

MAY 2022



The SideBar

NEWSLETTER OF THE MARTIN COUNTY BAR ASSOCIATION

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MCBA PRESIDENT

ADAM SCHWARTZ

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FLORIDA'S LAWYERS*

*ABA OPINION: LAWYERS HAVE AN
OBLIGATION TO ENSURE EMPLOYEES
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Jason D. Berger - 2019 - 2020
Barbara Kibbey Wagner - 2020 - 2021

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

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

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Message From the President

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

Dear Members,

Thank you for joining the Martin County Bar Association during its 2021/2022 Bar year. The Executive Board hopes you enjoyed your membership with the MCBA. With 29 new members this year, the MCBA saw new memberships on par with pre-covid years. The Executive Board is thankful for the opportunity to serve the membership. As we close the year with our last Sidebar, we especially want to thank our unsung hero of the MBCA, our Executive Director, Robyn O’Heron. The MCBA continues to sail forward as new leaders rotate into and out of service as Executive Board members because Robyn is there to make sure there is a continuous steady hand at the helm. We are thankful for Robyn’s great work.

In our August 2021 Sidebar I wrote: “The road to success is always under construction, personally and professionally.” Look back and think about what construction has occurred or still needs to occur as you continue to build your road to success.

This quote was a lead into speaker Tom Barnett, an individual at the forefront of artificial intelligence use by legal practitioners. In the first 4 months of the pandemic the legal community’s use of technology advanced ten years. While we all might not be using artificial intelligence to win bet the company cases, every attorney and court in Florida had to advance. The road to success for the judicial system and those who labor within required everyone to get out their construction hats.

I would like to share a little from by experience practicing civil litigation: I cut my teeth in the courtroom. Thousands of hours in the courtroom for years and years. There is a ritual to the courtroom and my fellow litigators and judges will know what I mean. Do I (we) want to give that up?

For all time until now countless attorneys labored in this profession in those physical rooms. So many great attorneys. Our judiciary rose to the herculean challenge of bringing the Judicial

Branch online for court. Judges control their dockets and their courtrooms. As time moves forward how will our courtrooms look and feel?

Here is the other side of where we find ourselves. Almost everyone is better off with using remote video or telephone appearances for all non-evidentiary and non-jury hearings and trials. No travel time or cost for anyone involved in the case. No pollution from traveling. I believe the list of pros outweigh the cons of nostalgia. Days become more efficient and more productive, which collectively should mean more legal services being provided. The truth is remote appearances allowed us to have a great speaker list that may not have otherwise been possible during the pandemic.

We were able to learn and hear from Florida Supreme Court Justice Jamie Grosshans; Judge Robert Luck of the 11th Circuit Court of Appeals; Fourth District Court of Appeals Chief Judge Burton Conner; Federal District Court Judge Aileen M. Cannon; Attorney Barry Richard; Mr. Edwin Bell, Director of Racial Justice, Equity and Inclusion at the National Center for State Courts, Ambassador Tatiana Gfoeller-Volkoff, and Chief Judge of the 19th Judicial Circuit, Charles Schwab.

If you joined us on March 10, 2022, for the Judicial Reception, you were present for a very special night. Two years of the George W. Bush Jr., Professionalism Award presented in one night to Judge Steven Levin and Attorney Jason Berger. Our community is proud of this professionalism award. The list of recipients are all important jewels in our community. Consider who you think is worthy and nominate them for next year.



Continued On Next Page . . .

Our social committee did a fantastic job this year. From the bi-monthly happy hours to the annual banquet and everything in between, we were able to enjoy fellowship with our members due to the hard work of our social committee chairs Brandon Woodward and Jeanette Lugo, and our Executive Director Robyn O’Heron. If you attended any of these events, you would have seen local lawyers from all different backgrounds and practice areas breaking bread and enjoying lively libations while unwinding and making valuable connections and relationships—which in turn makes our community stronger.

Martin County Bar Association held its Second Annual Tom Warner Tailgate in Gainesville. Almost 100 members and guest attended a Gator win and honored Former MCBA President Tom Warner. Tom’s wife and daughter attended, and we hope they know how much Tom was loved by his community. We miss him.

As this Bar year comes to a close, please allow me again to express gratitude—thank you for allowing me to serve as your President. The state of our Bar is strong. The MCBA will be in good hands next year with Jeffrey Friedman at the helm keeping the sails full.

