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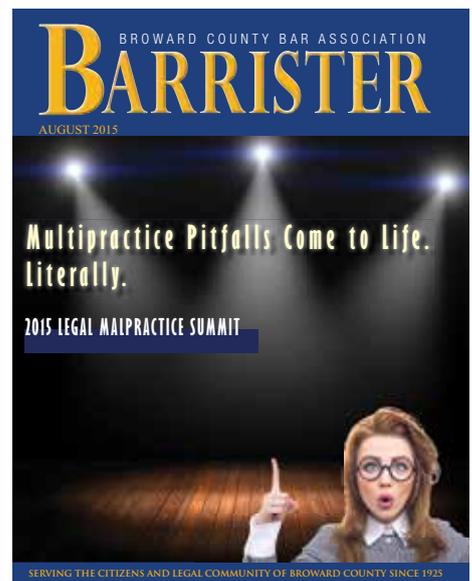
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Robin S. Moselle

The BCBA... By the Numbers

I love numbers. A strange statement coming from one who counts Statistics and Experimental Design & Quantitative Methods as two of her nightmare classes in college (yes, even more challenging than my 8:00 am philosophy class). But numbers are important. They serve as a benchmark and help provide a snapshot of how something is doing. Sometimes an increase in numbers are good (think an up day in the stock market or a high score in a football game), and sometimes a lower number is the ideal (cholesterol levels and a golf score come to mind).

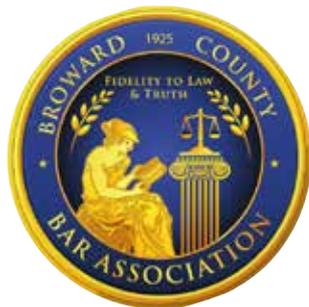
To efficiently operate a business, numbers need to be constantly monitored to ensure that revenue exceeds expenses and net income continues to increase. The Broward County Bar Association (BCBA) follows those principals. The top-notch staff at the BCBA led by our Executive Director, Braulio Rosa, has been working hard and crunching the numbers, and I believe you will be pleased with the results:

- **Membership** - The BCBA membership has blossomed in the last two years, increasing by an astonishing 21.48 %. At 2,941 members at the end of our last fiscal year, we are closing in on a never-before seen number of 3,000. If early registration numbers are any indication (a record 1,471 registered from April 1-June 30), we are well on our way to reaching, and exceeding, that number.
- **Events** - The addition of premier quality events such as the Young Lawyers' Section Boot Camp, Masters' of Trials, Constitution Day, Legal Malpractice, and Women in Leadership has been the cornerstone of the increase for this category. We have also strived to serve those members who practice outside of the downtown Fort Lauderdale area by holding regional events throughout the county. In the last two years, the number of BCBA events has increased from 66 a year to a whopping 114, which translates into a 72.73% upswing.
- **Lawyer Referral Service (LRS)** - Our LRS program helps match the legal needs of the public with an experienced attorney. It provides a resource for the community while helping our attorneys with another source for case referrals. It also provides an income stream to operate the BCBA. Through careful management and oversight, the LRS has seen a 29% growth in collections over the last two years.
- **Annual Sponsors** - Where would we be without our sponsors? Our sponsors support our organization by attending our events, providing important resources for our seminars, and valuable services for our members. Through their sponsorship and involvement, our sponsors demonstrate their belief and commitment to the BCBA. I am proud to report that in the last two years, our annual sponsorship numbers have increased by an incredible 61%! We now have 21 businesses and organizations that sponsor the BCBA throughout the year, in addition to the numerous other sponsors that we are fortunate to have for our individual events.

As a BCBA member, I hope that you are pleased with these numbers. While numbers cannot give us an entire picture, they do let us know that we are on the right track, and that your BCBA is thriving. Thank you for helping us grow. **B**

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letter from the young lawyers' president



Jeffrey M. Wank

Last year a young lawyer asked me why he should get involved with the Young Lawyers Section ("YLS"). The young lawyer mentioned he was interested in networking, but his priority was moving up the ranks within his firm, focusing on his cases, and exceeding his billable goals. My response to this particular young lawyer was concentrated on our charitable events and seminars to enhance his legal skills. The young lawyer attended a select few YLS events throughout the year.

A few weeks ago I ran into this young lawyer at the Broward Courthouse. It was evident he was in a rush, but he stopped to thank me for convincing him to get involved with YLS. He explained that he recently changed firms, and that he met his new employer at one of our events. The

rest was history.

There are countless stories of young lawyers getting jobs simply because they were engaged and attended events within the community. The adage goes, "it's not what you know, it's who you know." While not always the case, I firmly believe that a young lawyer's involvement in the legal community can create new opportunities. I have been pleasantly surprised by the feedback and outreach of our membership who want to get involved. You never know when an opportunity will present itself. At YLS events, different attorneys, judges, businesses and community leaders are always willing to speak with a young lawyer.

