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ON THE COVER The 2019 BCBA Bench and Bar Convention will take place on Friday, October 18th at the Signature Grand. See pages 12 and 13 for full convention agenda. Register today at www.browardbenchandbar.org.

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Michael A. Fischler

I am pleased to announce that for the first time in the history of the Broward County Bar Association (“BCBA”) one hundred percent (100%) of our Broward County 17th Judicial Circuit and County Judges are members of the BCBA. This is due in no small part to the tireless efforts of our executive director, Braulio Rosa (“Braulio”) to support, collaborate and build relationships with our Circuit’s Judges. We also need to recognize the diligent efforts, over many years, of all our past Judicial Liaisons and those of Judge Kenneth Gillespie, our current Judicial Liaison, as this achievement and great partnership would not have been achieved without their hard work, diligence and perseverance.

On Thursday, September 12, 2019, the Broward County Bar Association, Broward County Hispanic Bar Association, and Broward County Latin Entrepreneurs hosted, to a capacity

crowd, “Behind the Gavel”, to honor the Hispanic Judges of the 17th Judicial Circuit Court of Florida to kick off Hispanic Heritage Month. The moving and inspirational remarks by each of our Hispanic Judges, as well as those of our Chief Judge Jack Tuter, Aron Gibson, President of the Hispanic Bar Association, and Broward County Vice-Mayor Dale V. C. Holness’ presentation of the proclamation, were enjoyed by all in attendance. It was truly a fabulous, inspiring, warm and enjoyable evening!

Braulio and I had the pleasure of attending the Asian Pacific American Bar Association (“Apaba”) installation in Miami on September 13th, sitting with our good friend, Dade County Bar President, Gilbert Squires, Esquire. Congratulations to Jay Kim, Esquire (“Jay”), a past BCBA Board Member, who currently represents us on the Florida Bar Board of Governors, as he received the highest award given by Apaba in its 15 year history. Congratulations are also extended to award winner Alice Sum, Esquire and incoming Apaba President Sandy Chiu.

Our various regional and practice section and committee chairs (who are all “phenomenal”) are working with their members to plan innovative and interesting events and CLE programs. I encourage you to join and participate in BCBA section committees, as well as all BCBA activities, which will afford you the opportunity to build relationships with your colleagues and the Judiciary and to take advantage of the many educational and social programs offered, as well as help others.

The Young Lawyers Section (“YLS”) of the BCBA has their 31st Annual YLS Charity Golf Tournament on Saturday, November 9th at Jacaranda Golf Club, with proceeds being donated to the Nicklaus Children’s Hospital Foundation. Let’s support YLS President Lindsay Massillon, their golf committee and this YLS charitable event, named after our friend, Walter G. “Skip” Campbell, Jr.

The BCBA Bench & Bar Convention (“B&B Convention”), an all-day packed CLE event, is on October 18, 2019 at the Signature Grand. You can register and choose your seminars online by going to the BCBA website. There will be Judges and attorney presenters from the tri-county area who will provide valuable information, answer questions and lead discussions on a wide variety of relevant and current topics, as well as provide legal practice tips. This may be a sold out event, so register as soon as practical and show your support for the Bench and BCBA! Please join the over five hundred (500) Judges, Lawyers, Sponsors and guests we expect to be in attendance at the B&B Convention. Our appreciation is extended to the B&B Convention Title Sponsors, the law firm of Kelly/Uustal Trial Attorneys and Claims Investigation Agency, Inc., for without their and the other sponsors’ support, we would not be able to put on this extraordinary and important legal event.

Until next month, stay safe, stay healthy, look out for one another and enjoy your family and friends.

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letter from the young lawyers' president



Lindsay M. Massillon

As fellow members of the Broward Bar Association, I know I am preaching to the choir when I tout the importance of “community.” But if there is ever any doubt, look no further than the massive effort to collect donations for Bahamians in need after Hurricane Dorian unleashed on the Abacos Islands and Grand Bahama over the Labor Day weekend. The effort, kick-started by a Sunday afternoon email, turned into an all-hands call to action among 15 different South Florida Voluntary Bar Associations. Thanks

to the leadership of 17th Circuit Florida Bar YLD Representatives Todd Baker and Charise Morgan-Joseph, and Broward Bar Executive Director Braulio Rosa, over 30 volunteers spent their Saturday morning filling a 10-foot U-Haul to the brim (and then some) with water, supplies, and non-perishables to be delivered to the islands in need.

This would not be possible without the ties that bind our community. To paraphrase singer-songwriter Ne-Yo, YLS may be a movement by itself, but we are a force when we are together. Immersing yourself in our community also provides an opportunity to remember that being a lawyer is not only drafting contracts and arguing a motion for summary judgment; it’s also building connections with our colleagues outside of the office and courtroom. It’s remembering that we are all vulnerable, and we all spent the few days before the holiday weekend prepping for a potential Category 5 behemoth. We walked out unscathed; and knew that collectively, we could work together to help our friends to the East.

I hope you’re encouraged to get involved in our vast and wonderfully diverse community that the Broward Bar, the Young Lawyers Section, and our partnership with other South Florida Voluntary Bar Associations provides. Whether it is a social, a luncheon, the Bench and Bar Conference, our Annual Walter G. Skip Campbell Jr. Memorial Golf Tournament on November 9, National Adoption Day, or the BCBA Holiday Party, there are hundreds of opportunities to embrace your “authentic self,” and connect with other attorneys. B



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Legislative Update

by Brendan A. Sweeney, Esq.

