

FEBRUARY 2021



The SideBar

Newsletter of the Martin County Bar Association

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MCBA PRESIDENT

BARBARA KIBBEY WAGNER

GUEST ARTICLE

**MENTORSHIP MAKES
A DIFFERENCE**

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THE SIDE BAR NEWSLETTER

Published monthly, excluding June & July, by the Martin County Bar Association as a service to its membership.

If you have an article, opinion, news or other information for publication in the *SideBar*, please call (772) 220-8018 or email information to: martincountybarassociation@msn.com

The due date for all advertisements, articles and announcements is the 1st of the month preceding publication.

Zoom with Us on February 19, 2021

On Friday, February 19, 2021 the Executive Board and Diversity Committee of the Martin County Bar Association will hold its monthly CLE virtual luncheon meeting.

We are very pleased to have "The Giant Killer" Willie E. Gary as our speaker.

We look forward to an insightful and engaging program with another great turnout. To receive Zoom details, please RSVP by email to: martincountybarassociation@msn.com by Tuesday, February 16, 2021. Zoom details will be sent on February 17, 2021 to all who RSVP.

NEED HELP?

If you are feeling isolated, worried about your practice, your family, your employees, reach out - to a friend, a spouse, a colleague OR call the Florida Bar Helpline at 833-FL1-WELL

The Florida Bar Helpline

Bar members will be able to dial the helpline (833-351-9355 or "833-FL1-WELL") and speak with a mental-health professional who can provide crisis intervention and a referral for up to three free visits with a locally based, licensed mental-health professional.



Florida Bar Mental Health Helpline
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Many of the professional head shot photos and candid photos appearing in this issue have been provided courtesy of: Legal Consulting Services, Inc.

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Message From the President

Martin County Bar President - Barbara Kibbey Wagner, Esq.

HONORING BLACK HISTORY MONTH

This February, in honor of Black History Month, I wanted to take a moment to reflect and celebrate the achievements of members of the African American community.

On August 28, 1963, at the Lincoln Memorial in Washington, D.C., Martin Luther King delivered his infamous "I Have a Dream" speech. It was a speech we have all heard and know, not only because Dr. King spoke with such authority and conviction, but because the message was one that we all want: equality, unity, peace, love and freedom.

I recently moved my Stuart office to the historic Feroe building in Downtown Stuart. The building is more than 100 years old and at one point was a drugstore and/or soda shop. It has a few peculiar architectural niches

and structural "quirks" that interested me.

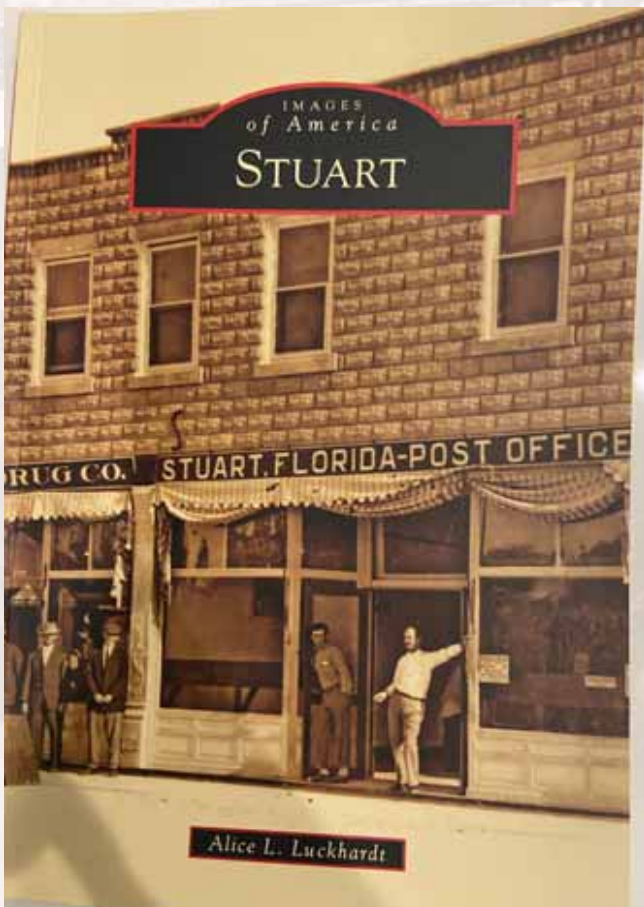
As a moving present, my mother gave me Alice Luckhardt's book, *Images of America Stuart*, which features our building on the cover. I couldn't help but wonder what life was like in Stuart through the Civil Rights movement, and what businesses, like my office, were once like. I began to investigate.

Unfortunately, I never found answers regarding the interior of the building, but while perusing the pages, I stumbled upon a photo of African American pineapple laborers. According to the book, in 1900, only approximately 15 people in Stuart were African American, most of Bahamian descent.

Our little town has certainly come a long way. Today, Martin County has grown exponentially - enriched with diversity from all backgrounds. The list of individuals who have helped progress for all of us over this last century are far too numerous to name here.



