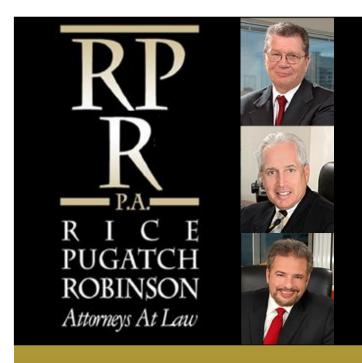
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ON THE COVER:

The Broward County Bar Association invites our members to the 2015 Annual Holiday Party on Thursday, December 10. This year we also celebrate in West Broward at the BCBA West Broward Section/Weston Bar Association Holiday Party on Wednesday, December 2. Register today at www.browardbar.org/calendar.

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letter from the president



Pumpkin Pie and All the Fixings

Fall is upon us. In most parts of the country leaves are turning colors and there is crispness (and in some places even snow) in the air. Here in South Florida we are still experiencing the heat and humidity, rain and green foliage. Yet wherever one lives, fall is a time to look forward to the holiday season and to reflect on the things we are thankful for.

For me personally, I am thankful for my family, and that we are all together and in good health. Professionally, I am thankful for the outstanding group I work with every day at my firm and for the staff, board of directors and

committee and section members I collaborate with at the Broward County Bar Association. Together, we have accomplished so much already this year. The recent Bench & Bar Convention that took place only a few weeks ago, is just one example of the premier events that we offer. Approximately 500+ people attended a day full of exceptional programing that included a panel discussion by some of our finest state, appellate and federal court judges, two plenary sessions with renowned national speakers, and a luncheon featuring Florida Supreme Court Chief Justice Jorge Labarga and Florida Bar President Ramon Abadin. With 42 exhibitors and 27 sponsors, the day was an overwhelming success.

This time of year is also an ideal time to think about those in our community who are not as fortunate. I've found that my riches are not as sweet if I do not give back in some way. During the month of October, many of the BCBA Board of directors volunteered for the Legal Aid Hotline. The "Telephone Advice and Counsel Hotline" is a project initiated by Legal Aid Service of Broward County (LAS) and Coast to Coast Legal Aid of South Florida (CCLA) to offer free legal advice and counsel to low income residents of Broward County. Bogged down by work obligations the day of my commitment, I frankly was not looking forward to leaving my office. Once I began speaking with the grateful low income residents of Broward County, I felt as if I had won a major case. The time is minimal (3 hours), and training and materials are provided. It is a small act that brings great rewards.

Another way to give back and to help our partners at LAS and CCLA is to sponsor a family through their Adopt-A-Family Project. There is no greater joy than seeing a smile on a small child's face who is receiving a much wanted toy, or the thankfulness of a parent who is able to provide a holiday dinner for their family. To either volunteer for the Legal Aid Hotline, or to adopt one of their families, contact Melissa Shepard at (954) 736-2423 or at mshepard@legalaid.org.

I hope that your holiday season is off to a great start, and that you find much in your life to be thankful for. **B**

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letter from the young lawyers' president



The Rainmaker

Our October luncheon featured Howard Wolkowitz, a financial advisor with AXA Advisors, LLC. Howard's presentation, Marketing and Developing Business, focused on the ability for younger lawyers to bring in business, and eventually, become a "rainmaker."

During his presentation, Howard quoted a very successful lawyer from Broward County:

"There are two kinds of lawyers. Lawyers who work for lawyers, and lawyers who work for clients."

This quote resonated with me. When you think about it, it is true. You either have

business which comes directly from your clients, or work is assigned to you by your firm, typically through a partner. After the seminar, I thought more about what it means to be a lawyer who works for clients. In today's market, this designation could make all the difference. Sure, exceeding billable goals, working late hours, and producing exceptional legal work may earn well deserved praises and potentially launch a lawyers climb up the ranks within the firm. But in reality, the best way to secure your future and ensure a paycheck is by bringing in business. One of my mentors once told me that in order to make partner, I would need to become "indispensable" to the firm. Certainly carrying a book of business would go a long way towards becoming "indispensable."