After the most recent Florida Legislative session roughly 200 bills were passed to seek the Governor's approval. Allow this to be a highlight for a few of particular significance.

The House passed HB1253 to allow Attorney General Ashley Moody access to a database of patients' opioid prescriptions so that she—on behalf of the State, can proceed with a lawsuit against Walgreens and CVS for the negligent selling of opioids. This bill will allow all state lawyers access to the Florida Department of Health's database of patients' opioid prescriptions.

In a call back to prior articles I've written, HB 7015/SB 182 was signed. This bill repeals the ban on smokable marijuana for medical purposes. Of course, smoking in public or at private businesses is still prohibited subject to the state's cigarette smoking ban. Also, minors will only be able to ingest their medicinal marijuana in smokable form if their condition is terminal. However, this should be viewed as another step in marijuana lobbyists push towards full legalization.

For those interested in real estate or tax law, HB 7123 was passed. This bill reduces the sales tax on commercial leases from 5.7 percent to 5.5 percent. The bill aims to provide tax relief to the people affected by Hurricane Michael and aid in preparation for the upcoming hurricane season. One very important change concerning criminal law was HB



107. This bill makes driving while texting a primary offense. This allows law enforcement to stop motorists solely for the offense of texting while driving. It also prohibits the handheld use of a cell phone for any purpose in school zones and construction zones.

In the areas of insurance and construction law, HB 7065 limits attorneys' fees in disputes over assignment of benefits (AOB) between insurance companies and contractors and authorizes policies that aren't subject to assignment of benefits. Overall, this establishes important consumer protections for property insurance policies by setting forth requirements for the execution, validity and effect of such agreements, and creating a formula that will determine which party, if any, receives an award of attorney fees should litigation related to an assignment agreement result in a judgment. This reform bill is expected to curtail the exponential growth in AOB abuse that has contributed to rising insurance costs for Floridians.

Some other bills of note that passed are HB 771 and HB 453. HB 771 prohibited local government entities from adopting or enforcing

ordinances and regulations relating to single-use plastic straws for the next five years. HB 453 allows county or municipality governments to regulate the operation of micromobility devices (e.g. for-rent motorized scooters).

With an eye to the future, the next major bill going through the legislature from the purview of attorneys should be SB 328. This bill purports to increase the jurisdictional limit for civil county courts from \$15,000 to \$30,000 and then possibly \$50,000 two years afterwards. Proponents of the bill state that this adjusts for inflation since the jurisdictional limits were set in the 1990's. The Supreme Court has recommended that the limit be raised to \$25,000. Opponents of the bill believe that the number should be closer to the \$25,000 recommendation and are against the \$50,000 jump thereafter without further proof of its need. The bill also allows Supreme Court justices to be able to work remotely away from Tallahassee, and trial judge candidates who run unopposed would have their filing fees refunded. It will be an interesting bill to monitor in the upcoming legislative session. **B**



Brendan A. Sweeney, Esq., LL.M., Sweeney Law, P.A., is an AV Preeminent Martindale Rated Attorney, that has been selected as a Florida Super Lawyer and Florida Legal Elite in 2019.

Gary Blankenship, Bill raising county court civil jurisdiction advances in the Senate The Florida Bar (2019), <https://www.floridabar.org/the-florida-bar-news/bill-raising-county-court-civil-jurisdiction-advances-in-the-senate/> (last visited Jul 2, 2019).

Samantha Gross et al., Florida Legislature 2019: What passed and what failed Tampa Bay Times (2019), <https://www.tampabay.com/florida-politics/buzz/2019/05/06/florida-legislature-2019-what-passed-and-what-failed/> (last visited Jul 2, 2019).

