

# BROWARD COUNTY BAR ASSOCIATION BARRISTER

FEBRUARY 2020

## BLACK HISTORY MONTH: A CELEBRATION OF OUR BLACK MAYORS



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*Broward County*



**Ashira Mohammed**  
*Pembroke Park*



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**BARRISTER**  
FEBRUARY 2020

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*Michael A. Fischler, Esq.*

February is here, the month of Valentine's Day, the month we are to appreciate our loved ones and the "nice" and "kind" people in our lives. As we enter the second half of the BCBA fiscal year, I am pleased to report membership continues to grow, we are fiscally sound, exciting programming and events continue to be planned and many exciting and positive things are happening within the BCBA. Last month, on January 24, 2020, Chief Judge Jack Tuter addressed, enlightened and educated all attendees on Judicial happenings and operations at the Annual Judicial Procession and State of the Circuit event. This event also provided the BCBA and the community the opportunity to express our appreciation to our fellow lawyers who have chosen the Judicial path and for us to give a special thanks to Circuit Court Judge Carol-Lisa Phillips, County Court Daniel J. Kanner and Broward County Mayor Dale V. C. Holness, who each received a Friends of the Bar Award for their participation in BCBA educational and other events. At the Judicial Jaunt Session on January 31, 2020, Judge Michael A. Robinson provided insightful comments and antidotes, as well as educated attendees on his Court operations and procedures.

On February 1, 2020, the BCBA and many Voluntary Bar Associations ("VBAs") will be hosting the South Florida Legal Mentoring Picnic at CB Smith Park (the "Picnic"). Madeleine Q. Mannello, Esq. Chair and the members of the BCBA VBA Leaders Committee are working hard to insure there are opportunities for VBAs to mix and mingle, develop comradery, as well as provide opportunities for mentoring and meaningful connections. This year's Picnic will have many games, music, a bounce house, and plenty of food (some beer) and activities for our families. We encourage all members to invite law students and newer members of our profession to come with their families to the Picnic (which is free except for the small park entrance fee per person).

On February 21, 2020, the Seventeenth Judicial Circuit and BCBA present Black History Month: A Celebration of our Black Mayors, honoring Broward County Mayor Dale V.C. Holness, and City Mayors Ashira Mohammed, Ken Thurston, Hazelle P. Rogers, Wayne Messam and Eric H. Jones. The celebratory event will take place from 11:00 a.m. to 1:00 p.m. at the Broward County Courthouse, Jury Assembly Room. This is an exciting event, providing recognition and demonstrating our appreciation of our black Mayors who have chosen to serve their communities. We should also remember Past BCBA President, W. George Allen, an icon, respected trial lawyer, pioneer in the legal profession, warm and compassionate person, and a tireless advocate and fighter for civil rights. Please register for the exciting event online at the BCBA website Calendar (its free).

The BCBA Judicial Jaunt series continues with an up-close conversation with the Honorable Carol-Lisa Phillips with lunch on February 26, 2020, in the BCBA Conference Center. You do not want to miss this opportunity to gain insight into the operations of Judge Phillips' courtroom and hear some interesting facts about the Judge. Another big event occurring this month is the 2020 Worker's Compensation Section Conference and Reception to be held on February 28, 2020 at Bahia Mar, Fort Lauderdale Beach Hotel from 11:30 a.m. until 5:00 p.m. Registration and sponsorship information can be found on the BCBA website Calendar, which has other information relating to other exciting and upcoming events.

The BCBA is an ever-growing, impactful and exciting Association, with a first-class staff, that provides a multitude of opportunities for you to learn, socialize, participate or take on leadership roles. I invite you to get involved and encourage non-members to join the BCBA, dues being half price for the rest of the year.

*Until next month, be safe, be happy and take care of yourself and those around you.*





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*Lindsay M. Massillon, Esq.*

Our 2020 is off to a phenomenal start! I am excited to announce that Broward's YLS was awarded Service Project of the Year by the Florida Bar's Young Lawyers Division (YLD) at the Affiliate Outreach Conference held in January! Our submission, "Veteran Stand Down," was selected as best service project in the state out of very significant and deserving projects put on by our counterparts in other counties. Huge shout-out to our Treasurer, James Heaton, who helped make his vision a reality on

November 1. The event helped several veterans clear hundreds in court costs which posed serious obstacles to driving with a clean license. The day also included free "Know Your Rights" informational sessions on landlord tenant issues, collections, and employment law. I was honored to speak to a handful of veterans on their rights in the workplace.

