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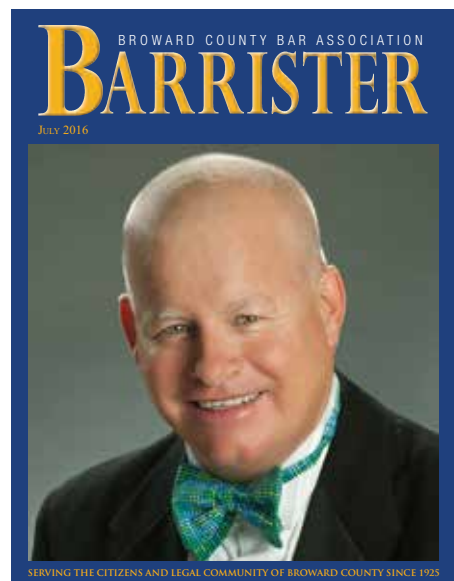
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## letter from the president



*Charles A. Morehead III*

Greetings from your new Broward County Bar Association President! When I first became a member of the BCBA in 1985, I had no idea how the practice of law would evolve. As a new associate at Fleming, O'Bryan & Fleming, I was exhorted by two past presidents, John Fleming & Bill O'Bryan, to join the BCBA.

Patrick Bailey was the President and two of his sons would become current Circuit Court judges. Like many folks in their early years, I simply treaded water with the Bar, attending seminars, but forsaking an active role. Nancy Gregoire, the

2002 President and a then my new law partner, broke the spell and insisted I get involved in 2002...and so it began.

Steve Moody, the 2004 President, insisted I join the board of directors when I became his partner in 2006. And I never stepped off the train. The long road has made me a better person, lawyer and I have made many friends along the way.

So what is my platform? It's simple. I pledge to make the BCBA's ongoing growth under the best executive director, Braulio Rosa, a continued priority. We are 3300 members strong and counting. We were 2200 members just 5 years ago!

Attempts to industrialize our profession will be met with fierce resistance. Those who would mate our time honored profession with for-profit corporations have met their enemy. Handing lawyers from other states the keys to our courthouses without passing our Bar, or so called "reciprocity", will be met with strong opposition, just as we did this past year. Our vigilance will be unwavering---that is a promise.

I also intend on speaking out and taking positions on relevant issues. That includes proper funding for our judiciary, the Clerk's office, and proper security in our courthouses.

Finally, I want to remind each of you to patronize our fine sponsors. Without them our organization would flounder. Our website ([www.browardbar.org](http://www.browardbar.org)) lists them all and each of us should try and repay them for their dedication to us.

I look forward to seeing each of you in the new courthouse. Hope springs eternal! **B**

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## letter from the young lawyers' president



*Todd L. Baker*

What a year it has been for the Young Lawyers Section (YLS)! Under the leadership of Jeff Wank, we have seen more members get involved in our committees and community service projects, and attendance at YLS events has been better than ever. We have been able to assist more charities than ever before by adding a new event, our Annual YLS-quire Charity Poker Tournament, which raised almost \$12,000 for six different charities. Our successes did not end there. We had the privilege of being named the Florida Bar Young Lawyers' Division's Affiliate of the Year and we intend on being back to back champions – but we need you to help us maintain the title.

Last year, we began a campaign to encourage greater involvement. While some have embraced the challenge, others have yet to take the next step. I encourage everyone reading this to do just that in the coming year - take the next step. Whether it be taking on additional chal-

lenges at work, attempting to generate business through our many networking opportunities, getting involved in a local charity that needs your help, or taking a leadership role in one of the many activities the Young Lawyers Section is involved in. Don't just get involved - take the next step and commit to staying involved.

So if you are a young lawyer, join a committee. Our reorganized committees will have more meaningful roles for its members in the activities that interest them. Don't let that email seeking committee members go unanswered. The time commitment is minimal and the rewards are significant. Once you're on the committee, ask how you can help and suggest things that will make your committee and its events and activities even more successful. If you are a more senior attorney, encourage the younger lawyers and your firm to get more involved. Join our Mentorship Program and help Broward County's young lawyers avoid the pitfalls that you may have experienced throughout your career. If you are a judge, continue to attend our events and encourage the young lawyers at those events and the ones that appear before you to get more involved. We all need to help young lawyers see the benefits of voluntary bar involvement. While being a member of the BCBA has its benefits, the benefits of being an active member is exponentially greater. It is up to each of you to see the reality of that statement. I certainly have through my involvement.

