

NOVEMBER 2022



The SideBar

NEWSLETTER OF THE MARTIN COUNTY BAR ASSOCIATION

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JEFFREY FRIEDMAN*

BENCH BAR CONFERENCE

MCBA HOLIDAY MIXER & TOY DRIVE

*THE ELEMENTS OF A
MINDFULNESS PRACTICE*

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

THE SIDE BAR NEWSLETTER

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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 - Jeffrey M. Friedman, Esq.

Dear Members:

We hope you enjoyed our October luncheon speaker Florida Bar President, and MCBA member, Gary Lesser. It was an honor to have Mr. Lesser take time out of his busy schedule to speak to us.

In continuance of our mental health focus for the year and spotlight our community, this month's luncheon speaker is Laura Girlando, Director of Infant Mental Health for Tykes and Teens. Tykes & Teens has been a leading provider of the highest quality evidence-based mental health services and programs for children and adolescents for more than 25 years.

We have now reached November, and the holidays are upon us. It is a time to take a breath, spend time with friends and family, and reflect upon our lives. After witnessing the devastation from Hurricane Ian and how it impacted the lives of so many, we are reminded how fortunate we are. We should strive to do what we can to help those affected by Ian, and hope that life improves for our friends on the west coast.

November has a rich history. November's name has remained unchanged since the ancient Roman calendar, which was in use until 45 BC. Thanksgiving is celebrated on the fourth Thursday of November and has been celebrated since 1621. On November 3, 1957, the first spacecraft carrying a live passenger, Leika the dog, was successfully launched into space. President Abraham Lincoln delivered the Gettysburg Address at the consecration of the National Cemetery at the site of the Gettysburg battle on November 19, 1863. Lastly, for all of you animal lovers, November 1st is National Cook for Your Pets Day.



Jeffrey M. Friedman
2022-2023 President

We look forward to seeing everyone at the luncheon.

Sincerely,

Jeffrey M. Friedman
2022-2023 MCBA President

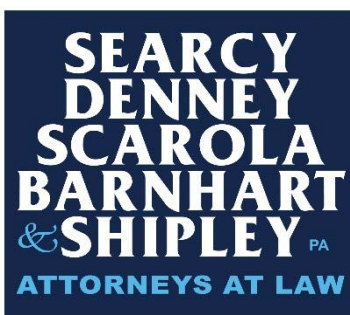


A warm welcome to our new Sponsors!
Thank you for supporting the MCBA.

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In this time of giving Thanks. . .



Thank you **Kevin Velasquez of Kreditme Videographer & Photography** for all of the luncheon and event photographs. If you need a photographer, call Kevin!

A huge debt of gratitude to **Kathy Enloe of Esquire Reporting** for her invaluable help with The SideBar.



Please Join Us!

The Martin County Bar Association will welcome Laura Girlando, M.Ed., LMHC – Director of Infant Mental Health at Tykes and Teens as the guest speaker at our monthly luncheon meeting on Friday, November 18, 2022 at Monarch Country Club. Networking begins at 11:30 a.m. and lunch will be served promptly at noon.

Laura Girlando is a Licensed Mental Health Counselor (LMHC) and Qualified Supervisor for Registered Master Level Interns in the State of Florida. Laura earned her Master of Education with a concentration in Clinical Mental Health Counseling from FAU in 2016. Laura is also certified in Child Parent Psychotherapy and Circle of Security. She is also trained in Eye-Movement Desensitization and Reprocessing (EMDR) and Perinatal Mental Health. Laura has been in the field of Infant Mental Health since 2016 and has overseen Tykes & Teens’ Infant Mental Health Program, as Director, since 2021.



In her role she is able to directly and indirectly support children birth to five and their primary parents in enhancing attachment, processing complex traumatic experiences impacting families, and support overall social-emotional development in an effort to prevent future life problems and build life-long resiliency. She is deeply honored to be a facilitator for growth and adversity: helping families heal through safe relationships.

Laura joined Tykes & Teens as a Master’s Level Student Intern in the Fall of 2015, became an Infant Mental Health therapist in the Spring of 2016, the Martin County Program Coordinator for Infant Mental Health in the Fall of 2018, and was promoted to Lead Program Coordinator in Fall of 2020, before becoming the Director of Infant Mental Health in 2021.

