

APRIL 2023



The SideBar

NEWSLETTER OF THE MARTIN COUNTY BAR ASSOCIATION

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THE SIDE BAR NEWSLETTER

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If you have an article, opinion, news or other information for publication in the *SideBar*, please call (772) 220-8018 or email information to: martincountybarassociation@msn.com

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 March luncheon speaker, Psychologist, Kristie DeBlasio, Ph.D. Dr. DeBlasio provided very helpful information on mental health and strategies on how to cope with mental health issues. We appreciate her work with The Florida Bar's Mental Health and Wellness Center, which confidentially assists attorneys with mental health issues. If you or a colleague is suffering from mental health issues, please call the Florida Lawyers Helpline at 833-351-9355, where you can confidentially speak with a mental health counselor.

This month's luncheon speaker will be Peggy Hewitt with Florida Mutual Insurance Company, who will be speaking about legal malpractice. Ms. Hewitt will be discussing how to understand from where and why legal malpractice claims happen, and how to take proactive steps to reduce the likelihood a claim will be successfully made against you.

April is upon us. Flowers have started blooming, leaves have begun growing on trees and we are starting to see a warm-up after our cold winter. April Fools! This is Florida. We have this all year. There is plenty of historical significance to

April. The first battle of the Revolutionary War, at Lexington and Concord, broke out on April 19, 1775. George Washington was inaugurated as the First President of the United States on April 30, 1789. On April 15, 1912, the famous Titanic ship hit an iceberg and sunk on her first and only voyage. After a 1,500-year break, the first Olympics of the modern era took place on April 6, 1896, in Athens.



Thanks for reading our Sidebar. We look forward to seeing everyone at the luncheon.

Sincerely,

Jeffrey M. Friedman
2022-2023 MCBA President

Welcome New and Returning Members

Kate Elizabeth Bradford

Ross Earle Bonan Ensor & Carrigan, P.A.
Stuart, FL
Stetson University College of Law, 2006

Tulio Gerardo Suarez

Devore Law Group, P.A.
Palm Beach Gardens, FL
George Washington University Law School, 1995



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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Please Join Us!

Join us on Friday, April 21, 2023

On Friday, April 21, 2023, the Executive Board of the Martin County Bar Association invites its members and guests to join us for our monthly CLE luncheon meeting at Monarch Golf Club in Palm City. **Networking begins at 11:30 a.m. and lunch will be served promptly at noon.**

We are excited to welcome Margaret “Peggy” Hewitt of Florida Lawyers Mutual Insurance Company who will discuss Legal Malpractice. Before coming to Florida Lawyers Mutual Insurance Company in May 2020, Ms. Hewitt was a 22+ year partner of Jones, Hurley & Hand, P.A., and was designated an “AV” Peer Review Rated Lawyer for nearly 25 years. Before joining JH&H, Ms. Hewitt’s career included nearly eight years as in-house litigation counsel for the Walt Disney Company, three years as Assistant General Counsel for the Sheriff of Orange County, and seven years as an Assistant State Attorney for the 9th Judicial Circuit. Peggy has spent the majority of her career litigating premises and product liability, employment and labor, and workers’ compensation claims on behalf of her self-insured and high retention clients. She has conducted more than 120 jury trials, and represented clients in hundreds of bench trials, administrative hearings, and appeals. Ms. Hewitt has created an extensive library of articles and advisories for legal and risk management publications; her Florida Bar CLE manuals and presentations include “Trying a Difficult Liability Case in Florida.” She has been an accredited CEU presenter for the Florida Department of Finance since 2002 and has presented legal topics at the ABA Annual Conference and numerous NRRDA National Conferences. She has been a guest instructor for three successive semesters at Barry Law in the Trial Advocacy Program, and most recently taught a class regarding Risk Containment at Stetson College of Law in the Law Office Management Program. Peggy was raised in Florida and earned both her BA and JD from the University of Florida.



Margaret “Peggy”
Hewitt

We look forward to an insightful and engaging program with another great turnout.

RSVP IS REQUIRED on or before 5:00 p.m. **FRIDAY, April 14, 2023** 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.**

FLORIDA BAR BOARD OF GOVERNORS TO MAKE MAY APPOINTMENTS

The Florida Bar Board of Governors is seeking applicants for the following vacancies to be filled during the May 12, 2023. Lawyer applicants must be members of The Florida Bar and in good standing.

ABA House of Delegates: Two attorneys to serve two-year terms commencing August 2023, at the conclusion of the ABA Annual Meeting. *Applicants must also be ABA members.*

Florida Lawyers Assistance, Inc. Board of Directors: Four attorneys and one non-attorney to serve three-year terms commencing July 1, 2023. This 15-member Board assists the legal community in securing counseling and treatment for emotional and chemical dependency problems for lawyers.

Florida Legal Services, Inc. Board of Directors: One attorney to serve a three-year term commencing July 1, 2023. This 15-member board provides judicial advocacy through co-counseling with local program attorneys and volunteer pro bono attorneys and provides legislative and administrative advocacy on policies impacting the legal rights of the poor, as well as providing civil legal assistance to indigent persons who would not otherwise have the means to obtain a lawyer.