There truly is strength in numbers. We can do so much good for our community if we all pitch in. We can help law students start their career on the right path through our Law School Liaison program. We can help newer lawyers achieve a work/life balance while practicing with professionalism and helping the community through our Mentorship Program. We can help teach elementary students to read through our Lawyers for Literacy/Read for the Record programs. We can provide some companionship to a sick child at the Broward Children's Center. We can help juveniles and adults get their criminal records sealed and/or expunged at the Broward State Attorney's Expungement Workshop. We can show foster kids the joy of the holidays through our Holiday in February program, or this year's charity golf tournament on October 29 benefiting 4Kids of South Florida. We can help families experience the joy of adoption during National Adoption Day. We can help the underserved members of our community receive legal services through our pro bono efforts in conjunction with Legal Aid. We can do many wonderful things for our legal community and our local community, but only if we do them together.

I am lucky to start my year as president where Jeff has left us. I am excited about the year to come given the strength of our board of directors and the many active members of our YLS. I hope reading this has ignited a desire to take the next step and make an impact in our community. The Young Lawyers Section will be hosting its first ever Town Hall meeting in July and we encourage all lawyers, young and more senior, and judges to attend to see our plans for the upcoming year, learn about ways to help with those activities, and suggest activities we should add to our calendar. I look forward to seeing and working with you all in the upcoming year. **B**



# Charles A. Morehead III

## 2016-2017 BCBA President

by Kimberly A. Gessner

Charles A. Morehead III is the 91st President of the Broward County Bar Association, bringing yet another level of rich history and accomplishment to our local bar. Charles, a native 4th generation South Floridian, grew up in South Miami, graduating from the University of Florida in 1982 and going on to complete his JD at the University of Miami, with honors, in 1985 where he passed the Bar and began his practice. Charles' career began as a clerk and later an associate with the esteemed Fleming, O'Bryan & Fleming in 1985, moving to Conrad, Scherer & James in January 1986. Charles was mentored by Rex Conrad, among others, until 1992 when he formed his own firm. Charles credits the success of his early years to partnering with George Bunnell, David Keller, and Steve Moody, with whom he worked closely in building his practice. Currently, Charles is an equity partner with the AV-rated firm of Abramowitz, Pomerantz & Morehead P.A. Charles' practice focuses primarily on personal injury cases dealing with wrongful death, product liability, premises liability, auto accidents, medical malpractice, legal malpractice, and any other case where serious personal injury is involved. Charles is listed in "Best Lawyers in America" in the field of Plaintiff's personal injury.

Charles' passion for the law is clearly demonstrated through the many years and hundreds of hours he has dedicated to enrichment of the legal profession, taking on numerous leadership positions in both our local community and at the state level of the Florida Bar. Charles is the current president of the American Board of Trial Advocates for the Fort Lauderdale Chapter, he is Board Certified by the Florida Bar in Civil Trial, and currently sits on the standing Committee for



Civil Trial for the Florida Bar. At the local level, Charles is the past chair for the Trial Lawyers Section, was the chairman of the Bench & Bar Committee for three years, was the co-chairman for the Bench & Bar Convention for 2013, and has been a member of the Board of Directors for the BCBA since 2006.

On a personal note, Charles has three children: sons Charles IV, 31; Parker, 23; and his daughter, Chandler 21. Charles IV is a graduate of the University of Florida and a commercial pilot. Parker is a graduate of Florida State University, and is an Assistant Superintendent for Seawood Builders. Chandler is currently a Senior at Texas State University, is a musical theater major, and has already appeared on Broadway. Charles has a passion for the outdoors, and is the past president and life member of the Broward County Airboat, Halftrack & Conservation Club, an active boater and airboater. He enjoys building racing engines, is an avid hunter and life member of the NRA, and is a two-time World Skeet Shooting Class Champion. Charles' vision of this upcoming year is to continue the growth of the BCBA, continue our outreach into the community,



and to stand up for the rights of Broward lawyers and judges. He will also focus on promoting and demanding professionalism, civility, and competence in our profession, as well as a dedication to defeating the commercialization of the legal field and increasing the profile of the BCBA.