Another huge perk to attending the Affiliate Conference is getting to know leaders across the state, and finding out what projects other Associations have in store for their membership. As part of the conference, Affiliates are provided an opportunity to apply for a grant to fund a certain project. In total, YLD has around \$40,000 to give away to deserving Affiliates for their projects which range from luncheons with judges, building beds for children in foster care, to our submission—Mental Health and Wellness May. Should we be awarded funding from YLD, YLS will be able to put on a three-part wellness series this May which would be completely free for our members.

In the spirit of the camaraderie that I experienced at the Affiliate Conference this year, I cannot think of a better way to celebrate Black History Month than with my colleagues at the T.J. Reddick Bar Association, Caribbean Bar Association, and Haitian Lawyers Association. Over the past year, I've had the pleasure of getting to know Janice Haywood (President, T.J. Reddick Bar Association), Tricia-Gaye Cotterell (President, Caribbean Bar Association), and Altanese Phenelus (President, Haitian Lawyers Association) on a much deeper level as we share our experiences as leaders of our respective organizations. It doesn't hurt that these ladies are absolute bosses, and a lot of fun to be around. I hope to see you at our Joint Black History Luncheon on February 12.

Finally, I hope you'll attend our Law-laPalooza! event on February 14. Think of it as a hot date with the law. This event will feature a full day of CLEs, Breakfast with our Judiciary, and lunch! What more could you ask for on Valentine's Day!





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# LIFE INSURANCE CHASSIS

by Howard Wolkowitz

## DO YOU KNOW WHAT LIFE INSURANCE CHASSIS YOU OWN? It could be a matter of life or death

Life insurance is a risk management vehicle. It can be designed and used for multiple purposes. If used properly it can provide tax free benefits, and it can protect families and businesses in the event of an untimely passing of key family and business members. The basic chassis of life insurance is term insurance; however, when it comes to designing your particular vehicle, or that of your client, there are many options.

Term life insurance is the cheapest, and most cost effective, coverage for specific durations of time. Term insurance can be purchased to cover a 10, 15, 20, 25, or 30-year duration and can be designed to be in force to age 100, guaranteed. Think of this type of contract as a guaranteed term policy.

With a term policy there is no equity buildup of cash, you are paying a premium based on your mortality table calculation at your current age and health. This is a perfect product for someone who needs to protect their income for a specific period of time.

Cash value policies are term chassis where you make an additional premium payment to over fund the policy, in order to create a cash account. These types of policies are oftentimes referred to as “permanent” policies. There are several types of cash value policies:

### Whole Life

Think of whole life insurance as a bilateral contract, where you agree to make required payments on time and the insurance company makes certain guarantees to you in exchange.

Whole life cash value grows from annually declared company dividends that are not guaranteed.

### Universal Life

Think of universal life as a unilateral contract where you don't guarantee to make all required payments on time and the insurance doesn't guarantee that policy will last or perform as illustrated. Universal life cash value grows from company declared annual interest rates that are not guaranteed. This type of policy is less expensive than whole life policies because it offers fewer guarantees.

### Index Life

Think of index life as a unilateral contract where the additional money you invest over and above the cost of insurance is invested in an investment pool and grows via a complex formula, as explained in an illustration. Index life generally has a floor of zero percent to a capped percent via the formula outlined in the illustration. This type of policy allows you the opportunity to participate in potential upsides of investments. This type of policy can be less or more expensive, based on performance.

### Variable Life

Think of variable life as a unilateral contract where you can fund, overfund, under fund and skip payments. The downside is that if your policy is not designed, funded and managed properly, your policy may collapse with no cash value and no death benefit when you pass away. This type of policy has the greatest upside and downside and therefore carries the most potential risk.

A good idea would be to enlist the assistance of an insurance professional where needed, especially one who has expertise in several life insurance vehicles, to help make insurance decisions for yourself or your clients, and to stay up to date on new options as they become available.

Whether it's for you or for your client, and whichever type of policy is owned, it's important to review policy terms and performance periodically, as well as in the event of any major life change, to ensure that the type of policy you carry is still a best fit for you and those it is designed to protect.

*Howard Wolkowitz provides life insurance solutions, reviews and analytics for consumers, beneficiaries and trustees. He can be reached at [howard@healthofyourwealth.com](mailto:howard@healthofyourwealth.com) and at 954-558-3673.*





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# 2020 WORKERS COMPENSATION CONFERENCE

by William R. Soler

The Workers Compensation Section of the Broward County Bar Association will soon be hosting its annual educational conference at the Bahia Mar Resort on Fort Lauderdale Beach on Friday, February 28, 2020. Just like every year, this event will be a success! Last year the event was completely SOLD OUT! DO NOT WAIT until last minute to book your seats! Purchase your seats today! "Don't put off until tomorrow what you can do today." - Benjamin Franklin

In addition to having a question-and-answer session with our Broward County Judges of Compensation Claims, Honorable Daniel Lewis, Honorable Iliana Forte, and Honorable Michael Ring, we will be holding interesting panel presentations on a wide range of hot topics and the latest cases in our field.