This year, YLS is committed to engaging and inspiring our membership. Please visit and bookmark the revamped YLS website (www.browardbar.org/yls) to keep up to date with our events. Plus, we have created a new YLS E-Newsletter which blasts our upcoming events each Wednesday morning. If you are not receiving our E-Newsletter, please contact me.

Finally, I am so happy to announce that YLS has been chosen to receive the Spirit of Justice Award at the 14th Annual For the Public Good event presented by Legal Aid Service ("LAS") of Broward County and Coast to Coast Legal Aid of South Florida ("CCLA"). The event will be held on Thursday, October 1, 2015 at the Hyatt Regency Pier Sixty-Six in Fort Lauderdale. I would like to share part of the press release highlighting YLS:

"The YLS has provided a shining example of how a group of people can pull together to make an impact in our community. Members of the YLS have donated countless hours to the Broward Lawyers Care Advice and Counsel Hotline at LAS. For the past two years they have challenged other volunteer bar associations to do the same. YLS has supported CCLA and LAS in other ways as well, making financial contributions, including sponsoring a summer fellow through NEXT, the young leadership group that supports CCLA and LAS. The enthusiasm and drive to put Broward County at top with regard to fulfilling pro bono obligations and support is inspiring. These young attorneys and the work they do will have a lasting impact for years to come."

I am so proud of YLS and all we have accomplished in the community. I hope this will encourage you to join us in our efforts to give back to Broward County. **B**

Defining Professionalism in our Profession “A Tale of Two Attorneys”

by Shari Carter

What exactly does it mean to practice with professionalism? Many attorneys believe that once they are practicing law they are automatically considered a professional. As we become more seasoned attorneys and work with all different kinds of people, we learn that this really is not the case. Being a professional and practicing with professionalism are not one and the same. Professionalism is not a word that is easily defined. It is the characteristics of an individual and the consistency of character that actually give meaning to the word. The members of the Broward County Bar Association truly understand this. That is why, every year, they honor deserving members of the legal community that exemplify professionalism and better our profession.

The Broward County Bar Association (BCBA) created four different awards that are given out at the annual installation dinner. One of these awards was created for Joseph J. Carter, a skilled trial attorney, who died unexpectedly at the age of 38. While Joe's passion was his family, his other passion was the law.

Joe practiced law for 13 years. He started his legal career at the Broward Public Defender's Office. He later started his own law firm and was one of the founding partners of Ferrero, Buschel, Carter, Schwatzenreich and Yates. Joe LOVED being part of the legal community and had tremendous respect for the law and all the people he worked with. He was involved in the community, was chair of the Criminal Law section of the BCBA, a St. Thomas More Society board member and president of the Emerald Society.

What made Joe so special as an attorney was really what made him so exceptional as a person. He treated everyone with respect. Anyone who had the honor of working with him knew that they could trust him. He would greet you with a handshake, a smile and probably a joke. He was thoughtful and funny. Many in the community described him as charismatic and charming in both his personal and professional life. His good nature carried over into everything he did. He perfectly balanced his commitment to the practice of law with the commitment and love

to his family. His strength of character and reputation as the consummate legal professional made it an easy decision to create an award bearing his name.



Joseph J. Carter

In 1995, Joe started his legal career as an assistant public defender. He was assigned to county court in Judge Marty Dishowitz's courtroom. At the same time, the state attorney assigned to this courtroom was Sarahnell Murphy. Sarahnell currently runs the county court division of the State Attorney's Office. Joe and Sarahnell were friends who had met at Nova Law School. They were both new attorneys trying to find their way. Fortunately they were assigned to the same courtroom. Early on, they established a working relationship based on trust and communication. They were always prepared, organized and willing to learn. They both were serious about their positions however they never took them so seriously as to make the adver-

sarial nature of their respective positions personal. They knew that they were on the same page as far as being able to trust each other at their word. This allowed the courtroom to run smoothly and also to serve as a learning environment for both.

This year, the winner of the Joseph J. Carter Professionalism award honored Joe's good friend and colleague, Sarahnell Murphy. Sarahnell has accomplished so much since the time she and Joe first began their legal journey together. Sarahnell went on to become a County Court Supervisor, a Felony Trial Unit Supervisor. She later became a member of the Career Criminal Unit, Division Chief of the Domestic Violence Unit and currently the Division Chief of County Court. She is an exceptional trial attorney who has tried over 150 cases. She is a member of the Florida Bar, Chair of the Florida Bar Grievance Committee, the past president and current board member of St. Thomas More Society, and on the foundation board of St. Anthony's Catholic School. She has trained law enforcement and taught classes for the Florida Bar. Her involvement

