-away should be that land use attorneys must become adept at reading and understanding local codes.

ⁱ *The Effect of the Growth Management Act on Local Comprehensive Planning Expenditures: The South Florida Experience*, K.T. Liou and Todd J. Dicker, *Public Administrative Review* Vol. 54, No. 3 (1994).

ⁱⁱ § 163.3161(9), Fla. Stat.

ⁱⁱⁱ § 163.3161(8).

^{iv} § 163.3177.

^v *Id.*

^{vi} §§ 163.3161(6), 163.3161(10)

^{vii} § 163.3177(6)(a)

^{viii} § 163.3171(2).

^{ix} Broward County Charter, Sec. 8.10

^x *Rinker Materials Corp. v. North Miami*, 286 So. 2d 552 (Fla. 1973)

^{xi} *Pinecrest Lakes, Inc. v. Shidel*, 795 So. 2d 191 (Fla. 4th DCA 2001)

^{xii} *See Brd. Of Cnty Commissioners of Brevard County v. Snyder*, 627 So. 2d 469 (Fla. 1993)

Ryan A. Abrams, Esq. is the founder and managing shareholder at Abrams Law Firm, P.A., which focuses its practice on land use and zoning law and local government law. He can be reached at rabrams@abrams-law.com.



FLORIDA CORONAVIRUS STATISTICS

by Diana I. Castrillon

Update on Florida Coronavirus Statistics in Workers' Compensation Claims

Many employees lost their jobs due to the COVID-19/ Coronavirus pandemic and economic fallout. Many others became "remote" employees overnight. However, there is a large subset of individuals who are still continuing to work at physical locations. Initially, this was limited to "essential" workers, however, at present a large percentage of the labor pool is working at a physical job site on a daily basis. This creates a lot of concerns for employers in the State of Florida, but also, places enormous pressure on the entire work force. Concerns over health and Economics, and attempting to balance these two essential tenets, can be a high-stress, anxiety provoking matter.

Florida issued emergency legislation on federal, state, and local levels to increase paid and unpaid sick leave and unemployment insurance benefits for COVID-19-related absences. The true gray area that exists is with regard to employees who contract COVID-19 while working – especially now that the work "place" is a fluid term.

There is always a risk of getting sick or injured at work, which is why Florida has a Workers Compensation system to begin with. In short, Workers' Compensation exists to provide medical care (at no cost to the employee) for the injury they sustained on the job, as well as cover a percentage of wages for individuals who are unable to work. However, the key term in coverage for Workers' Compensation disputes revolves around the term "arising out of employment." When an injured worker trips and falls on the job, this can be clearly determined to be "arising out of" their employment as long as it happens during the "course and scope" of employment. It is less clear, however, when trying to prove that a novel virus that is fast spreading and surging in Florida, was contracted on the job when it may have been contracted just about anywhere.

The law in Florida is not "built" to deal with Coronavirus. Understandably, a pandemic is not something that our lawmakers were considering when creating the statutes. However, while this situation may not have been predicted, we are still tasked with attempting to resolve it.

As of the most recent compilation of Jimmy Patronis, Florida's Chief Financial Officer dated May 31, 2020, there have been 3,807 COVID-19 claims filed with the state. Of these, Dade County accounts for 1,584 claims with Broward and Palm Beach following with 436 and 402 Cases, respectively. These three counties account for the most COVID-19 cases in the entire State of Florida. Importantly, these statistics were only last compiled on May 31, 2020. Based on the continued surge in Coronavirus cases in our state, as of the date of this article, the numbers have likely increased significantly as Southeast Florida continues to lead in the pandemic community spread.

There is a broad spectrum of individuals filing Workers' Compensation claims for contracting Coronavirus on the job, however based on the CFO's report the overwhelming majority of claims are coming from the health care industry. This is followed closely by "protective services" employees or First Responders, and the airline and service industry also represent a large percentage.



#COVID19

Interestingly from the statistics provided, COVID-19, when contracted in the workforce, seems to be indiscriminate, affecting males and females of all racial and economic groups equally. The most affected age group in the work force ranges from ages 30 to 50.

As of the May 31, 2020 publication, only four sick employees had retained attorneys and gone into litigation. This is despite the fact that of the 3,807 COVID-19 Workers' Compensation claims, over 45% have been denied by insurance carriers. In fact, of the four cases that were in litigation, three remained denied and only one claim in the entire state as of May 31, 2020 was accepted as a compensable claim.



Diana Castrillon has been in practice for over 19 years in the State of Florida. Diana started her practice as a defense attorney representing insurance companies, and for the last 17 years, Ms. Castrillon has been representing only injured workers in Workers' Compensation cases. Diana obtained her undergraduate degree from the University of Florida in 1997 with honors, her law degree from Nova Southeastern University in 2001 with high honors. Diana currently sits on the Board of Directors for the Broward County Bar Association and co-chairs the Workers' Compensation section.

