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ON THE COVER

Join us for our Annual BCBA Holiday Party on Thursday, November 29th at the NSU Art Museum in Fort Lauderdale. Visit Browardbar.org/calendar to register!

5 Letter from the President *Edwina V. Kessler*

7 Young Lawyers' Section Letter from the President *Brent M. Reitman*

9 Want vs. Need... *Art Garcia*

11 Veterans Day *James W. Heaton*

13 Party Smart *Amber Ruocco*

15 Broadway On The Road *Sal Fazio*

17 Citizenship and Immigration Services Issues *Nicole M. Avila*

18 Law-LaPalooza *Jacqueline DerOvanessian & Lindsay Haber*

20 Client Intakes *Deborah Ward*

21 Case Law Update *Debra P. Klauber*

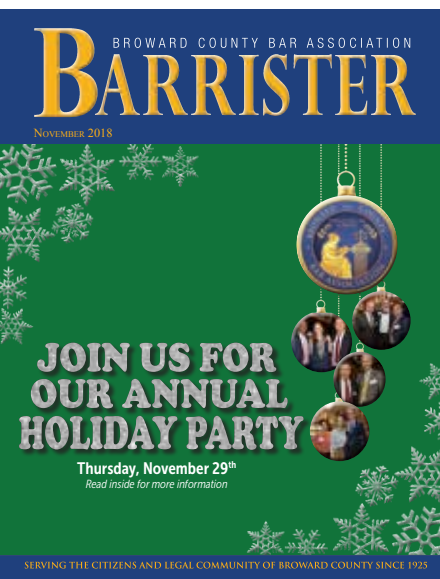
22 Surviving Holiday Stress *Marsha D. Brown*

23 Calendar of Events



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inside this issue



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letter from the president



Edwina V. Kessler


Although it may not seem like it here in South Florida, fall is upon us. Even though we do not experience the leaves changing as other parts of as do other parts of the country, November is the beginning of the holiday season. Thanksgiving began as a day of giving thanks for the blessing of the harvest and of the preceding year. It is a time to reflect what you are thankful for. I personally am thankful for my family and friends that they are in good health. I am fortunate and thankful to have my immediate family close by and see them on a regular basis including working with my sister, Paula. Happy thanksgiving and blessings

to you and your family.

As I sit here contemplating what to write for my President's message, hurricane Michael has just devastated Mexico Beach, Panama City and surrounding cities in the panhandle. The first pictures of the aftermath of the destruction and devastation are heartbreaking. My thoughts and prayers go out to those in the Panhandle.

Every October is the month the BCBA volunteers Legal Aid Advice & Counsel Hotline. On Tuesdays, volunteers call to provide legal advice to Legal Aid clients who want to know their legal rights. If you have never volunteered, I suggest that you do so. As a civil defense litigator, most of the clients at Legal are not seeking representation in my areas of practice. Legal Aid provides the volunteers all the law and forms to provide to the clients. I would like to thank The BCBA Board members and section chairs that participated this year.

November 12 is Veterans Day. The BCBA has many members who are veterans. I salute each and every one of our member veterans on this upcoming Veterans Day and thank you and your families for your service.

November is a busy month for the BCBA. On November 1st, we will be co-sponsoring a Jury Improvement Lunch with the 17th Circuit and ABOTA. November 2, is The Big Lunch: Connected to Goodness, Manifest Everything You Desire in Business and Life with author, David Meltzer. Mr. Meltzer is currently the CEO of Sports 1 Marketing one of the world's leading sports & entertainment marketing agencies. The lunch and presentation will be from 12:00 to 1:30 with book signings after. The BCBA Annual Holiday Party is November 29th at the NSU Art Museum from 5:30 - 8:30 p.m. To learn more about these events and other events at the BCBA this month, please look at the last page of the Barrister or go to: browardbar.org/calendar 

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letter from the young lawyers' president



Brent M. Reitman

Just like that, the year is almost over! Even though the holidays are around the corner there are still a plethora of amazing events between here and the new year!

It's not too late to golf! If you are interested in participating in the 31st Annual Young Lawyer's Golf Tournament that is set to tee off on November 10, 2018 at Jacaranda Country Club - there are still availabilities for your foursome! Every year we have a great turnout for this event and have partnered with a wonderful charity. Our beneficiary, Experience Camps, sends children, who have experienced the tragic loss of a parent or sibling, to summer camp to allow children to thrive and bond amongst common experiences and provides concurrent counseling services.


The golf tournament will be preceded by our tee-off happy hour that will take place on November 8, 2018 at 5:30pm.

November 17, 2018 is National Adoption day that comes about after a fantastically successful kick-off happy hour that was thrown in conjunction with the Heart Gallery (back on October 4) at the Galleria Mall. National Adoption day will take place at the Broward County Courthouse where we are taking on the monumental task of surpassing last year's wildly successful endeavor where Broward County set the National Record for Adoptions! The event is exceedingly meaningful and emotional for the families, judges, and lawyers involved.

Please also join us for the Broward County Bar Association Annual Holiday Party on November 28, 2018. This year, the event will take place at the Nova Southeastern University Art Museum at 5:30pm. It is always a very well-attended event where we can celebrate the winding down of another very successful year with the Broward County Bar Association and its amazing direction and staff!

Finally, December 7 of this year will be our first Law-LaPalooza event which is a full day of CLE courses and seminars in various legal topics geared toward giving your lawyers, law clerks, and legal interns a head start in diving into the practice of law. The event will feature topical presentations on a wide variety of legal topics which will be moderated by numerous judges, young and experienced practitioners, Florida Bar President Michelle Suskauer, and the President and Present-Elect of the Florida Board of Governors Young Leadership Division, as well as presentations on appropriate use of technology and crisis management. In addition, there will be a happy hour for all the participants, speakers and judges that will take place after the event concludes at the Downtowner. It is a wonderful learning opportunity and an event that no young lawyer should miss!