in the community is overwhelming. The above is not a comprehensive list of all of her community involvement. Her accomplishments are too numerous to list entirely. While her resume speaks volumes, it is about so much more. There is a sense of pride, commitment and enjoyment in every endeavor and accomplishment. She goes above and beyond what is required of her in every situation. Sarahnell is always willing to listen and do the right thing while maintaining her own morals, ethics, and the integrity of the State Attorney's Office and the law. The new attorneys now starting out, as Joe and Sarahnell once did, are fortunate to have her as their mentor. Her current position as The Division Chief of County Court gives young attorneys the opportunity to see professionalism in action. They get to learn from one of the brightest, most organized, and well prepared attorneys within the legal community. Sarahnell has added consistency and quality of work to a difficult profession. She is well respected by everyone in the legal community. In addition, she manages to do all of this and balance the demands of her career and

her service to the community while caring for her family, husband Rich Merlino, father Marty Murphy and two beautiful daughters Ava and Alexandra.

The award this year is very special due to the friendship and exceptional professional relationship between Joe Carter and Sarahnell Murphy. Congratulations Sarahnell for doing an excellent job defining Professionalism for the legal community. We applaud you!

Congratulations to other 2015 award recipients who exemplify Professionalism: Scott D. Knapp (Paul May Professionalism Award), Kelly D. Hancock (Lynn Futch Professionalism Award), and The Honorable Chief Judge Peter M. Weinstein (Stephen R. Booher Award). **B**



Shari Carter is an Assistant State Attorney in the Domestic Violence Unit. She can be contacted at (954) 831-7978 or via e-mail at scarier@sao17.state.fl.us

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LEGAL COUNSEL FOR TRUSTEE OWES NO FIDUCIARY DUTY TO TRUST BENEFICIARIES UNDER FLORIDA LAW

by Mark R. Manceri

On March 2, 2015, the United States Court of Appeals for the Eleventh Circuit decided *Bain v. McIntosh*, 2015 WL 859481 (11th Cir. 2015), in which it affirmed the decision by the United States District Court for the Middle District of Florida. The issue on appeal to the Eleventh Circuit was whether, under Florida law, an attorney retained to represent only the trustee of a trust also owes a fiduciary duty to the beneficiaries of the trust.

In *Bain*, Howard and Dorothy Walther (hereinafter collectively referred to as “the Walthers”) were named beneficiaries under the James Walther Revocable Life Insurance Trust. Patrick Walther was the named trustee of the Trust and was represented by Kane and Koltun. The Middle District of Florida entered an order granting summary judgment in favor of Steven Kane, Esq. and Kane and Koltun (hereinafter collectively referred to as “Kane”) holding that Kane owed no fiduciary duty to the Walthers.

As under Florida law, federal law holds that summary judgment can only be entered if the movant can establish that there is no genuine dispute (issue) as to any material fact and the movant is entitled to the requested judgment as a matter of law. *Levinson v. Reliance Standard Life Ins. Co.*, 245 F. 3d 1321 (11th Cir. 2001).

Section 90.5021, *Florida Statutes*, adopted in 2011, states that only the fiduciary is considered the client of the lawyer. Florida is consistent with the “majority” or “traditional” rule found in most jurisdictions. The rule is based on the premise that a fiduciary is to be impartial and if its counsel represented any beneficiary it would be advocating positions favoring one group or class over another. In order to avoid the inherent conflicts that would occur, court’s favor

protecting the lawyer-client (fiduciary) privilege because “an uncertain privilege, or one that purports to be certain, but results in widely varying applications by the courts, is little better than no privilege at all.” *Upjohn Co. v. U.S.*, 449 U.S. 383 (1981).

Under section 90.502, *Florida Statutes*, a “Client” is defined as “any person, public officer, corporation, association or other organization or entity, either public or private, who consults with a lawyer for the purpose of obtaining legal services by a lawyer.”

The leading case for the position that counsel for the trustee also owes a fiduciary duty to the beneficiaries is *Riggs Nat’l Bank of Washington, D.C. v. Zimmer*, 355 A. 2d 709 (Del. Ch. 1976). In *Riggs*, the trustees had legal counsel prepare a memorandum as part of their handling of the tax issues which were later raised in a surcharge action brought by the beneficiaries. Counsel for the trustees was paid from the trust assets. The beneficiaries requested the memorandum in discovery and the trustees objected on the basis of the attorney-client privilege and work product doctrine. The *Riggs* Court held that the memorandum was prepared ultimately for the benefit of the beneficiaries of the trust and not for the purpose of the trustees’ own defense in any litigation against themselves and was, therefore, discoverable by the beneficiaries.

In *Bain*, the Walthers relied on two Florida cases in support of their position that Kane owed them a fiduciary duty. They were: *McCormick v. Cox*, 118 So.3d 980 (Fla. 3rd DCA 2013) and *In re Estate of Gory*, 570 So. 2d 1381 (Fla. 4th DCA. 1990).