Barbara Kibbey Wagner
2020-2021 President



After harvest of one section of the...

Continued On Next Page . . .



Our community is certainly not perfect, but I prefer to be an optimist and believe that we are all working together to make it better for the next day ahead. Dr. King pleaded to those in D.C. decades ago, but his words still apply today:

“With this faith, we will be able to transform the jangling discords of our nation into a beautiful symphony of brotherhood. With this faith, we will be able to work together, to pray together, to struggle together, to go to jail together, to stand up for freedom together, knowing that one day we will be free.”

Currently, though, our Bar Association is lucky enough to have two such trailblazing members that hold leadership positions in Goretta Hall, Esq. as the first African American President of Martin County Women Lawyer’s Association, and Eula Clarke as Mayor for the City of Stuart. This, of course, does not begin to mention the other countless members of our Bar that have paved the way and trailblazed paths toward equality and civil rights.

I want to say thank you to all our African American lawyers, leaders, and members of the community for all that you have done and continue to do for the causes we hold so dear. Let us all continue to dream and work for a better tomorrow.

Best Regards,

Barbara Kibbey, Esq.

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Mentorship Makes a Difference!

Submitted by Jason D. Berger, Esq.

Our profession has given us such great knowledge, pleasure, wisdom and pride. The hope is that with all that our profession has done for us, each of us will give back to our profession. Mentoring is a great way to do that! Whether teaching a new attorney how to make a good first impression with the judiciary, with the clients or with our colleagues, it is up to us to set the bar high. There is only one opportunity to make a good first impression!

For me personally, I have been fortunate to have many colleagues who have helped mold and shape my legal career. Whenever I need assistance, I have been blessed to be able to call my colleagues and mentors for their guidance and advice. My mentors have always been there for me to answer my questions, to share their experiences, and to provide their wisdom.

My mentors have always reminded me (many times through their own life's lessons) that no matter how meaningful and consuming our work is, to always put family first. I certainly feel that my wife and my daughters have benefitted from my ability to follow their advice. In short, mentors have taught me many invaluable lessons in law and in life.

Based on all that my mentors have done for me, I feel a strong sense of responsibility to give back to our profession. Since 2012, I have implemented an internship program through my law practice. I mentor high school, paralegal, college and law school students. I have mentored over twenty interns, and I am proud to share that currently three of my former interns have graduated law school and are now practicing attorneys.



Annually, my office sponsors an intern luncheon for all of our present and former interns. We keep in touch, and I am happy to continue to mentor "our intern family" throughout their education and their

career (whether law related or not.) I feel a tremendous sense of satisfaction and joy in watching their personal and professional growth and success.

I cannot thank everyone enough for helping to mold and shape my legal career, and I certainly have always found mentorship to be a very rewarding and tremendously satisfying experience.

Mentorship really does make a difference!



Jason D. Berger, Esq.



The Florida Bar Updates / Board of Governors' Report

GREG WEISS - 19TH CIRCUIT BOG REPRESENTATIVE



Keep updated on Florida Bar initiatives and Board of Governors information, meeting minutes and reports by visiting the website regularly!

A direct link can be found at The Florida Bar's home page (www.floridabar.org) by clicking the "About The Bar"



Greg Weiss
19th Circuit BOG Rep

19th Circuit Judicial Nominating Commission

The MCBA will continue to post updates on the 19th Circuit JNC Commission meetings and deadlines for appointments to fill judicial vacancies as they become available at www.martincountybar.org

For more information, email martincountybarassociation@msn.com

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Diversity Committee

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Ricky Armand - Co-Chair



Erika Powers
Co-Chair

THE SILVER LININGS OF COVID-19 FOR WOMEN IN THE WORKFORCE



Ricky Armand
Co-Chair

While we all rejoice in welcoming 2021 and the close of 2020, the realities we face daily are still marked by the lingering effects of the very prominent Covid-19 Pandemic. However, this year is filled with hope – hope for the successful dissemination and impact of the Covid-19 vaccination, which has begun circulation and administration across the United States; hope for increasingly more efficient testing and results; and hope for a return to some sense of normality, which brings us slightly closer to the lives we all remember from a year ago.



As members of the legal profession, what Covid-19 represents to us on a daily basis is backlogged courts with less available hearing time, virtual hearings/trials, and temperature checks at the Courthouse doors. For smaller firms, this brings with it a new host of obstacles, such as having to pivot and become far more technologically savvy, review hiring needs, and implementing practices and plans in the event the firm must work remotely.

Notably, the pandemic has furnished an environment for a forward progression for women in the legal profession. According to a July 27th Law 360 article titled “Firms Must Note Pandemic’s Outsize Impact On Women,” the profession is at a “watershed moment where the massive upheaval caused by the pandemic has created a unique opportunity to implement meaningful structural and cultural changes that could benefit women in the legal field and the firms where they work” and that “[t]he key challenge for every law firm is to make sure that diversity and inclusion are core values, with meaningful strategies, goals and achievements in our new normal.”



