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SEPTEMBER 2017

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FRIDAY, OCTOBER 20

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ON THE COVER

The 2017 BCBA Bench and Bar Convention will take place on Friday, October 20th at the Broward County Convention Center. "A View from the Bench - Do You Measure Up?" judiciary panel is scheduled for our morning session. The panel will discuss the current state of their respective courts and will speak to the most recent changes and updates. Register today at www.broward-benchandbar.org

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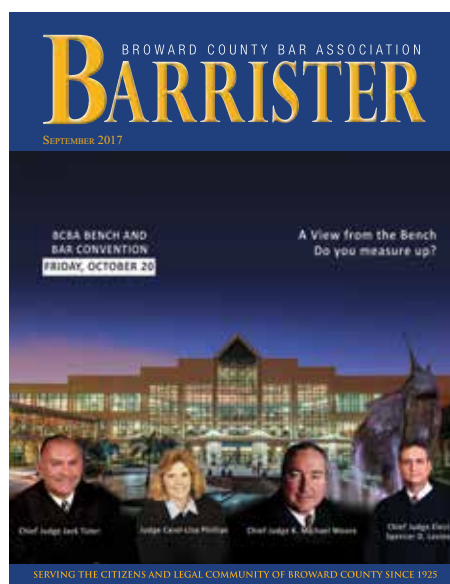
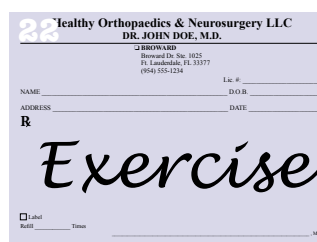
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letter from the president



Thomas Daniel Oates

Last month the Broward County Bar Association was extremely busy and we had many very successful events. Most notably, the BCBA hosted a reception with Florida Supreme Court Chief Justice Jorge Labarga as the guest speaker to kick-off National Hispanic Heritage Month (September 15 – October 15). Attendees learned about the Supreme Court's summer activities before the court resumed hearings on August 30.

I would like to extend a heartfelt thank you to Chief Justice Labarga for his valuable time, and to everyone who worked swiftly to pull together the necessary resources to plan the luncheon. Chief Justice Labarga's event at the BCBA would not have been possible without the assistance of The Honorable Chief Judge Jack Tutor, The Honorable Judge Carlos Rebollo, and the

joint efforts of the BCBA Hispanic Lawyers Committee, and the Broward County Hispanic Bar Association (BCHBA).

As I write this letter, a Hispanic Heritage Month event, including a CLE, are in the final planning stages for Thursday, October 5. SOS Venezuela will cover the events related to former President Obama's Executive Order that designates Venezuela as an "unusual and extraordinary threat" to national security and imposes restrictions affecting Americans looking to start or continue business in Venezuela. The BCBA event will be co-hosted by the Broward Bar and the Weston Florida Chamber of Commerce. This month's Barrister also includes a relevant article by Jorge Alberto Abreu, an attorney at Gastesi & Associates, P.A., titled Americans Conducting Business in Venezuela, Adversely Affected by U.S. Sanctions.

This month will also feature the event, A Taste of the Caribbean which will be Thursday, September 7, 2017, at the BCBA Conference Center. Guest speakers Lorna E. Brown-Burton, Dahlia Walker-Huntington, and Michael Goldstein (President & CEO Lan Infotech) will discuss the topic The Changing World of Immigration and Technology: Staying current on the new rules and regulations. This year's event will include an immigration and technology CLE, and feature a rum tasting.

This month we also recognize Constitution Day. Traditionally celebrated on September 17 in recognition of the signing of the United States Constitution that day in 1787. The BCBA's annual Constitution Day Reception titled, Constitution Revision Commission: An intimate Conversation will be Tuesday, September 12, 2017, from 5:30 to 8:30 p.m., at Hyatt Regency Pier Sixty-Six Pier Top, Fort Lauderdale. The event's Title Sponsor is Florida Power & Light Company (FPL).

Distinguished panelists to participate in a discussion moderated by Jay Cohen, Florida Bar Board of Governors member, include: Constitutional Review Commissioners, Former Senator Christopher L. Smith, and Belinda Keiser; and Florida Bar Board of Governors Constitution Committee Members, Florida Bar President Michal J. Higer, Gary Lesser, and Leslie J. Lott.

For additional information regarding upcoming BCBA events, please call 954-832-3618 or visit <https://www.browardbar.org/calendar>.

I look forward to seeing you at a future BCBA event. **B**

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letter from the young lawyers' president



Sara M. Sandler

I started to write my article for the September Barrister in early August. It began as a lighter piece, meant to poke fun at some of the more awkward situations we find ourselves in as attorneys. And then work, and life, and – let's call it what it is – procrastination happened. And then Charlottesville happened. And then I didn't feel like trying to be funny or witty.


I am not terribly well traveled. I have never been to Charlottesville, Virginia and certainly can't speak for what that city is like on a normal day. In fact, I can't speak for a very vast majority of cities or states or even parts of the country. Having grown up here in Broward though, I can say that Broward County is beautifully diverse. Here, you can find people of every race, religion, nationality, gender, and sexual orientation. The beauty of Broward is that we see this diversity on a daily basis and, more importantly,

we see this diversity blended together. We go to school together and take public transportation together. We live in communities together and volunteer together. We sit in board rooms together and in court rooms together. We lead our community together.

