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OCTOBER 2016

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#### ON THE COVER:

The Florida Medical Marijuana Legalization Initiative, also known as Amendment 2, is on the November 8, 2016, ballot in Florida as an initiated constitutional amendment. BCBA will be addressing Amendment 2 along with other relevant legal issues surrounding this topic in our first article of a three-part series. Read more on page 13.

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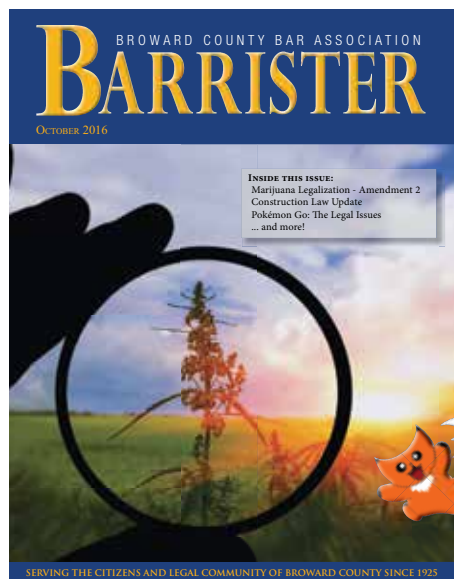
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## letter from the president



*Charles A. Morehead III*

Fall is upon us. Our third annual Constitution Day event was held on September 15, 2016 and was a rousing success. Fort Lauderdale High School and Daniel Katz, a lawyer and teacher who directs the pre-law curriculum there, participated heavily in our essay contest. A copy of the winning essay can be read here: <http://www.browardbar.org/2016-constitution-day-essay/>

Florida Power & Light and Juliet Roulhac once again sponsored this great event. Thirty-three members of the community including lawyers, judges, voluntary bar associations and others read our Constitution,

reminding all present as to the timeless nature of the document and the sacrifices made to generate it.

As promised, your bar association filed comments with the Florida Supreme Court regarding the proposed changes to the "for profit" lawyer referral service rules. The board of directors voted unanimously to oppose these changes as did every other lawyer that commented upon them and every bar association that weighed in on the issues. The document that we filed can be found here: [https://efactssc-public.flcourts.org/casedocuments/2016/1470/2016-1470\\_response\\_47110.pdf](https://efactssc-public.flcourts.org/casedocuments/2016/1470/2016-1470_response_47110.pdf)

It is our intention to attend oral argument and oppose these changes on an ongoing basis.

The new courthouse continues to be somewhat of an enigma. The promise of beginning move-in dates in late September have come and gone. According to Mayor Jack Seiler who briefly spoke at the October Bench Bar Committee luncheon, the City of Fort Lauderdale has signed off on the building. A temporary certificate of occupancy (CO) was given last month and the permanent CO in mid-September. Contractor workmanship issues seem to be further delaying a move-in date. Strangely, requests to tour the courthouse by two or three people, to take photographs and publish same have been met with silence. Court administration has also been unable to tour the very space that they seek to occupy.

We are redoubling our efforts to bring you current pictures of the new courthouse and proper move-in schedule that will actually be enforced. The project currently is a year and four months behind with initial occupancy to have been June of 2015.

We look forward to an excellent fall season here in South Florida and hope you will peruse the Broward County Bar's website for upcoming events. There is something there for everyone and the events continue to grow daily. **B**

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## letter from the young lawyers' president



*Todd L. Baker*

What a month it has been for YLS! Our August luncheon had an amazing panel, Judge Bowman, Judge Rodriguez-Powell and Judge Singhal, who educated young lawyers on the dos and don'ts in court. We helped Judge Bowman with his National Adoption Day efforts and to date, have raised approximately \$10,000 to support the event on November 19, 2016, an event I encourage everyone to support and attend. We held a fundraiser benefitting 5 local fire rescue benevolent associations, raising \$2,500. At that fundraiser, I was proud to see countless attorneys exchanging cards and trying to generate business referrals. Our September luncheon featured current Florida Bar Young Lawyers Division President, Katherine Hurst Miller, who discussed the tremendous resources provided by the Florida Bar to Young Lawyers. As active as I am, even I did not know about some of the things offered at [www.flayld.org](http://www.flayld.org), including their award winning webpage specific to the transition to running your own practice, [www.startmyfloridalawfirm.com](http://www.startmyfloridalawfirm.com). Attorneys young and "not young" can benefit from the resources available. We assisted the Big Bar with their Constitution Day Event, including sponsoring the Essay Contest, which awarded scholarships to 3 outstanding high school students for their essays about the Constitution and its impact on their lives.

