

AUGUST 2022



The SideBar

NEWSLETTER OF THE MARTIN COUNTY BAR ASSOCIATION



***THE MARTIN COUNTY BAR ASSOCIATION
WELCOMES THE 2022-2023 PRESIDENT
JEFFREY FRIEDMAN***

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Jason D. Berger - 2019 - 2020
Barbara Kibbey Wagner - 2020 - 2021
Adam Schwartz - 2021 - 2022

THE SIDE BAR NEWSLETTER

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

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Message From the President

Martin County Bar President - Jeffrey M. Friedman, Esq.

Dear Members,

As we begin a new Bar year for the MCBA, I would like to welcome new members as well as welcome back our returning members. I am honored to serve as MCBA President for the 2022-2023 Bar year. It has been two and a half years since Covid made its mark on the world. During that time we have experienced physical, emotional and economic damage. However, we have also seen how technology can improve our lives – both personal and in business. In many areas of law, videoconferences for meetings, depositions and even trials have become the norm rather than the exception. The technological advances have made it possible to be anywhere in the world, but from the comfort of our home or office.

We have undoubtedly benefited from technological advancements over the past few years. However, for many, it has also resulted in more seclusion. For some, both the good and the bad that have come from the pandemic have resulted in mental health issues. That is why I have chosen mental health as my platform for my term as President of the MCBA. Some of our luncheon speakers this year will discuss how to identify and cope with mental health problems, as well as help family, friends and colleagues that may be suffering.

“Your present circumstances don’t determine where you go; they merely determine where you start.” – Nido Qubein.

Thanks to the hard work and vision of our past MCBA Presidents during the Covid era, Jason Berger, Barbara Kibbey Wagner, and Adam Schwartz, we were able to continue to conduct MCBA business and have luncheon speakers by videoconference and a hybrid of live/videoconference. With the fresh start of a new year, we will return to fully in-person CLE luncheons, along with our yearly special events. We will also continue to have happy hours, which is an excellent way to network and get to know fellow MCBA members and sponsors.



Jeffrey M. Friedman
2022-2023 President

I look forward to seeing our returning members and meeting our new members at this year’s events.

Sincerely,

A handwritten signature in black ink that reads "Jeffrey M. Friedman". The signature is fluid and cursive.

Jeffrey M. Friedman
2022-2023 MCBA President

Don’t forget to send in your 2022 – 2023 Membership Renewal

Renewals are due July 1 of each year.

Only members in good standing will continue to be listed on our website with all their contact information, professional headshot and in our FREE Referral program by Practice Area.

Don’t forget, Courthouse Badges are only available to MCBA members.

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Please Join Us!

Join Us for the First Luncheon of the 2022 – 23 Bar Year!

On Friday, August 19, 2022, the Executive Board of the Martin County Bar Association will hold the first CLE luncheon for the 2022 – 2023 Bar year at Monarch Country Club.

We welcome **Michelle Miller**, C.P.M. Human Services Administrator of Martin County Board of County Commissioners and **Joanna Greene**, M.S.; Human Services Supervisor, as our speakers.



Michelle Miller is the Human Services Administrator for Martin County Board of County Commissioners, which oversees the Human Services Department of Martin County. She is a Certified Public Manager and received her Bachelor of Arts Degree in Criminal Justice from Florida Atlantic University and Master of Science Degree in Criminal Justice from Florida International University. Additionally, she possesses a Six Sigma Green Belt Certification. She is a Certified Instructor of Mental Health First Aid.

Ms. Miller serves on the Drug and Alcohol Abuse Awareness Committee, the Local Coordinating Board for the Transportation Disadvantaged, Treasure Coast Homeless Services Council, and Martin County Interagency Coalition. Ms. Miller is the Vice-Chair of the Martin Interagency Network for Disasters, and Vice-Chair of the Florida Association of County Human Services Administrators.



Joanna Greene serves as the Human Services Supervisor at Martin County Human Services. In this role, she supervises case management services offered by Adult Drug Court, Adult Mental Health Court, Juvenile Drug Court, as well as the Civil Citation and REACH juvenile diversion programs. She oversees operation of the Martin Human Services drug lab, which serves multiple local agencies for random and regular drug testing. Along with the Human Services Administrator, she contributes to implementation of the Drug-Free Communities, OD2A, and Tobacco-Free Florida grants. She is a Certified Instructor of Mental Health First Aid.

Prior to this role, Joanna was Crisis Response Specialist, serving as a liaison between Martin County Human Services and Martin County Sheriff's Office. She taught multiple Human Services and Psychology courses at Indian River State College for twelve years. She is a member of the Treasure Coast Critical Incident Response Team, and a board member of the Florida Association of Drug Court Professionals.

We anticipate an insightful and engaging program and are looking forward to seeing everyone in-person. The lunch is free to MCBA members and Judges. Guests are welcome to attend and pay the \$35 guest fee at the door (cash or check only).

RSVP IS REQUIRED on or before 5:00 p.m. **FRIDAY, August 12, 2022** by calling 772-220-8018 or emailing martincountybarassociation@msn.com.

In order to expedite gate access for everyone, please be sure to RSVP by the deadline.

Now Accepting Nominations
MCBA's George W. Bush Jr. Professionalism Award for 2022



Beth Alcalde
Chair

This Professionalism Award recognizes an attorney who has demonstrated or promoted outstanding professionalism in Martin County, as defined by exemplary ethical conduct, character and integrity, respect for the legal system and all of its participants, commitment to maintaining the highest levels of professional competence, courtesy and civility, as well as a commitment to serving clients, the community and the public good. All current members of the Martin County Bar Association are eligible.