But there are always exceptions. And while, comparatively speaking, Broward County is a united community, that doesn't mean that we aren't scared and sad and outraged by what happened in Charlottesville. It doesn't mean that we have the luxury of ignoring what happened there and what is happening across the country. And, to be clear, this isn't about one race or one religion, this isn't about a particular side of the aisle, this isn't about any one particular group of people no matter how you try to divide it. This is about us, as a collective unit of people living in this county, this state, this country, together. Simply put, this affects us all. Especially in a place like Broward, a place that celebrates its diversity but may otherwise be complacent, the type of hatred that spewed over in Charlottesville is exceptionally dangerous. It allows people to believe that hatred is acceptable; it puts people under the false impression that suddenly their bigotry is welcomed. We must find a way to ensure that we never welcome this way of thinking here; we must make it clear that, in Broward, the only thing we are prejudiced against is prejudice.

Admittedly, I come to you with no solution. All I can offer with this little, localized article is the acknowledgment of what took place in Charlottesville and some small way of making it clear that it has not gone unrecognized at a local level simply because it did not happen here. And while I am a very, very teeny tiny fish in the sea of local leadership, I am fortunate enough to have a platform that allows me to address what took place in Charlottesville and maybe, just maybe, use it to serve as a reminder that we must work together to ensure that we continue to be the beautifully diverse and blended community we have always been; intolerant of hatred of any kind. We must continue to ensure that our friends, our colleagues, our neighbors feel safe and loved here in Broward County. While I am not naïve enough to think that this is all it will take, at least it can continue to take us in the right direction.

Let me be clear that, while there will always be a bigger issue worth addressing, I don't intend to use this monthly article as a way to air my social commentary. I look forward to using this space to tell you all about the great things your Young Lawyers Section is doing in the community and, ideally, making you smile, and maybe even laugh. Just not today. Today, I use this space to remind anyone who may be feeling uneasy about Charlottesville that, here in Broward, we are a united, inclusive community. Rather than feeling consumed by the ugliness of the hatred we saw in Charlottesville, I encourage you all to "walk in the sunshine, watch for the bright sun, be all those things you're able to be."

Until next time, keep truckin'. 

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IMMIGRATION INTERSECTION: HOW THE IMMIGRATION STATUS OF YOUR CLIENTS AFFECTS YOUR PRACTICE

by Anastasia White

It is well-known that South Florida has a high immigrant population, and even non-immigration attorneys often deal with clients who are not U.S. citizens. For many non-immigration practitioners, the significance of their clients' immigrant status might not seem important; however, while certain legal circumstances or advice will not affect U.S. citizens, they may subject non-U.S. clients to adverse immigration consequences.

Immigration and Corporate Law

Corporate attorneys must pay close attention when incorporating legal entities for foreign entrepreneurs and investors. Practitioners must inquire whether the foreign national ("FN") – a sole owner or a shareholder – will seek any immigration benefit based on his or her U.S. business in the future. Common nonimmigrant visas that allow FNs to live and work in the U.S. are L visas for multinational managers/executives, or E visas for treaty traders or investors.

FN who has her own business in a foreign country and would like to open or purchase a business in the U.S. must prove the qualifying relationship between entities. Qualifying relationship might be of parent–subsidiary, affiliate, or branch. Usually, the majority stock ownership in the company is sufficient; however, affiliation also might be shown with less than 50% ownership but when there is an element of control over management and policy. In situations with multiple owners or joint ventures, practitioners must pay close attention in order to properly structure the qualifying relationship between the U.S. and foreign entities for immigration purposes.

If a foreign investor will seek an E treaty trader or investor visa, the corporate attorney must be aware of so-called "nationality" of the enterprise. In order for the U.S. entity to qualify as an E treaty enterprise, it must have the nationality of the treaty country (based on an existing

Treaty of Friendship, Commerce and Navigation with the U.S.). The country of incorporation, in this case, is irrelevant because the nationality is traced to the nationality of the individual owners or shareholders of the company. In order to preserve the treaty nationality, 50% of the U.S. enterprise must be owned by the nationals of the treaty country.

These issues are extremely important to consider at the initial stage, otherwise, the U.S. entity and/or FN might be ineligible for the immigration benefit in the future.

Immigration and Family Law

Family law practitioners must inquire into the immigration status of their clients when clients are seeking a divorce, because divorce and, in some cases, separation may cut off FN's eligibility for an immigration benefit. For example, if the client is currently in the process of obtaining her lawful permanent resident ("LPR") status – or a Green Card – based on a marriage to a U.S. citizen ("USC") or an LPR, divorce will cause her to lose eligibility for the Green Card and may trigger deportation proceedings (unless the FN holds another valid nonimmigrant status). This is extremely important nowadays because the processing time for immigrant petitions are getting longer (e.g., an approval of a Green Card based on a marriage with USC takes approximately ten months from the application date). Family law practitioners also have to be familiar with the concept of *conditional residency* (aka *conditional Green Card*). If a FN received her Green Card based on a marriage to a USC or LPR, and the marriage is less than two years old, the FN receives a *conditional* Green Card. In order to remove conditions, the FN and USC/LPR spouse must *jointly* petition for removal of conditions within 90 days preceding the second anniversary of the Green Card approval. To remove conditions, the FN must establish, among others, that the marriage has not been terminated and is valid, and provide *bona fide* marriage

evidence. Neither divorce nor separation during the conditional residence does not automatically preclude the FN from removing conditions, but the process then requires a special waiver. If the petition to remove conditions is denied for any reason, the FN is placed in removal proceedings.