One of the hot topics will deal with everything you need to know before getting to trial, and will include Petitions, Depositions, Pre-Trials, Motions in Limine, etc. As many practitioners know, how you shape your case from the beginning can help you achieve the result you want for your respective client. Preparing properly can help each side see the other's positions, and this will very often promote resolution of the issues or settlement.

Lastly, after trial or after months or years of litigation, your client is ready to settle. We will have a panel ready to discuss "Practical Tips when Approaching a Settlement", including MSA Consideration and Updates. This topic will be discussed in greater detail, as well as a case law update at our annual Educational Conference. To wrap up the day, we will also be honoring Mal Steinberg as the first inductee to the BCBA Workers' Compensation Section Hall of Fame. Did I mention a cocktail hour? See you there!

*William R. Soler, Esq. is a Junior Partner at Velasquez Dolan Arias, P.A., and focuses his practice on Workers' Compensation and Personal Injury litigation. He obtained his undergraduate degree from the Florida International University, and his J.D. from Nova Southeastern University in 2013. He is the current chair of the Workers Compensation section of the Broward County Bar Association. He can be reached at WSoler@VDAtrialLawyers.com or by calling 954-382-0533.*



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For More Information regarding Event contact Lauren Riegler Capote, BCBA Events and CLE Manager at [lauren@browardbar.org](mailto:lauren@browardbar.org) or (954)832-3618





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# BLACK HISTORY MONTH

by Alison F. Smith

## Celebrating Black Excellence as we Embark on a New Decade

To mark the end of a decade, at the end of 2019 a new challenge started trending on Instagram called the “10-year challenge,” which essentially required participants to post photographs of themselves in 2009 and 2019, to show if, or how, they had grown or changed in the space of a decade. If the 10-year challenge is applied to Broward County, one can see that Broward County today looks different than it did ten years ago. Broward County is more racially diverse than its neighbors Dade and Palm Beach Counties, and steadily continues to increase its racial diversity. In narrowing the focus to Black/African American residents of Broward county, Broward County has had tremendous growth in the Black/African American population and this is reflected in our judiciary, our local elected officials, members of the Bar and, indeed, leaders of the Broward County Bar Association (“BCBA”), among many others.

The BCBA recognizes the importance of diversity and inclusion and, throughout the year, hosts events aimed at observing and applauding Broward’s diversity. For example, on the lighter side, the BCBA hosts Caribbean-themed events and a Noche Latina event where different cultures are explored through an array of good food and music. On the more serious side, the BCBA has successfully worked in conjunction with minority bar associations to ensure that awareness is raised within the legal community as to the importance of diversifying the bench.

Although originally only lasting for a week and going by a different moniker (i.e., Negro History Week), the entire month of February has been designated as Black History Month since 1970. It was created as a means to celebrate and indeed highlight the great strides and achievements of those in the Black community. In such a racially diverse community as Broward County, the BCBA relishes the opportunity to meaningfully participate in Black History Month. To that end, every year the BCBA finds a unique way to celebrate Black history, and shine a light on those in the Black community who serve not only as an example for the Black community, but Broward County as a whole. This year is no exception. In particular, as a way to recognize our exemplary brothers and sisters in the Black community, the BCBA has decided to honor Broward

County’s Black Mayors at their annual joint event, co-hosted with the 17th Judicial Circuit, on February 21, 2020. In this, the seventh largest county in the State, there are six Black Mayors (in alphabetical order): Dale Holness (Mayor of Broward County); Eric Jones (Mayor of the City of West Park); Wayne Messam (Mayor of the City of Miramar); Mayor Ashira Mohammed (Mayor of the Town of Pembroke Park); Hazelle Rogers (Mayor of the Town of Lauderdale Lakes); and Ken Thurston (Mayor of the City of Lauderhill).

While elective office is generally glamorized, elected officials work long hours, usually for little pay, and are often the sounding board for members of the citizenry who may be displeased with matters that are purely personal in nature and outside of the control of the elected official. In addition, they routinely have to shoulder the blame for actions they did not take or order, and the consequences therefrom. Nonetheless, they toil relentlessly. At the BCBA, we want to express our deepest gratitude to our elected officials for their service and during this Black History Month, we rejoice in knowing that we live in such a diverse community, and that the people charged with governing the community resemble the community and can relate to the community. As such, it is our honor to recognize these six mayors, all of whom are truly trailblazers (Mayor Messam, for example, is the first Black Mayor in the City of Miramar and was a 2020 presidential candidate). It is our sincere hope that Broward County and the municipalities that these officials govern continue to thrive under their leadership. A toast to our Black Mayors and happy Black History Month!