In recent years, the Professionalism Committee has appreciated the opportunity to celebrate the winners:

- 2015 - George W. Bush, Jr., Esq.
- 2016 - Preethi Sekharan, Esq.
- 2017 - Richard Levenstein, Esq.
- 2018 - Stephen C. Page, Esq.

- 2019 - Edwin "Ted" Mortell, III, Esq.
- 2020 - Jason D. Berger, Esq.
- 2021 - Hon. Steven J. Levin

The Committee has also in the past received several excellent nominations for deserving candidates who have not yet been recognized. Therefore, in addition to committing to review all newly-received nominations for the 2022 award, the Professionalism Committee will revisit all submissions that have been made in years past. **We encourage both new nominations, as well as any supplemental support for the many excellent past nominees who were not yet selected.**

We welcome your input! Please send nominations or other support to martincountybarassociation@msn.com by midnight **September 15, 2022**. Any questions can be directed to either Robyn O'Heron at 772-382-9076 or to the Professionalism Committee Chair, Beth Alcalde, at 561-671-3657.

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19th JUDICIAL BENCH BAR CONFERENCE

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Constitution Week

VOLUNTEERS NEEDED FOR CONSTITUTION WEEK 2022

Judge Alan Forst

Past MCBA President and Constitution Week Co-chair

Adam Schwartz

Immediate Past MCBA President and Constitution Week Co-chair

Julie Ann Treacy

Constitution Week Co-chair

To live under the American Constitution is the greatest political privilege that was ever accorded to the human race. (Calvin Coolidge)



Adam Schwartz
Co-Chair

In 1940, Congress designated the third Sunday in May as “I am an American Day.” Both the date and name of this celebration of United States citizenship were changed in 1953, with “Citizenship Day” being celebrated on September 17. In 2004, Congress added the observation of “Constitution Day,” also to be celebrated annually on September 17. Why September 17? Because on that date in 1787, thirty-nine delegates to the Constitutional Convention signed the United States Constitution. Beginning in 2004, the Martin County Bar Association commenced Martin County Constitution Week, sending volunteers to nearly every school in the county to speak about the Constitution and the Rule of Law. We have been



Judge Alan Forst
Chair

at it every year since that start, even during Covid when we had to substitute a video for our live interactive programs.

This year, we will once again work with the Martin County Schools (from the Superintendent down, they have been very supportive) to coordinate visits from our lawyer and judge volunteers to speak about the Constitution during the week of September 16-22 (Friday and the following Monday-Thursday). So, what does one do at the schools during Constitution Week? A lot of discretion is provided to the speakers, with the proviso that we are celebrating the United States Constitution, the audience is school children, and the goal is to get the kids thinking and talking about the subject. Need help? **We will be hosting a lunch meeting (pizza is on us!) at the courthouse on Tuesday, September 6 at noon.** We will be sharing lesson plans, materials, and experiences. Several judges are part of this “staff,” and therefore this meeting will also be a network-with-the-judges opportunity.



Julie Treacy
Co-Chair

The time commitment for this project is not egregious, and you are encouraged to team up with a colleague. We have learned from our volunteers that this is a very fun experience, you will be as much a beneficiary as the students, and this is an excellent public service project for the Bar (and for you and your firm).

Schools are *required* by Federal Law to conduct a special program during Constitution Week. Why? Let’s start with this: A new survey of young Americans found that 42 percent of the respondents didn’t know who the colonies declared their independence from. Nearly 20 percent answered “Native Americans” or “South America.”



George Washington sat in this chair for nearly three months during the 1787 Constitutional Convention. The chair doesn't appear to provide lumbar support! In any case, it has been reported that at the close of the convention, Benjamin Franklin remarked, "I have often looked at that behind the president without being able to tell whether it was rising or setting. But now I know, that it is a rising sun."

Constitution Week is an excellent opportunity for our Bar Association to generate interest in our Constitution and form of government and impress upon our youth that it is, indeed, a rising sun. We hope that you can join in this effort.

So, here is what we need ASAP:

Please email us at usakids@comcast.net and provide the following: (1) the day(s) and time(s) that you are available during the week of September 16-22; (2) the number of class periods you're willing to take on (class periods generally are less than an hour); (3) your contact information; (4) the school(s) that you prefer to visit/teach; (5) your preferred topic(s). If you will be joining us on Tuesday, September 6 at the courthouse, please RSVP to us in advance, so we know how much pizza to order and we can give you the courtroom number. It'll be fun! Really! We look forward to hearing from you!

The strength of the Constitution lies entirely in the determination of each citizen to defend it. Only if every single citizen feels duty bound to do his share in this defense are the constitutional rights secure. (Albert Einstein)

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Admiralty Committee

FLORIDA STATUTORY MARITIME LAW UPDATE

Barbara A. Kreitz Cook, Florida Bar Board Certified Admiralty & Maritime Law
& MCBA Admiralty Committee Chair

The following Florida boating statutes regarding collisions were significantly changed, effective July 1, 2022. WE HOPE THIS NEVER HAPPENS TO YOU...but read this and be prepared to follow the law.

§ 327.30, Florida Statutes, now mandates vessel operators involved in collisions must render assistance to others affected by the accident. It states, at section (1) “It is the duty of the operator of a vessel involved in a collision, accident, or other casualty, so far as he or she can do so without serious danger to the operator’s own vessel, crew, and passengers, if any, to render to other persons affected by the collision, accident, or other casualty such assistance as is practicable and necessary in order to save them from or minimize any danger caused by the collision, accident, or other casualty, and also to give his or her name, address, and identification of his or her vessel in writing to any person injured and to the owner of any property damaged in the collision, accident, or other casualty. The operator of a vessel involved in an accident with an unattended vessel shall take all reasonable steps to locate and notify the owner or person in charge of such vessel of the accident, furnishing to such owner his or her name, address, and registration number and reporting as required under this section.”