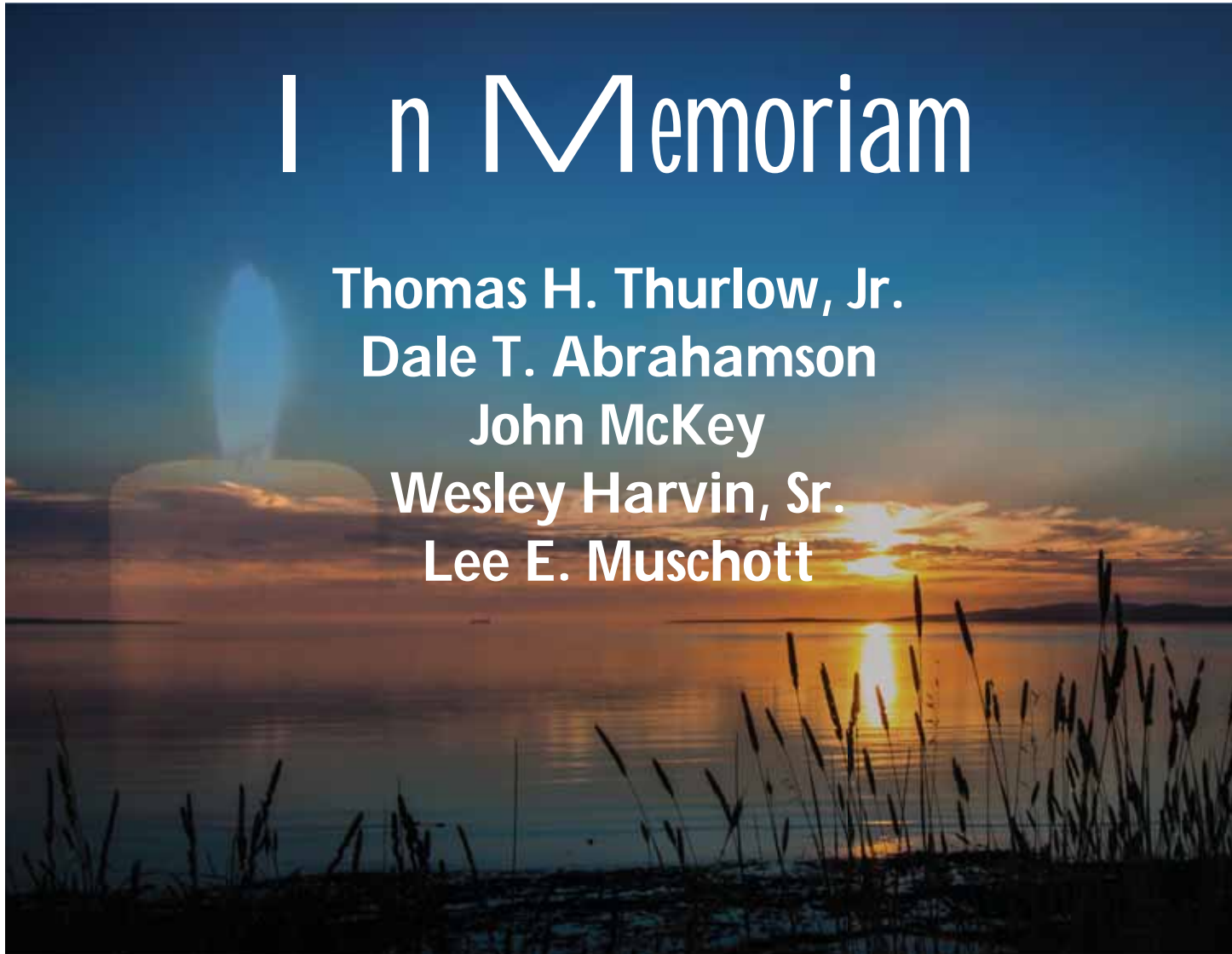
“Gratitude is not only the greatest of virtues, but the parent of all the others.” -- Sir Winston Churchill

Yours Truly,

Adam Schwartz
2021-2022 MCBA President

In Memoriam

Thomas H. Thurlow, Jr.
Dale T. Abrahamson
John McKey
Wesley Harvin, Sr.
Lee E. Muschott



Please Join Us!

Join Us for the Final Luncheon of the 2021 - 22 Bar Year!



Adam Schwartz
2021-2022 President

On Friday, May 6, 2022, the Executive Board of the Martin County Bar Association will hold the last CLE luncheon meeting for the 2021-2022 Bar year at Monarch Country Club. We welcome 19th Judicial Circuit Chief Judge Charles Schwab and Adam Schwartz as the guest speakers. Networking begins at 11:30 a.m. and lunch will be served promptly at noon.

We look forward to hearing from Judge Schwab about the State of the 19th Circuit as well as some of the goals, changes and updates for all attorneys who practice in the 19th circuit.



Chief Judge
Charles Schwab

MCBA President, Adam Schwartz will provide a recap of the 2021-2022 Bar year and will recognize our outstanding 2022 High School Scholarship recipients. We hope you will join us.

As a reminder, there are no luncheon meetings over the summer. Lunches will resume on Friday, August 19, 2022.

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, April 29, 2022 by calling 772-220-8018 or emailing martincountybarassociation@msn.com.

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



The MCBA Executive Board would like to thank all of our members for their support this year.

We hope everyone has a safe, healthy and fun summer.

See you in August!

Judicial Relations Committee

Jessica VanValkenburgh - Chair



Our Purpose: The purpose the MCBA's Judicial Relations Committee (JRC) is primarily to serve as a liaison between the Martin County Bar Association and the 19th Circuit's Judiciary. Moving forward, the JRC will be planning, implementing and coordinating certain programs designed and focused on improving relationships and overall communications between the Bench and Bar.

Upcoming JRC Meetings:

JRC Judicial Speaker Series 2021 - 2022

Dates

May 3, 2022

Speakers

Judge Darren Steele

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

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

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Publishing The SideBar takes a team of people.

As we end the 2021 – 2022 Bar year, I would like to take a moment to thank those who provide invaluable assistance in getting The SideBar published every month.



First, thank you to all the Committee Chairs who submit the articles, you are all very busy and the time you take to come up with a topic and write an article is very much appreciated. Without you, there would be no SideBar!



A sincere thank you to Kathy Enloe of Esquire Reporting for the countless hours spent on proofreading the entire magazine each month. Your time and your attention to detail is incredibly valued, recognized and appreciated by me.



To Lisa Barreca of Michael Madison Reese Photography, your positive attitude and fun-loving spirit shine through in your wonderful photographs. It has been a pleasure working with you!



Last, but not least, Kevin Mulligan of Spiral Media. Thank you for your creativity, photos, images, ideas and for tolerating my requests for numerous drafts and layout changes. Somehow, we get it done and out the door on time



And to the members, thank you for actually reading The SideBar and providing your feedback and comments. I am truly grateful.