A family law practitioner may inquire whether the FN was a victim of domestic violence because if certain criteria are met, it will help the FN to preserve her status regardless of the divorce. Violence Against Women Act (VAWA) allows qualified spouses, parents, and children, who have been subject to extreme cruelty or battered, to self-petition for a Green Card without the abusive LPR/USC relative.

An LPR's divorce with a qualifying spouse may hinder her eligibility for becoming a citizen. For example, an LPR spouse who continues to "live in marital union" with the same USC spouse may naturalize in only three years after becoming an LPR (conditional residency period is counted towards three years). "Living in marital union" means actually residing together. If the couple does not reside together, the Green Card holder is eligible for naturalization in three years only with VAWA waiver. Otherwise, the FN must wait five years. **B**



Anastasia White is an immigration attorney at Rostova Westerman Law Group, P.A. Ms. White focuses her practice on primarily business and investor visas and is a member of Business and Investment Committee of AILA (American Immigration Lawyers Association) of South Florida. She may be contacted at 786-408-3183 or anastasia@usainvestor-visas.com.



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17TH CIRCUIT COURT JUDGE SPEARHEADS COLLABORATION WITH THE SEMINOLE TRIBE OF FLORIDA

by Hilary A. Creary



The Honorable Jose Izquierdo

The Indian Child Welfare Act (ICWA), 25 U.S.C. §1911, provides for transfer of jurisdiction of state court cases involving an Indian child to that child's tribal court. Specifically, ICWA provides that "In any State court proceedings for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe..."

For many judges and attorneys, navigating the ICWA can be challenging, but one judge has turned that challenge into an opportunity. Dependency Judge Jose Izquierdo has taken the first step towards the Circuit's Dependency court partnering with the Tribal Court of the Seminole Tribe. The Tribal Court's mission is

to respect the customs and traditions of the Seminole Tribe of Florida and to ensure that the rights and powers which are inherent to the Tribe's sovereign status are secure.

Stan Wolfe, the Director of Court Administration for the Seminole Tribal Court, began this initiative by opening lines of communication with the court system including representing the Tribal Court on Florida's Dependency Court Improvement Panel. Director Wolfe, and Kristi Hill, the Seminole Tribe's Administrator of Special Projects, worked with Judge Izquierdo to arrange for Tribal Court judges and staff to observe Dependency Court on the Seminole Tribe Reservation. Director Wolfe expressed his gratitude for Judge Izquierdo's interest, and the Circuit Court's assistance in developing the process for ultimately transferring dependency cases to the Tribal Court.

There was a lot of work behind the scenes by both the Circuit Court and the Tribal Court to ensure the success of the first of what is expected to be, many dockets held on the Reservation. Judge Izquierdo began by having the cases with Seminole Tribe members transferred to an ICWA Special Division. He then scheduled hearings for these cases to be heard at the Tribal Court on the Seminole Tribe Reservation in Hollywood. Holding court on the Reservation involved coordinating the appearances of service providers as well as social workers and child advocates from the Circuit and the Tribe, guardians ad litem, and attorneys from the Office of the Attorney General which represents the Department of Children and Families and its subcontracted agency, Child Net; attorneys who represent parents including attorneys from the Office of Criminal Conflict and Civil Regional Counsel; Attorneys for the Guardian ad Litem Program, as well as Court staff. Coordinating such an effort on both sides was no small feat, but working together ensured that the process was a smooth one.

Conducting the hearings on the Reservation was very significant, in that it provided tribal members a level of comfort being in familiar surroundings at their Tribal court house. As Judge Izquierdo points out, "Dependency court is therapeutic in nature and has as its goal, the reunification of children and their families." Hav-

ing the ability to be heard on what can be traumatic issues of abuse, abandonment, and neglect on the Reservation in familiar surroundings made a great deal of difference to the families involved.

Three judges from the Tribal Court joined Judge Izquierdo to observe him conduct the hearings scheduled on the docket. The Tribal judges were able to ask questions about the process, the roles of the participants in the hearings, and the judge's thought processes during his analysis of the evidence presented, as well as his rulings. This exchange between the judges was a crucial step in ensuring their comfort with eventually conducting the hearings, and the long term success of the Tribal Court once jurisdiction for all the ICWA Dependency cases is transferred to the Tribe. This will be a gradual transition, but the process has begun with these hearings. Another docket is scheduled to be heard on the Reservation in October.

Judge Izquierdo, Director Wolfe, and Administrator Hill all believe this first of many dockets, was successful. Judge Izquierdo said it was a good experience for him because he believes it is extremely important that judges should expand their horizons, as this improves racial, ethnic, and cultural diversity. He is also excited about the many innovative projects in the 17th Circuit which benefit children and families such as drug court, early childhood court and the permanency project, among others. Administrator Hill who has worked with the Seminole Tribe for twelve years, says the Court has been developed for a while, and this is the next step in the transition phase. She reports that having the docket heard

on the Reservation was much less stressful for the families, and that the parents really appreciated Judge Izquierdo coming to their facility, as it made attending court much less intimidating.