The revised statute further states, at section (2), “ In the case of collision, accident, or other casualty involving a vessel in or upon or entering into or exiting from the water, including capsizing, collision with another vessel or object, sinking, personal injury requiring medical treatment beyond immediate first aid, death, disappearance of any person from on board under circumstances which indicate the possibility of death or injury, or damage to any vessel or other property in an apparent aggregate amount of at least \$2,000, **the operator shall without delay, by the quickest means available give notice of the accident to one of the following agencies: the Division of Law Enforcement of the Fish and Wildlife Conservation Commission; the**

sheriff of the county within which the accident occurred; or the police chief of the municipality within which the accident occurred, if applicable.” (Emphasis added)

§ 327.731, Florida Statutes, now makes education and \$500 fines for boating law violators mandatory and prohibits their operation of a boat until completion of the education and payment of the fine. The statute specifically states: “(1) A person convicted of a criminal violation under this chapter, convicted of a noncriminal infraction under this chapter if the infraction resulted in a reportable boating accident, or convicted of two noncriminal infractions as specified in s. 327.73(1)(h) -(k), (m), (o), (p), and (s)-(y), the infractions occurring within a 12-month period, must: “(a) Enroll in, attend, and successfully complete, at his or her own expense, a classroom or online boating safety course that is approved by and meets the minimum standards established by commission rule; (b) File with the commission within 90 days proof of successful completion of the course; (c) Refrain from operating a vessel until he or she has filed proof of successful completion of the course with the commission; and (d) Pay a fine of \$500. For the purposes of this section, “conviction” means a finding of guilt, or the acceptance of a plea of guilty or nolo contendere, regardless of whether or not adjudication was withheld or whether imposition of sentence was withheld, deferred, or suspended. Any person who operates a vessel on the waters of this state in violation of the provisions of this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.



Barbara A. Kreitz Cook
Chair

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Terminating an employee during their 90-day probationary period is risk free; right?

One of the biggest fallacies that I hear Treasure Coast business owners say is, “Dave, I didn’t call you because there is no legal risk with this one - I fired her during her probationary period.”

This is flat wrong. Plenty of employers get sued for violating various federal or Florida laws when they terminate an employee during their introductory period.

The 90-day probationary period is NOT a get out of jail/lawsuit free card.

In April 2022 the EEOC announced that a business hired a woman who was approximately 12 weeks pregnant, but her pregnancy was not visible, and the employer was unaware she was pregnant.

On the employee’s 30-day review, she received a high rating (just one point shy of “Excellent.”)

Four days later (and less than one week after she disclosed her pregnancy to Human Resources) she was fired!

Oh yeah, the following day, she was replaced by a non-pregnant employee.

I can hear the employer now, “but we fired her after 5 weeks. She was in her probationary period!”

Well, that business just agreed to pay \$85,000 to settle a pregnancy discrimination lawsuit . . . for an employee who only worked 5 weeks!

This could have been avoided. If there is any doubt whatsoever about a termination, please call an employment lawyer of your choosing BEFORE you terminate.

Are you giving employees 8.5% raises?

U.S. inflation surged to a new four-decade high of 8.5% in March 2022 from the same month a year ago. What does this mean for your Florida business? I am telling my clients the following: If you are worried about employee retention, you may need to examine whether you are competitive. The current inflation is 8.5% which means that any employee who did not receive an 8.5% raise (or higher) in the past 12 months effectively had their wages cut. In order to be competitive, employers are having to view things very differently than even just a couple years ago.

8.5% for an employee making \$20/hour would be a \$1.70/hour raise.

It doesn’t matter if you blame COVID or Biden or Trump or Putin. 8.5% is real.



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Young Lawyers Division



Melissa Dean
Chair

Before I went to law school, I was lucky enough to have a mentor at UCF who challenged me to confront my world view and personal biases of what it meant and “looked like” to be an attorney. Dr. Chad Cronon spent his entire legal career fearlessly advocating for the voiceless and inspiring students like myself to celebrate diversity, inclusion, and equality in the legal profession. As a young lawyer, I still carry that spark with me and in the spirit of the Florida Bar’s #YLDIsME campaign, hope to help make an impact on reshaping the image of what an attorney “should” look like in the eyes of YLD members of Martin County, The Florida Bar, and the public.

More recently, the appointment of Ketanji Brown Jackson to the United States Supreme Court as the first black woman and the first former public defender has meant a great deal to law students and attorneys of all walks of life. To read up on more stories highlighting successful attorneys from all backgrounds, ethnicities, orientations, and physical abilities, visit <https://flayld.org/inclusion-and-equality/#YLDIsMe>

This is an exciting time to be a member of the Martin County Bar Association and the YLD. The Young Lawyers Committee is planning some great events and happy hours in the future, so please reach out if you want to get involved! mdean@rosenthallevy.com

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Appellate Committee

PCA Without Written Opinion – Can it mean anything?

By Carri Leininger



Carri Leininger

A PCA with no written opinion generally means nothing except to the parties involved. If you were the Appellant, you feel defeated and probably frustrated not knowing the reasons why the court rejected your efforts. If you were the Appellee, you should be thrilled, but maybe a little disappointed the court did not wax poetic on your brilliant

analysis.

Regardless, the PCA should mean little to everyone else. Trial and appellate attorneys who face an opposing counsel relying on a PCA should be ready to argue that a PCA has no precedential value. Such decisions do not establish any point of law; and there is no presumption that the affirmance was on the merits. See, *Dept. of Legal Affairs v. District Court of Appeal, 5th Dist.*, 434 So.2d 310(Fla. 1983).

While a PCA without opinion may be sufficient to support a plea of res judicata as between the original parties, such per curiam affirmance opinion does not stand for any general pronouncement of principles of law that might have been urged by the parties in their pleadings and briefs.

