

February
2022



The SideBar

NEWSLETTER OF THE MARTIN COUNTY BAR ASSOCIATION

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MCBA PRESIDENT
ADAM SCHWARTZ

**FLORIDA PRO BONO
LAW SCHOOL CHALLENGE**

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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.

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(Subsequently Elected to Bench) 1960
Thomas H. Thurlow - 1960 – 1961
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W. Thomas Wackeen - 1986 – 1987
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Hon. Jennifer Alcorta Waters - 2014 – 2015
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Mark Miller - 2016 - 2017
Elizabeth R. Hunter - 2017 - 2018
Barbara A. Kreitz-Cook - 2018 - 2019
Jason D. Berger - 2019 - 2020
Barbara Kibbey Wagner - 2020 - 2021

Message From the President

Martin County Bar President - Adam G. Schwartz, Esq.

Dear Members,

We hope you enjoyed our January luncheon speaker, Ambassador Tatiana Gfoeller-Volkoff. It was a very intense discussion and the situation is dire. We are thankful for the time she spent with us discussing how we can help the women of Afghanistan.

Please join us on February 25, 2022, for our luncheon. Our speaker will be Florida Bar President Mike Tanner. Mr. Tanner will provide an update on the Florida Bar activities. Please come with questions for Mr. Tanner.

We hope everyone had a great time January 20 at Stringers Tavern & Oyster Bar. The turnout was fantastic, and the members have a great time catching up, sharing stories, and having a few drinks.

The MCBA will be publishing an updated legal directory. Please make sure your contact information is up to date and contact Robyn O’Heron for sponsorship/advertising opportunities. The last directory issued was over four years ago—advertising here lasts a while.

The MCBA will be holding the judicial reception on March 10, 2022, at Willoughby Country Club. Please look out for more details and save the date on your calendars.

The MCBA will hold the annual banquet on May 20, 2022, so please hold the date. We are hopeful to host a great event. The theme for this year’s annual banquet will be: History of the MCBA, honoring its prior leadership and its early lawyers. I hope you will join us this year to celebrate our history and our past leaders. I hope you will join us to celebrate you!



The MCBA board looks forward to continuing to serve the membership in 2022.

“If everything was perfect, you would never learn and you would never grow.” -- Beyoncé

Yours Truly,

Adam Schwartz
2021-2022 MCBA President

SAVE the DATE

MCBA Judicial Reception

Thursday, March 10, 2022

5:30 p.m.

Willoughby Golf Club

***Welcome New MCBA Sponsor
First Citizens Bank
We appreciate your support***

Are you looking for Year-Round Marketing Exposure for your Firm?



Consider an Annual Sponsorship!

Opportunity for Year-Round marketing exposure with Martin County Bar Association's Membership!

The Annual Sponsorship Program provides your firm continuous, repeatable marketing presence and networking opportunities with MCBA's membership through:

- Greater exposure on-line; in-print; and during monthly meetings
- Person-to-person networking
- Increased recognition
- Building more meaningful relationships with colleagues

Benefits include visibility on MCBA's website, inclusion on member email blasts, signage at Bar events, advertising in the SideBar and complimentary tickets to the Fall Reception and Annual Installation Dinner.

There are sponsorship packages for law firms and businesses of all types, sizes and marketing budgets.

***Visit the Sponsor page of the MCBA website or contact Robyn O'Heron
at martincountybarassociation@msn.com for details.***



SouthState

Please Join Us!

The Martin County Bar Association (MCBA) will welcome Florida Bar President, Michael G. Tanner and 19th Circuit Chief Judge Charles Schwab as the guest speakers at our monthly luncheon meeting on Friday, February 25, 2022 at Monarch Country Club. Networking begins at 11:30 a.m. and lunch will be served promptly at noon. **Please note that this is not our usual 3rd Friday.**

Mr. Tanner will discuss the State of the Florida Bar. and **Honorable Charles Schwab** will present the State of the 19th Circuit.



Mike Tanner, the 73rd president of The Florida Bar, practices business commercial litigation and appellate and election law with Gunster in Jacksonville, where he is a shareholder. He has served on the **Board of Governors** since 2011, including on the Legislation Committee since 2013 and has chaired or co-chaired that committee three times.

Tanner is board certified in both civil trial law and business litigation and is rated “AV-Preeminent” by Martindale-Hubbell Inc. He is a fellow of the American College of Trial Lawyers and a member and a past Jacksonville chapter president of the American Board of Trial Advocates.

Honorable Charles A. Schwab is Chief Judge of the 19th Judicial Circuit Court. He was appointed by Governor Rick Scott on November 15, 2013 to fill the vacancy left by Mark W. Klingensmith.



Judge Schwab received his bachelor’s degree from the University of Colorado and his **J.D.** from the University of Denver.

Prior to his 2013 appointment, Judge Schwab was a sole practitioner. Between 2003 and 2013, he was also the 19th Circuit traffic magistrate and assistant state attorney in the Nineteenth Circuit from 1993 – 1997.

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 \$30 guest fee at the door (cash or check only).

RSVP IS REQUIRED on or before 5:00 p.m. **FRIDAY, February 18, 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.