Persons interested in applying for these vacancies may [download the Application for Special Appointment](#) or call Bar headquarters at 850-561-3127, to obtain the application form. Completed applications must be received by the Executive Director, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida, 32399-2300 or submitted via email no later than the close of business on Friday, April 14, 2023. Resumes will not be accepted in lieu of the required application. The Board of Governors will review all applications and may request telephone or personal interviews.

YOUR LOCAL ELDER AND SPECIAL NEEDS LAW ATTORNEY

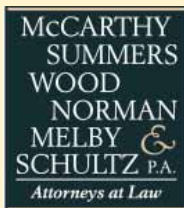


- Elder Law*
- Special Needs Trusts*
- Medicaid Planning and Applications*
- Long Term Care Planning*
- Estate Planning*
- Wills & Trusts*
- Probate and Guardianship*



Nicola J. Melby
 Certified Elder Law Attorney By the
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 and The Florida Bar
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MCBA Sobel Cup

GOLF TOURNAMENT

Supporting the MCBA Scholarship Fund

SATURDAY, MAY 13, 2023

LOST LAKE GOLF CLUB
Hobe Sound, FL
8:30 a.m. Shotgun
Scramble Format



\$150 per golfer or
\$500 per foursome
Includes: Breakfast,
Lunch & Awards

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Hole Sponsors

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MCBA Sobel Cup Golf Tournament

Benefitting the MCBA Scholarship Fund

Sponsorship Opportunities



Gold Sponsor - \$1500

1 Available

- Includes Foursome (\$500 value)
- Logo in all print advertising and social media posts relating to tournament
- Signage at tournament
- Logo with hyperlink on MCBA website
- Recognition at Luncheons leading up to event
- Full-page ad in 1 issue of The SideBar

Luncheon Sponsor - \$750

1 Available

- Includes entry fee - 2 golfers (\$250 value)
- Logo in all print advertising and social media posts relating to tournament
- Signage and Recognition at Lunch
- Logo with hyperlink on MCBA website
- Recognition at Luncheons leading up to event
- Half-page ad in 1 issue of The SideBar

Cart Sponsor - \$500

1 Available

- Logo displayed on all golf carts used for event
- Logo in all print advertising and social media posts relating to tournament
- Logo with hyperlink on MCBA website
- Recognition at Luncheons leading up to event
- Quarter-page ad in 1 issue of The SideBar

Scorecard Sponsor - \$500

1 Available

- Logo displayed on all scorecard used for event
- Logo in all print advertising and social media posts relating to tournament
- Logo with hyperlink on MCBA website
- Recognition at Luncheons leading up to event
- Quarter-page ad in 1 issue of The SideBar

Beverage Cart Sponsor - \$500

1 Available

- Logo displayed on beverage cart used for event
- Logo in all print advertising and social media posts relating to tournament
- Logo with hyperlink on MCBA website
- Recognition at Luncheons leading up to event
- Quarter-page ad in 1 issue of The SideBar

Breakfast Sponsor - \$300

1 Available

- Signage and Recognition at Breakfast
- Logo in all print advertising and social media posts relating to tournament
- Logo with hyperlink on MCBA website
- Recognition at Luncheons leading up to event
- Business Card size ad in 1 issue of The SideBar

Gift Bag Sponsor - \$300

1 Available

- Logo on each gift bag
- Logo in all print advertising and social media posts relating to tournament
- Logo with hyperlink on MCBA website
- Recognition at Luncheons leading up to event
- Business Card size ad in 1 issue of The SideBar

Hole Sponsor - \$200 per hole

One sponsor per hole

- Signage at tee box
- Listing in all print advertising and social media posts relating to tournament
- Listing on MCBA website

Only 16 Remaining

To Sponsor or for Information contact: Robyn O'Heron at
martincountybarassociation@msn.com or 772-382-9076

Foreclosure Committee

Overture Realty, LLC v. City of Madeira Beach - order to show cause

in the City's amended complaint to foreclose unpaid liens, they sought an order to show cause pursuant to Fla. Stat. § 702.10(1). The trial court entered an order to show cause and set a hearing. Overture moved to dismiss and filed a verified answer challenging the liens and their amounts pursuant to Fla. Stat. § 702.10(1)(b). The trial court entered summary judgment in favor of the City and Overture appealed. The 2nd DCA reversed and remanded the case finding that Overture's challenge to the liens created a genuine issue of material fact that should have precluded the trial court from granting summary judgment. The Court agreed with Overture that Fla. Stat. § 702.10 provides an expedited process to foreclose when the case is uncontested.

Sutton v. Wilmington Trust - motion to vacate sale

In this case, the borrowers consented to final judgment with an extended sale date. Before the sale, Sutton and Wilmington separately moved to postpone the sale to allow Sutton to refinance. Hearings were not set on the motions and the trial court never entered orders on either motion. The property went to a foreclosure sale where a third-party was the successful bidder. Sutton moved to vacate the sale alleging miscommunication issues because she thought Wilmington obtained an order postponing the sale. The trial court denied the motion finding Sutton failed to establish fraud or irregularity in the sale. The 3rd DCA reversed and remanded for reconsideration of Sutton's allegations and proof of equitable grounds to vacate the sale. The Court provided the standard is not only a showing of irregularity at the sale and further expanded on case law supporting a proper showing of equitable grounds could support relief from a sale.