RSVP IS REQUIRED on or before 5:00 p.m. **FRIDAY, November 11, 2022** by calling 772-220-8018 or emailing martincountybarassociation@msn.com. There is no charge for paid MCBA members. Guests are welcome; a \$35 guest fee may be paid at the luncheon (cash or check only).

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

Help Make a Difference This Holiday Season!



During the Holidays, there is an increased need at local food banks. We will be collecting non-perishable food items for House of Hope at this month’s luncheon. Please consider donating as much as you can to make a difference in the lives of those less fortunate and the holidays a little happier.

A little goes a long way, so please contribute.

Welcome New and Returning Members

Mitchell Ira Kitroser

Kitroser and Associates

*Jensen Beach and North Palm Beach, FL
St. Johns University School of Law, 1982*

Susan A. Swanson

Swanson Law Office

*Grand Forks North Dakota and Stuart, FL
University of North Dakota Law School*

Jacob Scott Mayer

*19th Circuit Public Defender's Office
Ft. Pierce, FL*

Lauren K. Sweet

*St. Lucie County Public Schools
Port St. Lucie, FL*

Mario G. Menocal

*Block & Scarpa, Attorneys at Law
Stuart and Vero Beach, FL
University of Miami School of Law, 2012*

Katherine Van Bramer

*Cleary Gottlieb Steen & Hamilton LLP
New York, NY
Cornell Law School, 2019*

Edward Vincent Ricci

*Searcy Denney Scarola Barnhart & Shipley, P.A.
West Palm Beach, FL
Georgetown University Law Center, 2006*

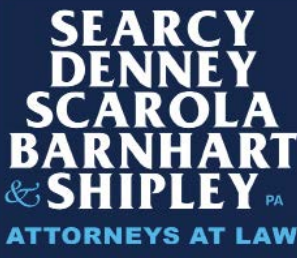
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is truth in action.”**

--Benjamin Disraeli



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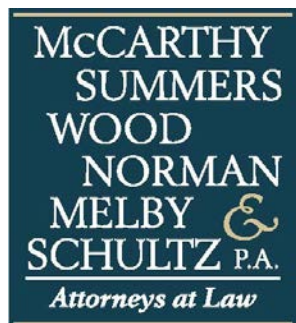
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TOM WARNER MCBA GATOR TAILGATE

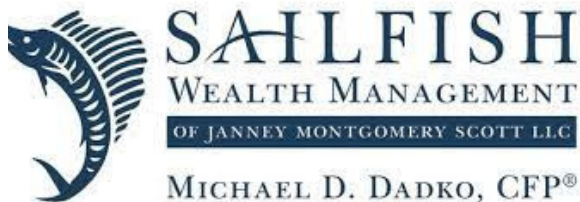
We had a great turnout for the 3rd Annual Tom Warner Gator Tailgate on Saturday, October 8, 2022!

We appreciate our Sponsors who step up every year and make this new tradition a huge success!

THANK YOUR SPONSORS!



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The Florida Bar Updates / Board of Governors' Report

GREG WEISS - 19TH CIRCUIT BOG REPRESENTATIVE



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

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

19th Circuit Judicial Nominating Commission

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

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MCBA Small and Solo Practice Committee

“Acknowledging the good that you already have in your life is the foundation for all abundance.” *Eckhart Tolle*



Kathy McHale
President

November is the month set aside to give thanks. We have a lot to be thankful for given the past couple of years of disruption in our lives and the recent devastation in Florida from Hurricane Ian and the fact that we are still here in our law practices. In our solo or small firm practices, we should take the time to say thanks. I love writing thank yous. I was raised to always send a thank you note, even for the smallest thing. I even send thank you notes for family gifts. I do not do it to receive one in return. But I love receiving them and save the special ones. I have a few on my refrigerator from some friends who are no longer with us. Saying thank you is a lost art. These days even a text of thanks would complete the task. So, when a colleague sends you a new client, acknowledge it with a short handwritten note or an email to say thank you. I keep a client tracker document that I update as to who sent the client and what the outcome was. It also contains when I send clients to colleagues and the outcome. That is the method that I use to make sure that I acknowledge the referral. Referrals are the best compliments that you can receive from colleagues as someone has confidence in your abilities to handle the matter. I have a challenge for you this month. You should catch up on those thank yous and think about sending a small token to your clients who are loyal to you. Remember that acknowledging the good truly is the foundation for all abundance.