A per curiam affirmance without opinion does not bind the appellate court in another case to accept the conclusion of law on which the decision of the lower court was based. The Florida courts have expressed that they “foresee great danger in applying the rule of stare decisis to such a decision. No one can ascertain what was argued to the original court first rendering a decision. More importantly, however, would be the uncertainty of the law. All lawyers, and lay people also for that matter, should be able to research and have available all existing law. If there is a body of law floating around in unwritten or unpublished opinions, only those persons privy to those cases know those pronouncements. This

creates unwarranted confusion and disparity in the orderly presentation of issues.” The rationale and basis for the decision without opinions is always subject to speculation.

In *Newmons v. Lake Worth Drainage District*, 87 So.2d 49 (Fla.1956), the court discussed several reasons for issuing per curiam decisions, some with written opinions and some without written opinions, and concluded: “In fine, there is no limit to the grounds that may prompt a per curiam opinion.” Such uncertainty in itself negates a basis for reliance on an unwritten decision for guidance or precedence.

The situation is slightly different in reference to calling a court’s attention to one of its own unwritten decisions. It would not be improper for counsel, in an effort to persuade a court to adopt a certain position, to refer to such a decision and thereby suggest to the court how it previously viewed the proposition. That court has the records of its own decisions, and the judges have the opportunity to discuss such cases collegially. Conversely, because such decisions have no precedential value, a court may take the view that it desires not to consider such cases in any circumstance, and it may properly disregard such a reference in briefs or arguments presented to it.



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Foreclosure Committee

Dorothy Dlugolecki – Chair

Trust v. Serpa – taxes on loan mods

In this case, the trial court granted the borrowers’ motion for involuntary dismissal based on the taxes not being paid on the loan modification pursuant to Fla. Stat. § 201.08 and entered a final judgment in favor of the borrowers. Wilmington paid the taxes on the loan mod and then moved for rehearing and alternatively to reopen the evidence with proof of the tax payment, which was denied. The 3rd DCA affirmed the involuntary dismissal but found the trial court abused its discretion in entering a final judgment and failing to reopen the evidence when Wilmington timely requested to introduce evidence of the tax payment. The case was remanded to allow Wilmington to proceed on foreclosing on the amount due under the note, mortgage, and loan mod since the record showed the taxes were paid on the loan mod.

Nationstar Mortgage v. DeSouza – intervention and fee judgment

In this 2008 case, a quitclaim deed was executed and delivered to a non-party, Mr. Fernandes, in 2007 but was not recorded until 2009 - 10 months after the complaint and notice of *lis pendens* were filed. Under the 2008 version of Fla. Stat. § 48.23, all unrecorded interests in a property are barred unless the party intervenes within 20 days from the filing of the *lis pendens*. Mr. Fernandes did not intervene within the required timeframe but participated in the case since 2009 and the trial court ultimately granted his motion to intervene in 2018. In 2019, Mr. Fernandes moved for sanctions against Nationstar alleging deficient discovery responses and the trial court granted sanctions and entered an amended judgment, which is the subject of this appeal. Nationstar argued Mr. Fernandes was not a proper intervenor, and therefore, not entitled to litigate or seek fees against Nationstar. The 1st DCA agreed, finding there was jurisdiction to also review the order granting intervention under Fla. R. App. P. 9.110(h) in the appeal

of the fee judgment. The 1st DCA reversed and remanded because Mr. Fernandes did not intervene within 20 days from the filing of the *lis pendens* and the trial court had no discretion or authority to allow him to participate as a party.



Dorothy Dlugolecki
Chair

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On Friday, May 13, 2022 the MCBA held its Annual Installation Banquet at Mariner Sands Country Club.

The theme of the evening was *“Rockin’ Like It’s 1955: Honoring the founding of the MCBA”*. There were close to 200 members and guests who enjoyed a delicious dinner, dancing to The Chase Band and witnessed the swearing-in of the 2022 – 2023 MCBA Executive Board by 4th DCA Judge and former MCBA President Alan Forst. The room was decorated in a 50’s theme but the main focus was on the signage around the room honoring the lawyers of the 1950s who shaped the future of Martin County Law. Thank you to Thomas “Todd” Thurlow, III for allowing us to use parts of his father’s book *“The Early Lawyers of Martin County”* for the Bios. We were very fortunate to have Sandy Thurlow join us for the evening. Congratulations to raffle prize winner Mark Hanson who walked away with a gift certificate to Hutchinson Shores Resort.





Tennis Committee

Chair: Ray Robison

Hooray Tennis! We got the MCBA Tennis Tournament back on track on Saturday, May 21st. After a couple hours of tennis, where plenty of fun was had and great shots made, Scott Konopka reigned supreme again among the MCBA members. Mariner Sands was a wonderful host, as always, with good weather, great food, and the typical relaxed atmosphere that comes with a morning of tennis among friends.



Ray Robison
Chair

Thank you again to our sponsor, SEACOAST BANK, for supplying all players with t-shirts, as well as prizes for the winners. SEACOAST BANK has been such a wonderful sponsor and friend of the tennis tournament and the MCBA in general. We are so appreciative of their support.



MCBA Golf Tournament

Chair: Jack Sobel

How often do you get to have a lot of fun while doing something nice for others? Well, that's exactly what happened on Saturday, May 7th when the Martin County Bar Association held its annual golf tournament at the luxurious Monarch Country Club. Playing golf with your friends is a good enough experience for many, but our event also raised money to fund \$5,000 in scholarships to be awarded to three seniors selected from Martin County's high schools at graduation ceremonies next spring.