So, please come join us for all of these wonderful events!

As always, the Young Lawyers' Section wishes everyone an early, safe and meaningful Holiday season. We are all thankful for your support, sponsorship and friendship during this wonderful year and look forward to more successes in the future! 



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Want vs. Need...

by Art Garcia



Mediation is a process that requires an understanding of the participants' needs and wants. That understanding requires active listening during mediation and often communication before the mediation process begins.

I want that pumpkin, and that's all there is to that!

Patti and Dennis had a problem; they both wanted the last pumpkin in the pumpkin patch. There seemed no way to reach an agreement. There was one pumpkin and both wanted it. Frustrated over the situation, they each hired counsel, who without delay began the litigation process. It was no surprise that all discovery requests resulted in objection or similar responses: My client must have the pumpkin. Neither side could understand why the other wouldn't just give up the pumpkin. The battle continued, and a trial date was set. Before the parties could go before a jury and explain why each's want of the pumpkin was greater than the other's, they were ordered to mediation.

Each attorney gave impassioned opening remarks as to why his client should get the pumpkin. On behalf of Patti Plaintiff, counsel proclaimed, "She saw it first, and she is entitled to the pumpkin." Dennis Defendant had his payment ready before Patti Plaintiff; therefore, his lawyer said, he had the right to the pumpkin.

The parties separated, and Mediator Mike spoke to each separately. It seemed hopeless. Both sides were uncompromising. Then Mediator Mike said to Patti Plaintiff, "I know you want the pumpkin, but my question is why?" She looked surprised.

No one had asked before. She said, without hesitation, "It's fall. I am making pumpkin pie; I can't do that without the pumpkin, and it is the last one in the patch."

Mediator Mike then went to Dennis Defendant and asked the same question. Like Patti Plaintiff, he said, "It's fall, and I want to carve the pumpkin and make a jack-o'-lantern."

Mediator Mike asked each of them what part of the pumpkin was needed. From their answers, you've probably guessed Patti needed the flesh, and Dennis, the shell. Each used the needed part. There was, in fact, a solution.

While Patti and Dennis' dilemma seemingly had a simple solution, it was only apparent once considered. The same principle applies to disputes encountered in your daily practices.

In a probate dispute between adult siblings, over entitlement to the proceeds of their deceased parent's estate, each wants the greatest proportionate share. They need the proceeds to live which are being tied up in litigation and they also need to retain the family unit.

In the personal injury context, the defense wants a verdict in its favor and plaintiff wants the largest possible monetary award. However, both need to reduce uncertainty and risk. Plaintiff needs to consider the additional costs of trial and whether that investment is best served ensuring a better net recovery for plaintiff. The defendant's offer may make settlement the better option over trial.

Another example is a construction defect dispute. Of course, each attorney wants the best possible monetary outcome for their client. Meanwhile, the parties bog down in litigation which results in properties untouched and off the market; extending losses that may not be recoverable. They need to get back in business. They need to maintain relationships between the various contractors and material providers in the dispute. These relationships are so joined that while one may win the battle during the litigation, others will lose their businesses, tantamount to a lose-lose for all.

What one wants and what one needs is certainly not always the same thing. Help make the process more successful by talking to the client. With communication comes understanding, and with understanding the impossible becomes possible. Only with proper advance preparation you may get what you need.

Keep Talking! **B**



Art Garcia is a South Florida-based Mediator and Arbitrator with Upchurch Watson White & Max Mediation Group. Mr. Garcia was a civil litigator for 25 years, a Registered Nurse, EMT and is a Marine Corps. Veteran, Honorably Discharged. He is currently a full time Certified Civil Circuit, County and Appellate mediator and Supreme Court Qualified arbitrator. The firm's areas of practice include mediation, Arbitration, General Master Services and e-discovery. For more information, visit www-adr.com or call 305-266-1224.

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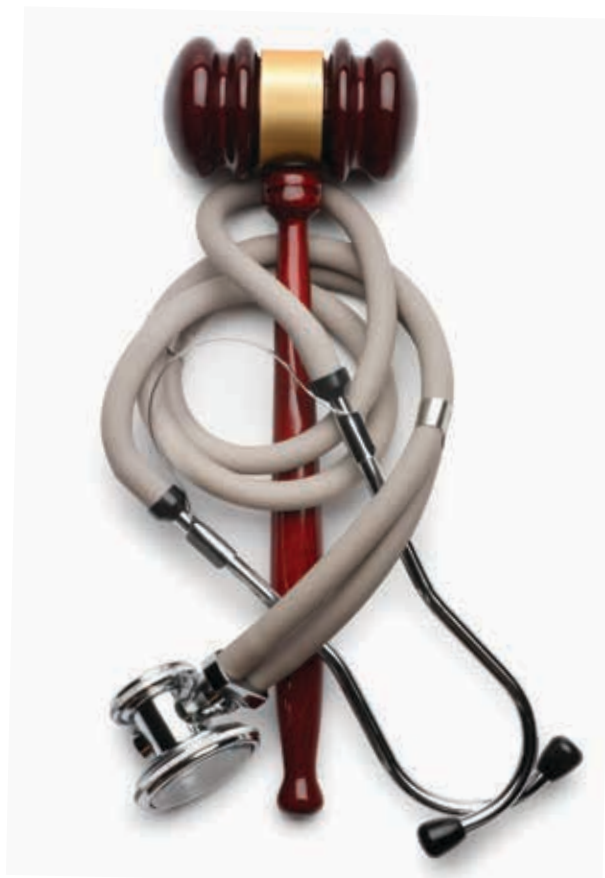
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Military servicemembers returning from overseas deployment during the Vietnam War were spit on and vilified. Conversely, their modern-day counterparts, those who served tours in Iraq and Afghanistan are often perceived, at least by the civilian world, as damaged and broken. While the civilian reception of these two generations is vastly different, both groups are ultimately viewed as outsiders.