It seems only natural that Charles take the next step into the presidency of the BCBA, a role that we, as members of the BCBA, are excited to welcome him into, and want to extend our humble gratitude for the many years of service, pride, and growth he has brought, and continues to bring, to the BCBA. Charles, you continue to enrich our profession and our organization, please accept our warmest congratulations on becoming the 91st President of the BCBA.

P.S.: Charles has promised that we WILL move into our new courthouse before his term ends! On behalf of all Broward Lawyers, we will take you up on that! **B**



*Kimberly A. Gessner, Esq. is a civil litigator, and while being Board Certified in Construction Litigation, practices in all areas of commercial litigation, including business torts and probate. She is with Buchanan Ingersoll & Rooney PC and can be reached at Kimberly.gessner@bipc.com, or 954 335 1590.*



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*Glenn Mednick, BCBA Member  
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# Got Civility!

## An Alternative Approach to Resolving Unprofessional Conduct

by Alan Bryce Grossman

On May 24, 2016, the Broward County Bar Association and U.S. Legal Support presented Got Civility! featuring 17th Judicial Circuit Chief Judge Peter Weinstein, United States District Court for the Southern District of Florida Judge Beth Bloom, 17th Judicial Circuit Court Judge Jack Tuter, Michael J. Higer, Florida Bar President-Elect, and Kenneth J. Joyce, chair of the Professionalism Panel for the 17th Judicial Circuit. The panel addressed the basic question of why some lawyers do not treat other attorneys with professionalism, and what can be done about it.

In 2013, the Florida Supreme Court sought an approach to more critically address professionalism issues in Florida.<sup>1</sup> It recognized that “professionalism involves principles, character, critical and reflective judgment, along with an understanding of ourselves and others working in and under stressful circumstances.”

The Florida Supreme Court also recognized that the “passive academic approach to such problems probably has a positive impact toward improving professionalism or at least maintaining the status quo by preventing a further decline.” To increase the likelihood that attorneys would act with more professionalism towards each other, the Florida Supreme Court went beyond the passive approach and created mechanisms to “receive and resolve any complaints before and in the place of the initiation of

formal grievance proceedings.” One mechanism directed the Chief Judge of each circuit in Florida to create a Local Professionalism Panel “to receive and resolve professionalism complaints informally if possible.”

Chief Judge Weinstein created the Seventeenth Judicial Circuit Professionalism Panel on October 21, 2013 (2013-53-Gen), which was modified on February 16, 2016 (2016-8-Gen). Pursuant to the Administrative Order, all attorneys in Broward County are governed by the Standards of Professionalism, which includes the Standards of Professional Courtesy and Civility for South Florida (as attached to the Administrative Order).

The Local Professionalism Panel is an informal process to address attorney conduct that is inconsistent with the Standards of Professionalism. The Panel can be initiated by an attorney, a judicial officer, or a non-attorney. The Panel has no authority to discipline any attorney nor compel an attorney to appear before the Panel. However, in addition to counseling an attorney to further the goals of professionalism, the Panel has several options available to resolve the issues, including recommending mentorship, recommending ethics school, referring attorneys to the Florida Lawyers Assistance Program for drug, alcohol or emotional problems, or referring attorneys to the Attorney Consumer Assistance Program, depending on the nature and

severity of the matter.

Members of the Florida Bar should consider utilizing the Panel to address circumstances of unprofessional conduct that they may encounter. As noted by Mr. Higer, civility is a higher standard that all attorneys should strive for. When unprofessional conduct is encountered that may not rise to sanctionable conduct, referrals to the Panel can help to educate and guide attorneys as to more civil conduct in productive, non-punitive ways.

All attorneys should be aware of the Standards of Professionalism. These Standards govern matters such as scheduling, discovery, conduct during proceedings, and candor to the court and opposing counsel. Attorneys often encounter conduct that may cross the line of professionalism. With referrals to the Panel, attorneys, and the public, have a mechanism that can assist, without punishing, in resolving these issues. **B**



*Alan Bryce Grossman is a sole practitioner in Cooper City, practicing in South Florida, and around the state, and elsewhere, for 26 years. His areas of practice include litigation and appeals in commercial, property, and probate matters. He is a graduate of the University of Florida and the University of Baltimore School of Law. He can be reached at [alan@abgrossman.com](mailto:alan@abgrossman.com) or by calling 954-364-6294.*



# Legal Writing in the Digital Age

by Sarah T. Weitz

When you began reading this magazine, did you notice the way in which your eye reads each page? Did you read the headline and first paragraph, then pick up the pace, skimming down the left side of the page?