Respectfully,
Robyn O'Heron
MCBA Executive Director




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RACE TO THE COURTHOUSE

2022



The annual 5K Run to the courthouse was held on Saturday, April 16, 2022.



Gene Zweben
Co-Chair

We had close to 150 runners participate in the race which winds through downtown Stuart.

Look for an update in the August SideBar.

The race could not be possible without the generous support of our sponsors.

Thank you all.

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The MCBA / Sobel Cup Golf Tournament
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Paralegal Committee



Pamela Lewis
Chair

Be sure to join us on June 15, 2022, to hear Attorney Dorothy A. Dlugolecki speak regarding Due Process and Service of process.

Please join us immediately after work (5:30 p.m.) at Mrachek Law, 1000 SE Monterey Commons Blvd., Suite 306, Stuart, Florida. RSVP by 06/10/22.

Be sure to RSVP early because space is limited. It will be on a first come first served basis. Any late submissions can attend via Zoom. I really look forward to seeing you all!

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.

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bankruptcy committee

RECENT AND UPCOMING CHANGES

May should prove to be a pivotal month for BANKRUPTCY both from the perspective of the past seven months, and looking to the coming seven months, a lot of change has already happened and there's still more to come.



Jon L. Martin
Chair

Changes having already occurred involve many provisions that were enacted as temporary amendments that occurred from December 2021 through December 2022.

On December 1, 2021 changes in how certain financial institutions must be served with objections to claims were implemented.

V guidelines as well as consumer income means test limits substantially across the board to reflect inflationary increases.

December 1, 2022, changes to numerous (15+) Bankruptcy Rules are expected to become effective, AND; By December 27, 2022, several amendments to rules under Subchapter V regarding Small Business Debtors and some rules under The Paycheck Protection Program will be suspended.

On the December 27, 2021, special provisions regarding Chapter 13 discharges and forbearances under the CARES Act, as well as some of the Small Business Subchapter V rules reverted to Pre-Pandemic provisions.

NEED MORE INFORMATION?
Jon L. Martin, Chair 772 419 0057 or jlm@jonlmartinlaw.com

On March 27, 2022, the CARES ACT enlargement for Subchapter V debt limits did not get renewed, and reverted for 4 days, UNTIL;

April 1, 2022 when the Census Bureau published its new Guidelines raising both the Subchapter

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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 via Zoom on May 17th from 12-1 pm (networking 11:45 am-noon) for our CLE with Donna L. Eng, who will be installed as the next FAWL President at the Florida Bar Convention in Orlando in June of 2022. Please join us to hear Donna's thoughts and early plans for the FAWL 2022-2023 year. Donna is Board Certified by the Florida Bar in Appellate Practice. She also handles a wide variety of general civil, business, real estate and probate litigation matters with the firm of Mrachek Law. RSVP to fawlmartin@gmail.com

Please join us for our Second Annual Yoga on the Beach Membership Drive!



Please join us for a Membership Drive Beach Yoga Event at Stuart Beach on **Saturday, May 7, 2022** at 9:00am. Both current members of Martin County Women Lawyers Association and prospective new members are welcome to attend, free of charge! Bring a yoga mat or beach towel, water bottle, sunscreen, and wear lightweight clothing. Breakfast snacks will be provided. Katie Carroll of Lala Hot Yoga in Stuart will conduct this class, both beginners and advanced yogi's are welcome. RSVP to fawlmartin@gmail.com

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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Employment Law

David Miklas, Esq. – representing employers only

By bringing in an employment lawyer to review pay practices allows the business to have a defense that can cut liability in half.

This is because the Fair Labor Standards Act (FLSA) is the federal law addressing wages and hours (including overtime). This law allows a Florida business to argue that because they ran their pay practices by an employment lawyer, any legal liability should be cut in half.

Technically, any unpaid wages will be owed to the employee. It is the “liquidated damages” that I am talking about. Under the FLSA, liquidated damages are presumptively available. This generally means that an employer who violates the overtime pay requirement is liable to the employee for the unpaid overtime compensation *and in an additional equal amount as “liquidated damages.”* 29 U.S.C. § 216(b).

But, and here is the important part, if an employer in an FLSA action shows that they acted in good faith and that they had reasonable grounds for believing that their action was not a violation of the FLSA, the court may, in its sound discretion, award no liquidated damages. 29 U.S.C. § 260. The employer has the burden of establishing the good faith defense against liquidated damages. The recent case of *Gelber v. Akal Sec., Inc.*, 14 F.4th 1279 (11th Cir. 2021) is illustrative. In *Gelber*, the employer asserted the good-faith defense. The district court held a bench trial and heard from witnesses whose testimony bore directly on that issue. Most importantly, the company’s outside counsel testified that a company executive sought his advice regarding the company’s meal-breaks policy and that he advised that the policy comported with the FLSA. Based on this testimony, the court concluded that the company acted in good faith on the advice of counsel. On appeal, the 11th Circuit agreed and also noted that it did not find the company’s employment lawyer’s advice objectively unreasonable. Therefore, the liquidated damages were not applied against the employer.

A further way to cut off liability can be to use that same legal advice from outside employment counsel to cut off the statute of limitations.

Ordinarily there is a two-year statute of limitations for actions seeking unpaid overtime compensation under the FLSA. *See* 29 U.S.C. § 255(a). For a cause of action arising out of a “willful violation,” however, there is a three-year statute of limitations. Accordingly, if the employer willfully violates the FLSA, the employees can recover an additional year of overtime compensation. This burden to extend the limitations period from two to three years is on the employee. Basically the employee must prove that the employer either knew that its conduct was prohibited by the FLSA or showed reckless disregard about whether it was.