PARALEGAL COMMITTEE

Pamela Lewis – Chair

We had a great meeting and discussion on September 28 despite the threat of the hurricane! George Kastrenakes discussed the spoliation of evidence and it was truly an informative meeting.

I am in need of speakers and topics for upcoming meetings. Judge McNicholas has agreed to speak for us again and I will try to get us a date in early December. With the holidays approaching so quickly it is getting tricky to arrange dates. Any input with regards to speakers and topics is very much appreciated.

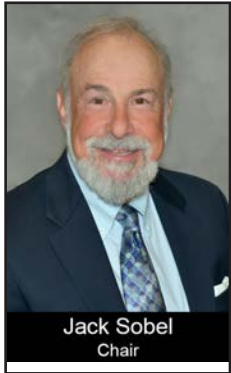


Pamela Lewis
Chair

MCBA Golf Tournament

Chair: Jack Sobel

Join the Golf Committee!



Jack Sobel
Chair

Here's a good opportunity for you to have some fun while doing something nice for local high school seniors. Join the Martin County Bar Association Golf Committee, or become a sponsor, and help plan and run the next Martin County Bar Association Golf Tournament, which funds scholarships awarded by the MCBA Scholarship Committee to three Martin County High School seniors at graduation ceremonies every spring.

The golf committee works with sponsors and local merchants to gather prizes for the players. The tournament is always a fun experience. We use the scramble format - while all four golfers on the team hit their shot, only the best one counts. The other three players simply pick up their ball and move it to the place where the best one lies.

No need to fret about an errant shot. This allows even inexperienced golfers to have fun enjoying a pretty

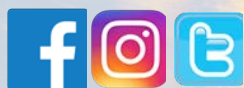
outdoor setting, and maybe compete for a trophy. This year, the gross division winners were Adam Less, Matthew Killough, E.R. Clark and Geoff McGowen and the net division winners were Robin Wally, Michael Peckham, Juan Asconape and Blake Swan. The biggest silent auction prize was a foursome at the exclusive Fisher Island Club (which is only accessible by boat).

The committee wants to thank this year's sponsors: Donaldson & Weston; Williams, Leininger & Cosby; R. Wayne Richter, Atlas|Solomon; Law Offices of Jason Berger; Yara Bashoor of Water Pointe Realty; Kathryn McHale; Treasure Coast Estate Buyers; Manatee Island Bar & Grill; and Ohle & Ohle. The tournament was started in 2003 and has become something of a tradition, while serving as one of MCBA's best fundraising events.

Become a sponsor or join the Golf Committee and be part of our next great tournament!

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

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Admiralty Committee

Barbara A. Kreitz Cook

Florida Bar Board Certified Admiralty & Maritime Law
MCBA Admiralty Committee Chair



Barbara A. Kreitz Cook
Chair

“Admiralty and Maritime Law” is the group of rules, concepts, and legal practices governing vessels, the shipping industry, the carrying of goods and passengers by water, and related maritime concepts. Admiralty and Maritime Law includes the substantive law and procedural rules associated with the General Maritime Law of the United States, i.e. the Maritime Law developed by courts rather than by statute.

reasons, have been recognized as distinctly different from our modern system of common law and have been traditionally grouped and practiced as “admiralty and maritime law.”

General Maritime Law provides common law remedies to any person who suffers an injury at sea, despite the fact that the individual is unable to file a claim under a federal statute. It includes the jurisdiction and procedure rules and statutes regarding personal injury and wrongful death of seamen and passengers aboard vessels, compensation for injury and wrongful death of longshoremen and harbor workers, government regulation of marine safety and the maritime industry, carriage of goods, charter parties, salvage, general average, collision, marine insurance, maritime liens, limitation of liability, marine pollution and environmental law, maritime arbitration, recreational vessels, vessel finance and documentation, international aspects of maritime practice as well as other maritime topics which, because of their special history, as well as for historical and practical

Added July 20, 1995 (658 So.2d 930); amended and effective Dec. 11, 1998 by the Board of Governors of The Florida Bar; amended and effective December 4, 2020 by The Florida Bar Board of Governors.



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Social Media Committee

Committee Co-Chairs: Jacob Mayer and Melissa Dean

Howdy-hello from your Co-Chairs, Melissa Dean and Jacob Mayer, for the MCBA's Social Media Committee! We pray that everyone and their families are safe after the craziness of hurricane Ian.