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8:00 AM - 8:40 AM		BREAKFAST 25 tips in 25 minutes Motivation - Wellness - Practice management - Mark Eiglarsh, Esq., Joseph M. Goldstein, Esq., Kemio King Lindsey, Esq. and N SEMINAR 200 The View From the Bench - Do You Measure Up? Presented by Chief Judge Jack Tuter (Moderator), Chief Judge Spencer D. Levine (4th DCA), Hon. Carol-Lisa Phillips (Broward Administrative Circuit Court), and Hon. Lisa S. Small (Palm B			
SESSION 2 8:55 AM - 10:05 AM					
SESSION 3 10:15 AM - 11:05 AM	SEMINAR 300 Emerging Issues in Family Law & Immigration Hon. Tarlika Navarro Hon. Frank Ledee Helena Tetzeli, Esq. Jeanne Hines, Esq. Moderator Sheena Benjamin-Wise, Esq.	SEMINAR 310 Trial Advocacy in Bankruptcy Court Hon. Robert A. Mark Hon. John K. Olson Craig A. Pugatch Esq.	SEMINAR 320 Arbitration, Binding and Non-binding v. Mediation, What, When and How Arthur Garcia, Esq. Darlene Gimble, Esq. Aaron J. Horowitz, Esq. Ret. Judge Joseph Farina CME CREDIT	SEMINAR 330 Legal Malpractice - Staying off of the front page of the DBR Raymond L. Robin, Esq.	SEMINAR 340 Appellate DCA Judges Panel Hon. Alan O. Forst Hon. Mark W. Klingensmith Clerk Lonn Weissblum,
	SEMINAR 400 Federal Judges Panel	SEMINAR 410 Student Loans in Bankruptcy Cases Chad Van Horn Esq. Zach B. Shelomith Esq. John D. Eaton Esq.	SEMINAR 420 Business Law Arbitration Jesse Diner, Esq. Aaron J. Horowitz, Esq. Rebecca Storrow, Ph.D	SEMINAR 430 Legal Evolution: Analytics and Artificial Intelligence in the Law Carol Kuczora Antonin TECHNOLOGY CREDIT	SEMINAR 440 Looking Back Behind the Appellate Bench Jared M. Krukar Daniel Samson Maxwell Sawyer Eric Yesner Moderators: Alexis Fields & Morgan Weinstein
SESSION 4 11:15 AM - 12:05 PM					
12:20 PM - 1:40 PM		LUNCH Keynote Speaker Supreme Court Justice			
SESSION 5 2:00 PM - 2:50 PM	SEMINAR 500 Family Law Trial Advocacy: Presenting your case to the Bench Hon. Keathan Frink Hon. Scott Suskauer Hon. Eleana Sosa-Bruzon Roberta Stanley, Esq. Rae Chorowski, Esq. George Odom, Esq., Moderator Hon. Fabienne Fahnestock	SEMINAR 510 Role of the Trustee in Bankruptcy Cases Scott N. Brown Esq. Soneet R. Kapila, Trustee Kenneth A. Welt, Trustee	SEMINAR 520 Administrative Law for Immigration Practitioners Patricia Flanagan, Esq. Tammy Fox-Isicoff, Esq.	SEMINAR 530 The Finer Points of DUI Law Jeremy Kroll, Esq.	SEMINAR 540 Property Appraiser: Homestead Issues Broward County Property Appraiser Marty Kiar
	SEMINAR 600 How to not take on water after you sprung a leak; Advanced topics of first party litigation Hon. John B. Bowman Jeffrey Wank, Esq. Abidemi Oladipo, Esq. Valorie S. Chavin, Esq.	SEMINAR 610 Getting to Know Local Government and how it affects you Mayor Joshua Rydell Mayor Greg Ross Commissioner Mike Gelin	SEMINAR 620 Effective mediation Planning and presentation Arthur Garcia, Esq. Darlene Gimble, Esq. Aaron J. Horowitz, Esq. Ret. Judge Joseph Farina	SEMINAR 630 Criminal Law and Immigration panel Patricia Cooper, Esq.	SEMINAR 640 Employment Law Seminar
SESSION 6 3:00 PM - 3:50 PM					
SESSION 7 4:00 PM - 4:50 PM	SEMINAR 700 Corporate Counsel Panel Meisha Smith-Coulter, Senior Director & in-house Counsel Spirit Airlines Devona Reynolds-Perez, in-house counsel Cruiseplanners	SEMINAR 710 Government Seminar	SEMINAR 720 How to not take on water after you sprung a leak; Advanced topics of first party litigation Hon. John B. Bowman Jeffrey Wank, Esq. Abidemi Oladipo, Esq. Valorie S. Chavin, Esq.	SEMINAR 730 Criminal Law Seminar: Stand your Ground, why all the controversy? Eric Schwartzreich, Esq. Anthony Bruno, Esq.	SEMINAR 740 Happiness Guaranteed or Your Misery Back Mark Eiglarsh, Esq. MENTAL ILLNESS AWARENESS CREDIT
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<p>SEMINAR 350 Broward County Probate Roundtable Hon. Charles M. Greene Hon. Kenneth Gillespie Hon. Mily R. Powell</p>	<p>SEMINAR 360 New Horizons in County Civil Jurisdiction Hon. Robert W. Lee Hon. Louis H. Schiff</p>	<p>TRIAL TRACK The Case is Over Once the Jury is Sworn Bob Kelley, Esq Kimberly L. Wald, Esq.</p>
<p>SEMINAR 450 Elder Care Mediation: Resolving Family Conflict Tina Scott Polsky, Esq.</p>	<p>SEMINAR 460 County Civil Rules Refresher Hon. Nina W. Di Pietro Hon. Giuseppina Miranda</p>	<p>TRIAL TRACK Winning with Experts and Evidence Sheri Fiske Schultz, CPA/ABV/CFF Scott S. Liberman, Esq. Sean F. Thompson, Esq.</p>