The Eleventh Circuit found that the Walthers’ reliance on *McCormick* was

misplaced. In *McCormick*, the trustee was also an attorney who breached his fiduciary duty to the beneficiaries of the trust. The *McCormick* Court did not decide whether an attorney representing a trustee owes a fiduciary duty to the beneficiaries. In *Bain*, the trustees were not attorneys. As such, *McCormick* was distinguishable.

The Eleventh Circuit also found that the Walthers’ reliance on *Gory* unpersuasive. The *Bain* Court found the statement by the *Gory* Court that “[w]e have no quarrel with the view that counsel for the personal representative of an estate owes fiduciary duties not only to the personal representative but also the beneficiaries of the estate” to be dicta. As a result, the *Bain* Court found that *Gory* did not stand for the proposition that under Florida law an attorney for the trustee owes a fiduciary duty to the beneficiaries.

In the end, the Eleventh Circuit affirmed the summary judgment entered by the Middle District of Florida.

In a footnote, the *Bain* Court pointed out that the Walthers failed to clearly plead that they were intended third-party beneficiaries of the contract between Kane and the trustees.

Note: The author thanks Michael J. Manceri, a recent graduate of Tulane University, for his able assistance and good conversation in the preparation of the Probate and Trust Law Tip Page. **B**



Mark R. Manceri, Esq. is Florida Bar Board Certified in Wills, Trusts and Estates and specializes in litigating all types of related adversarial proceedings. Mark R. Manceri, P.A., 2929 East Commercial Blvd., Suite 702, Fort Lauderdale, Florida 33308; (954) 491-7099. mrrmlaw@comcast.net

Legal Malpractice Summit: Malpractice Pitfalls Come to Life... Literally.

by Dominique Y. Martinez

Legal malpractice is a dreaded phrase that has too often become a reality for many attorneys. No matter the field of law you practice in, chances are you are susceptible to a malpractice claim at least once during your term of actively practicing law. The best way to avoid injury is to avoid the risk. The Broward County Bar Association is hosting the 2015 Legal Malpractice Summit to serve that very purpose. The summit is cleverly and candidly titled “Malpractice Pitfalls Come to Life...Literally.”

Many attorneys spend countless hours combing through documents and researching. The folks over at the Broward Bar Association understand this. As a result, this year’s summit will take an all-new enticing approach. For those of you who wanted to be theater majors in college, but decided to take a more traditional route, there will be acting and role-playing. For those of us who are a bit more reserved, do not worry no audience participation is required. Additionally, new interesting practice areas will be covered such as bankruptcy, technology law and family law.

The summit will take place on September 11, 2015 at the Broward County Bar Association. The program will begin promptly at 8:30 a.m. and conclude at 1:00 p.m. Breakfast and lunch are included. Food, learning and entertainment are always a great combination. Join the Broward County Bar Association and Florida Lawyer’s Mutual Insurance Company to gain valuable insight on malpractice and how you can avoid the “pitfall” yourself. Register now at www.browardbar.org. Seats are limited and guaranteed to sell out. **B**



Dominique Martinez is an attorney at Dominique Y. Martinez Law P.A. Her practice focuses on family law and small business law. She can be contacted at dominique@dym-law.com or 954-951-3264. For more information see www.dym-law.com.

Our New LEED Courthouse



Many of you may have heard the term LEED when we talk about our new Courthouse. LEED stands for Leadership in Energy & Environmental Design and is a certification given to buildings that promote sustainable principles as the base for their design and construction. LEED buildings can be certified in four (4) different categories; certified, silver, gold and platinum depending on the number of sustainable strategies accomplished and points achieved. Our new Courthouse is seeking LEED Gold certification.

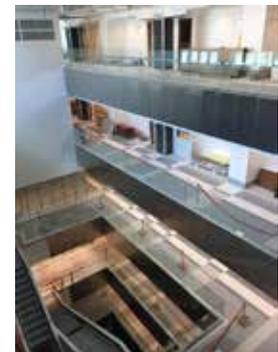


What this means to you is that our new work environment will promote better air monitoring and increased access to daylight and views and as a result you may feel more productive and energized throughout your work day.

Our new Courthouse is also good for the environment, it will promote energy savings and lower operational costs. On average, US buildings account for 38% of all CO₂ emissions, consume 15 trillion gallons of water every year and 73% of US energy. Contributing to reducing carbon emissions (CO₂) and reducing energy and water use is important to all of us and will help support our sustainable stewardship.



Elevator lobby at the new courthouse.



New courthouse atrium & escalators.