Further, in an August 7th Law.com podcast titled “For Big Law’s Working Moms, Pandemic Could Have a Silver Lining ... Seriously!” the argument is made that the pandemic has been a “unique moment in time,” proving that working remotely, which reduces the need to travel, has shown progression in participation by women in the current job market. Now more than ever, women are juggling family life, remote schooling, and still maintaining a career. While we still struggle with the obstacles posed by the global

pandemic, we cannot forget what we have and continue to learn from it, as well as acknowledging the beautiful silver-lining of diversity and inclusion and, in particular, the increasing opportunities for women in the legal field.

For more information contact Erika Powers, Esq. at epowers@jgormanlaw.com or Ricky Armand, Esq. at ra@williegary.com.

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Solo & Small Firm Committee

Join fellow members of the MCBA on March 11th as we learn about the **Time Management Strategies & Life Hacks for the Productive, Professional Lawyer from **Melanie Griffin, Esq.**, Founder of **Spread Your Sunshine****

Time. It is something we all want more of. Yet, no matter how hard we wish, there are only 24 hours in each day. During this virtual webinar, these 24 hours will be stretched as far as possible. Together, we will develop a personal strategy that incorporates time management skills and other productive habits to become more effective, efficient, professional and happy lawyers who best serve ourselves, our clients and employers/employees, and the legal profession and justice system as a whole.



Kathy McHale
Chair

Thursday, March 11th- Noon - 1pm by ZOOM Conference
CLE pending (1 hour)
RSVP to Kathy McHale - Kathy@KMChaleLaw.com

Presented by the Small Firm and Solo Committee
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Jeanette Lugo - Co-Chair

Matthew Worsham - Co-Chair



Jeanette Lugo
Co-Chair

The YLD would like to thank Gordon & Partners for sponsoring "A Holly Jolly Time" happy hour at Talk House in Stuart, FL on Friday, December 11, 2020.

Stay tuned for the YLD's upcoming events in the New Year. If you have any questions about the YLD, please contact Jeanette Lugo (**Jeanette.M.Lugo@gmail.com**) or Matthew Worsham (**MWorsham@crarybuchanan.com**).



Matthew Worsham
Co-Chair



Tennis Tournament



Ray Robison
Chair

We are hopeful to bring the MCBA Tennis Tournament back in 2021. Please check future SideBar issues for further details on the tournament in 2021. If any questions, please contact Ray Robison (772-287-4444 or robison@foxmclluskey.com). Thank you to everyone that has expressed interest in playing, as well as our sponsors, SEACOAST BANK and ESQUIRE DEPOSITION SERVICES

ADMIRALTY LAW



Joanne Foster - Chair

THE DOCTRINE OF UBERRIMAE FIDEI

Joanne M. Foster, Florida Board Certified, Admiralty and Maritime Law
Admiralty Committee Chair

The doctrine of uberrimae fidei is a maritime doctrine that applies only when a marine insurer issues a policy. “Uberrimae fidei” means utmost good faith and the doctrine requires the insured to disclose to the insurer all known circumstances that materially affect the insurer’s risk.

An applicant for a marine insurance policy has a duty to disclose all facts material to the calculation of the insurance risk, whether or not the insurer requested them. An “insured” might lose coverage if the insurer discovers not all relevant facts were disclosed on the insurance application. The matter here was whether or not the insured’s policy was renewed or considered a new policy subject to uberrimae fidei when it was issued.

Alfredo Quintero owned a 32’ Renegade powerboat insured under a Geico marine insurance policy. Two months prior to renewal, Geico sent a renewal package to Quintero advising the date and time certain when the policy would lapse and also that the premium had increased by twenty-five percent. Quintero told Geico the increase was unacceptable and they would lose him as a customer. Shortly thereafter Quintero received a “Notice of Policy Expiration”.

Twenty days later, at 4:58 a.m., a pickup truck pulled up to Quintero’s home and towed away the uninsured boat and trailer. The neighbor’s surveillance camera recorded the incident. At 7:28 a.m. Quintero called Geico to reinstate his policy. The Geico representative asked Quintero if the boat had any damage and if it was seaworthy, but failed to ask him if it had been stolen that morning. The policy was reinstated effective immediately.

At 2:43 p.m., Quintero reported his boat stolen to the local police department who

was also provided with the surveillance footage. He then called Geico at 6:28 p.m. to report the vessel had been stolen. Quintero told Geico he discovered the boat missing when his wife came home from work. Geico investigated taking statements from Quintero and his wife. However, Quintero refused to submit to an examination under oath.



Joanne Foster
Chair

Geico later informed Quintero that it had denied his claim and rescinded the policy ab initio because Quintero was not in possession of the boat when he called to reinstate the policy. Quintero filed suit arguing the policy had been renewed and backdated and was therefore WW in full force and effect since the expiration date and uberrimae fidei could not apply. Ultimately the district court granted Geico’s motion for summary judgment. The District Court concluded the policy was void ab initio under the uberrimae fidei doctrine “regardless of whether [it] was renewed, cancelled, or expired”. Alfredo Quintaro v Geico Marine Insurance Company, 2020 U.S. App. LEXIS 40091, (11th Cir. Dec. 2020).