<p>SEMINAR 550 Palm Beach County Probate Roundtable Hon. Charles Burton Hon. Jessica Ticktin Moderator: Hon. Kenneth Gillespie</p>	<p>SEMINAR 560 Keeping Civil in County Civil Hon. Daniel J. Kanner, Hon. Natasha DePrimo</p>	<p>TRIAL TRACK Mock Trial <i>Moderated by</i> Hon. Mindy Solomon Robert C.L. Vaughan <i>Featuring</i> Jay Cohen Daniel Harwin Charles "Chuck" Morton Robert E. Paradela Eugene K. Pettis Eric S. Rosen More to be Announced!</p>
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<p>SEMINAR 650 Attorney's Fees In Contested Guardianships And Probate Jill R. Ginsberg, Esq. Allison Muney, Esq.</p>	<p>PROFESSIONALISM CREDIT SEMINAR 660 IP on Online Lorri Lomnitzer, Esq. Michael Santucci, Esq. Stacy Schwartz, Esq.</p>	<p><i>Witnesses</i> Omar A. Giraldo, Esq. Kimberly L. Wald, Esq.</p>
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<p>SEMINAR 750 Dade County Probate Roundtable Hon. Jorge E. Cueto Hon. Celeste H. Muir Moderator: Hon. Kenneth Gillespie</p>	<p>SEMINAR 760 Views from the Bench: Keeping it Professional Hon. Carol-Lisa Phillips Hon. Raag Singhal Hon. Martin J. Bidwill Hon. Yael Gamm Hon. David A. Haimes Moderators: Hon. Jennifer Hilal & Brian Koch PROFESSIONALISM CREDIT</p>	<p>MOCK TRIAL CREDIT</p>
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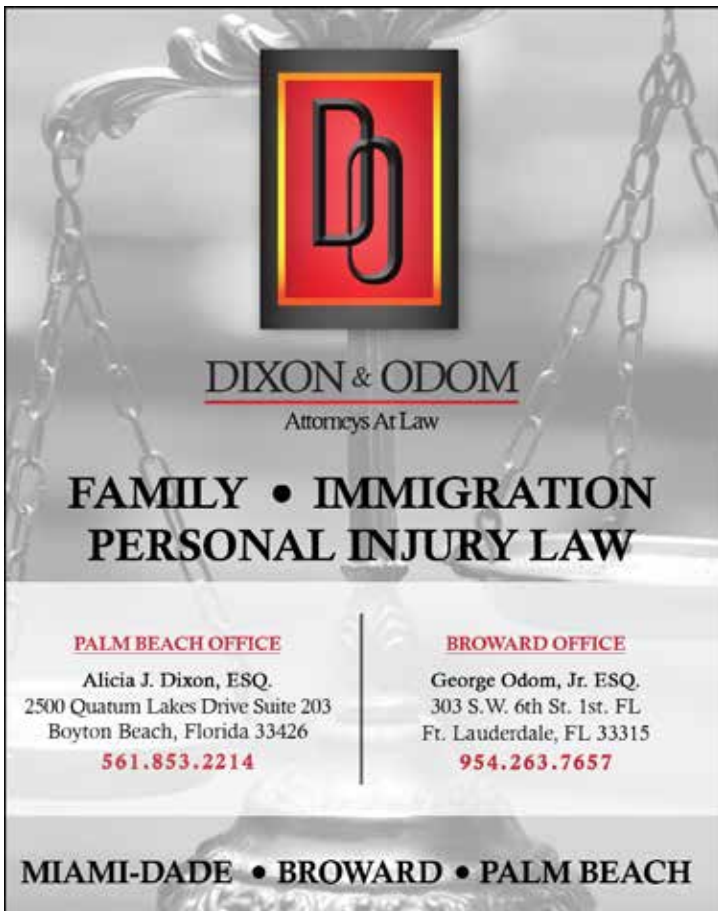
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Using Social Media to Grow Your Law Firm

By Natalie Giachos

Having a social media presence can increase web traffic, build brand awareness, and of course, generate leads. Businesses, large and small, are using social media with great success and law firms should be no exception.

If you've been contemplating using social media, but just didn't know where to start, this is for you.

Getting Started

Before you can begin using social media, you need to set up a business page across the different social



platforms. You don't have to be on all of the social media platforms, but you may want to select the 2-3 where you know your target audience will likely be.

The next step is to brand your page and fill in your firm information. Your branding should be the same across all platforms. That doesn't mean you have to use the same exact pictures for each platform, but the pictures should be on brand. You should also fill in your firm's information. Depending on the platform, it will allow for more or less detail. Fill it out as completely as the platform will allow. Best practices are to always have a link to either your website or to a promotion you are doing, such as an event or free report you are giving away.

Finally, be sure to protect your accounts like you would any other important account. If the platform allows for two factor authentication, be sure to enable that feature. However, you should speak to your IT specialist to make sure you are secure.

Strategy

Now that you're all set up, you need to have a social media strategy.

Part of that strategy is coming up with content. Content includes blog posts, pictures, videos, and any other relevant information you would like to share. Another part is having a consistent schedule for when your content will be shared. Come up with a schedule that works best for you, but best practice is at least once a day. Again, something is better than nothing, so do what you can in the beginning, but stick to your schedule.

The final part of your strategy should be about planning out marketing goals for the year (or at least quarter) so that you can make sure that the content you are posting is consistent with the marketing goal you are trying to accomplish.

For example, if you are planning a free seminar, you may want to start posting content that poses the same questions you will be answering at the seminar a few months before it is scheduled. This way, when you announce your event, the people who read your posts, will be more likely to want to attend the seminar.

Again, whatever your strategy is, planning and consistency are key.

Advertising

Social media advertising, if done correctly, can yield great results. The major benefit that social media has over other types of advertising, is its powerful targeting options which allow you to reach a specific audience and make the most of your advertising dollars.

You may not want to have an ad that is similar to what you would see on TV, but you can use social media ads to promote events, build your email list, or even just to build brand awareness.

Like any other form of advertising, be sure to comply with the Bar Rules.

Expectations

If you are not using social media, you are missing out on an inexpensive and effective way to reach your potential clients.

Social media may not produce results overnight, but it is definitely not a platform that should be ignored.

Natalie Giachos practices civil litigation in South Florida. She earned her law degree from Nova Southeastern University. Since graduating, Natalie has served on the NSU Law Alumni Association and has coached and judged NSU law students in mock trial competitions. She has participated in the NSU Law Center Plus program providing continuing legal education to attorneys. Natalie also serves on the Publicity Committee for the Broward County Bar Association and on the Animal Law Section of the Florida Bar.



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Behind the Gavel -The First Event of its Kind

by Aron J. Gibson

Hispanic Heritage Month is nationally celebrated each year from September 15 to October 15.

