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ON THE COVER

The Broward County Bar Association welcomes the newest judiciary of the 17th Circuit Court of Broward County. Learn more about our new judiciary by reading this month's section on "A Dedication to Service".

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Robert C.L. Vaughan, Esq.

New Beginnings ...

Many of us rang in the New Year far more quietly than we did 2020 and admittedly, far more quietly than most of us had hoped. Even though we entered the new year tired of 2020 and tired of all of the hurt that it brought, we were filled with the promise that we were on the brink of a new and brighter 2021 filled with better health and prosperity for all of us (with maybe even a renewed commitment to social change as well). That promise was delayed by the events of January 6, 2021—an attempted coup and an attack upon the United States

Capitol—as our national legislature met in bi-cameral session to validate the results of our recent Presidential elections. An event which many of us thought we would never witness in our lifetimes, let alone on American soil.

Our nation watched in horror as our democracy, our Capitol, our flag and the majority of our nation's leadership fell siege to an angry mob of our fellow Americans who had been led to such rage that they were virtually unrecognizable to us as our friends, neighbors, family and co-workers. We watched helpless as this angry mob ransacked our chambers of government, threatened the lives of our legislators and their families, violated our flag and political institutions and attacked men and women whose job it was to protect those hallowed hallways. Most of us have spent every day since that unimaginable attack trying to understand how we got there and trying to explain to our children that they are safe, that our leaders are safe and that our nation is "safe." While there are some who are legally culpable for what happened—and should be held fully to account—we are all guilty of allowing this untenable attack on our democracy to come to fruition and we all have to make changes if we hope to strengthen and preserve our democracy for our children and their children.

How often have you heard a Judge described as a "Republican Judge" or a "Democrat Judge"; a "conservative" or a "liberal" Judge or some other political label purporting to brand the Judge—like political chattel—and worse, predict their thought process and legal conclusions as they execute their constitutional duties? This must stop. Not only is it an affront to the constitution, but as was made painfully obvious in the last several months, any compromise, dilution or diminution of the absolute independence of our municipal, state and federal judiciary, risks undermining the confidence of our citizens in our judges' decision-making role as neutral arbiters and as a check and balance to the other two branches of government.

As lawyers, we must do our part to put an end to this seemingly innocuous but dangerous practice. Our Judges are constitutional officers who play a vital role in the preservation of our democracy. They are not "Republican" or "Democrat"; they do not belong to Presidents or Governors or Senators. History teaches us that we would all do well to remember that and act accordingly.