Job Opportunity - Part Time

We are a firm that contracts with the State of Florida to handle child support hearings in the 9th, 18th and 19th circuits. We have been doing this work for well over 30 years. We are looking for someone to handle our dockets in St Lucie, Martin, Okeechobee and Indian River. This is a great opportunity for a sole practitioner to supplement their income or for an attorney who is only interested in part-time work. It would be 3 full days in court per week but no work outside of that except simple prep for court. Bar admission required. Please no recent graduates looking for full-time work.

You can submit a resume by email to: hernancastro@cfl.rr.com

Or by mail to:
Law Offices of Hernan Castro, PA
 1535 Cogswell Street Suite A-5
 Rockledge, FL 32955

I am also happy to speak with anyone interested who would like to make inquiries about the position. Just email me with your number and I will get back with you.

Laura Castro, Law Offices of Hernan Castro, PA

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January 31 - March 25, 2022

CONNECTING students with lawyers to partner on **PRO BONO CASES** from **LOCAL** legal aid organizations.

- All Florida law schools are competing to see which can take the most pro bono cases!
- Students will have early access to the site to pick a case beginning January 19
- Visit the site to pick a case and match with a student.

THE COMPETITION:



Satisfies lawyers' pro bono obligations



Gives students real world experience



Introduces lawyers and students to local legal aid programs



Allows students to network with lawyers

FloridaLawSchoolChallenge.org



THE FLORIDA BAR
FOUNDATION



SCAN TO VIEW FAQs

Judicial Relations Committee

Jessica VanValkenburgh - Chair



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 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.

Upcoming JRC Meetings:

JRC Judicial Speaker Series 2021 - 2022

Dates

April 12, 2022
May 3, 2022

Speakers

Judge Jennifer Alcorta Waters
Judge Darren Steele

All JRC Judicial Speaker Series meetings will be held from 11:45 a.m. to 1:00 p.m. at McCarthy, Summers, Wood, Norman, Melby & Schultz, P.A., 2400 SE Federal Highway, Fourth Floor, Stuart, Florida 34994, (772) 286-1700. RSVP required at least two (2) days prior to each meeting to: jmv@mccarthysummers.com. Space is limited. Lunch will be provided. Meetings are free for current MCBA members and \$10.00 for all others. Cash or checks made payable to the MCBA accepted. Please look out for an update on location as the meeting may be changed to Zoom.

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



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The MCBA / Sobel Cup Golf Tournament is back!

benefitting the MCBA Scholarship Fund

Saturday, May 7, 2022

Lost Lake Golf Club

8:30 a.m. Shotgun
Scramble Format
Awards for Top 3 Foursomes

Download entry form at
martincountybar.org

Each Entry Includes:

- Greens Fees
- Cart
- Range Balls
- Breakfast
- Lunch and Awards
- 2 beverages on course
- Hole-in-One Chances
- Gift Bag

Entry Fee:

Individual Player - \$150
Foursome - \$500
Lunch only \$35

MCBA
Golf

Sponsorships Available

- Gold Sponsor* - \$1,500 **SOLD**
- Luncheon Sponsor* - \$750 **SOLD**
- Cart Sponsor* - \$500 **SOLD**
- Beverage Cart Sponsor* - \$500
- Breakfast Sponsor* - \$300
- Gift Bag Sponsor* - \$300
- Hole-in-One Sponsor (4) - \$250 each - **3 available**
- Individual Hole Sponsor (18) - \$200 each - **17 available**

*single sponsorship available at this level

Interested in a Sponsorship?

Contact Robyn O'Heron
772-382-9076 or
martincountybarassociation@msn.com



2022 MCBA Golf Tournament / Sobel Cup To benefit the MCBA Scholarship Fund



Sponsorship Opportunities

Gold Sponsor \$1500

- 1 Available
- ☛ Includes Foresome (\$500 value)
- ☛ Name/Logo prominently displayed on all print materials relating to tournament
- ☛ Signage at tournament
- ☛ Name/Logo with hyperlink on website and in The SideBar advertising event
- ☛ Recognition at CLE luncheons leading up to event
- ☛ Full page ad in 1 issue of The SideBar

Luncheon Sponsor \$750

- 1 Available
- ☛ Includes entry fee for 2 golfers (\$250 value)
- ☛ Name/Logo on all print materials relating to tournament
- ☛ Sign at Luncheon
- ☛ Name/Logo with hyperlink on website and in The SideBar advertising event
- ☛ Recognition at CLE luncheons leading up to event
- ☛ 1/2 page ad in 1 issue of The SideBar

SOLD

Cart Sponsor \$500

- 1 Available
- ☛ Name/Logo displayed on all golf carts used for event
- ☛ Name/Logo in print materials relating to tournament
- ☛ Name/Logo with hyperlink on website, in The SideBar advertising event
- ☛ Recognition at CLE Luncheons leading up to event
- ☛ 1/4 page ad in 1 issue of The SideBar

Scorecard Sponsor \$500

- 1 Available
- ☛ Name/Logo displayed on all scorecards used for event
- ☛ Name/Logo in print materials relating to tournament
- ☛ Name/Logo with hyperlink on website, in The SideBar advertising event
- ☛ Recognition at CLE Luncheons leading up to event
- ☛ 1/4 page ad in 1 issue of The SideBar

SOLD

Beverage Cart Sponsor \$500

- 1 Available
- ☛ Name/Logo displayed on beverage cart used for event
- ☛ Name/Logo in print materials relating to tournament
- ☛ Name/Logo with hyperlink on website, in The SideBar advertising event
- ☛ Recognition at CLE Luncheons leading up to event
- ☛ 1/4 page ad in 1 issue of The SideBar