Florida's 2015 Legislative Session: Overview of Relevant New Laws

by Lydia Harley

Governor Rick Scott signed numerous bills into law this month that will have an impact in the areas of abortion, same sex adoption, juvenile justice, HIV testing, and the statute of limitations for the criminal prosecution of rape cases. For instance, women seeking an abortion must now wait an obligatory 24-hour period and have two separate, in-person, meetings with a medical provider before they can undergo the procedure. Exceptions are given to victims of rape, incest, domestic violence or human trafficking, if the woman can prove their circumstances with a police report, medical records or similar documentation. However, this new law has already faced criticism by the judiciary as Judge Charles Francis opined that state officials presented no evidence that the new requirements are not an additional burden on a woman's right to privacy under Florida's Right of Privacy Clause.

New laws on human trafficking have also been passed; comprising an increase in penalties for solicitation. Second time offenders will now be charged with a felony, and any offense thereafter is considered a second-degree felony, punishable by up to 15 years in prison.

The legislature, now aligning with Florida courts, also officially repealed a 38-year ban on same sex couples adopting

children. Interestingly, a separate bill that would have allowed adoption agencies to deny prospective parents an adoption based on the agency's religious or moral convictions, failed to pass.

Another notable change pertains to juvenile justice. First time offending juveniles will be given a citation instead of being arrested for misdemeanors. This law authorizes police officers to either issue a civil citation, a warning to the juvenile, or inform the child's parent/guardian of the child's infraction.

HIV testing will become easier in Florida as well. The new law eliminates the written consent of patients required to administer HIV tests, opening the path for HIV testing as a routine procedure. Patients will be informed that the test is being provided and have the option to opt-out. However, the requirement is only lifted from physicians that routinely test patients for HIV. Written consent forms will still be required for HIV testing by community-based organizations and in other "non-healthcare" settings, including mobile testing vans.

The statute of limitation for rape cases has been extended from 4 to 8 years, revising the time limitations for the criminal prosecution of sexual battery offenses if the victim is 16 years of age or older.

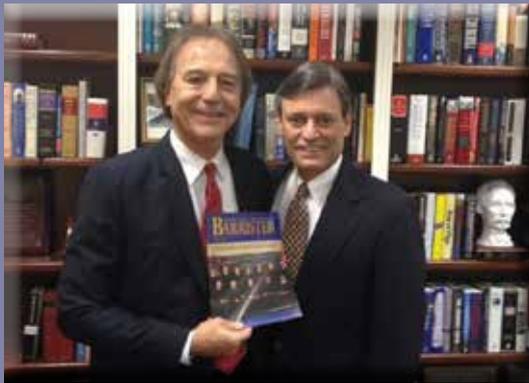
The act may be cited as the "43 Days Initiative Act" in honor of Danielle Sullivan, who, under the old law reported a rape 43 days too late. This new law also corrects a 2011 error by the Legislature that made "sexting" an unenforceable crime. In an attempt to stop charging minors with child pornography for sending inappropriate pictures of themselves, "sexting" is now a civil offense. For a first time "sexting" offense minors will be given a citation. The minor can then elect to complete 8 hours of community service work, pay a \$60 civil penalty, or participate in a cyber-safety program in lieu of appearing in court.

For a complete list of general and special laws enacted by the Florida Legislature, please visit laws.flrules.org. 



Lydia Harley, Esq., attorney at the law firm of Kelley Kronenberg in Fort Lauderdale, is fluent in English, German, and Aramaic. She practices in the area of General Liability. She earned a Master of Business Administration (M.B.A.) from Florida Atlantic University and her Juris Doctor (J.D.) from Nova Southeastern University where she graduated summa cum laude. She can be reached at lharley@kelleykronenberg.com or by calling 954-370-9970.

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BCBA member, H. Collins Forman, Jr. with Florida Supreme Court Chief Justice Jorge Labarga.

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YOGA FOR LAWYERS

by Shari Scalone

The practice of law is a demanding profession. Not only does one devote years of intense study, but upon entering the workforce is exposed to long hours, high burn-out, and perhaps even higher expectations from colleagues or clients.

Some studies suggest that lawyers are prone to depression; specifically, the American Psychological Association reports that lawyers are 3.6 times more likely to suffer from depression than non-lawyers.¹ Furthermore, the American Bar Association has estimated that substance abuse rates among lawyers are between 15 and 20 percent.²

This is where yoga, including office yoga, can play a part to improve daily physical health, combat anxiety and depression, reduce stress, and improve mood. Moreover, yoga has been shown to yield cardiovascular benefits, lowering blood pressure and even improving lipid profiles in patients.³

The following office techniques can be used as a simple introductory guide to refocus and de-stress.