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LGBT Family Equality, Legitimacy & the Marital Presumption: *McGovern v. Clark*

On June 12, 2020, Florida's Fifth District Court of Appeal issued a decision in a case of first impression, extending the application of the statutory and common law presumption of legitimacy to the children of a same-sex married couple. See *McGovern v. Clark*, Case No. 5D19-1525 (Fla. 5th DCA June 12, 2020). While the decision itself makes no reference to prior decisions in Florida or in Federal courts regarding equal treatment under the law of same-sex couples, it nevertheless represents a ground-breaking step forward in the equal treatment of same-sex parents on the question of legitimacy. The Court takes it for granted that a same-sex couple must be treated the same as a similarly situated opposite-sex couple in rendering its decision. It does so without reaching the question of the constitutionality of section 742.091 of the Florida Statutes because, among other things, the trial court did not make a ruling on the constitutionality of the statute as applied to Ms. McGovern.

In 2013, in the landmark case of *D.M.T. vs. T.M.H.*, 129 So. 3d 320 (Fla. 2013), the Florida Supreme Court handed down a ground-breaking decision that was limited on its facts but broad in the scope of its language. The decision permitted same-sex couples to be the legal parents of a child conceived through assisted reproductive technology (ART) just as opposite-sex couples could. But it was unmistakable that the Court's constitutional analysis and sweeping language portended that discrimination based on sexual orientation would not survive constitutional challenge. The Fifth District in *McGovern* seemed to take the Florida Supreme Court at its word.

"The facts [in *McGovern*] are largely undisputed." See *McGovern*, 5D19-1525 at *2. Before they were married, Ms. McGovern and Jacquelyn Clark were in a committed relationship. In 2012, Ms. Clark gave birth to one child, and then gave birth to a second child the following year. A few months later, in May 2013, Ms. McGovern and Ms. Clark were legally married in New Hampshire. After they married, Ms. Clark gave birth to two more children. The children's birth certificates listed only Ms. Clark as the mother and did not indicate a father. However, all four children were conceived and born while the parties

were in a committed relationship and raised together as siblings, with the same parents, as an intact family.

The parties separated in early 2018, after which Ms. McGovern filed the underlying dissolution of marriage action, naming all four children as children common to the parties. Ms. Clark filed a motion to dismiss all issues related to the four children, arguing that Ms. McGovern lacked biological or legal ties to any of them. Ms. McGovern was seeking to establish parentage as a "reputed" parent of the two older children, just as an unwed father might seek to legitimize a child born out of wedlock by marrying the child's mother to establish parentage as a matter of law pursuant to section 742.091, Florida Statutes (2018), which provides in pertinent part that "[i]f the mother of any child born out of wedlock and the reputed father shall at any time after its birth intermarry, the child shall in all respects be deemed and held to be the child of the husband and wife, as though born within wedlock."

The trial court determined that the two younger children were children of the marriage since they were born during Ms. McGovern and Ms. Clark's legally valid marriage. In other words, the trial court applied Fla. Stat. §382.013(2)(a) to the wife of the birth mother exactly as the statute requires the husband of the birth mother to be treated: "If the mother is married at the time of birth, the name of the husband shall be entered on the birth certificate as the father of the child, unless paternity has been determined otherwise by a court of competent jurisdiction." That ruling was not appealed. However, the trial court granted Ms. Clark's motion to dismiss the issues pertaining to the two older children, concluding that it did not have subject matter jurisdiction over the two children born prior to the marriage because Ms. McGovern has no biological connection to the children and did not adopt them after the parties married. As such, these children were not "children of the marriage." In reaching this conclusion, the trial court reasoned that "although the children were conceived and born prior to the marriage, they are nonetheless legally her children since she and Respondent married after the children were born."

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LGBT Family Equality

The Fifth District noted that the statute does not state that the “reputed father” must be the child’s biological father. If it were true, a single woman who conceived a child, via in vitro fertilization or otherwise, could simply marry and her husband would automatically become the child’s father. Yet that is not the case. In order to become the child’s parent, the man would have to adopt the child, even if the biological father were deceased or a sperm donor. The statute was enacted not to permit automatic parental rights in stepparents, but to legitimize children born out of wedlock upon the marriage of their parents.

The Court reiterated that [t]here is a strong presumption of legitimacy of a child born to an intact marriage. *Simmonds v. Perkins*, 247 So. 3d 397, 398 (Fla. 2018); *Dep’t of Health & Rehab. Servs. v. Privette*, 617 So. 2d 305, 308 (Fla. 1993). There is no presumption of legitimacy for a child born before marriage, but the subsequent marriage of the mother and the “reputed father” legitimates the child. The parties and the children are, by statute, given the same status that they would have had if the child had been born during the marriage. See *I.A. v. H.H.*, 710 So. 2d 162, 164 (Fla. 2d DCA 1998). “[B]y enacting section 742.091 the legislature expanded the common law rule to include a child born prior to its mother’s marriage to the reputed father.” *Id.* at 165.

“Legitimacy is the legal kinship between a child and its parent or parents.” Restatement (Second) of Conflict of Laws § 287 cmt. a (Am. Law. Inst. 1971). A child may enjoy legitimacy status either by birth into a legally valid marriage or through a process referred to as legitimation where the child, having been born illegitimate, may thereafter by operation of law become legitimate. *Id.* at cmt. b. Section 742.091 clearly is a legitimation statute that allows an illegitimate child to become legitimate when, following the child’s birth, the “reputed” father and the mother of the child marry.

