

FEBRUARY 2024



# The SideBar

NEWSLETTER OF THE MARTIN COUNTY BAR ASSOCIATION

## IN THIS ISSUE

**PRESIDENT'S MESSAGE:  
MCBA PRESIDENT, R. WAYNE RICHTER**

**FEBRUARY SPEAKER  
THE HONORABLE JENNIFER DOROW**

**SAVE THE DATE FOR THE BANQUET  
SATURDAY, MAY 4, 2024  
PIPER'S LANDING YACHT AND COUNTRY CLUB  
THEME: THE KENTUCKY DERBY: THE RUN FOR THE ROSES  
TICKETS ON SALE NOW!**



## In This Issue

President's Message (Pg. 3)  
Annual Sponsors Page (Pg. 4)  
President Speaker Series (Pg.5,6)  
Annual Banquet (Pg. 7)  
Pro Bono Award Recipient (Pg. 10)  
Employment Law (Pg. 11)  
Wills, Trusts & Probate (Pg. 13)  
January Luncheon (Pg. 14, 15)  
MCBA Tennis Tournament (Pg. 16)  
Elder Law (Pg. 17, 18)  
Race to the Courthouse 5K (Pg. 21)  
Judicial Relations Committee (Pg. 22)  
Trivia Night (Pg. 23)  
MCBA Scholarship (Pg. 24)  
Sobel Cup Golf Tournament (Pg. 25, 26)  
Real Estate\ Commercial Lit (Pg. 27, 28)  
Gator Weekend (Pg. 29)  
Legal Resources (Pg. 31)  
Florida Bar Help Line (Pg. 32)  
Online Resources (Pg. 33)  
Links, Jobs & Legislation (Pg. 35)  
February Calendar (Pg.32)

## THE SIDE BAR NEWSLETTER

Published monthly, excluding June & July, by the Martin County Bar Association as a service to its membership.

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

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

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# Message From the President

Martin County Bar President - R. Wayne Richter, Esq.

Dear Members & Friends,

The first month of 2024 is in the books! If you missed our January lunch meeting, you missed a good one. We revealed the theme for the MCBA Annual Banquet. This year's theme is: The Kentucky Derby: *The Run for the Roses*. We had a trumpeter on hand to blast the *Call to the Post*, and board members handed out roses to the ladies and hats to the gentlemen. A special surprise, Penny the pony, waited under the portico to greet members and guests as they left Monarch Country Club. This year's banquet will be held on May 4, 2024, at Piper's Landing Yacht & Country Club in Palm City. Come watch the 150<sup>th</sup> running of the Kentucky Derby during Happy Hour. Following the race we will have dinner, music, dancing, and casino games. Be sure to save the date! Tickets are now available for purchase on the MCBA website. We are also in need of sponsors. If you would like to be recognized as a sponsor of Martin County's biggest Kentucky Derby party, contact Executive Director Lynne Poirier at: [martincountybar@gmail.com](mailto:martincountybar@gmail.com).

February is the shortest month, but it is chock-full of celebrations, holidays, and activities. February has the Super Bowl, the Grammy Awards, Ground Hog Day, Presidents Day, Valentine's Day, Fat Tuesday, Ash Wednesday, Black History Month, Chinese New Year and more that I have surely missed. Likewise, the Martin County Bar Association also has no shortage of events. In fact, one of the most interesting installments of the President's Speaker Series will take place at our monthly CLE luncheon on **Thursday, February 22, 2024**. (Please note this month's luncheon will take place on a Thursday instead of our usual Friday). Our guest speaker will be Wisconsin Circuit Court Judge Jennifer R. Dorow.

Judge Dorow presided over the tumultuous 2022 trial of Darrell Brooks who in November 2021 drove an SUV through the Waukesha, Wisconsin Christmas Parade killing six people, ranging in age from 8 to 81 years old, and injuring sixty-two more. The trial lasted 18 days and Brooks represented himself. Brooks claimed that he

was a "sovereign citizen" and that the court did not have jurisdiction over him. The trial was televised on Court TV. Brooks' trial was notable, in part, due to his frequent interruptions and outbursts during the trial process. The interruptions and outbursts became so bad that at times Mr. Brooks had to participate in the trial remotely from