With a new year upon us, we are convinced you will have a great time as we journey together through the magic and adventure that this year has to offer. We encourage everyone to reach out with suggestions, upcoming events, or even just to say hi.

Our goal this year is to use social media to promote our legal community and highlight our wonderful Bar Association. Fun and excitement are on the horizon, and you do not want to miss it! The social media accounts will be up and running soon, so keep on the lookout for updates.

Stay safe, stay informed, and stay curious.

With gratitude,

Jacob Mayer and Melissa Dean

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Employment Law

David Miklas, Esq. – representing employers only

Real-world examples of employment law issues:

Let’s say an “upscale” senior living residence makes an offer of employment to a veteran who suffers from post-traumatic stress disorder (PTSD), conditioned upon a negative drug test.

During the interview, the applicant informs the interviewer of the applicant’s diagnosis of PTSD and being required to take legally-prescribed medications that would cause a drug test failure.

The applicant subsequently takes the drug test and receives a “non-negative” result.

A few days after taking the drug test, the applicant calls to check on the status of being hired and AGAIN informs the employer that the prescription medications would cause a drug test to fail.

The next day, the applicant’s job offer is revoked without explanation.

Do you think this is a problem?

Well, the federal government (EEOC) thinks yes, big problem, and they just announced that they are suing a Florida business for violating the Americans with Disabilities Act (ADA).

Employers are reminded that if they chose to drug test applicants, it is critical they utilize the results in compliance with federal anti-discrimination laws.

Example #2: Some heavy jobs are more appropriate for men, right? Other jobs, like

folding and sorting laundry are more suited for women, right?

Let’s say a commercial laundry facility that serves the hospitality industry felt this way. Maybe they wanted to hire strong men to push around heavy carts full of laundry and they would hire women to fold and sort the laundry.

Let’s say the employer used a staffing company and requested only female applicants for certain “light” job positions, and only male applicants for “heavy” job positions. The staffing company didn’t want to upset this big client so they agreed and recruited and referred applicants based solely on their sex.

Problem?

Well, those are the allegations that were announced recently by the EEOC in a new discrimination lawsuit they filed.

Oh yeah, staffing agencies and employers will be deemed to have a dual-employer relationship, which is why both the company AND the staffing agency are being sued!

This is no different than a business telling a staffing company to not refer any Black people. Illegal discrimination.



David Miklas
Chair

NEED HELP?

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

The Florida Bar Helpline

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

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Appellate Committee

THE ONLY CONSTANT IS CHANGE

By Carri S. Leininger, Esq.

The Florida Supreme Court continues its zealous pursuit of clarity through amendments to the rules. On August 25, 2022, the court released two opinions with each opinion amending two rules (that's 4 amended rules for those of you struggling with the math).

The court amended Florida Rule of Civil Procedure 1.530 and Florida Family Law Rule of Procedure 12.530 to require a motion for rehearing before challenging on appeal "the sufficiency of a trial court's findings in the final judgment." *In re: Amends. to Fla. Rule of Civil Procedure 1.530 & Fla. Fam. Law Rule of Procedure 12.530, No. SC22-756*, (Fla. Aug. 25, 2022) Under this rule change, when a circuit court enters a final judgment that is required to include specific findings, a trial counsel's failure to move for rehearing will be fatal to appellate review.

Prior to this amendment, cases within the Fourth DCA's jurisdiction were governed by *Fox v. Fox*, 262 So.3d 789 (Fla. 4th DCA 2018), which was an en banc decision. In a split decision, the Fourth DCA held that the rules did not require a party to file a motion for rehearing challenging the court's lack of sufficient findings of fact.

The amendment is effective immediately and gives the public 75 days to submit comments to the court.

The court also amended Florida Rules of Civil Procedure 1.530 and 1.535 which govern motions for rehearing and motions for remittitur and additur. *In re Amends to Fla. Rule of civil*

Procedure 1.530 and 1.535, No. SC22-115 (Fla. August 25, 2022). This change morphs the two rules into one and clarifies when the motions must be filed. The New Rule is titled "RULE 1.530. **MOTIONS FOR NEW TRIAL AND REHEARING; AMENDMENTS OF JUDGMENTS; REMITTITUR OR ADDITUR**". Rule 1.535 is now deleted. The amendments became effective October 1, 2022.