But we all know this, and I am not sharing anything new with those who have managed to read through the preceding paragraphs. However, it is critical that younger attorneys, and even more seasoned lawyers, realize that becoming a lawyer who works for clients is not an impossible achievement, no matter what area of law you practice. Waiting until you become the face of the firm, more seasoned, or even until you have a few more grey hairs, is a grave mistake. Go out and network, and explain to potential clients why they should hire you now. Come to Young Lawyer Section events and practice selling yourself in front of your peers.

It is no secret that I network a tremendous amount, but I never interacted with potential clients with the mindset of truly obtaining business. Of course I wanted to bring in business (who doesn't?), but I found myself concerned about coming across too aggressive. Another challenge was that my firm's clients are mainly insurance companies, and I felt it was nearly impossible to connect with a large company at such a young age. This was a mistake.

Thus, my personal/professional goal this year was to change my approach and network with a purpose. I sat across from my boss during an interview in January 2015, and I stressed to him the importance for me to become a lawyer working for clients. But could I deliver? I am pleased to report that over the past several months, I have brought in several new cases through a new client.

I share this story so that other young lawyers may become more proactive. Setting up a dinner with a potential client and having a conversation about how you and/or your firm can benefit that client, can go a long way in making you become a lawyer who works for clients, and eventually, a rainmaker!



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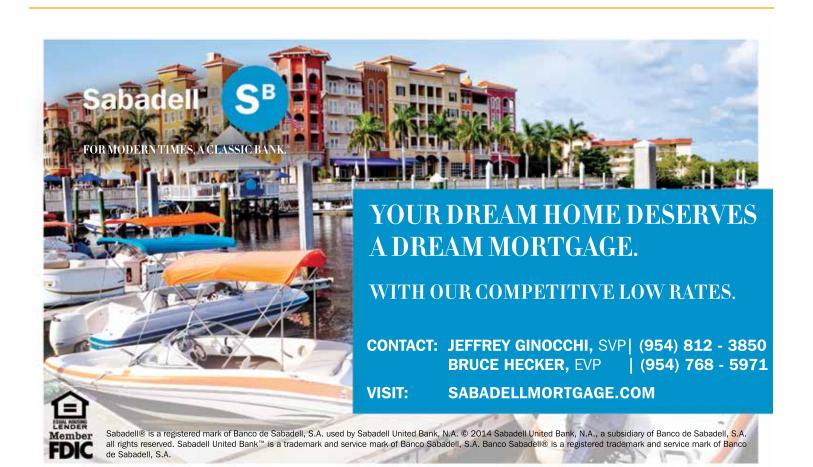
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by Valerie Barnhart & Julie Talenfeld

Is your law firm creating or boosting its social media presence?

If so, that's a smart move, according to the American Bar Association, "Taking control of your online presence is a necessity, and there are few better ways to do so than social media. Used carefully, social media can give your firm a voice, amplify your professional reputation and help drive new business."

But how can you ensure your Facebook posts, tweets, YouTube videos or blogs stay beyond reproach? This question is especially important as The Florida Bar broadens professionalism rules to encompass social media in law firm marketing.

Social media savvy lawyers may harness their online skills in different ways. Some active, more aggressive social media users, may write a blog and share it on their Facebook and Twitter accounts. Others may choose to record themselves discussing a legal topic and share it on social media as a YouTube video or podcast. More passive social media users may choose to simply share the link to a story they read online through their social media platforms. Using and embracing social media builds a lawyer's professional reputation, bolsters their law firm's brand and broadens perceived expertise among local, national and global audiences.