This year, for the first time ever in Broward County, an event was held to honor the Hispanic judges of the 17th Judicial Circuit. “Behind the Gavel – A Celebration of Hispanic Judges” was held on the evening of September 12, 2019 at ArtServe in Fort Lauderdale, Florida. This event was the result of the vision and labor of three organizations: the Broward County Bar Association, the Broward County Hispanic Bar Association and the Broward County Latin Entrepreneurs. Over 200 citizens of Broward County attended this standing-room only event, where Broward’s Hispanic judges were recognized for their dedication and hard work in the 17th Judicial Circuit. The program included a networking hour, speeches from various community leaders, speeches from the Hispanic judges themselves and a reading by Broward County Vice Mayor Dale V.C. Holness of an official Broward county proclamation deeming September 12, 2019 “Broward County Hispanic Judges’ Day”.



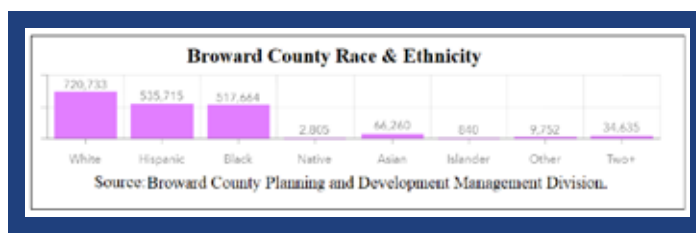
Attorney Joseph S. Kashi said of the event, “This was one of the best bar functions I have ever attended. The personal stories of all of the judges were deeply moving.”

Judge Florence Taylor Barner said of the event, “This was truly a momentous occasion for the citizens of Broward county and privilege for me personally to be in the presence of such greatness. Our Hispanic judges represent the rich diversity of the community in which they serve and having them on the bench fosters subjective and objective fairness in the legal process and increases the perception of justice for all.”

The event also included a video presentation of the Hispanic judges answering various questions such as “When did you know you wanted to become a judge”, “What does being a judge mean to you” and “Do we have enough Hispanic judges on the bench or do we need more”. The latter question was answered by Judge Carlos Rodriguez who said, “Well, the answer to that is, no, we do not have enough Hispanic judges. We don’t have enough minority

judges on the bench, generally. And the need for more minority judges – Hispanic judges, Black judges – is really based on the community. You want the judiciary to reflect the percentage of minorities in the community.”

This idea, that the ideal composition of a judiciary should reflect - in appearance, values and life experiences - the community it serves, is a basic concept that most people cherish. Citizens of any given jurisdiction may, and often do, lose trust in a judiciary that cannot identify with them. The chart below details Broward county’s estimated general population from 2017. Using the example populations quoted by Judge Carlos Rodriguez, the chart below indicates that Broward county is made up roughly of 28.37% Hispanic citizens and 27.41% Black citizens. Therefore, the ideal composition of the 17th Judicial Circuit judiciary would include at least 28.37% Hispanic judges and 27.41% Black judges.



However, only 14 of the 90 Broward judges are Hispanic (15.55%), and only 11 are Black (12.22%). While Broward County’s judiciary is diverse, these deficient numbers indicate that there is still work left to be done.

What is the solution? To identify and empower young lawyers, early in their career, who could be great judges, and give them the tools necessary to run a successful election campaign and/or to successfully apply for a vacant seat.

The Broward County Hispanic Bar Association is looking into avenues of identifying and empowering young Hispanic lawyers to one day become Hispanic judges, and we encourage all other local voluntary bar associations to do the same with their respective communities. We owe it to the county that we call home to see a judiciary that reflects our community.

Also, we hope you will join us at “Noche Latina” on October 11, 2019 to close out Hispanic Heritage Month. See the flyer on the previous page for more info.



Bio : Aron J. Gibson is President of the Broward County Hispanic Bar Association, and an attorney at Hiram Montero, P.A. where he focuses his practice in the areas of personal injury and criminal defense. He can be reached at agibson@monterolaw.com or by calling 954.767.6500.

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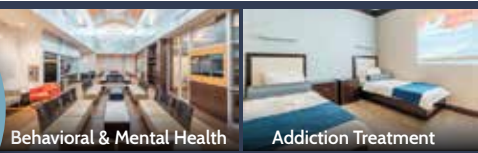
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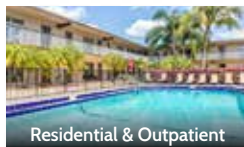
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In the Spirit of Halloween: Florida's Spooky Urban Legends, Rumors and Tales



by: Yanina Zilberman

Florida is the Sunshine State, known for its climate and natural beauty. It is a popular vacation destination renowned for its sandy beaches, water sports and amusement parks. While it is known for all these things, it is also known for its dark side, which is apparent in its spooky urban legends, rumors and tales. In the spirit of Halloween, here is a compilation of some examples.

Legend has it that the skunk ape is among the residents of the Everglades. This is a human-like figure that is purportedly a relative of Bigfoot¹. More than a dozen sightings of the creature were reported between the 1960s and 1980s². Although scientists have since concluded that the skunk ape was a “figment of the human imagination,” the legend continues to this day³. In fact, 100 miles south of Sarasota County lies a Skunk Ape Research Headquarters⁴. It is said that they are called skunk apes because “they were said to look like orangutans and stink like rotten eggs and methane.”⁵ Apparently, as adults, they could range from approximately 5 to 7 feet tall, and weigh 450 pounds⁶.

A fair share of legends and rumors emanate from the most magical place on Earth, Disney World's Magic Kingdom. Legend has it that someone was decapitated while riding on Space Mountain, and that the victim haunts the ride⁷. Although the accident did happen, it apparently involved a test dummy⁸. Legend also has it that Walt Disney made arrangements to have his body frozen in a deep-freeze chamber upon his death so that he could one day be brought back to life⁹. Snopes.com dispels this popular rumor, which dates back to 1969¹⁰.