1. Seated Backbend - Sit up straight, elongating your spine, and take a deep breath. Reach your hands over your head. As you exhale, draw your gaze upwards, with your chin moving up towards the ceiling. Hold this position for a few seconds and release your arms to your sides. Repeat a few times while controlling your breathing.
2. Wrist Release - Extend your arms and bend each wrist using the opposite hand to create a stretch. Press your fingertips upward for a moment and then downward. Feel the stretch throughout the lower arm.
3. Seated Twist - While seated, elongate your spine and sit up straight. Slowly inhale, and upon exhaling, twist your torso to one side. The twisting motion should originate from the abdomen. Repeat on the other side.
4. Shoulder Opener - In order to align your shoulders, begin by standing a few feet from your desk. Bend your upper body in a 90 degree angle, starting at the hips. Place your hands on the desk and breathe.
5. Forward Fold/Toe Touching - From a standing position, shoulder width apart, fold over in half with soft knees. Attempt to let gravity pull you further down with each breath, and if possible, stretch towards your toes. While bent, you can sway your head up and down or side to side to loosen your neck. The reversal of blood flow can also give you an energy boost to help with the rest of your day. Then lift yourself slowly into standing position, letting each vertebra build on top of each other.

The benefits of yoga are particularly useful to attorneys, bringing both physical stress relief and clarity of mind. These suggestions can yield more energy, more productivity, and a better sense of balance. **B**

¹Rosa Flores and Rose Marie Arce, Why are lawyers killing themselves?, CNN (January 19, 2014), <http://www.cnn.com/2014/01/19/us/lawyer-suicides/>

²Don Jones, Career killers, in A GUIDE TO THE BASIC LAW PRACTICE 180-197 (B.P. Crowley & M.L. Winick eds., 2001).

³Yoga – Benefits Beyond the Mat, Harvard Health Publications, <http://www.health.harvard.edu/staying-healthy/yoga-benefits-beyond-the-mat>

⁴Meredith Nordhem, 5 Office Yoga Poses (That Won't Freak Out Your Coworkers), Huffington Post (July 29, 2014), http://www.huffingtonpost.com/meredith-nordhem/office-yoga-poses_b_5604195.html



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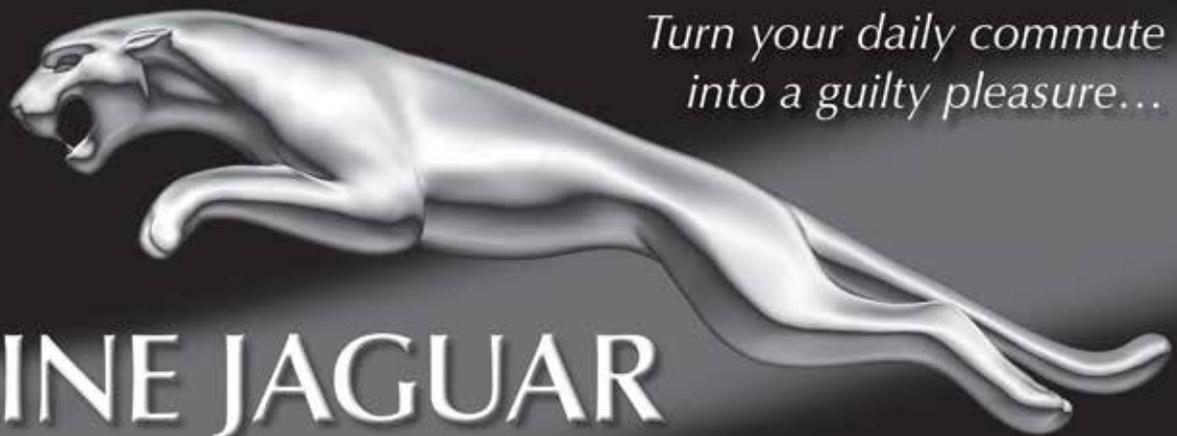
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To Have and To Hold, From this Day Forward... Equality For All

by Natalie S. Kay

Justice Anthony M. Kennedy delivered the opinion for the Supreme Court of the United States in the landmark case of *Obergefell v. Hodge* on June 26, 2015, holding that the Fourteenth Amendment of the U.S. Constitution requires states to issue marriage licenses to same sex couples, and to recognize same sex marriages when lawfully licensed and performed in another state. Petitioner, James Obergefell met John Arthur over twenty years ago when they began their united life together. In 2011, Arthur was diagnosed with ALS¹. To cement their union, they travelled from Ohio, where same sex marriage was unlawful, to Maryland. The couple married on a medical transport plane on the tarmac in Baltimore. Three months later, Arthur died. Ohio denied James his request to be listed as the surviving spouse. In Petitioners' pursuit of equal dignity in the eyes of the law, this suit followed.

Justice Kennedy's opinion focused on where the dimensions of marriage once existed, and the evolution from the traditional confines of "one man and one woman", into new dimensions of family.

Justice Kennedy profoundly explains that marriage has transformed strangers into relatives, binding families and societies together since the dawn of history; how marriages were once arranged based upon political, religious and financial concerns, until flowing into pairings based upon 'romantic love'².