Here is the big point. An employer acts with reckless disregard if it fails to make adequate inquiry into whether conduct is in compliance with the FLSA. So, the take-home message for a business is to run payroll practices by your employment lawyer! In fact, in *Gelber*, both the district and the appellate courts found the employer did not “willfully” violate the FLSA. Guess what? The basis for this finding was that the company sought outside employment counsel’s advice regarding whether the meal-period policy complied with the FLSA.

This real world example shows how this business saved far more than 50%. It saved by only owing backpay for two years, rather than owing backpay + liquidated damages (double the backpay) + all of that going back *three years*.

You can see that if there is a systemic issue (multiple employees not paid correctly), eliminating liquidated damages and that third year of liability can be a lot of money saved.

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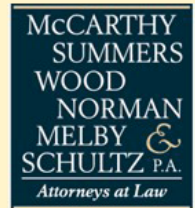


Nicola J. Melby
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Cheers



Congratulations to **Philip W. Grosdidier** who has become an equity partner in the Law firm of **Fox McCluskey Bush Robison, PLLC.** Phil continues his practice in the areas of Corporate/Business Organization & Transactions, Probate & Trust, Taxation and Wills, Trusts & Estate Planning.



Best Wishes to **Darryl Kogan** and **Ted DiSalvo** on the opening of the new **Kogan & DiSalvo** office building located at 6341 S. Kanner Highway in Stuart. The new office will service Treasure Coast clients with Personal Injury cases.



Kudos to **Brandon Woodward** on his admission to the New York State Bar

Martin County Bar Association Welcomes New Members

Jonathan “Jon” Wick Chambers
Saxe Doernberger and Vita P.C.

Nova Southeastern University - Shepard Broad College of Law, 2013

Thomas G. Zeichman
Beighley, Myrick, Udell & Lynne, P.A.

Nova Southeastern University - Shepard Broad College of Law

We appreciate all of our new 2021 - 2022 Members.
You are encouraged to get involved and help to make the MCBA the best it can be in providing you with the resources and opportunities necessary for your continued success!

*The MCBA would like to thank our Annual Sponsors!
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**The MCBA Executive Board would like to recognize our
Committee Chairs for their contributions for 2021 – 2022.**

Your time and efforts on behalf of the MCBA are truly appreciated.

5K.....	Gene Zweben
Admiralty.....	Joanne Foster
Alternative Dispute Resolution.....	Elizabeth R. Hunter
Appellate.....	Donna Eng and Carri Leininger
Bankruptcy.....	Jon Martin
Camping Trip.....	Marc Teplitz
Community Association / HOA.....	J. Henry Cartwright
Constitution Week.....	Hon. Alan Forst
Criminal Law.....	Whitney Duteau
Diversity.....	Paul Bernard
Elder Law.....	Portia Scott
Employment & Labor Law.....	David Miklas
Family Law.....	Linda Weiksnar
Foreclosure.....	Dorothy Dlugolecki
Gator Tailgate.....	Jason Berger and Scott Konopka
Golf Tournament.....	Jack Sobel
Immigration.....	Angelina Castro
Judicial Relations.....	Jessica VanValkenburgh
Legal Resources/CLE.....	Christine Moreno
Paralegal.....	Pamela Lewis
Pro Bono.....	Jane Cornett and Maxine Noel
Professionalism.....	Niki Marshall
Real Property.....	Manuel Farach
Scholarship.....	Barbara Kibbey Wagner
Solo & Small Firm.....	Kathryn McHale
Social Committee.....	Jeanette Lugo and Brandon Woodward
Tennis Tournament.....	Raymond Robison
Trial Law.....	Preethi Sekharan
Wills, Trusts & Estates and Probate.....	Kimberly Ryan

Thank You

TRIAL LAWYERS



Preethi Sekharan
Chair

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

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

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



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Tennis Committee

Chair: Ray Robison

MCBA Tennis Tournament is Back!

On May 21, 2022, we will gather for tennis and lunch at Mariner Sands. Tennis will begin at 10:00, and lunch will be served at approximately 12:00. If interested in joining us for this fun event, please contact Ray Robison (772-287-4444 or robison@foxmclcluskey.com). Thank you to our sponsor, SEACOAST BANK, for its continued support throughout the years.



Ray Robison
Chair



Social Committee

Co-Chair: Jeanette Lugo Co-Chair: Brandon Woodward



Jeanette Lugo
Co-Chair

On Thursday, March 24, 2022, MCBA members gathered at **Townies Tavern** in Palm City for happy hour and networking. Attendees enjoyed beverages, food and even a little music Bingo!



Brandon Woodward
Co-Chair



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Foreclosure Committee

Dorothy Dlugolecki - Chair

ARP Acquisitions Corp v. PHH Mortgage Corp. - motion for rehearing and motion for reconsideration

In this case, the borrower reinstated the loan before the foreclosure sale, but PHH was unable to vacate the final judgment and cancel the sale before the sale occurred. ARP was the successful bidder at the sale. PHH moved to vacate the final judgment, cancel the sale, and reinstate the loan after the sale. At the hearing, ARP's counsel argued for an award of attorney's fees and costs from the sale and the court entered an order canceling the sale and directing PHH to refund the purchase price and pay attorney's fees and costs to ARP. PHH filed 2 untimely motions for reconsideration. The trial court denied the first motion for reconsideration and entered an order setting an evidentiary hearing to evaluate the award of attorney's fees and costs for the second motion for reconsideration. ARP appealed the order on the second motion for reconsideration arguing that the trial court lacked jurisdiction to adjudicate the motions for reconsideration. The 3rd DCA agreed with ARP and quashed the order. The 3rd DCA outlined the difference between a motion for rehearing and a motion for reconsideration and found that the trial court lost jurisdiction because PHH did not file a timely motion for rehearing of the final order within 15 days under Rule 1.530.