Breakfast Sponsor \$300

- 1 Available
- ☛ Signage at Breakfast
- ☛ Name/Logo in all print materials relating to tournament
- ☛ Name / Logo with hyperlink on website, in The SideBar advertising event
- ☛ Recognition at CLE luncheons leading up to event
- ☛ Business Card size ad in 1 edition of The SideBar

Gift Bag Sponsor \$300

- 1 Available
- ☛ Logo on each gift bag
- ☛ Name/Logo in all print materials relating to tournament
- ☛ Name/Logo with hyperlink on website, in The SideBar advertising event
- ☛ Recognition at CLE luncheons
- ☛ Business Card size ad in 1 edition of The SideBar

Hole-in-One Sponsor \$250

- 3 Available
- ☛ Signage at specified hole
- ☛ Name/Logo in all print materials relating to event
- ☛ Name/Logo with hyperlink on website, in The SideBar advertising event
- ☛ Recognition at CLE luncheons

Hole Sponsor - \$200 per hole

- 17 Available
- ☛ Signage at tee box
- ☛ Name in all print materials relating to tournament
- ☛ Name on MCBA Website

bankruptcy committee

BEST WISHES FOR A HAPPY NEW YEAR!

As another year ends and a new one begins, we hope everyone, consumers as well as all business owners, fared better through year two of these difficult and unpredictable times!

For those who have encountered new difficulties or are still experiencing continuing cash flow crunches, there is still time to turn hardship into a better new year, especially for small business owners! In fact, the new Sub V program can be instrumental in helping small business owners re-negotiate and restructure without filing bankruptcy! This is good news for any small business and its owner(s).



Subchapter V has been extended to March of 2022. This vastly expands the number of small business owners and entrepreneurs that can take advantage of this sweeping change in Small Business and their owner's cash flow squeezes.

Aside from helping to AVOID BANKRUPTCY, what are the advantages of Sub V?
Dramatic cost reductions:

1. It eliminates the quarterly fees to the U.S. Trustee that are required in regular Chapter 11.
2. There is no mandatory requirement of a creditors committee, saving the debtor the cost of paying legal fees for that committee.
3. No mandatory requirement to file a disclosure statement, thus saving attorney fees of the debtor for that portion.
4. The ability to confirm a Plan even if all classes reject the Plan, thus saving what can turn into months of additional attorney fees for the debtor.
5. The ability to pay administration expenses over time under the Plan, thus easing up front costs and cash flow requirements.
6. The elimination of the "Absolute Priority Rule" which allows the owners to retain ownership without paying all creditors in full.
7. The exclusive right to file a Plan (which cannot be terminated); thus avoiding costly battles before the court by creditors trying to impose their own preferences in a Plan.

Another advantage that is especially helpful to those who took loans against their home to finance and/or operate the business, Subchapter V provides the ability to modify or strip down a claim secured only by a security interest in the debtor's principle-residence as long as the funds were used primarily in connection with the business and not primarily to acquire the home.

Martin County Women Lawyers Association

Elizabeth Hunter: MCWLA President 2021 - 22



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 Cohen Milstein partner **Leslie Kroeger**, who spoke with our members in January about her practice and how she balances her roles as mother and partner in a large firm, as well as her involvement in board and committee work.

PLEASE JOIN US for our next CLE luncheon on **Tuesday, February 15th from 12-1 pm** (networking from 11:45 am to noon) via Zoom. Details forthcoming! Please e-mail fawlmartin@gmail.com to RSVP.

We are working on our membership event to be held this Spring – YOGA ON THE BEACH! Stay tuned for details.

Save the dates for our upcoming CLEs in 2022: 3/15; 4/19; and 5/17.

To join or renew your membership, visit www.fawl.org. Contact our Membership Director, Davina Tala, at dt@talalegal.com with any membership questions.

CONNECT WITH US ON FACEBOOK: @MartinCountyWomenLawyersAssociation

CONNECT WITH US ON INSTAGRAM: @Martin_County_Women_Lawyers

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Employment Law

David Miklas - Chair

Recent real-world Employment law examples:

EXAMPLE 1: Let's say an employee discloses to his boss that he has been diagnosed with severe depression and needs three weeks off work, per his doctor's recommendation.

The employer says, "take as much time as you need to get well."

Six weeks later, the employee provides a doctor's return to work note, but the employer says, "sorry, but I can't trust you to perform your job duties" and terminates the employee.

These are the allegations in a new lawsuit that the EEOC just filed for an Americans with Disabilities Act (ADA) violation.

This appears to have been the CEO's decision. Where was human resources? Where was the consultation with the employment lawyer? Sounds like the CEO's ego got in the way, if the allegations are true.

EEOC v. Ranew's Management Company, Inc., 5:21-cv-00443-MTT in U.S. District Court for the Middle District of Georgia.

EXAMPLE 2: Let's say you have an immunocompromised employee who wants preventative monoclonal treatment that received emergency use authorization in December 2021. It's called EVUSHELD from AstraZeneca.

That employee asks whether the employer will pay them for their time to get this preventative treatment just like how the employer has been paying employees to get the COVID vaccine. What do you do?

Treasure Coast businesses and their regular attorneys should be careful before rejecting this request. It could set the business up for a discrimination claim.