Rule 1.530(d) has also been changed to clarify when the deadline for when the court, on its own initiative, may order a new trial or rehearing. The new rule provides that the deadline is "15 days from the date of filing of the judgment". The previous rule counted days from "entry of the judgment." The word "entry" can be ambiguous whereas the word "filing" more clearly points to the date the judgment is filed.

Do not be confused, this new amendment did not change the deadline for a party to file a motion for new trial or rehearing. Subsection (b) provides that a motion for rehearing or new trial be served not later than 15 days after return of the verdict or date of filing of a judgment in a non-jury action.

We are becoming accustomed to the supreme court's amendments and wonder if they are taking suggestions?



Carri Leininger
Chair

Veterans Day, November 11, 2022

"Our debt to the heroic men and valiant women in the service of our country can never be repaid. They have earned our undying gratitude." Harry S. Truman



Kudos to **Brandon Woodward**, managing partner of Woodward, Kelley, Fulton & Kaplan on becoming the Chair of the 19th Circuit Grievance Committee.

Sponsor Spotlight

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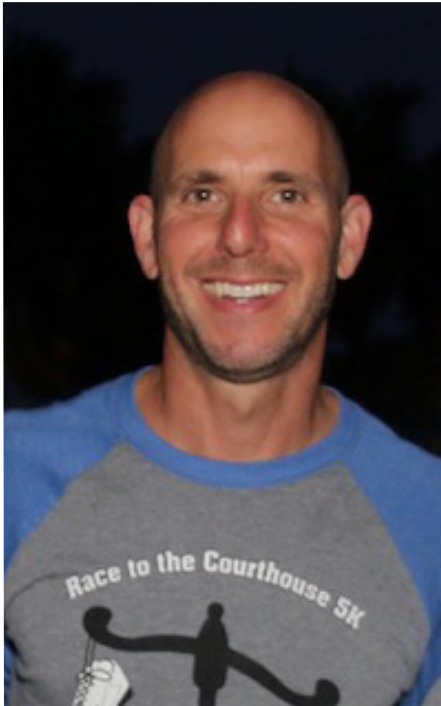
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MARTIN COUNTY BAR ASSOCIATION RACE TO THE COURTHOUSE



We are excited to announce that the 6th Annual Race to the Courthouse 5k Run/Walk will be held on Saturday, April 22, 2023. We are looking forward to another great race. This race benefits the Legal Aid Society of Martin County and the Martin County Bar Association Scholarship Fund.

Please come out and run or walk with us around beautiful downtown Stuart...everyone is welcome!

We will also be having our competition for fastest law firm and largest law firm (so recruit away!). We will also have an award to the fastest male and female judges. If you are interested in sponsoring, volunteering, or helping out with the race committee, please email Gene Zweben at gene@zwebenlawgroup.com.

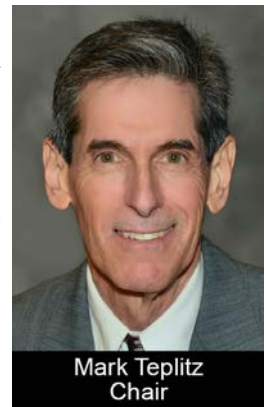
Camping Weekend

Join your fellow Martin County Bar Association members (lawyers, judges, and associates) and their families for a fun weekend getaway at Sebastian State Park Marina camping trip in late February 2023.

This weekend activity has been a tradition enjoyed by our members for over 20 years, the last 3 years (not counting Covid cancellation) at Sebastian State Park Marina, just a little under 2 hours up the coast. We have exclusive use of the park.

Bring your tents and sleeping bags. Teach you kids (or yourself) the great outdoors, camping, cooking, and campfire stories. Enjoy eco tour of the river on kayaks (or pontoon boat if available). The ocean is just across the road if that's more your taste. Campers arrive Friday late afternoon (but you can also arrive Saturday, your choice). The Bar Association will provide Saturday night dinner and, along with Judge Roby's famous crepes, Sunday morning breakfast. Plan on checking off "conviviality" from your to-do list.

Last year's camp trip was cancelled because we did not have enough campers signed up. Please let the Association know by early November if you will participate. More details to follow then. The cost will be determined based on sponsorship and activities. It is usually about \$75 per couple, additional fee for extra persons.