R. Wayne Richter  
2023-24 President

another courtroom. Judge Dorow, referring to Brooks' trial, was quoted as saying: "To say it has been the most challenging of my career, would be an understatement." Judge Dorow will share the compelling story of the Darrell Brooks trial with the MCBA and talk about what being an ambassador for justice means to lawyers and judges. We are anticipating a large turnout for this luncheon and space is limited. Please RSVP by emailing: [martincountybar@gmail.com](mailto:martincountybar@gmail.com) (include in the subject line: Feb. Lunch)

Lastly, be sure to register for the MCBA tennis tournament to be held on March 9<sup>th</sup> at Willoughby Golf & Country Club and for the MCBA golf tournament that will be held on May 31<sup>st</sup> at Monarch Country Club. The MCBA will also be hosting a trivia night on March 6<sup>th</sup> at Monarch Country Club. This is intended to be a casual and fun event. More information about these events is available on the bar website.

As you can see, in keeping with this year's theme, there are many opportunities to be engaged with your local bar.

All the best,

A handwritten signature in blue ink that reads "R. Wayne Richter". The signature is written in a cursive, flowing style.

R. Wayne Richter  
2023-2024 MCBA President



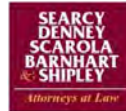
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**JUDGE JENNIFER DOROW**



**THURSDAY, FEBRUARY 22, 2024**

**11:30 - 1:00**

**Monarch Country Club**

**MCBA Members are FREE!**

**RSVP Required by 2.15.24**

email: [martincountybar@gmail.com](mailto:martincountybar@gmail.com)

(include in the subject line: Feb Lunch)

Join us as we welcome the Honorable Jennifer Dorow from the Wisconsin Circuit Court. Judge Dorow recently presided over the tumultuous Darrell Brooks trial. From proclaiming himself to be a sovereign citizen and dismissing his public defenders, to childish outbursts and disrespectful remarks, Brooks' trial was one of the most bizarre cases to date. Brooks was found guilty of running over and killing six people and injuring sixty two others in the Waukesha Christmas Parade. Judge Dorow will discuss the case, *plus* talk about being an ambassador of justice and what that means to lawyers and judges.

*This is a luncheon you won't want to miss!*

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**The Martin County Bar Association**  
presents

*President's Speaker Series*

*Save The Dates*

**Thursday, February 22 \*NEW DATE**

**Speaker: The Honorable Jennifer Dorow**

Judge Dorow, from the Waukesha County Circuit Court, joins us to discuss presiding over the tumultuous Darrell Brooks trial. This trial included twists and turns with no shortage of memorable moments. The case made national news as Brooks represented himself and was found guilty of all 76 charges against him for the Christmas day parade crash killing innocent people. Judge Dorow will talk about being an ambassador of justice and what that means to lawyers and judges.

**Friday, March 22**

**Victor Ashe**

**American former diplomat and politician who served as  
United States Ambassador to Poland**

**Friday, April 19**

**Round table with the Judges**

**Friday, May 10**

**Steve Weagle, WPTV News Channel 5  
Hurricane Prep: Protect your home and practice.**

Support our President's Speaker Series so we can continue bringing quality programming to the Martin County Bar Association.

Contact Lynne at [martincountybar@gmail.com](mailto:martincountybar@gmail.com)





# SAVE THE DATE FOR OUR ANNUAL BANQUET

Honoring Immediate Past President R. Wayne Richter  
& our Incoming and Outgoing Board of Directors

THEME: THE KENTUCKY DERBY

*The Run For the Roses*

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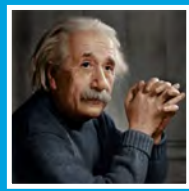
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- - Albert Einstein

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# Congratulations!

## **Congratulations to Jessica VanValkenburgh** recipient of the Florida Bar President's Pro Bono Service Award

The Florida Bar recently recognized 21 lawyers for their work on behalf of low-income and disadvantaged clients during a ceremony at the Supreme Court of Florida.

Established in 1981, The Florida Bar President's Pro Bono Service Awards are intended to encourage lawyers to volunteer free legal services to the poor by recognizing those who make public service commitments. The awards also help raise public awareness of the substantial volunteer services provided by Florida lawyers to those who cannot afford legal fees. Florida Bar President F. Scott Westheimer will present the 2024 awards.

The awards recognize pro bono service in each of Florida's 20 judicial circuits as well as service by one Florida Bar member practicing outside the state of Florida. They are presented annually in conjunction with the Tobias Simon Pro Bono Service and other service awards, which are given by the chief justice of the Florida Supreme Court.