Goetz v. AGB Tampa LLC - surplus funds

In this case, the association foreclosed its lien for unpaid assessments and there were \$154,000 in surplus funds after the foreclosure sale. The first position mortgage holder, who initiated a separate foreclosure action, moved to intervene and asserted a claim for the surplus funds utilizing its affidavit of indebtedness. The trial court granted the first position's motion and Ms. Goetz, the owner, moved for rehearing alleging that first position had no right to surplus funds in the association's foreclosure and separately moved to assert a claim for the surplus funds. The 3rd party purchaser from the sale moved to intervene opposing Ms. Goetz's motions. The trial court granted the motion to intervene and denied both of Ms. Goetz's motions, which are the subject of this appeal. The 2nd DCA agreed with Ms. Goetz that the trial court erred in awarding surplus funds to the first position and reversed. Ms. Goetz is entitled to surplus funds pursuant to Fla. Stat. § 45.032, which provides a rebuttable presumption that the owner at the time of filing the *lis pendens* is entitled to surplus funds after paying any junior lienholders that made a claim for surplus funds.



Dorothy Dlugolecki
Chair

Family and Circuit Civil Mediator



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Martin County Bar Association Monthly Luncheon



Brian Beauchamp, Barb Cook,
Jordan Richardson, Daniel Sweeny



Thomas Zeichman, Brandon Woodward, Jay Connelly, David Miklas



Jeffrey Friedman, Hon. Aileen Conner, Adam Schwartz



Lisa Clasen, Maryann Diaz,
Laurel Hopper



Brandon Woodward, Carl Domino,
Bill Windrop



Frank Plunkett,
Betty Plunkett



Jason Berger, Hon. Rebecca White,
Aurora White, Sarah Baker



Maryann Diaz, Bill Windrop,
Rose Schneider, Oliveann Lancy



Jason Berger, Michael Donnelly, J. Henry Cartwright, Jane Cornett



Stephane Beauchamp, Bill Galle,
Jessica VanValkenburgh, Brian Beauchamp



Oliveann Lancy, Jack Sabel



Patrick Malone, Rose Schneider,
Jessica VanValkenburgh, Lisa Clasen

Real Estate and Commercial Litigation Update

Florida Real Property and Business Litigation Report

Manuel Farach



Manuel Farach
Chair

Reiterman v. Abid, Case No. 20-11025 (11th Cir. 2022).

Whether a contract has been rescinded - thereby rescinding the arbitration provision within the contract - is a matter of state law.

The Glynn Environmental Coalition, Inc. v. Sea Island Acquisition, LLC, Case No. 21-10676 (11th Cir. 2022).

An “aesthetic injury” due to environmental concerns is a sufficient concrete injury for Article III standing purposes, even if the complaining party has never visited the affected area.

In Re: Amendments to The Rules Regulating The Florida Bar—Biennial Petition, Case No. SC20-1467 (Fla. 2022).

The Florida Supreme Court amends the Rules Regulating The Florida Bar, including Rules: 1-3.2 (Membership Classifications); 1-3.6 (Delinquent Members); 1-3.8 (Right to Inventory); 1-7.3 (Membership Fees); 1-12.1 (Amendment to Rules; Authority; Notice; Procedures; Comments); 1-13.1 (Time); 3-5.2 (Emergency Suspension and Interim Probation or Interim Placement on the Inactive List for Incapacity Not Related to Misconduct); 3-6.1 (Generally); 3-7.1 (Confidentiality); 3-7.7 (Procedures Before Supreme Court of Florida); 4-1.5 (Fees and Costs for Legal Services); 4-1.10 (Imputation of Conflicts of Interest; General Rule); 4-1.14 (Client Under a Disability); 4-5.8 (Procedures for Lawyers Leaving Law Firms and Dissolution of Law Firms); 4-6.1 (Pro Bono Public Service); 4-7.13 (Deceptive and Inherently Misleading Advertisements); 4-7.18 (Direct Contact with Prospective Clients); 5-1.2 (Trust Accounting Records and Procedures); 7-1.3 (Administration); 7-1.4 (Definitions); 7-2.3 (Payments); 7-2.4 (Prerequisites to Payment); 7-2.5 (Claims Ordinarily Denied); 10-2.1 (Generally); 10-2.2 (Form Completion by a Nonlawyer); 10-6.3 (Recommendations and Disposition of Complaints); 10-7.2 (Proceedings for Indirect Criminal Contempt); 14-2.1 (Generally); 14-3.1

(Application Required); 20-5.1 (Generally); and 21-3.1 (Continuing Legal Education), as well as proposed new Bar Rule 6-3.14 (Sunset of Certification Areas).

Tribeca Asset Management, Inc. v. Ancla International, S.A., Case No. SC21-24 (Fla. 2022).

The language that “[t]his agreement will be governed by the laws of the State of Florida of the United States of America (USA), a jurisdiction accepted by the parties irrespective of the fact that the principal activity of the beer project will be conducted in Colombia” indicates a choice of law provision and not a forum selection clause.

Brown v. City of Gulf Breeze, Case No. 1D19-4245 (Fla. 1st DCA 2022).

Land owned by a municipality and used for recreational purposes (e.g., a municipal golf course) is not entitled to governmental exemption from ad valorem taxation when the municipality leases to a private, profit-making venture, i.e., governmental exemption from taxation cannot be used to shield profit-making ventures.

Hernandez v. CGI Windows and Doors, Inc., Case No. 3D20-1318 (Fla. 3d DCA 2022).

Pleadings cannot be entered into evidence absent a party manifesting an adoption or belief in the truth of the pleading, e.g., a sworn statement.