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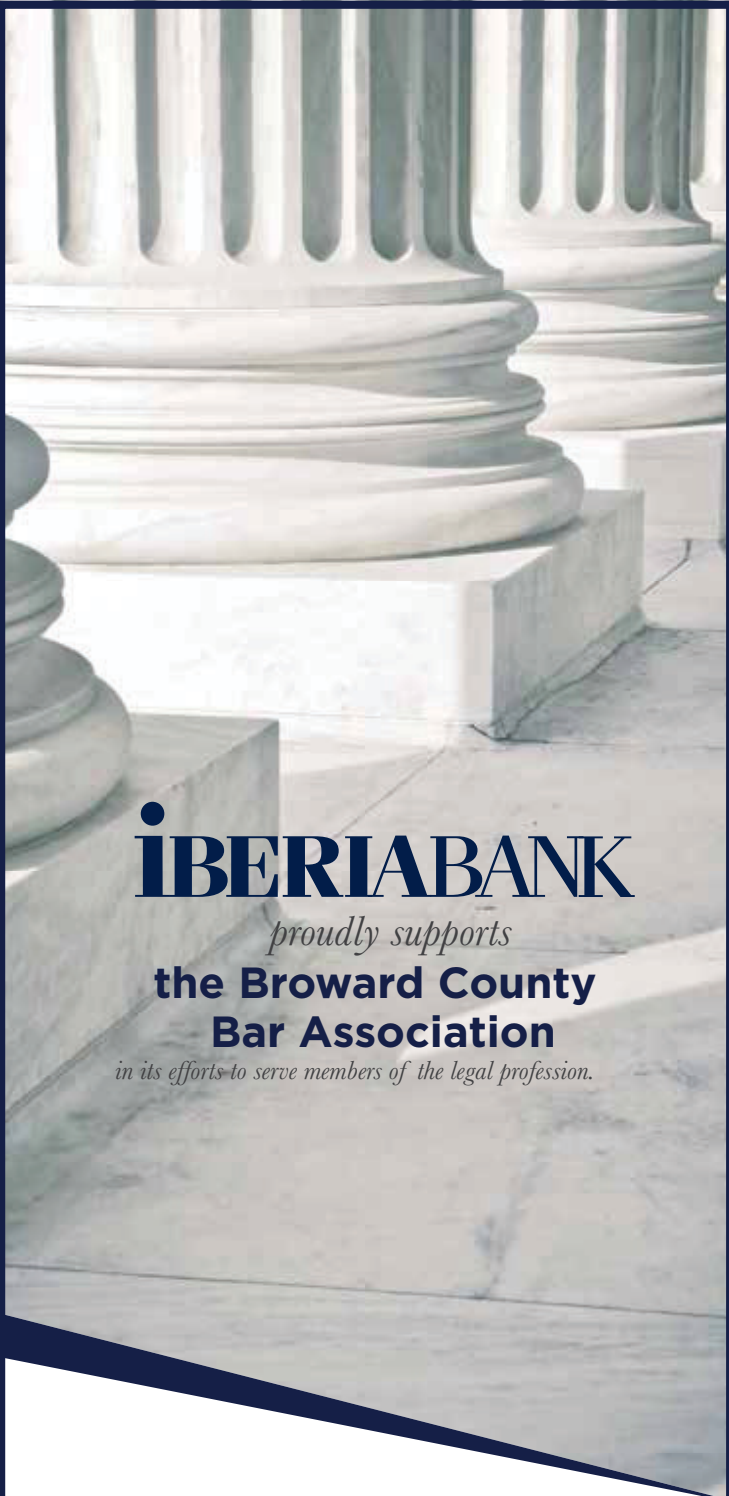
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Omar A. Giraldo, Esq.

I want to thank our Board Members for the tremendous work they've done, in a very different year. Jaime Alman and Kim Wald organized a holiday toy donation to Child Net in December. We were able to drop off several bins of toys for kids that could certainly use some cheer, now more than ever.

Kyle Roberts has been instrumental in the organization of our Lawyers for Literacy

program. We have had maximum participation in every month that we have read for the students. The teachers have enjoyed having new readers present, virtually, to read to the kids and the kids certainly have enjoyed it.

Brendalyn Edwards is spearheading a Black History program to occur on February 24. Be on the look-out for more information to come, along with registration information.

We're also hoping to put on a joint professionalism event, together with the BCBA Professionalism Committee. More information will be forthcoming in February/March.

We greatly appreciate your commitment to our Young Lawyers. Lastly, please mark your calendars for upcoming events, details of which can be found on our online calendar: www.browardbar.org/calendar/.






If you are interested in joining the YLS, partnering with YLS on an event, or have any questions, please feel free to contact me at VG Law Group at (954) 500-2422 or ogiraldo@vg.law.

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welcomes Karen A. Brimmer
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- » Karen served as a South Florida civil trial attorney for 43 years.
- » She has represented parties in more than 100 jury trials in Florida's state and federal courts.
- » Her many diverse practice areas include employment discrimination, wage and hour claims, personal injury, first party insurance coverage disputes, legal malpractice, premises liability and negligent security.

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JUDICIAL DIVISIONAL REQUIREMENTS BEFORE, DURING AND AFTER COVID-19

by Lisa Ferreri

After speaking with various Judges, attending the Judicial and Paralegal Webinars, and brainstorming on the improvements that can be made in order for their cases to procedurally move along, I was surprised how one Rule needs to be implemented each time you are presenting a Notice, Motion, Memorandum, and/or an Order before any Judicial Court.

Rule 1-Review their local clerk of court's webpage for the Judicial Divisional Instructions for each Court Circuit, Civil, Family, Probate and Criminal. The changing of Judges to different divisions are not always published and therefore each of us as an extension of the Court System has the responsibility to accurately and with due diligence familiarize yourselves with divisional instructions. As members of the legal community, we are responsible for implementing the Judicial procedures in a clear, concise, manner which includes specific wording, courtesy copies of motions, caselaw, proposed orders, filing, Zoom ID's passwords, prioritizing and/or attaching the documents in the order that each Judge wants to review in their courtrooms and/or chambers.