Since last month's article, we've had 5 YLS events that ranged in what they offered young lawyers, be it charitable activities, education opportunities, networking with judges and other attorneys, and community programming. They were on different days of the week, at centrally located venues and during different times of the day. I know that we have work obligations, family obligations and personal obligations, but we also have an obligation to ourselves. You owe yourself the opportunity to find a new referral source and generate business. You owe it to yourself to build relationships with community leaders that will benefit you in ways you never imagined. We are here to help you, but our help is limited. It is up to you to show initiative and come to an event. Sure, you'll be in a room full of lawyers and judges, but trust me, you'll enjoy yourself and find yourself eager to come to the next one.

YLS members that have showed the initiative over the last month have found themselves helping to spearhead community projects they are passionate about: encouraging students to vote, educating students on the practice of law, health and wellness programming with a networking aspect, and other charitable/community programming. All it took was coming to an event and proposing an idea and they have the full resources of the YLS and BCBA behind them. If you're reading this and wondering how you can be involved and run a project, all it takes is your willingness to get involved and we'll do whatever we can to help. We have some great programming ahead, including another Breakfast with the Judiciary on September 30, 2016, regional networking lunches in Plantation, Hollywood and North Lauderdale on October 13, 2016, our first of many High School outreach assemblies in October at Fort Lauderdale High School, our 29th Annual YLS Golf Tournament on October 29, 2016 with the Happy Hour on October 20, 2016. Don't just sit on the sidelines – get in the game! 



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# Construction Case Law Update

by Harry Malka

## THIRD DISTRICT COURT OF APPEAL ENFORCING CONTRACTOR'S RIGHT TO PERFORM REPAIRS TO DEFECTIVE WORK.

In *Underwater Engineering Services, Inc. v. Utility Bd. of the City of Key West*, 194 So. 3d 437 (Fla. 3d DCA 2016), the Third District Court of Appeal reversed the trial court's final judgment awarding damages to the Utility Board ("Owner") for the costs of repairs to allegedly defective work performed by the Contractor. At trial, the Owner alleged that the Contractor breached the contract by failing to perform certain work in accordance with the contract specifications. As a result of such breach, the Owner alleged that it had to hire another contractor to repair the defective work, and sought reimbursement for the costs of the repairs. However, the Contractor defended on the grounds that (i) the work was not defective, instead it was the specifications provided by the Owner that were defective, and (ii) the Contractor was not notified that the work was defective and was not allowed an opportunity to cure such defects. The appellate court did not discuss whether the work or the specifications were defective. Instead, the appellate court analyzed the relevant portion of the contract and found that the Owner had a contractual duty to provide the Contractor the opportunity to replace any defective work. Since the evidence at trial established that the Owner did not give the Contractor the opportunity to repair the defective work, the Owner was not entitled to damages.

## THIRD DISTRICT COURT OF APPEAL REAFFIRMING STRICT COMPLIANCE WITH DEADLINES IN FLORIDA CONSTRUCTION LIEN LAW

In *Hiller v. Phoenix Associates of South Florida, Inc.*, 189 So. 3d 272 (Fla. 2d DCA 2016), the Court was asked to interpret the deadline for filing an action against a surety on a lien transferred to a bond pursuant to section 713.24, *Florida Statutes*. When Hiller failed to pay Phoenix Associates ("Contractor") for construction work performed on Hiller's home, Contractor recorded a Claim

of Lien against the property. Contractor then timely commenced an action to foreclose on the Claim of Lien. After commencement of the action, Hiller posted a Lien Transfer Bond, thereby transferring the lien on the real property to a surety bond. Hiller then filed a Notice of Contest pursuant to section 713.22(2), *Florida Statutes*, thus shortening the time for Contractor to commence an action against the Lien Transfer Bond to sixty days (instead of one year). However, Contractor failed to timely commence the action against the transfer bond. Contractor argued at the trial court level, that since it had timely filed its Claim of Lien before the lien was transferred to a bond, there was no deadline to commence the action against the surety. The trial court held that the delay in joining the surety did not violate the statute or prejudice the surety in any way. The Second District Court of appeal reversed, holding that "the mechanics' lien law is to be strictly construed in every particular and strict compliance is an indispensable prerequisite for a person seeking affirmative relief under the statute." The Court held that the Owner properly transferred the lien to a bond and properly shortened the time for filing an action against the bond. Thus, Contractor's failure to timely commence an action against the surety resulted in the extinguishment of the right to make a claim on the bond.