The Pensacola Lighthouse is believed to be haunted by the ghost of Michaela Penalber. Michaela and her husband were keepers of the lighthouse in 1826¹². Their marriage turned sour, and it is said that she wanted the lighthouse all to herself. This culminated in Michaela murdering her

husband in the living quarters inside the lighthouse¹². Never convicted for her crime, she spent the remainder of her life living in her precious lighthouse, until her death in 1855¹³. Her death did not break her connection to the lighthouse. To the contrary, “[v]isions of her, strange sounds, heavy breathing, objects flying across the room at tourists, and phantom bloodstains on the new floor” are some of the “paranormal occurrences” for which the lighthouse is known¹⁴. Visitors of the lighthouse have reported “someone breathing behind them, or on their necks,” and a woman’s voice calling their name¹⁵.



Finally, two of Florida’s oak trees are known for their paranormal essence. Located in the Bulow Creek State Park, in Ormond Beach, is the Fairchild Oak tree. This tree is more than four hundred years old and is believed to be haunted by two men who died under the tree¹⁶. People report seeing images of a man by the tree, and say that looking at the tree brings on a feeling of “intense sorrow.”¹⁷ Inside the Oak Hammock Park, in Port St. Lucie, stands an oak tree regarded as the Devil’s Tree. Two young girls were murdered in its vicinity and buried under the tree¹⁸. There have been claims by visitors of “bloodcurdling screams erupting from the surrounding woods,” and “ghostly apparitions and camera malfunctions” being experienced nearby¹⁹. Apparently, the tree has been immune to all efforts to cut it down; chainsaws and axes have broken, or malfunctioned²⁰.

... Happy Halloween! 



Yanina Zilberman is an Associate Attorney at Egozi & Bennett, P.A., where she practices real estate, commercial, and appellate litigation.

She can be contacted at: yanina@egozilaw.com.

¹Thrillist, *The Creepiest Urban Legend in Every State*, THRILLIST.COM (Oct. 1, 2017), <https://www.thrillist.com/travel/nation/creepiest-urban-legend-in-every-state-american-folklore>.

²Shelby Webb, *The legend of skunk ape: A pungent figure in Florida folklore*, SARASOTA HERALD-TRIBUNE (Aug. 8, 2014), <http://extra.heraldtribune.com/2014/08/08/legend-skunk-ape-floridas-stinky-mystery/>.

³*Id.*

⁴*Id.*

⁵*Id.*

⁶*The Creepiest Urban Legend in Every State*, *supra* note 1.

⁷Orlando Weekly, *21 creepy Central Florida urban legends to keep you up at night*, ORLANDO WEEKLY.COM (Mar. 24, 2019), <https://photos.orlandoweekly.com/21-creepy-central-florida-urban-legends-to-keep-you-up-at-night/?slide=7&decapitated-space-mountain>.

⁸*Id.*

⁹See David Mikkelson, *Was Walt Disney Frozen?*, SNOPE.COM (Oct. 19, 1995), <https://www.snopes.com/fact-check/suspended-animation/>

¹¹See *id.*; see also Tom Bricker, *Walt Disney World Urban Legends*, DISNEY TOURIST BLOG, <https://www.disneytouristblog.com/walt-disney-world-urban-legends/> (last visited Sept. 6, 2019).

¹²Lyra Radford, *Creepy Stories and Urban Legends from Florida*, Ranker, <https://www.ranker.com/list/creepy-florida-stories-legends/lyra-radford> (last visited Sept. 5, 2019).

¹³*Id.*

¹⁴*Id.*

¹⁵*Id.*

¹⁶Ray Walker, *Urban Legends of Florida: Old Places Have Old Stories, Sometimes They Don't Stay in the Past*, Odyssey (Nov. 5, 2014) <https://www.theodysseyonline.com/urban-legends-florida>.

¹⁷*Id.*

¹⁸Radford, *supra* note 11.

¹⁹*Id.*

²⁰*The Creepiest Urban Legend in Every State*, *supra* note 1.

²¹*Id.*



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Case Law Update

by Debra P. Klauber, Esq.

Fourth District limits expert discovery that is directed to a non-party business entity with which the expert is affiliated.

The discovery rules are designed to strike a balance between a party's need for information to show a medical expert's potential bias, and the expert's own right to be free from burdensome and intrusive discovery requests. The Fourth District has extended that protection to the non-party corporate or business entity with which the medical expert is affiliated. The court also cautioned trial counsel from utilizing "novel discovery methods" in an effort to circumvent the limits of authorized discovery, and cautioned trial courts from approving such methods where the rules already allow parties to explore (a) financial interests of medical witnesses, and (b) the volume of referrals to those witnesses. *Orthopedic Center of South Florida v. Sode*, No. 4D18-3478, 44 Fla. L. Weekly D1480 (Fla. 4th DCA June 12, 2019).

Fourth District joins Fifth District in asking Florida Supreme Court to clarify whether defendants and their lawyers and insurers can be protected from disclosing information about their relationships with medical experts.

In 1999, the Florida Supreme Court held that information about the relationship between an expert witness and a defendant-insurer, including the frequency of referrals and the payments made, was discoverable. In 2017, the Florida Supreme Court limited that holding, finding that the financial relationship between a plaintiff's law firm and treating physicians was not discoverable, because the question of whether a plaintiff's attorney referred a client to a particular physician for treatment was protected by the attorney-client privilege. The Fifth District recently asked the Florida Supreme Court to clarify whether a defense law firm should have to disclose its financial relationship with an expert witness who performs independent medical examinations for litigation purposes. Now, the Fourth District has similarly asked the Florida Supreme Court to clarify whether a defendant-insurer can be required to disclose its financial relationship with medical experts who perform independent medical examinations. It appears that the Florida Supreme Court will need to provide clarity on whether such discovery requests exceed the proper scope of expert discovery, invade the attorney-client privilege, or are calculated to lead to the discovery of admissible evidence. *Dodgen v. Grijalva*, No. 4D19-1010, 44 Fla. L. Weekly D1617 (Fla. 4th DCA June 26, 2019).