This stigma is damaging to these men and women who risked their lives serving our country, the majority of whom leverage their military experiences into successful civilian careers. I recently had the pleasure of working with a young man who is an example of the undying will exhibited by our veterans.

Lance Corporal Claude served four years active duty in the Marine Corps and about a year in the Army from 2002-2006 and 2008-2009 respectively. While in the Marines, Claude was deployed to Iraq for eleven months.

Upon being discharged from active duty in 2009, Claude lived a fairly normal and independent life using his GI Bill to cover the costs of school and rent and living off service-connected disability benefits to cover the rest of his expenses. However, his combat experiences started to catch up with him and Claude began to heavily drink alcohol and use drugs to quiet his suffering. Substance abuse led to Claude dropping out of school and being evicted from his apartment, making him homeless.

Subsequently, the Department of Veterans Affairs declared Claude incompetent to handle his own finances and contacted his family to seek a fi-



by James W. Heaton

duciary. Reeling from the discovery of how rapidly their son's condition had regressed, Claude's mother requested that the VA designate her as the fiduciary over Claude's finances, and moved him back into her home. Unfortunately, due to the lapsing of procedural deadlines, the VA designated a private fiduciary to manage Claude's VA benefit checks.

After hitting what most would call "rock bottom," Claude was enrolled in specialized treatment with the VA and sought out assistance from the United Way of Broward County's Mission United. Channeling his military spirit, Claude began the fight to regain control and, with help from his fellow veterans, started to make progress toward normality.

After a few months of treatment Claude re-enrolled in classes at Broward College. However, Claude's inability to directly access his finances made purchasing books and school supplies difficult. Even with these hiccups, Claude maintained a 3.2 GPA for the semester. Wanting to regain his independence, Claude made phone calls and sent hand-written letters to the VA requesting that it reconsider his need for a fiduciary. How-

ever, these letters went unanswered.

Not knowing where to turn, Claude contacted his Mission United case manager and was referred to Legal Aid for placement with the Veteran's Pro Bono Project. From there, Claude met with a pro bono attorney who was able to establish a plan of action. Working together on his case, Claude and his volunteer attorney were able to navigate the procedural maze of VA regulations and begin the process of having Claude's need for a fiduciary reevaluated. The team submitted legal briefs, medical opinions, and VA forms, and within six months, the VA rendered a decision: "Veteran is competent to manage his finances." Within two months Claude began to directly receive his VA service-connected disability and was sent a large sum of money that was being held by the fiduciary.

Claude is not the exception. His strong spirit and determination are characteristics that were drawn out of him and nurtured during his military service. The continuing comradery that Claude found with his fellow veterans exists in communities throughout America. This Veterans Day, spend some time reflecting on what you are grateful for, go thank a veteran for their service, and find a way to give back to your community. **B**



James W. Heaton is the supervising attorney for the Mission United Veterans Pro Bono Project at Legal Aid Service of Broward County. James also serves on the Board of Directors for the BCBA Young Lawyers Section, the Florida Bar Military and Veterans Affairs Committee, and the American Bar Association Commission on Homelessness and Poverty.

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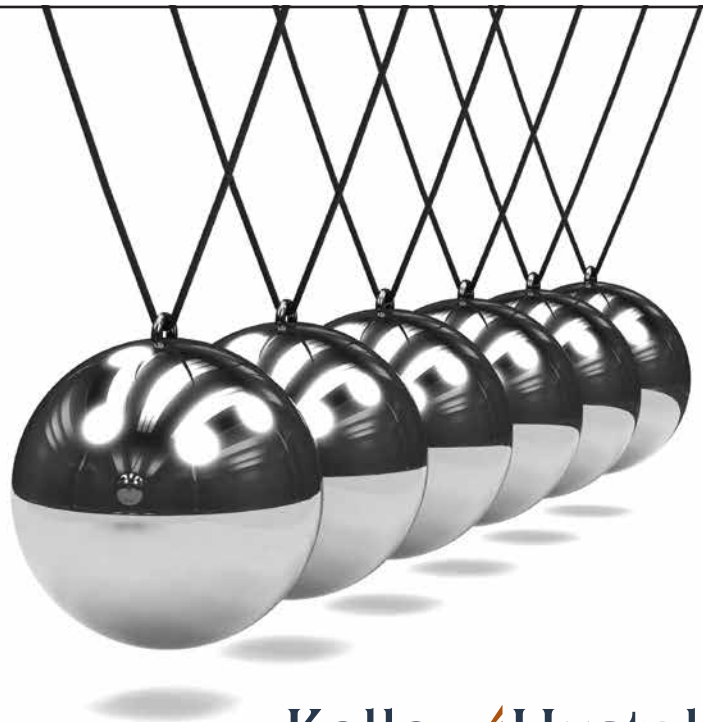
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Party Smart

by Amber Ruocco

It's the holiday season, arguably the most wonderful time of the year filled with tree decorating, candle lighting, family togetherness, and, of course, holiday parties. While office holiday parties are a great way to celebrate joy and new beginnings with your colleagues, before you grab that second glass of eggnog, it is important to remember that there is still potential for liabilities and claims to arise as a result of poor choices.

As attorneys, we know not to drink and drive and advocate this to our clients, friends, and family. However, it's easy to get caught up in the lights and wonder of the holiday season and forget to take our own advice, which, among other things, could put ourselves, our employers, and/or employees at risk for liability for claims under workers' compensation and tort, as well as civil and criminal penalties. The risk is not only limited to holiday parties, but also could include any company sponsored events such as retreats, happy hours, sports teams, dinners and/or meetings with clients, etc.