Chapter 742 does not define the term “reputed father.” But courts have long recognized that “reputed” has been defined to mean “generally believed; widely believed although not necessarily established as fact.” *A.S. v. S.F.*, 4 So. 3d 774, 776 (Fla. 5th DCA 2009) (quoting *Encarta Dictionary*). The Court recognized that reputed can mean “believed to be the biological father but held that section 742.091 does not require that the individual is the

biological father -- only that the person held out as the reputed father willingly assumed the responsibilities of parenthood. *Knauer v. Barnett*, 360 So. 2d 399, 403, 404 (Fla. 1978) (writing that under section 742.091, marriage by “reputed father” to mother of illegitimate child shall render child legitimate for all purposes, and factual proof of paternity is not required of person who willingly seeks to assume responsibilities of parenthood). “[P]aternity and legitimacy are related, but nevertheless separate and distinct concepts.” *Daniel v. Daniel*, 695 So. 2d 1253, 1254 (Fla. 1997). Legitimacy refers to the status of a child born to legally married parents, while paternity refers to the status of being the only one natural, or biological, father of a child. *Id.* at 1254-55; see *Callahan v. Dep’t of Rev. ex rel. Roberts*, 800 So. 2d 679, 683 (Fla. 5th DCA 2001).

The Court held that Ms. McGovern was not required to prove a biological connection to the older children, and that the trial court erred in determining that it is a “natural conclusion” that section 742.091 requires that the “reputed father” must be the child’s biological father and dismissing all issues related to M.P.M. and E.S.M. in the dissolution proceedings. This holding is consistent with longstanding Florida law on this issue, but this marks the first instance of the application of the law to the wife of the birth mother.

The case was remanded back to the trial court to determine whether Ms. McGovern met the requirements of section 742.091, notwithstanding her lack of biological connection to the children. In other words, if the couple held themselves out as the parents of these children, and no doubt there will be ample evidence that they did, then it is likely that Ms. McGovern will be found to be the reputed parent of these two children, and that she will be granted her parental rights to those children. ■



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REMOTE JURY SELECTION DURING A PANDEMIC

by Jack Tuter, Chief Judge 17th Judicial Circuit, State of Florida

The 2020 Covid-19 pandemic is not the first-time courts have shut down. In the early part of this century, the “Spanish-flu” wreaked havoc on this country and the third branch of government.

While pandemics vary in severity, the pandemic of 1918, sometimes termed the “Spanish flu,” is generally regarded as the most deadly disease event in human history, killing over 40 million people in less than a year. This 1918 pandemic also had another notable characteristic: while most deaths from influenza occur in the very young or very old, the deaths from this pandemic were primarily in those aged 15–35, with 99% of deaths in those under 65. Pandemic Influenza Bench Guide, 2019 Edition



In the latter part of June 2020, 120 prospective jurors residing in Broward County, Florida, received a summons for jury duty. Like all summons in Florida, the prospective jurors received their notices for jury duty in the mail and were selected randomly by a computer using the Florida driver’s license data base.

The summons, a first in Florida, instructed the panel of jurors to report for jury duty over the Internet. The juror summons was modified with specific directions not to come to the courthouse. Happily, only one juror appeared in the juror parking lot. Forty-nine other jurors promptly reported at 8:30 am by connecting to a Zoom platform. Another 4-6 jurors had been previously excused. In total 55 of 120 jurors answered the call to duty. *(A similar experiment is in process pursuant to an order by a workgroup appointed by Chief Justice Charles Canaday of the Florida Supreme Court).*

Except for specific instructions as to how to report for jury duty, the juror summons was not altered. The summons instructed jurors to report at 8:30 a.m., July 10, 2020. The summons specifically instructed jurors to go to a website and view a video which gave instructions on how to check-in for jury duty; instructions to go to the Zoom website and download the Zoom app; and lastly, the juror was told to go to the 17th Circuit website, find the name of the Chief Judge and obtain the log-in information for the judges Zoom platform. None of the 49 jurors who checked in for jury duty could have done so unless they followed all of these instructions. The success rate was a true testament of faith in the jury system.

The presiding Judge, (Patti Henning), was joined for the 8:30 a.m. check-in by two members of the Broward County Clerk of Court’s jury staff and a member of the Court’s Judicial Information System staff.

It had been pre-determined that only 20-25 jurors would be needed for voir dire to keep the process as concise as possible. It was abundantly clear at the outset that pre-selection of a panel would be more tedious than expected. First, everyone had to check-in remotely and had to be asked about their right to compensation for serving as jurors. Next the presiding judge had to go through juror exemptions, juror hardships, and juror equipment to be used during jury selection. The check-in process lasted one hour and fifteen minutes.

Some jurors expressed difficulty with operating video equipment primarily with the use of iPhones. Some stated they could only view four video panels on Zoom and felt uncomfortable participating; others claimed weak Wi-Fi signals; some made excuses just to bail out such as being at a car repair shop when they checked in.

Despite the aforementioned, everyone who observed this experiment thought the prospective jurors wanted to participate and were fully engaged throughout the process. Once a panel was pre-screened down to 23, the jurors were brought into the virtual courtroom where abbreviated jury instructions were read and voir dire began.