**JESSICA M. VANVALKENBURGH, 19TH JUDICIAL CIRCUIT**  
*(Indian River, Martin, Okeechobee and St. Lucie counties)*



Jessica M. VanValkenburgh is a vital part of Florida Rural Legal Services Inc. (FRLS), where she goes above and beyond to help individuals at the Pro Se Family Law Clinic. Through these clinics, VanValkenburgh counsels clients on all types of family law cases, helps them with their initial filings, and provides information regarding court proceedings and mediation. In 2023 alone, VanValkenburgh helped more than 25 clients. She was also a featured speaker at Florida Rural Legal Services' 2023 19th Judicial Circuit Bench Bar Conference. In addition to her work with FRLS, VanValkenburgh is an active member of the Martin County Bar Association, where she recently served as chair of the Judicial Relations Committee. She is also a past president of and currently serves as treasurer for the Martin County Chapter of the Florida Association of Women Lawyers.



# Employment Law

**Chair – David Miklas, Esq.  
(representing employers only)**

## How can an employer’s social media activity be used as evidence of retaliation?

Here is an example: An employee, Riley, requested to be paid for job-related travel time. The employer was not receptive and Riley promised to complain to the “labor board” if the employer failed to pay.

Riley was fired. Not surprisingly, the Department of Labor (DOL) began an investigation to determine whether the employer was in compliance with the FLSA. The DOL found violations and the employer agreed to pay 17 of its employees \$17,356.20 in unpaid overtime wages and liquidated damages. The employer also agreed to pay an additional \$25,000 in punitive damages and \$3,310 in back pay and liquidated damages to Riley.



David Miklas  
Chair

Immediately after paying the employees the local news published an online article and did a television news segment concerning the DOL’s investigation into the employer and the resulting settlement agreement.

That same day, the employer’s secretary and treasurer, wrote a public and shareable Facebook post blaming the news coverage on Riley, characterizing Riley as a “disgruntled employee whom [sic] was fired,” and encouraged people to Google Riley’s background. Then the company president, “liked” Facebook replies to the treasurer’s post. Certain of those replies included screenshots of news articles concerning Riley’s alleged criminal history.

Can it get worse?

The company president then made public comments on Facebook in reference to the back wages and liquidated damages the company agreed to pay 17 employees concerning work-related travel, writing: “Let’s just say my employees are great and most of that money came back to me!”

Fellow colleagues, this suggests that the company had solicited or accepted repayment of at least some of the back wages and liquidated damages paid to employees pursuant to the DOL settlement.

Now the DOL is suing the employer for retaliation, seeking injunctive relief and punitive damages in its complaint. The DOL is concerned that employees are at risk of being deterred from exercising their rights under the FLSA.

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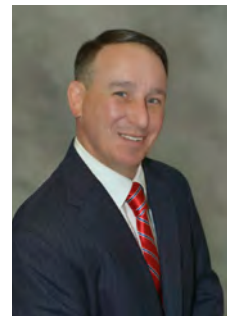
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# Wills, Trusts and Estates

Chair – Matthew Worsham, Esq.

The Wills, Trusts, and Estates Committee is holding a Zoom roundtable on February 13, 2024, at 12:00 p.m. to discuss issues facing the estate planning bar of Martin County. Please email me if you are interested in attending ([mworsham@jonesfoster.com](mailto:mworsham@jonesfoster.com)).

## Be Wary of Consequences Faced by Elderly Scam Victims Elder Fraud Can Lead to Unforeseen Tax Consequences

Florida has been a retirement destination for decades and, unsurprisingly, has one of the largest population bases over the age of 65 in the United States. Unfortunately, elderly individuals can be viewed as easy targets to scammers of all types. When scams involve an individual's retirement accounts, unforeseen tax consequences may occur.



In *Gomas v. United States*, the U.S. District Court for the Middle District of Florida held that distributions from retirement accounts made to a scammer must be included in the victim's gross income. 132 A.F.T.R.2d 2023-5165 (M.D. Fla. July 17, 2023). The victims were Dennis and Suzanne Gomas, an elderly married couple who retired in Florida in 2016. Mrs. Gomas' daughter, Suzanne Anderson, perpetuated an extensive and complex fraud that left the Gomas' nearly destitute.

