

JANUARY 2022



The SideBar

NEWSLETTER OF THE MARTIN COUNTY BAR ASSOCIATION

HAPPY NEW YEAR
2022



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ADAM SCHWARTZ**

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THE SIDE BAR NEWSLETTER

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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

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Portia B. Scott - 2006 – 2007
Hon. Alan Orantes Forst - 2007 – 2008
Linda L. Weiksnar - 2008 – 2009
Scott W. Konopka - 2009 – 2010
Preethi Sekharan - 2010 – 2011
Shaun T. Plymale - 2011 – 2012
Gregory S. Weiss - 2012 – 2013
George W. Bush, Jr. - 2013 – 2014
Hon. Jennifer Alcorta Waters - 2014 – 2015
Chad H. Hastings - 2015 - 2016
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 all had a good holiday season and wish you a happy and healthy new year. The fastest way to get to where you want to be is to get going. What are you going to do this year to help you get to where you want to be?

We hope you enjoyed our December luncheon speaker, Mr. Edwin Bell, Director of Racial Justice, Equity and Inclusion at the National Center for State Courts. He is a former administrator of the Atlanta court system. We are thankful for the time he spent with us discussing how we can continue to strive to form a more perfect court system.

Please join us on January 21, 2022, for our luncheon. Our topic is of great importance: **Afghan Women: Where are they Now?** Our speaker will be Ambassador Tatiana Gfoeller-Volkoff. In her 33-year government career, Ambassador Gfoeller-Volkoff reached the highest levels of the U.S. Foreign Service. Her many postings in the former Soviet Union and Middle East included numerous command positions, culminating in her appointment as Ambassador to Kyrgyzstan 2008 - 2011. She is one of the most highly decorated American Diplomats in recent decades holding numerous awards from the Department of State and Defense including the U.S. Army's highest civilian award, the National Guard's Distinguished Civilian Service Award, and the State Department's Distinguished Career Achievement Award. Ambassador Gfoeller-Volkoff is working right now to help Afghan women and your attention to her message most appreciated. Please keep a look out for our bi-monthly outdoor happy hours. The next event is January 20 at **Stringers Tavern & Oyster Bar**. The turnout has been 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 check the MCBA website to make sure your contact information and headshot photo is up to date. Please contact Robyn O'Heron for 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. As you may know, every recent sitting President selects the theme for



the year's annual banquet. You learn this early in your service on the Board. I have pondered theme picking passionately for years. I switched back and forth. Redoing, narrowing the list over and over. Recently, I made a decision. Before I tell you, I want you to know I believe in my heart my role on the board is to be one of service to my community, friends, and colleagues. Providing good leadership, stewardship, and enjoyable experiences for the membership guide my decision-making process. I enjoy our Bar and its membership. The friends I made changed the entire course of my professional career, in a good way. And, with this in mind I think back on all the past leadership of the MCBA and the dedication of all those people to serve and build the MCBA into what it is today. So, now I am ready to tell you the theme I chose. 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.

"When I started counting my blessings, my whole life turned around." -- Willie Nelson

Yours Truly,

A handwritten signature in blue ink that reads "Adam Schwartz".

Adam Schwartz
2021-2022 MCBA President



The Martin County Bar Association wishes all our members, sponsors, families and friends a very happy 2022.

May the new year bring each of you health, joy, happiness, prosperity and peace.

Let's toast to yesterday's success and tomorrow's bright future.

**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.

Please Join Us!

The Martin County Bar Association (MCBA) will welcome **Ambassador Tatiana Gfoeller-Volkoff**, President, American Women for International Understanding as the guest speaker at our monthly luncheon meeting on Friday, January 21, 2022 at Monarch Country Club. Networking begins at 11:30 a.m. and lunch will be served promptly at noon.

The topic of Ambassador's presentation is titled "Afghan Women: Where are They Now?"

Ambassador Gfoeller-Volkoff reached the highest levels of the US diplomatic service, attaining the rank of Minister-Counselor during her 33-year career with the Department of State and the Department of Defense. Her many postings in the former Soviet Union and the Middle East contained a string of command positions. They included Consul General in Jeddah, Saudi Arabia, Consul General in St. Petersburg, Russia, and Deputy Chief of Mission and Chargé d'Affaires in Turkmenistan. She also served as Advisor on the Former Soviet Union to the Secretary General of NATO. Her other overseas assignments included Warsaw, Poland, Moscow, Manama, Bahrain, and Riyadh, Saudi Arabia.



One of the most highly decorated American diplomats in recent decades, Ambassador Gfoeller-Volkoff holds numerous awards from the Department of State and Department of Defense. They include the US Army's highest civilian award, the National Guard's Distinguished Civilian Service Award, and the State Department's Distinguished Career Achievement Award.

For the past two years, Ambassador Gfoeller-Volkoff has served as President of American Women for International Understanding an organization dedicated to support and promote female leaders around the world. The mission of AWIU is to "Promote woman-to-woman interaction and understanding worldwide through meaningful visits, grants, educational support, the celebration and support of the International Women of Courage and participation of local chapters which ac locally and affect globally."

American Women for International Understanding has a long history of supporting women from Afghanistan. The AWIU is actively pursuing opportunities to help the women of Afghanistan and will not stop until there are options for women beyond Taliban oppression and violence.

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, January 14, 2022**

TO REGISTER: please visit martincountybar.org and click on the registration link

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

Social Committee



Jeanette Lugo
Co-Chair

Join us for a Beverage

Our next Networking Happy Hour will be Thursday, January 20, 2021
5:30 – 7:30 p.m.
Stringers Tavern & Oyster Bar
3754 SE Ocean Boulevard

First drink and Appetetizers will be provided



Brandon Woodward
Co-Chair

Save the Date!

We are excited to announce the **Judicial Reception** will be held **Thursday, March 10, 2022** at Willoughby Golf Club. The recipients of the 2020 and 2021 George W. Bush, Jr. Professionalism Award will be announced. You don't want to miss it!

Looking further ahead, the **Annual Installation Event** will be **Friday, May 20, 2022**.

Stay tuned for more information. . .

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Member Spotlight

HONORABLE LAURIE BUCHANAN

Education: Undergrad? Indiana University
Law School? Quinnipiac University

How long have you been practicing law?
26 years

Why did you want to be an attorney?
Became inspired while watching a trial during a high school government class.

What do you like most about it? I feel like I have the opportunity to make a difference in a positive way in the lives of the litigants.

What don't you like? When the attorneys take on the emotions of their clients and stop focusing on the law.

What are the biggest changes you have seen through the years? A decrease civility, professional and preparation.

How do you define success? Success is only in the eyes of the beholder when they are looking in a mirror.

Who Inspires you? My God and my family

Who has been the most influential person in your career? My mom

If you could choose anyone as a mentor, who would you choose? Bill Roby

What is the best piece of advice you have ever received? If you do not want people knowing about a behavior, then you probably shouldn't be doing it.

What advice would you give to someone looking to become an attorney?

No case or client is ever worth compromising your integrity and values.



If you weren't an attorney, what would you be doing? I have no idea.

If you could switch places with someone for a day, who would it be? My dogs...they are spoiled rotten!

What's on your bucket list? Sky-diving, salmon fishing in Alaska, traveling to Ireland and Scotland

If you could visit anywhere in the world, where would you go? Seville, Spain

If you could have dinner with any person, alive, dead or fictional, who would it be and where would you go? I would want to eat Japanese food with my mom again. It was a tradition growing up.

What is something (a fun fact) that many people might be surprised to learn about you? I love to waterski. I was a barefoot waterskier when I was younger and still slalom ski whenever I get the chance.

ALTERNATIVE DISPUTE RESOLUTION

Elizabeth Hunter - Chair



Wishing you a happy and healthy 2022!

Stay tuned for more details on our luncheon to be held in March. Please feel free to email ehunter@sheilabiehl.com if you have any suggestions regarding programming that you would like to see happen in 2022. Thanks!

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 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
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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

Admiralty

THE RULES OF THE ROAD

(adapted from Maritime Law and Practice, Sixth Edition, Chapter 10, Collision, David Pope, author)

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

The “Rules of the Road” are often unknown to recreational boaters or considered to be “suggestions” that can be followed casually, or not at all. The lack of marked lanes on the water, and a series of weird looking markers and signs, are often confusing to the novice captain. Nonetheless, in the event of a collision or other casualty on the water, a violation of the Rules can place a captain in serious legal peril.