However, before you hit "Enter" and share a post online, it is critical to know and understand the legal landscape as it relates to social media. When attorneys or firms use social media for what can reasonably be perceived as advertising efforts, they fall within the purview of The Florida Bar Association's Rules for Attorney Advertising. In this regard, The Florida Bar has strict guidelines regarding social media and solicitation.

Cautious practitioners should REFRAIN from:

- Posting past or misleading results that cannot be objectively verified.
- Sending unsolicited invitations to people requesting that they "Like" your professional Facebook, LinkedIn or other social media page to obtain legal business. Such activity qualifies as a solicitation under The Florida Bar advertising rules. Be sure such invitations are compliant with The Florida Bar's "direct e-mail" rules.
- Having unmoderated comments on professional social media pages. Therefore, make sure your settings alert you or your marketing team when a comment is awaiting moderation. Only release the comment once it's been reviewed.
- Opening up online groups for anyone to join. Groups can be great for sharing events or news or building camaraderie. However, comments and posts by the members of online groups become the responsibility of the group moderator. Be sure to verify all member requests before granting approval.

Nonetheless, technology has created new methods for lawyers to interact with potential clients in a way that is compliant with governing professionalism rules. What practitioners SHOULD

- Post or share stories that are relevant to their clients.
- Post or publish articles or commentary that is appropriate to their practice area or area of expertise.
- Share updates that highlight community service efforts in the areas in which you and your firm are actively involved.

Whether handled by the lawyer themselves, the firm's marketing department or the firm's social media or public relations partner, social media can become the power tool to build your brand.



Valerie Barnhart is a partner with Fort Lauderdale law firm Kelley Kronenberg practicing in the areas of data privacy, cyber security, and business law She chairs the Technology Committee for the Broward County Bar Association and is a representative on The Florida Bar Young Lawyers Division Board of Governors. She can be reached at vbarnhart@, kellevkronenberg.com.



Julie Talenfeld is the president of BoardroomPR, a full-service, integrated marketing and public relations firm headquartered in Fort Lauderdale. For more information, please email jtalenfeld@boardroompr. com.



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Steve Moody, Past President of Broward County Bar Association (2004-2005) in Huemoz, Switzerland.

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(Left to Right) Jeff Wank and Anthony Karrat, Esq.



(Front Row - Left to Right) Gladys Gerson, Katherine Birnbaum, Michele Cumming Edith Lederberg, and Jane Curran. (Back Row - Left to Right) Samuel Goren, Anthony Karrat, Juliette Lippman and Jeff Wank.

Over 350 members of the legal and business community celebrated the "magic of pro bono giving" at the 14th Annual For the Public Good fundraiser benefitting Legal Aid Service of Broward County (LAS) and Coast to Coast Legal Aid of South Florida (CCLA) respectively. Members of the community were recognized for their efforts to secure justice and change lives for the underprivileged and underserved in Broward County. The event was held on October 1, 2015 at the Hyatt Regency Pier Sixty-Six and raised an estimated \$116,000.

This annual fundraising event recognizes outstanding community advocates whose contributions have made it possible for LAS and CCLA to provide free civil legal services to Broward County children, families, veterans and senior citizens in the low income community. A few of the many legal services provided include helping veterans gain much needed benefits, abused children in foster care, the homeless, children in need of special education, victims of domestic violence and families losing their homes to foreclosure.

Broward County Bar Association's (BCBA) board member Jose Izquierdo of the Law Office of Izquierdo and Marin, returned for a second time to serve as the evening's Master of Ceremonies. His involvement with both LAS and CCLA enabled him to bring a unique perspective to the event as he entertained and delighted the crowd comprised of prominent members of the legal and business community. Izquierdo is the Chair of the 17th Judicial Circuit's Pro Bono Committee and a proponent of pro bono activities through involvement with the local Broward County bar associations.