Schmidt and Schmidt Farms v. JJTB, Inc. - subject matter jurisdiction

In 2011, JJTB filed a foreclosure against Schmidt in Hillsborough County and the trial court entered an order denying a foreclosure judgment in 2015 for failure to prove a default. JJTB appealed the order which resulted in a PCA from the 2nd DCA. In 2016, JJTB filed a new foreclosure against

Schmidt in Polk County and the trial court entered summary judgment against JJTB finding the claims were time barred by the SOL. Citing the Polk County holding that a new cause of action was barred, JJTB obtained leave to amend its complaint in the Hillsborough County case to allege a cause



Dorothy Dlugolecki
Chair

of action on the note and a cause of action for new and separate defaults. Schmidt moved to dismiss the amended complaint and the trial court dismissed only the claim on the note. The trial court subsequently entered a final judgment against Schmidt and awarded JJTB attorneys' fees and costs. Schmidt appealed alleging the trial court lacked subject matter jurisdiction and JJTB argued Schmidt waived any objection by not raising this issue until moving for rehearing. The 2nd DCA found the 2015 final order denying a foreclosure judgment did not reserve jurisdiction, the mandate from the previous PCA appeal did not authorize any amendments, and the trial court never amended or vacated its 2015 order. The Court agreed with Schmidt reversing both the final judgment and order awarding fees based on the trial court lacking jurisdiction and certified conflict with the 4th DCA on whether parties can waive subject matter jurisdiction.

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MARITIME LIENS

A “maritime lien” is a lien on a vessel to secure a claim for services to the vessel or for injury by a vessel to a person or property. It arises by operation of maritime law as security for a claim, without requirement for possession, and gives the claimant a special property right in the vessel. It comes into existence when the debt or claim arises and gives the claimant the right to have the vessel sold and the debt paid out of the proceeds of sale.

Section 328.17, Florida Statutes, provides for the nonjudicial sale of undocumented (state licensed) vessels. Under that statute, a vessel may be subject to nonjudicial sale for the nonpayment of licensed commercial marina storage fees, repairs, improvements, or other authorized work on the vessel, including towing and storage charges, after notice to the owner and any title lienors. The sale may not extinguish title liens.

1. **46 U.S.C. Sec. 31326**, provides for sale of a U.S.C.G. documented vessel by order of a U.S. District Court by a civil action *in rem* against the vessel to enforce a preferred mortgage lien or a maritime lien. The procedure is quite cumbersome. It requires a lienor to:
 1. File a Verified Complaint in compliance with Fed.R.Civ.P. 9(h), Supp. R. C(2)(a), and the local admiralty rules of the district court where the vessel is located.
 2. File a Motion for Issuance of a Warrant of Arrest, Supp. R. C(3), accompanied by a proposed order directing Issuance of the Warrant directed to the U.S. Marshal to arrest the vessel and proposed Warrant of Arrest *in rem*.
 3. File a Motion and proposed Order for Appointment of a Substitute Custodian of the vessel to be arrested, accompanied by an Affidavit of Substitute Custodian to provide custodial care for the vessel arrested in substitution for custodial care by the U.S. Marshals Service.
 4. Receive the Order Appointing Substitute Custodian and the Warrant of Arrest issued by the U.S. District Court Clerk.
 5. Deliver the Warrant to the U.S. Marshals Service by noon of the day following issuance, accompanied by U.S. Marshals Form 285, 3 certified copies of the Warrant for Arrest, 3 certified copies of the Order Appointing Substitute Custodian, 2 copies of the Complaint, and a certified copy of the Substitute Custodian Consent and Indemnification Agreement, indemnifying the U.S. Marshals Service for any liability for loss or damage to the vessel or its property.
 6. The vessel is arrested by the U.S. Marshals Service and turned over to the substitute custodian for the duration of the lawsuit or until bonded out, in accordance with Supp.R. E(5)(a)(b) by the vessel’s insurer ...OR...Upon Agreement, file a Joint Motion & Stipulation for release of the vessel in accordance with Supp.R. E(5) C ... OR ... file a Motion for Release for the Court to set Bond.
 7. The Defendant(s) file their answer and the lawsuit proceeds to conclusion or settlement.
 8. An interlocutory sale of the vessel is permitted if the cost of keeping the vessel is excessive or disproportionate to the value of the vessel, or if there is an unreasonable delay in securing release of the vessel, per Supp.R. E(9)(a)(i)(A)-(9)(a)(i)(C)

Personal Injury Trial Attorney JACK SOBEL

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Employment Law

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It is hard to hire right now. You may have to pay more for talent now than you used to. Let's say you hire a couple of men into "coordinator" positions that have been hard to fill, so you offered them more than you have in the past.

Let's say you already have some female employees in the same "coordinator" type position but they are paid less than the newly-hired male coworkers.

Assume the female coordinators are excellent workers with no performance issues, but the economy and hiring market basically forced the employer to shell out more for the newly hired men.

If the women complain, do you have to do anything? Fire the men? Reduce the men's pay? Increase the women's pay?

Well, what should be done is increasing the women's pay.

One month ago the U.S. Equal Employment Opportunity Commission ("EEOC") announced it filed a lawsuit against an employer for the above example, because the employer is paying women less than their newly hired male counterparts despite having more job-related experience in the field and more seniority in the coordinator position.