Impex Caribe Corp. v. Carl Levin, P.A., Case Nos. 3D20-1806, and 3D21-323 (Fla. 3d DCA 2022).

The fact that opposing counsel is board certified in the area of law in dispute does not eliminate the Quanstrom requirement for a trial court to find that the relevant market requires a contingency fee multiplier to obtain competent counsel.

Sheckler v. Monroe County, Case No. 3D21-0464 (Fla. 3d DCA 2022).

Paying a code enforcement lien does not moot a party’s right to further contest the lien if the payment was involuntary.

Continued On Next Page . . .

City of Miami Beach v. Cleavelander Ocean, L.P., Case No. 3D21-1345 (Fla. 3d DCA 2022).

Estoppel is designed to shield a property owner from enforcement of a subsequent regulation where the owner has received approval for and made substantial efforts to undertake a property use consistent with a prior regulation while balancing the community interest of maintaining the character of an area as established by comprehensive zoning plans and preventing one property from being damaged or diminished in value by the permitted use of an adjacent property.

Nemani v. Sachmechi, Case No. 3D21-1662 (Fla. 3d DCA 2022).

An award of attorney's fees under Florida Statute section 83.48 of the residential portion of the Florida Landlord Tenant act is discretionary and not mandatory.

Philip Morris USA, Inc. v. Naugle, Case Nos. 4D20-953 and 4D20-1287 (Fla. 4th DCA 2022).

The plain language of Florida Statute section 90.702 requires that *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), apply to expert testimony on attorney's fees and also that the trial court apply the gatekeeping function of *Kumho Tire Co., Ltd. v. Carmichael*, 572 U.S. 137 (1999).

Monroe County v. Ashbritt, Inc., Case No. 3D20-553 (Fla. 3d DCA 2022).

When the state has entered into a contract authorized by its powers under general law, sovereign immunity will not protect from damages for breach but does preclude recovery of the cost of extra work where claims for that extra work are "totally outside" the terms of the contract.

Sakowitz v. Waterside Townhomes Community Association, Inc., Case No. 3D21-1453 (Fla. 3d DCA 2022).

While general law holds that contracts must be accepted within a reasonable time, a time period of eighty-five days to accept a settlement offer is reasonable in light of the fact that the negotiations occurred during the pandemic.

West Bay Plaza Condominium Association, Inc. v. Sika Corporation, Case No. 3D21-1834 (Fla. 3d DCA 2022).

Non-signatories to a contract containing a forum

selection clause may be forced to comply with the forum selection clause when the claims arise directly from the contract.

Hallandale Plaza, LLC v. New Tropical Car Wash, LLC, Case No. 4D21-1445 (Fla. 4th DCA 2022).

The following lease provision requires the payment of "additional rent," and pursuant to Florida Statute section 83.22 deposit into the Registry of the Court if the tenant wishes to contest an eviction action for non-payment of rent:

Tenant shall pay, as additional Rent ("Additional Rent"), prorated for the part of the Lease Term within the applicable calendar year, Tenant's Percentage Share ("Tenant's Percentage Share"), as hereafter defined, of the total amount of (i) the annual operating expenses ("Operating Expenses"), as hereafter defined and (ii) the annual taxes ("Taxes") for the Building.

Herff v. Weston Properties, LLC, Case No. 4D21-2668 (Fla. 4th DCA 2022).

The act of renting a single residential property in Florida does not rise to the level of a general course of business activity to allow service on the Secretary of State under Florida Statute section 48.181(1).

NM Residential, LLC v. Prospect Park Development, LLC, Case No. 2D20-3012 (Fla. 2d DCA 2022).

A contract which purports to waive claims for fraud must specifically state that claims for fraud are being waived and not merely disclaimed.

Walsh v. Abate, Case No. 4D21-1463 (Fla. 4th DCA 2022).

Extensive electronic communications are not sufficient to comprise an enforceable contract that is subject to the Statute of Frauds, e.g., a contract for the sale of real estate.

Immigration Committee

Chair - Angela Castro

May Day Updates:

- The Committee has received just nine entries from Martin County fifth graders in this year's Celebrate America Creative Writing Contest. Unfortunately, no public school students entered the competition for 2022. The nine poems we collected will be added to the pool of 150 to 200 competitors from all across South Florida. The top three students and their teachers will be recognized and awarded cash prizes at a celebration with the South Florida Chapter of the American Immigration Lawyers Association later this month.

- The Biden administration granted Temporary Protected Status (TPS) last year to Venezuelans and Haitians, and in March this year, DHS Secretary Alejandro Mayorkas designated Ukraine and Afghanistan under the TPS Program. Foreign nationals already residing in the U.S. will be given relief from deportation or removal and are eligible to apply for TPS status and authorization to work lawfully after their applications are approved. Approximately 320,000 foreign nationals from 12 countries have TPS status, and this year, another 100,000 Afghans and Ukrainians will join them. The DHS Secretary in consultation with the Department of State, the National Security Council and, on occasion, the Department of Justice determines which countries will be designated for TPS due to ongoing armed conflict, environmental disaster or other extraordinary and temporary conditions. The protective period ends after 18 months, and DHS will determine 6 months prior to expiration whether or not that period will be extended for another 18 months.