The Due Process Clause of the 14th Amendment has long protected and secured the fundamental rights guaranteed by the U.S. Constitution, including the right to marry. *Obergefell* now patently extends the Equal Protection Clause of the 14th Amendment to en-

sure that same sex couples are not denied the benefits afforded to opposite sex couples, and are not barred from exercising their fundamental right to marry. **B**

¹ John Arthur suffered from amyotrophic lateral sclerosis (ALS), often referred to as Lou Gehrig's Disease.

² Roberts C. J. dissent



Natalie Kay is an Attorney at Kelley Kronenberg in their Fort Lauderdale office. Natalie focuses her practice on Family and Matrimonial Law, Commercial Litigation and Appellate practice. Natalie earned her Bachelor of Arts in Criminal Justice and Criminology from Florida Atlantic University and went on to earn her Juris Doctor degree from Nova Southeastern University, Shepard Broad Law Center. While attending law school, Natalie received the American Academy of Matrimonial Lawyers Association Scholarship for Excellence in Matrimonial Law.

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By Robert

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Florida's Craft Breweries: The Expanding Law

by Jared Guberman

The craft beer scene in Florida, and across the United States, has exploded in the past couple of years. Today, Florida has more than 100 licensed craft breweries, ranking it within the top ten in the United States (California sits at the top spot in the country), and produces more than a million barrels of craft beer per year, ranking it within the top five in the United States. This is a world of difference from when Florida had only six small-scale breweries in 2007. The time is now to get into Florida's craft brewery market before it gets too saturated. With the number of breweries growing every month, Florida has made some changes to its ever-growing beverage laws that became effective on July 1, 2015 ("New Beverage Law") which craft breweries must be aware of. Below are some of the highlights:

First and foremost, Florida breweries can finally sell beer in 64-ounce containers (also known as growlers). Prior to July 1, 2015, Florida craft brewers could have only sold beer for home consumption in 32 or 128-ounce containers. Now, if the containers are filled at the point of sale, it may be packaged in individual containers that hold 32 ounces, 64 ounces, or 128 ounces. Florida is one of the last states to allow the industry standard 64-ounce containers.

Unlike before, the New Beverage Law further specifies who may fill those containers. Such license holders are: 1) A licensed manufacturer of malt beverages holding a vendor's license under section 561.221(2), Florida Statutes; 2) a vendor holding a quota license under sections 561.20(1) or 565.02(1)(a), Florida Statutes, that authorizes the sale of malt beverages; and 3) a vendor holding a license under sections 563.02(1)(b)-(f), 564.02(1)(b)-(f), or 565.02(1)(b)-(f), Florida Statutes.

Second, the New Beverage Law places stringent requirements when selling the above containers. The containers must have an unbroken seal or be incapable of being con-

sumed immediately, the containers must be filled or refilled on the premises of the licensed manufacturer or licensed vendor, and all containers must have a label that provides the following information: name of the manufacturer, brand, and the anticipated percentage of alcohol by volume. The New Beverage Law also sets forth that a violation of the above is a first-degree misdemeanor and the license of the person or entity is subject to revocation.

Third, the New Beverage Law allows the Florida Department of Transportation to in-



stall craft brewery signs on Florida interstate highways and primary and secondary roads upon the request of a Florida craft brewery. However, this does not come free of charge. Craft breweries will have to pay all associated costs therewith.

Fourth, New Beverage Law imposes a limit on how much beer can be transferred from a manufacturer to a licensed facility. The amount of beer that can be transferred from one location to another location is limited to an amount equal to the annual production amount of the receiving location. Further, the New Beverage Law allows manufacturers of beer to have up to eight vendor's licenses. This means a manufacturer can have up to eight taprooms around the state.

Fifth, previously only vendors could host beer tasting or sampling on their premises.

Now, manufacturers, distributors, and importers are also allowed to conduct sampling at either the licensed location authorized to sell alcohol for consumption on its premises or a licensed location authorized to sell alcohol for consumption off its premises only if it has at least 10,000 square feet open to the public or it's a package store licensed under section 565.02(1)(a), Florida Statutes.

If a beer tasting is conducted at a licensed location authorized to sell alcohol for consumption on its premises, all samples must be in a tasting cup, glass or other open container, not an unopened can or bottle. If a beer tasting is conducted at a licensed location authorized to sell alcohol for consumption off its premises, the tasting must be in the interior of the building constituting the vendor's licensed premises and tasting cups can be no more than 3.5 ounces.

With some of the recent changes above, craft breweries must stay abreast of all the new laws and be sure to comply with any existing law that was not amended. However, if you are thinking of starting a brewery be sure to comply with all city ordinances, county ordinances, building and zoning codes, and primarily Chapters 561 through 563, Florida Statutes. Further, make sure you obtain the proper licenses to manufacture and distribute beer from the Division of Alcoholic Beverages and Tobacco and obtain all the proper licenses and permits in creating such a business entity. **B**



Jared Guberman is a civil and commercial litigation attorney with GPG Law in Fort Lauderdale. He may be contacted at 954-533-5530 or by e-mail at jared@gpglawfirm.com.