Director Stan Wolfe moved to South Florida twelve years ago from The District of Columbia after years of work on Capitol Hill, and as a Prosecuting Attorney in Michigan, and Judge for his tribe, the Eastern Band Cherokee Tribe in North Carolina. He has been working on the establishment and expansion of the Seminole Tribal Court for ten years, and is excited at the progress that has now been made towards the transfer of jurisdiction to the Tribal Court of Dependency matters. According to Director Wolfe, the Tribal Court is fully functional and has broad civil jurisdiction. The tribal judges have had extensive training and are currently hearing all types of cases, including Dissolution of Marriage and customary adoption cases.

However, there are still some differences between the two Courts. For example the Seminole Tribe does not recognize termination of parental rights. Their customary adoptions permit children to be adopted without the termination of their parents' rights. In addition, there is no formal mediation required in Tribal Court. Instead, mediation occurs in the court room, where the parties meet one on one with the judge in a non-adversarial conference. These differences mean that there is still a lot of work to be done. Nevertheless, the collaboration between the courts is innovative, and is the first of its kind in the State of Florida.

There is also ongoing discussion on

whether the Tribal Court will adopt its own Rules and Statutes in Dependency and other matters. Judge Izquierdo has recently joined the Tribal Court's long-standing Tribe/State collaborative group which has been ongoing for several years, and is involved in discussions with the Tribe regarding the continued use of Florida Statute Chapter 39 which governs Dependency proceedings. It seems to be the consensus that although the Seminole Tribe will continue operating under Chapter 39 in the near future, it will most likely implement its own rules and statutes which are consistent with the Tribe's customs and traditions. Administrator Hill believes the Tribe's intent is to have its own set of codes for use by the Tribal Court. She expects that the codes will mimic Chapter 39 but will be amended to include Tribal language and customs. Likewise Director Wolfe believes the Tribe's code will reflect the essence of Chapter 39, with amendments to make sure it works for the people of the Seminole Tribe.

The 17th Circuit is grateful to Judge Izquierdo for his insight and innovative thinking. We wish him much success. **B**



Hilary Creary is a partner with the Family Law firm, Benjamin-Wise Creary, PLLC located in Pompano Beach. She is also a Guardian ad Litem, and Florida Supreme Court Certified Family Law Mediator. For more information Hilary can be contacted at hilarycreary@wiselawoffice.com or (954) 783-9737.

Two Featured Tracks for the 2017 Bench & Bar Convention October 20, 2017 | Broward County Convention Center

The Trial Track

by Brent M. Reitman & Robert C. L. Vaughan

Come and join some of the State's most renowned trial practitioners as they share their secrets for success! This year's trial track is set to offer advanced topical discussions and techniques that will be sure to add more than a few innovations to each attendee's trial arsenal. In short, the goal of this track is to be the best by learning from the best!

Starting in the morning, Joe Slama of Krupnick Campbell Malone Buser Slama Hancock Liberman, P.A., who has successfully litigated numerous aviation disasters, industrial catastrophes, brain and spinal cord injury cases, and taken on some of the largest product manufacturers in the world will be demonstrating the rules of the road when it comes to effectively cross-examining expert witnesses.

Following, Bob Kelley of Kelley Uustal, a nationally renowned trial lawyer who has achieved success in numerous legendary trials (including a successful verdict against

General Motors after a six-month trial) will be discussing his secrets on effective jury selection including the pitfalls and perils of what is considered by many practitioners as the most important part of any trial.

The afternoon of the trial track will have live trial demonstrations conducted by extremely prominent trial practitioners as they perform examinations of witnesses and closing arguments with a step-by-step breakdown to follow and critiques. Observer and hear from



Brent M. Reitman joined the Law Office of Krupnick Campbell Malone Buser Slama Hancock Liberman, P.A., in 2013. Prior to joining the firm, Brent was a prosecutor for the Office of the State Attorney where he was responsible for thousands of criminal convictions and conducted scores of jury trials. Brent is a Board-Certified Trial Attorney in the area of Criminal Law and is AV Rated by Martindale-Hubbell, which is the highest rating in both Legal Ability and Ethical Standards. While not working, Brent volunteers his time on the Board of Directors for the B'Nai B'Rith Justice Unit for Broward County. Brent also serves as the President-Elect on the Executive Board of the Young Lawyer's Section of the BCBA. He can be reached at breitm@krupnicklaw.com



Robert C.L. Vaughan is a Partner with Kim Vaughan Lerner LLP, in Fort Lauderdale, Florida. Robert focuses his practice on general and complex commercial litigation, international dispute resolution and product liability. He represents clients with matters pending in US state and federal courts as well as with matters pending before Caribbean courts. Mr. Vaughan is rated AV by Martindale-Hubbell, its highest rating for professional excellence. Robert also serves as the Secretary on the Executive Board of the Broward County Bar Association. He can be reached at rvaughan@kvllaw.com

Medical Marijuana Track

by Matthew Ginder

The Broward County Bar Association, at its 2017 Bench and Bar Convention, is proud to host panel discussions on medical marijuana in Florida, sponsored by Greenspoon Marder, P.A., a leader in cannabis law. With the legalization of medical marijuana in Florida, the State is on track to become one of the largest markets in the Country. Hundreds of thousands of patients are eligible for medical marijuana in Florida, which is estimated to become a billion-dollar industry within the next couple years. As the industry begins to take shape, many areas of law will be impacted. Broward County Bar Association has invited industry professionals to discuss the unique issues and complexities facing the State's new medical marijuana program and how it impacts the practice of law. Topics will include a legislative update and summary of the medical marijuana laws in Florida and its effect on the industry. Professionals will also discuss issues affecting

different areas of law, such as land use and zoning, employment law, real estate, landlord/tenant law, among others. To learn more about the medical marijuana track and the Bench and Bar Convention, visit our website and register today! **B**