The “Rules of the Road” include federal statutes and their implementing regulations:

- The International Regulations for Preventing Collisions at Sea – known as COLREGS – are adopted by statute at 33 USC §§ 1601 et. seq.
- The International Rules found at 33 C.F.R. §§81.1, et. seq., serve as the implementing regulations to the COLREGS. And 33 C.F.R. §§82.1, et seq., serve as the interpretive regulations to the COLREGS.
- The Inland Navigational Rules Act of 1980 is found at 33 USC §§2001 et. seq.
- The “Inland Rules” 33 C.F.R. §§83.01 et. seq. serve as the implementing regulations to the 1980 Act.

The Rules of the Road were designed to prevent the risk of collision, The Rules are not mere guidelines, but statutes that must be complied with in every circumstance.

They are not mere prudential regulations, but binding enactments, obligatory from the time that the necessity for precaution begins, and continuing so long as the means and opportunity to avoid the danger remains. The Dexter, 23 Wall. 69. Obviously they must be rigorously enforced in order to attain the object for which they were framed, which could not be secured if the masters of vessels were permitted to indulge their discretion in respect of obeying or departing from them. Belden v Chase, 150 U.S. 674, 698 (1893)

Occasionally there is confusion among boaters and non-maritime attorneys as to whether the Rules apply in Florida waters. Yes, they do. See Florida Statute §§327.02(32) which adopts both the International and Inland Navigation Rules and applies them to the waters of the State of Florida.



For links to the International and Inland Navigation Rules go to: <https://www.navcen.uscg.gov/?pageName=NavRulesAmalgamated>

SAVE THE DATE: On February 18, 2022, the Admiralty Law Committee of the Florida Bar will be presenting a day-long seminar on a variety of issues related to a marine disaster at a local port. The seminar will be held at the Shepard Broad School of Law at Nova Southeastern University in Davie, Florida, and will provide advanced CLE’s for attorneys seeking admiralty and maritime law certification.



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Admiralty Law Committee of the Florida Bar Upcoming Meeting Dates

The **Winter Meeting** of the Admiralty Law Committee of the Florida Bar will be held **Friday, January 28th, 2022**, at 1:00 pm in the St. Johns 22-23 room at the Rosen Shingle Creek Hotel, Orlando, FL. All are invited to attend. The meeting will also be available on Zoom:

Admiralty Law Winter Meeting 2022 Virtual Attendance Link:

Welcome! You are invited to join a meeting: Admiralty Law Winter Meeting 2022. After registering, you will receive a confirmation email about joining the meeting.

Save the date! February 18th, 2022. The Admiralty Law Committee of the Florida Bar will present a day-long seminar with advanced credits available towards Admiralty certification. The Seminar will be held at the Shepard Broad School of Law at Nova Southeastern University Law. Watch for more details.

Judicial Relations Committee

Jessica VanValkenburgh - Chair



Jessica M. VanValkenburgh
Chair

2021-2022 JRC Committee Members – Judge Lawrence Mirman, Judge Elizabeth Metzger, Judge William Roby, Gene Zweben and Kathryn McHale

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

<u>Dates</u>	<u>Speakers</u>
February 8, 2022	Judge Charles Schwab
March 8, 2022	TBD
April 12, 2022	TBD
May 3, 2022	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.

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

Employment Law

David Miklas, Esq. – representing employers only

Further updates on COVID vaccine mandates and exemptions:

OSHA issued an emergency temporary standard (“ETS”) for employers with 100 or more employees. Immediately the 5th Circuit Court of Appeals issued a stay and the remainder of the lawsuits were consolidated and the 6th Circuit Court of Appeals will address. Meanwhile, the ETS has been paused, and may be dead. The original deadlines in the ETS (December 5, 2021 and January 4, 2022) are tossed aside.

Meanwhile, in November 2021 Florida gave a big middle finger to the federal government’s COVID vaccine mandates. Florida lawmakers approved HB 1B. The bill:

- Prohibits private employers from mandating COVID-19 vaccination without providing qualifying employees the ability to opt out of the mandate.
- Allows employees to opt out of an employer’s vaccination mandate if they are exempt based on medical, pregnancy, or anticipated pregnancy reasons, religious reasons, COVID-19 immunity, periodic testing or use of employer-provided personal protective equipment. Such exemptions must be submitted to the employer on forms adopted by the Department of Health (DOH).
- Authorizes the Attorney General to receive complaints and impose administrative fines up to \$50,000 per violation, if the employee was terminated for refusing vaccination and the employer failed to follow procedures.
- Prohibits public educational institutions or governmental entities from requiring COVID-19 vaccination as a condition of employment and authorizes DOH to impose a fine not to exceed \$5,000 per violation.
- Specifies that employees improperly terminated on the basis of COVID-19 vaccination refusal may be eligible for reemployment benefits and establishes that reemployment benefits to such employees may not be denied or discontinued

based on new job offers that require COVID-19 vaccination.

Oh yeah, and a whopping \$5 million is specifically set aside to investigate complaints of employers violating this and for litigating to stop the federal government’s enforcement of COVID-19 vaccination mandates.

The governor already signed this into law... in “Brandon” Florida (I am not making that up!)

So what else should you know?

The big news now is that the Florida Department of Health has already created the five “forms” that private employers should be using. The forms can be downloaded for free at: <http://www.floridahealth.gov/newsroom/2021/11/20211118-florida-department-health-covid19-vaccination-exemption-forms.pr.html>

Because of the conflict between federal vaccine mandates (including the CMS for health care and the Executive Order for federal employees and contractors) Florida employers should consult an employment lawyer to help provide guidance. It may not be as simple as what you learned in law school about federal supremacy over state statutes.



David Miklas
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Annual Camping Weekend



Be intrepid. Be a little primitive for the weekend. Come camping with your fellow lawyers, judges, and their families.

We are hoping to enroll enough of our members to once again have a weekend away in nature (with close-by bathrooms and other benefits of civilization for those who need those comforts). Camping is by the tent that you bring. The Association will sponsor Saturday night dinner. All other meals are your chance to cook outdoors and show your family your skills or teach them how to survive in the mild wild.

We have reserved all camping sites at the Bayside Marina at Sebastian Inlet State Park for the weekend of Friday evening, February 25 to Sunday, February 27. We have exclusive use of all campsites for the 2 evenings. Come after work on Friday or join us in the morning Saturday. It's about a 2-hour drive from Stuart.

The Marina is on the Indian River and the Atlantic Ocean and is just 1000 feet away. We hope to have kayak eco tours. In the past we have seen dolphin playing and plenty of sea birds. Fishing is available (you will need a day license before you go).

Contact Marc S. Teplitz for costs; we are looking for donors and determining cost. It is usually modest, around \$35 per camper.



Michael J. McCluskey • Raymond G. Robison • J. Henry Cartwright • Tyson J. Waters
Adam G. Schwartz • Eric S. Matthew • Philip W. Grosdidier • Valerie A. Costello
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MCBA Small and Solo Practice Committee

Coffee & Conversation



Kathryn McHale and Jessica VanValkenburgh enjoy some coffee at Coffee Bar Blue Door during the Coffee and Conversation event on December 15, 2021



Kathy McHale
Chair

Personal Injury Trial Attorney JACK SOBEL

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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.

PLEASE JOIN US for our next CLE luncheon on **Tuesday, January 18th from 12-1 pm** (networking from 11:45 am to noon) via Zoom. We will be joined by Cohen Milstein partner **Leslie Kroeger**, who will speak about her nationwide 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 e-mail fawlmartin@gmail.com to RSVP.

Thank you to everyone who joined us for our November CLE with **Rebecca Bandy**, Director of the Henry Latimer Center for Professionalism at the Florida Bar. We also enjoyed our in-person December CLE luncheon with **Judge Metzger, Judge Roberts, Judge Waters, and Judge White**. We also hosted a wine and cheese event in December. We hope you were able to join us for the wonderful events!

Save the dates for our upcoming CLEs in 2022: 1/18; 2/15; 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.

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Foreclosure Committee

Dorothy Dlugolecki - Chair



Dorothy Dlugolecki
Chair

2275 NW 120 Street, LLC v. Sanchez Struve Business Advisors, LLC - right of redemption

In this case, the final judgment was amended several times to include additional expenses incurred and there were five unsuccessful sales where the mortgagor was the winning bidder but failed to make payments after the sales. At the sixth and final sale, the mortgagee was the winning bidder, and the clerk issued a certificate of sale. The mortgagor moved to vacate the sale 4 months later claiming its right of redemption was negatively impacted and the mortgagee had an unfair advantage by being able to increase its credit bid, which was denied by the trial court. The 3rd DCA affirmed and found the mortgagor did not attempt to tender any payment towards the indebtedness before the issuance of the certificate of sale when the mortgagor's right of redemption is terminated, pursuant to final judgment and Fla. Stat. § 45.0315.