Because Zoom does not permit “tiles” to be moved, jurors were numbered 1-23 for ease of locating the jurors on the screen. A group of attorneys from the American Board of Trial Advocates conducted the voir dire and used a negligence case from which to ask questions. It had been pre-planned by the attorneys and court to ask questions which primarily focused on the use of a Zoom platform while serving on a jury duty. Jurors were asked to mute their microphones and raise their hands to be recognized. Overall, the jurors responded to questions posed by the attorneys as they would in any courtroom environment.

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Remote Jury Selection

Each side were given 20-25 minutes to conduct voir dire. At the conclusion of questioning, the jury was placed in a virtual break-out room and the court and attorneys selected the jury. The jury was brought out of the break-out room and an announcement was made as to who has had been chosen.

After the jury was chosen, the spectators, many of whom were judges, attorneys, and a member of the news media who engaged in a question and answer session with all 23 jurors.

The jurors were asked, “Do you feel you could participate in a jury trial and render a fair verdict if the trial was conducted completely on video?” “Would you rather attend jury duty this way as opposed to in the courthouse practicing social distancing and wearing a mask?” “Do you feel you may be distracted sitting as a juror in this format?” “Do you feel using this format you were not able to feel fully engaged in the jury selection?” “Do you feel you were limited in engaging in the process due to technology limitations i.e. Wi-Fi or equipment?” “Do you feel you may not be able to judge credibility of a witness over Zoom?” “In a personal injury case where the Plaintiff may have suffered catastrophic injuries do you feel you may not be able to award large sums of money as you may only see the injured person or their family for a limited time?”

Based on answers from the prospective panel of jurors and feedback solicited at the conclusion of the event, the following lessons were learned:

- All of the jurors felt they could comfortably participate in a remote jury trial and expressed few limitations
- Some jurors felt a Zoom jury trial had its limitations in scope i.e. some felt this would not be a good format for a serious criminal trial
- Some jurors felt slightly limited using a phone for jury service however, after the event was over, those concerns diminished
- All felt they could judge credibility over a Zoom trial
- Given the choice to serve on jury duty via Zoom or live most felt they would choose Zoom however, all felt if compelled they would go to the courthouse and

serve on a jury

- The juror summons instructions were clear but most did not see the instruction to fill out a juror questionnaire
- The instructional video gave clear instructions as to what they needed to do to participate in jury duty
- Everyone participating in jury selection felt they could serve on a jury via Zoom and render a fair verdict

There is no doubt in my mind jury trials can be conducted via a video platform. Had a judge brought up this possibility of viable jury trials to the legal community in March 2020 it is unlikely anyone would have thought it possible.

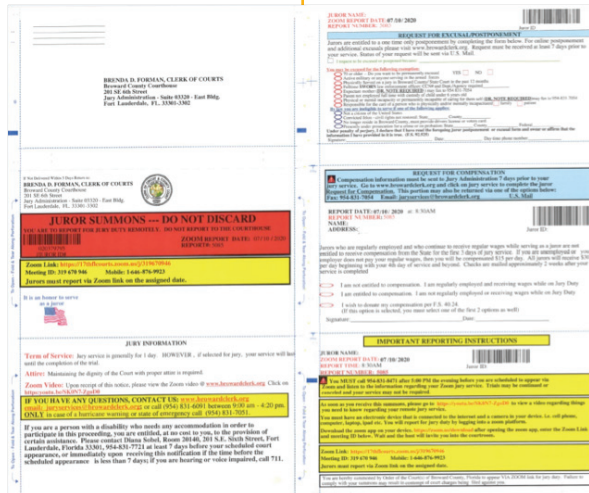
Today, with continued Covid-19 outbreaks, remote jury trials may be the only way to safely move cases on civil dockets. Video trials do have limitations especially in the criminal justice arena, but, certain civil cases and other non-due process cases can be tried by a jury using a video platform. The unanswered question remains whether participants will feel

comfortable enough to stipulate to seating a jury and resolving their case remotely.

The legal profession is prone to centuries old-processes. As attorneys and litigants seamlessly transition into a non-face to face environment, trials conducted via a video platform offer an effective and viable alternative to face-to-face encounters in a courthouse.

The 17th Judicial Circuit conducted a series of mock jury trials and voir dire sessions. These are not part of the Chief Justice’s workgroup directives.

In the criminal justice arena, but, certain civil cases and other non-due process cases can be tried by a jury using a video platform. . ■



Remote summoned jurors, ABOTA members conducting voir dire - 07/10/2020 - <https://youtu.be/GRkFIShuZ9k>

Circuit Civil mock voir dire, ABOTA members as jurors - 06/05/2020: <https://youtu.be/HQwfFIHfAF4>

Circuit Civil mock jury trial over Zoom with ABOTA members - 05/11/2020: <https://youtu.be/onIDrUS6wHg>

County Criminal mock jury trial over Zoom (DUI) - 05/06/2020: <https://youtu.be/F9eyX2h4nZM>

17th Circuit Civil mock civil trial over Zoom - 04/14/2020: <https://youtu.be/93Wvd3XUNUA>

WHAT COURSES SHOULD LAW STUDENTS TAKE?

by Dr. Adam Scott Goldberg

What Courses Should Law Students Take for Practice in South Florida? Survey Results From Practicing Attorneys in South Florida

Law schools have a reputation for teaching law students how to think like lawyers but not how to act like lawyers (Alexander, 2010-2011). Law schools focus on helping students obtain a JD degree and pass the Bar exam. Law schools and the Florida Supreme Court encourage students to take as many classes as possible that will help them to pass the Bar exam or exams. Most students design a curriculum that will allow them to take as many classes as possible that will cover subjects tested on the exam. Whether or not the law school classes chosen will help the student to get a job in the legal field is either ignored or classified as a lower priority by most law students (Murphy, 2015).