Matthew Ginder is senior counsel in the Cannabis Law practice group at Greenspoon Marder. Mr. Ginder represents various cannabis related businesses assisting in many areas of the industry, including licensing, regulatory and compliance, and business transactions. He also represents individuals and entities interested in investing in state legal cannabis businesses. Mr. Ginder co-founded and manages a nonprofit organization called the Organization for Safe Cannabis Regulation (OSCR), which advocates on behalf of cannabis related businesses in Florida. He is frequently sought after to comment on the medical marijuana market and has been quoted extensively in several well-known publications, including Fortune, Reuters, and Law360 to name a few. He can be reached at Matthew.Ginder@gmlaw.com



2015 Bench and Bar Attendee, Anthony J. Karrat, Esq., Executive Director Legal Aid Service of Broward County mapping out his day.

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SUCCESSION PLANNING: What Will Happen to Your Law Firm if Something Were to Happen to You?

by Natalie Giachos

None of us like to think about the uncertainties of life, but the reality is that illness, disability, accidents, and even death can occur unexpectedly. Yes, even to us lawyers. So as much as we would like to think we are immortal and that we will die at our desks at an old age, we need to plan for the unexpected. We owe it to our clients, our partners and staff, and our families.

Surprisingly, a majority of law firms do not have a written succession plan in place. For larger firms, this may not pose much of a problem as there are other attorneys at the firm that can take over if something were to happen. However, for solo practitioners and smaller firms, this is alarming. If anything were to happen there is a substantial risk to clients that their cases will be delayed or abandoned while staff and family are scrambling to figure out what to do with the lawyer's practice at a time when they are grieving.

Florida Bar Rule 1-3.8

In order to protect clients in these situations, The Florida Bar has a default/back-up plan in place. Florida Bar Rule 1-3.8, requires all attorneys in private practice to designate an "inventory attorney" who can manage their practice if necessary. The inventory attorney is assigned when no partner, personal representative, or other reasonable party capable of conducting the attorney's affairs is known to exist. The purpose of the inventory attorney is to protect the interests of your clients, not to preserve your practice or its value. It also does not discharge your ethical duties to your clients.

Considering that you have worked hard to build your firm and that your family is

likely dependent upon the income from the firm, relying on a back-up plan is risky. Taking the time to develop a comprehensive detailed succession plan that not only protects your clients, but also protects the value of the practice and your estate from any potential malpractice claims, is imperative.

What to Consider When Developing a Succession Plan

When it comes to succession planning, "one size does not fit all." Solo practitioners, small firm owners, and larger law firms all have unique challenges and issues. As a result, they will require different approaches.

However, here are 5 things all firm owners can do today to start developing a succession plan:

1. Enter into a written agreement with another attorney who is willing a capable to serve as a successor to close or carry on your practice in the event of your death or disability;
2. Determine what authorizations and/or other documents you will need to have in place so that the successor attorney is authorized to handle financial matters, including accessing your operating and trust accounts;
3. Provide your clients with information about your plan and add a clause to your retainer agreements obtaining pre-authorization so the successor attorney can immediately contact clients in the event of your death or disability;

4. Prepare a manual detailing your policies and procedures, how to access and obtain information from your case management and billing systems, calendar, and providing the successor attorney with passwords, bank account numbers, and anything else they will need;

5. Inform your spouse or personal representative/successor trustee about your agreement and consult with your estate planning attorney to determine how to best coordinate your succession plan with your estate plan.

This is obviously not a comprehensive list. Your plan will depend on your personal situation and goals, but given what is at stake both personally and professionally, you should make it a point to start planning early and educating yourself about key concerns and considerations in the succession planning process.

Having a succession plan can preserve your practice's value, prevent your spouse or heirs from facing a hasty emergency sale, and give you, your staff, and your family peace of mind. **B**



Natalie Giachos is the Managing Attorney at The Solution Law Firm, P.A., where she practices Estate Planning and Personal Injury. Natalie has a passion for marketing and helps attorneys and entrepreneurs achieve success through online marketing. Natalie can be reached at Natalie@solutionlawfirm.com. Visit www.solutionlawfirm.com

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The Legal Aid Chronicle

ay, October 19, 2017

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Americans Conducting Business in Venezuela Adversely Affected by U.S. Sanctions

by Jorge Alberto Abreu

According to the World Bank's 2016 Doing Business Report, Venezuela is the second worst country in the world within which to start a business. The World Bank's report found that the Central African Republic (an African country with widespread civil war) is the only place worse than Venezuela to start a business. On March 9, 2015, President Obama issued Executive Order 13692 in response to the Venezuelan government's erosion of human rights guarantees, including but not limited to: persecution of political opponents, curtailment of press freedoms, use of violence in response to protests and the presence of significant public corruption. The Executive Order, entitled "Blocking Property and Suspending Entry of Certain Persons Contributing to the Situation in Venezuela", explicitly affords the U.S. Department of the Treasury ("U.S. Treasury") and the Office of Foreign Assets Control ("OFAC"), the right to name specific individuals or entities deemed to be engaging in human rights violations contrary to the will of the Venezuelan people. These individuals or entities are placed on a Specially Designated Nationals and Blocked Persons List ("SDN List"). U.S. persons cannot engage in transactions with any listed parties on the SDN List.