If so, you are not alone. Research shows that our eyes move in an “F” pattern down a paper page, as mentioned by Professor Ellie Margolis in her 2015 article “Is the Medium the Message? Unleashing the Power of E-Communication in the Twenty-First Century.” Most of our attention is captured by information at the top of the page. Then our eyes skim down the left side to the middle, where we scan laterally again. Our eyes then skim down the left side of the page again to the bottom.

Many of us no longer read on paper. Electronic filing became the norm in Florida three years ago. The entire Fourth District Court of Appeal, a majority of the Third District Court of Appeal, and many trial judges in South Florida now read almost exclusively on electronic devices. At a recent BCBA seminar, a panel of Fourth DCA judges suggested that attorneys consider the effect this has on their advocacy.

The small screen of a tablet changes our reading experience in several ways. Reading is no longer a tactile experience involving the turning of pages and the heft of a brief in our hands. On a screen, we cannot see an entire page at once. We do not know whether we are near the end without checking the page numbers. Electronic documents are designed to be interactive, with hyperlinks, bookmarks, and a search function that all allow the reader to jump away from the text into



another document.

With so many potential distractions, we need to provide better sign posts for our readers to signal the reader’s location in a piece. These sign posts can take several forms.

One is a roadmap sentence at the beginning of a trial court motion and in the facts section of an appellate brief. A single-sentence description of the issue helps orient the court to the key facts that you present next. Additional roadmap sentences should be used at the beginning of each argument section to move the reader through the piece.

Numbered headings and subheadings also are important structural elements. In the argument section, well-written subheadings can help move the reader through each point. Consider using subheadings in the facts section to help link the facts to each point that you plan to make later in the brief.

Avoid footnotes. Even on a paper page, footnotes interrupt the rhythm of your words and for tablet readers, footnotes stop the flow entirely. The reader finds himself in a different part of the text and

is forced to find his way back.

As you write, remember the “F”-shaped reading pattern. Always lead with your most important information to take advantage of this natural reading pattern as well as the reader’s limited time. Before filing your brief, review it on a tablet so that you can read your work the way the court will. If important sentences are buried in the middle of a page, you may want to rearrange your text to ensure maximum impact.

Many of the suggestions in this article were highlighted by Judges Robert M. Gross and Jonathan D. Gerber during the BCBA Appellate Practice Section’s Fourth DCA seminar on April 15, 2016.

This article was submitted on behalf of the BCBA Appellate Practice Section, Michele K. Feinzig, Esq. of the Law Offices of Robin Bresky, Chair and Louis Reinstein, Esq. of Billing, Cochran, Lyles, Mauro & Ramsey, P.A., Vice Chair. **B**



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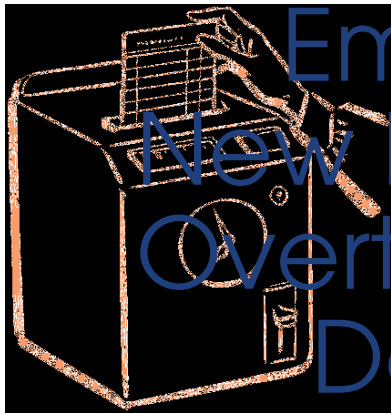
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# Employers Beware - New Final Rule Governing Overtime goes into effect December 1, 2016

by Catalina M. Avalos

Many employers will see their bottom line affected by the U.S. Department of Labor's final rule increasing the minimum salary for employees classified under the "white collar" exemptions from \$23,660 to \$47,476 annually. Section 13(a)(1) of the Fair Labor Standards Act provides an exemption from both minimum wage and overtime pay for employees employed as bona fide executive, administrative, professional and outside sales employees—referred to as the "white collar" exemptions.