Every year after the Bar exam results are published, thousands of new lawyers, fresh out of law school, seek employment. Many new lawyers come to South Florida to start their legal careers. A few of these new lawyers may already have secured a job because of the law firm they clerked at during law school or by the on-campus interview process. Many of these new lawyers use career service departments from their respective law schools or contact people in the legal field from their social networks or the social networks of others to find employment. For those new lawyers who do not already have a job lined up, it would be beneficial to know what law school courses prospective South Florida employers are looking for on the resume or transcript as they go about the interviewing process.

In the spring and early summer of 2019, the Broward County Bar Association (hereinafter BCBA) weekly e-newsletter contained a survey asking for Florida lawyers to comment on what law school classes they felt most helped them with the practice of law. Thanks to the many BCBA members who responded to the survey, the results are ready for publication.

The eight-question online survey addressed three basic questions:

1. What law school classes did the survey participant take during law school and was the class required by the law school?
2. What law school classes do attorneys in South Florida find to be most helpful in their practice of law?
3. What law school classes do attorneys in South Florida want new hires to have taken while in law school?

Survey results came from practicing Florida attorneys from fourteen (14) different law schools including many

schools in Florida along with schools in Massachusetts, New York, Pennsylvania and Texas. The survey offered participants twenty-nine different classes to choose from in alphabetical order ranging from Appellate Law to Wills, Trusts & Estates.

Before sharing the results, it would be beneficial to get a quick perspective on the issue. The number one complaint of recent law school graduates is that they were not prepared to enter the practice of law (Chafee, 2014). Chafee wrote that law schools must change their focus to classes that teach skills with a focus on practical and business skill developments. Doing so will result in producing law school graduates who are more prepared for the actual practice of law and who will, in turn, become more effective lawyers. Law schools need to do a better job of teaching critical thinking (Curtis, 2014). Scholars suggest that law school has not changed enough to keep up with contemporary law students. It has even been suggested that if you took a law student from the 1970s and dropped him or her into a law school class today, the experience would not be any different. The inability to change is often fed by law schools that have historically looked backward rather than forward as the general rule. Too often, courses are taught at law school because of tradition instead of looking at what courses are needed to ensure success for graduates. The study concluded that the current crisis in legal education should demonstrate to legal educators that their previous decisions on how to educate law students should be reassessed.

Three similar surveys were done in other parts of the country. In the Northeast United States in 2015, Coates, Fried, and Spier surveyed a group of 124 full-time attorneys who worked at 11 major law firms where Harvard Law School placed graduates. Harvard Law School approved the survey and supplied contact information. The online survey asked former law students which, among seven law school courses, proved to be most valuable now that the former students were practicing attorneys. The law school classes that focused on corporate finance and accounting rated higher than courses in negotiation and leadership in law firms. The study results were consistent between transactional attorneys and litigators. Although the survey was conducted on behalf of Harvard University, survey respondents came from numerous law schools, including Yale, Columbia, and New York University.

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What Courses Should Law Students Take?

A similar study was done in Northern California in 2011 by Schultz & Zedeck. Here, the study was taken from 3,000 graduates from two local law schools. The purpose of the study was to determine what skill sets were most important for the successful practice of law. The results suggested that creativity, strategic planning, problem-solving, negotiation, and establishing client relationships were the most important skills for new employees to have.

John Marshall School of Law, located in Chicago, Illinois, surveyed its graduates in April of 2011 regarding what skills are needed for a first-year attorney (Niedwiecki, 2015-2016). The survey illustrated that first-year lawyers needed to be proficient in filing documents and pleadings, client interviews, investigation of facts, problem-solving, client counseling, oral communication, oral arguments, and practicing with professionalism (e.g., ethics). John Marshall responded to the survey results by ensuring that its curriculum was filled with classes that helped students hone these skills.

A survey known as the “Foundation for Practice” developed by the Institute for the Advancement of the American Legal System asked what makes new lawyers successful (Gerkan 2017). The survey results from more than 24,000 attorneys from across the United States indicated that characteristics including integrity, high work ethic, common sense and resilience were the foundations that new lawyers need to be successful.

The surveys and articles listed above illustrate that there is no one answer on what the most important law school classes students should take during their time in law school. The experts tend to skew based upon whether the author was a law professor or a practicing attorney. Only a minimal amount of statistical research on actual law school classes to take has been done on the topic based mostly upon one-time surveys from the Northeast and the Midwest United States. This survey now adds the Southeast United States to the list of locations surveyed about what law school classes employers want new hires to take.

As for the survey results from our local survey as offered online through the BCBA, here are the results.