Community advocates honored with special awards included: Jane Curran, Executive Director Emeritus, The Florida Bar Foundation, receiving the Russell E. Carlisle Advocacy Award; Samuel S. Goren, Esq., Goren Cherof Doody and Ezrol P. A., receiving the Commitment to Justice Award; Kirschbaum, Birnbaum, Lippman & Gregoire, PLLC, receiving the Law Firm of the Year Award; Michele K. Cummings, Esq., GrayRobinson, P.A., receiving the Attorney of the Year Award; the Young Lawyers Section of the Broward County Bar Association receiving the Spirit of Justice Award and Gladys Gerson, Esq., Coast to Coast Legal Aid of South Florida, receiving the Jacquelyn & Bruce Rogow Employee of the Year Award. **B**





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legal health corner

The Practice of Gratitude

by Shari Scalone

It's that time of year again, as we approach Thanksgiving and the holiday season, when we start thinking about gratitude. However, being thankful throughout the year can have a plethora of benefits to improve our overall quality of life.

For instance, "[g]ratitude research is beginning to suggest that feelings of thankfulness have tremendous positive value in helping people cope with daily problems, especially stress." Moreover, a 1995 study in The American Journal of Cardiology showed that positive emotions and appreciation are linked with changes in heart rate variability which may be beneficial in the treatment of hypertension as well as significantly impacting cardiovascular function.² Furthermore, empirical evidence shows that gratitude intervention, in the form of writing in a journal before bedtime, improved sleep quality.³

Expressing gratitude is also linked to optimistic attitudes, and in turn, better immune function. In one study, researchers compared the immune systems of healthy, first-year law students under stress. They found that, by midterm, students characterized as optimistic (based on survey responses) maintained higher numbers of blood cells that protect the immune system, compared with their more pessimistic classmates.⁴

The benefits of gratitude also extend to the legal profession as a whole. "The profession itself has a collective selfinterest in altering professional requirements and expectations to facilitate self-conscious gratitude. Lawyers who feel diffusely grateful for their chosen work are naturally motivated to greater compassion and generosity. Collectively, these changes in affect and behavior can only bolster the profession's reputation..."5

We can cultivate gratitude on a regular basis in a variety of ways:

- Make lists of all the things you are grateful for or keep a gratitude journal. Gratitude becomes tangible in these concrete visual reminders.
- Say "thank you" to those who make a positive impact on your life, whether at the office or at home. Acting with courtesy and with good manners can open the door to more relationships, enhance empathy, and reduce aggression.
- Reduce social comparisons, especially through social media. Instead, attempt to focus on the positives, avoid resentment, and appreciate other people's accomplishments. Reframing the situation to be more positive as a whole can also improve your self-esteem.
- Interweave gratitude with mindfulness meditation, or focusing on the present moment without judgment, by concentrating on things for which you are grateful. For those who are religious, prayer is also a great way to contemplate the blessings in life.

Gratitude does not have to be seasonal, it can be year-round. Let us try incorporating gratitude into our daily routine to help us recognize the goodness in our profession and in our personal lives

⁵ Reed E. Loder, Lawyers and Gratitude, 20 NOTRE DAME J.L. ETHICS & PUB. POL'Y 175 (2006), available at http://scholarship.law.nd.edu/ndjlepp/vol20/iss1/7



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¹ Elizabeth Heubeck, Boost Your Health with a Dose of Gratitude, WEB MD (Oct. 16, 2015, 8:19 PM), http://www.webmd.com/women/features/gratitute-health-boost

² Rollin McCraty et al., The Effects of Emotions on Short-Term Power Spectrum Analysis of Heart Rate Variability, 76 AM. J. CARDIOLOGY 1089-93 (1995), available at https://www.heartmath.org/ assets/uploads/2015/01/emotions-and-hrv.pdf

³ Nancy Digdon & Amy Koble, Effects of Constructive Worry, Imagery Distraction, and Gratitude Interventions on Sleep Qualify: A Pilot Trial, 3 APPLIED PSYCHOLO9GY: HEALTH & WELL-BEING 193-206 (2011).