- The 11th Circuit Court of Appeals has ruled that Florida's definition of marijuana is categorically overbroad, and thus does not qualify as a federal controlled substance offense. In a case in which the petitioner was applying for residency through cancellation of removal but was denied due to a conviction for marijuana possession during the 7 year period prior to his application, the Court explained that this was not a problem because "by the plain language of § 893.02(3), not all substances that it proscribes are federally

controlled. Section 893.02(3) includes "all parts" of the marijuana plant, while federal law does not. For instance, federal law does not include the mature stalks of the marijuana plant or fiber produced from such stalks. 21 U.S.C. § 802(16). This is a significant divergence, and on its own, is sufficient to establish a realistic probability of broader prosecution under Florida law. The implications for this holding are potentially extremely broad and will create paths to gaining immigration status for many immigrants charged with multiple marijuana possession or sale offenses that were later determined by DHS and immigration judges to be aggravated felonies and crimes involving moral turpitude. <https://media.ca11.uscourts.gov/opinions/pub/files/202112917.pdf>

- On 02/03/2022, H.R. 6577 - Real Courts, Rule of Law Act of 2022 was introduced by Rep. Zoe Lofgren (Chair of the House Subcommittee on Immigration and Citizenship). As the bill continues to move through the Judiciary and Budget Committees for consideration, its purpose is to create an Article 1 immigration court free from influence of the Executive Branch. Rep. Lofgren states, "A hallmark of our system of democracy and the rule of law is an independent judiciary. Our immigration court system will never be effective as long as it is housed under the Department of Justice. After decades of political whiplash, resulting from the ever-changing policies and priorities of the governing Administrations, it is clear that the system is ineffective, inflexible, and far too often, unfair. This structural overhaul will strengthen due process and restore faith in the system by taking politics out of the immigration courts for good." The Real Courts, Rule of Law Act of 2022 is supported by the American Bar Association, American Immigration Lawyers Association, Federal Bar Association, National Association of Immigration Judges, American Immigration Council, Bipartisan Policy Center Action, Human Rights First, Kids in Need of



Angela Castro
Chair

Continued On Next Page . . .

Defense, National Immigrant Justice Center, National Immigration Law Center, Niskanen Center, Women’s Refugee Commission and the MCBA Immigration Committee.

MCBA Members interested in chairing or joining this committee during the next term may contact Angelina Castro at ACastro@ACLawSolutions.com

- The Immigration Committee is always looking for fresh ideas, writers and leaders. Any



The Florida Bar Updates / Board of Governors’ Report

GREG WEISS - 19TH CIRCUIT BOG REPRESENTATIVE



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

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

19th Circuit Judicial Nominating Commission

The MCBA will continue to post updates on the 19th Circuit JNC Commission meetings and deadlines for appointments to fill judicial vacancies as they become available at www.martincountybar.org. For more information, email martincountybarassociation@msn.com

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

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IMPROVING CAREER OPPORTUNITIES FOR FLORIDA'S LAWYERS

By: Michael G. Tanner.

This article first appeared in the Florida Bar Journal Vol. 96, No. 2 March/April 2022 Pg 4

I recently spoke with a prominent “vintage” lawyer who described how his career developed the way it did. He said he now realizes that two simple advantages, early in his career, made all the difference in enabling him to flourish in our profession.

The first was the advantage of several talented mentors. In a few cases, these mentor relationships were formal; that is, he was “assigned” to each mentor at various times and told to rely on them as resources. But he said most of his mentor relationships were informal and sometimes temporary and indirect. Still, from all of these relationships, he was able to observe a variety of techniques, personal styles, and skills to solve the problems the practice of law presents every day. He said he learned very early that there is rarely only one right way to address a problem and that this lesson has taught him the great value of openness to other points of view.

This lawyer’s second key career advantage — which flowed directly from his mentor relationships — was the opportunity to work on a wide variety of legal matters. From this he was able to begin to build his “knowledge base” of a broad range of legal principles, an essential element in developing sound professional judgment.

Many of you reading this will recognize the arc of your own career.

But unfortunately, not every lawyer in Florida has had these advantages and, consequently, some of our colleagues have never fully developed their potential and never found the fulfillment in our profession that they might have found. Some of these lawyers have left the practice of law, and the data shows that this has occurred most often among women and minority lawyers

The reasons that some young lawyers receive these career advantages and others do not are varied. Sometimes, it’s because of biases (some conscious and some not); sometimes it’s because of differences in personality (enabling some young lawyers to more easily establish relationships and get better assignments); and sometimes it’s simply because of random circumstances. But whatever the reason, the loss to our profession from this unfulfilled potential should be obvious to us. The question is: What can we do about it?

One solution lies with the thousands of employers of Florida’s lawyers — private law firms, government agencies, and corporate law departments — because they have the power to ensure that, as much as possible, every young lawyer who enters our profession is given career development opportunities to help them succeed.



This year the Board of Governors has been working to address this issue through the Special Committee on Opportunity in the Practice of Law in Florida. The special committee was authorized by the board in May 2021 and was charged with the responsibility for developing recommendations “to increase opportunities in employment, leadership, and career development in private law firms, corporate law departments, and government agencies, and increase meaningful economic participation in private law firms for all Florida lawyers, regardless of gender, race, ethnicity, sexual orientation, or any factor other than merit.” Serving on the committee are lawyers with experience in large firms, small firms, and government agencies across Florida. Special committee recommendations or “best practices” for employers could include structured relationship programs, case assignment protocols, performance evaluations, and other career development templates that, if adopted and employed, will help every young lawyer develop to her or his fullest potential.

Certainly, these recommendations will be voluntary for employers of Florida’s lawyers, but hopefully the benefits of the recommendations will be so self-evident that employers will enthusiastically adopt them.

Some employers may look at the special committee’s recommendations through the lens of better training their lawyers; some may look through the lens of increasing diversity within our profession; while others may look through the lens of improving firm profitability. Each of these perspectives is valid, but ultimately, the goal of the special committee’s work is to improve our profession for the benefit of the public we serve. Watch for further reporting between now and June 2022 on this important work.