One thing that really seems to irritate the EEOC is that the employer "refused to adjust female [coordinators]' wages after receiving a complaint of pay discrimination."

This lawsuit is being brought as a violation of Title VII of the Civil Rights Act of 1964 and the Equal Pay Act of 1963, which prohibit pay discrimination based on sex. For those who are keeping track, this lawsuit is in the U.S. District Court for the Eastern District of Virginia (EEOC v. Alternate Solutions Health Network, LLC and Inova Home Health, LLC., Case No. 1:23-cv-00264).

Many of us have enjoyed a beverage at Tropical Smoothie Café. They are a big company and shouldn't screw stuff up, right?

Well, over in Tampa some folks operating several of these stores (franchise locations) decided to pass on some costs to the workers.

Specifically, they deducted money from the workers' paychecks for uniforms and cash register shortages.

Is that legal?

Well, it can be, if it is set up right.

Sadly, the owners of these franchises do not appear to have consulted an employment lawyer to set this up right.

See, it is legal to require employees to wear a uniform. However, if the wearing of a uniform is required by the employer, then the cost and maintenance (laundry/dry cleaning) of the uniform is considered to be a business expense of the employer.

Now, it can be legal to require the employee to bear the cost, but you have to be careful.

Why? Well, you cannot reduce the employee's wage below the minimum wage, and you cannot cut into overtime compensation.

This employer deducted too much money from the workers' paychecks for uniforms and cash register shortages, which caused their average hourly rates to fall below the minimum wage.

Oh, yeah, the Department of Labor ("DOL") investigators also discovered that the employer also paid some employees straight-time rates for overtime hours worked (rather than 1.5 times the regular rate of pay).

This is not a massive cost to the employer. It was \$6,520 in back wages and liquidated damages for 56 workers. The key is that it could have been completely avoided.



There are numerous opportunities to support the MCBA through Event Sponsorships.

Annual Installation Banquet – see page 18

Sponsorships allow for a special evening and help keep ticket prices as low as possible

MCBA Sobel Cup– see page 8

Proceeds from the Tournament go towards the MCBA Scholarship Fund.

Last year's tournament allowed the MCBA to increase the Scholarships awarded to \$7,500.

5K Race to the Courthouse – see page 20

Last proceeds go to Legal Aid Society of Martin County and MCBA Scholarship Fund

Your sponsorships help to make these events the best they can be.
Consider supporting your Bar with an Event Sponsorship



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WHAT LAWYERS NEED TO KNOW ABOUT BANK FAILURES AND TRUST ACCOUNTS

Reprinted from the Florida Bar News
Mar 16, 2023 Ruth Smith Assistant Bar Ethics Counsel

(Editor's Note: Due to the recent failures of Silicon Valley Bank and Signature Bank, the Bar's Ethics Hotline has been fielding questions from attorneys regarding bank failures and trust accounts. To provide some guidance, we are republishing this 2008 column written by former Bar's Ethics Counsel Ruth Smith.)

Recent bank failures are causing lawyers to give greater consideration to the safety of their client trust funds and whether any steps need to be taken to avoid or lessen any threats to those funds.

Rule 5-1.1(a), Rules of Professional Conduct, mandates that a lawyer hold in trust all funds and property of clients that come into the lawyer's possession. Such funds are to be held in a bank or savings and loan association in an account that is a "clearly labeled and designated" trust account. IOTA accounts, which are to be established for nominal or short-term client funds (where the costs to earn income for the client would exceed the income), are to be established in a bank or savings and loan that is insured by the FDIC. Rule 5-1.1(g)(1)(D). In view of the duty to safeguard client property, non-IOTA accounts should be held in an FDIC-insured financial institution as well, unless the client directs otherwise.

The Federal Deposit Insurance Corporation (FDIC) is an independent agency of the United States government that protects against the loss of insured deposits if an FDIC-insured bank or savings association fails. FDIC deposit insurance is backed by the full faith and credit of the United States government. On October 14, 2008, the maximum coverage limit for FDIC deposit insurance temporarily increased from \$100,000 to \$250,000 per depositor (client or third-party owner of the trust funds) through December 31, 2009.

According to the FDIC, trust accounts are "fiduciary accounts" or "deposit accounts owned by one party but held in a fiduciary capacity by another party." All fiduciary accounts are required by 12 C.F.R §330.5(b), to meet certain disclosure requirements. These are first that the fiduciary nature of the account must be disclosed in the bank's deposit account records (e.g. , "ABC Law Firm Trust Account"). Pursuant to Rule 5-1.1(a), the trust account is required to be a "clearly labeled and designated" trust account. Thus, the first requirement should be met upon compliance with the rule, as the designation discloses the existence of a fiduciary relationship.

And, second, the name and ownership interest of each owner must be ascertainable from the deposit account records of the insured bank or from records maintained by the lawyer (or someone hired by the lawyer to perform the recordkeeping task). Rule 5-1.2 requires certain minimum trust accounting records, which include ledgers that set forth receipts, disbursements, transfers, and balances for each client. Compliance with the rule should satisfy the second disclosure requirement.