In response to Question 1 (classes taken), civil procedure, constitutional law, contracts, ethics, property, criminal law, and torts were the classes taken by most of the survey participants. For almost all the survey participants, these were also required classes. No other classes or required classes showed up on many of the surveys.

In response to Question 2 (most helpful classes), civil procedure, contracts, and legal research and writing, in

that order, topped the list of the most helpful law school class taken by the survey participants. It is interesting to note that all three of these classes were required classes taken by almost every survey participant. Survey participants could choose up to five law school classes when answering this question. The survey results also showed that even though evidence, torts, property, and ethics were taken by almost every survey participant, less than 33% of the survey participants felt these classes were important in the practice of law. Constitutional law, another required law school class, was perceived as being helpful in less than 15% of the completed surveys. Some classes like International Law, Insurance Law and Law & Leadership received no votes for being top five important law school class.

In response to Question 3 (most important class for getting a job), civil procedure, legal research and writing, and contracts, in that order, were the three classes that participants felt were most important for law school graduates to take for hiring purposes. No other law school class ranked near these three classes in level of importance. Survey participants could choose up to five law school classes when answering this question. This response suggests that many of the survey participants may have been litigators as opposed to transactional attorneys. It was interesting to note that the survey choice receiving the most votes as an important class that was not a required class for most participants was Business Entities (i.e. Corporation or Business Associations). Another interesting trend was classes that tended to show up together. If a participant chose trial advocacy as one of their five most important classes, they were likely to have also chosen evidence. If a participant chose federal income tax as one of their five most important classes, they were likely to have also chosen wills and trusts. If a person chose wills and trusts, they were likely also to select business entities. This author was disappointed to see only 32% of respondents said ethics is one of the most important subjects. Ethics is a subject that covers every topic of law and is an issue that every attorney must face every day (Teague, 2018-2019). Perhaps therefore attorneys do not always have the best reputation among the professions.

Based on the survey results, current and future law students should select classes during law school that focus on contracts, civil procedure, and legal research and writing. By focusing on these three areas, law school graduates should be more attractive candidates during the legal hiring process.

What Courses Should Law Students Take?

In addition, law schools= curriculums in South Florida should strive to add elements of these three subjects into as many law schools' classes as possible.

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WHEN WAS THAT FILED, AGAIN?

by Ebryonna Wiggins

Electronic Service and Filing Deadlines During and After COVID-19

Filing deadlines are one of the most important logistical aspects of litigation practice. Fortunately, we have substantive statutes and procedural rules to assist in the proper computation of time. Specifically, Florida Rule of Judicial Administration 2.514 governs how to compute time to arrive at the correct deadline date. If I was served with a document on a Friday, do I start counting from the next day, a Saturday, or the following Monday? If my deadline falls on a holiday, is the filing still due that day? Does it matter if I was electronically served or served via regular mail? Florida Rule of Judicial Administration 2.514

generally answers such questions in a relatively straightforward manner. One question that does require a bit more analysis, however, is what happens if you are electronically served on a weekend? Is that document deemed filed on the weekend day, or the following Monday? With more judges and counsel working remotely due to the COVID-19 restrictions and a sharp shift to remote hearings that allow a judge to enter an Order over a weekend, it is imperative to understand the electronic service and filing time computation rules.

To explore the rules that impact weekend filings, consider first the following scenario:

Your boss wants you to work over the weekend to file an Amended Complaint that is due Monday. Is there any advantage to filing on Saturday an 86-page Amended Complaint for opposing counsel to review bright and early on Monday morning?

In this case, opposing counsel's response deadline would move up one day due to filing on Saturday rather than on Monday, assuming that the deadline does not fall on a weekend or holiday. This is simply a function of the rule stating that you begin counting a deadline that is stated in days or longer from the next day that is not a Saturday, Sunday or legal holiday.ⁱ

As to the fact that you are electronically serving a document on a Saturday, electronic service of all required or permitted documents served through the e-filing Portal or other e-Service system is complete on the date the served document is electronically filed.ⁱⁱ The filing date for a document served through the e-Portal is the date and time that such filing is acknowledged by an electronic stamp or some other acknowledgment, or the date the last page of such filing is received by the court or clerk.ⁱⁱⁱ (Not sure that the latter much applies given today's e-filing system, unless you are filing the document in parts, but the guidance is there if you need it.) Therefore, if you file your Amended Complaint on Saturday night and receive confirmation from the e-filing Portal that the document was filed that Saturday, the document will also be deemed served that Saturday. However, because of the time computation rules, the outcome for opposing counsel given a 10 or 20-day response deadline would be no different whether you file on Friday at 11:59 p.m. or Saturday, again because you would not begin counting to calculate the response deadline until Monday.

Practically-speaking, then, whether you file on Friday or Saturday is up to you.

Consider now the scenario posed at the outset of this article. The Court e-filed an Order over the weekend and gave you a 10-day deadline to comply. Is the Order deemed filed on the following Monday, and when is compliance due? Applying the same rules as stated above, the Order is not necessarily deemed filed on Monday. As long as the Order has a time stamp acknowledging the date and time of the e-filing, the Order is deemed filed and served on the date indicated in the time stamp, which very well may be a Saturday or Sunday. Nevertheless, whether the Order is deemed filed on a Saturday or Sunday, your 10 days begin on the following Monday.^v If there is a delay in the processing and the time stamp shows that the Order was electronically filed on Monday,



Continued to Page 23

When Was That Filed Again?

then you begin counting your deadline on Tuesday.