Jack Sobel
Chair

The tournament was put together for our Golf and Scholarship Committees by our all-star Executive Director, Robyn O'Heron and her terrific teammate for golf-related projects, Lynn SanFilipo. Sixty-four players participated in the scramble format, which included a light breakfast and a great lunch. For those of you unfamiliar with the format, please know that in a scramble all four golfers hit their shot, but only the best one counts. The other three players simply pick up their shot and move it to the place where the best one lies. This allows inexperienced or rookie golfers to be part of a team that can compete for a trophy.

This year, the winners in the gross score division were Adam Less, Matthew Killough, E.R. Clark and Geoff McGowen, who carded an impressive 55! The winners in the net division were Robin Wally, Michael Peckham, Juan Asconape and Blake Swan, with a net score of 49! Second place went to the foursome of Alex and Frances Gillen and Eric and Lauren Sweet. Third place was taken by the team of Theo Smith, Robert Nehls and long-drive winner, Ryan Nehls.

The biggest silent auction prize was a foursome at the exclusive Fisher Island Club (which is only accessible by boat).

The committee wants to thank this year's sponsors: Donaldson & Weston; Williams, Leininger & Cosby; R. Wayne Richter, Atlas | Solomon; Law Offices of Jason Berger; Yara Bashoor of Water Pointe Realty; Kathryn McHale; Treasure Coast Estate Buyers; Manatee Island Bar & Grill; and Ohle & Ohle.

Hopefully, the tournament will be part of the Martin County Bar Association experience forever, giving everyone a chance to do good while having fun. We look forward to seeing you on the links next year!





PAST PRESIDENT'S BREAKFAST 2022

On April 22, 2022, after a 2-year hiatus, the Past Presidents of the MCBA were treated to a breakfast in their honor at the offices of Crary Buchanan. Attendees enjoyed a wonderful breakfast, camaraderie and lots of laughs as they shared stories and memories of their time as MCBA President. We even had a surprise guest - Mark Miller (2016-2017) - who came all the way from South Dakota! A sincere thank you to Crary Buchanan for hosting this favorite annual event.

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Martin County Women Lawyers Association

Abby Spears: MCWLA President 2022 - 23

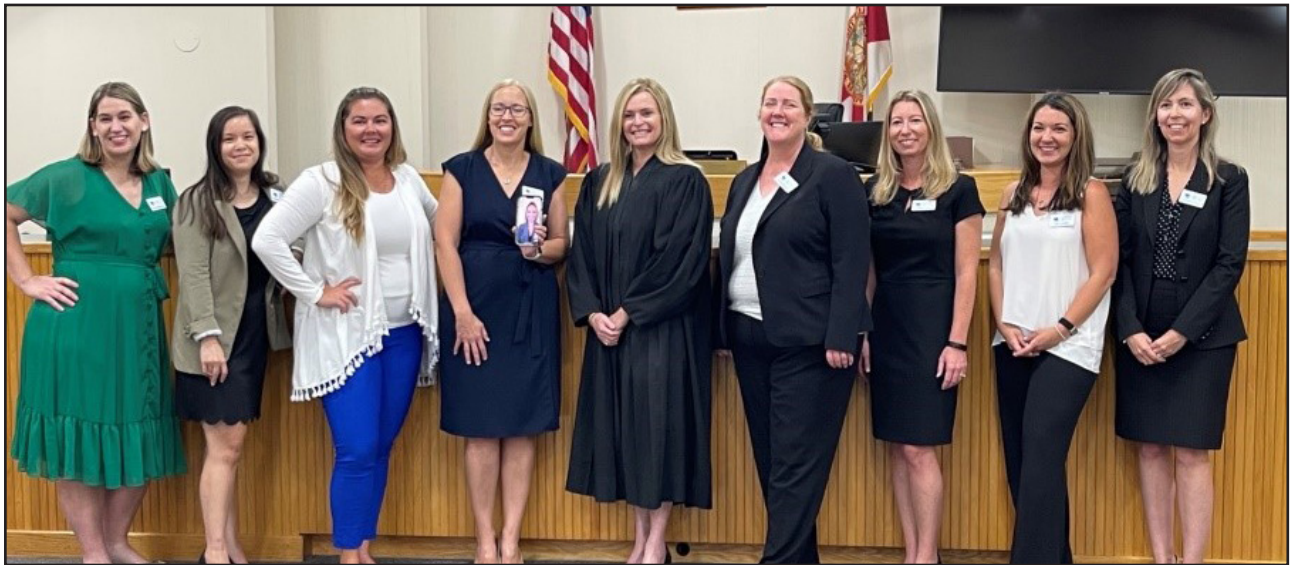


Martin County
MCWLA
Women Lawyers Association

The **Martin County Women Lawyers Association** is your local chapter of Florida Association for Women Lawyers (FAWL). The mission of FAWL is:

To actively promote gender equality and the leadership roles of FAWL's members in the legal profession, judiciary and community at large. To achieve these goals, FAWL will uphold the highest standard of integrity, honor and courtesy in the legal profession, promote reform in law, and facilitate administration of justice.

Thank you to Judge Metzger for conducting our officer installation in June.



Meet our new Board of Directors for 2022-2023:

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President-Elect – Erin Kirkwood

Membership – Davina Tala

Secretary and State FAWL Representative – Niki Marshall

Treasurer – Valerie Costello

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Please join us via Zoom on August 12 from 12-1 pm (networking 11:45 am-noon) for our **CLE** with **Carolyn Timmann**, Clerk of Court and Comptroller for Martin County. **Please join us to hear updates from Clerk Timmann regarding confidentiality, technology, guardianship audit and recent legislation.** You are not going to want to miss this one!

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Real Estate and Commercial Litigation Update

Florida Real Property and Business Litigation Report

Manuel Farach



Manuel Farach
Chair

Siegel v. Fitzgerald, Case No. 21-441 (2022).

Congressional enactment of different bankruptcy fee structures for different states violates the uniformity requirement of the Constitution.