On Appeal, the Circuit Court ruled Quintero’s misrepresentations concerning his possession of the boat during his call to Geico rendered his policy void ab initio. Quintero again argued uberrimae fidei did not apply because he was not issued a new policy. Nevertheless, the court found Quintero’s original policy had expired, and whether or not he knew his boat was gone, it was not in his possession at the time the policy was renewed. The Circuit Court affirmed the ruling of the District Court, leaving Quintero without coverage for his loss.



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Appellate Committee

Donna Eng - Co-Chair
Carri Leininger - Co-Chair

Submitted by Donna Eng, Esq.



Thanks to all those who attended the Appellate Committee's January 28, 2021, Zoom CLE on appellate bonds and stays. Although virtual CLEs are not ideal, we are fortunate to be able to take advantage of the Zoom platform this year to be able to host practitioners and Judges from across the State.

(Fla. Dec. 3, 2020), and In re *Amendments to the Florida Rules of Appellate Procedure* 9.120 and 9.210, No. SC19-884, 2020 WL 7062674 (Fla. Dec. 3, 2020). Despite the similarity of the titles of the opinions, the opinions discussed changes to various rules, so be sure to review both opinions and carefully note all of the revisions to the rules. Given the number of rules changes, we advise you download the latest set of the Rules and review them *all* prior to commencing your next appeal.



In case you missed it, the Florida Supreme Court has enacted several important changes to various rules which took effect on January 1, 2021. See *In re Amendments to the Florida Rules of Appellate Procedure* 9.120 and 9.210, No. SC20-597, 2020 WL 7062711

Here are some highlights for you:

- New Rule 9.045 sets forth the formatting requirements for all documents filed in an appellate court, provides that the only fonts permitted are Arial or Bookman Old Style 14 point, and requires a new certificate of compliance.
- New word counts for computer-Wgenerated briefs are enacted in Rules 9.100, 9.125, 9.141, 9.210, and 9.370.
- New Rule 9.120(d) deletes the requirement of service of a notice of cross-review, and deletes the exclusion of jurisdictional briefs in cases certifying questions of great public importance under Rule 9.030 (a)(2)(A)(v).
- New Rule 9.120(e) shortens the time for transmission of the record.
- New Rule 9.120(f), governing cross review, now requires a party who intends to raise issues on cross review to identify the issues in the statement of the issues section of the jurisdictional brief. The identification of issues on cross review is also discussed in Rule 9.210(a), (c), and (f).
- New Rule 9.120(g) lengthens the time for service of the initial brief.
- Rule 9.210 (a) reflects that the only briefs permitted to be filed include the initial brief, answer brief, and a reply brief. A cross reply brief is only permitted where a cross appeal has been filed, or where the respondent identifies issues on cross review in its brief on jurisdiction to the Supreme Court.

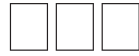
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find us online



NOTICE



VIRTUAL FAMILY LAW UPDATE

with family judges/magistrates

TO: ALL FAMILY ATTORNEYS
FROM: JUDGE CYNTHIA COX

WHEN: **Friday, February 5, 2021 @ 2 p.m.**
through ZOOM: @
<https://zoom.us/j/6168154963>
Meeting ID: 616-815-4963

PLEASE MARK YOUR CALENDARS AND PLAN TO ATTEND THIS VIRTUAL INFORMATIVE EVENT.

For more information, email whiteh@circuit19.org.

****2.0 hrs CLE credits (1 of which is ethics)**

Course No.



Save the Date

Conversations with the Fourth DCA

Presented by the Martin County, Palm Beach County and Broward County Bar Associations

Friday, March 26th, 2021 9:00 a.m. to 12:30 p.m.

Program Outline:

1. Introduction and Discussion of Changes in Operations due to COVID
2. Breakout Sessions – attendees will select 1
 - Session 1: The Life of an Appeal 1 and 2
 - Session 2: Preservation and Finality
 - Session 3: Changes in Jurisdiction & Other Rule Changes and How to Modernize Brief Writing
3. A Mock Oral Argument with Feedback and Discussion of Judges’ Intentions in their questions
Audience Q&A for all Judges from the Audience

CLE Credits have been applied for
More Details to follow





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MARTIN COUNTY BAR ASSOCIATION RACE TO THE COURTHOUSE



APRIL 17, 2021



New Date Announced for the Race to the Courthouse 5k Run/Walk. April 17, 2021.



Gene Zweben
Co-Chair

Due to the Corona Virus situation, we have rescheduled the race to Saturday, April 17, 2021. We hope everyone can adjust their schedule and still join us for this incredible race that **raises money for the Legal Aid Society of Martin County and the Martin County Bar Association Scholarship Program.**



Sarah Vickers
Co-Chair

All runners currently registered will have their registrations automatically transferred to the new date. Registration is still open, so sign up now. We are hoping you all can join us and look forward to another great race!