*Alison Smith is a partner at Kelley Kronenberg and is a Business Unit Leader for Labor and Employment. She has been practicing for almost sixteen years and serves as the Secretary on the Executive Board of the Broward County Bar Association. She can be reached at [asmith@kklaw.com](mailto:asmith@kklaw.com).*





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A large stone plaque on the left and a photograph of a courtroom entrance on the right. The plaque is inscribed with the name of the courtroom and a dedication. The photo shows a wooden double door with a sign above it. A blue arrow points from the photo to the plaque.

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# THE ABC'S OF ATTORNEY'S FEES IN FLORIDA

by Brendan A. Sweeney

Florida courts have accepted the “American Rule” with respect to awarding attorney’s fees to a prevailing party in litigation. The “American Rule” requires that “in the absence of legislation providing otherwise, litigants must pay their own attorney’s fees.” Simply put, attorney’s fees may usually only be awarded if the contract that is at issue allows for recovery of attorney’s fees or if an applicable statute allows for recovery of attorney’s fees. This means that if you are the prevailing party at the end of the litigation, you may be awarded your attorney’s fees only if your contract has a clause stipulating that the prevailing party will recover its attorney’s fees from the non-prevailing party. Instead, if you are enforcing your rights pursuant to a statute, such as Florida’s Deceptive and Unfair Trade Practices Act, it can provide that the prevailing party will recover its attorney’s fees from the non-prevailing party.

Prevailing party fee provisions are designed to put the prevailing party in the position it would have been in had the matter been fixed without litigation. It is meant to be a simple concept, but implementing these provisions can be complex depending on the nature of the lawsuit and the procedural tactics used in the case.

Generally, a prevailing party is one that succeeds on the significant issues in a case. Courts apply a balancing test to determine which party has prevailed in a lawsuit. Once the prevailing party is determined, the Court must award fees if the party has a right to fees. If one party prevails on a particular facet of the case, while another party prevails on another part of the case, the court applies a balancing test to determine how to allocate attorney’s fees. In a situation where both parties would be considered prevailing, the party declared liable for a greater amount of attorney’s fees may be required to pay the difference between each party’s fees.

Litigants can also utilize proposals for settlement, or offers of judgment, as a tool for obtaining entitlement to attorney’s fees. The purpose of the proposal for settlement is to encourage early resolution of civil litigation by inflicting an added financial burden on a party who has rejected a fair offer of settlement. If served by defendant, they will recover attorney’s fees if the judgment attained by the plaintiff is 25% less than

the amount of the proposal or if there is a judgment of no liability. Likewise, if the offer is from plaintiff, they will recover its attorney’s fees if the judgment is in favor of the plaintiff for an amount in excess of 25% of the amount of the proposal.

A party may also seek fees pursuant to Florida Statutes § 57.105, which allows a party in litigation to seek an award of fees as a sanction against the losing party and the losing party’s attorney for maintaining a frivolous claim or defense. The standard for obtaining § 57.105 fees is extraordinary. The court must find that at the time of filing the claim lacks a basis in material facts or then-existing law.

When pleading entitlement to attorney’s fees in Florida it is important to follow certain specific guidelines. In *Carman v. Gilbert*, 615 So. 2d 701 (Fla. 2d DCA 1992), the Court set out these procedures: “Such pleading must demonstrate: (a) the contractual or statutory basis for an award, (b) why the opposing party should be obligated to pay the award, and (c) the obligation of the moving party to pay his or her attorney.” Since this ruling, courts have relatively kept these guidelines and have primarily just added that any motion for fees must be submitted within 30 days of the date the final judgment is filed. These same courts have also stressed that attorneys need to keep sufficient records of the costs and fees that have been incurred. Courts are reluctant to award attorney’s fees if there are no records to substantiate them.

Overall, entitlement to attorney’s fees is both simple and complex but knowing the basics is essential to good practice.

*Brendan A. Sweeney, Esq., LL.M.,  
Sweeney Law, P.A. a boutique  
two-attorney law firm in  
downtown Fort Lauderdale, Florida,  
is an AV Preeminent Martindale  
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## Looking to the Future with Judge Hunter Davis

Affable, passionate, and eager to listen; these are just a few descriptors for Judge Hunter Davis which are instantly noticeable when speaking with him.

During a recent meeting, we discussed a lot of topics, both personal and legal. It is apparent that Judge Davis's background played a role in developing his outlook on the future of our profession and where he would like to see improvement.

Judge Davis grew up in Chapel Hill North Carolina and became a third-generation tar-heel attending the University of North Carolina Chapel Hill before attending Marquette Law School and then completing his legal education at Washington & Lee University. He also obtained a Master of Laws in Maritime Law from University of Miami School of Law.