ZF Automotive US, Inc. v. Luxshare, Ltd., Case No. 21-401 (2022).

Only a governmental or intergovernmental adjudicative body (i.e., not an arbitral body) constitutes a “foreign or international tribunal” under 28 U. S. C. §1782 such that a district court may order the production of evidence “for use in a proceeding in a foreign or international tribunal.”

Brucker v. City of Doraville, Case No. 21-10122 (11th Cir. 2022).

It is not unconstitutional for a municipality to base its annual budget on the collection of code enforcement and traffic fines.

U.S. Bank National Association v. Martinez, Case No. 2D21-1351 (Fla. 2d DCA 2022).

While it is proper for a court to take a defendant’s motion to dismiss under advisement and rule later in the case, the better course is for the court to enter a final judgment at the end of trial instead of granting a motion for involuntary dismissal.

O’Boyle v. Town of Gulf Stream, Case No. 4D21-972 (Fla. 4th DCA 2022).

Florida Statute section 119.12 (attorney’s fees for government refusing to produce or copy a public record) does not provide for an award of “fees for fees” and does not permit an award of fees for associates of the testifying expert who did not testify.

Inlet Colony, LLC v. Martindale, Case No. 4D21-2330 (Fla. 4th DCA 2022).

The time under Florida Statute section 48.23(1)(b)(2) for an expired, withdrawn, or discharged lis pendens to no longer be a lien on a property

includes the time for any filed appeal to be resolved.

Doral Collision Center, Inc. v. Daimler Trust, Case No. 3D21-1385 (Fla. 3d DCA 2022).

The requirements of Florida Statute section 713.585 (enforcement of mechanic’s lien by sale of motor vehicle) are mandatory and failure to strictly comply with the statute voids a lien claimed under the statute.

100 Emerald Beach Way LC v. Thornton, Case Nos. 4D20-2792 and 4D21-508 (Fla. 4th DCA 2022).

The Fourth District follows its prior precedent and holds that Florida Rule of Appellate Procedure 9.130(a)(3) authorizes review of pre-judgment contempt orders; conflict certified with the opinions of the First, Second, Third, and Fifth Districts which hold review of such orders is by certiorari.

Lloyd S. Meisels, P.A. v. Dobrofsky, Case No. 4D21-2397 (Fla. 4th DCA 2022).

A trial court does not abuse its discretion by treating the facts in a moving party’s motion for summary judgment as undisputed when the non-moving party fails to comply with Florida Rule of Civil Procedure 1.510.

Echo River Sanctuary, LLC v. 21st Mortgage Corp., Case No. 1D21-1940 (Fla. 1st DCA 2022).

A creditor’s security lien on a mobile home is extinguished by foreclosure of a real property mortgage of the land on which the home sits when the mobile home is a fixture, i.e., is affixed to the land, and the creditor failed to title the home and perfect its lien.

Phillips v. Lyons Heritage Tampa, LLC, Case No. 2D21-816 (Fla. 2d DCA 2022).

Civil rights claims arising under 42 U.S.C. §1983 are generally subject to arbitration under a broad arbitration provision; those claims that cannot be arbitrated (e.g., attorney’s fees) can be severed.

Continued On Next Page . . .

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Karisma Hotels & Resorts Corporation Ltd. v. Hoffmann, Case No. 4D22-729 (Fla. 4th DCA 2022).

A party seeking a protective order under the Apex Doctrine of Florida Rule of Civil Procedure 1.280(h) must file an affidavit that explains that the officer “lacks unique, personal knowledge of the issues being litigated.”

DecisionHR USA, Inc. v. Mills, Case No. 2D21-3468 (Fla. 2d DCA 2022).

An officer of a business entity who files an Apex Motion for Protective Order under Florida Rule of Civil Procedure 1.280(h) and who establishes their position as a senior officer without personal knowledge of the issues in the case is entitled to certiorari relief.

International Village Association, Inc. v. Weiss, Case No. 4D21-537 (Fla. 4th DCA 2022).

A party is entitled to a limited award of “fees for fees” for re-establishing entitlement when the issue of entitlement was previously determined but the opposing party continues to contest entitlement.

Tallo v. Illes, Case No. 3D21-1206 (Fla. 3d DCA 2022).

A proper predicate must be laid before a non-party is compelled to turn over personal financial information, even if the request to produce is post-judgment and the requested party is the spouse of the judgment debtor.

City of Miami v. Cruz, Case No. 3D21-2424 (Fla. 3d DCA 2022).

A municipality waives sovereign immunity for express contracts into which it entered, including settlement agreements.

Lexington Place Condominium Association, Inc. v. Flint, Case No. 5D21-2644 (Fla. 5th DCA 2022).

Eliminating an existing dog park and a wallyball court are material alterations to condominium common elements for which Florida Statute section 718.113(2)(a) requires member approval, even if the Declaration of Condominium alteration without member approval.

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MARTIN COUNTY BAR ASSOCIATION RACE TO THE COURTHOUSE



APRIL 17, 2021



We had another amazing Race to the Courthouse 5k on April 16, 2022. Over 150 people showed up on a beautiful Saturday to support the Legal Aid Society of Martin County and the Martin County Bar Association Scholarship Fund. This event raised \$4,620.07! Of this, \$1,000

goes to the MCBA Scholarship Fund and \$3,620.07 to the Legal Aid Society of Martin County.

The winners of the overall race were Josh Negrón and Sara Aube. The master's winners were Thomas Connors and Courtney Ryberg. The largest law firm winner was Stone and Capobianco. The fastest law firm was Zweben Law Group. The fastest Judge winner was Judge Rebecca White. Thank you to all of the runners, volunteers, and sponsors who helped make this race a success. We are planning another great event in 2023!