EXAMPLE 3: Let's say the company owner vehemently opposes COVID precautions like masks and social distancing and tells employees to "pray" instead because masks are for people with a "weakness of spirit."

Let's say an employee has an immuno compromised child and a "high-risk" spouse and he is concerned for their safety so he talks to his boss about working remotely, after which he is demoted.

Let's say another employee files an OSHA complaint for the company not doing enough to prevent the spread of coronavirus.

Company owner calls a staff meeting and says, "[s]o whoever you are, you moron, you did absolutely no good, except piss me off. You are not welcome here if you are willing to do stuff like that. If you are really scared and you really think that leadership is trying to kill you.... Please... Just leave. We really don't want you here."

I know, you are thinking this sounds pretty bad, right?

Well, I didn't come up with this out of thin air. These are some of the allegations in a new lawsuit against Dave Ramsey's company.



David Miklas
Chair

RAYMOND JAMES

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Martin County Bar Association Welcomes New Members

Sarah Campbell

Jay & Campbell PLLC
Stuart, FL
St. Thomas School of Law, 2010

Katie Jay

Jay & Campbell PLLC
Stuart, FL
Indiana University Maurer School of Law Bloomington, 2006



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Small & Solo

A good read - *High Performance Habits* by Brendon Burchard – I highly recommend this book. Mr. Burchard uses a 6-point model of key habits organized into “personal” habits and the second category of “social” habits. We can all use reminders in our high functioning worlds. The six key habits are:



Kathy McHale
Chair

1. **Seek clarity** – know who you are, how you want to interact with others, what you want to achieve. Be intentional about your thoughts and actions.
2. **Generate energy** – build up significant reserves of energy so that you can maintain effort and focus for sustained periods of time. Care for your mental and physical well-being, and bring positive emotions to your work.
3. **Raise necessity** – tap into the reasons why you absolutely must perform well.
4. **Increase productivity** – focus on the area where you can achieve the highest impact.
5. **Develop influence** – connect with others to influence them to support your efforts and projects. Build trust with others to enable strong collaboration towards joint goals.
6. - you will need to read the book to get the last habit.

The book will force you to ask yourself important questions and to help you with your future self. You will come to learn what skills and experiences you need to develop in order to be more successful in the future. I hope that you take the time to read *High Performance Habits* and come away as inspired as I did.

Diversity Committee

Thank you to **The Florida Bar Diversity & Inclusion Committee** for awarding the Martin County Bar Association a \$1500 grant so that we can continue to promote diversity and inclusion within the legal community and our community overall. The grant allowed us to present two programs: Diversity Pathway to the Bench: A Panel Discussion and A Blueprint for Racial Justice by Edwin Bell.

Participants in the Diversity Pathway to the Bench Panel Discussion heard from members of the Judiciary about their journey to the bench as well as tips and suggestions they felt helped them reach their goals. Panelists also shared their thoughts on why a diverse bench is beneficial to the community as a whole.

Edwin Bell, Director for Racial Justice, Equity & Inclusion, National Center for State Courts presented A Blueprint for Racial Justice. His goal

is to bring awareness of the inequities that people of diverse backgrounds experience when dealing with the court system and implement programs or changes that create an environment of trust and fairness.

The MCBA recognizes the importance of diversity and inclusion within our community and appreciates the opportunity to present programs, such as these, that the grants provide.



Paul Bernard

Cheers



Congratulations to **Jessica VanValkenburgh**, recipient of The Florida Bar President's Pro Bono Service Award.

Jessica received her award from Florida Bar President, Michael Tanner on January 20th at the Florida Supreme Court.

Best of Luck to **Jeffrey M. Friedman** on the opening of his new practice; The Law Offices of Jeffrey M. Friedman specializing in Workers' Compensation.



Congratulations to **William "Jay" Connelly** of Connelly Law on his election to the Hobe Sound Chamber of Commerce Board of Directors for a 2-year term.

Starting a new chapter: **Julie Treacy** has joined Treasure Coast Legal as of February 1, 2022. All the best Julie!



Moving on! **Thomas R. Sawyer** has joined Gunster's Stuart and West Palm Beach offices as an Of Counsel Attorney in the Real Estate and Environmental & Land Use Practices. Tom will be advising clients on all aspects of real property acquisition, development, financing, leasing and environmental permitting, while maintaining a watchful eye over environmental justice issues.

January 21, 2022 CLE Luncheon Meeting



James Bowdish, Goretta Hall, Laurel Hopper, Hon. McNicholas



Golda Zimmerman, Oliveann Lancy,
Goretta Hall



Neal Colvin, Darryl Kogan, Jeff Friedman,
Brandon Woodward



Hon. McNicholas, Erin Kirkwood, Yara Bashoor, Neal Colvin, Christine Thompson, Gerard Reinhard



Jack Sobel, Eula Clarke, Oliveann Lancy,
Phillip Waldrop



Stephen Isherwood, Marney McKee, Tom Sawyer,
Yara Bashoor, Kathryn McHale



Debbie Williams, Linda Hake,
Laurel Hopper



Kathryn McHale, Sarah Baker, Trisha Hawthorne

TRIAL LAWYERS

Please join the Trial Lawyers Committee for its monthly meetings the second Thursday of the month at 12:00pm via ZOOM, featuring a number of outstanding speakers:

2/10/2022: Our Virtual CLE Meeting this month will be held on February 10, 2022 at 12:00 pm via Zoom. The Guest Speaker will be the Honorable Gary Sweet of Florida 19th Judicial Circuit, sharing his thoughts from the Bench and addressing current trial practice in the wake of the pandemic. RSVP to mkostick@gunster.com.