After passing the bar, Judge Davis gained experience in civil litigation before following his passion for criminal law and interning at the Palm Beach County State Attorney's Office, assisting in Felony and gang/organized crime cases. This ultimately led to a position as an Assistant State Attorney for the Twentieth Judicial Circuit.

From there, Judge Davis became an Assistant State Attorney for the Broward County State Attorney's Office, working in several divisions, including as a Supervising Assistant State Attorney for the Felony Trial Unit and then the Public Corruption & Special Prosecutions Unit.

Judge Davis ultimately became an Assistant Statewide Prosecutor handling drug crime, often prosecuting "pill mills" and other opioid-centric cases, and would also handle cases in Federal Court as a Special Assistant United States Attorney.

It was his experience as a statewide prosecutor that afforded him firsthand experience with the horrors of drug addiction and how it can unravel people's lives. Interestingly, his experience with those cases impacted his view that more needs to be done to help those with drug problems.

Despite the relative success of the criminal crackdown on "pill mills", the underlying problem for the individual user remains, and often leads users to more "hardcore drugs" such as heroin. Judge Davis, now sitting in the family division, still witnesses the problems drug addiction creates for people, especially potentially life-changing consequences regarding the

individual's relationship with their children. It is a problem without a direct solution in general, which has major consequences in some family law cases, and is close to Judge Davis' heart where he hopes to see improvements in the future.

When posed with the question of what he sees for the future of the legal profession, Judge Davis notes that he is also an adjunct professor of Florida Constitutional Law at St. Thomas University, and the experience fills him with optimism. In the classroom, he has exposure to the future of our profession: aspiring lawyers learning the legal foundations for our state. His students' enthusiasm provides him with a great sense of pride and optimism that the future of the profession is in strong hands and that the traditional concept of attorneys popularized through "attorney jokes" (you know the ones) will begin to change. Judge Davis believes the future is bright for the profession.

During our lengthy conversation, topics ranged from the specific styles of North Carolina BBQ and oysters to the importance of laughter, to the everyday challenges that attorneys and judges face. Judge Davis is easy to talk to, always a willing listener, and eager to learn.

These are traits Judge Davis has taken with him to the bench. In his approximately 15 months on the bench, Judge Davis has encouraged attorneys practicing before him to discuss with him practical critiques as to what works and doesn't work all to maximize the effectiveness of his courtroom. The idea is to consistently improve the courtroom not only for attorneys but also ultimately for the parties as well.

The totality of Judge Davis' experience has instilled in him a sense of optimism and belief that our profession will only continue to improve as we move steadily into the future.



*Josh Lida is a partner at Lida Law, PLLC primarily practicing criminal defense and professional license defense. He can be reached at [Josh@lidalaw.com](mailto:Josh@lidalaw.com).*



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# Did you know....? PROBATE DIVISION

by Brenda D. Forman

Broward County has the fastest growing 85+ population in Florida and is projected to grow by almost 32% in the next ten years. Thousands of Broward seniors are on waitlists for elder services and almost 13% live below the poverty line. As a result, case filings for probate and guardianship are increasing each year.

The Probate Division of the Clerk's Office and the Seventeenth Judicial Circuit handles all matters relating to:

- Determinations of incapacity for individuals over the age of 18
- Appointment of guardian advocates for developmentally disabled adults
- Estates (disposition without administration, summary administration and formal administration)
- Guardianships
- Trusts
- Mental Health (Baker Act)
- Substance Abuse (Marchman Act)
- Tuberculosis
- Sexually Transmittable Diseases
- Risk Protection Orders (RPO)

Probate is a court-supervised process for identifying and gathering the assets of a deceased person (decedent), paying the decedent's debts, and distributing the decedent's assets to his or her beneficiaries.

A guardianship is generally defined as the relationship between a guardian and a ward. The guardian is the person or entity charged with the duty to take care and manage the property and rights of the ward, who is considered incapable of managing their own affairs.

My office works closely with the judiciary, judicial staff attorneys, private attorneys, paralegals and pro se customers to keep the process running smoothly. We participate in the annual probate roundtable events that are sponsored by the Broward County Bar Association. We also recently met with Greg Medalie, Co-Chairperson of the Wills, Trusts & Estates Section of the Broward Bar to discuss educational opportunities we can work on together to provide additional assistance to our filers.

Some of the most common questions about probate

and guardianship revolve around processing times for opening cases and signing of orders. Many factors affect processing times. A factor that customers do not have control over is the ebb and flow of the workload at the Clerk's office. There are times when staffing and budget constraints can slow down the process. When that happens, we use tools like overtime and temporary staffing to bring things back in line.