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Martin County Women Lawyers Association

Submitted by Elizabeth Hunter

The Martin County Women Lawyers Association has received wonderful feedback from our members regarding our 2020-21 CLE programming developed by our President, Gloretta Hall. The CLE presentations have been informative discussions led by our members in their particular area of expertise. Civil attorneys had a unique opportunity to learn about the work of lawyers practicing in criminal law. A panel discussion gave members practical and interesting insight into family law.



Gloretta Hall
MCWL President

And the list goes on. On February 9, 2021, Sheila Biehl, who is Florida Bar Board Certified in Business Litigation, will be joined by panelists **Abby Spears and Preethi Sekharan** for a presentation on “What is Business Litigation and Why is it so Complex?” We hope you will join us for this CLE presentation via Zoom at noon; for Zoom meeting details and membership information, please feel free to reach out to Kathy McHale, MCWLA Membership Director (kathy@kmchalelaw.com).

If you are a member or are considering becoming a member, please join us on February 27, 2021 at 8:30am for our beach yoga membership drive. Please RSVP to Kathy McHale, who will provide you with more details. Stay tuned for more information regarding our Diversity CLE.

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Bankruptcy Committee

Jon Martin - Co-Chair

Nick Bangos - Co-Chair

Democrat Proposals for Change in 2021



In anticipation of a Biden Presidency, Democrat Senators Elizabeth Warren and Jerrold Nadler have proposed some pretty significant changes to the Bankruptcy Code in the form of the

“CONSUMER BANKRUPTCY REFORM ACT OF 2020”

Most Bankruptcy practitioners cite 10 rather dramatic issues in the proposed legislation:

1. No more Chapter 7 or 13. Instead these would be replaced by a “new” CHAPTER 10. The proposal would also eliminate the recently enacted Sub-chapter V under Chapter 11 for debtors and small businesses with debts under \$7.5 Million Dollars who would also file under the new Chapter 10. Businesses with more than \$7.5 Million Dollars in debt would continue to file under the existing Chapter 11.
2. The credit counseling required under the 2005 ACT would no longer be required.
3. 341 meetings (Creditor meetings would no longer be held in person and scheduled so as not to interfere with a debtor’s work schedule.
4. A new standard of “Ability to Pay” would be implemented based on what is determined to be non-essential living standards such as payments on private schools for children; support for “adult children and family members such as elderly parents;” and items such as expensive vehicle payments. A minimum payment would be established based on non-exempt assets and income.
5. 3 Special categories of the new Chapter 10

would allow debtors to change the terms on their (1) mortgages; (2) other secured debt; and (3) general unsecured debt. (Sort of a “3 in 1” plan, or, “pick your own!”)



6. Debtors with insufficient income or assets would receive immediate discharges without any payments.

7. Consumers in plans under the new chapter would receive discharges immediately upon confirmation of the plan as opposed to on the date of completion of payments.
8. All attorney fees would be allowed to be paid over time, unlike Chapter 7.
- 9. Both private and federal Student Loans would be dischargeable.**
10. Rules would include strengthening the FAIR DEBT COLLECTION PRACTICES ACT and the CONSUMER FINANCE PROTECTION BUREAU in order to allow the inclusion of an “Unclean Hands” provision to disallow claims of creditors in violation when creating their debt obligations.

It will be interesting to see how much of this makes it to the finish line and how long it will take to get there, AND whether or not the proposed legislation will help or hurt debtors and creditors. I’m betting it will look a lot different before it gets there.

NEED MORE INFORMATION? Contact Jon Martin 772 834 5021 or Nick Bango 305 915 1605 co-chairs, Martin County Bar Bankruptcy Committee.

Real Estate and Commercial Litigation Update

Florida Real Property and Business Litigation Report

Manuel Farach

Tyson Waters



Manny Farach
Co-Chair

Lucoff v. Navient Solutions, LLC, Case No. 19-13482 (11th Cir. 2020).

A person who consents online to be contacted regarding past due debts even though he earlier advised the company he did not wish to be contacted has, as a legal matter, changed his preference and cannot claim a violation of the Telephone

Consumer Protection Act of 1991 (“TCPA”), 47 U.S.C. § 227.

In Re: Amendments to Florida Rules of Appellate Procedure 9.120 And 9.210, Case No. SC20-597 (Fla. 2020).

Changes to the Florida Rules of Civil Procedure, including certification and required fonts.

Galleon Bay Corporation v. Board of County Commissioners of Monroe County, Florida, Case No. 3D19-1783 (Fla. 3d DCA 2020).

Florida Statute sec. 73.111 (the money to satisfy a condemnation judgment award must be deposited in the court registry within 20 days of the judgment) does not apply to inverse condemnation awards.

Kachkar v. U.S. Bank National Association, Case No. 3D19-1961 (Fla. 3d DCA 2020).