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"

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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The Florida Bar Helpline

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Visit the MCBA website at www.martincountybar.org for upcoming events, committee meetings and more!

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The following article was shared by Jason Berger, Chair of Florida Bar Professionalism Committee. Per Jason, this is an excellent “throw-back” article on mentoring from the Honorable Judge Mark Klingensmith, Chief Judge of the Fourth District Court of Appeals. This article originally appeared in The ABA Journal.

Mentoring



By The Honorable Judge
Mark W. Klingensmith

“Successful mentoring can happen almost anywhere: playing a round of golf, attending a baseball game, or strolling through a museum. Being a mentor is not only about giving professional advice -- it includes giving life advice as well.”

The importance to a new attorney of developing a mentoring relationship, either in a law firm or in the legal community, has been widely acknowledged. Much has been written about how important it is for these new lawyers, especially in the first 1-3 years after leaving law school, to have someone available to provide the guidance needed to become a successful and respected attorney. Attorneys given no professional guidance at the outset of their careers often develop bad work habits, as well as poor stress management and coping skills. Mentors can play an indispensable role in helping new attorneys overcome the steep learning curve they face after leaving law school, and bridging the gap between passing the bar and establishing a successful law practice.

Many lawyers believe that mentoring occurs only within law firms. In fact, the mentoring process does not depend on the existence of any employer-employee relationship at all. However, mentoring is more than just instruction or supervision -- it involves a willingness to pass on knowledge, skill, and wisdom. In that sense, the “senior” attorney takes on the role of both advocate and supporter for the “junior” attorney. Mentors can help set goals for career development and help facilitate opportunities for the mentee to further those goals.

Mentors can serve as professional confidantes, to whom no question or concern will be considered silly or inappropriate. They get to know the newer lawyer on a personal level, often dispensing life lessons, helping the young attorney learn to deal with stresses or crises, and providing insight on dealing with the “personalities” on the bench and in the legal community.

It seems there are too few seasoned attorneys willing to undertake such a responsibility, especially compared to the number of new lawyers seeking a mentor. For those with the fortitude to step up and fill that role for someone, there is scant information on what it takes so that everyone gains value from the experience. Lori L. Keating, secretary of the Supreme Court of Ohio’s Commission on Professionalism, administers its Lawyer-to-Lawyer Mentoring Program. In her 2010 article for the ABA’s *GPSolo* newsletter, she provided valuable insight and advice to make the mentoring experience successful for all concerned.¹

Find the right mentee. While it would be important for someone to seek out the right mentor for him or herself, it is just as important that any prospective mentor “audition” their mentee. Do their legal interests match up with yours? Do you feel comfortable advising him or her about their professional goals? Do you value the same goals and ideals? If your mentee’s goals and interests are not the same things that you personally value, perhaps you should consider engaging with someone else.



Mentoring

Share expectations. Mentors should always have a clear understanding about what they expect to achieve or obtain from their investment of resources and time. Look at yourself critically, and think about the strengths you have that you might teach. Do you feel that you have strength in networking, writing, communicating effectively with clients and others, or in balancing the demands of career and personal life? Share your perceived strengths at the outset with your mentee, and develop a mutual understanding about what is to be gained from the mentoring relationship. You should also be clear about how often you will be able to meet, the preferred method of communication between these meetings, and other time commitments that may impact your ability to timely respond to requests. Expectations are much more likely to be achieved by both sides if they are shared and mutually understood.

Get out of the office. Mentors and mentees who share common interests outside of the professional environment may feel they have a freer exchange of thoughts and feelings with one another. While it may be convenient to meet at someone's office, it is also a good idea to meet after hours on occasion, perhaps over a glass of wine or a meal. Sharing breakfast, lunch, dinner, or even a coffee break is also a great way to bring comfort and connection to your mentoring relationship. If you get to know your mentee as a person, not just as a lawyer, you will have a better idea of how to help them achieve their goals. Successful mentoring can happen almost anywhere: playing a round of golf, attending a baseball game, or strolling through a museum. Being a mentor is not only about giving professional advice -- it includes giving life advice as well.

Don't do all the work yourself. Mentors should make sure their mentee is invested in the relationship too. Although most mentees are eager to have as much contact as possible, many will be initially reluctant to make contact for fear of being perceived as too intrusive, or not wanting to monopolize their mentor's time. While you may need to take the initiative with contacting your mentee, this does not necessarily indicate a lack of interest on their part. Encourage them to contact you, to set up meetings, and to get in touch when needing help. This will help make your mentee more independent and take some pressure off you.

No access, no deal. Again, make sure your expectation about the time commitment is completely understood. To succeed, the relationship has to be a two-way street. Do not undertake the responsibility of mentoring if you do not have the time to invest. Simply stated, *you must be available*. No matter how much insight a mentor can offer, it has no value if the mentor and mentee never meet.

If it is too difficult for a mentee to see their mentor, or to receive a timely reply email or phone call, then there probably is no point continuing the relationship.

Follow up. It is easy to promise your mentee that you will "meet again soon." However, you may realize (perhaps months later) that you have not been able to keep in touch regularly. To prevent this, make it a point immediately after each meeting to mark your calendar with a future date, or at least a reminder to schedule a date and time to get together. Also, when big life events happen to you, let your protégé know, and ask him or her to keep you updated on their life events, too. Taking the time to call or e-mail about special occasions will help keep you and your mentee connected.

The benefits to a young lawyer of being mentored by a more experienced lawyer are obvious. But if asked, a mentor might admit that they probably derived as much benefit from the experience as did the mentee (perhaps more), especially with their own professional growth and career development. In many ways, mentoring can provide an experienced lawyer with a different outlook on life and the profession as a whole. It can serve as an impetus to reflect on one's professional life, to re-examine both personal and professional priorities, and even serve as a challenge to improve both.