Factors that are within the control of the customer are things like ensuring filings are completed accurately. If information or documents are inaccurate or missing, this requires re-work on everyone's part and will naturally increase processing times. Being aware of and using the various tools made available by the court such as ex-parte hearings and motion calendar can expedite the timeline.

Lastly, meaningful communication between all participants is essential. My staff is available to address procedural questions or case status questions. The most effective and efficient way to pose a question is through email by using ProbateEclerk@browardclerk.org. By providing your case number or eFiling reference number and describing the nature of the issue, my staff can be prepared to respond with helpful information. There is also a wealth of information at <http://www.17th.flcourts.org/probate/>. The court's standard procedures, forms, and checklists can be found there.

My office is committed to partnering with all probate stakeholders to resolve any issues. To that end, I am prepared to personally meet with customers to discuss potential solutions. My door is always open.

Happy New Year!

*Brenda D. Forman was elected as the Broward County Clerk of Courts in November 2016. She was sworn in on January 3, 2017, and is the first African American woman to be elected to the position.*





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# CASE LAW UPDATE

by Debra P. Klauber

## Recent Development In The Law

**Florida Supreme Court accepts review of whether the Florida Statute, which precludes adult surviving children from recovering noneconomic damages for the wrongful death of an unmarried parent in medical negligence cases, is unconstitutional.** *Santiago v. Rodriguez*, SC19-1506 (underlying decision 44 Fla. L. Weekly D2562a (Fla. 2d DCA 2019)).

**First District certifies question about whether apex doctrine applies to private entities.**

The First DCA certified the following question to the Florida Supreme Court as a question of great public importance:

DOES A TRIAL COURT DEPART FROM THE ESSENTIAL REQUIREMENTS OF LAW BY NOT REQUIRING A PARTY SEEKING TO DEPOSE THE TOP OFFICER OF A CORPORATION TO SHOW THAT (1) OTHER MEANS OF DISCOVERY HAVE BEEN EXHAUSTED AND (2) THE CORPORATE OFFICER IS UNIQUELY ABLE TO PROVIDE RELEVANT INFORMATION THAT CANNOT BE OBTAINED FROM OTHER SOURCES?

*Suzuki Motor Corp. v. Winckler*, 1D18-4815, 44 Fla. L. Weekly D2736 (Fla. 1st DCA Nov. 22, 2019).

**Questions of agency/independent contractor are generally left for the jury.**

The appellate court reversed the trial court's conclusion that an individual was an independent contractor for the purported employer when his van struck and injured the plaintiff. The appellate court held that the trial court's attempt to make the decision as a matter of law was improper where the court had accepted some portions of the independent contractor agreement and discounted other portions of that same agreement. *Blue v. Weinert*, 1D18-4305, 44 Fla. L. Weekly D2827 (Fla. 1st DCA Nov. 22, 2019). Similarly, the appellate court held that a trial court erred in granting summary judgment on the issue of apparent agency in a medical malpractice case where there was record evidence from which a jury could conclude that the hospital engaged in activities to create the appearance of an agency relationship. *King v. Baptist Hosp. of Miami, Inc.*, 3D18-1017, 44 Fla. L. Weekly D2838 (Nov. 27, 2019).

**Appellate court clarifies scope of certiorari review of orders on pure bill of discovery.**

In this case, the petitioner filed a complaint for a pure bill of discovery which the respondent moved to dismiss. The trial court did not address the issue of whether the information sought could be discovered, but asked the respondent to answer the complaint. The appellate court refused to accept certiorari jurisdiction, finding that in the limited cases where certiorari review has been permitted in cases involving a pure bill of discovery the underlying orders under review compel the production of "cat out of the bag" discovery. The appellate court did note that a subsequent trial court order compelling the discovery might be reviewable on certiorari, and that the denial of the motion to dismiss the pure bill of discovery would also be reviewable on plenary appeal. *American Medical Systems, LLC v. MSP Recovery Claims Series LLC*, 3D19-1570, 44 Fla. L. Weekly D2937 (Fla. 3d DCA Dec. 11, 2019).

Appellate court continues to protect hospital credentialing records.

In this medical malpractice action, the trial court ordered a hospital to produce records related to a staff physician's board eligibility for a three-year period. Because these records did not involve an adverse medical incident the appellate court accepted certiorari review to address Florida's peer review privilege. This case confirms that privileged documents reviewed by the hospital in its hiring and credentialing of staff physicians remain protected from discovery under the long-standing privilege where the information sought does not involve an adverse medical incident. *Tarpon Springs Hospital Found., Inc. v. White*, 2D19-603, 44 Fla. L. Weekly D2942 (Fla. 2d DCA Dec. 11, 2019).