Under Florida Statute Section 440.09(1), employers can be liable to provide benefits for injured employees under workers' compensation when: (1) the injury arises out of activities that are within the course and scope of employment; (2) the injury is established to a reasonable degree of medical certainty, based on objective relevant medical findings; and (3) the accident is the major contributing cause of any resulting injuries. Gen-

erally, under the Statute, recreational and/or social activities are not included, unless same are considered to be an expressly required incident of employment and produce a substantial and direct benefit to the employer-beyond improvement in employee health and morale that is common to all kinds of recreation and social life. Fla. Stat. § 440.09(1).

If the court finds an employee is in the course and scope of employment when the injury occurs, even if they appear to be intoxicated at the time, the intoxication defense to compensability of the injury may not be accepted. In *Inmon v. Convergence Employee Leasing III, Inc.*, No. 1D17-0815 (Fla. 1st DCA 2018), a recent wrongful death case, an employee who was seemingly intoxicated, was hit by a car when walking from a bar to the hotel where he was staying for an out of town job. The First DCA rejected the employer's intoxication defense and found that even with video surveillance evidence of the employee stumbling out of the bar minutes before the accident and evidence showing the damage to the vehicle, there was not enough to establish by the greater weight of the evidence that the work injury was as a result of the intoxication of the employee. *Inmon*, Fla. 1st DCA 2018 (citing *Wright v. DSK Group*, 821 So. 2d 455, 456 (Fla. 1st DCA 2002)). The employer was then held liable for funeral expenses and death benefits to the wife of the deceased employee. *Id.*

There is also potential for tort liability

to a third party injured by an intoxicated employee driving home. In the case of *Carroll Air Systems v. Greenbaum*, 629 So.2d 914 (Fla. 4th DCA 1993), an employee was driving home from a work conference after attending a company-sponsored dinner where alcohol was served and caused a fatal accident. The court found the employer vicariously liable for the fatal crash and \$85,000 in compensatory damages and \$800,000 in punitive damages were assessed for the wrongful death and for failure to exercise control over the employee by allowing him to drive while clearly under the influence of alcohol.

Company-sponsored events are a great way to boost employee morale and comradery, as well as acknowledge all of the hard work and dedication that goes into running a law practice and/or business. Instead of ditching the event altogether, before you grab that last drink, make sure you and/or your colleagues, employers, and/or employees have an action plan in place before you get behind the wheel. **B**



Amber L. Ruocco is an associate of Lubell | Rosen in their workers' compensation defense division in Fort Lauderdale, Florida, headed by partner, Lorna E. Brown-Burton, Esquire. Ms. Ruocco is also a member of the Broward County Section and the Young Lawyers Division. Amber can be contacted at ALR@lubellrosen.com.

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BROADWAY ON THE ROAD: GRAND RIGHTS AND OTHER INTELLECTUAL PROPERTY

by Sal Fazio

Theaters all over South Florida are preparing to usher in their 2019 season, but not without first displaying some of Broadway's most acclaimed productions to close out 2018. Evergreen classics like the "Phantom of the Opera" (showing at the Broward Center for the Performing Arts Oct. 10-21), movie musical adaptations like Disney's "Freaky Friday" (showing at the Broward Center for the Performing Arts Oct. 18 through Nov. 4), jukebox musicals like "Jersey Boys" (showing at the Kravis Center in West Palm Nov. 23-24), and Tony Award-racking, box-office mastodons like "Hamilton" (showing at the Broward Center for the Performing Arts on Dec. 18 through Jan. 20, 2019) will make a return to South Florida audiences and in turn contribute to Broadway's billionaire industry before the new year.

Stacy J. Grossman, Esq. of the Law Offices of Stacy J. Grossman in New York City, NY regularly works with theatrical works creators. "There are just so many ways to exploit theatrical works" said Grossman, adding that although it is generally difficult for Broadway shows to recoup all their expenditures, the value of their intellectual property can be substantial in cases in which a Broadway show becomes a household name.

Taking a Broadway show on the road, however, can be an intricate feat. Not all Broadway productions are created equal and the legal framework behind clearing intellectual property rights for travel productions is based heavily on the type of show for which a license is sought.

Approved Production Contracts

Approved production contracts generally spell out the terms under which a commercial touring production company, an amateur community theater, or a high-school theater program is able to perform Broadway shows. However, there is a myriad of

scenarios that can be at play depending on the size of the production and the dynamic of the parties involved. Because of this, theater law distinguishes and provides treatment standards that vary based upon parties' "performance classes".

A production will be deemed a "first class performance" based on the size, location and reputation of the theatre(s) where the musical will be performed, the use of a professional cast and an experienced professional director, quality of scenography, and duration of the tour and budget. All other performance types, including condensed performances and amateur performances are generally regarded as "second class performances." In addition to fees, most Broadway producers require touring shows to adhere to stringent authenticity and quality measures. The Dramatist Guild of America, an association in support of theatrical works creators, provides detailed guidelines and model contracts reflecting the latest industry standards in licensing theatrical works.

Copyrights

The use of copyrighted musical and lyrical work in a dramatic-musical manner (telling a story with words and music, or incorporated with choreography, stage action or as part of a play), necessitates a "grand rights" license. Grand rights differ from the rights sought to publicly perform works in a non-dramatic manner also known as "small rights" in that they usually encompass other copyrightable aspects of a Broadway show such as choreography, stage directions, scenery, and certain costume designs. By way of example, performing a standalone selection from the musical "Cats" without any dialogue or stage action would only require a license from a performance rights organization like ASCAP, BMI or SESAC (another way of defining "small rights") whereas a full production of the feline-themed musical

would require a license to multiple copyrightable aspects of the production, thus requiring a more comprehensive licensing scheme.