⁴ Suzanna C. Segerstrom et al., Optimism is Associated with Mood, Coping, and Immune Change in Response to Stress, 74 J. PERSONALITY AND SOC. PSYCHOLOGY 1646-55 (1998).



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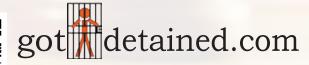


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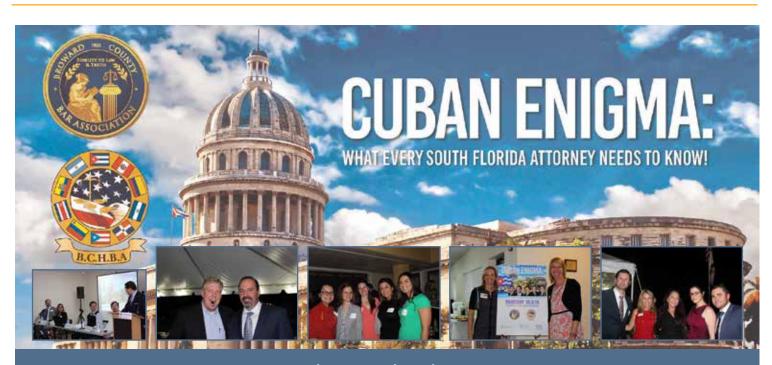






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ARE TRIAL JUDGES AMATEUR SCIENTISTS? WORKING WITH YOUR FORENSIC EXPERT

by E'lyn Bryan

Supreme Court Judge Rehnquist voiced his concern about making "trial judges amateur scientists." Daubert requires the forensic expert to prove the evidence is fundamentally reliable scientifically. But can a judge "change proverbial hats" and scrutinize from the perspective of the expert? The burning question: is the judge qualified to do so? Um...nope...not usually.

FRE 702 is Congresses way of ensuring the trial judge maintains the integrity, reliability and relevance of the science and technical evidence presented. This law puts the trial judge in a unique position. He or she becomes the gatekeeper of the science in question. What is truly in question is how much scientific training does a judge have? Expert testimony could be excluded for any reason. The lack of compelling, detailed information that the judge needs in order to understand the science in question is a perfect example.

The role of "amateur scientist" places an unfair burden upon judges. If we assume for arguments sake that the trial judge has no training in a particular forensic science, it is the responsibility of the expert to be exacting and informative - no problem if you have thoroughly vetted your expert.

The daunting task of being an expert witness is a daily challenge. Experts must keep current with the new rulings, case law, and latest technology in their chosen field of science. Experts should be certified, take proficiency tests, ongoing continuing education, refresher courses, lecture, and have published articles.

In Daubert, the judge must screen scientific evidence to ensure reliability and relevance. The focus is solely on principals, not on the conclusion they generate. Prior to the Daubert decision in 1993, the courts relied upon the 1923 Frye v U.S., ruling which concentrated on general acceptance in the particular field in which the science belonged.

Since the 1993 Daubert decision, the reliability of expert evidence has been further scrutinized even more closely. As a result, there has been an increase of rulings of evidence being unreliable and inadmissible. Are the rulings in some cases due to the evidence being unreliable or is it the inability of the expert to support their opinion with sound science?

Federal Rules of Evidence 702 on acceptability of expert witnesses states, "Testimony is based upon sufficient facts or data. Testimony is the product of reliable principals and methods and the witness has applied the principals and methods reliably to the facts of the case." The emphasis is on scientific validity, not the conclusion.

The expert witness must be able to testify defending all aspects of the validity of the science under scrutiny. Testimony should be extremely detailed, loaded with technical information. If the trial judge is to make his or her decision based on Daubert, he or she must screen the scientific evidence. Not an easy task for someone with no particular background in the science in question. It is up to the expert to educate. It is up to the forensic expert to convince the judge and jury that their testimony is reliable, relevant and based on empirical studies and sound science, not junk sci-

A forensic expert's testimony should be compelling, convincing, and educational. However, the attorney needs to educate the expert as well. A pre-deposition or pre-court conference to prepare your expert should not be an option. The attorney and expert must be in synch. There should be no surprises.