3/10/2022: Our Virtual CLE Meeting this month will be held on March 10, 2022 at 12:00 pm via Zoom. The Guest Speaker will be Chris Wilson of Phipps Reporting and the topic will be: Best Practices for using Zoom effectively at Trials. RSVP to mkostick@gunster.com.

4/14/2022: Save The Date! MCBA Trial Lawyers Committee Virtual CLE Meeting April 14, 2022 at 12:00 pm via Zoom.

5/12/2022: Save The Date! MCBA Trial Lawyers Committee Virtual CLE Meeting May 12, 2022 at 12:00 pm via Zoom.

All attendees must RSVP with their name/email address to Mary Kostick at mkostick@gunster.com if they wish to receive CLE credit for attending the meetings. Email blasts containing the specific ZOOM information and subsequent CLE credits for each meeting will be sent to those who RSVP before each session. Any questions, please contact Preethi Sekharan at psekharan@gunster.com.



Preethi Sekharan
Chair

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.

Foreclosure Committee

Dorothy Dlugolecki - Chair



Dorothy Dlugolecki
Chair

Valdes v. Deutsche Bank – objections to foreclosure sales

In this case, the trial court overruled objections to the foreclosure sale and denied a motion for sanctions because the objections were facially deficient by not being related to the conduct of the sale. The 3rd DCA addressed allegations that the reset of the sale violated the CARES Act and state executive order from the initial brief and found these arguments lack merit when the sale was originally set in 2018. The 3rd DCA affirmed the order denying the objections to sale and retained jurisdiction to determine entitlement to sanctions.

Nationstar Mortgage v. Faramarz – attorney’s fees

This case was remanded from the Florida Supreme Court following the opinion in *Page v. Deutsche Bank Trust Company Americas* - holding the unilateral attorney’s fee provision in Fla. Stat. § 57.105(7) provides entitlement for attorney’s fees when a borrower prevails on lack of standing to enforce the note and mortgage at trial. At trial, an original blank indorsed note was admitted but the trial court granted a motion for involuntary dismissal based on lack of standing at case commencement. The 4th DCA affirmed the award of attorney’s fees for the borrower after prevailing on lack of standing at case commencement because there was contractual privity between the parties.

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MARTIN COUNTY BAR ASSOCIATION RACE TO THE COURTHOUSE



APRIL 16, 2022



Mark Your Calendars - New Date

The Race to the Courthouse 5k Run/Walk is back again for 2022.



Gene Zweben
Co-Chair

The Race to the Courthouse 5k Run/Walk is back again for 2022. It will be held on Saturday, April 16, 2022 at Memorial Park. Last year was a great race with an amazing turnout, and we expect this year to be even better. All proceeds go to the Legal Aid Society of Martin County and the Martin County Bar Association Scholarship Program. **You can register at www.runsignup.com** and search for The Race to the Courthouse 5k. We are also looking for sponsors, so please reach out to out to **gene@zwebenlawgroup.com** if you are interested. Looking forward to seeing you all there!

The run/walk is open to EVERYONE in our community, not just law firms.

Last year we raised over \$5000 for Martin County Legal Aid Society and the MCBA Scholarship Program. Let's see if we can do better this year!



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Appellate Committee

Co-Chair: Cari Leininger

Co-Chair: Donna Eng

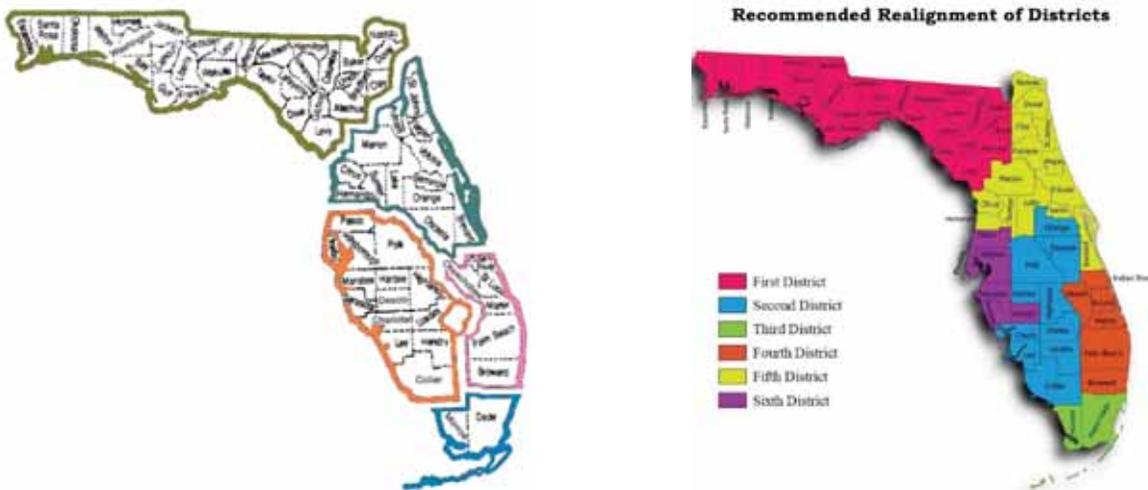
Appellate Review of Orders Vacating Judgment Due to Excusable Neglect



Did you know that there is a proposal to create another District Court of Appeal? As you all know, right now there are five (5) mid-tier appellate courts in the State. However, the Florida Supreme Court, in a plurality opinion dated November 24, 2021, adopted the recommendation of the District Court of Appeal Workload and Jurisdiction Assessment Committee, called for the creation of a sixth District Court of Appeal, and certified the need for six (6) new appellate judgeships. See *In re Redefinition of Appellate Districts and Certification of Need for Additional Appellate Judges*, No. SC21-1543, 2021 WL 5504715 (Nov. 24, 2021).