Mark Teplitz
Chair

Gator Tailgate, October 8, 2022

Thank you to everyone who made the trip to Gainesville. No tailgate is complete without great food and beverages. Both were plentiful and available before and after the game. In addition to all the MCBA members and their families, we were honored to have UF Law Dean, Laura Ann Rosenbury, Mike Farley, UF Law Senior Director of Development & Alumni Affairs and James C. Cunningham, Jr., Immediate Past Chair, UF Law Board of Trustees as well as our local State Senator, Gayle Harrell, stop by to say hello. To see more photos, go to www.martincountybar.org.



We would like to recognize the following firms for reaching 100% Club.

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Wills, Trusts & Estates

Lisa Clasen- Chair

As I am writing this, the news is heavy with heartbreak and devastation as a result of Hurricane Ian and its destruction. It is difficult to reconcile my own gratitude and gratefulness for the blessings in my life while others are so heartbroken with loss and grief. A comment by one news anchor has stuck with me: "Sometimes the worst of Mother Nature brings out the best in human nature." I am seeing the best in human nature all across the country coming to the aid in one form or another for the victims of this horrible storm. My thoughts are with all those affected by this tragedy.

Thank you to all who attended the first meeting of the Wills, Trusts and Estates Committee meeting in September. I received several positive comments and feedback from attendees along with suggestions for future meetings, which I am working to employ. So much helpful and useful information was shared, and a special thank you to Todd Thurlow, who shared insights he gleaned from the RPPTL Section committee meetings


about what might appear in upcoming legislative sessions. During the meeting we had many instances of members helping members with questions and specific scenarios. Some of those questions centered around planning for homestead and the use of ladybird deeds as well as obligations to inform clients about long-term care in skilled nursing facilities, subjects that enter our everyday planning processes. This roundtable discussion was enlightening and entertaining and provided an opportunity for us to become acquainted with our colleagues. There were many offers to be available for questions and assistance. Thank you! Looking forward to seeing everyone again soon!



Lisa Clasen
Chair

Lisa Clasen

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Martin County Women Lawyer's Association

Abby Spears: MCWLA President 2022 - 23



Martin County
MCWLA
Women Lawyers Association

The **Martin County Women Lawyer's 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.

LUNCHEON AT BERRY FRESH CAFÉ (Stuart)

“Women, Wealth & Well Being”
with Jennifer Taboada, VP BlackRock

Wednesday, November 9, 2022
11:45 a.m. networking
12:00 p.m. presentation
RSVP to fawlmartin@gmail.com

HURRICANE IAN POSTPONES JUDICIAL RECEPTION
The MCWLA Judicial Reception set for September 29, 2022, fell victim to Hurricane Ian's path. The Reception will be rescheduled, keep an eye on your inbox for more details.

HAPPY HOLIDAYS FROM MCWLA!

Please join us for a holiday celebration. Details coming soon. Keep an eye on your inbox for details.

BECOME A MEMBER OF MCWLA TODAY! To join or renew your membership, visit www.fawl.org. Contact our Membership Director, Davina Tala, at dt@talalegal.com with any membership questions.

CONNECT WITH US ON FACEBOOK: [@MartinCountyWomenLawyersAssociation](https://www.facebook.com/MartinCountyWomenLawyersAssociation)
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Real Estate and Commercial Litigation Update

Florida Real Property and Business Litigation Report

Manuel Farach

Spring Valley Produce, Inc. v. Forrest (In Re: Forrest), Case No. 21-12133 (11th Cir. 2022).

The Eleventh Circuit holds a debtor is acting in a “fiduciary capacity” under 11 U.S.C. § 523(a) (4) only when there is a “trustee” who holds an identifiable trust res for the benefit of an identifiable beneficiary or beneficiaries, there are sufficient trust-like duties imposed on the trustee with respect to the trust res and beneficiaries sufficient to create a “technical” trust, and the debtor acted in a fiduciary capacity before the act of fraud or defalcation creating the debt.

Arrington v. Burger King Worldwide, Inc., Case No. 20-13561 (11th Cir. 2022).

An agreement between different restaurant franchisees to not hire each other’s employees is “concerted action” under the Sherman Antitrust Act and violates Section 1 of the Act.

Hunstein v. Preferred Collection and Management Services, Inc., Case No. 19-14434 (11th Cir. 2022) (en banc).

A plaintiff claiming harm from a statutory violation has to demonstrate the harm is “real” and concrete in order satisfy Article III standing requirements, and it is acceptable to compare the statutory harm to a common-law tort. A creditor sending financial information to a third-party vendor is analogous to the tort of public disclosure, but such claim fails because the information was not disclosed to the public.