While the opinion provides significantly more detail in short, Ms. Anderson conned Mr. Gomas into believing that he was facing arrest due to former employees using Mr. Gomas' birthdate and social security number to defraud the customers of an online raw pet food business formerly run by Mr. Gomas. Ms. Anderson suggested that the couple hire an attorney, who conveniently required a \$125,000 retainer. She created a fake email and posed as the lawyer in correspondence with the couple. After nearly two years, Ms. Anderson had stolen nearly \$2 million from her mother and stepfather. Fortunately, Ms. Anderson's crimes caught up with her, and she was sentenced to 25 years in prison.

Mr. and Mrs. Gomas sought to deduct the distributions made in furtherance of Ms. Anderson's scheme. The IRS was unwilling, or at least argued they lacked the authority to exercise discretion and excuse the payment of taxes on the stolen funds. Accordingly, the IRS denied the deduction and litigation ensued. Although historically the couple would be able to deduct the theft loss in the year the theft was discovered, Congress suspended this deduction for 2018 through 2025 tax years. 26 U.S.C. §165(h)(5). The Gomas' additional arguments were unpersuasive, and the Court concluded, "It is highly unlikely that Congress, when it eliminated the theft loss deduction beginning in 2018, envisioned injustices like the case before the Court. Be that as it may, the law is clear and it favors the IRS. . . . The Court is bound to follow the law, even where, as here, the outcome seems unjust." *Gomas*, 132 A.F.T.R.2d at 2023-5169.

As elder abuse crimes continue to rise, we must be aware of potential unintended consequences facing the victims. I hope this article was interesting and applicable to your practice. Please contact me at [mworsham@jonesfoster.com](mailto:mworsham@jonesfoster.com) for inclusion on the Committee's emails and/or to share any potential speakers, topics, or articles.



*Pictures from January's Luncheon Revealing  
this Year's Banquet Theme*









# MCBA TENNIS TOURNAMENT

MARCH 9, 2024

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# Elder Law Attorney Corner

## Medicaid Eligibility...

### Income Can Impact Eligibility

### Giftling? Beware!

### (Part 2 on Medicaid Planning)

Gregory G. Glenn, Esq.

Gregory Glenn, P.A. Elder Law Attorney



In the January edition of this column I provided a high-level outline of the Florida Medicaid resource/asset eligibility criteria. This month's edition will focus on two other financial eligibility criteria: 1) Income limits, and 2) transfers/gifting. (Refer back to my January edition for citations to the federal and state laws that address Medicaid eligibility.)

**Income:** The second criteria for purposes of determining Florida Medicaid nursing home benefits eligibility is the gross monthly income of the applicant and spouse. Medicaid law looks at "Gross" income. Not net income. Note, that Medicaid laws do not allow for any deductions from gross monthly income for federal withholding or payment of other deductions from gross monthly income sources. The IRS annual gift tax exclusion (\$18,000.00 in 2024) DOES NOT apply in the context of Medicaid eligibility laws.

Florida is considered a Medicaid "Income Cap State". Meaning an applicant's gross monthly income cannot exceed three times the monthly Federal Benefit Rate (\$943.00 in 2024). Florida's Medicaid nursing home benefits Gross Monthly Income Cap is \$2,829.00 in 2024. If the applicant's gross monthly income exceeds this amount, the person is not eligible for Florida Medicaid nursing home level of care benefits for that month. However, there is a caveat. Federal law allows "Income Cap States" like Florida to give a Medicaid applicant/recipient's the ability to shift income that exceeds the State's gross monthly income cap into what is referred to as a Qualified Income Trust (i.e., Miller trust or d(4)(B) special needs trust) while preserving eligibility for Medicaid for that month. Creation of the Qualified Income Trust requires an attorney to draft that trust and assist with initial funding. A Medicaid applicant needs legal guidance on 1) how much to fund the trust with each month, 2) how to flow the funds between accounts, 3) when to fund that qualified income trust, and 4) how much to pay the nursing home for the share of cost/patient responsibility and 5) when to pay the nursing home. There are many unforeseeable traps in the laws and rules associated with income that exceeds the Gross Monthly Income Cap. Simply drafting a qualified income trust for client is not enough. If an attorney is drafting such a trust, it is inherent in doing so that the attorney must provide guidance on how to properly fund that trust to ensure compliance with State and Federal Medicaid laws.

**Patient Responsibility/Share of Cost** Under Medicaid law, there is "no free lunch." Meaning, under federal Medicaid laws all of an applicant's gross monthly income is considered available and must be contributed toward the applicant's cost of care. That is referred to as the applicant's "Patient Responsibility" or "Share of Cost." The only allowable deduction in calculating an applicant's "Patient Responsibility" or "Share of Cost" is for monthly out-of-pocket supplemental health insurance premiums and a small personal needs allowance (\$160.00 per month in 2024).