People who have been a mentor to another lawyer report feeling a renewed sense of pride and purpose in their own work. Those who have been truly fortunate have even gained a life-long friend in the process.

Mentors are special people. Do you have what it takes to be one?

(Endnotes)

¹https://www.americanbar.org/newsletter/publications/gp_solo_magazine_home/gp_solo_magazine_index/solo_lawyer_mentor.html

Judge Klingensmith is a Circuit Court judge in the 19th Judicial Circuit, currently assigned to the Family Division in St. Lucie County. He received his B.A. and J.D. degrees from the University of Florida. He now serves on the UF Law School Board of Trustees, as well as the St. Lucie County Children's Services Council, the Executive Roundtable of St. Lucie County, and is the Treasure Coast District Chairman for the Boy Scouts of America Gulf Stream Council. Judge Klingensmith is also Board Certified by the Florida Bar in Civil Trial Law, and a member of the local chapter of the American Board of Trial Advocates and the Major Harding Inns of Court.

This Just In.....

At the end of June, Judge Klingensmith was appointed to the 4th District Court of Appeals. Congratulations, Judge Klingensmith!

7



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:

- **Civil Trial Update & Board Certification Review 2021** – Valid through 8/31/2022. **Credits:** 15.0 General; 2.0 Ethics; 1.0 Technology. **Certification Credits:** 15.0 Appellate Practice; 15.0 Business Litigation; 15.0 Civil Trial; 15.0 Criminal Appellate Law; 15.0 Criminal Trial Law; 15.0 Juvenile Law.
- **19th Circuit Voluntary Bar Coalition Town Hall** - Valid through 9/30/2022. **Credits:** 1.0 General.
- **MCBA Monthly Meeting (Virtual) - Valid Through 10/31/2022.** Speaker: Andrea Andrus, Principal; Andrus Communications. Topic: Marketing & Advertising for Lawyers. **Credits:** 1.0 General Credit.
- **2021 Survey of Florida Law(2 copies) - Valid through 12/31/2022.** Credits: 14.5 General; 3.5 Ethics; 0.5 Bias Elimination; 1.5 Professionalism; 3.0 Technology. **Certification Credits:** 5 Appellate Practice; 2.5 Business Litigation; 2.0 City, County and Local Government; 3.5 Civil Trial; 1.0 Condominium and Planned Development Law; 2.5 Criminal Appellate; 2.5 Criminal Law; 2.0 Elder Law; 1.0 Health Law; 1.0 Intellectual Property; 2.5 Juvenile Law; 1.0 Labor & Employment Law; 3.0 marital & Family Law; 2.0 Real Estate Law; 2.0 State & Federal Gov't & Administrative Practice; 1.0 Tax Law; 2.0 Wills, Trusts & Estates.
- **MCBA Monthly Meeting – November 19, 2021.** Valid through 5/31/2023. Speaker: Judge Robert J. Luck, U.S. Court of Appeals, 11th Judicial Circuit. Topic: Martin County's Legal Impact on State and Federal Law – Part 2. **Credits:** 0.5 General. Includes speaker notes.
- **MCBA Monthly Meeting – December 17, 2021.** Valid through 6/30/2023. Speaker: Edwin Bell, Director of Racial Justice, Equity & Inclusion National Center for State Courts. Topic: Blueprint for Racial Equality. **Credits:** 1.0 General; 1.0 Bias Elimination.
- **MCBA Monthly Meeting – January 21, 2022.** Valid through 7/31/2023. Speaker: Ambassador Tatiana Gfoeller-Volkoff; Topic: Afghan Women: Where are They Now? **Credits:** 1.0 General;
- **MCBA Monthly Meeting – February 25, 2022.** Valid through 2/28/2023; Speaker: Michael Tanner, Esq. Florida Bar President. **Credits:** 1.0 General; 1.0 Professionalism.

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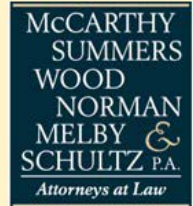
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ONLINE RESOURCES OFFERED BY THE MCBA

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 [clicking on "Volunteer Attorney Registration"](#) and agreeing to the attorney agreement.

Links, Jobs and Legislation



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>August 2022</h1>						
	1 SideBar Articles Due	2	3	4	5	6
7	8	9	10	11	12 RSVP DEADLINE FOR 8/19 LUNCH MCWLA CLE Mtg Via Zoom 11:45 a.m.	13
14	15	16 MCBA Officers' Meeting	17	18	19 MCBA Luncheon @ Monarch CC (11:30 am)	20
21	22	23	24	25	26	27
28	29	30	31	SAVE THE DATES: See www.martincountybar.org for full 2022-23 calendar including committee meetings, holidays & courthouse closings.		



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

Please join us for MCBA's CLE Monthly Meeting, Friday, August 19, 2022

- When: Friday, August 19, 2022
11:30 a.m. networking; 12:00 p.m. lunch
- Where: Monarch Country Club
1801 SW Monarch Club Drive, Palm City
- Menu: Baked Stuffed Tomato, Grilled Chicken and Strawberry Salad: Mixed Greens Topped with Grilled Chicken, Strawberries, Grapes, Mandarin Oranges and Feta with Raspberry Vinaigrette, Rolls with Butter, Italian Lemon Cake.
- Speaker: Michelle Miller, C.P.M. Human Services Administrator and Joanna Green, M.S. Human Services Supervisor, Martin County Board of County Commissioners
- CLE: Requested

RSVP to: martincountybarassociation@msn.com
No later than Friday, August 12, 2022

PLEASE BE SURE TO RSVP TO EXPEDITE ACCESS AT THE GATE

There is no charge for paid MCBA members. Guests are welcome; a \$35 guest fee may be paid at the luncheon (cash or check only).