In Re: Amendments To The Florida Evidence Code, Case No. SC22-1040 (Fla 2022).

The Florida Supreme Court adopts Florida Statute section 90.2035 (judicial notice may be taken of information from web mapping services, global satellite imaging sites, or Internet mapping tools) to the extent it is procedural.

CFLB Partnership, LLC v. Diamond Blue International, Inc., Case Nos. Nos. 3D21-1335 & 3D21-1639 (Fla. 3d DCA 2022).

A claim for unjust enrichment requires that a direct benefit be given to a party, and money given to a defendant entity which then loans the

money to a different third entity is an indirect benefit incapable of sustaining a claim for unjust enrichment.

Metnick v. Right of the Dot, LLC, Case No. 3D22-156 (Fla. 3d DCA 2022).

Florida Statute section 49.011 does not permit service by publication of lawsuits seeking money damages.



Manuel Farach
Chair

GCTC Holdings, LLC v. Tag QSR, LLC, Case No. 2D21-3457 (Fla. 2d DCA 2022).

A trial judge deciding a landlord-tenant case who is presented with an objection to defendant’s request for production of landlord’s rent roll for other tenants must conduct an in camera review of the discovery to see if it contains trade secrets, and must issue findings of fact on their decision.

Mikhaylov v. Bilzin Sumberg Baena Price & Axelrod LLP, Case No. 3D20-1627 (Fla. 3d DCA 2022).

The bankruptcy of a real estate project is not “underlying litigation” that must be resolved before a cause of action for transactional malpractice accrues.

Belvant v. Cohen, Case No. 3D21-862 (Fla. 3d DCA 2022).

A party seeking a fee award under Florida Statute section 78.20 (replevin) must prevail on the underlying replevin action and not just on vacating the writ of replevin; conflict certified with First District Court of Appeal.

Eclectic Synergy, LLC v. Seredin, Case No. 4D21-1701 (Fla. 4th DCA 2022).

Proposing additional non-material terms to a contract does not constitute violation of a court order to negotiate in good faith and does not entitle a trial court to dismiss a party’s pleadings as a sanction.

Continued On Next Page . . .

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Brevard County v. Waters Mark Development Enterprises, LC, Case No. 5D21-1809 (Fla. 5th DCA 2022).

A Bert J. Harris claim does not lie against a county when the inability to develop the property is also due to the failure of another governmental agency to issue a development permit.

Levitan v. Dancaescu, Case No. 1D21-806 (Fla. 1st DCA 2022).

Unless fraud is specifically disclaimed, a general contractual waiver of claims does not waive fraud claims.

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

The First District holds on rehearing that a personal property lien on a mobile home which is not timely perfected (either in fact or as a matter of law) is extinguished by foreclosure of a real property mortgage of the land on which the home sits when the mobile home is affixed to the land and becomes a fixture.

Pops Family Entertainment Center, Ltd. v. Kelly, Case 2D21-17 (Fla. 2d DCA 2022).

The Doctrine of Merger is controlled by the intent of the parties, and under the contracts and circumstances of this case, no merger occurred of a lease and the fee simple estate when a tenant exercised its right of first refusal under the lease.

Santana Equestrian Private Financial, LLC v. Richtmyer, Case No. 4D21-3363 (Fla. 4th DCA 2022).

A merchant entrusted with goods who then, without the consent of the entruster, sells the goods to a third-party bona fide purchaser conveys good title to the goods under Florida Statute section 672.403 notwithstanding the merchant himself did not have good title to the goods.

Feldman v. Schocket, Case No. 3D21-1509 (Fla. 3d DCA 2022).

Failure to comply with the fair disclosure requirement of Florida Statute section 732.702(2) (waiver of homestead rights after marriage requires a fair disclosure of the estate of the non-waiving party) nullifies the waiver.

Trombino v. Echeverria, Case No. 4D21-3525 (Fla. 4th DCA 2022).

The general rule that courts cannot place restrictions on disposition of real estate sale proceeds prior to the entry of judgment against a defendant is not changed by either Florida Statute section 69.031(1) (a court may order the personal property of an “estate in process of administration” to be placed with a “bank, trust company, or savings and loan association” for cause) or section 736.1001(2)(c) (a court may order a trustee, as a remedy for a breach of trust, to pay money or otherwise restore the assets of a trust).