According to the FDIC, provided that the disclosure requirements are fully satisfied, then funds deposited by a fiduciary on behalf of one or more persons or entities (the owners) are insured as the deposits of the owners. That is, for a trust account, the FDIC will provide insurance coverage of up to \$250,000 for each client. The trust funds will be aggregated and insured to the statutory limit with any other funds which the client may hold individually at the same insured depository institution.

A discussion of fiduciary accounts is available on the FDIC Web site at: www.fdic.gov/deposit/deposits/insured/faq3.html.

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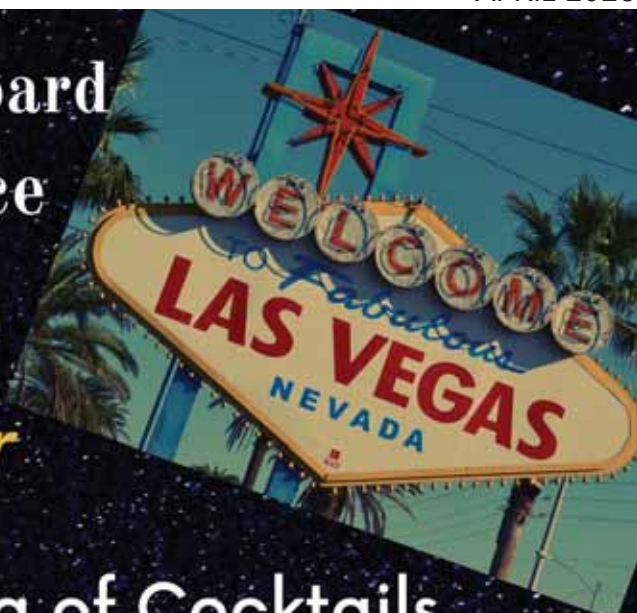
Saturday, May 20, 2023

6:30 p.m.

Willoughby Golf Club



Invitations to be mailed soon.



[Florida Ethics Opinion 72-37](#) states that there is no ethical requirement that a lawyer divide trust funds in order to ensure complete FDIC coverage. However, the opinion states that a lawyer is expected to act prudently with respect to the trust account and consider the deposits' size in relation to the size and reputation of the financial institutions concerned. Obtaining information on a financial institution's solvency would be useful in such an evaluation.

Lawyers can call their bank officer and ask for a copy of their rating with one of the two chief bank rating services used by financial institutions. Unfortunately, the FDIC does not release its ratings on the safety and soundness of banks to the public. But, the FDIC's Web site contains a list of several private companies that provide ratings of financial institutions. The ratings generally are a numerical or letter grade that reflects the safety or soundness of the institution. The list can be obtained at:

When there is concern about the stability of a bank in which a trust account is maintained, and when the account contains more than \$250,000 for one client, or the amount of client-held funds in the bank when combined with the trust funds held for that client exceed \$250,000, it may be prudent to consider consulting with the client to determine if these funds should be divided over two or more institutions to receive the benefit of full FDIC coverage.

Additionally, it is probably good practice, regardless of the current stability of a particular institution, to advise clients of the bank in which the clients' funds will be placed in trust. This will enable the clients to determine if the clients may hold other funds at that same institution which, when combined with the funds held in the trust account on their behalf, will exceed FDIC coverage limitations.

As noted previously, in order for each client to receive the advantage of full FDIC coverage,

trust account recordkeeping must be properly maintained as required pursuant to Rule 5-1.2. The identity of each client and amount of funds held on behalf of each client must be ascertainable from the lawyer's records. In the event of a bank failure, those records will be utilized by the FDIC to pay insurance to the lawyer, who will then be responsible for remitting the insurance payments to the clients. Thus, lawyers must be vigilant in ensuring good trust account records are maintained.

There are no disciplinary cases in which a lawyer has been held liable to a client for failure to protect client funds against uninsured losses in the event of a bank failure. There is one malpractice case that considered this issue. *Bazinet v. Kluge*, 14 A.D.3d 324, 788 N.Y.S.2d 77 (2003), involved a situation in which an attorney made two deposits of over \$1 million each into an IOTA account at a bank that failed after the deposits. The appellate court held: "There is no requirement imposed by law that an attorney-escrow agent place escrow funds in an account fully insured by the FDIC, and there are no allegations that [the attorney] knew that [the bank] was in danger of closing. The proximate cause of [the depositor's] injury, if any, was [the bank's] unforeseen demise." *Id.* at 325, 788 N.Y.S.2d at 78.

It is unclear if Florida courts would take the same position. However, lawyers do have an ethical obligation to act prudently with client funds. Lawyers should be certain to keep compliant trust accounting records and consider the financial health of any financial institution in which client funds are maintained. If there are any concerns about the institution, the lawyer should consult with any client who is not receiving the advantage of full FDIC coverage and determine what actions can be taken to prevent any potential loss of these funds.

For more information, call the Bar's Ethics Department at 1-850-561-5780.