**Married Couples Community Spouse "Bonus":** In the January edition of this column it was suggested that applicants who are married are provided a possible "bonus" when applying for Florida's Medicaid nursing home level benefits. It is in the form of what is referred to as a "Community Spouse Income Allowance" (CSIA). Criteria to qualify include: 1) that the community spouse must be "living in the community" (*not in a nursing home*), and 2) incur monthly out-of-pocket costs associated with maintaining a "roof over the community spouse's head", and 3) the community spouse's gross monthly income must be within certain Medicaid limits. The "bonus" Medicaid law allows is that an applicant for nursing

Continued On Next Page . . .

home level of care benefits may divert part of the applicant's gross monthly income to the community spouse "living in the community" to pay for each month's rent or mortgage payments, utilities, condo or association dues, property taxes, and property insurance. In turn this results in a reduction of the "Patient Responsibility" or "Share of Cost" the applicant has to pay the nursing home. There are limitations on the amount of the allowance based upon the community spouse's gross monthly income and out-of-pocket cost of housing expenses. The formula Florida Medicaid uses is complex and beyond the scope of the space for this article. An elder law attorney who understands the community spouse income and resource allowances should be consulted. It is easy to overlook or not properly calculate that allowance.

**Medicaid Penalty Period for Gifts:** There is a planning strategy involving gifting that elder law attorneys utilize in the right circumstances. First rule of thumb is to start with the general proposition that Medicaid law "presumes" any "gifts" by an applicant or a spouse within 5 years of the date of applying for Florida Medicaid nursing home level of benefits has been done with intent to try to qualify for Medicaid benefits. In the Medicaid world a gift is a gift. Anything given away or sold for less than fair market value is considered a "penalizing gift/transfer". The penalty Medicaid imposes is a one-month penalty for every \$10,809.00 given away. The \$10,809.00 is adjusted periodically for inflation. During the penalty period, the applicant must provide for nursing care. The "presumption" of a "gift" can be rebutted, but the process requires careful analysis on how to rebut the gift and documentation supporting that rebuttal.

**Gifting as a Planning Strategy:** There is a sophisticated strategy where gifting can be used as a viable planning tool to achieve Medicaid eligibility in the context of nursing home level of care benefits. The planning strategy is known as "half-loaf gifting". This concept involves setting up a plan for an applicant where roughly half of the applicant's countable liquid assets are gifted to someone, while enough of the total gifted funds are made available to private pay for the nursing care during the Medicaid penalty period calculated for the gift. This strategy works, but one has to know how to calculate and implement such a planning strategy. An elder law attorney can provide guidance on setting up such a plan and then assisting in proper reporting of the penalty period to Medicaid and calculate the penalty period itself.

**Medicaid Planning does not mean "Applying":** - It is not just getting someone eligible for benefits. Planning involves much more than that. To provide proper Medicaid planning services requires the "qualified planner" to look not only at eligibility for today, but also the long-term impacts of the plan, including the "what if's" down the road once eligibility is achieved. Beware of the "Medicaid Planner" who "helped" a person get "qualified for Medicaid" but that "planner" did not have the acumen or competencies in tax, real estate, estate planning, and Medicaid lien related issues necessary to address post-eligibility issues that exist. Applying is not the same as Planning in the context of Medicaid. Florida law prohibits non-lawyers from engaging in "Medicaid Planning."

**Medicaid and the Middle Class** - Yes, the middle class have an opportunity to apply for and become eligible for Medicaid to help pay for nursing home costs (On Average a nursing home cost is \$10,000.00 per month). There are many planning options available. Engaging in such planning could mean the difference between a community spouse being able to afford to live in the home while their applicant ill-spouse is in a nursing home. It can also provide a higher better quality of life by sheltering assets of a single individual that can be used to pay for additional care and comforts of life Medicaid does not pay for.