Jenkins v. Silver Pines Association, Inc. - setting aside foreclosure sales

In this case, the 5th DCA PCA-ed an order denying a motion to set aside or "reverse" the foreclosure sale. The concurring opinion outlines the burden to set aside a foreclosure sale - an evidentiary burden of establishing at least one equitable ground for relief, such as gross inadequacy of the successful bid, surprise, accident, or mistake imposed on the complainant, and irregularities in the conduct of the sale.

JPMorgan Chase Bank v. Llovet - protective order

In this case, the borrower moved to vacate the consent final judgment alleging the WaMu blank indorsement on the note is fraudulent, and served a subpoena on JPMorgan Chase, who bought WaMu loans after the FDIC receivership. JPMorgan Chase moved for a protective order and the trial court denied the motion limiting production to documents and manuals related to this loan. The 3rd DCA agreed that the borrower knew or should have known to seek such discovery before the entry of a consent judgment and Rule 1.540(b) does not have as its purpose or intent the reopening of lawsuits to allow parties to state new claims or offer new evidence omitted by oversight or inadvertence.



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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 excellent and valued speakers:

1/13/2022: We are very excited to be holding another Joint Virtual CLE Meeting with the MCBA's Family Law Committee on January 13, 2022 at 12:00 pm via Zoom. The Guest Speaker will be Dr. Letitia Lopes, and the topic will be: Attorney Mental Health and Coping Strategies. RSVP to mkostick@gunster.com.



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 for each meeting will be sent to those who RSVP before each session. Any questions, please contact Preethi Sekharan at psekharan@gunster.com.

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.

THE ACCESS TO JUSTICE “TRIPOD”

Michael G. Tanner, Florida Bar President

Article originally appeared in the November/December issue of The Florida Bar Journal. Reprinted with permission.

Across the country, including here in Florida, access to justice continues to be a focus of state bars, legal academics, and the courts. But it's often difficult to follow the discussions, in part because of the wide variety of current and proposed solutions to addressing the challenge of making legal services more available to our citizens.

If you're like me, you appreciate a good metaphor as a useful tool for conceptualizing ideas. So, think about the access to justice challenge as a tripod. A tripod has three legs, each of which carries a part of the load.

One “leg” of the access to justice tripod is the technology leg. This includes efforts to enable lawyers to better use technology, arguably enabling lawyers to lower the cost of their services to clients. The many online practice management platforms and tools to assist with remote depositions and virtual court proceedings now available are examples of this. Another aspect of the technology leg are the efforts to provide greater automation to our court operating systems, enabling pro se litigants to more easily and effectively represent themselves. One example of this is the DIY (Do It Yourself) Florida online platform, which was developed by the Judicial Management Council and is now operated by the Office of State Courts Administrator. DIY Florida assists self-represented litigants in completing and filing pleadings for landlord/tenant matters, small civil monetary claims, and interpersonal violence matters. Other subject areas are expected to be included soon. There are also online dispute resolution platforms now in use in two Florida circuits. In the 11th Circuit, a civil traffic defendant may now resolve a citation through online negotiation with a state hearing officer. A Ninth Circuit platform allows parties to civil monetary claims of \$8,000 or less to resolve their dispute through online negotiation. Yet another initiative within this technology leg is the Board of Governors COVID-19 Pandemic Recovery Task Force's exploration of an online platform for the complete management and resolution of civil claims of \$1,000 or less. And the most recent example within this technology leg is the Supreme Court's administrative order on September 20, 2021, establishing a Workgroup on Access to Justice and tasking the workgroup with identifying strategies to

increase pro se litigants' use of electronic filing and remote technology in court proceedings.

The second leg of the access tripod is pro bono and legal aid. Efforts here seek to increase pro bono services by Florida lawyers and to increase funding for legal aid organizations. The Florida Supreme Court's recommendation of 20 hours of pro bono service each year,

or a \$350 contribution to a legal aid organization, is an example. Another example is the Bar's legislative support for “funding for civil legal assistance to indigent persons through the Florida Access to Civil Legal Assistance Act.” A recent development in regard to legal aid funding was the Supreme Court's July 1, 2021, order addressing how IOTA trust funds must be spent by The Florida Bar Foundation and legal aid organizations.

The third leg of the tripod is regulation. The focus here is whether legal services can — or should — be made more available through changes to our ethics and other Bar rules. An early example is Bar Rule 4-1.2(c) that allows lawyers and clients to agree to limit the scope of the lawyer's representation. Another example is the 2019 proposal by the Bar to the Supreme Court for a new Chapter 23 to the Rules Regulating The Florida Bar. This new Chapter 23 would allow “online legal service providers” to register with The Florida Bar if they agree to meet certain standards in their communications, disclosures, and financial charges to the public; this proposal is still under consideration by the Supreme Court. Finally, and perhaps most notably within the regulatory leg, is the June 2021 final report of the Special Committee for the Improvement of the Delivery of Legal Services that recommends further study of significant changes to our rules governing advertising, fee sharing, law firm ownership, and legal services by paralegals.



Michael G. Tanner
President: Florida Bar

Continued On Next Page . . .

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These are just some of the initiatives within each of these "legs" and, of course, it's an understatement to say there are strongly held opinions for and against some of the initiatives mentioned here. But hopefully this tripod metaphor will give you a framework to review and evaluate individual initiatives toward access to justice within their broader context. It's likely

that the mix of solutions among these three legs will evolve over time. But whatever that mix may become, it cannot be overstated that providing our citizens with adequate access to services to meet their legal needs is vitally important to our system of justice and to the long-term viability of our society.



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MARTIN COUNTY BAR ASSOCIATION
RACE TO THE COURTHOUSE
 APRIL 9, 2022

Mark Your Calendars

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 9, 2022 at Memorial Park. Last year was a great race with an amazing turn out, 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!

Appellate Committee

Co-Chair: Cari Leininger

Co-Chair: Donna Eng

Appellate Review of Orders Vacating Judgment Due to Excusable Neglect.



Cari Leininger
Co-Chair

In this post-COVID lockdown era, trial lawyers and judges are working harder than ever before. This pace could result in a missed deadline. So, we dedicate this article to discussing appellate review of a trial court's order on a motion to vacate a judgment based on excusable neglect.

The appellate courts must give great deference to a trial judge's decision on a motion to vacate judgment. In order to overturn an order vacating a judgment pursuant to Rule 1.540, Florida Rules of Civil Procedure, the appellant must do more than demonstrate error and abuse of discretion. A showing of gross abuse of discretion is necessary on appeal to justify reversal of the lower court's ruling on a motion to vacate. *N. Shore Hospital, Inc. v. Barber*, [143 So.2d 849, 852 \(Fla.1962\)](#); *Kalman v. Pasco-Hernandez Surgical Assoc.*, 974 So.2d 1219 (Fla. 2d DCA 2008). Because the trial court granted relief, a higher standard is applied to overturn the decision than if the trial court had denied the motion. *Geer v. Jacobsen*, [880 So.2d 717, 720 \(Fla. 2d DCA 2004\)](#).

Florida courts have a preference for deciding cases on the merits of the claims rather than on a technicality. *J.J.K. Int'l, Inc. v. Shivbaran*, [985 So.2d 66, 69 \(Fla. 4th DCA 2008\)](#). Where an issue is decided on a technicality and the failure of a party to comply with the technical requirement can be attributed to excusable neglect, courts have consistently allowed the party to seek rehearing or to vacate the judgment obtained against them.

"Excusable neglect is found 'where inaction results from clerical or secretarial error, reasonable misunderstanding, a system gone awry or any other of the foibles to which human nature is heir.'" *Elliott v. Aurora Loan Servs., LLC*, [31 So.3d 304, 307 \(Fla. 4th DCA 2010\)](#)

When deciding a motion to vacate judgment the court considers whether the movant demonstrated (a) excusable neglect, (b) a meritorious defense, and (c) due diligence. See, *Geer v. Jacobsen*, 880 So.2d 717, 720 (Fla. 2d DCA 2004). In vacating the judgment in this case, the trial court correctly determined that the Defendants demonstrated all three.



Donna Eng
Co-Chair

Florida courts have repeatedly and consistently granted relief from judgment due to calendaring mistakes. See, e.g., *Munsey v. General Telephone*, 538 So.2d 1328 (Fla. 2d DCA 1989)(court holding that trial judge's order vacating default because attorney miscalculated deadline for answering the complaint is not a gross abuse of discretion); *Crystal Lake Golf Course v. Kalin*, [252 So.2d 379 \(Fla. 4th DCA 1971\)](#) (failure to attend pretrial conference deemed to have been caused by excusable neglect of counsel's secretary, who failed to diary same; judgment reversed and remanded for proceedings on the merits).

The appellate courts have repeatedly demonstrated their understanding that mistakes happen and a preference to resolve cases based on their merits. Hopefully, you will never have to reach for this article, but just in case...