For example; I was retained to testify and opine on a high profile forged document case in Federal Court. I was well prepared and eager. I called the attorney to schedule a pre-court conference. There was much to review. The attorney, let's call him "Mr. No Thank You" said it "wasn't necessary." Without going to the extent of pleading, I urged him to just give me an hour. His reply was "no thank you. Just be there." I replied, "Okay then, please just follow my report page by page exactly (which included demonstrative illustrations and the questioned documents) so I have no surprises."

Fast forward. Surprise!! "Mr. No Thank You" called me to the stand and promptly asked me if the document he held in his hand was the sole document on which I relied upon to form my opinion in this case. Boom! That would be a horrified no I thought. I was too stunned to talk. I had never seen the document held in his hand. I promptly looked at the judge and whispered, "Your honor? Am I allowed a side bar?" The judge smiled and promptly had the bailiff sequester the jury.

The expert witness has an obligation to support their findings. The expert needs to employ and demonstrate a "scientific method. If an expert can't define a methodology or follow a procedure that can be replicated then the expert does not have a methodology. The scientific method is a way of logically analyzing and documenting information as it pertains to a specific discipline. The expert, with precise detail will support their analytical thought processes that contributed to their opinion.

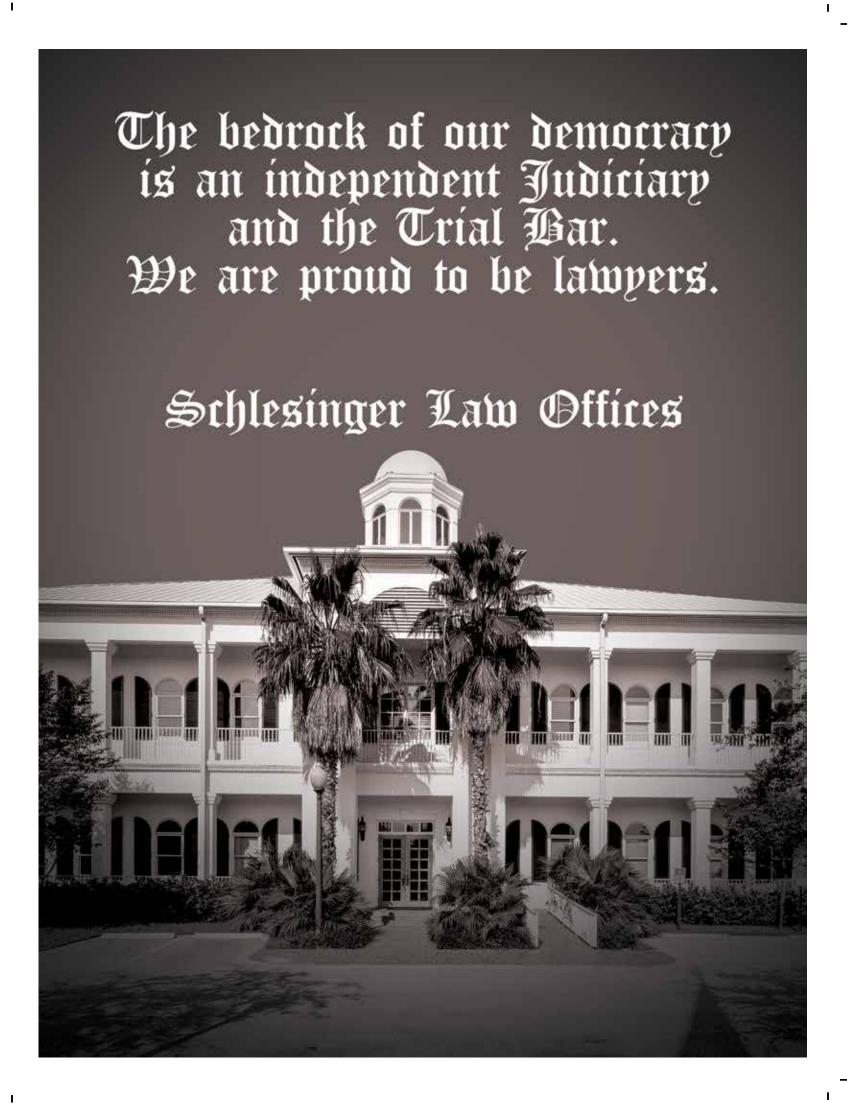
The forensic expert should come to court prepared for "battle" bringing supporting documentation; journals, articles, research, exhibits and reference books citing case studies of sound science to support each and every aspect of their opinion. The trial judge and jury, opposing and retaining counsel should be provided a copy of all demonstrative illustrations and the expert's report. Experts should prepare a "court book" for reference. The court book should have copies of all the exhibits supplied to the court, along with their report.