*Gregory G. Glenn started his practice with a focus on serving the elderly and disabled back in 1995. He is a nationally Certified Elder Law Attorney by the National Elder Law Foundation. **His elder law practice today focuses on Medicaid planning, estate planning for the over 55 and disabled, special needs trust planning for the disabled, incapacity planning, and probate.** Prior to law school he worked as an accountant for Coopers & Lybrand, CPA's assisting clients with cash management as well as tax preparation and planning. He has offices in Stuart and Boynton Beach. Phone: 561-347-1071 - Website: [www.Bocaelderlaw.com](http://www.Bocaelderlaw.com)*





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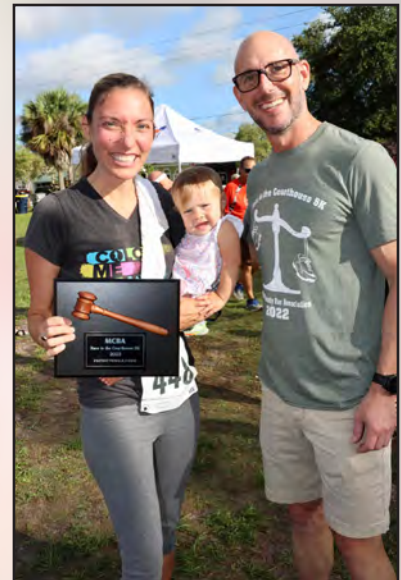


## Race to the Courthouse 5k Run/Walk



Gene Zweben

We are looking forward to another great event this year! The Race will be held on Saturday, April 20, 2024, so there is plenty of time to get out there and start training! We are still looking for sponsors and committee members. For more information, please contact Gene Zweben at [gene@zwebenlawgroup.com](mailto:gene@zwebenlawgroup.com) or 772-223-5454.



Race to the Courthouse 5K

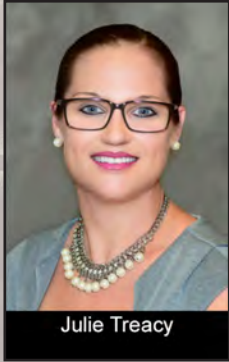


Martin County Bar Association



# Judicial Relations Committee

The Judicial Relations Committee invites you to its monthly lunch meetings. Lunches are held from 11:45 to 1:00 at Treasure Coast Legal, 100 SW Albany Avenue, Suite 310, and are free!



Julie Treacy

RSVP required by emailing chair Julie Treacy at [JTREACY@TREASURECOASTLEGAL.COM](mailto:JTREACY@TREASURECOASTLEGAL.COM)

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March 19 - Judge Brett Waronicki

April 16 - Judge William Roby

May 21 - Judge Leatha Mullins

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# MCBA Annual Scholarship

MCBA Annual Scholarship by Abby Spears, Chair

The Scholarship Committee will be meeting this month to pick its three winners. Recipients will be announced in May.

Scholarships are made possible with proceeds from our annual Sobel Cup Golf Tournament. This is our only source of funding for the program.



If you're a golfer, please save the date and join us for a round of golf on Friday, May 31, 2024 at Monarch Country Club. We'll begin with a 1:00 p.m. shotgun start followed by cocktails and awards.

To play as a foursome, individual, or for sponsorship opportunities, please contact Lynne at [martincountybar@gmail.com](mailto:martincountybar@gmail.com)

If you're not a golfer, but would like to support our scholarship efforts, please send your donation made payable to the MCBA, and mail it to P.O. Box 2197, Stuart 34495. Donations made by May 1 will be recognized at the tournament and in the SideBar. Any level of support is appreciated. Contact Lynne at [martincountybar@gmail.com](mailto:martincountybar@gmail.com)



**SOBEL CUP**  
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# Real Estate and Commercial Litigation Update

## Florida Real Property and Business Litigation Report

*Manuel Farach*



Manuel Farach  
Chair

**Acheson Hotels, LLC v. Laufer**, Case No. 22-429 (2023).

The Court dismissed the case as moot and left unresolved the circuit court split on the issue of whether Americans with Disabilities Act (ADA) “testers,” i.e., those who sue physical locations for violations of the ADA have standing to bring suit if they did not and had no intention of visiting the locations.

**Sweetapple v. Asset Enhancement, Inc. (In re: Asset Enhancement, Inc.)**, Case No. 22-11389 (11th Cir. 2023).

Contrary to the general rule that awards granting entitlement to attorney’s fees but not setting the amount are “final decisions” for appellate purposes, a sanctions award requires the amount of fees imposed as a sanction be determined before it is a “final decision.”

**Bedgood v. Wyndham Vacation Resorts, Inc.**, Case No. 22-11504 (11th Cir. 2023).

A party that seeks to compel arbitration but whose policies do not comply with the rules and policies of the arbitral forum cannot compel arbitration, and accordingly, may be forced to litigate the claims it sought to arbitrate.