Below, the map on the left shows the jurisdictional boundaries of the DCAs as they are currently drawn, while the map on the right shows the proposed new boundaries.



The proposal would move the Fourth Judicial Circuit (Clay, Duval and Nassau counties) from the First District into the Fifth District, composed of the Fourth, Fifth, Seventh, and Eighteenth judicial circuits; the Ninth Judicial Circuit from the Fifth District into the Second DCA, composed of the Ninth, Tenth, and Twentieth circuits, and the Sixth, Twelfth, and Thirteenth circuits from the Second District to be compose of a newly created Sixth DCA. The Third and Fourth DCAs would be unaffected. If the Legislature agrees, it would be the first time since 1979 that a new district court of appeal was created.

A review of the Supreme Court’s plurality opinion shows that the boundary changes were proposed to address demographic and court filing statistics which appeared to show that the Fourth Circuit was underrepresented in the First District as currently drawn. Justice Polston, the lone dissenter, opined that the Florida Constitution does not permit the appellate districts to be redrawn based on population size. See *In re Redefinition of Appellate Districts and Certification of Need for Additional Appellate Judges*, 2021 WL 5504715. An article about the proposed new boundaries appeared in the Florida Bar News dated November 29, 2021.

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Young Lawyers Division

YLD received a pre-pandemic Florida Bar grant so that it could donate beach clean-up supplies to Florida Oceanographic Society here in Martin County. As part of that grant, we also performed clean-ups at Stuart Beach, Stuart Causeway, Jensen Beach, and Jensen Causeway. Thank you again to all who participated! If you have any questions about YLD, please contact Jeanette Lugo (jlugo@wmrfla.com)



Paralegal Committee

Chair - Pam Lewis

Hi All: I was hoping to start hosting live meetings again in February, but my office is on high alert again. I am so sorry that we are not getting back to normal. Just when we started to stick our toes back in the water.

At any rate, I hope you all were able to enjoy your holidays with your families and you loved ones. If things do not clear up soon, I will plan a CLE via Zoom for March. Stay tuned.



Pamela Lewis
Chair

The Florida Bar Updates / Board of Governors' Report

GREG WEISS - 19TH CIRCUIT BOG REPRESENTATIVE



Greg Weiss
19th Circuit BOG Rep

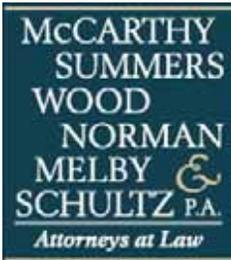
Keep updated on Florida Bar initiatives and Board of Governors' information, meeting minutes and reports by visiting the website regularly!



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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Real Estate and Commercial Litigation Update

Florida Real Property and Business Litigation Report

Manuel Farach



1944 Beach Boulevard, LLC v. Live Oak Banking Company (In Re: NRP Lease Holdings, LLC), Case No. 21-11742 (11th Cir. 2021).

The Eleventh Circuit certifies questions regarding Florida Statute section 679.5016(3) (safe harbor for incorrect spelling of debtor names in UCC-1 Financing Statements) to the Florida Supreme,

specifically:

(1) Is the “search of the records of the filing office under the debtor’s correct name, using the filing office’s standard search logic,” as provided for by Florida Statute § 679.5061(3), limited to or otherwise satisfied by the initial page of twenty names displayed to the user of the Florida Secured Transaction Registry’s search function?

(2) If not, does that search consist of all names in the filing office’s database, which the user can browse to using the command tabs displayed on the initial page?

(3) If the search consists of all names in the filing office’s database, are there any limitations on a user’s obligation to review the names and, if so, what factors should courts consider when determining whether a user has satisfied those obligations?

In Re: Amendments to Rule Regulating the Florida Bar 1-3.10 and Florida Rule of General Practice and Judicial Administration 2.510, Case No. SC21-722 (Fla. 2021).

The process for pro hac vice is amended and out-of-state attorneys are required to comply with the Florida Rules of General Practice.

Jain v. Buchanan Ingersoll & Rooney PC, Case No. 3D20-1529 (Fla. 3d DCA 2021).

Florida Statute section 768.79 awards fees paid by a party as well as those paid on the party’s behalf, and accordingly, a prevailing defendant may be awarded attorney’s fees even if his firm (not him) paid his fees under an indemnification agreement.

K.D. Construction of Florida, Inc. v. MDM Retail, Ltd., Case No. 3D20-1759 (Fla. 3d DCA 2021).

Florida Statute section 713.10 cannot be used by an owner/landlord to escape liability for unpaid construction charges when the owner/landlord personally contracted for the improvements, recorded the notices of commencement, and was contractually obligated to pay for the improvements.