Conclusions

The major amendments to the Florida Rules of Judicial Administration regarding e-filing occurred in 2013.^{vi} While forward-thinking in general, the various amendments to the email and e-filing procedures were still cautious in treating e-mail as regular mail for time computation purposes, thus, still adding five days to a required deadline despite the instantaneous nature of electronic service. It was not until January 1, 2019, that the new Rules became effective to eliminate the extra five days.^{viii} It may seem obvious that an electronically-filed document may be deemed filed the same day, but a careful reading of the Florida Rules of Judicial Administration makes it clear that we cannot simply rely on what feels common sensical to determine the filing and service date of e-filed documents. The most important take-away is to pay attention to the time stamp on the document that you electronically served. If for any reason there is a delay in the electronic processing of your document, you will have to shift your deadline calculations accordingly. In short, despite the instantaneous transmission of electronic documents, it is prudent to never assume that a document that is served through the e-filing Portal was actually served on the same day.

One thing learned from the COVID-19 challenges is that technology when appropriately used and properly regulated can be a vital ally. With social-distancing restrictions slowly lifting, let us not lose the technological momentum gained, but pay even closer attention to the rules now governing and that surely will govern our increasing reliance on technology in the legal profession. ■

ⁱ Fla. R. Jud. Admin. 2.514 (a)(1)(A).

ⁱⁱ Fla. R. Jud. Admin. 2.516 (b)(1)(D)(i).

ⁱⁱⁱ Fla. R. Jud. Admin. 2.525 (f)(3).

^{iv} Fla. R. Jud. Admin. 2.516 (b)(1)(D)(i); 2.525 (f)(3).

^v Fla. R. Jud. Admin. 2.514 (a)(1)(A).

^{vi} See *In re Amendments to the Fla. Rules of Judicial Administration*, 126 So. 3d 222, 226 (Fla. 2013).

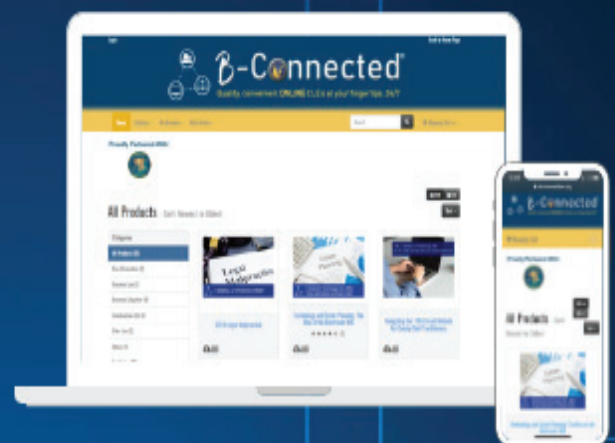
^{vii} See *Id.* (Fla. R. Jud. Admin. 2.516 (b)(1)(D)(iii)).

^{viii} See *In re Amendments to the Fla. Rules of Civ. Procedure*, 257 So. 3d 66,67-68, 70-71 (Fla. 2018).

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RECENT DEVELOPMENTS IN LAW

by Debra P. Klauber

When an attorney is accused of unprofessional conduct arising from a personal bankruptcy proceeding, the “advice of counsel” defense should apply to negate a finding of bad intent.

In this case, an attorney filed for personal bankruptcy, which was denied after the court found that he had intentionally failed to disclose an anticipated bonus with the intent to hinder, delay or defraud his creditors. Subsequently, The Florida Bar filed an administrative complaint, which alleged he had failed in his obligation to be forthright with the bankruptcy court, in violation of the rules of professional conduct. Although the attorney failed to timely file an advice of counsel defense in the bankruptcy proceeding, he sought to apply it in the disciplinary proceedings against him. The Florida Supreme Court noted that an advice of counsel defense is usually unavailable in Bar discipline proceedings because the Bar Rules themselves charge Florida lawyers with knowledge of the Rules. However, where the attorney in question was not relying on advice of counsel with respect to the Bar Rules, and where the case had nothing to do with work he performed on behalf of clients, the court held that the defense should apply and remanded the case so that the referee could reconsider the case in light of its holding. *The Florida Bar v. Herman*, SC17-2050, 45 Fla. L. Weekly S186 (Fla. June 18, 2020).

Appellate court dismisses a case that sought to hold a manufacturer of a product containing synthetic marijuana responsible for an auto accident and wrongful death.

The driver of a vehicle involved in a collision that killed others voluntarily consumed a product that was labeled as not safe for human consumption, became impaired, drove at a high rate of speed, and rammed his vehicle into another. The wrongful death plaintiffs attempted to sue the manufacturer of the product for negligence and strict liability. Although the trial court denied the manufacturer’s motion for directed verdict on the issue of causation, the appellate court reversed, finding that the driver’s criminal conduct was the sole superseding proximate cause of the accident, as a matter of law. *DZE Corp. v. Vickers*, 1D18-5081, 45 Fla. L. Weekly D1379 (Fla. 1st DCA June 8, 2020).