When interviewing an expert, be sure to ask these extremely important qualifying questions; Are you court qualified? Have you ever been disqualified? Are you certified? Have you been published? Do you do annual proficiency testing? How much training have you had? Do you belong to any organizations? Do you have references I can call? Do you have a college degree? Have you even been convicted of a crime? Do you participate in continuing ed classes? Do you give presentations to organizations?

The most reassuring and successful process for retaining an expert is through referrals. Retaining an expert should most definitely not be about finding the least expensive. The more experienced and credentialed your expert, the more credible and least likely he or she is to be disqualified. Surprise adverse information in your expert's background suddenly introduced by opposing counsel will certainly disqualify your expert. B



E'lyn Bryan, BAI, CFDE Certified Forensic Document Examiner and Handwriting Expert.Board Accredited Investigator. Instructor, lecturer and author of forensic articles





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by Nancy Little Hoffman

SUPREME COURT: EVIDENCE OF EXISTENCE OF FUTURE GOV-**ERNMENT CHARITABLE** OR HEALTH CARE BENEFITS IS NO LONGER ADMISSIBLE IN PER-SONAL INJURY ACTIONS.

Under the common law collateral source rule, as modified by section 768.76(1), Fla. Stats., trial courts are required to reduce awards by amounts which have been paid for, or are otherwise available to, a personal injury claimant, with some exceptions. Those exceptions include collateral sources which have a right of subrogation or reimbursement. The statute specifically provides that benefits received from Medicare are not considered a collateral source. The evidentiary aspect of the common law rule was not affected by that statute, so that evidence of such payments could not be presented to the jury.

In 1984, however, the Supreme Court decided Florida Physician's Insurance Reciprocal v. Stanley, 452 So. 2d 514, which declared that the jury could consider publicly available health services when deciding the amount of future damages. Citing the difficulty of applying that rule, when the continued availability of such services is in doubt, as well as the inherently prejudicial effect of such evidence, the Court has now receded from

Stanley and agreed with the dissent's position that tortfeasors "should not enjoy such a windfall at the expense of taxpayers who fund social legislation benefits." In this case, it approved the trial court's exclusion of evidence that the disabled plaintiff would be eligible for Medicare or Medicaid benefits in the future. Joerg v. State Farm Mutual Automobile Ins. Co., 40 Fla. L. Weekly S553 (Fla. Oct. 15, 2015).

A PARTY'S STATUS AS A DE FACTO OR PSYCHOLOGICAL PARENT IS NOT SUFFICIENT TO CONFER STANDING TO SEEK VISITATION OVER OBJECTION OF BIOLOGI-CAL MOTHER.