MARTIN COUNTY BAR ASSOCIATION RACE TO THE COURTHOUSE

There is still time to sign up for the 6th Annual Race to the Courthouse 5K

Benefitting Legal Aid Society or Martin County and the MCBA Scholarship Fund



Go to: <https://runsignup.com/Race/FL/Stuart/TheRacetothecourthouse5k>

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- Opportunity to include promotional items in the race bag
- Included in race day announcements
- Eight race entries

JUDGE SPONSOR \$500

- Logo on Race T shirt (third placement location)
- Logo on MCBA website through May 2023
- Mention as sponsor in monthly articles in the monthly MCBA Sidebar publication and Logo in May’s issue
- Opportunity set up banner and or booth at the finish line
- Opportunity to include promotional items in the race bag
- Included in race day announcements
- Two race entries

COURTHOUSE SPONSOR \$750

- Logo on Race T shirt (second placement location)
- Logo on MCBA website through May 2023
- Mention as sponsor and include logo in monthly articles in the MCBA Sidebar publication
- Opportunity to set up banner and or booth at the finish line
- Opportunity to include promotional items in the race bag
- Included in race day announcements
- Four race entries.

JURY SPONSOR \$250

- Logo on Race T shirt (fourth placement location)
- Mentioned in monthly articles in the monthly MCBA Sidebar publication and Logo in May’s issue
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- Opportunity to include promotional items in the race bag
- Included in race day announcements
- One race entry

EVIDENCE BAG \$50

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Solo & Small Firm Committee

We had a great turnout for the Solo & Small Firm Committee Par-Tee at the Sailfish Sands Hitting Bays on Thursday, March 16th.

Novice and experienced golfers alike, enjoyed hitting balls from the second floor bays while playing a variety of computer generated challenges or courses. Congratulations to John Sherrard for winning closest to the pin. . .twice! We discovered that someone in the group was a college golfer, but "hasn't played in a very long time" and saw a few beginners hit some great shots that hopefully sparked a desire to learn the game! A huge thank you to First Citizens Bank for the delicious food and beverages they made a fun time even better!



Martin County Women Lawyers Association

Abby Spears: MCWLA President 2022 - 23



Martin County
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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.

UPCOMING EVENTS

3/29/23

CLE - Camille Frazer, Director of Legal Training, Statewide Guardian ad Litem Office (via Zoom)

April 27, 2023

Judicial Assisant Appreciation Luncheon at Kyle G's on the ocean

May 6, 2023

Yoga on the Beach

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.*

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Real Estate and Commercial Litigation Update

Florida Real Property and Business Litigation Report

Manuel Farach

Walters v. Fast AC, LLC, Case No. 21-13879 (11th Cir. 2023).

An aggrieved party has standing to claim a violation of the Truth in Lending Act against a defendant lender when the third-party violator of the Act was the agent of the lender.

GSE Consulting, Inc. v. L3Harris Technologies, Inc., Case No. 22-10647 (11th Cir. 2023).

A reverse triangular merger does not constitute a “merger” for purposes of monies due under a consulting agreement.

Esteva v. UBS Financial Services Inc. (In Re: Esteva), Case No. 21-13580 (11th Cir. 2023).

A district court has jurisdiction and discretion to review interlocutory judgments and orders of a bankruptcy court, but a court of appeals has appellate review jurisdiction only over final judgments and orders entered by the district court.

TR Investor, LLC v. Manatee County, Case No. 2D21-2061 (Fla. 2d DCA 2023).

Wetlands buffers imposed by local government regulations are neither exactions nor takings in violation of the Constitution.

Home Performance Alliance, Inc. v Better Business Bureau of West Florida, Inc., Case Nos. 2D21-2785 and 2D22-485 (Fla. 2d DCA 2023).

Due to the rating being an opinion, a party aggrieved by a poor rating by the Better Business Bureau has no cause of action for tortious interference, trade libel, libel per se, defamation, and for injunctive and declaratory relief, but if false statements were made, may have a claim under Florida’s Deceptive and Unfair Trade Practices Act.

King v. Roorda, Case No. 2D22-678 (Fla. 2d DCA 2023).

An owner cannot grant an easement over their own property, and accordingly, neighbors are not permitted to use such an easement.

The Residences at the Bath Club Condominium Association, Inc. v. Bath Club Entertainment, LLC, Case No. 3D21-933 (Fla. 3d DCA 2023). A settlement agreement which provides a party with property rights of upland property controls over a conflicting survey.



Omni Healthcare, Inc. v North Brevard County Hospital District, Case No. 5D22-786 (Fla. 5th DCA 2023).

A motion to disburse rents from the court registry is a non-final order, and accordingly, the date of rendition of such an order for appellate purposes is not tolled by a motion for rehearing.

Schmidt v. JJTB, Inc., Case Nos. 2D21-1213 and 2D21-2752 (Fla. 2d DCA 2023).

The Second District holds that parties cannot stipulate to “case jurisdiction,” i.e., procedural and continuing jurisdiction over a case; conflict certified with Fourth District decision of *MCR Funding v. CMG Funding Corp.*, 771 So. 2d 32, 35 (Fla. 4th DCA 2000).

G & G In-Between Bridge Club Corporation v. Palm Plaza Associates, Ltd., Case No. 2D21-3402 (Fla. 2d DCA 2023).

A landlord cannot change parking arrangements if doing so deprives a tenant of sufficient parking, even if the tenant had the opportunity to negotiate for specific parking rights and failed to do so and even if the tenant’s parking rights are subject to a “reasonable” right to change parking by the landlord.

Quest Systems, LLC v. Far, Case No. 2D22-1545 (Fla. 2d DCA 2023).