It is not the responsibility of the Judicial Assistant to notify us of the procedures it is our responsibility as Paralegals/Scheduling Assistants to know what needs to be done and how to implement the right instruction in order to move our cases along. As an essential part of the legal profession, the Paralegal is responsible for most of the aspects of research and preparation, we administer and have duties to our employer and our clients', to communicate, write, organize, multi-task and use our internet skills; to be able to find and analyze information that is requested and provide it when applicable. Juggling these duties is not easy but is required and necessary if you wish to succeed in the legal profession. Having the attorney, you work with prepared before the Judge not only makes him "look good" before the Judge, but it reflects on you as the Paralegal that you care about the job you do and what it represents.

Recently, I attended a Zoom meeting and basically what was stated by various Judicial Assistants and Paralegals is that as legal liaisons it is our mission to work together, research the divisional rules, keep up with the COVID-19 Closures and Procedures for each Court which may change daily. The Judicial Assistants have experience,

knowledge and want to be helpful to all of us, however, we have the responsibility as Paralegals to be aware of the procedures of each Judge, know the differences and implement the procedures.

Rule 2- Complex Litigation Matters. This is important, when you are transferring a case to Complex Litigation with the Honorable Judge Patti Henning the Motion has to be Special Set and an Administrative Order needs to be signed. It is not up to the Circuit Judge assigned to your case to sign the Order to Transfer. That transfer will not be effectuated until an Administrative Order is signed (which as a seasoned Paralegal, I did not know).

Lastly, it appears that the Court System will not be business as usual for the upcoming 2021 year. The Courtrooms are empty, the employees are not all back and are working from home, cases are backlogged, everyone is overwhelmed and trying to do their best during this COVID-19 Pandemic.

As a Personal Injury Paralegal, we have the ability and the know how to move the cases along and get those Agreed Orders signed, move the discovery, set the depositions, and try our best not to set Motions or Disputes that can be worked out without Court intervention. Reach out the attorney you work with, let them know the disagreement, ask them to make that call, sometimes all it takes is for the attorney to have a five-minute conversation with opposing counsel. In the long run, you will be relieved, the issue will be taken care of and ultimately, your clients will be happy.



Lisa Ferreri is a Litigation Paralegal with more than three decades in the legal community and currently works at Middlebrooks & Middlebrooks, P.A. in Fort Lauderdale Florida. Her Contact information is Lisa@Middlebrookslaw.com.

EFFECT OF COVID-19 ON TRAVEL INDUSTRY AND AIR

by *Mohammad Ahmed*

The public may see COVID-19 as the only factor affecting the future of air travel, but it is merely a major player conspiring with other factors. Major airlines' struggles to adapt, the rapid opportunistic adaptation by charter and private aviation during COVID outbreaks, new technology, and COVID migrations will fashion a new air travel ecosystem.

In 2020, legacy airlines that thrived on hub-and-spoke route planning models struggled to survive. Delta Airlines, American Airlines, and United Airlines are three masters of the hub-and-spoke system, aggregating passengers into their major hubs and connecting them to their final destinations. Yet, United Airlines is rumored to experiment with direct point-to-point routes famously used by Southwest Airlines, Spirit Airlines, and JetBlue. A few airlines are making remarkable guarantees to boost the traveling public's confidence. Emirates Airlines announced automatic COVID-19 insurance coverage for all tickets purchased between key dates, promising up to \$500,000 in overseas healthcare and quarantine expenses, and up to \$7,500 for trip cancellation reimbursements. Emirates advertises that its promise is backed by American International Group, Inc.