Employers need to decide whether to increase their employees' pay to meet the new salary threshold to properly claim one of the exemptions or re-classify the employee as "non-exempt" and pay overtime if the employee works over 40 hours during any workweek. Properly classified exempt employees are not entitled to overtime. Generally, overtime pay is calculated as one and one-half times the employee's regular hourly rate of pay.

According to the department, the Final Rule may "extend overtime pay protections to over 4 million workers within the first year of implementation." Additionally, the Department of Labor's Fact Sheet released in May 2016, states that the Final Rule:

1. Sets the standard salary level at

\$913 per week or \$47,476 annually for a full-year worker and the standard salary level will automatically increase every three years, beginning on January 1, 2020. The Department will post new salary levels 150 days in advance of their effective date, beginning August 1, 2019; and

2. Sets the total annual compensation requirement for highly compensated employees (HCE) subject to a minimal duties test from \$100,000 to \$134,004. Additionally, for the first time the Final Rule "amends the salary basis test to allow employers to use nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to 10 percent of the new standard salary level. The Final Rule makes no changes to the duties tests."

Many employers will have to decide what actions to take in order to comply with the act and the Final Rule; including whether to:

1. Increase the salary of employees classified as "exempt" in order to benefit from the exemptions.
2. Re-classify the employee to non-exempt status, leave the employee's salary "as is" and pay overtime if the employee works overtime.
3. Re-classify the employee to non-exempt status and closely monitor the

employee's hours to ensure that the employee does not work overtime.

Employers should take this as an opportunity to contact counsel and review how they are currently classifying their employees and determine what, if any, action they need to take in order to comply with the Final Rule. Although the "duties test" was not impacted by the Final Rule, employers should also take this as an opportunity to review the job duties of their employees to ensure that employees, not only meet the new salary threshold but that they also meet the "duties" test for the exemptions to apply. **B**



*Catalina M. Avalos, Esq. is a director with TrippScott, PA and focuses her practice in the areas of labor and employment, and complex commercial litigation. Avalos has experience representing both plaintiffs and defendants in employment matters and often serves as quasi in-house counsel for various corporate clients providing advice for their employment needs. She may be reached at (954)760-4912 or via email at [cma@trippscott.com](mailto:cma@trippscott.com).*



# THE MILITARY DISCHARGE UPGRADE PROCESS (AND HOW YOU CAN HELP)

by Russell Miller Thompson

I'm not a veteran myself, however my father was in the Navy and served in the Pacific during World War II. My son served in Fallujah, Iraq, as a Marine. There is a special place in my heart for veterans. Legal Aid Service of Broward County, in conjunction with United Way of Broward County, has created the Mission United Veterans Pro Bono Project to offer free civil legal services to Broward's income-eligible military veterans and their families. I have taken on some of these cases and they are very rewarding. You too can help a veteran overcome the stigma and limited access to benefits that often come when their discharge is classified as "less than honorable." These types of discharges can add to the emotional trauma veterans unfortunately too often face when returning home.

A veteran's service record tells a story about their sacrifices for our nation - a good and honorable story. However, sometimes, the tale is less than honorable. When returning home, the most important document a service member receives is a Department of Defense Form 214 (DD-214). A DD-214 containing adverse information can impair the veteran's ability to secure meaningful professional and educational opportunities. Veterans with less than an "honorable discharge" are looking at a future of diminished job prospects, no educational benefits, and reduced or eliminated VA benefits. The good news is there are options to lessen this stigma. In many cases, the retention of a lawyer who understands the discharge upgrade process can make a difference.

Each branch of service has a Discharge Review Board that evaluates requests from veterans who desire to have their discharge upgraded. Normally, this applies only to those who receive a "general", "under honorable conditions", "other than honorable", or "bad-conduct"

discharge. Those who receive a dishonorable discharge are not eligible to apply to the board for an upgrade.

In military discharge upgrade cases, the burden is on the veterans to prove they deserve an upgrade. The goal in securing an upgrade is to get the board to understand the extenuating circumstances the discharge. These can include trauma or mental illness stemming from multiple tours, sexual assaults that too often remain unaddressed in combat situations, and any pre-existing conditions that might have impacted the discharge.