Plaintiff’s claim that health care providers refused to transfer a patient for strictly financial reasons is still governed by medical malpractice pre-suit requirements.

The plaintiff alleged that the defendant hospital refused to complete a medically necessary transfer so that it could increase its admission rates for financial reasons. The complaint alleged that the refusal to transfer the patient to a facility that could immediately provide ICU care caused the decedent’s death. The trial court denied the defendants’ motion to dismiss for failure to comply with the pre-suit requirements, finding that the wrongful acts complained of were not directly related to the improper application of medical services and did not require the use of professional judgment or skill. The appellate court disagreed, and held that the claim did relate to medical care or services and did require the use of professional judgment or skill. At bottom, the claim arose out of a decision to admit the patient to receive critical care management as opposed to transferring her to another facility for intensive care. In order to recover, the plaintiff would be required to show that the decision required professional judgment

through testimony of a qualified medical expert. *Rockledge HMA, LLC v. Lawley*, 5D19-1223, 5D19-1919, 5D19-1225, 5D19-1957, 45 Fla. L. Weekly D1282 (Fla. 5th DCA May 29, 2020).

Appellate court upholds dismissal against a mental health facility that provided outpatient mental health services to a high school shooter.

Families of victims of the school shooting at Marjory Stoneman Douglas High School filed suit against a mental health facility that provided outpatient mental health services to the shooter. The plaintiffs alleged that the mental health facility was negligent for failing to prevent the shooter from being mainstreamed into the public school system and in failing to warn others of his dangerous propensities. The trial court and appellate court followed long-standing Florida precedent in holding that mental health providers do not have a duty to warn third parties that a patient may become dangerous because of the inherent unpredictability associated with mental illness. The appellate court also refused to apply the undertaker’s doctrine and discussed the public policies inherent in its holding, recognizing that if it found a duty on the part of the mental health facility under such circumstances, it would not only undermine effective patient-therapist relationships, but would also discourage mental health professionals from providing mental health services to students. *Pollack v. Henderson Behavioral Health, Inc.*, 4D19-1512, 45 Fla. L. Weekly D1244 (Fla. 4th DCA May 27, 2020).

Even where the trial court properly concluded that a store did not breach its duty to maintain the premises in a reasonably safe condition, given the lack of time between the spill and the plaintiff’s fall, there was still a disputed issue of fact as to whether the store had a duty to warn the plaintiff.

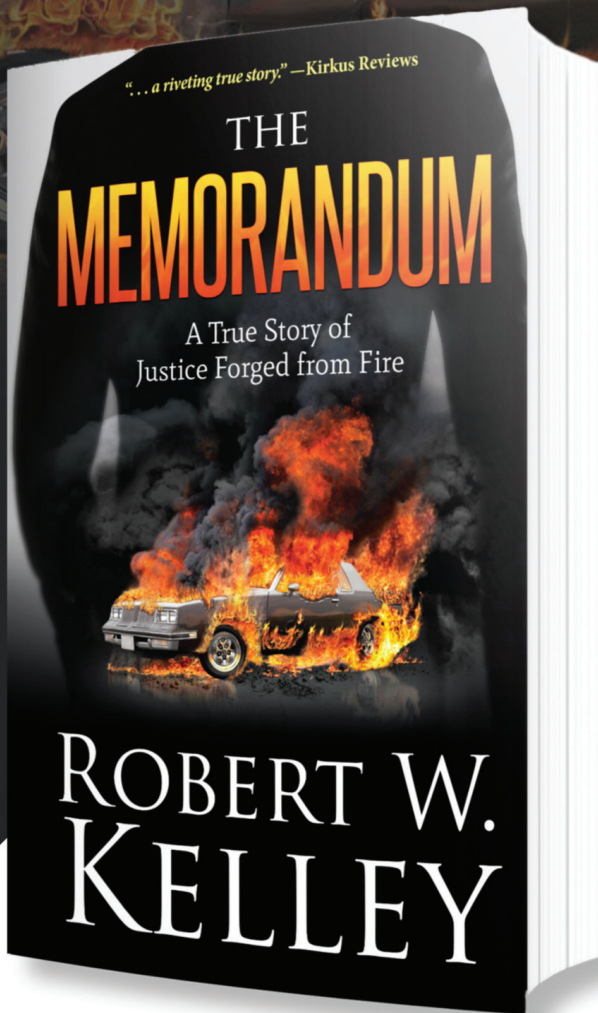
The appellate court affirmed summary judgment in favor of the premises owner based on a finding that it did not have sufficient time to take action in the less than one minute between the spill and the plaintiff’s fall. However, where the plaintiff had elicited testimony from the store manager that she should have told another employee about the spill, and that she could have warned the plaintiff, or that they could have quickly blocked off the area surrounding the spill, the appellate court reversed the summary judgment in favor of the premises owner on the duty to warn claim. The court did, however, leave open the question of whether the spill (of laundry detergent) was an open and obvious condition. *Frederick v. Dolgencorp, LLC*, 2D18-4621, 45 Fla. L. Weekly D1259 (Fla. 1st DCA May 27, 2020).

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