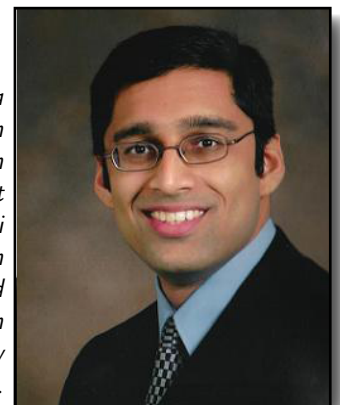
In all instances of commercial airline travel, passengers should take great care to understand the terms and conditions in their chosen airline's "Contract of Carriage." The terms and conditions of any traveler insurance policies should also be noted. For international travel, Article 17 of the Montreal Convention is likely to govern any passenger claims against an airline for COVID infections. Therefore, a court would have to determine whether an infection constituted an "aviation accident" outside of the passenger's control and reasonably foreseeable and controllable by the airline. Such a question is very fact specific.

Charter and private aviation experienced an influx of business for several reasons. Major airlines trimmed their schedules in part because there are fewer business travelers but more leisure travelers. Business travelers who must travel, often to markets that are poorly scheduled or shutdown, will resort to charter or private aviation if they can make a business case. Additionally, a growing number of passengers have chosen to fly in a setting that involves skipping the crowds of large airports and larger aircraft.

On the technology front, attempts to develop short-distance, two- to five-passenger battery-electric drones and regional 15- to 30-passenger battery-electric airliners have gained attention. Their impact will not be felt for at least a decade because development and government certification is lengthy. However, when a pilotless battery-powered drone can fly commuters from Palm Beach to Miami, it may add traffic and remap the way people choose their favorite airlines for long-haul flights. Also, short-haul 15- to 30-passenger flights to and from smaller markets such as Tallahassee were never profitable. Battery-electric airlines might have lower maintenance and fuel costs, which might increase availability of air travel to smaller markets.

Smaller markets always needed better and more frequent aviation service, but they were often economically unviable markets for the airlines. COVID migration may give smaller markets new life. Many people are moving away from high-density cities to medium-density cities, ex-burbs, small towns, semi-rural and even rural areas in search of cleaner, fresher air, fewer COVID-related governmental restrictions, and better social distancing. The need to live in a large city has been questioned because many workers function equally well by videoconferencing and telecommuting. Some COVID migrants have moved closer to their extended family to reduce the social isolation caused by the pandemic. These movements may all cause the travel industry to rethink how it provides services.

Mohammad Ahmed Faruqui is a Board-Certified Aviation Attorney in Fort Lauderdale, FL, servicing aviation clients in Florida and throughout the U.S. and abroad. Mr. Faruqui has been licensed to practice law in Florida since 2006 and graduated from Nova-Southeastern University Shepard Broad Law Center in 2005.



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WELCOMING OUR NEWEST MEMBERS OF THE JUDICIARY

The Broward County Bar Association is proud to honor and recognize the four newest members of the 17th Judicial Circuit. We thank the new judges for their dedication and commitment to serving the good of our community. Please join us in welcoming and congratulating our new judges.

THE HONORABLE LINDA A. ALLEY

by Kimberly L. Wald, Esq.



Judge Linda Alley is a veteran trial attorney who brings a wealth of knowledge, compassion, and experience to the bench. She has had an exceptional legal career spanning over 20 years as an attorney practicing in Broward County. Judge Alley began her legal career as a paralegal at the Schlesinger Law Firm in Fort Lauderdale. While she was a paralegal, she became interested in pursuing a career as a lawyer so she could further help injured victims. Judge Alley attended the University of Florida College of Law and graduated with honors. Thereafter, she returned to the Schlesinger Law Firm as a trial attorney and primarily worked on complex medical malpractice, wrongful death, and product liability cases. Then, in 2017, Judge Alley began working at Kelley|Uustal, a catastrophic personal injury and wrongful death law firm also in Fort Lauderdale. At Kelley|Uustal, Judge Alley was one of the lead attorneys working in the tobacco division and assisted the team in successfully trying many cases to jury verdict.

During the course of her legal career, Judge Alley has tried many cases to verdict. Her most memorable cases were those on behalf of injured children because she was able to obtain justice and funding for their medical expenses, thereby helping them achieve the best lives possible.

In addition to her exceptional trial experience, Judge Alley is also active in the legal community and is a member of many different bar organizations. Judge Alley is a past president of the Broward County Trial Lawyers Association and was also an active member in the Florida Justice Association Womens' Caucus, the American Association of Justice, and the Florida Justice Association.