Occasionally, a veteran is assigned a negative discharge that does not accurately reflect his or her performance. Consider the case of a female veteran who was the victim of military sexual trauma by her company commander. She was a 20-year-old private at the time of the assault, and her assailant was much older and held the rank of captain. Scared to report the incident due to the captain's senior status, she attempted to deal with the assault alone. Required to interact with her company commander on a daily basis, the situation eventually become too much for her. Over time she turned to prescription drugs to cope with the pain. She subsequently failed a urinalysis test and was separated from the Army with a discharge characterization of "other than honorable".

In such a case, a lawyer's assistance is critical to the discharge upgrade process. Evidence of the sexual assault will need to be developed and presented for the first time in the upgrade paperwork submitted to the board. The benefits to a veteran can be transformative and bring closure to a painful open wound. This is just one illustration of how you can assist those who need a discharge upgrade. There are many cases where veterans who have been deployed on multiple combat tours

return home with an "other than honorable" discharge due to trauma-instigated behavior. In most cases, veterans who work with a lawyer in the upgrade process are five times more likely to prevail than if they just submit a written application on their own.

Review boards are not accustomed to seeing well-documented, organized and persuasive applications (known as a DD Form 293). Most of their caseload involves unrepresented veterans who employ an approach based on good behavior that followed their discharge, which is specifically not grounds for an upgrade. Nevertheless, always include such information, as it can be considered reflective of character or actions that occurred before discharge. Boards are impressed by good conduct, charitable activities and an impressive career after discharge.

I have been fortunate to be involved in a few discharge upgrades and the experience has taught me that there is no substitute for documentation, developing the evidence, and providing a persuasive and compelling narrative as to why there were mitigating circumstances surrounding the misconduct that led to the discharge.

This is what we do as lawyers. Please consider giving some of your time and legal talent to help a veteran. After what they have given us - it is the least we can do! **B**



*Russell Miller Thompson, Esq. of the Law Offices of Russell Miller Thompson, 7771 W. Oakland Park Blvd., Suite 216 in Sunrise has been a civil trial attorney in Broward County for over 30 years. Mr. Thompson was named 2016 Pro Bono Attorney of the Year by Legal Aid of South Florida, Inc. He can be reached at (954) 316-8988 or via email at [rthompson@rmtlawfirm.com](mailto:rthompson@rmtlawfirm.com).*

## Attorney Steven Jaffe Receives First Women Leaders Foxy Award

by Elizabeth W. Finizio



(left to right) Elizabeth Finizio, James Fox Miller and Steven Jaffe

The Broward County Bar Association and Broward County Women Lawyers' Association have partnered on an annual Women Leaders in the Law Series. The sessions are geared to-

wards women attorneys to inspire and guide them to reach the top of their field. To cap off our second year we presented the annual "Foxy Award" named after James Fox Miller. Mr. Miller, Past-President of BCBA and the Florida Bar has spent his entire career supporting and mentoring women in the profession. In the spirit of Mr. Miller, the Foxy Award honors a male attorney who has made it part of their mentoring mission to sponsor, support and mentor female attorneys and help them obtain leadership positions. This year's Foxy Award was presented to Mr. Steven Jaffe from Farmer, Jaffe, Weissing, Edwards, Fistos and Lehrman, P.L. of Fort Lauderdale.

The next installation of the Women Leaders in the Law will kick off in October of 2016. Stay tuned for details. **B**



Elizabeth "Beth" W. Finizio, Esq. is a personal injury attorney in Fort Lauderdale. Beth is licensed in Florida, Pennsylvania and New Jersey and regularly handles cases in all 3 jurisdictions. She can be reached at [Elizabeth@finiziolaw.com](mailto:Elizabeth@finiziolaw.com) or by calling 954.767.6000



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# RECENT DEVELOPMENTS IN THE LAW



by Nancy Little Hoffman

## FLORIDA SUPREME COURT STRIKES DOWN WORKER'S COMPENSATION STATUTE LIMITING TEMPORARY TOTAL DISABILITY BENEFITS

Section 440.15(2)(a) cuts off benefits to a totally disabled worker after 104 weeks if the worker has not yet reached maximum medical improvement by that time. The supreme court held that this portion of the worker's compensation statute is unconstitutional under article I, section 21 of the Florida constitution as a denial of access to courts, since it does not provide a reasonable alternative to tort litigation as required by *Kluger v. White*. However, the court declined to invalidate the rest of the statute, holding that the proper remedy is revival of a prior statute which provided for a limitation of 260 weeks of temporary total disability benefits. *Westphal v. City of St. Petersburg*, 41 Fla. L. Weekly S261 (Fla. 5th DCA June 9, 2016).