During their relationship and cohabitation, each of the partners gave birth to two children and shared their upbringing. At some point after their separation, Ms. Russell denied access to her two children, and Ms. Pasik filed a petition for timesharing, claiming to be their de facto or psychological parent. Upon denial of her motion to dismiss that petition, Ms. Russell sought certiorari. The Second District quashed the denial order, finding that the biological mother had a constitutional privacy interest in raising her children, and that her former partner was a non-parent with no standing to assert visitation rights, despite having played a large role in the upbringing of the children. Russell v. Pasik, 40 Fla. L. Weekly D2313 (Fla. 2d DCA Oct. 14, 2015).

FOURTH DISTRICT: SHERIFF'S SUIT AGAINST CITY BASED ON IMPLIED CONTRACT WAS BARRED BY SOVEREIGN IMMU-NITY.

The Broward County Sheriff sued the City of Fort Lauderdale for its failure to pay for police dispatch and other services. While the parties previously had an express written contract, it had expired and was not renewed. The trial court denied the City's motion for summary judgment based on sovereign immunity. Reversing, the Fourth District held that a city waives its immunity only when it enters into an express contract, and that an implied contract would not suffice. City of Fort Lauderdale v. Scott Israel, 40 Fla. L. Weekly D2325 (Fla. 4th DCA Oct. 14, 2015). B



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.

November

4 The LawTV Member Videos

Time: 10:00 a.m. – 4:30 p.m.; 30

min time slots

Venue: BCBA Conference

Center

Cost: \$15 scheduling fee

6 New Attorney Orientation **Breakfast**

Time: 8:30 a.m. – 11:00 a.m. **Venue:** Law Library – County

Courthouse

Cost: No Cost – Recently Admitted 2015 Attorneys only

7 Guardianship Class - 8 hour

Time: 9:00 a.m. – 5:00 p.m. Venue: BCBA Conference

Center

Cost: \$180; No Walk-ins

accepted

10 North Broward Luncheon

Time: 12:00 p.m. – 1:00 p.m. **Venue:** Champps Americana, 6401 N Andrews Ave, Fort

Lauderdale

Cost: \$20 BCBA Member; \$25

Non-Member

14 Guardianship Class - 4 hour Minor

Time: 9:00 a.m. – 1:00 p.m. Venue: BCBA Conference

Center

Cost: \$100; No walk-ins

accepted

18 CLE: Mediation Insights and **Strategies**

Time: 12:00 p.m. – 1:30 p.m. **Venue:** BCBA Conference

Center

Cost: \$15 BCBA Member; \$25

Non - Member

18 Solo/Small Networking Dinner

Time: 6:00 p.m. – 8:00 p.m. Venue: Dave and Busters -

Hollywood

Cost: \$35 BCBA Member; \$50 Non-Member *\$5 Additional at

the Door

19 West Broward Luncheon

Time: 12:00 p.m. – 1:30 p.m. **Venue:** Lago Mar Country Club, 500 NW 127th Ave, Fort Lauderdale (Plantation)

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

walk-ins

20 November 20 – 21 **Speaking for Kids Guardian Ad Litem Training**

Time: 8:00 a.m. – 5:00 p.m.

(both days)

Venue: BCBA Conference

Center **Cost:** \$400

24 Northwest Section Luncheon

Time: 12:00 p.m. – 1:30 p.m. Venue: Runyon's Restaurant, 9810 W Sample Rd, Coral

Springs

Cost: \$15 BCBA Member; \$20

Non-Member

calendar of events

Upcoming Special Events

December 2

West Broward Section & Weston Bar Holiday Party

Time: 5:00 - 8:00 p.m.

Venue: Moon Thai & Japanese Cuisine

in Weston

Cost: BCBA Members/Weston Bar Members and their quests \$10; Non-Members \$25; BCBA Judiciary are Free

December 10

Annual BCBA Holiday Party

Time: 5:30 - 8:30 p.m.

Venue: Embassy Suites in Fort

Lauderdale - Atrium

Cost: No Charge BCBA Member; BCBA

Member Guest \$25.00

Register for BCBA Events www.browardbar.org • 954-832-3618





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