In her free time, Judge Alley enjoys giving back to the community and particularly enjoys working with and teaching school children. She volunteers for the "My Future Is Now" Program whose goal is for every student to have the vision of a successful future and to view school as a place to make that vision a reality. She also has participated as a "mock juror" for the Broward County School board for several years. Additionally, she is a member of the Tracy McPharlin Pro Bono Initiative which is a project launched in 2012 in memory of Tracey McPharlin, a Broward County attorney who passed away in 2010. The goal of the initiative is to recruit, train and support attorneys who will carry on Tracey's work by representing at-risk children in all proceedings affecting their safety, permanency, health and well-being.

Judge Alley has two wonderful children who mean the world to her. Her daughter Sarah is a prosecutor at the Broward County State Attorney's office and her son Brad is a teacher.

When asked why Judge Alley wanted to become a Judge, her response was, "I want to see justice done in our community for all our citizens and I want to be part of that process."

THE HONORABLE TABITHA BLACKMON

by Morgan Weinstein, Esq.



Judge Tabitha Blackmon was recently appointed to the bench as a county court judge. Judge Blackmon spent her early childhood in Trinidad, moving to the United States at the age of nine. Her childhood experiences in Trinidad, which made her feel insecure due to a described sense of lawlessness, made her reverent of people who would seek to provide or restore order to a society, informing her career path prior to becoming a judge and also sparking her interest in becoming a decisionmaker within her community.

Judge Blackmon is a University of Florida graduate, both in her undergraduate and juris doctorate degrees. Judge Blackmon began her legal career as an assistant state attorney, serving four years and becoming a supervisor. Judge Blackmon then embarked on a career in private practice, ultimately returning to a position as an assistant state attorney. In her second round as a prosecutor, she practiced in the career criminal division. Prior to her appointment to the bench, Judge Blackmon prosecuted second degree murder and manslaughter cases.

Along the way, Judge Blackmon picked up a lengthy resume of professional and community service. She has volunteered with hospice organizations and through Ronald McDonald House, and has been involved in various legal organizations, including the TJ Reddick Bar Association, the Inns of Court, and the Broward County Bar Association, in part mentoring newer attorney and serving on the professionalism community for Broward County. Judge Blackmon wants it to be known: “My door is always open.”

A mother of two children, both girls, Judge Blackmon finds that parenthood happily occupies much of her free time. She is involved in her children’s softball, running, and swimming. Judge Blackmon also enjoys baking and is teaching her children to bake. On Saturdays, she takes them to feed the homeless.

THE HONORABLE ALLISON GILMAN

by Brendan Sweeney, Esq.



At the age of eighteen, Judge Gilman received her undergraduate degree from Florida State University, she then received her law degree three years later at the young age of twenty-one from St. Thomas University School of Law. After graduating from law school Judge Gilman served as an Assistant Public Defender for four years under former Broward Public Defender, Al Schreiber. After working at the Public Defender’s office Judge Gilman realized her life-long dream and opened up her own law firm, focusing on trial work. Judge Gilman’s prior firm was highly successful and eventually employed approximately sixty people with Judge Gilman trying approximately two hundred jury trials. While managing such a large firm, Judge Gilman recognized that she was becoming more of a manager than an attorney, and as such, re-focused her attention and downsized her firm, focusing on criminal matters throughout south Florida serving as a better way to connect and help the every-day clients.

Judge Gilman was drawn to the bench, in order to help others in the community and make a difference. As a practicing litigation attorney with thirty years’ experience, Judge Gilman understands that being an effective attorney is a very stressful and tough job; therefore, she does not want to add unnecessary stress to situations, but instead, would like to think outside of the box when necessary, and come up with resources that can assist young persons and/or first time offenders.

Judge Gilman is active in the community and is a member of the Coral Ridge Association, Humane Society, Jewish Association for Foster Children, and Pet Rescue Center. Judge Gilman is the proud mother of a school aged daughter, and a dog lover. With Judge Gilman’s extensive background and experience, she is a welcome addition to the Broward Judiciary, and will be assigned to the South Regional Courthouse.

THE HONORABLE GEORGE ODOM JR.

by Diana Castrillon, Esq.