**In Re: Certification of Need for Additional Judges**, Case No. SC2023-1586 (Fla. 2023).

The Florida Supreme Court certifies the need for one additional circuit court judge for the Twentieth Judicial Circuit, five additional county court judges (three in Orange County and two in Hillsborough County), and no need for additional district court of appeal judgeships.

**In Re: Amendments To Florida Rule of Civil Procedure 1.041 And Form 1.933**, Case No. SC2023-0361 (Fla. 2023).

The Florida Supreme Court creates Rule of Civil Procedure 1.041 outlining the process for attorneys to appear in limited fashion in matters and amends Rule of Civil Procedure form 1.933 (Account Stated), both amendments to take effect April 1, 2024.

**Seadler v. Marina Bay Resort Condominium Association, Inc.**, Case No. SC2022-0984 (Fla. 2023).

The Harmless Error Standard applies to the incorrect denial of for cause challenges to a potential juror.

**In Re: Amendments To Florida Rules of Appellate Procedure 9.020 and 9.400**, Case No. SC2023-0836 (Fla. 2023).

Florida Rule of Appellate Procedure 9.400 is amended to add subdivision (b)(4) which now permits a party seven days to move for attorney’s fees if an appeal is dismissed under Rule 9.350.

**Palm Beach Polo Holdings, Inc. v. Ethrensa Family Trust Company**, Case No. 4D2022-3003 (4th DCA 2023).

Contractual provisions in a developer’s vacant lot sales agreement which provide the lot buyer shall construct a single family residence within two years of purchase and which restrict the sale of the vacant lot to a third party until the residence has been built - the breach of which provide the seller with a below market right of first refusal to purchase back the lot - run with the land and are not violative of *Iglehart v. Phillips*, 383 So. 2d 610 (Fla. 1980), and are reasonable restrictions on alienation of land as they require the improvement of land and are to the benefit of the buyer.

**Advanced Biomedical, Inc. v. 1551 Properties, LLC**, Case No. 5D23-1279 (Fla. 5th DCA 2023).

An order denying a motion to vacate a default judgment of eviction is considered a non-final order reviewable under Florida Rule of Appellate Procedure 9.130, and accordingly, motions for rehearing directed to the order are “not authorized” under the rule and do not suspend the deadline for filing an appeal.

**Grozdanovic v. Alliance RE Holdings, LLC**, Case No. 3D22-0689 (Fla. 3d DCA 2023).

An order which requires a party to make an interim payment while leaving intertwined factual matters unresolved is not reviewable by appeal as a “final order” but is reviewable by writ of certiorari.

Continued From Previous Page..

**Sarasota Tennis Club Holdings, LLC v. Country Club of Sarasota Homeowners Association, Inc.**, Case No. 2D22-2358 (Fla. 2d DCA 2023).

A party which has a right of first refusal to purchase real property does not have the right to unjustifiably interfere with the contract for sale of the property on which it did not exercise its right to purchase.

**Johansson v. Miami-Dade County Value Adjustment Board**, Case No. 3D23-1165 (Fla. 3d DCA 2023).

A circuit court has no right of appellate review over a Value Adjustment Board’s decision as the Board merely serves to attempt to resolve tax disputes; “review” of a tax valuation is accomplished by instituting a *de novo* proceeding in the circuit court contesting the valuation.

**Federal Insurance Company v. Perlmutter**, Case Nos. 4D2022-1558, 4D2022-1560, and 4D2022-1562 (Fla. 4th DCA 2023).

To allow a pleading claiming punitive damages, a trial court must review evidence from all parties and determine that clear and convincing evidence exists for punitive damages; conflict with decisions of the Second and Fifth District Courts of Appeal and question of great public importance certified.

**Shaw v. Newham**, Case No. 2D22-3300 (Fla. 2d DCA 2023).

A contract which allows a non-defaulting seller to either retain a deposit as liquidated damages or sue for specific performance is enforceable; a contract which allows a non-defaulting seller to sue for actual damages or sue for specific performance is not.

**Florida BC Holdings, LLC v. Rees**, Case No. 6D23-1379 (Fla. 2d DCA 2023).

The Impact Rule does not apply to intentional torts, including intentional interference with an advantageous business relationship; question of great public importance and conflict with *Reid v. Daley*, 276 So. 3d 878 (Fla. 1st DCA 2019), certified.