Fourth District disapproves "trial by ambush" and grants new trial after expert is permitted to

testify about an MRI he reviewed for the first time during the trial.

The Fourth District reaffirmed its long-standing belief that trial lawyers should be able to rely on discovery deadlines and not be confronted with additional undisclosed testimony at the time of trial. In this case, the plaintiff's expert gave limited opinions in his deposition, and had not reviewed an MRI from an earlier accident. Long after the discovery deadlines, after defense counsel had explained his theory of the case to the jury, and in the middle of the trial, that same expert reviewed the earlier MRI and was ultimately permitted to testify about it to the jury. The Fourth District reversed the trial judge's determination that the testimony did not constitute a "changed opinion," noting that the defendants and their counsel were confronted with "new and undisclosed testimony during trial and after opening statements." The court held that the defense was entitled to a new trial because of the prejudice resulting from the plaintiff's tactics. The new and undisclosed testimony was not only a surprise, but the defendants had to cross-examine the expert without the benefit of having their own witnesses review and rebut that testimony. *Gurin Gold, LLC v. Dixon*, No. 4D18-2156, 44 Fla. L. Weekly D1789 (Fla. 4th DCA July 10, 2019).

Fifth District asks the Florida Supreme Court to revisit the summary judgment standard in cases where video surveillance clearly contradicts the opposing party's evidence.

Where the testimony of one party and a number of eyewitnesses is contradicted by video evidence, it usually creates question of fact to be presented to a jury, as it is not proper for the court to adjudge the credibility of witnesses or weigh the evidence. However, in light of technological advancements and the "clear, objective, neutral" video and digital evidence now commonly available, the Fifth District has asked the Florida Supreme Court to answer the following question:

Should there be an exception to the present summary judgment standards that are applied by state courts in Florida that would allow for the entry of final summary judgment in favor of the moving party when the movant's video evidence completely negates or refutes any conflicting evidence presented by the non-moving party in opposition to the summary judgment motion and there is no evidence or suggestion that the videotape evidence has been altered or doctored?

By way of comparison, the appellate court notes, a federal court is permitted to assess the proof and grant a summary judgment where the record, as a whole, could not lead a rational trier of fact to find for the non-moving party. *Lopez v. Wilsonart, LLC*, No. 5D18-2907, 44 Fla. L. Weekly D1808 (Fla. 5th DCA July 12, 2019).

First District holds that there is no cause of action under Chapter 415 of the Florida Statutes where the claim is based on the provision of medical care and services and is therefore encompassed by Chapter 766.

The First District provided some well-needed clarification with respect to the interplay between a medical negligence claim and a claim under Florida's Adult Protective Services Act. As explained by the court, the purpose of Chapter 415 is to protect vulnerable adults who are in need of services, not to provide a duplicative remedy for claims involving medical malpractice. As the court also noted, Chapter 415 was not put in place to criminalize health care providers, and cannot be used to transform a medical negligence case into a claim against a health care provider as a "perpetrator" of abuse. Plainly stated, if the claim involves medical negligence, which requires compliance with the pre-suit procedures and other provisions of Chapter 766, the claim cannot be asserted under Chapter 415. If the claim asserts non-medical negligence or criminal conduct, it can be asserted under Chapter 415. The court did not go so far as to hold that claims under Chapter 415 could never be asserted against a hospital or health care provider, but did explain that such claims must be limited to those involving allegations of "non-medical abuse or neglect." *Specialty Hospital-Gainesville, Inc. v. Barth*, No. 1D18-511, 44 Fla. L. Weekly D1819 (Fla. 1st DCA July 15, 2019). B



Debra P. Klauber, Esq., a partner with Haliczzer Pettis & Schwamm, oversees the firm's trial support and appellate practice and provides guidance to litigators throughout Florida. Debbie can be reached at: 954-523-9922 or dklauber@hpslegal.com

Put the Candy Down!

by Jeni Meunier

We are approaching three high-calorie holidays in the next three consecutive months, and the absolute worst is Halloween. It starts with the accumulation of calories from the kids' candy haul, or the leftovers from trick-or-treaters.

We've all heard that candy is an addiction. And for me, this is true. Once I started eating candy or really anything sweet, I craved more, and the next few months led to my downfall. It all started with just a handful of Halloween candy and the cravings began. Since I knew the holidays bring the ultimate in sweets, why not just go ahead and satisfy those cravings? My plan was to start the new year with an ultimate diet resolution.

Sweet cravings constantly nag at you. When I'm sitting at my desk at work, the desire to nibble on leftover Halloween candy is so strong I'm distracted until it is satisfied. Then it's time for a mid-afternoon candy snack to give me a jolt of energy as I wind up the necessary work for the day.

Thankfully, after several years of moaning and groaning through January and February, I've finally learned my lesson. An ounce of prevention is worth a pound of cure. The older I got, the harder that pound of cure was to work off. What piqued my interest were films I saw on Netflix and YouTube. Did you know that there is absolutely no reason to eat sugar, candy, or overly processed desserts? They have no nutritional value for our bodies whatsoever. Sugar causes inflammation, which is a precursor to disease and various cancers.