George Odom, Jr. brings fresh perspectives to the bench. His background gives him a unique perspective on the law, and how our legal system can and does work when done effectively and applied equitably. Odom became licensed in Florida in 2012 and spent three years working in the Public Defender's office in Broward County. Thereafter, he transitioned to civil law and focused his practice on family law, personal injury, and criminal defense. Odom has led an exemplary career maintaining active involvement in the legal community.

Odom shared that his mother often reminds him that since the age of 9 he wanted to be a judge. He has incredible respect for his mother, whom he describes as a fiercely strong and independent woman who worked hard to raise her family. While Odom credits his success to his mother, he also gives tremendous reverence to the Honorable Brian Davis, Judge for the Middle District of Florida. In his youth, Odom "got himself into some trouble" and this introduced him to the legal world first-hand.

Faced with becoming a statistic, then-Juvenile Court Judge Davis gave him an opportunity to make a change. Davis "exemplified how being fair and impartial is so important in our judiciary."

Odom describes walking out of the juvenile court, walking into the military depot and enlisting in the U.S. Marine Corps. Throughout his years in the military, college, and later law school, Odom remained steadfast in his determination to give back to his community and be civic-minded. He became actively involved in many civic organizations including the NAACP, Ronald McDonald House, and St. Jude Children's Hospital. Odom has held prominent roles in many organizations and is the immediate past president of the T. J Reddick Bar Association, which is the premier voluntary bar promoting the professional excellence of Black lawyers in Broward County.

Now that he is on the bench he wants to "help inspire and advocate for equality in the law." He believes the judiciary must ensure that all members of the community are given protections under the law to avoid disproportionate results towards any one population. Odom believes that "our justice system is the best in the world, as long as you have the right people in place." Odom strives to be among those "right people" for the job and from where I stand, it seems he is well on his way.

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RECENT DEVELOPMENTS IN LAW

by Debra P. Klauber

First District adheres to the “pro rata” method to support reduction of Medicaid liens.

An injured plaintiff can initiate an administrative proceeding to challenge or reduce a Medicaid lien. In a pair of recent cases, the First District held that the administrative law judge erred in refusing to reduce the Medicaid liens where the plaintiffs had presented evidence, using the pro rata method, that only a portion of the settlement proceeds should be used to satisfy their liens. Where the Agency for Health Care Administration failed to present any evidence that the pro rata methodology was inaccurate, or that another method would be appropriate, the judge should have reduced the liens accordingly. *Domingo v. Agency for Health Care Admin.*, 1D18-2573, 45 Fla. L. Weekly D2603 (Fla. 1st DCA Nov. 18, 2020); *Soto v. Agency for Health Care Admin.*, 1D17-5387, 45 Fla. L. Weekly D2604 (Fla. 1st DCA Nov. 18, 2020).

University of Miami protected by sovereign immunity for services provided by its employee at Jackson Memorial Hospital.

In 2011, after the Florida Legislature amended the sovereign immunity statute to include teaching hospitals, the University of Miami and Jackson Memorial Hospital entered into an agreement under which the University of Miami’s employees and faculty, while treating patients at Jackson, are considered agents of the public hospital. The trial court agreed, and the Third District affirmed, the University’s contention that it was entitled to sovereign immunity under the new version of the statute and the affiliation agreement. *Lazzari v. Guzman*, 3D19-597, 45 Fla. L. Weekly D2426 (Fla. 3d DCA Oct. 28, 2020).

Fifth District clarifies causation standard in whistleblower cases.

The trial court instructed the jury that it could find in favor of the plaintiff, who claimed retaliation, if it found that the employer’s intent to punish him for engaging in a protected activity was a motivating factor, even if it was not the only reason for terminating him. The Fifth District reversed based on the United States Supreme Court’s recent determination that the more stringent “but for” test has to be applied in this context. The jury should have been instructed that it could find for the plaintiff only if it found that his termination would not have occurred but for his employer retaliating against his protected activity. *Chaudhry v. Adventist Health System Sunbelt, Inc.*, 5D18-2380, 45 Fla. L. Weekly D2443 (Fla.

5th DCA Oct. 28, 2020).

Third District confirms applicable standard for an award of fees under 57.105.