In exchange for a limited license for the foregoing, commercial production companies generally dedicate a percentage of their gross weekly box office revenue to a royalty pool made up of the script writers, lyricists, composers, directors, choreographers and book writers (if musical is derived from a book) who contributed copyrightable material to the show. Compensation derived from licensing income is based on an agreed apportionment schedule.

The Broadway Touring Industry

Broadway touring has become a valuable component of the entertainment industry. According to the Broadway League, a trade association for the Broadway industry, the 2017-2018 Broadway touring season reached 17 million people in over 200 cities across the United States and generated over 1.4 billion dollars in revenue (not including non-equity tours and sit-down Las Vegas productions), while providing a stimulating economic impact in the cities where productions were shown. As the old saying goes, "there is no business like show business." **B**



Sal Fazio is an attorney with Santucci Priore P.L. in Fort Lauderdale, focusing on intellectual property, civil and commercial litigation, entertainment law and startup development. He can be contacted at sfazio@500law.com or www.500law.com

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United States Citizenship and Immigration Services Issues New Policy Memoranda Affecting all Applicants

by Nicole M. Avila

The U.S. Citizenship and Immigration Services (USCIS), the agency traditionally tasked with the adjudication of immigration benefits under the Department of Homeland Security (DHS), has recently updated long-standing guidance, pursuant to the President's Executive Order 13768 *Enhancing Public Safety in the Interior of the United States*.ⁱ USCIS has changed its policy with regard to Requests for Evidence (RFE) and Notices of Intent to Deny (NOID)ⁱⁱ, as well as the issuance of Notices to Appear (NTA, the charging document whereby removable aliens are placed in Removal Proceedings).ⁱⁱⁱ

On June 28, 2018, USCIS issued Policy Memorandum PM-602-0050.1 (hereinafter NTA Memorandum) updating its policy on the issuance of NTAs and referral of cases of inadmissible and deportable aliens. This Policy Memorandum directs USCIS to issue a NTA to anyone who is inadmissible or deportable from the United States.^{iv} A stark departure from the traditional role of USCIS, as its mission is not enforcement, but adjudication of benefits.^v This policy went into effect on October 1, 2018.

The NTA Memorandum directs USCIS to issue a NTA in any case that has been denied if the person is removable from the United States (e.g., someone who falls out of status, whether through their own fault, or the fault of the DHS due to processing times).

Notably, the NTA memorandum also directs the USCIS to issue NTAs to people who have been charged with any criminal offense, that has not been resolved, and persons who have "committed acts that constitute a chargeable criminal offense."^{vi} This policy change will carry severe consequences to arrestees who are later found not guilty, or whose cases are nolle prosequi by a State Attorney's Office.

As of September 26, 2018, USCIS stated

on its website, that it would not be implementing the NTA memorandum with respect to employment-based petitions or humanitarian forms of relief at this time (applications and petitions for victims and survivors of crimes, domestic violence, human trafficking, etc.).^{vii} It is unclear if and when the NTA memorandum will be implemented for these types of applications. However, they are not exempted from the NTA memorandum and are expressly mentioned therein with respect to how the NTA is to be served on those applicants.^{viii}

In addition to the NTA memorandum, USCIS has updated its policy on the issuance of RFEs and NOIDs. Since 2013, officers were directed to issue RFEs and NOIDs unless there was "no possibility" that the deficiency could be cured by additional evidence. The new Policy Memorandum, PM-602-0163 (hereinafter RFE Memorandum), issued July 13, 2018, reversed this policy and directs USCIS to deny any case in which insufficient initial evidence has been submitted, rather than requesting additional evidence, with very limited exceptions.^x The RFE memorandum went into effect on September 11, 2018.

Ultimately, these memoranda must be read together. The denial of an application for insufficient initial evidence will likely result in the issuance of a NTA. While the true effects of these policy changes remain to be seen, the increase in removal cases filed with the Executive Office of Immigration Review (EOIR, the immigration courts) will further hinder the already overburdened EOIR. Presently, the Transactional Records Access Clearinghouse (TRAC) shows that there are 764,561 cases pending at EOIR nationwide.^{xi} These new policies will likely add thousands of additional cases.

These new policies will also have a chilling effect on persons who are legally entitled to ask for immigration benefits. Fear of removal from the United States will

cause many prospective, legally eligible applicants to forego applying, and remain in the shadows. **B**

ⁱ Exec. Order No. 13768, 82 Fed. Reg. 8799 (Jan. 25, 2017).

ⁱⁱ DEPT. OF HOMELAND SEC., U.S. CITIZENSHIP & IMM. SERVS., Issuance of Certain RFEs and NOIDs; Revisions to Adjudicator's Field Manual (AFM) Chapter 10.5(a), Chapter 10.5(b), PM-602-0163 (Jul. 13, 2018).

ⁱⁱⁱ DEPT. OF HOMELAND SEC., U.S. CITIZENSHIP & IMM. SERVS., Updated Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens, PM-602-0050.1 (Jun. 28, 2018).

^{iv} Id. At 2.

^v DEPT. OF HOMELAND SEC., U.S. CITIZENSHIP & IMM. SERVS., Revised Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Removable Aliens, PM-602-0050 (Nov. 7, 2011). In this memorandum, USCIS's policy was to refer enforcement cases to DHS's enforcement agency: Immigration and Customs Enforcement (ICE). The new memorandum gives USCIS greater enforcement power by tasking them with the issuance of NTAs in some cases without necessarily referring to ICE for enforcement determinations.

^{vi} PM-602-0050.1 at 2.

^{vii} U.S. CITIZENSHIP AND IMMIGRATION SERVS., Notice to Appear Policy Memorandum (Sep. 26, 2018), <https://www.uscis.gov/legal-resources/notice-appear-policy-memorandum>.