On July 31, 2017 and pursuant to President Obama's 2015 Executive Order, the U.S. Treasury and OFAC, with the support of the current Trump Administration, announced the addition of Venezuelan President Nicolas Maduro to the SDN List. The U.S. Treasury has



designated many other high-ranking Venezuelan government officials to the SDN List in the past as well. All U.S. persons, defined as U.S. citizens and permanent resident aliens regardless of where they are located and all U.S. incorporated entities and their foreign branches, must comply with OFAC regulations. Foreign subsidiaries owned or controlled by U.S. companies must also comply. Any entities owned, 50 percent or more, either directly or indirectly, by persons or entities on the SDN List, are also barred from engaging in transactions with U.S. persons. Further, U.S. persons cannot engage in transactions involving third parties that are acting on behalf of persons on the SDN List or engage in transactions that are otherwise designed to evade or avoid the sanctions restrictions. Further, the U.S. Government retains authority to freeze the assets of any person on the SDN List.

However, U.S. persons may engage in business with a person that is on the SDN List if that person works for or controls the entity without an ownership interest. Furthermore, the SDN List designation does not extend to family members of designated individuals, unless they act on behalf of the SDN

List designated individual. There is also no general ban or embargo on imports from Venezuela at this time. U.S. persons may still enter into contracts involving Venezuelan businesses that are not on the SDN List.

The fines for violations of the U.S. Treasury and OFAC regulations can be substantial. In many cases, civil and criminal penalties can exceed several million dollars. Civil penalties vary by sanctions program, and the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalty Inflation Adjustment Act Improvements Act of 2015, requires OFAC to adjust civil monetary penalty amounts annually.

Consequently, even though one may start or conduct a business in Venezuela, U.S. persons considering the country as a viable option should thoroughly review the aforementioned SDN List and make sure they are not conducting business with persons or entities in violation of President Obama's Executive order, U.S. Treasury regulations or OFAC regulations. **B**



Jorge A. Abreu is an attorney at Gastesi & Associates, P.A. located in Miami Lakes where he practices in the areas of Commercial Litigation and Transactions. Born and raised in Miami, Jorge is a graduate of Florida International University and Nova Southeastern University's Shepard Broad Law Center. Jorge can be reached at JAbreu@Gastesi.com or by calling 305-818-9993.



Recent Developments in the Law

by Nancy Little Hoffmann

SUPREME COURT: LIABILITY INSURER WHICH REFUSED TO SETTLE WAS OBLIGATED TO PAY PLAINTIFF'S ATTORNEY'S FEES AND COSTS UNDER OFFER OF JUDGMENT STATUTE.

In its automobile liability policy, the insurer reserved control over whether to settle litigation against its insured. The policy further provided, in a section entitled "Additional Payments We Will Make," that it would pay "all investigative and legal costs incurred by us" as well as "all reasonable costs incurred by an insured at our request." After the insurer rejected a proposal for settlement by the injured plaintiff, and the jury returned a verdict far in excess of the offer, the plaintiff joined the insurer to the judgment. She was then awarded her attorney's fees and costs against the insurer pursuant to section 768.79, Florida Statutes, jointly and severally with its insured. On appeal, the First District affirmed and certified conflict with a 2001 opinion from the Second District.

The supreme court approved the First District's decision, finding that the policy language was ambiguous as to whether attorney's fees were included in the term "legal costs," which was not defined in the policy, and as such, the language must be liberally construed in favor of coverage. The court rejected the insurer's argument that costs and fees awarded under the offer of judgment


statute were not incurred by the insured at the insurer's request. It explained that since the insurer controlled the litigation and could have settled it, it thereby authorized the continued litigation expenses. *Government Employees Insurance Co. v. Macedo*, 42 Fla. L. Weekly S731 (Fla. July 13, 2017).

DEFENDANT WHO HAS NOT SATISFIED JUDGMENT AGAINST IT CANNOT SEEK EQUITABLE SUBROGATION AGAINST SUBSEQUENT TORTFEASOR UNDER STUART V. HERTZ.

In a lengthy opinion with concurring and dissenting opinions, the supreme court answered a question certified to be of great public importance as to the availability of the equitable subrogation remedy. A vehicle accident with severe injuries resulted in a judgment of nearly twelve million dollars against the negligent party. After the insurer paid its policy limit, approximately ten million dollars remained unpaid. Thereafter, the plaintiff filed a separate medical negligence action against his medical provider for exacerbating his injuries. The defendant and her insurer were initially permitted to join that action to seek equitable subrogation against the medical provider under *Stuart v. Hertz* and its progeny [defendant precluded from presenting evidence of medical negligence in original trial, but may later seek equitable subrogation], but their action was later dis-

missed by the trial court because they had not satisfied the judgment against them.

After the Fifth District reversed and certified the question, the supreme court quashed that decision and directed that the equitable subrogation action again be dismissed. It concluded that the judgment debtors could not bring such an action unless and until they had fully satisfied the judgment. *Holmes Regional Medical Center, Inc. v. Allstate Insurance Co.*, 42 Fla. L. Weekly S738 (Fla. July 13, 2017)

Note: There will be no more Supreme Court decisions until August 31, 2017. Happy summer vacation! 