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Gene Zweben presents donation of \$4989.78 from 5K to Jane Cornett of Legal Aid Society of Martin County



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Immigration Committee

Chair - Angela Castro

The Immigration Committee wishes everyone a brighter and better year ahead. If you are interested in joining the group, please email Angelina Castro at ACastro@ACLawSolutions.com.



Please also let us know if you would like to help with the 2022 Celebrate America Creative Writing Contest. Entries are due Mid-March, and as always, we need donors and recruiters for 5th grade students, teachers and schools.

Congratulations to **Antonietta Brancaccio** who was confirmed this past December as Honorary Consul for the Italian Consulate serving areas between Stuart and Orlando.



Angelina Castro
Chair

The Florida Bar Updates / Board of Governors' Report

GREG WEISS - 19TH CIRCUIT BOG REPRESENTATIVE

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



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



Greg Weiss
19th Circuit BOG Rep

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Real Estate and Commercial Litigation Update

Florida Real Property and Business Litigation Report

Manuel Farach



Manuel Farach
Chair

Mississippi v. Tennessee, Case No. 143, Orig. (2021). No State has a sovereign right to the water in an aquifer, and the Court's Equitable Apportionment jurisprudence (each of the States has an equality right to use the water at issue) applies to interstate, underground aquifers.

Reynolds v. ServisFirst Bank

(**In Re: Stanford**), Case No. 20-11652 (11th Cir. 2021).

Unless a section 363 sale or lease was stayed pending appeal, the reversal or modification on appeal of the authorization under 11 U.S.C. § 363(m) does not affect the validity of a sale or lease to an entity that purchased or leased such property in good faith; whether the transferee knew or did not know of the appeal is irrelevant to application of statutory mootness under the statute.

Jackson v. Le Centre on Fourth, LLC (In re: Le Centre on Fourth, LLC), Case No. 20-12785 (11th Cir. 2021).

Notwithstanding that a hearing notice did not comply with Bankruptcy Rule of Procedure 2002(c)(3) (conspicuous language on a notice is required when a plan of reorganization proposes an injunction against non-debtors), a creditor is barred from later objecting to a reorganization plan which contains discharge injunctions in favor of third parties if the creditor received actual notice of the confirmation hearing and did not object at the hearing.

State Farm Florida Insurance Company v. Carapella (In Re: Gaime), Case No. 20-12240 (11th Cir. 2021).

The Bankruptcy Code's automatic stay provision precludes a post-judgment motion to intervene in a state court action.

Callahan v. United Network for Organ Sharing, Case No. 20-13932 (11th Cir. 2021).

Discovery materials are not conclusively deemed "judicial records" but may become so - and likewise become subject to public disclosure as a judicial record - if attached to a substantive motion.

In Re: Redefinition of Appellate Districts and Certification of Need for Additional Appellate Judges, Case No. SC21-1543 (Fla. 2021).

The Florida Supreme Court certifies the need for a sixth appellate district and recommends it be based in the Northeast Florida area.

First Fidelity Trust Services, Inc. Shelter Cove Condominium Association, Inc., Case No. 1D20-1426 (Fla. 1st DCA 2021).

An attorney who represents a condominium association as receiver is precluded under Rule of Professional Conduct 4-1.9 from later representing a unit owner in the same condominium.

AmeriGas Propane, Inc. v. Sanchez, Case No. 3D20-1447 (Fla. 3d DCA 2021).

An employee soliciting customers of his former employer while at his new employer establishes substantial likelihood of success on the merits for injunctive relief when the employee's former restrictive covenant prohibited the employee from directly or indirectly soliciting business from former customers.

Ehlert v. Castro, Case No. 4D20-2007 (Fla. 4th DCA 2021).

A Proposal for Settlement which offers to settle the lawsuit based on the allegations raised in the lawsuit is not void for vagueness and is accordingly enforceable.

Deweese v. Johnson, Case No. 4D21-446 (Fla. 4th DCA 2021).

Even under a broad arbitration provision, a claim for personal injury damages need not be arbitrated when the claim has no nexus to the contract which contains the arbitration provision.

Continued On Next Page . . .

Crescent Shore Condominium Association, Inc. v. Lani Kai, L.P., Case No. 2D21-234 (Fla. 2d DCA 2021).

A claim for violation of an easement is not barred by res judicata when the new claim of violation is different than the previous violation sued upon.

12550 Biscayne Condominium Association, Inc. v. NRD Investments, LLC, Case Nos. 3D19-1893, 3D20-752, and 3D20-292 (Fla. 3d DCA 2021).

Residential owners of a mixed use condominium cannot avoid application of a Reciprocal Easement Agreement between the residential and commercial owners based on oppression and unconscionability or Florida Statute section 718.302.

2275 NE 120 Street, LLC v. Sanchez Struve Business Advisors, LLC, Case No. 3D20-1277 (Fla. 3d DCA 2021).

A mortgagor that fails to exercise its right of redemption within the time period set forth by Florida Statute section 45.0315 cannot later claim that the statutory redemption amount was incorrect as the result of not including previous amounts paid on the judgment.

Roche v. Cyrulnik, Case No. 3D21-1741 (Fla. 3d DCA 2021).

Extraordinary circumstances are required to avoid that general rule of comity that a later filed state court action should defer to a previously filed federal action.

Andreatta v. Brown, Case No. 1D20-2397 (Fla. 1st DCA 2021).

Email communication between counsel may satisfy the obligation of producing a privilege log.

Gambrel v. Sampson, Case No. 2D21-805 (Fla. 2d DCA 2021).

There is no excusable neglect provision within Florida Statute section 44.013 (nonbinding arbitration) and failure to object to the nonbinding arbitration award and demand trial de novo within the statutory twenty days leave the trial court with no discretion other than to enter a judgment on the arbitration award.

JPMorgan Chase Bank, N.A. v. Llovet, Case No.

3D19-1118 (Fla. 3d DCA 2021).

Florida Rule of Civil Procedure 1.540 cannot be used to reopen a consent judgment to obtain discovery regarding matters that a party knew or should have known about and for which he could have sought discovery before entering into the consent judgment.

Flooring Depot FTL, Inc. v. Wurtz bach, Case No. 4D20-1787 (Fla. 4th DCA 2021).

A claimant must prove three factors by a preponderance of the evidence to pierce the corporate veil: (1) the shareholder dominated and controlled the corporation to such an extent that the corporation's independent existence, was in fact non-existent and the shareholders were in fact alter egos of the corporation; (2) the corporate form must have been used fraudulently or for an improper purpose; and (3) the fraudulent or improper use of the corporate form caused injury to the claimant.

Hobe-St. Lucie Conservancy District v. Martin County, Case No. 4D20-2036 (Fla. 4th DCA 2021).

A 'tax' is an enforced burden of contribution imposed by sovereign for the support of the government while a special assessment is imposed on that portion of the community which receives some special or peculiar benefit in the enhancement of value of the property against which the assessment is imposed.

Auction Company of America v. Russell Revocable Trust, Case No. 3D20-1914 (Fla. 3d DCA 2021).

An auctioneer does not have a general, non-contractual legal duty to collect a deposit from a bidder before allowing a bid to be placed at auction.

Carrington Mortgage Services, LLC v. Nicolas, Case Nos. 3D21-1300, 3D21-1304, 3D21-1311, and 3D21-1320 (Fla. 3d DCA 2021).

A trial judge hearing a disputed factual issue should not issue an order to show cause why a witness should not be held in contempt as the result of the witness's testimony.

Mark Your Calendars January 2022

January 1, 2022

Happy New Year!

Tuesday, January 11, 2022

Judicial Relations Committee Speaker Series
11:45 – 1:00 p.m.
@ McCarthy Summers et. al.
RSVP to: JMV@mccarthysummers.com

Wednesday, January 12, 2022

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

Thursday, January 13, 2022

Trial Lawyers and Family Law Committees
Joint Virtual CLE Meeting
12:00 p.m. via Zoom

Friday, January 14, 2022

RSVP Deadline for MCBA Monthly CLE Meeting

Monday, January 17, 2021

Courthouse Closed – Martin Luther King, Jr. Day

Tuesday, January 18, 2022

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

Thursday, January 20, 2022

Networking Happy Hour
5:30 – 7:30 p.m.
Stringers Tavern & Oyster Bar
3754 SE Ocean Blvd

Friday, January 21, 2022

Judge Rebecca White Investiture
4:00 p.m.
St. Lucie County Courthouse

Friday, January 21, 2022

MCBA Monthly CLE Meeting
11:30 a.m. – 1:00 p.m. @ Monarch Country Club
RSVP by January 14, 2022 to:
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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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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

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ADMINISTRATIVE PROCEDURE FOR THE GENERALIST

Vol. 95, No. 6 November/December 2021 Pg 8 David G. Tucker Featured Article

For many attorneys, the prospect of a case governed by the Administrative Procedure Act[1] (APA) is a source of fear: fear of a thicket of laws and rules with a complexity comparable to the Internal Revenue Code. And yet, given the ubiquity of matters that the APA touches — from professional licenses (for professions as different as teachers, engineers, and daycares) to environmental permitting to exceptional student educational plans — fear of the APA must be conquered. Just as various practice areas have their own rules — such as the Florida Rules of Criminal Procedure, Florida Family Law Rules, and so forth — administrative practice has its own rules as well. It turns out that the rules are neither as complicated nor as onerous as the generalist might fear.