^{viii} PM-602-0050.1 at 9.

^{ix} DEPT. OF HOMELAND SEC., U.S. CITIZENSHIP & IMM. SERVS., Requests for Evidence and Notices of Intent to Deny PM-602-0085, at 2 (Jun. 3, 2013).

^x PM-602-0163 at 3.

^{xi} Transactional Records Access Clearinghouse, SYRACUSE UNIVERSITY (Aug. 2018) http://trac.syr.edu/phptools/immigration/court_backlog/.



Nicole M. Avila is the founder of Avila Law PLLC, and a loving wife and mother of a wonderful child. Her practice focuses on immigration relief for victims of crimes, survivors of human trafficking and of domestic violence. Nicole is the Vice Chair of the Immigration Law Section of BCBA, and a Director on the board of BCHBA. She can be reached at 954-866-5296 or nicole@avilaimmigrationlaw.com.

LAW-LAPALOOZA

by Jacqueline DerOvanesian & Lindsay Haber

The Broward county Bar Association & Young Lawyers Section of the Broward County Bar Association is excited to introduce “Law-LaPalooza,” an unprecedented event designed for the entire membership of the Young Lawyers Section to spend a productive day together attending focused customizable tracks targeted to all practice areas from real estate to criminal law, for both litigators and transactional attorneys. This event on Friday, December 7, 2018 will teach attendees new, practical skills for their practice area, cultivate new connections to the BCBA community, and instill a refreshed sense of confidence in their practice areas, all while knocking out 5.5 CLE credits in a single day.

This event is not just for brand new attorneys. Each track option is designed to include advanced topics, tips and tricks useful for first year attorneys and seasoned young lawyers alike that go far beyond the bar exam basics. Inspired by the “boot camp” series that the Young Lawyers Section traditionally hosts, Law-LaPalooza will give young lawyers a unique opportunity to ask questions to the best in the business for each specific practice area. Law-LaPalooza will provide even more hands-on, practical continued education and networking opportunities than the boot camp series, all by 4:00 p.m. in a single, action-packed day.

Florida Bar YLD President Christian George & YLD President-Elect Santo DiGangi will start off the day getting to know attendees and addressing the group over breakfast. The practical sessions of Law-LaPalooza will be led by some of the most powerful names in the local legal industry, including judges, partners of large law firms, and up and coming attorneys. Each session will also feature a young lawyer in the field, to offer relatable perspective and lead conversation. Law-LaPalooza endeavors to redefine the classic CLE model, keeping attendees actively engaged and rotating through focused innovative topics that are critical to their practice areas and moving away from a mundane lecture structure.

We look forward to this rare opportunity Law-LaPalooza will offer, as an attendee you will meet and spend quality time with Broward County’s entire diverse population of young lawyers. By offering different “tracks” to accommodate all practice areas, this event will draw attorneys who may not typically attend the same CLE seminars or encounter one another in practice. Additionally, with an all-day agenda integrating education, networking, and hands-on activities, Law-LaPalooza will provide the opportunity to make more meaningful connections with other attorneys and members of the

judiciary than possible at a traditional networking cocktail reception. The Young Lawyers Section looks forward to wrapping up the day and kicking off the weekend with happy hour, then sending its attendees off feeling fully acquainted with the Broward County Bar Association and ready to bring some new skills back to the office.

Registration and the full schedule of events for Law-LaPalooza is available at <http://bit.ly/LawLaPalooza>. For Sponsorship or Event information please contact Amanda Marks at amanda@browardbar.org. **B**



Jacqueline DerOvanesian is an associate in the Business Litigation and Dispute Resolution practice groups at Gunster, Yoakley and Stewart, P.A. and a board member of the Broward County Bar Association Young Lawyers Section.



Lindsay Haber is an attorney with Kluger Kaplan and is a part of their Family Law Group, focusing her practice divorce, paternity, child custody issues, domestic violence, and preparation of prenuptial and post-nuptial agreements.

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Client Intakes: Importance of Making the ‘Right Diagnosis’ to Maximize Your Success with Case Selection & Development

by Deborah Ward

When client intakes are not conducted effectively, legal teams may find themselves navigating through costly and time-consuming medical record requests and expert witness evaluations only to find out later that significant barriers exist in the case. Client intakes, similar to patient medical history taking, is an essential skill to master and when used effectively, can assist attorneys in deciding quickly if a potential case is worth their time and money. Making the right case diagnosis timely and efficiently allows attorneys to maximize their results by saving time, money, and avoiding cases that can turn into bad investments.

For healthcare providers, accurate and thorough medical history taking is an essential skill, tool, and foundation necessary for good decision making. Information obtained from a medical history is crucial and assists medical providers determine a treatment plan that leads to making an accurate and timely medical diagnosis for their patients. This not only ensures appropriate treatment to start early, but also helps decrease medical expenditure by minimizing unnecessary testing or medical treatments. Similarly, it is imperative for attorneys to use the client intake process effectively.

Client intakes usually focus on the injury or event details for which a client first seeks legal professional services. However, it is important to note that, like a medical physical exam unaccompanied by a medical history, examining the injury alone does not allow for efficient and effective decision making. Intakes for legal professionals are most effective

when attorneys and their teams maximize the opportunity to also gather important information surrounding the injury or event.

Comparable to a review of systems, or patient questionnaire completed by patient or client prior to being evaluated by healthcare provider, this initial screening does not provide enough information alone. It is important to either conduct a thorough intake from the beginning or perform a more detailed evaluation and history taking after the initial screening is performed. Either way, competence in a detailed intake and history taking is key to optimizing efficiency of case development and expenditure of legal teams. Additionally, it is imperative to readdress and persistently evaluate client status and medical history throughout case development to maximize case results.