In order to award attorneys’ fees as a sanction under section 57.105 of the Florida Statutes, the trial court “must” find that the action was frivolous or so devoid of merit, both on the facts and the law, as to be completely untenable. Absent such findings, this case was reversed and remanded for further proceedings. *Lavold, Inc. v. Oracle Elevator Company*, 3D20-0264, 45 Fla. L. Weekly D2574 (Fla. 3d DCA Nov. 18, 2020)

Attorneys’ fees upheld as sanction for plaintiffs’ frivolous filings and general disregard of court orders.

After a hearing, the trial court concluded that the defendants were entitled to recover attorneys’ fees under Florida Statute 57.105. The court found that the plaintiffs knew or should have known that their claims were not supported by the facts, or the law, and that their counsel was precluded from asserting reliance on the representations of the clients. The court gave the plaintiffs and their counsel an opportunity to object to the detailed time and cost entries, but their filings did not comply with the court order, provide legal authority for their objections, or challenge the hourly rates. The appellate court agreed that their failure to appropriately respond to the order on fees resulted in a waiver of their arguments, and upheld the order awarding those fees and costs. *Lanson v. Reid*, 3D18-2616, 45 Fla. L. Weekly D2479 (Fla. 3d DCA Nov. 4, 2020).

Debra P. Klauber, Esq., a partner with Haliczer 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



WELLNESS REBOOT DURING COVID-19

by Beth Feder

As 2020 comes to an end and many of us take stock in what this year has been and what this year has meant to us, I cannot help but focus on some of the positive aspects of what has otherwise been a tumultuous year for our world.

I focused on the one thing I had absolute control over – my mindfulness. I was able to slow down and take stock of my life, my career, my family and most importantly to all of this, my mindfulness. What exactly is mindfulness? According to Oxford Dictionary, “Mindfulness is a mental state achieved by focusing one’s awareness on the present moment, while calmly acknowledging and accepting one’s feelings, thoughts, and bodily sensations.” As someone who is very involved in the voluntary bar community locally and state-wide, I found myself constantly going to meetings, events, and galas. When the pandemic hit and suddenly I had nowhere to be, my thought was “so now what do I do?” The chatter in my mind was deafening, I did not know how to just be. I spent the past eight months learning to be with myself. Learning to take care of myself and to quiet the chatter and be ok with the quiet. It is through mindfulness techniques like meditation, yoga and just walking that I have cleared the chatter and thrived.

The Broward County Bar Association created a Wellness Committee and I have the honor of being the first chair of the committee. The goal of the Wellness Committee is to assist attorneys in Broward County and through Florida in improving their mental health and well-being. The first step was to create programs that would benefit our community. Both programs described below were recorded and I suggest you reach out to Lauren Capote at BCBA for access to the programs.

Our first program was Navigating Your Practice in the Time of COVID-19. We had a variety of speakers speak on how COVID was affecting them, their practices, and their ability to generate revenue. I am thankful to Rick Ellsley, of The Ellsley Law Firm; Michael Hersch, Managing Partner of Kelley Uustal; Christina McKinnon of McKinnon Legal; Anthony Quackenbush of The Quackenbush Law Firm; and, Louis Reinstein, Partner at Kelley Kronenberg. The speakers shared advice on how to not only keep their practices growing during this challenging year, but also on how they adapted and thrived.



Our next program was Unreasonable Demands: Mental Health and Stress Management for Attorneys with Dr. Marsha Brown. Dr. Brown is a licensed psychologist with extensive experience in the assessment, evaluation, diagnosis, and treatment of individuals of all ages. Dr. Brown specializes in helping individuals and organizations in the legal, mental health and law enforcement fields deconstruct their stress and take back control of their time. Dr. Brown shared the impact stress has on our lives currently and the long term affects. Dr. Brown gave tangible coping strategies for self-care and work-related strategies.

As 2021 starts, it is time to Reboot Your Life, Reboot Your Practice and Reboot Your Mind. Look for more programs on how to do just that from the Broward County Bar Association’s Wellness Committee.



Beth Feder is with Winston Law Firm (WLF), a boutique personal injury firm in Davie, FL. Ms. Feder is the current chair of the Wellness Committee for BCBA and BCWLA. Ms. Feder is also a proud GAL and recommends volunteering for the program.

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