Lawyers have an obligation to ensure employees don't solicit clients, new ABA ethics opinion says

BY DAVID L. HUDSON JR.

Originally appeared in the ABA Journal, April 13, 2022

Attorneys not only must refrain from engaging in improper direct solicitation of potential clients, but there is also an ethical responsibility to ensure that employees or others hired by the lawyers do not engage in such misconduct, according to a new ethics opinion from the ABA's Standing Committee on Ethics and Professional Responsibility.

Formal Opinion 501, [released Wednesday](#), April 13, 2022 identifies that a solicitation under ABA Model Rule of Professional Conduct 7.3(a) is a communication initiated on or behalf of a lawyer or a law firm directed to a specific person that the lawyer knows or reasonably should know needs legal services. The rule permits such direct, face-to-face solicitation if the contacted person is a lawyer, a family member or a close friend or a person who routinely uses the types of services offered by the lawyer.

An ABA press release is here. (<https://www.americanbar.org/news/abanews/aba-news-archives/2022/04/aba-issues-guidance-on-live-person-lawyer-solicitation/>)

The opinion focuses on a lawyer's ethical responsibilities regarding third parties who solicit on behalf of the lawyer. Model Rule 8.4(a) provides that it is professional misconduct for a lawyer to knowingly assist or induce another to violate the rules—including engage in impermissible solicitation. The lawyer is subject to discipline under 8.4(a) if the lawyer knows of the third party's conduct or requests or authorizes it.

"It would be manifestly unfair and illogical to hold a lawyer responsible for another's actions that the lawyer does not even know about," according to the opinion.

Lawyers also can run afoul of Model Rule 5.3, which provides that lawyers generally are responsible for the ethical conduct of their employees—including nonlawyers. Under Model Rule 5.3, lawyers with supervisor authority "must discuss ethical rules with these employees," including the rule against solicitation in Model Rule 7.3. The opinion acknowledges that "what constitutes a prohibited 'solicitation' on behalf of the lawyer versus merely making a recommendation about the lawyer can be complicated."

The opinion gives four hypotheticals of solicitation and then explains whether they are permissible or impermissible. The first three include:

1. A lawyer obtaining a list from a local sheriff of people arrested and calling such people to offer legal series.
2. A lawyer hiring a professional lead generator to obtain client leads for mass tort cases.
3. A paralegal at a law firm, who doubles as a paramedic, directly soliciting accident victims on behalf of their law firm.

In all three of these scenarios, the lawyers violated the ABA Model Rules of Professional Conduct by either engaging in direct solicitation in violation of Model Rule 7.3(b), knowingly assisting another in violation of the rules under Model Rule 8.4(a), or failing to train nonlawyer legal assistants on ethical responsibilities under Model Rules 5.3(b) and 5.3(c).

The opinion, however, offers a fourth hypothetical of a lawyer asking a banker, who is a personal friend or colleague, to provide the lawyer's name and contact information to anyone that might need estate planning.

"Recommendations or referrals by third parties who are not employees of a lawyer and whose communications are not directed to make specific statements to particular potential clients on behalf of a lawyer do not constitute 'solicitations,'" according to the opinion.



Legal Resources / CLE

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

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



Current CLE Seminars Available Include the Following:

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

Save the Date

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

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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ONLINE RESOURCES OFFERED BY THE MCBA

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

Florida Online Traffic School Courses:

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

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

Parent Education and Family Stabilization Online Course:

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

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



Florida Free Legal Answers Program

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

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

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



Links, Jobs and Legislation

19th Judicial Circuit Court of Florida

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

www.circuit19.org

Emergency Hotline / Info: 772.742.9229

Visit

www.martincountybar.org

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



Florida Bar Appointments / Vacancies

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

19th Circuit Appointments / Vacancies

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

Track Legal Legislation

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

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



Martin County Ordinances

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

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

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

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



City of Stuart Ordinances

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

www.cityofstuart.us

Click on link at the bottom of the page.

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
<h1 style="color: blue;">May 2022</h1>						
1	2	3 JRC Speaker Series @ McCarthy Summers 11:45 a.m. MCBA Officers' Meeting	4	5 Cinco de Mayo	6 MCBA Luncheon @ Monarch CC (11:30am)	7 MCBA/Sobel Cup Golf Tournament @ Monarch GC MCWLA Yoga on the Beach
8	9 COLUMBUS DAY	10	11	12 Trial Lawyers Comm. Meeting via Zoom @ Noon	13 MCBA Annual Banquet @ Mariner Sands 6:30 p.m.	14
Mother's Day		17 MCWLA CLE Mtg. 11:45 a.m. via Zoom	18	19	20	21 MCBA Tennis Tournament @ Mariner Sands 10:00 a.m.
15	16		25	26	27	28
22	23	24				
29	30 Courthouse Closed Memorial Day	31	Happy Summer! See You August 19 th for the First CLE Luncheon of the 2022-23 Bar Year.			



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

Please join us for MCBA's CLE Monthly Meeting, Friday, May 6, 2022

- When: Friday, May 6, 2022
11:30 a.m. networking; 12:00 p.m. lunch
- Where: Monarch Country Club
1801 SW Monarch Club Drive, Palm City
- Menu: Spinach Salad with Mandarin Oranges, Pecans, Red Onion, Croutons and Dressing Selection; Rolls with Butter, Mojo Pulled Chicken, Mac & Cheese, Green Beans, Chocolate Mousse.
- Speaker: Honorable Charles A. Schwab, Chief Judge, 19th Judicial Circuit and Adam Schwartz, MCBA 2021-22 President
- CLE: Pending

RSVP to: martincountybarassociation@msn.com
No later than Friday, April 29, 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).