Optimizing client intakes includes using a systematic and constructive questioning process, similar to how clinicians conduct a medical history. Using this technique allows attorneys and their team to evaluate and extract information based on responses to arrive at the right diagnosis. This includes gathering not only detailed information about the injury or event, but also prior history, current status, and future plan of care. This efficiency allows attorneys to gather focused information and sources early on as to where additional data or discovery may exist to optimize their decision making and decide if the potential case is worth pursuing. Obtaining the right information early allows litigators to identify potential barriers to the case or even outline

additional damages.

Maximizing the tool of client intakes includes attorneys adopting the concept of conducting intakes similar to a thorough medical history. This may require additional training of staff who conduct intakes or developing a strong team to assist with initial screening or subsequent consultations with potential clients.

The complexity of tasks and time constraints associated with the daily workload of attorneys may lead to underutilizing and overlooking the value of client intakes. Optimizing the client intake process becomes an advantage for attorneys and their teams, resulting in timelier and more effective decision-making regarding case selection. Take the time to evaluate how you conduct client intakes and if this task is delegated, make sure you have the right team in place to escalate your success. Plato once said, “A good decision is based on knowledge and not on numbers.” So, the next time you conduct a client intake, remember the impact and importance of being a ‘good diagnostician’ and having the right people on your team to help. Keep in mind, avoiding the wrong cases is as important as pursuing the right ones. **B**



Deborah Ward, ARNP, LNC is a board-certified nurse practitioner working as a legal nurse consultant. Her nursing expertise and legal nurse consultant services assist attorneys with full case development of a wide range of medical related cases. Deborah can be contacted at deborah@drwardconsulting.com or (954) 290-7311.



Case Law Update

Attorney's Fees, Attorney's Fees, Attorney's Fees: Recent Florida Decisions

by Debra P. Klauber

Award of attorneys' fees under section 57.105(1) requires the trial court to make explicit findings that the case is frivolous or devoid of merit.

Historically, a court could award fees under section 57.105 only when there was a "complete absence of justiciable law or fact." However, in an effort to reduce frivolous litigation, the statute was amended in 1999 to broaden the entitlement to fees, and now allows the recovery of fees for claims or defenses that are unsupported. However, the statute must be carefully applied to ensure that it is used to deter frivolous pleadings. As such, the courts strictly construe both the notice requirement, and the requirement that the trial court make the requisite findings set forth in the statute. *MC Liberty Express, Inc. v. All-Points Servs., Inc.*, 3D17-0961, 43 Fla. L. Weekly D1808 (Fla. 3d DCA Aug. 8, 2018).

Media parties were not entitled to attorneys' fees under the Public Records Act where the government agency did not act unlawfully.

The appellate court refused to award fees to various media parties who requested public records from a state agency. The statute governing public records allows for the recovery of fees where an agency "unlawfully" refuses to permit the record to be inspected or copied. Even though the appellate court found that the media parties were entitled to the requested records, it found that the agency's actions were not "unlawful" because it pursued, albeit unsuccessfully, an unsettled area of the law. Accordingly, the request for attorneys' fees was denied. *State Attorney's Office of the 17th Judicial Circuit v. Cable News Network, Inc.*, 4D18-1336, 43 Fla. L. Weekly D1799 (Fla. 4th DCA Aug. 8, 2018).

Counsel's failure to sign certificate of service in proposal for settlement did not invalidate the offer.

After analyzing the rules applicable to proposals for settlement, and the filing of documents in court cases, the appellate court reversed the trial court's order finding that a proposal was invalid because counsel failed to sign the certificate of service. The court's dicta, however, noted that it does not "condone nor encourage" a practice of failing to sign certificates of service. *Valle v. Flory*, 2D16-2848, 43 Fla. L. Weekly D1852 (Fla. 2d DCA Aug. 15, 2018).

Trial court properly allowed a contingency fee multiplier in claim against property insurance company.

Because the contingency fee multiplier is "no longer limited to rare and exceptional circumstances," the appellate court upheld the trial court's decision to apply it in this property claim where the insurance company refused to participate in the appraisal process. Given the Florida Supreme Court's determination that the statutory fees in this context are designed to discourage insurance companies from contesting valid claims, and reimburse insureds when they must enforce their insurance contracts by way of formal litigation, the court found that it was proper for the trial court to apply a multiplier to the fee award when the competent, substantial evidence supported it. *Citizens Property Ins. Corp. v. Laguerre*, 3D15-2411, 43 Fla. L. Weekly D1934 (Fla. 3d DCA Aug. 22, 2018).

Plaintiff's proposal for settlement in UM/first-party bad faith litigation requires success on both UM claim and bad faith claim before entitlement to attorneys' fees

can be determined.

When an insured is seeking recovery under a UM policy and also claims bad faith, the Florida courts have held that the proper protocol is a bifurcated procedure. First the insured is entitled to a jury verdict for the full amount of the insured's damages. Second, the insured may pursue the bad faith claim. Here, the court found that the insured's entitlement to attorneys' fees pursuant to a proposal for settlement cannot be determined until the final judgment in the case, after the bad faith claim is decided.

21st Century Centennial Ins. Co. v. Walker, 4D17-2937, 43 Fla. L. Weekly D2000 (Fla. 4th DCA Aug. 29, 2018).

Statute related to prevailing party attorneys' fees based on a contractual provision applies to claim seeking to recover credit card debt.

A Florida appellate court held that a credit card company's suit for "account stated" constituted an "action to enforce the contract." As such, the court also agreed that the defendant was entitled to recover prevailing-party attorneys' fees pursuant to section 57.105(7) after the claim against her was voluntarily dismissed.

Bushnell v. Portfolio Recovery Assoc., LLC, 2D17-429, 43 Fla. L. Weekly D2144 (Fla. 2d DCA Sept. 14, 2018). 