Cocoplum Civic Association, Inc. v. City of Coral Gables, Case No. 3D21-1569 (Fla. 3d DCA 2021).

The Third District holds that “second-tier certiorari may not be utilized to challenge simple legal error, but only in instances where the petitioner establishes a violation of a clearly established principle of law resulting in a miscarriage of justice.”

Millan Law Firm, P.A. v. Zambrano, Case No. 3D21-1726 (Fla. 3d DCA 2021).

Records regarding payments to law firms typically do not implicate either the attorney-client or work product privileges.

McGregor v. Fowler White Burnett, P.A., Case No. 4D20-2684 (Fla. 4th DCA 2021).

Fraudulent transfer claims brought under Florida Statute section 56.29 (proceedings supplementary) are subject to the time limitations of Florida Statute chapter 726 (fraudulent conveyances) and thus can be barred by the application of Florida Statute section 726.110.

Blue Water Holdings SRC, Inc. v. Santa Rosa County, Florida, Case No. 1D19-4387 (Fla. 1st DCA 2021).

The purpose of appraisals under the Bert Harris Act, Florida Statute section 70.001 (2012), is to give notice to the government to allow it to fairly assess the claim and the appraisals need not be “before and after,” i.e., appraisals before and after the inordinate government regulation which show the diminution in value due to the government regulation.

Continued On Next Page . . .

nor admissible in evidence by themselves.

The Solomon Law Group, P.A. v. Dovenmuehle Mortgage, Inc., Case No. 2D21-360 (Fla. 2d DCA 2021).

Forum selection clauses, being a contractual right and not a grant of jurisdiction, neither grant jurisdiction to nor remove jurisdiction from a particular court, and being a contractual right, can be waived by the actions of the party invoking the clause.

ProntoCash, LLC v. The Autoboutique of Miami, Inc., Case No. 3D21-1277 (Fla. 3d DCA 2021).

A lis pendens not founded on a duly recorded instrument requires a fair nexus between the apparent legal or equitable ownership of the property and the dispute embodied in the lawsuit, and accordingly, is not enforceable against a party not involved in the underlying dispute.

Cleveland v. Westport Recovery Corporation, Case No. 4D20-2445 (Fla. 4th DCA 2021).

A motion denied under the prior Florida Rule of Civil Procedure 1.525 may be re-filed after the adoption of the revised rule and will be determined under the new rule.

Costa del Mar, Inc. v. Haney, Case No. 1D19-1787 (Fla. 1st DCA 2021).

An appeal may be dismissed under Florida Rule of Appellate Procedure 9.350(a) but the appeal cannot be “without prejudice.”

Tidewater Preserve Master Association, Inc. v. Department of Transportation, Case No. 2D21-223 (Fla. 2d DCA 2021).

The fact there are competing real estate appraisals as to the good faith estimate for a “quick take” condemnation under Florida Statutes chapter 74, even if the appraisal adopted by the court presumes hypothetical conditions for its determination of value, does not render the adopted appraisal improper as a matter of law.

Gill v. Parvez, Case No. 3D21-0796 (Fla. 3d DCA 2021).

A tenant who seeks to defend an eviction must pay rent into the Registry of the Court during the litigation even if the initial Complaint does not demand back-due rent.

Samoilova v. Loginov, Case No. 3D21-1144 (Fla. 3d DCA 2021).

A successor judge has jurisdiction to rule on a Rule 1.540 motion regarding matters ruled upon by the predecessor judge.

Ballard v. Pritchard, Case No. 2D20-2967 (Fla. 2d DCA 2021).

A decedent’s devise of a life estate of her homestead to a surviving spouse with the fee to decedent’s child is invalid under Florida Statute section 723.4015(1) and the property descends via intestate secession under Florida Statute section 732.401(1).

Unifirst Corporation v. Joey’s New York Pizza, LLC, Case No. 2D21-891 (Fla. 2d DCA 2021).

The Second District holds that an order vacating an arbitration award is a non-final order not subject to appeal under Florida Rule 9.130 nor capable of certiorari review; conflict certified with the First District under *Felger v. Mock*, 65 So. 3d 625, 628 (Fla. 1st DCA 2011).

Lennar Homes, LLC v. Martinique at the Oasis Neighborhood Association, Inc., Case No. 3D20-1732 (Fla. 3d DCA 2021).

The Third District follows the Second District and holds that a homeowner’s association’s right to sue in its representative capacity requires it “to comply with the arbitration agreements signed by each of its members” under *Pulte Home Corp. v. Vermillion Homeowners Ass’n, Inc.*, 109 So. 3d 233, 235 (Fla. 2d DCA 2013).

Wilmington Savings Fund Society, FSB v. Gulfstream of Las Olas Condominium Association, Inc., Case No. 4D20-1443 (Fla. 4th DCA 2021).

A receiver appointed at the request of a condominium association pursuant to Florida Statutes section 718.111(5) is subject to the safe harbor provision of Florida Statute section 718.116(1)(b)(1).



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).