Nancy Little Hoffmann is a Board-Certified Appellate Lawyer practicing in the Fort Lauderdale area since 1974. She may be contacted at 954-771-0606 or by e-mail at NLHappeals@aol.com

WARNING SIGNS OF MENTAL ILLNESS

by Sandra Cumper and Bruce A. Blitman

Research shows that lawyers face higher rates of substance abuse, depression and suicide than the general population. According to the most recent data from the Centers for Disease Control and Prevention, in 2012 the U.S. legal industry had the 11th-highest suicide rate among occupations, 18.8 per 100,000 compared with 16.1 per 100,000 nationwide.

A study of mental-health issues among U.S. lawyers released last year by Patrick Krill, a former practicing attorney who moved into addiction counseling seven years ago, and other researchers found that 20.6% of those surveyed were heavy drinkers and 28% experienced symptoms of depression, compared with 8% or less for the general population for both issues, according to other studies.

The adversarial nature of law practice, together with work and home stressors and the demands of clients contribute to these problems. Advances in technology make it possible to communicate with anyone, anywhere, at any time, making it more difficult to escape from the stresses and challenges of practice.

In "Law Firms Tackle a Taboo," an article in the May 22, 2017 edition of The Wall Street Journal, Sara Randazzo reported that "some U.S. law firms are tackling mental-health issues head-on. They are offering on-site psychologists, training staff to spot problems and incorporating mental-health support alongside other wellness initiatives."

Used interchangeably, the terminologies "mental health" and "mental illness" are assumed to mean the same thing. Every person has mental health just as everyone has physical health. Mental health relates to a level of psychological well-being or an absence of a mental disorder and explains the emotional, psychological and social well-being a person's existence. It affects thought, feelings, and actions. Our mental health helps to determine how we handle stress, relate to others, and make choices. Mental health is important throughout all stages of life, from childhood and adolescence through adulthood. Nonetheless, not all people will experience mental illness, but everyone will struggle or have a challenge with their mental well-being.

Mental illness is associated with unique types of mental experiences, similar to different physi-

cal and health problems. According to the World Health Organization (WHO) "there is no health without mental health." Throughout the course of life, various factors can contribute to mental health problems. Biological factors, such as genes or brain chemistry, life experiences as in trauma or abuse, and family history of mental health all affect our thinking, moods, and behaviors. Mental illnesses present with different symptoms and affect lives in different ways. What these conditions have in common is that they negatively affect a person's emotions, thoughts, and behaviors. These symptoms influence how people see the world around them and how they interact in that world.

One in five adults and one in four children experience mental health conditions each year. One in 17 lives with a serious and persistent mental illness, such as schizophrenia or bipolar disorder and can indirectly affect family members, friends and communities. These numbers are staggering. In the course of our practices, it is quite likely that we will encounter employees, junior lawyers, partners, support staff, clients, judges, and fellow lawyers who are struggling with mental health issues.

The following are some warning signs or indicators that can influence feelings or behaviors:

- Severe mood swings that cause problems in relationships;
- Persistent and recurring thoughts and memories;
- Withdrawing from people and usual activities;
- Feeling numb or like nothing matters;
- Low or no energy;
- Unexplained aches and pains; feeling helpless and/or hopeless;
- Increased smoking or use of alcohol and drugs;
- Eating or sleeping too much or too little;
- Forgetfulness, confusion, edgy, angry, upset, worried or scared;
- Hearing voices or delusional beliefs;
- Thoughts of harming self or others, and inability to perform daily tasks like taking care of yourself or performing daily living skills.

Naturally, there are times when we change our thinking and worldview. However, the diagnosis for mental illness evaluates the frequency of the condition, duration of the illness and the associated symptoms, as well as the impact of mental illness on lives. However, it is important to consider that every diagnosis presents with its own symptoms. While there are no known cure for mental illnesses, recovery is possible.


Below are some resources to help you and others.

- Florida Lawyers Assistance - <http://fla-lap.org/>
- Fla Toll-Free Hotline: (800) 282-8981 (National)
- FLA Judges' Hotline: (888) 972-4040 (National)
- Pompano Beach Office: (954) 568-9040

Florida Suicide Prevention Coalition (FSPC) - <http://www.floridasuicideprevention.org/>
• (800) 273-8255 (TALK)

National Alliance in Mental Illness – Broward County (NAMI) - <https://namibroward.org/>
• Broward – (954) 316-9907
• Helpline – (800) 316-9907

Suicide Prevention Lifeline - <https://suicidepreventionlifeline.org/>
• National Suicide Prevention Lifeline - (800) 273-8255
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Bruce A. Blitman has been a member of The Florida Bar since 1982 and is a longtime member of the Broward County Bar Association. He is a Florida Supreme Court Certified County and Circuit Civil Mediator (since 1989) and a Family Mediator (since 1990). He is also a Federal Mediator and a Qualified Arbitrator in Florida. Since 1989, Bruce has mediated thousands of disputes throughout Florida. A full-time mediator and ADR neutral since 1989, Bruce has written and lectured extensively about the benefits of mediation and Alternative Dispute Resolution for nearly thirty years. His articles have appeared in state, national and international dispute resolution magazines and journals. His office is located in Pembroke Pines. He can be contacted at (954) 437-3446 or babmediate@aol.com.