This article serves a two-fold purpose: 1) to provide an overview of administrative practice in Florida, or at least so much as addresses substantial interests; and 2) to provide a research skeleton so that a generalist might rely on this article as a starting point. While almost every subject addressed below is worthy of its own extended article, this article likely does not address many nuances and subtleties.

This article briefly describes the process of administrative litigation under Florida law where agency action triggers a request for an administrative hearing. The legislature has defined “agency action” as “the whole or part of a rule or order, or the equivalent, or the denial of a petition to adopt a rule or issue an order. The term also includes any denial of a request made under §120.54(7).”[2] However, there are some areas this article does not discuss: rulemaking, including challenges to adopted (or unadopted) rules, standing issues, and judicial review. The article presupposes a situation in which a client is given a letter or other notice from an agency announcing that the agency is doing something to the client. In this article, there is no question about whether the client has standing to request an administrative hearing.

Structure of Administrative Adjudication in Florida

The APA “presumptively governs the exercise of all authority statutorily vested in the executive branch of state government.”[3] Other statutes are to be construed in pari materia with the APA, and not as legislative repeals by implication as to the APA.[4]



David G. Tucker

In Florida, F.S. Ch. 120 governs proceedings across state agencies unless exempted by the legislature. [5] The Florida Constitution has always prohibited as broad delegations of substantive powers to state agencies as Congress might delegate to federal agencies.[6] The legislature has and does closely monitor and control administrative agencies and procedure.[7]

Administrative proceedings are conducted by “presiding officers.”[8] The legislature has created a pool of administrative law judges (ALJ) serving in the Division of Administrative Hearings (DOAH) within the Department of Management Services.[9] Administrative law judges generally, but not always, conduct hearings that resolve contested issues of fact. These proceedings are equivalent to bench trials under the civil rules. [10] The legislature has defined those proceedings involving contested issues of material fact where ALJ’s are not required to preside.[11] In those instances an agency may appoint its own hearing officer to serve as a presiding officer.[12] All ALJ’s are presiding officers but not every presiding officer is an ALJ.

The legislature has also established units of specialized presiding officers outside of DOAH. Some examples include, but are not limited to, hearing officers within the Department of Children and Families or Agency for Health Care Administration who conduct fair hearings regarding disputes arising under public assistance programs or Medicaid;[13] hearing officers appointed by the Public Employee Relations Commission (PERC);[14] and re-employment appeals referees within the Department of

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Economic Opportunity.[15]

Even within DOAH, there have historically been efforts to specialize. Prior to 2018, DOAH organized its ALJ's into four groups.[16] Three groups were based on geography (Northern, Middle, and Southern) but the fourth was a specialized group for medical and environmental matters.[17] After July 1, 2018, the medical and environmental unit was dispersed into the three geographic groups. [18] Cases involving medical and environmental matters continued to be assigned to the ALJ's with the most experience in those matters within the geographic grouping.[19]

The legislature directed the Administration Commission[20] to adopt uniform rules of procedure to implement the APA not later than July 1, 1997,[21] setting out a list of subjects the rules must govern.[22] Prior to the adoption of Uniform Rules of Procedure, various agencies promulgated multiple duplicative rules of procedure in the administrative code.[23] The uniform rules replace the prior duplicative rules of procedure.[24]

The Administration Commission complied with legislative mandate and adopted the uniform rules.[25] The uniform rules govern every agency[26] subject to Ch. 120, except where the Administration Commission grants an exemption or the legislature itself provides otherwise by statute.[27] These uniform rules cover a wide array of matters, including, to name but three examples, agency organization,[28] agency rulemaking,[29] and bid protests.[30]

Also included within the uniform rules are "rules of procedure for filing of petitions for administrative hearings pursuant to s. 120.569 or 120.57." [31] The uniform rules also include rules for the "filing of request for administrative hearing by a respondent in agency enforcement and disciplinary actions." [32] The uniform rules relevant here are found in Florida Administrative Code Ch. 28-106, "Decisions Determining Substantial Interests." [33] This chapter is as close as there is to an APA equivalent of rules of civil procedure.

Points of Entry and Timeliness

Florida law is well settled that "an agency must grant affected parties a clear point of entry, within a specified time after some recognizable event in investigatory or other free-form proceedings, to

formal or informal proceedings." [34] An agency must afford the persons or entities an opportunity to question, challenge, or contest the agency action that they believe affects them. [35] The point of entry is obvious in those proceedings described in statute, such as licensing or permitting statutes. [36] A point of entry may be less obvious without an express statutory framework, such as free form proceedings. [37] Agency rules must clearly signal when the agency's free form decisional process is completed or at a point when it is appropriate for an affected party to file a request.

The APA requires agencies to provide notice regarding the rights a person or entity has to a point of entry: "Each notice shall inform the recipient of any administrative hearing or judicial review that is available under this section, s. 120.57, or s. 120.68; shall indicate the procedure which must be followed to obtain the hearing or judicial review; and shall state the time limits which apply." [38] A point of entry is exercised when a person or entity affected by the agency action submits a request for hearing to the agency whose action is substantially affecting their interests.

Practitioners must be aware of the strict penalties for untimely filed requests for hearing. The APA requires that untimely filed petitions or requests for hearing be dismissed. [39] Although the APA itself does not specify deadlines that divide the timely from the untimely, the uniform rules require that the hearing request be filed within 21 days of the receipt of written notice of the agency action. [40] Some statutes, however, do provide specificity. [41] Practitioners must be keenly aware of the timeframes controlling their points of entry.

Administrative practice is not easily forgiving for late filings. [42] The legislature has eliminated the defense of excusable neglect for late filings. [43] The only equitable defense to an untimely filing in a proceeding under Ch. 120 is that a deadline has been equitably tolled. [44] Section 120.569 expressly provides: "This paragraph does not eliminate the availability of equitable tolling as a defense to the untimely filing of a petition." [45] Untimely petitions must, therefore, be dismissed unless equitable tolling applies. Requests for relief filed even one day late have been dismissed as having waived the right to a hearing. [46]

Equitable tolling is, therefore, worth discussion. “Equitable tolling” is generally applied when a plaintiff has been “misled or lulled into inaction, has in some extraordinary way been prevented from asserting his or her rights, or has timely asserted his or her rights mistakenly in the wrong forum.”[47] Equitable tolling has allowed claims to survive where, for example, an agency agreed to propose a settlement to a matter but failed to deliver a proposed settlement agreement for over a year;[48] where an agency published contradictory deadlines for filing, and petitioner complied with one deadline but not the other;[49] filing a bid protest with a security guard who did not allow the filer access to the office where the filing was due, resulting in the bid protest not being deemed received until the following day;[50] or where a petitioner believed a deadline was waived by the cancellation of a conference without rescheduling the conference.[51] These examples all share the characteristic that some action or omission by the agency led the petitioner to believe that the petitioner was in compliance with filing deadlines, thus, missing the actual deadline.

In contrast, courts have not allowed “excusable neglect” to dilute the standards of equitable tolling.[52] Almost universally, errors by counsel are not considered “equitable tolling” even though such errors may have drastic consequences for clients.[53] Practitioners must, therefore, pay particular attention to the deadlines by which to file a request for hearing with an agency.

Hearings and Non-Jury Trials Under Ch. 120

The APA provides instructions for “decisions which affect substantial interests”[54] and “hearings involving disputed issues of material fact.”[55] Attorneys used to operating under the rules of civil procedure will immediately recognize the latter hearings as trials. Hearings under the APA share many characteristics with non-jury trials under the rules of civil procedure. This section discusses a few of those similarities as well as some important differences.