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.

An Attorney's Guide to Surviving Holiday Stress

by Marsha D. Brown

Once again, holiday season is upon us. With constant reminders of upcoming holidays and celebrations through television commercials, various advertisements, and retail displays, we are constantly reminded that the countdown to a chaotic time of year has begun. Many people view this season as an exciting time filled with love, care, and the holiday spirit. Many others find this time of year to be a source of significant stress, anxiety, loneliness, isolation, and depression. Attorneys are often expected to manage not only their own emotions surrounding this time of year, but those of their clients as well. Between stress at work and responsibilities at home, this can seem daunting and, at times, outright overwhelming. Here are five tips to help manage stress during this season:

1. Accept your feelings surrounding the holidays. Know that whether you love or dread this time of year, it is ok. You may not feel as cheerful about this season as some around you may seem, or as you believe you "should" feel. There is nothing wrong with that. For some people, this time of year evokes memories of bad experiences and significant losses, including lost family or loved ones.
2. Set realistic boundaries and expectations, both for yourself and those around you. You do not have to accept every task and/or responsibility that is given to you. You also

do not have to prepare or create a "perfect" holiday experience for others. Holiday planning and celebrating often come with unanticipated obstacles and changes. Know that even if things do not go exactly as you envisioned them, you will still be able to create positive and lasting memories with those you love.

3. Set aside time for yourself. During this whirlwind season, we often get so caught up in trying to make sure others are taken care of that we neglect to make time for our own mental health and well-being. Schedule some time each week to take a break from the craziness of planning, shopping, preparing, etc. While taking daily breaks is ideal (e.g., even 10 minutes per day will help you to regroup), you can start with taking 20 minutes per week and then adding more time to each session as the holidays draw near.
4. Create a new holiday experience, just for yourself. As holidays are often a time of giving, give yourself permission to create a new holiday routine, designed to help relieve your stress. For example, schedule a weekly 60-minute massage, set aside an hour each day to read a book or watch your favorite show, or hire a personal trainer. To help lighten your load, outsource some of your regular responsibilities by hiring a meal delivery or housecleaning service or by get-

ting someone else to take a few tasks off your plate. If you don't have time for the above, quick-fixes such as a 30-minute chair massage, 10-minute power nap, or even a quick walk around the office or building can work wonders to decrease stress.

5. Reach out to others for comfort and support. It is important to refrain from isolating yourself during this time. If you have a trusted friend or family member, reaching out to them and talking about your feelings, emotions, and frustrations can be helpful during this time of year. If you do not have a trusted go-to individual, there are a number of excellent professionals who can provide support through difficult times.

Note: If your feelings about the holidays are ever accompanied by thoughts of hurting or killing yourself, please get help immediately. Call 911 or the National Suicide Prevention Lifeline at 1-800-273-TALK. You are never alone. **B**



Dr. Marsha Brown is a Florida licensed psychologist specializing in forensic practice. She is currently working in private practice where she conducts evaluations for criminal and family court. You can contact Dr. Brown at mbrown@forensic-experts.net or www.forensic-experts.net

1 Jury Improvement Luncheon
Time: 12:00 p.m. – 1:30 p.m.
Venue: Tower Club
Cost: \$25 General Admission

2 BIG Lunch: Connected to Goodness
Time: 12:00 p.m. – 1:30 p.m.
Venue: BCBA Conference Center
No Cost

3 Guardianship Class - 8 Hour Adult
Time: 9:00 a.m. – 5:00 p.m.
Venue: BCBA Conference Center
Cost: \$180

8 CLE: Probate Bench, Clerk and Bar Roundtable
Time: 2:00 p.m. – 4:00 p.m.
Venue: Jury Assembly Room (Room number 03320)
Cost: \$15 BCBA Member; \$25 Non-Member

8 YLS Golf Happy Hour
Time: 5:30 p.m. – 7:30 p.m.
Venue: Township Fort Lauderdale

9 Investiture of The Honorable N. Hunter Davis
Time: 1:30 p.m.
Venue: Broward County Courthouse
Room: #03320 Jury Assembly Room

10 YLS 31st Annual Charity Golf Tournament
 Benefiting Experience Camps
Time: 8:00 a.m.
Venue: Jacaranda Golf Club
Cost: \$150 Single Player ; \$500 Foursome

10 Guardianship Class-4 hr Minor
Time: 9:00 a.m. – 1:00 p.m.
Venue: BCBA Conference Center
Cost: \$100

14 West Broward CLE Luncheon
Time: 12:00 p.m. – 1:30 p.m.
Venue: Cole Scott & Kissane, P.A.
Cost: \$20 BCBA Members; \$30 Non-members

14 Solo/Small Networking Dinner
Time: 6:00 p.m. - 8:00 p.m.
Venue: Dave & Buster's Hollywood
Cost: \$40 BCBA Member; \$55 Non-member *\$5 additional after 11/07/2018

15 After 5 - Eat. Drink. Connect.
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Time: 5:30 p.m. - 7:30 p.m.
Venue: American Social
No Cost

16 Judicial Jaunt #1
Time: 12:00 p.m. – 1:30 p.m.
Venue: BCBA Conference Center
Cost: \$20 BCBA Member; \$30 Non-member

20 Trial Section CLE: IT in the Courtroom
Time: 12:00 p.m. – 1:30 p.m.
Venue: BCBA Conference Center
Cost: \$20 BCBA Member; \$30 Non-member

29 2018 BCBA Annual Holiday Party
Time: 5:30 p.m. – 8:00 p.m.
Venue: NSU Art Museum Fort Lauderdale
Cost: No Charge BCBA Member; \$25 Member Guest

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Young Lawyers' Law-LaPalooza

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Time: 8:30 a.m. – 6:30 p.m.

Venue: Broward County Courthouse

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