Smith v. Carlton, Case Nos. 5D21-1383 and 5D21-2174 (Fla. 5th DCA 2022).

A party does not necessarily waive claims for breach of portions of a real estate sales contract by proceeding to closing; waiver is a fact-specific determination in each case.



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THE FOCUSED ATTENTION PRACTICE

Begin by bringing yourself into a comfortable posture, lower or close your eyes, and:

- 3. Rest attention on the sensations of the breath with the intention to remain attentive to the breath (or another object of attention you may select),
- 4. Notice the sensations of breathing (or the subtleties of the object you've selected),
- 5. When you detect mind wandering, return to the sensations of the breath (to the object).

This classic practice has been found to help improve focus, reduce mind wandering, regulate emotions, improve sleep, manage impulses, and improve working memory. It can help us to navigate our interior to bring clarity and calm out of moments of confusion and conflict. And, in so doing, it can help us to bring a greater measure of clarity and calm into the environments in which we work and live.

If you are interested in a humorous and thoughtful look at some reasons to practice mindfulness and take another look at the focused attention practice, watch Dan Harris's 15-minute Nightline segment on

his exploration of mindfulness, or as he refers to it, [The Long Journey to Become 10% Happier](#).

If you have a question about mindfulness and integrating it into the practice of law that you would like answered in this column, send it to srogers@law.miami.edu.

Scott Rogers, M.S., J.D., is a nationally recognized leader in the area of mindfulness in law and founded and directs the University of Miami School of Law's Mindfulness in Law Program where he teaches mindful ethics, mindful leadership, and mindfulness in law. He is the creator of Jurisight, one of the first CLE programs in the country to integrate mindfulness and neuroscience and conducts workshops and presentations on the role of mindfulness in legal education and across the legal profession. He is author of the recently released, "The Elements of Mindfulness."



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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

Current CLE Seminars Available Include the Following:

- **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.
- **MCBA Monthly Meeting - September 19, 2022.** Valid through 3/31/2024; Speaker: Carolyn Timmann, Martin County Clerk of Circuit Court and Comptroller. Topic: Technology Enhancements and Updates. Credits: 1.0 General; 1.0 Technology



Presents

TWELVE ANGRY MEN

By Reginald Rose

Directed by J. Barry Lewis

December 9 – 24, 2022

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Tuesday, December 13, 2022 •

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ONLINE RESOURCES OFFERED BY THE MCBA

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

Florida Online Traffic School Courses:

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

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

Parent Education and Family Stabilization Online Course:

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

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



Florida Free Legal Answers Program

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

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

Florida lawyers may enroll to join the effort by visiting [clicking on "Volunteer Attorney Registration"](#) and agreeing to the attorney agreement.

Links, Jobs and Legislation



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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>November 2022</h1>						
		1 SideBar Articles Due Networking Happy Hour 5:00 p.m. @ The Hangar	2	3	4 19 th Circuit Bench Bar Conference	5
6 Daylight Saving Time Ends	7	8 Election Day	9 MCWLA Luncheon 11:45 am @ Berry Fresh	10	11 Veterans Day Courthouse Closed RSVP DEADLINE FOR 11/18 LUNCH	12
13	14	15 MCBA Officers' Meeting	16	17	18 MCBA Luncheon @ Monarch CC (11:30am)	19
20	21	22	23	24 Thanksgiving Day Courthouse Closed	25 Day After Thanksgiving Courthouse Closed	26
27	28	29	30	SAVE THE DATES: See www.martincountybar.org for full 2022-23 calendar including committee meetings, holidays & courthouse closings. Nov 23 – 27: Martin County Schools Thanksgiving Break		



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

Please join us for MCBA's CLE Monthly Meeting, Friday, November 18, 2022

When: Friday, November 18, 2022
11:30 a.m. networking; 12:00 p.m. lunch

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

Menu: Grilled Marinated Pork Chops topped with Apple Sauce, Blue Cheese Crumbles (on the side), Mashed Potatoes, and Broccoli. Rolls with Butter; Berry Cobbler with Whipped Cream

Speaker: Laura Girlando, Director of Infant Mental Health, Tykes and Teens

CLE: 1.0 General CLE Credit
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RSVP to: martincountybarassociation@msn.com
No later than Friday, November 11, 2022

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

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