Sandra Cumper is the Executive Director of NAMI Broward County, Inc. She is a mental health counselor with a demonstrated history of working in forensic mental health. Ms. Cumper is a strong business development professional and a Doctoral candidate for Integrated Behavioral Health. sandra@NAMIBroward.org

Exercise is the Best Medicine

by Michelle Suarez

We all hear and speak about the health benefits of exercise, but do you actually know what they are? I do, because after years of consistent exercise, I can personally attest to the mental and physical benefits exercising regularly provides.

Enter Deborah Ward, a nurse practitioner with extensive experience in both the acute (hospital) and outpatient (clinic) settings taking care of patients. She works as a legal nurse consultant assisting attorneys with full case development of a wide range of medical related cases. Education regarding health promotion remains her passion.

I asked Ms. Ward if she could tell me some of the benefits of exercise. She identified the following:

Improves/Supports weight maintenance: affects our hormonal and metabolic balance

Neurological/Psychological: improves memory and cognition, improves sleep quality, improves mood, improves energy, helps to decrease symptoms of anxiety and depression, improves our self-esteem and productivity

Cardiovascular/Respiratory: improves cardio/respiratory function, helps reduce bad cholesterol, helps with blood pressure control

Musculoskeletal: helps strengthen bones/muscles

Immune: helps improve our immune system, decreases inflammation, and improves energy

Risk factors: reduces risk of heart disease, stroke, diabetes, and some cancers

So, knowing all of this, how do you convince yourself to get to the gym after a 12-hour day? Here are some pointers she gives on

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how to get and stay on track with exercise: (1) exercise does not have to be expensive. Go for a walk or a swim (or see my April 2017 article in the Barrister on inexpensive ways to stay fit!); (2) make exercise fun by choosing an activity you like or else you are less likely to stick to it; (3) work out with a partner or have someone you report back to for accountability; (4) create a routine to make exercise a habit, even if that means packing your gym clothes the night before to be ready to go right after work, since once you get home, chances are you are not leaving; and finally (5) track your goals and document your achievements to help you stay motivated. Set small goals so you are not putting too much pressure on yourself and it is less overwhelming.

I am always surprised when people say they lack time for exercise. I know that sounds judgmental, but the way I see it is: if you have time to watch a TV show, you have time to exercise, or at least can work out while you watch. Or another analogy I like is: would you go to sleep without showering? No, right? Well, exercise is as essential

to your body as showering. Even 20 minutes two to three times a week can provide significant health benefits. So, get your butt out of that office chair, do a few sit ups and push-ups, and start getting fit. Stay healthy my friends! 



Bio: Michelle K Suarez, Esq. is a Partner at Florida Entrepreneur Law, P.A. in Fort Lauderdale, FL. She focuses her practice on working with StartUps and Entrepreneurs. She is an avid fitness enthusiast, former personal trainer, and former competitive bodybuilder. She regularly speaks on panels promoting health and fitness and the importance of living a life in balance. She can be reached at MichelleSuarezEsq@gmail.com.

6 Bar at the Bar – Louie Bossi

Time: 5:30 p.m. – 7:30 p.m.

Cost: No Cost

7 A Taste of the Caribbean

Immigration & Technology CLE followed by Rum Tasting and Networking!

Time: 5:30 p.m. – 8:30 p.m.

Venue: BCBA Conference Center

Cost: \$25 General Admission

9 Guardianship 8-hour Adult

Time: 9:00 a.m. – 5:00 p.m.

Venue: BCBA Conference Center

Cost: \$180; No Walk-ins accepted

12 2017 Constitution Day Reception

An Intimate Conversation with the Constitution Revision Commission

**Date Change*

Time: 5:30 p.m. – 8:00 p.m.

Venue: Pier Top – Hyatt Regency Pier 66

Cost: \$30 General Admission

13 Solo/Small Networking Dinner

**Date and Venue Change*

Time: 6:00 p.m. – 8:00 p.m.

Venue: Signature Grand

Cost: *\$5 price increase on 9/6/2017, \$40 BCBA Member; \$55 Non-Member

15 YLS Breakfast with the Judiciary

Time: 7:45 a.m. – 8:45 a.m.

Venue: Broward County Courthouse Law Library

Cost: \$10 YLS Member; \$15 Non-Member

15 2017 Roger Staley Memorial

Real Property Seminar

6 General, 1 Ethics, and 1 Technology CLE Credits

Time: 8:30 a.m. – 3:00 p.m.

Venue: BCBA Conference Center

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

16 Guardianship 4-hour Minor

Time: 9:00 a.m. – 1:00 p.m.

Venue: BCBA Conference Center

Cost: \$100; No Walk-ins accepted

20 Construction CLE: Commercial Roofing

Sponsored by: THE VERTEX COMPANIES, INC.

Time: 12:00 p.m. – 1:30 p.m.

Venue: BCBA Conference Center

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

Save the Date!

Visit our online Calendar for more information.

October 5

Hispanic Heritage Event: S.O.S Venezuela

October 20

2017 BCBA Bench and Bar Conference

Visit www.browardbenchandbar.org for more information.

Sponsorships and Exhibitor Booths Available!

October 27

2017 Legal Malpractice Summit

November 30

BCBA Member Holiday Party



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