A signatory to a mortgage, even if not a party to the foreclosure case, is permitted to intervene in proceedings to set a foreclosure sale.

Wahnon v. Coral & Stones Unlimited Corp., Case No. 3D19-2387 (Fla. 3d DCA 2020).

A trial court faced with invocation of a witness’s invocation of the Fifth Amendment privilege against self-incrimination which impacts a party’s right to discovery and access to the courts may fashion an appropriate balancing remedy, including but not limited to, staying the case, preventing

a witness from testifying or a party from presenting evidence, and recognizing an adverse inference.

Torruella v. Nationstar Mortgage, LLC, Case No. 5D19-3298 (Fla. 5th DCA 2020).

A party that has not been served in a lawsuit is not a “prevailing party” entitled to attorney’s fees when the suit is dismissed.



Tyson Waters
Co-Chair

M & M Realty Partners at Hagen Ranch, LLC v. Mazzone, Case No. 18-13536 (11th Cir. 2020).

A “binding financial commitment” from a third party, including a wholly owned business entity, is required in order to satisfy the financial requirement of the “ready, willing and able” standard for awarding specific performance.

Persaud Properties FL Investments, LLC v. Town of Fort Myers Beach, Case No. 2D19-1282 (Fla. 2d DCA 2020).

Abandonment of a non-conforming use requires voluntary discontinuation of the use combined with the intent the discontinuation be permanent, i.e., more than the passage of time is required for abandonment.

Schlechter v. Community Housing Trust of Sarasota County, Inc., Case No. 2D19-3619 (Fla. 2d DCA 2020).

Florida Rule of Civil Procedure 1.540 cannot be used to vacate the dismissal of an action based on a party’s assertion it would not have agreed to the dismissal if it had the knowledge or information at the time of dismissal that it has now.

JAK Capital, LLC v. Adams, Case No. 2D19-4371 (Fla. 2d DCA 2020).

A party claiming unenforceability of a mortgage

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due to fraud must plead fraud (not forgery) as a defense and must also prove the mortgagee seeking enforcement participated in the fraud.

Bank of America, N.A. v. De Morales, Case No. 3D19-1782 (Fla. 3d DCA 2020).

Certiorari relief generally is not available to avoid the expense of continued litigation (including discovery) but is available where immunity from litigation altogether is asserted.

Bridge Financial, Inc. v. J. Fischer & Associates, Inc. Case No. 4D19-348 (Fla. 4th DCA 2020).

The owner of 5% of a corporate entity is a sufficient “owner” such that he cannot tortiously interfere with a contract with “his” company.

Digiport, Inc. v. Forum Development BFC, LLC, Case No. 3D18-1651 (Fla. 3d DCA 2020).

The question of whether an idea constitutes a “trade secret” under the Florida Uniform Trade Secrets is typically a fact issue and thus summary judgment cannot be granted for a claim that design of a data center for a building constitutes a trade secret.

Koyfman v. 1572 Pledger LLC, Case No. 3D19-1521 (Fla. 3d DCA 2020).

On rehearing, the Third District re-affirms that a person primarily liable on an obligation who pays the obligation is not entitled to subrogation against third parties, e.g., a party cannot pay off a second mortgage on which it is liable, have the mortgage assigned to it instead of having the mortgage satisfied, and then foreclose the “unsatisfied” second mortgage to extinguish junior liens.

1440 Plaza, LLC v. New Gala Building, LLC, Case No. 3D20-0120 (Fla. 3d DCA 2020).

A trial court stating that it was “granting” a party’s motion but then asking for additional argument reflects the trial court was leaning toward a particular outcome but does not demonstrate the trial court had prejudged the case.

Skylink Jets, Inc. v. Klukan, Case No. 4D20-615 (Fla. 4th DCA 2020).

The Fourth District recedes from prior precedent

and holds that in some situations neither party in a contract action may be the prevailing party for purposes of an attorney’s fees award.

Baldwin v. Harris, Case No. 5D19-2791 (Fla. 5th DCA 2020).

Directing that a payment be made in an estate planning document does not satisfy a contractual obligation that the payment be made.

Wilcox v. Cupstid, Case No. 5D20-359 (Fla. 5th DCA 2020).

An award of attorney’s fees under Florida Statute section 704.04 (statutory right of way) requires a finding that one party unreasonably refused to comply with 704.01(2) and not just that one party prevailed.

USF Federal Credit Union v. Gateway Radiology Consultants, P.A. (In re: Gateway Radiology Consultants, P.A.), Case No. 20-13462 (11th Cir. 2020).

Debtors in bankruptcy are not entitled to receive Paycheck Protection Program payments due to the limitations set forth in the CARES Act, Coronavirus Aid, Relief, and Economic Security Act, Pub L. No. 116-136, 134 Stat. 281 (2020).

Herrell v. Universal Property & Casualty Insurance Company, Case No. 2D19-1911 (Fla. 2d DCA 2020).