**Third District addresses whether a party can compel an unretained "expert" to testify.**

In this personal injury case the plaintiff's son was killed when he stepped through a skylight and fell to the floor of a warehouse. The plaintiff claimed that the defendant's failure to obtain proper permits created the danger and caused the death. The defendants listed a county employee as an expert witness on the permitting issues, but he was neither a fact witness involved in the subject case nor a retained expert. The trial court denied the nonparty county's motion for a protective order and the appellate court reversed, holding that an unretained expert cannot be compelled to render an expert opinion when he lacks knowledge of the facts of the case. *Miami-Dade County v. Morejon*, 3D19-1874, 44 Fla. L. Weekly D2904 (Fla. 3d DCA Dec. 4, 2019).

**Injury sustained while bowling with co-workers during regular working hours compensable.**

Where a claimant injured her ankle during a bowling event that was held during the claimant's paid work shift, the employer argued that the event was a "recreational activity" and that the injury was not compensable under workers compensation. The First District found, under the facts of the case, that the event was a required incident of employment and that it produced a benefit to the employer beyond improvement in employee health and morale. The event was held during work hours, claimant was not told that she could have remained at work or taken a vacation day, and in addition to improving morale, a managerial-level employee had testified that the event was also designed to discuss upcoming goals for the following year. *Reynolds v. Anixter Power Solutions*, 1D19-0231, 44 Fla. L. Weekly D2931 (Fla. 1st DCA Dec. 10, 2019).

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





# FLORIDA BAR BOARD CERTIFICATION

by Steven B. Lesser

## Run out Every Ground Ball: A Good Lesson for Lawyers

In Little League, our first base coach never got tired of telling the players to “run out every ground ball.” Who knows—the first baseman may make an error, the fielder may bobble the ball or you may be faster than you thought, and reach first base safely.

The instruction is a good lesson for lawyers. In the course of our careers, opportunities exist to become better lawyers and enhance our personal satisfaction within our profession. The best approach is to take advantage of those opportunities by volunteering to serve on local bar association committees, the Florida Bar, and national organizations such as the American Bar Association.

All provide tremendous opportunities to learn from others. Along the way, you will learn the importance of preparing a meeting agenda, how to run an efficient meeting and develop an action plan to lead you to the finish line. Most importantly, you ultimately forge relationships with colleagues that may start out as business propositions, but which can lead to personal friendships. It is this aspect that becomes most satisfying. The benefits quickly materialize.

Suddenly, your volunteer work provides you with a network of colleagues to consult with on case challenges and strategy, and receive honest advice on your career without fear that someone in your firm may view your questions as “stupid” or that you “may be on the verge of leaving.” That is a primary driver, but the continuing opportunities to develop substantive and practical knowledge can be even more invaluable. For example, The Broward County Bar Association offers numerous opportunities to gain valuable continuing legal education credits through its sponsored “lunch and learn” programs, and to benefit from its mentorship program. Most importantly, volunteering at the local level provides opportunities to meet judges and other leaders in the legal community. Serving on local bar associations is a stepping-stone to expanding your volunteer efforts to improve our legal profession and develop your leadership skills.

Serving on a Florida Bar Grievance Committee can open your eyes to how a simple failure to communicate with clients and procrastination in dealing with issues can lead to a career disaster. You quickly learn, by real-world examples, how to avoid mistakes and career bumps in the road that may blemish the reputation you have worked so hard to achieve.

You also learn how our profession is misunderstood by the public. Through this volunteer service, you can best understand what lawyers need to do to bring our reputation back to that of “trusted adviser” as opposed to being viewed as an argumentative group focused only upon money and opportunity. We should take the attitude that “we learn from others” and understand how we can benefit from that approach.

One valuable opportunity in Florida is to become board certified in a specialty area of law. Florida is unique in that it has 27 different specialty areas of legal certification, from adoption law, appellate, civil trial, construction,

condominium, workers’ compensation and more.

After five years of practice and devoting a percentage of your time each year to your specialty, along with satisfying certain continuing legal education requirements and a peer review process, you become eligible to take the board certification examination. The exam is generally six hours, consisting of a variety of multiple choice, short answer and essay questions. This is not an easy exam, nor should it be if you are to be held out to the public as an expert in your field. But what it will do is make you a better lawyer, providing you with more confidence in advising and representing clients. In fact, simply studying for the exam will also do that, as each specialty area has its own specifications of topics to learn. As a board certified lawyer you should have “walking around” knowledge of these topics, if you hope to pass.

Florida has the largest board certification program in the country. Texas, California and others have certification programs, but none as progressive as Florida. Gaining board certification provides an opportunity to learn more, develop your credentials, and build confidence as a lawyer as well as elevate your status within your firm.