A Motion to Vacate a Foreclosure Sale can only be directed to the conduct of the sale, and a third-party bidder’s lack of knowledge of a superior mortgage on the property bought at foreclosure sale is not a basis to vacate the sale.

Continued From Previous Page.

Testa v. Town of Jupiter Island, Case No. 4D22-432 (Fla. 4th DCA 2023).

Subject to affirmative defenses and despite the actual date of adoption being more than 10 days from publication, the failure of a municipality to strictly comply with Florida Statute section 166.041(3)(a) invalidates the adopted ordinance.

Shamieh v. HCB Financial Corp., Case No. 1D21-1821 (Fla. 1st DCA 2023).

Florida's Uniform Contribution Among Tortfeasors Act, Florida Statute section 768.31, does not apply to non-tort actions.

Kapila v. RJPT, Ltd., Case No. 2D22-837 (Fla. 2d DCA 2023).

Even if it was a "passive investor" that neither managed nor operated a Florida business, buying and selling membership interests seventeen times and receiving distributions in the eight figures is sufficiently a "business venture" for a foreign entity to be subject to jurisdiction under Florida Statute section 48.193.

Overture Realty, LLC v. City of Madeira Beach, Case No. 2D21-2199 (Fla. 2d DCA 2023).

An expedited final judgment of foreclosure cannot be entered per Florida Statute section 703.10 if the answer raises genuine issues of material fact.

Risman v. Seaside Villas Condominium Association, Inc. (Fisher Island), Case No. 3D21-1963 (Fla. 3d DCA 2023).

The following provision of a condominium declaration permits the Board of Directors to exercise its discretion and permit the destruction of a condominium building, sale of the parcel to a buyer with intention to build a single-family home in place of the condominium building, and the grant of a 99-year lease in the condominium common elements:

Interpretation. The Board of Directors of the Association shall be responsible for interpreting the provisions hereof and of any of the exhibits attached hereto. Such interpretation shall be binding upon all parties unless wholly unreasonable. An opinion of legal counsel that any interpretation adopted by the Association is not unreasonable shall conclusively establish the validity of such interpretation.

Taso Group, LLC v. Gould, Case No. 3D21-2271 (Fla. 3d DCA 2023).

A trial court cannot enter judgment in a

garnishment proceeding that includes liability for post-judgment interest as doing so exceeds the trial court's jurisdictional authority over the property granted to the court by the garnishment statute.

Sutton v. Wilmington Trust, N.A., Case No. 3D22-1274 (Fla. 3d DCA 2023).

A trial court may relieve a party from the consequences of a foreclosure sale on the basis of mutual mistake.

Storey Mountain, LLC v. George, Case No. 4D22-1408 (Fla. 4th DCA 2023).

Florida Statute section 655.79(1) allows married couples to disclaim entireties ownership designation for bank accounts in any written document specifically incorporated by reference into the signature card signed by the depositors upon the opening of the account.

Maddox v. Maddox, Case Nos. 2D21-517 and 2D21-521 (Fla. 2d DCA 2023).

The assets of a third party company cannot be adjudicated during divorce proceedings unless the company is made a party to the proceedings and has the opportunity to participate with regard to its assets.

Oana v. Solomon, Case No. 2D22-772 (Fla. 2d DCA 2023).

An appellate court has non-final jurisdiction under Florida Rule of Appellate Procedure 9.130(a)(3)(C)(ii) to review an arbitration award approving a receiver's sale of real property even if the award has not been confirmed, i.e., the final judgment confirming the award has not been rendered.

AFP 103 Corp. v. Common Wealth Trust Services, LLC, Case No. 3D21-2117 (Fla. 3d DCA 2023).

A landowner cannot, while being owner of both a dominant and servient estate, grant an easement to oneself in their own property.

Pershing Industries, Inc. v. StoneMor Florida Subsidiary, LLC, Case No. 3D21-2367 (Fla. 3d DCA 2023).

The use of different language in different contractual provisions of a contract strongly implies that a different meaning was intended.

CLE Luncheon February 17, 2023



Thomas Sawyer, Preethi Sekharan



Welcome New Member Gregory Glenn, with Jack Sobel



William "Jay" Connolly, III and Christopher Gaston



Speaker, Edwin Bell, Director of Racial Justice, Equity & Inclusion, National Center for State Courts



Jeffrey Friedman, MCBA President



Fahira Coleman, Christopher Gaston, Eula Clarke, Joseph Cooper, Althea Wiley



Phil Waldrop



Trisha Hawthorne, TD Bank, Courtney Jones, Joanne Zarro

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How To Survive A Panic Attack When It Strikes

By: Stan Popovich



A person can experience a panic attack when they least expect it. This can cause a great deal of fear and anxiety for the person.

Many people do not know what they should do when dealing with a panic

attack.

As a result, here are eight easy steps a person can follow when a panic attack strikes unexpectedly.