Over the years, I tried several diets, including but not limited to: counting calories, starving, liquid diets, low-carb, and dairy-free. I also discovered that every "body" has a different response to the various diets. What works for one person doesn't necessarily work for another. In every experiment, my own body helped signal which method was best for me, my personality, my time, and my habits.

The first step was to break the sweet addiction. In doing so, my body not only regained a healthy look and feel, I also had much more energy and felt more clear and alert. I was sleeping better and had a more positive and happier outlook on life. One of the most important facts I learned was that the sweet craving was often the result of my body's lack of true salt. I learned that our everyday iodized salt is useless. I switched to Himalayan pink salt, and another mineral-based salt from Utah called Redmond salt. That was the tipping point for me. I no longer even desire the taste of sweet desserts.

The wealth of knowledge on YouTube is awe-inspiring. I discovered a very healthy habit inspired by the 2016 Nobel Prize winner in medicine. If you really want to learn how to clear the mind, slow the aging process, and generally safeguard against such diseases as Alzheimer's or cancer, look up "Autophagy." This has been a game changer in my life. Let go of the "been there, done that" mentality and find out for yourself what your body personally needs, and not what someone else tells you it does.

The most important thing I learned on this journey is to listen to myself. Also remember moderation is the key. Fanatical, strict and obsessive diets are detrimental to your health. Be open to learn and change no matter your age. Let your body be your guide to a healthier and happier you. **B**



Jeni Meunier is a Director at Trustpoint. One. Trustpoint. One provides end-to-end eDiscovery capabilities, in forensic consulting, processing, hosting, review/staffing, production and court reporting and translation services. Jeni can be contacted at Jeni.Meunier@Trustpoint.One

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Cost: Free BCBA County Court
Section Member; \$20 BCBA
Member; \$45 Non-Member

**18 2019 Bench and Bar
Convention**

Sponsorships Available!

Agenda Now Available online

Time: 7:30 a.m. – 6:00 p.m.

Venue: Signature Grand

Cost: \$195 BCBA Member; \$235
Non-Member

**10 Workers' Compensation CLE:
Heart and Lung Presumption
Laws**

Time: 11:30 a.m. – 2:00 p.m.

Venue: BCBA Conference Center

Cost: Free BCBA Workers Comp
Section Member; \$15 BCBA
Member; \$25 Non-Member

25 Robes & Ritass

Judicial Jaunt Kick-off Event

Sponsored by: Rissman, Barrett,
Hurt, Donahue, McLain &
Mangan

Time: 5:00 p.m. – 7:00 p.m.

Venue: O Lounge

11 Noche Latina

*Dance Lessons, Paella, Cuban
Cocktails & Cigars!*

Time: 5:30 p.m. – 8:30 p.m.

Venue: BCBA Conference Center

Cost: \$35 BCBA & BCHBA
Member; \$40 Non-Member

Save the Date!

*Visit our online Calendar for more
information.*

**2019 Roger Staley Real Property
Seminar**

Date: November 1, 2019

Time: 8:30 a.m. – 3:00 p.m.

Venue: BCBA Conference Center

Cost: \$95 BCBA Member; \$125
Non-Member

**2019 YLS Golf Tournament
Benefiting Nicklaus Children's
Hospital Foundation**

Sponsorships Available!

Date: November 9, 2019

Time: 8:00 a.m.

Venue: Jacaranda Golf Club

Cost: \$150 Single Player ; \$500
Foursome

2019 BCBA Annual Holiday Party

Date: December 12, 2019

Time: 5:30 p.m. – 8:00 p.m.

Venue: NSU Art Museum Fort
Lauderdale





HALICZER
PETTIS &
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Attorneys At Law

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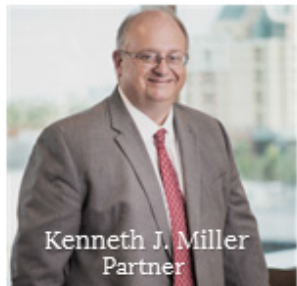
James S. Haliczer
Founding Partner



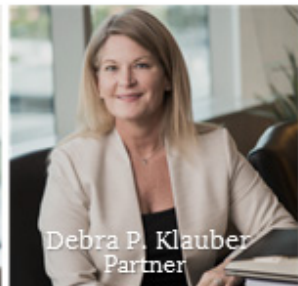
Eugene K. Pettis
Founding Partner



Richard B. Schwamm
Senior Partner



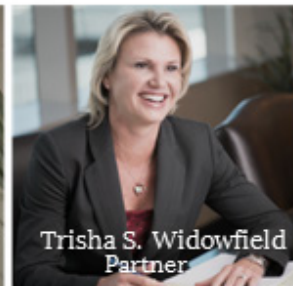
Kenneth J. Miller
Partner



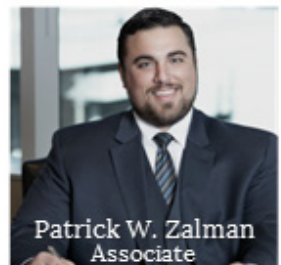
Debra P. Klauber
Partner



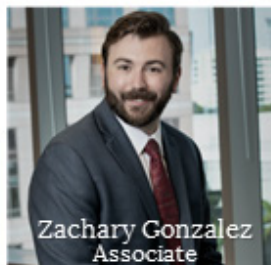
Michael Reidhammer
Partner



Trisha S. Widowfield
Partner



Patrick W. Zalman
Associate



Zachary Gonzalez
Associate

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