Christine Moreno
Chair

Current CLE Seminars Available Include the Following:

- **40th Annual Legislative & Case Law Update** - Valid through 2/28/2022. **Credits:** 8.0 General; 1.0 Ethics; 0.55 Technology. **Certification Credits:** 8.0 Development Law; 8.0 Real Estate; 8.0 Tax Law; 8.0 Wills, Trusts & Estates
- **MCBA Monthly Meeting (Virtual) - September 18, 2020.** Valid through 3/31/2022. Speaker: Giles Kibbe, SVP and General Counsel Houston Astros and Crane Companies. 1.0 General CLE Credit
- **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.
- **How the Ethical Lawyer Can Avoid Technology Traps** - Valid through 5/31/2022. Credits: 1.0 General; 1.0 Ethics; 1.0 Technology.
- **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:** 2.5 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.

Mark Your Calendars February 2022

Wednesday, February 9, 2022

Justice Major B. Harding American Inns of Court
5:30 p.m. Martin County Courthouse

Thursday, February 10, 2022

Trial Lawyers Committee Meeting
Virtual CLE Meeting
12:00 p.m. via Zoom

Monday, February 14, 2022

Valentine's Day

Tuesday, February 15, 2022

MCWLA Virtual CLE Meeting
11:45 – 1:00 p.m. via Zoom
Please e-mail fawlmartin@gmail.com to RSVP

Friday, February 18, 2022

RSVP Deadline for MCBA Monthly CLE Meeting

Monday, February 21, 2022

President's Day

Friday, February 25, 2022

MCBA Monthly CLE Meeting
11:30 a.m. – 1:00 p.m. @ Monarch Country Club
RSVP by February 18, 2022 to:
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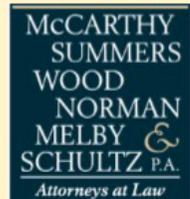
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Tennis Committee

Chair: Ray Robison



Ray Robison
Chair

We look forward to having the MCBA Tennis Tournament again in early 2022. Please check future SideBar issues for further details on the tournament. If any questions, please contact Ray Robison (772-287-4444 or robison@foxmcccluskey.com). Thank you for everyone that has expressed interest in playing.



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Save the Date

Justice Major B. Harding American Inns of Court 2021 - 2022 Meeting Dates

February 9, 2022	5:30 p.m.	Regular dinner meeting
March 9, 2022	5:30 p.m.	Regular dinner meeting
April 13, 2022	5:30 p.m.	Regular dinner meeting
May 11, 2022	5:30 p.m.	Regular dinner meeting

Alternate dates, if necessary

June 1, 2022 5:30 p.m.



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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.

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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 2022</h1> <p>PLEASE NOTE: The monthly CLE Luncheon is one week later than usual</p>						
		1 SideBar Articles Due	2	3	4	5
6	7	8 JRC Speaker Series Cancelled	9 Inns of Court 5:30 p.m.	10 Trial Lawyers Committee Mtg. (Noon) Zoom	11	12
13	14 Happy Valentines Day!	15 MCWLA CLE Mtg. 11:45 a.m. Zoom	16	17	18 RSVP DEADLINE FOR 2/25 LUNCH	19
20	21 President's Day	22 MCBA Officers' Meeting	23	24	25 MCBA Luncheon @ Monarch CC (11:30am)	26
27	28	<p>SAVE THE DATES:</p> <ul style="list-style-type: none"> March 10, 2022: Judicial Reception, 5:30 – 7:30 p.m. Willoughby GC April 9, 2022: 5K Race to the Courthouse May 7, 2022: Golf Tournament @ Lost Lake Golf Club May 20, 2022: Annual Installation Event <p>See www.martincountybar.org for full 2021-22 calendar for including committee meetings, holidays & courthouse closings.</p>				

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
<h1>March 2022</h1> <p>NOTE: The luncheon is one week earlier than usual this month</p>						
		1 SideBar Articles Due	2	3	4 RSVP DEADLINE FOR 1/18 LUNCH	5
6	7 MCBA Officers' Meeting JRC Speaker Series Cancelled	8	9 Inns of Court 5:30 p.m.	10 Trial Lawyers Committee Mtg. Noon via Zoom Judicial Reception @ Willoughby GC 5:30 p.m.	11 MCBA Luncheon @ @ Monarch CC (11:30am)	12
13	14	15 MCWLA CLE Mtg. 11:45 a.m. Zoom	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31	SAVE THE DATES: <ul style="list-style-type: none"> April 9, 2022: 5K Race to the Courthouse May 7, 2022: Golf Tournament @ Lost Lake GC May 20, 2022: Annual Installation Event See www.martincountybar.org for full 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, February 25, 2022,

When: Friday, February 25, 2022
11:30 a.m. networking; 12:00 p.m. lunch
Note: This is NOT the usual 3rd Friday of the month

Where: Monarch Country Club
1801 SW Monarch Club Drive, Palm City

Menu: Roasted Apple Salad with Mesculin Salad Mix, Almonds, Craisins and a Cinnamon Dressing. Five Spice Chicken served on a Vegetable Fritter, Butter Pecan Crusted Sweet Potato Casserole Topped with a Sweet Corn and Coconut Burre Mania Sauce. Rolls with Butter, Toasted Coconut Pineapple Ice Cream with a Macadamia Cookie Crumble

Speaker: Michael G. Tanner, President, The Florida Bar

CLE: Applied For

RSVP to: martincountybarassociation@msn.com
No later than Friday, January 14, 2022

PLEASE BE SURE TO RSVP TO EXPEDITE ACCESS AT THE GATE

There is no charge for paid MCBA members. Guests are welcome; a \$30 guest fee may be paid at the luncheon (cash or check only).