- **Discovery** — Discovery is available in many, but not all, administrative proceedings. The APA authorizes a presiding officer “to effect discovery on the written request of any party by any means available to the courts and in the manner provided in the Florida Rules of Civil Procedure, including the imposition of sanctions, except contempt.”[56] This section has been construed to import

discovery rules from the Florida Rules of Civil Procedure into administrative proceedings, and generally to apply the same limits on discovery in civil proceedings to administrative proceedings.[57] In addition to the subpoena power, the APA confers upon presiding officers the power to quash subpoenas.[58] The APA also expressly authorizes an action in circuit court to enforce a subpoena, an order mandating discovery, or sanctions.[59]

The uniform rules likewise authorize discovery.[60] The uniform rules expressly incorporate discovery provisions from the rules of civil procedure.[61] This includes an authorization for the presiding officer to impose discovery sanctions provided in the rules of civil procedure, except for contempt.[62]

Practitioners should also be aware that the availability of discovery may be limited in certain proceedings. For example, in proceedings before the Public Employee Relations Commission, the legislature has provided that:

Discovery may be granted only upon a showing of extraordinary circumstances. A party requesting discovery shall demonstrate a substantial need for the information requested and an inability to obtain relevant information by other means. To the extent that chapter 120 is inconsistent with these provisions, the procedures contained in this section shall govern.[63]

Similarly, the Reemployment Assistance Appeals Commission has by rule authorized its appeals referees to shorten the time limits on responding to discovery.[64]

- **The Hearing and Burdens of Proof** — The APA prescribes standards for a hearing involving disputed issues of material fact:

All parties shall have an opportunity to respond, to present evidence and argument on all issues involved, to conduct cross-examination and submit rebuttal evidence, to submit proposed findings of facts and orders, to file exceptions to the presiding officer’s recommended order, and to be represented by counsel or other qualified representative. When appropriate, the general public may be given an opportunity to present oral or written communications. If the agency proposes to consider such material, then all

parties shall be given an opportunity to cross-examine or challenge or rebut the material.[65]

At such hearing, the presiding officer assesses the weight and credibility to be given the evidence presented by the parties.[66] The presiding officer then weighs such evidence in relation to each party's burden of proof.[67]

The APA specifies that the burden of proof in making factual findings is that of preponderance of evidence: "Findings of fact shall be based upon a preponderance of the evidence, except in penal or licensure disciplinary proceedings or except as otherwise provided by statute, and shall be based exclusively on the evidence of record and on matters officially recognized." [68] "Penal" proceedings are those in which an agency seeks to impose sanctions or penalties against a professional license.[69]

In proceedings to revoke a professional license[70] or to impose administrative fines for violating a statute governing a professional license,[71] courts have required clear and convincing evidence. "Clear and convincing" evidence is a heavier burden of proof than "preponderance of the evidence." [72] The higher burden of proof is based on the potential disruption of the license holder's property interest in the license.[73] When the issue is the denial of an initial application for a license, a preponderance of evidence suffices, because no property interest has yet been created. [74] Similarly, only the preponderance of evidence standard applies where a statute expressly disclaims the creation of property interest in a particular license, such as licenses to operate foster homes.[75] In licensing proceedings, therefore, practitioners must know which burden of proof applies to the particular issue before them.

The uniform rules require that the agency that referred the matter to DOAH or assigned a presiding officer has the responsibility for recording the testimony.[76] However, parties wishing to obtain a copy of the recordation, i.e., the transcript, must pay for the transcription themselves.[77]

- Evidence — The interplay between the APA and the Florida Evidence Code[78] determines evidentiary issues. In addition to statutory provisions in the APA, the legislature has authorized the Administration Commission to

adopt rules regarding taking evidence, testimony, and argument.[79] The rules of evidence under the APA are also less defined than in the Florida Evidence Code. In issues involving disputed facts, the ALJ is to consider the evidence and make findings of fact based on competent substantial evidence.[80]

The APA provides, in pertinent part:

Irrelevant, immaterial, or unduly repetitious evidence shall be excluded, but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible, whether or not such evidence would be admissible in a trial in the courts of Florida.[81]

The Florida Supreme Court has held that this provision does not incorporate the Florida Evidence Code[82] into the APA, and that the evidence code does not "strictly" apply to proceeding under the APA.[83] Rules of statutory construction, however, suggest that those parts of the evidence code dealing with relevance, materiality, or unduly repetitious evidence should be construed in *pari materia* with the evidentiary provisions of the APA.[84] "Relevant evidence" that might not be admissible under the evidence code[85] might nevertheless be admissible under the APA.[86]

The APA also provides for examination of documents.[87] Both the APA and the uniform rules provide for judicial notice by presiding officers, called here "official recognition." [88] The APA restates the evidence code as to the admissibility of other bad acts, changing only the word "crimes" in §90.404 in the evidence code[89] to "violations" in the APA.[90] The APA is silent as to questions of privilege. The Uniform Rules, however, incorporate by reference the same rules of privilege as govern civil actions.[91] Both the APA and the uniform rules authorize cross examination.[92] Presumably the evidence code might also apply to cross examination.

Findings of fact, if set forth in a manner that is no more than mere tracking of the statutory language, must be accompanied by a concise and explicit statement of the underlying facts of record that support the findings.[93] "Facts of record" have been construed to be the record evidence supporting findings of fact.[94] Note the subtle but important difference between "findings of fact"

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and “facts of record.” To be upheld upon judicial review, such findings of fact must be supported by competent substantial evidence.[95] A standard definition of competent substantial evidence, set out by the First District Court of Appeal, declares: Competent, substantial evidence is such evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred or such evidence as is sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached. (citations omitted).[96]

Absent from this judicial definition is any reference to “facts of record” or other reference to §120.57. In context, and absent a statutory definition, “facts of record” must be considered synonymous with “competent substantial evidence.” Practitioners should not lose sight of the fact that at the end of the day, they will need to have introduced competent substantial evidence to support the positions they advance. At the same time, they will want to cast doubt on the competence and substantiality of their opponents’ evidence.

• Hearsay — The APA provides: “Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.”[97] Similarly, the uniform rules provide:

Hearsay evidence, whether received in evidence over objection or not, may be used to supplement or explain other evidence, but shall not be sufficient in itself to support a finding unless the evidence falls within an exception to the hearsay rule as found in Sections 90.801-805, F.S.[98]

“Uncorroborated hearsay” is not legally sufficient evidence on which to base findings of fact. [99] This exception has been used to admit into evidence documents or other writings that would be inadmissible hearsay in court but that fortify admissible testimony.[100] Nevertheless, for hearsay to be used to support competent substantial evidence (a “fact of record”) the hearsay must itself be supported by a factual predicate, such admissible evidence that the hearsay evidence is to supplement or explain. [101] Practitioners must, therefore, build their argument for admissibility or hearsay upon having admissible evidence to be supplemented or explained.

After the Hearing: Post-Hearing Filings

• Post Hearing Submissions — After the conclusion of the hearing, parties may submit their proposed findings of fact, conclusions of law, and other arguments (“proposed recommended orders”) within a time period set by the presiding officer.[102] For counsel, such a document might appear to be what counsel believes should be the presiding officer’s recommended order, and counsel certainly hopes that it will be adopted as is. For pro se litigants, such document may be only their closing argument restating why they should prevail.

The authority of the presiding officer to designate such a date is circumscribed by other rules. The presiding officer is required to submit his or her recommended order within 30 days after the hearing or receipt of the transcript.[103] The parties must file their own proposed recommended orders within 10 days of the end of the hearing or within 10 days of the filing of the transcript, or the requirement for the presiding officer to file a recommended order within 30 days is waived. [104] As a practical matter, parties may, by stipulation, modify these deadlines.

• Recommended Order and Exceptions — After receipt of the parties’ proposed recommended orders, the presiding officer must file a recommended order. The recommended order shall consist “of findings of fact, conclusions of law, and recommended disposition or penalty, if applicable, and any other information required by law to be contained in the agency’s final order.”[105]

After the ALJ issues a recommended order, each party has 15 days to file exceptions to the recommended order.[106] Exceptions are disagreements with the recommended order regarding the presiding officer’s 1) findings of fact or 2) conclusions of law.[107] Exceptions are not appeals; they are disagreements. Exceptions must identify the disputed portion of the recommended order by page number or paragraph, must identify the legal basis for the exception, and must include any appropriate and specific citations to the record.[108] The agency’s final order must include an explicit ruling on each exception, but an agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by

page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record.[109] The uniform rules allow 10 days for an adverse party to respond to exceptions filed by a different party.[110]

- **Final Order** — Having received and considered the presiding officer's recommended order, exceptions, and any response to the exceptions, the agency now must enter a final order. The agency may adopt the recommended order as the final order of the agency. The agency in its final order may reject or modify the conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction.[111] When rejecting or modifying such conclusion of law or interpretation of administrative rule, the agency must state with particularity its reasons and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified.[112] Some cases still quote the proposition that an agency may reject a conclusion of law without limitation,[113] but that proposition is inconsistent with the APA as amended in 1999.[114]

The agency may not reject or modify the findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the final order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law.[115] However, the agency may not try to convert rejections of conclusions of law into different findings of fact.[116]

That is a difficult standard. When ruling on factual findings in a recommended order, the agency is not authorized to weigh the evidence presented, judge credibility of witnesses, or otherwise interpret the evidence to fit its desired ultimate conclusion.[117] The agency is limited to determining whether the findings are supported by competent substantial evidence.[118]

- **Judicial Review** — Judicial review must be sought in the appellate district where the agency maintains its headquarters or where a party resides or as otherwise provided by law. All proceedings must be instituted by filing a notice of appeal or petition for review in accordance with the Florida Rules of Appellate Procedure[119]

within 30 days after the rendition of the order being appealed.[120] Judicial review, however, is beyond the scope of this article.