**Zahav Refi LLC v. White Hawk Asset Management, Inc.**, Case No. 2D23-675 (Fla. 2d DCA 2023).

An evidentiary hearing must be conducted under Florida Statute section 714.06(1)(b) prior to instituting a receivership, even after judgment has been entered for the plaintiff.

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## SAVE THE DATE FOR THE MCBA GATOR BASKETBALL AND GYMNASTICS WEEKEND

The MCBA 2024 Gator Basketball and Gymnastics weekend will be held on Friday, February 23, Florida Gators v. LSU Gymnastics Meet and Saturday, February 24, Florida Gators v. Vanderbilt Commodores Basketball game.

The hotel block has been reserved.  
\$149 a night (no two-night minimum)

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Basketball Game Ticket Link  
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Gymnastics Ticket Link (to be provided at a later date)

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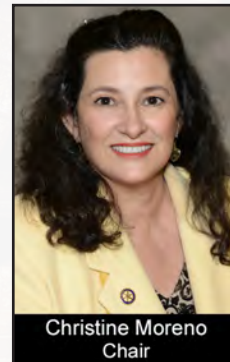






# Legal Resources / CLE

Christine Moreno, Legal Resources Committee Chair



Christine Moreno  
Chair

**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 Martin County Public 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).

**CLE MATERIALS:** Visit our Website or the Clerk’s website for available FL CLE programs. Our current offerings include:

2022 Florida Survey of Law

2023 Florida Survey of Law

2023 Wills, Trust & Estates Certification Review Course

2023 Advanced Real Estate Certification Review Course

Our materials generally include a disc for pdf course materials

Currently corporate sponsors are enlisting to provide specialty FL CLE courses to our members, so check back to our MCBA website or Clerk’s website for updates on CLE course offerings.

**ADMINISTRATIVE RESOURCES:** Discounts are available for many administrative resource materials. Please inquire if you are interested in any such services. Also, our Florida Bar offers free CLE courses as well as administrative materials at the FloridaBar.Org website under the heading “Legal Fuel”. One valuable & FREE resource is the current “NOTA” on-line trust accounting program. I am still awaiting information on the security and encryption aspects of NOTA, since it is an on-line platform, but it looks promising.

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

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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?**

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# Links, Jobs and Legislation

19<sup>th</sup> Judicial Circuit Court of Florida

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

[www.circuit19.org](http://www.circuit19.org)

Emergency Hotline / Info: 772.742.9229

Visit

[www.martincountybar.com](http://www.martincountybar.com)

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



## Florida Bar Appointments / Vacancies

For applications and complete details, visit: [www.floridabar.org](http://www.floridabar.org)

## 19<sup>th</sup> 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](http://www.cityofstuart.us)

Click on link at the bottom of the page.

# February

2024

Martin County Bar Association

## Upcoming Events

- March 6, 2024 – Trivia Night
- March 6, 2024 – Paralegal CLE
- March 9, 2024 – MCBA Tennis Tournament – Willoughby Golf & CC
- March 19, 2024 – Judicial Relations Committee Lunch
- March 22, 2024 – President's Lunch Series
- April 10, 2024 – Race to the Courthouse
- May 31, 2024 – Sobel Cup Golf Tournament



Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
				1	2 <b>Groundhog Day</b>	3
4	5	6	7	8	9	10
11	12 <b>Lincoln's Birthday</b>	13 Wills Trusts & Estate Committee Meeting at Noon on Zoom	14 <b>Valentine's Day</b>	15	16 <b>JUDICIAL RELATIONS LUNCH</b>	17
18	19 <b>Presidents Day and Washington's Birthday</b>	20	21	22 <b>Membership Luncheon</b>	23 Gator Basketball and Gymnastics Weekend	24
25	26	27	28	29 Leap Year Day		





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

## Please join us for MCBA's CLE Monthly Meeting, Thursday, February 22, 2024

- When:** Thursday, February 22, 2024  
11:30 a.m. networking; 12:00 p.m. lunch
- Where:** Monarch Country Club  
1801 SW Monarch Club Drive, Palm City
- Speaker:** The Honorable Jennifer Dorow
- CLE:** General 1.0 - Professional 1.0

RSVP to: [martincountybar@gmail.com](mailto:martincountybar@gmail.com)  
No later than Thursday, February 15, 2024

**PLEASE BE SURE TO RSVP TO EXPEDITE ACCESS AT THE GATE**

*There is no charge for paid MCBA members.*