## SENTENCING JUVENILE OFFENDERS – THREE OPINIONS:

The Florida Supreme Court has issued two new opinions dealing with the constitutionality of life sentences without parole for juvenile offenders, applying the U.S. Supreme Court's 2012 opinion in *Miller v. Alabama* as reaffirmed by its 2016 opinion in *Montgomery v. Louisiana*. In those opinions, the U.S. court held that the Eighth Amendment "forbids a sentencing scheme that mandates

life in prison without parole for juvenile offenders."

In *Landrum v. State*, 41 Fla. L. Weekly S274 (Fla. June 9, 2016), a sixteen-year-old girl with no prior record was convicted of second-degree murder and sentenced to life without parole. Her post-Miller request for resentencing was denied because she was sentenced under a non-mandatory scheme. Answering a certified question from the Second District, the supreme court held that Miller applied to discretionary sentencing schemes as well, and that because the sentencing court did not consider the juvenile's "youth and its attendant circumstances," life without parole was unconstitutional under the Eighth Amendment.

*Atwell v. State*, 41 Fla. L. Weekly S244 (Fla. May 26, 2016), involved a sixteen-year-old who was convicted of armed robbery and first-degree murder committed in 1990. On the murder charge, he was sentenced to life imprisonment with the possibility of parole after 25 years. After that time passed, a parole hearing was conducted, but his presumptive release date was set for the year 2130, 140 years after the crime and far exceeding his life expectancy. The supreme court held that since Florida's existing statutory parole system does not provide for individualized consideration of the inmate's juvenile status at the time of the crime, as required by Miller, the sentence – "virtually indistinguishable

from a sentence of life without parole" – was unconstitutional.

The Fifth District addressed a similar issue in *Peterson v. State*, 41 Fla. L. Weekly D1394 (Fla. 5th DCA June 10, 2016). In that case, the defendant was seventeen when he committed burglary of a dwelling with an assault or battery. In 2003 he was sentenced to 56 years in prison. Seven years later, the U.S. Supreme Court held in *Graham v. Florida* that the Eighth Amendment forbids a sentence of life without parole for a juvenile offender convicted of a nonhomicide crime, and that the juvenile must be given "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." The Fifth District vacated the sentence and ordered resentencing under recent guidelines, holding that *Graham* applies to lengthy term-of-year sentences and applies retroactively. It certified related questions to the Florida Supreme Court as to when such a sentence becomes a de facto life sentence. **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](mailto:NLHappeals@aol.com)*

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**Venue:** BCBA Conference Center

**Cost:** \$180; No Walk-ins accepted

### 13 TheLaw.TV Member Videos

**Time:** 10:00 a.m. – 4:30 p.m.; 30 min. time slots

**Venue:** BCBA Conference Center

**Cost:** \$15 scheduling fee

### 16 Guardianship 4-hour Minor

**Time:** 9:00 a.m. – 1:00 p.m.

**Venue:** BCBA Conference Center

**Cost:** \$100; No Walk-ins accepted

### 20 Solo/Small Networking Dinner

**Time:** 6:00 p.m. – 8:00 p.m.

**Venue:** Dave and Busters

**Cost:** \$35 BCBA Member; \$50 Non-Member \* \$5 additional at the door

### 27 Construction CLE: Case Law Updates

**Time:** 12:00 p.m. – 1:30 p.m.

**Venue:** BCBA Conference Center

**Cost:** \$15 BCBA Member; \$25 Non-Member

#### Upcoming Special Events

##### August 3

##### A Taste of the Caribbean

**Time:** 5:30 p.m. – 8:00 p.m.

**Venue:** BCBA Conference Center  
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##### September 7

##### 2016 Marlins Game CLE Night

**Time:** 4:45 p.m. CLE followed by Networking & Game

**Venue:** Marlins Park

**Cost:** \$75 first 50 BCBA & NSU Alumni Members; \$90 Non-Member

*Includes: Parking, CLE, Club Level Ticket, Food and Beverage*

##### December 1

##### BCBA Annual Holiday Party

**Time:** 5:30 p.m.

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