Aside from becoming board certified, publications exist in Florida and throughout the country that seek articles from lawyers on a wide range of topics. Write an article, become a published author and develop expertise. The billable work you did researching a legal issue can be converted to an article that can be published locally or on a national platform.

Publishing can set you apart from other lawyers competing for career opportunities or obtaining work in a specialty area. A published paper can lead to an invitation to speak and exposure to new people in the industry where you practice, or to other colleagues that may refer work to you.

You should never stop learning or building your credentials because both will lead you to greater satisfaction in your career. The great Arnold Palmer was right when he said, “The road to success is always under construction.”

You can always do better, and the start of it all is to raise your hand, volunteer to serve your profession and become board certified. You never know where it will lead unless you take those opportunities and “run out every ground ball.”

*Steven B. Lesser is chair of the construction law group at Becker. He is board certified in construction law and chair of The Florida Bar Board of Legal Specialization and Education that oversees all 27 areas of board certification.*





February 1  
**South Florida Legal Mentoring Picnic**  
*Sponsorships Available!*  
**Time:** 11:00 a.m. – 3:00 p.m.  
**Venue:** C.B. Smith Park  
**Cost:** Free to all *Park entrance admission is \$1.50 per person*

February 6  
**County Court Insurance CLE: All About Local County Civil Practice**  
*Sponsored by: Kelley Kronenberg*  
**Time:** 12:00 p.m. – 1:30 p.m.  
**Venue:** Kelley Kronenberg  
**Cost:** Free County Court Insurance Section Member; \$20 BCBA Member; \$45 Non-Member

February 11  
**CLE: Litigating the Post-Judgment Attorney's Fees Claim**  
**Time:** 12:00 p.m. – 1:30 p.m.  
**Venue:** BCBA Conference Center  
**Cost:** \$20 BCBA Member; \$40 Non-Member

February 12  
**Wills, Trusts, and Estates CLE: Best of Heckerling 2020**  
**Time:** 12:00 p.m. – 1:30 p.m.  
**Venue:** BCBA Conference Center  
**Cost:** \$20 BCBA Member; \$40 Non-Member

February 12  
**YLS Black History CLE Luncheon**  
**Time:** 11:30 a.m. – 1:30 p.m.  
**Venue:** Timpano Las Olas  
**Cost:** \$40 YLS/TJR/HLA/CBA Member; \$50 Non-Member

February 13  
**Bankruptcy CLE**  
*Sponsored by: Rice Pugatch Robinson Storfer & Cohen PLLC & Leiderman Shelomith Alexander + Somodevilla, PLLC*  
**Time:** 12:00 p.m. – 1:30 p.m.  
**Venue:** BCBA Conference Center  
**Cost:** Free BCBA Bankruptcy Section Member; \$15 BCBA Member; \$30 Non-Member

February 14  
**Young Lawyers' Law-LaPalooza**  
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**Time:** 7:45 a.m. – 4:00 p.m.  
**Venue:** Broward County Courthouse  
**Cost:** \$50 BCBA Member; \$75 Non-Member

February 19  
**ASFMA CLE**  
**Speaker:** Judge Andrea R. Gundersen  
**Time:** 12:00 p.m. – 1:30 p.m.  
**Venue:** BCBA Conference Center  
**Cost:** \$25 ASFMA/BCBA Member; \$40 Non-Member

February 21  
**17th Judicial Circuit Black History Month Celebration**  
*Sponsorship's Available!*  
**Time:** 11:00 a.m. – 1:00 p.m.  
**Venue:** Broward Courthouse Jury Assembly Room 3320  
**Cost:** No Cost



February 26  
**Judicial Jaunt Series: Judge Carol-Lisa Phillips**  
*Sponsored by: Rissman, Barrett, Hurt, Donahue, McLain & Mangan, P.A.*  
**Time:** 12:00 p.m. – 1:30 p.m.  
**Venue:** BCBA Conference Center  
**Cost:** \$20 BCBA Member; \$45 Non-Member

February 28  
**2020 Workers' Compensation Section Conference and Reception**  
*Sponsorship's Available!*  
**Time:** 11:30 a.m. – 6:00 p.m.  
**Venue:** Bahia Mar Fort Lauderdale Beach Hotel  
**Cost:** \$95.00 BCBA Member; \$110 Non-Member

## Save the Date!

*Visit our online Calendar for more information.*

**2020 Raising the Bar**  
 Date: April 24, 2020

**2020 Law Day Luncheon**  
 Date: May 1, 2020

**2020 Barrister Bolt 5K**  
 Date: May 2, 2020

**2020 Annual Installation Gala Dinner**  
 Date: June 27, 2020



♥ Happy Valentine's Day ♥

BROWARD COUNTY BAR ASSOCIATION  
**BARRISTER**

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