Aligning itself with the Third District Court of Appeal, the Second District holds that for purposes of an award of attorney’s fees a dismissal without prejudice is not the same as the dismissal with prejudice required by Florida Rule of Civil Procedure 1.442, Florida Statute section 768.79, and *MX Investments, Inc. v. Crawford*, 700 So. 2d 640 (Fla. 1997).2020).

If you wish to receive the expanded, weekly version of this Report, sign up at: <https://www.mcglinchey.com/publication-subscription>



Legal Resources / CLE

CLE seminars are available free of charge to all MCBA members through the Clerk of Court Office - Official Records Division at the Martin County Courthouse (1st Floor). Non-members may rent them for a fee. If you have new seminar suggestions, please e-mail martincountybarassociation@msn.com for consideration.

The Law library has relocated to the first floor reference area of the main branch of our Martin County library system, The Blake Library at 2351 SE Monterey Road in Stuart, with expanded hours of access to library patrons. Legal research assistance will continue to be offered Monday through Thursday (Noon to 4:00 p.m.); Blake Library hours are Monday - Thursday (10 a.m. to 8 p.m.) with all other days open 10 a.m. to 5:30 p.m. except for Sunday (closed).

Current CLE Seminars Available Include the Following:

- **39th Annual Legislative & Case Law Update 2019:** Valid through 1/31/2021. **Credits:** 98.0 General, 2.0 Ethics; Certification Hours: 8.0 Condo & Planned Development, 8.0 Real Estate, 8.0 Tax, 8.0 Wills Trusts 7 Estates.
- **MCBA Monthly Lunch Meeting - August 16, 2019.** Valid through 2/28/2021. Topic: State of the The Florida Bar. Credits: 1.0 General CLE Credit and 1.0 Technology CLE Credit.
- **MCBA Monthly Lunch Meeting - September 20, 2019.** Valid through 3/31/2021. Topic: Election Legislative Updates and Martin County Youth in Government Program. **Credits:** 1.0 General
- **MCBA Monthly Lunch Meeting - October 18, 2019.** Valid through 4/30/2021. Topic: Overview of the Public Defender and State Attorney Offices, **Credits:** 2.0 General, 2.0 Technology
- **Parenting Plans from Start to Finish. Valid through 8/21/2021. Credits:** Marital and Family Law 7.5 hours; Professional Responsibility 1.0 credit hour; Ethics 1.0 credit hour; Technology 1.0 credit hour.
- **MCBA Monthly Lunch Meeting - February 21, 2020.** Valid through 8/31/2021. Topic: Diversity and Juvenile Justice; **Credits:** 2.0 General, 2.0 Bias Elimination; **Certification Credits:** 2.0 Juvenile Law
- **MCBA Monthly Lunch Meeting (Virtual) - August 21, 2020.** Valid through 1/31/2022. Speaker: FL Supreme Court Justice Jorge Labarga. Topic: The Role of the Judicial Branch during time of societal division. Credits: 1.0 General
- **MCBA Monthly Meeting (Virtual) - September 18, 2020.** Valid through 3/31/2021. Speaker: Giles Kibbee, SVP and General Counsel Houston Astros and Crane Companies. 1.0 General CLE Credit
- **2020 Survey of Florida Law (2 copies) - Valid through 11/30/2021. Credits:** 13.5 General; 3.0 Ethics; 2.0 Mental Illness; 1.0 Professionalism; 3.0 Technology. **Certification Credits:** 1.0 City, County and Local Government; 1.0 Civil Trial; 1.0 Condominium and Planned Development Law; 2.0 Elder Law; 1.0 Labor and Employment Law; 1.5 Marital and Family Law; 1.0 Real Estate; 1.0 State/Fed Govt & Admin Practice; 1.0 Tax Law; 4.0 Wills, Trusts & Estates.
- **MCBA Monthly Meeting (Virtual) - November 12, 2020.** Valid Through 4/30/2022. Speaker: Congressman Brian Mast, Journalist Ed Killer. Topic: The St. Lucie River & Estuary. 1.0 General CLE Credit.

The materials are located in the office of the Martin County Clerk and Comptroller, Official Records Division, 100 SE Ocean Blvd., 1st Floor. Office hours are 8:00 am - 5:00 pm, Monday through Friday. If you have any specific questions regarding these instructions, please contact the Official Records Division at 772-288-5553.



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Mark your Calendars!

Justice Major B. Harding American Inns of Court 2021 Meeting Dates

February 10, 2021
March 10, 2021
April 14, 2021

May 12, 2021
June 2, 2021**

**To be used as an alternative date if necessary

Judicial Relations Committee

Jessica Van Valkenburgh - Chair



Jessica M. VanValkenburgh
Chair

2020-2021 JRC Committee Members – Chief Judge Lawrence Mirman, Judge Elizabeth Metzger, Judge William Roby, Gene Zweben and Kathryn McHale

19th Circuit’s Judiciary. Moving forward, the JRC will be planning, implementing and coordinating certain programs designed and focused on improving relationships and overall communications between the Bench and Bar.