Conclusion

Administrative law provides the mechanics for practitioners in a wide array of substantive regulatory areas. The purpose of administrative procedure is to provide an opportunity for a person or entities affected by agency action to have meaningful opportunities to challenge and test the validity of those agency actions. Such proceedings enhance accountability of agencies to the public at large. The processes outlined in this article equip a practitioner unfamiliar with administrative procedure with sufficient tools to represent clients substantially affected by agency actions.

[1] Fla. Stat. Ch. 120. Both the federal government and Florida have Administrative Procedure Acts, but the acts themselves are very different. As used in this article, the term "APA," will refer to the provisions of Fla. Stat. Ch. 120.

[2] Fla. Stat. §120.52(2); see *Friends of the Hatchineha, Inc. v. Dept. of Environmental Reg.*, 580 So. 2d 267, 269 (Fla. 1st DCA 1991) (granting agricultural exemption to unpermitted driveway was final agency action sufficient to allow request for formal hearing by affected third party). Requests made under §120.54(7) are petitions to initiate rulemaking.

[3] *Gopman v. Dept. of Education*, 908 So. 2d 1118, 1120 (Fla. 1st DCA 2005).

[4] *Id.*

[5] *School Board of Palm Beach County v. Survivors Charter Schools, Inc.*, 3 So. 3d 1220, 1232 (Fla. 2012).

[6] *Askew v. Cross Key Waterways*, 372 So. 2d 913 (Fla. 1979).

[7] See, e.g., *Barfield v. Dept. of Health*, 805 So. 2d 1008, 1011 (Fla. 1st DCA 2002) (discussing legislative response to concurring opinion in *Dept. of Children & Families v. Morman*, 715 So. 2d 1076, 1077 (Fla. 1st DCA 1998) (Ervin, J., concurring)); Dan R. Stengle and James P. Rhea, *Putting the Genie Back in the Bottle: The Legislative Struggle to Contain Rulemaking by Executive Agencies*, 21 Fla. St. U. L. Rev. 415 (1993).

[8] "Presiding officer" is an agency head, or member thereof, who conducts a hearing or proceeding on behalf of the agency, an administrative law judge assigned by the Division of Administrative Hearings, or any other person authorized by law to conduct administrative hearings or proceedings who is qualified to resolve the legal issues and procedural questions which may arise. Fla. Admin. Code R. 28-106.102.

[9] Fla. Stat. §120.65; *Gopman*, 908 So. 2d at 1123.

[10] Fla. Stat. §120.57(1)(a).

[11] Fla. Stat. §§120.80, 120.81.

[12] Fla. Stat. §120.57(2).

- [13] Fla. Stat. §120.80(7), Fla. Stat. §409.285.
- [14] Fla. Stat. §120.80(12), Fla. Stat. §447.207(8).
- [15] Fla. Stat. §120.80(10); Fla. Stat. §443.151(4).
- [16] Division of Administrative Hearings, Forty-Fifth Annual Report 6 (Jan. 31, 2019), available at <https://www.doah.state.fl.us/ALJ/Reports/45thAnnualReport.pdf>.
- [17] *Id.*
- [18] *Id.*
- [19] *Id.* Note that Fla. Stat. §120.651 requires that DOAH designate at least two ALJ's to preside over actions involving the Department of Health or boards within the department.
- [20] Governor and Cabinet, Fla. Stat. §14.202.
- [21] Fla. Stat. §120.54(5).
- [22] Fla. Stat. §120.545(5)(b).
- [23] Florida Public Employees Council 79 v. Jacksonville Employees Together, 738 So. 2d 489, 491 (Fla. 1st DCA 1999).
- [24] Jacksonville Employees Together, 738 So. 2d at 489.
- [25] Fla. Admin. Code R. 28-101-28-112.
- [26] "Agency" is defined in Fla. Stat. §120.52(1).
- [27] Fla. Stat. §12_0.54(5)(a)3; See, e.g., Fla. Stat. §120.80(10), §409.285(2)(b).
- [28] Fla. Admin. Code R. 28-101.
- [29] Fla. Admin. Code R. 28-103.
- [30] Fla. Admin. Code R. 28-110.
- [31] Fla. Stat. §120.54(5)(b)4.
- [32] Fla. Stat. §120.54(5)(b)5. The statute also calls for similar rules for filing requests for declaratory statements and bid protests.
- [33] Fla. Admin. Code R. 28-106.
- [34] Capeletti Brothers, Inc. v. State Dept. of Trans., 362 So. 2d 346, 348 (Fla. 1st DCA 1978).
- [35] *Id.*
- [36] See, e.g., Fla. Stat. §§120.60(3); 403.0876.
- [37] Capeletti Bros., 362 So. 2d at 348.
- [38] Fla. Stat. §120.569(1).
- [39] Fla. Stat. §120.569(2)(c).
- [40] Fla. Admin. Code R. 28-106.111(2).
- [41] See, e.g., Fla. Stat. §760.11(7) (Florida Commission on Human Relations); Fla. Stat. §110.227(5) (Public Employee Relations Commission).
- [42] In judicial proceedings, Florida Rule of Civil Procedure 1.500 provides that a clerk of court may enter a default without notice where no papers have been served. Courts recognize "excusable neglect" warranting relief from judgment of default where a party's inaction results from clerical or secretarial error, reasonable misunderstanding, a system gone awry or any other of the foibles to which human nature is heir. Defaults and final judgments entered after default may also be set aside for the grounds such as mistakes, inadvertence, surprise, excusable neglect, newly discovered evidence, and fraud. Such is not the case for filings to request hearings in administrative proceedings.
- [43] Laws of Fla. Ch. §4, 98-200; *Aleong v. Dept. of Bus. and Prof. Reg.*, 963 So. 2d 799, 801 (Fla. 4th DCA 2007); *Patz v. Dept. of Health*, 864 So. 2d 79, 81 (Fla. 3d DCA 2003) (quoting *Cann*, noting that the 1998 amendment to the APA overruled *Unimed* and no longer recognized excusable neglect as a valid reason for a late filing).
- [44] *Cann*, 813 So. 2d at 239.
- [45] Laws of Fla. Ch. 2006-82.
- [46] *Cann*, 813 So. 2d at 238.
- [47] *Seavor v. Dept. of Fin. Svcs.*, 32 So. 3d 722, 723 n.1 (Fla. 1st DCA 2010). Claims of equitable tolling have generally been unsuccessful outside the context of administrative practice. *HCA Health Servs. of Fla. v. Hillman*, 906 So. 2d 1094 (Fla. 2d DCA 2004); but see *In re: Engle Cases*, 45 F. Supp. 2d 1351 (M.D. Fla. 2014). In the reported decisions, courts have not always been clear whether equitable tolling is inapplicable categorically, or whether it is applicable, but the presented facts do not satisfy its requirements.
- [48] *Garcia v. Dept. of Bus. and Prof. Reg.*, 988 So. 2d 1199 (Fla. 3d DCA 2008).
- [49] *Madison Highlands, LLC v. Florida Housing Finance Corp.*, 220 So. 3d 467 (Fla. 5th DCA 2017).
- [50] *Pro Tech Monitoring v. Dept. of Corrections*, 72 So. 3d 277 (Fla. 1st DCA 2011).
- [51] *Abusalameh v. Dept. of Bus. Reg.*, 627 So. 2d 560 (Fla. 4th DCA 1993).
- [52] *Aleong*, 963 So. 2d at 799; see note 51.
- [53] *Williams v. Albertson's, Inc.*, 879 So. 2d 657 (Fla. 5th DCA 2004); *Cann*, 813 So. 2d at 239.
- [54] Fla. Stat. §120.569.
- [55] Fla. Stat. §120.57(1).
- [56] Fla. Stat. §120.569(2)(f); see also Fla. Admin. Code R. 28-106.206.
- [57] *Menke v. Broward County School Bd.*, 916 So. 2d 8, 10 (Fla. 4th DCA 2005).
- [58] Fla. Stat. §120.569(2)(k)1.
- [59] Fla. Stat. §120.569(2)(k)2.
- [60] Fla. Admin. Code R. 28-106.206.
- [61] *Id.* It is worth noting the rule applies the discovery provisions in Fla. R. Civ. P. 1.280-1.400. However, the Supreme Court repealed Rule 1.400 in 1992. Although deposition subpoenas appear to be outside the range of the discovery rules (Fla. R. Civ. P. 1.410), that rule is cited by reference by Fla. R. Civ. P. 1.310(a) and, thus, still applies.
- [62] *Id.*
- [63] Fla. Stat. §447.208(1).
- [64] Fla. Admin. Code R. 73B-20.018.
- [65] Fla. Stat. §120.57(1)(b).
- [66] *Hamilton Downs Horsetrack LLC v. Dept. of Bus. And Prof. Reg.*, 226 So. 3d 1046, 1050 (Fla. 1st DCA 2017).
- [67] *Haines v. Dept. of Children and Fams.*, 983 So. 2d 602, 608 (Fla. 1st DCA 2008).
- [68] Fla. Stat. §120.57(1)(j).
- [69] *Galvan v. Dept. of Health*, 285 So. 3d 975, 979 (Fla. 3d DCA 2019); *Beckett v. Dept. Fin. Servs.*, 982 So. 2d 94, 100 (Fla. 1st DCA 2008).
- [70] *Ferris v. Turlington*, 510 So. 2d 292, 293 (Fla. 1987).
- [71] *Dept. of Banking and Fin. v. Osborne Stern and Co.*, 670 So. 2d 932, 935 (Fla. 1996).
- [72] *In re Graziano*, 696 So. 2d 744, 753 (Fla. 1997).
- [73] *Id.*
- [74] *Id.* at 934; *Dept. of Children and Fams. v. Davis Family Day Care Home*, 160 So. 3d 854, 856 (Fla. 2015).
- [75] *Haines*, 983 So. 2d at 603; See, e.g., Fla. Stat. §409.175(2)(f).
- [76] Fla. Admin. Code R. 28-106.214(1).
- [77] Fla. Admin. Code R. 28-106.214(2).
- [78] Fla. Stat. §§90-101-