1. **Take a break:** A panic attack can be very uncomfortable and can affect a person's thinking. The best thing to do when this happens is to take a break in order to calm down. You don't want to do anything when you are not thinking clearly.
2. **Take deep breaths:** A person should take some deep breaths to help feel better and to get rid of some of the excessive fear and anxiety. There are many kinds of breathing exercises a person can learn to follow with the help of a mental health counselor. Taking some deep breaths can help a person relax right away.
3. **Distract yourself:** A person should try to distract themselves from the panic they are experiencing. A person could get some fresh air, listen to some music, take a brisk walk, read the newspaper, or do something relaxing that will give them a fresh perspective on things.
4. **Visualize a red stop sign:** A person should visualize a red stop sign in their mind when they encounter a fearful thought. When the negative thought comes, a person should think of a red stop sign that serves as a reminder to stop focusing on that thought

and to think of something else. A person can then try to think of something positive to replace the negative thought.

5. **Get the facts of your situation:** Many people feel helpless when they experience a panic attack for the first time. The fact is that you will be ok and that it takes a few minutes for the anxiety to go away. Talk to a counselor and get the facts of what a panic attack is and what you can do when a panic attack occurs.

6. **Don't dwell on your thoughts:** A person must not dwell or focus on their thoughts during a panic attack. The more a person tries to reason out their thoughts the longer a panic attack will last. Read some positive statements from your favorite self-help book to help overcome your negative thoughts during a panic attack.

7. **Read some positive affirmations:** Another technique that is very helpful is to have a small notebook of positive statements that makes you feel good. Whenever you come across an affirmation that makes you feel good, write it down in a small notebook that you can carry around with you in your pocket. Whenever you feel depressed, open up your small notebook and read those statements.

8. **Get help:** It is important to talk to a qualified professional in order to learn how to survive a panic attack. By talking to a professional, a person will be helping themselves in the long run because they will become better able to deal with any panic attacks that may occur in the future.

BIOGRAPHY

Stan Popovich is the author of the popular managing fear book, "A Layman's Guide to Managing Fear". For more information about Stan's book and to get some more free mental health advice, please visit Stan's website at <http://www.managingfear.com>

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Legal Resources / CLE

CLE MATERIALS: We are sending to you our **Urgent Request for current CLE Materials**. Our Martin County Clerk's Office—Recording Division, provides invaluable services in curating our CLE materials. However, this requires current (not expired) CDs of Florida Bar programs. Everything is out-of-date except for one Florida Bar CLE Program (Survey of Law) and our monthly meetings on DVD. Plus our Legal Resource Committee lacks the funds to provide additional materials beyond two Florida Bar CLE programs per year. Our Committee is actively requesting our membership (**YOU**) to contribute to our lending CLE law library any Florida Bar CLE programs which you have that are not expired.



Did you know: Our Florida Bar offers online CLE programs for little or no cost! This is a great advantage if you are looking for 1 credit CLE materials on a variety of topics. Login to the Florida Bar and take a look.

Interesting: A quick read of your monthly Florida Bar News will result in many interesting topics. Did you know that one of the largest areas of disciplinary actions is the result of improper law office management/trust accounting? Yet, many law schools hardly ever offer law office management in their curriculum. Our committee has been asked to offer a CLE program on law office management. It is in the works and an agenda should be forthcoming soon with a program prior to June, 2023. When the agenda appears, please consult your schedules as we have been promised that the program will fillup soon.

FREE LEGAL RESEARCH: All members are reminded that our Martin County Public Library has free legal research available which is accessible at all branches of the library system. **If you forget to bring your USB** for copying the research results, then one might be obtained for a nominal charge from the librarian, or you can always email your research results to yourself or print the results for a minor charge per page (although copying to USB is usually better).

ADMINISTRATIVE RESOURCES: Discounts are available for many administrative resource materials. Please inquire if you are interested in any such services.

Call (772) 485-6767 if you are interested in joining our Legal Resource Committee. See you at our upcoming Bar Luncheon, Christine Moreno

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.

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>April 2023</h1>						
2 Palm Sunday	3 SideBar Articles Due	4	5 Passover Begins	6	7 Good Friday	8
9 Easter	10	11	12	13	14 RSVP DEADLINE FOR 4/21 LUNCHEON	15
16	17	18 MCBA Officers' Meeting	19	20	21 MCBA Luncheon @ Monarch CC (11:30 am)	22 Run to the Courthouse 5K Earth Day
23	24	25	26	27	28	29
30	<p>SAVE THE DATES: May 6, 2023: MCWLA Yoga on the Beach May 12, 2023: MCBA CLE Luncheon May 13, 2023: MCBA Sobel Cup Golf Tournament, Lost Lake Golf Club May 20, 2023: Annual Installation Banquet</p>					



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

Please join us for MCBA's CLE Monthly Meeting, Friday, April 21, 2023

- When: Friday, April 21, 2023
11:30 a.m. networking; 12:00 p.m. lunch
- Where: Monarch Country Club
1801 SW Monarch Club Drive, Palm City
- Menu: Fresh Spinach Salad with Mandarin Oranges, Pecans, Red Onions and Raspberry Vinaigrette; Shrimp and Chicken Pesto over Pasta, Rolls with Butter; Cookies and Brownies
- Speaker: Margaret "Peggy" Hewitt, Flordia Mutual Insurance Company
- CLE: 1.0 General CLE Credit
1.0 Ethics CLE Credit

RSVP to: martincountybarassociation@msn.com
No later than Friday, April 14, 2023

PLEASE BE SURE TO RSVP TO EXPEDITE ACCESS AT THE GATE

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