Our Purpose: The purpose the MCBA’s Judicial Relations Committee (JRC) is primarily to serve as a liaison between the Martin County Bar Association and the

Please look for our Judicial Speaker Series schedule TBD!

If you are interested in the JRC please contact Jessica VanValkenburgh, Esquire, at jmv@mccarthysummers.com



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ONLINE RESOURCES OFFERED BY THE MCBA

Notice: Your clients and the public at large can now access online courses directly through the MCBA website. They are fast, convenient, and inexpensive - available 24 hours a day, 7 days a week. All instructions are included online and programs can be started/stopped, picking up where you left off, as many times as you like. **Help the MCBA promote this community service while generating income to support local initiatives!**

Florida Online Traffic School Courses:

- Basic Driver Improvement 4-hour course (Traffic Ticket - TCAC)
- First-time Driver 4-hour course
- Advanced Driver Improvement 12-hour course (ADI / Judge-ordered class)
- Florida Mature Driver Program 6-hour course

All traffic courses are approved by the Florida Department of Highway Safety & Motor Vehicles and sponsored by the American Safety Council.

Parent Education and Family Stabilization Online Course:

This 4-hour course is required by Florida law for concerned parties seeking to obtain a final judgment of dissolution of marriage in Florida when minor children are involved. The course is approved by the Department of Children & Families and provided by a division of the University of Continuing Education.

The courses are provided via the American Safety Council which is the leading source for online driver education, workplace safety training, continuing education, online business and security solutions, and more!



Florida Free Legal Answers Program

Did you know that The Florida Bar provides free virtual legal information through its cooperative effort with the American Bar Association to low-income Floridians via the Florida Free Legal Answers Program?

Members of the public can go to: <https://florida.freelegalanswers.org/> to sign up and answer a few questions to see if they qualify to use the service.

Florida lawyers may enroll to join the effort by visiting <https://florida.freelegalanswers.org/> clicking on "Volunteer Attorney Registration" and agreeing to the attorney agreement.



19th Judicial Circuit Court of Florida

Court administration, judicial assignments, programs, job opportunities and other resources:

www.circuit19.org

Emergency Hotline / Info: 772.742.9229

Visit

www.martincountybar.org

for resources, links, events and member contact & practice area information.



Florida Bar Appointments / Vacancies

For applications and complete details, visit: **www.floridabar.org**

19th Circuit Appointments / Vacancies

For applications and complete details, visit: **<http://www.circuit19.org/careers.html>**

Track Legal Legislation

For more detailed information on specific legislation being tracked by the Bar, visit the Legislation Committee's webpage on the Bar website at this link:

<http://www.floridabar.org/cmdocs/bd160.nsf/WDOCS>



Martin County Ordinances

All Martin County ordinances may be found on the County website:

<https://www.martin.fl.us>

Click on Departments, County Attorney, County Code & Ordinances.

See ordinance list on right side of web page (ex: Ordinances 800-849).



City of Stuart Ordinances

All City of Stuart ordinances may be found on the City website:

www.cityofstuart.us

Click on link at the bottom of the page.

| Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday |
|------------------------|--|---|---------------------|---------------------------------|--|----------|
| <h1>February 2021</h1> | | | | | | |
| | 1 SideBar Articles Due | 2 | 3 | 4 Trial Lawyers Mtg @12 noon | 5 Virtual Family Law Update CLE @ 2pm | 6 |
| 7 | 8 | 9 MCWL Meeting @ 12 noon | 10 Inns of Court | 11 | 12 | 13 |
| 14 Valentines Day | 15 President's Day | 16 RSVP DEADLINE FOR 2/19 General Meeting MCBA Officers' Meeting | 17 Ash Wednesday | 18 | 19 MCBA Monthly Meeting @ Noon | 20 |
| 21 | 22 | 23 | 24 | 25 | 26 | 27 |
| 28 | <p>SAVE THE DATES: See www.martincountybar.org for full 2020-21 calendar including committee meetings, holidays & courthouse closings.</p> <p>March 26, 2021: Tri-County Appellate Meeting</p> <p>April 9, 2021: Judge Waronicki Investiture</p> <p>April 17, 2021: Run to the Courthouse 5K</p> <p>April 23, 2021: Bench Bar Conference</p> | | | | | |



MARTIN COUNTY BAR ASSOCIATION
PO Box 2197
STUART, FL 34995-2197

Please join us for MCBA's CLE Monthly Meeting, Friday, February 19, 2021

**When: Friday, February 19, 2021
12:00 Noon**

Where: Zoom

Speaker: Wilie E. Gary

Topic: Mr. Gary's perspectives and experiences of his career. The challenges he has faced and how they were overcome.

CLE: CLE credit has been applied for

**Please RSVP to: martincountybarassociation@msn.com
No later than Tuesday, February 16, 2021**

**Zoom call details will be sent no later than February 17, 2021
to members who RSVP.**