Latest Supreme Court Decisions

by Nancy Little Hoffman

THE LEGISLATURE ACTED WITH INTENT TO FAVOR REPUBLICANS AND INCUMBENTS; REDISTRICTING MAP MUST BE REDRAWN.

In an unusually lengthy opinion, the Court affirmed the findings of the trial court delineating how legislators, with the assistance of special interest groups, drew the redistricting map so as to favor the Republican Party and incumbent officials. The trial court had concluded that the redistricting process and resulting map were thus tainted by the legislators' "unconstitutional intent" – prohibited by the 2010 Fair Districts Amendment – yet it approved the map.

The Court reversed that approval, stating that "...the trial court analyzed the Legislature's map as if it had not found the existence of unconstitutional intent, affording deference to the Legislature where no deference was due. Once a direct violation of the Florida Constitution's prohibition on partisan intent in redistricting was found, the burden should have shifted to the Legislature to justify its decisions in drawing the congressional district lines."

The Court relinquished its jurisdiction for 100 days with directions that the trial court require the Legislature to redraw the map as to certain districts, on an expedited basis, in accordance with the "transparency and neu-

trality" required by the 2010 Amendment. *The League of Women Voters of Florida v. Detzner, et al.*, 40 Fla. L. Weekly S432 (Fla. July 9, 2015).

THE DEFENSE BEARS THE BURDEN OF PROOF TO DEMONSTRATE A DEFENDANT'S SELF-DEFENSE IMMUNITY UNDER THE "STAND YOUR GROUND" LAW, AT A PRETRIAL HEARING AS WELL AS AT TRIAL.

The Fifth District certified to the Supreme Court the question of whether, at a pretrial evidentiary hearing on the entitlement of "Stand Your Ground" immunity, the State or the defendant bears the burden of proof. The Supreme Court held that a defendant who files a motion to dismiss claiming such immunity must prove, by a preponderance of the evidence, that he or she meets the statutory requirements. *Bretherick v. State*, 40 Fla. L. Weekly S411 (Fla. July 9, 2015).

INDIGENT PARENT HAS RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL IN PROCEEDING TO TERMINATE PARENTAL RIGHTS.

Having previously established that an indigent parent has a constitutional right to counsel in proceedings to terminate parental rights, the Supreme Court held in this case that the criminal standard of ineffective as-

sistance of counsel does not apply. The Court instead set forth a temporary process for asserting such claims and directed the development of rules to provide a procedure for bringing ineffective assistance claims in the future. *J.B. v. Florida Department of Children and Families*, 40 Fla. L. Weekly S416 (Fla. July 9, 2015).

NO REQUIREMENT TO OBTAIN CONFLICT-OF-INTEREST WAIVER UNLESS ACTUAL CONFLICT EXISTS.

Where criminal co-defendants are represented by the same counsel, the DCAs have differed as to whether the trial court must obtain a conflict-of-interest waiver if there is no actual conflict. Resolving that issue, the Supreme Court held that such a waiver is not required where counsel was not shown to have labored under an actual conflict of interest. *State v. Alexis*, 40 Fla. L. Weekly S423 (Fla July 9, 2015). **E**



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.

August 27

West Broward CLE Luncheon

Time: 12:00 p.m. – 1:30 p.m.

Venue: Lago Mar Country Club

Cost: \$25 Member; \$40 Non-Member; \$10 extra for walk-ins

September 2

Elder Law CLE: Special Needs Trusts and Affordable Care Act

Time: 4:00 p.m. – 6:00 p.m.

Venue: BCBA Conference Center

Cost: \$10 Member; \$20 Non-Member

September 5

Guardianship Class - 8 Hour Adult

Time: 9:00 a.m. – 5:00 p.m.

Venue: BCBA Conference Center

Cost: \$180; no walk-ins accepted

September 9

Solo Small Networking Dinner

Time: 6:00 p.m. – 8:00 p.m.

Venue: Dave and Busters - Hollywood

Cost: \$35 Member; \$50 Non-Member

September 11

2015 Legal Malpractice Summit

Time: 8:30 a.m. – 1:00 p.m.

Venue: BCBA Conference Center

Cost: \$75 Member; \$95 Non-Member

September 12

Guardianship Class - 4 Hour Minor

Time: 9:00 a.m. – 1:00 p.m.

Venue: BCBA Conference Center

Cost: \$100; no walk-in accepted

September 16

Constitution Day Reading & Reception

Time: 5:30 p.m. – 8:30 p.m.

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September 18

Roger H. Staley Memorial Real Property Seminar

Time: 8:30 a.m. – 3:00 p.m.

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October 3

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Time: 8:30 a.m. – 3:00 p.m.

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