90.955.

[79] Fla. Stat. §120.54(5)(b)2.

[80] See *Gross v. Dept. of Health*, 819 So. 2d 997, 1001-1004 (Fla. 5th DCA 2002).

[81] Fla. Stat. §120.569(1)(g).

[82] Fla. Stat. Ch. 90.

[83] *Florida Industrial Power Users Group v. Graham*, 209 So. 3d 1142, 1145 (Fla. 2017). Proceedings under the APA are not the only proceedings to which the evidence code does not strictly apply. C. Ehrhardt, *Florida Evidence* §103.1 (2012 ed.).

[84] Statutes may be read in pari materia without such being specifically directed, because “(l)aws should be construed with reference to the constitution and the purpose designed to be accomplished, and in connection with other laws in pari materia, though they contain no reference to each other.” *Miami Dolphins, Ltd. v. Metropolitan Dade County*, 394 So. 2d 981, 988 (Fla. 1981).

[85] Fla. Stat. §90.402: “All relevant evidence is admissible, except as provided by law.” (emphasis added).

[86] *Jackson v. Fla. Birth-Related Neurological, etc.*, 932 So. 2d 1125, 1129-1130 (Fla. 5th DCA 2006).

[87] Fla. Stat. §120.569(2)(h).

[88] Fla. Stat. §120.569(2)(i); Fla. Admin. Code R. 28-106.213(6); see “Order Granting Official Recognition,” *Dept. of Bus. and Prof. Reg. v. Walk*, Case No. 18-3505PL, 2018 WL 5281856 (Fla. Div. Admin. Hrgs. July 19, 2018); “Order Granting Official Recognition,” *St. Johns Riverkeeper et al. v. Sleepy Creek Lands, LLC*, Case No. 2017 WL 5998774 (Fla. Div. Admin. Hrgs. Aug. 14, 2017).

[89] Fla. Stat. §90.404(2).

[90] Fla. Stat. §120.57(1)(d).

[91] Fla. Admin. Code R. 28-106.231(4).

[92] Fla. Stat. §120.569(2)(j); Fla. Admin. Code R. 28-106.213(2) (conferring the right to impeach any witness).

[93] Fla. Stat. §120.569(2)(m).

[94] *Community Health Charities of Fla. v. Dept. of Mgmt. Svcs.*, 7 So. 3d 570, 571-572 (Fla. 1st DCA 2009).

[95] Fla. Stat. §120.68(7)(b); Fla. Stat. §120.68(10).

[96] *Mobley v. Agency for Health Care Admin.*, 181 So. 3d 1233, 1235 (Fla. 1st DCA 2015).

[97] Fla. Stat. §120.57(1)(c).

[98] Fla. Admin. Code R. 28-106.213(3).

[99] *Forehand v. School Bd. Of Gulf County*, 600 So. 2d 1187, 1191-1193 (Fla. 1st DCA 1992).

[100] *Orasan v. Agency for Health Care Admin.*, 668 So. 2d 1062, 1063 (Fla. 1st DCA 1996).

[101] *Wark v. Home Shopping Club*, 715 So. 2d 323, 324 (Fla. 2d DCA 1998).

[102] Fla. Admin. Code R. 28-106.215.

[103] Fla. Admin. Code R. 28-106.216.

[104] Fla. Admin. Code R. 28-106.216(2).

[105] Fla. Stat. §120.57(1)(k).

[106] Fla. Admin. Code R. 28-106.217(1).

[107] Id.

[108] Id.

[109] Fla. Stat. §120.57(1)(k).

[110] Fla. Admin. Code R. 28-106.217(3).

[111] Fla. Stat. §120.57(1)(l); *Barfield v. Dept. of Health*, 805 So. 2d at 1011 (overturning an agency’s rejection of a conclusion of law that made a determination about admissibility of evidence).

[112] Id. See, e.g., *Cuenca v. Bd of Administration*, 259 So. 3d 253, 259 (Fla. 3d DCA 2018) (determination of nexus between criminal acts and public employment within agency jurisdiction sufficient to reject ALJ conclusion of law to the contrary).

[113] See, e.g., *Ogle v. Fla. Unemployment Appeals Com’n*, 87 So. 3d 1264, 1267 (Fla. 1st DCA 2012).

[114] *Barfield*, 805 So. 2d at 1008; See *Laws of Fla.* §6, 99-379.

[115] Fla. Stat. §120.57(1)(l).

[116] *Dept. of Labor and Emplmt. Security v. Little*, 588 So. 2d 281, 282 (Fla. 1st DCA 1991).

[117] *Castella v. Stewart*, 285 So. 3d 980, 987 (Fla. 3d DCA 2019).

[118] Id.

[119] Fla. R. App. P. 9.190.

[120] Fla. Stat. §120.68.

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Save the Date

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

January 12, 2022	5:30 p.m.	Regular dinner meeting
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 Mature Driver Program 6-hour course

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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.

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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>January 2022</h1>						
2	3 SideBar Articles Due	4	5	6	7	8
9	10	11 JRC Speaker Series @ McCarthy Summers (11:45 a.m.)	12	13 Trial Lawyers Committee Mtg. 12 p.m. Zoom	14 RSVP DEADLINE FOR 1/21 LUNCH	15
16	17 Courthouse Closed Martin Luther King, Jr. Day	18 MCBA Officers' Meeting	19	20	21 MCBA Luncheon @ Monarch, CC (11:30 a.m.) Rebecca White Investiture	22
23	24	25	26	27	28	29
30	31	<p>SAVE THE DATES: See www.martincountybar.org for full 2021-22 calendar March 10, 2022: Judicial Reception, Willoughby Country Club April 9, 2022: 5K Race to the Courthouse May 7, 2022: Golf Tournament @ Lost Lake Golf Club May 20, 2021: Annual Installation Party</p>				

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 @ McCarthy Summers (11:45 a.m.)	9 Inns of Court 5:30 p.m.	10 Trial Lawyers Committee Mtg. (Noon) Zoom	11	12
13	14	15 MCWLA CLE Mtg. 11:45 a.m. Zoom	16	17	18 RSVP DEADLINE FOR 2/25 LUNCH	19
20	21	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 				



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

Please join us for MCBA's CLE Monthly Meeting, Friday, January 21, 2022,

- When:** Friday, January 21, 2022
11:30 a.m. networking; 12:00 p.m. lunch
- Where:** Monarch Country Club
1801 SW Monarch Club Drive, Palm City
- Menu:** Roasted Butternut Squash Soup, Par 3 Salad (1 scoop each of Chicken, Egg & Tuna Salad), Rolls with Butter, Cookies and Brownies.
- Speaker:** Ambassador Tatiana C. Gfoeller, President AWIU
- 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).