## OWNER'S MEASURE OF DAMAGES FOR DEFECTIVE CONSTRUCTION

In *Gray v. Mark Hall Homes, Inc.*, 185 So. 3d 651 (Fla. 2d DCA 2016), Angela Gray ("Owner") entered into a contract with Mark Hall Homes ("Contractor") for the construction of a new single family home on her property in exchange for payment of \$168,144. Shortly after moving into her home, Owner discovered a number of defects. Contractor attempted to remedy some of the defects, but Owner eventually filed suit against Contractor for Breach of Contract. At trial, Owner's expert testified that the lack of flashing allowed water to penetrate into the house, causing the wood to rot. Other experts testified that the house should

be torn down because it was worthless, could not be sold, could not be rented, and could not be insured. A structural engineer testified that the house was salvageable, but that the cost would not justify the effort. A general contractor testified that Owner paid him \$16,000 to replace the balcony. At the close of Owner's case, Contractor moved for a directed verdict arguing that Owner had not properly proved damages. The trial court granted the motion in part, limiting damages to \$16,000 because, in its view, the only evidence of damages was the testimony that the general contractor was paid \$16,000 to replace the balcony. When the jury returned a verdict for \$168,000, the trial court reduced the award to \$16,000. In reversing the trial court, the appellate court reiterated the long standing measure of damages for defective construction was "the difference between the value that the product contracted for would have had and the value of the performance that has been received by the plaintiff, if construction and completion in accordance with the contract would involve unreasonable economic waste." *Grossman Holdings Ltd. v. Hourihan*, 414 So. 2d 1037, 1039 (Fla.1982). Since multiple witnesses testified that the house was worthless, the appellate court reasoned, that the jury could have reasonably concluded that the house was valueless and the jury's verdict was sustainable under *Grossman Holdings*. **B**



Harry Malka, a shareholder in MALKA & KRAVITZ, P.A., is Board Certified in Construction Law and certified by the Supreme Court of Florida as a Circuit Court Civil mediator. His practice is primarily focused on representing clients in matters relating to construction law, including, litigation, arbitration, and mediation of claims and defenses relating to construction liens, payment and performance bonds, and construction defects, as well as on construction contract preparation, review and negotiation. Mr. Malka served as chairman of the Construction Law Committee for the Broward County Bar Association in 2014.

# Don't Miss the 2016 Legal Malpractice Summit!

by Mary Beth Ricke

Register now to attend the 2016 Legal Malpractice Summit on October 14, 2016 hosted by the BCBA and the Florida Lawyers Mutual Insurance Company! The Summit offers 4 CLE credits, and includes breakfast and lunch.

The Summit begins with breakfast and then transitions to informative discussions on various topics regarding legal malpractice. The first panel discussion covers Insurance Issues with speakers Michael Packer, Jason Weissman, Ninowtzka Mier, and Jason Fogg. The panel presentation will cover topics such as insurance companies suing defense counsel for malpractice, staff counsel ethical issues on insurance company captive counsel, and balancing the interests of the insurer and the insured.


The next panel discussion covers the

topic of Data Breach, Privacy, and Confidentiality with panelists Judge Jack Tuter, Avery Dial, and Seth Lehrman. Topics will include cyber liability, data breach concerns, and confidentiality issues in court filings.

Summit attendees will then receive valuable insight from Judge Robin Rosenbaum, Judge William Haury, Judge Thomas Lynch, Judge Marina Garcia-Wood, Judge John Bowman, and Frances Brown-Lewis during the next panel discussion: The Interplay Between Legal Ethics and Legal Malpractice, Common Bar Grievances Against Attorneys, and Best Practices.

The Summit concludes with the Luncheon Program: Viewpoints - Assorted Malpractice Pitfalls with speakers Judge Dorian Damoorgian, David Ehrlich,

Richard Block, Cori Meltzer, and Melissa Pigott. The topics during this discussion will include immigration law, ADR, consumer finance, and juror perspectives.

You may register for the Summit and obtain more information on the BCBA website. We hope to see you there! 



*Mary Beth Ricke is an associate attorney with Buchanan Ingersoll & Rooney PC and focuses her practice on labor and employment law. She can be reached at marybeth.ricke@bipc.com or by calling (954) 703-3651.*

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# The Florida Medical Marijuana Legalization Initiative, Amendment 2

by Alan Bryce Grossman  
Part 1 of a 3-part series.

Marijuana will become more readily available for medical use statewide if voters approve a proposed amendment to Florida's Constitution. On November 8, 2016, Florida voters will decide whether the Florida Medical Marijuana Legalization Initiative, also known as Amendment 2, will be added to the Florida Constitution. The measure, titled "Use of Marijuana for Debilitating Medical Conditions," will appear on all Florida ballots with the following summary:

Allows medical use of marijuana for individuals with debilitating medical conditions determined by a licensed Florida physician. Allows caregivers to assist patients' medical use of marijuana for medical purposes and shall issue identification cards to patients and caregivers. Applies only to Florida law. Does not immunize violations of federal law or any non-medical use, possession or production of marijuana.

Voters in Florida rejected a similar ballot initiative in the 2014 election. Amendment 2 addresses the criticisms of the prior initiative, including the requirement of parent or guardian consent for minors, allowing the Department of Health to deny convicted felons the ability to act as caregivers, requiring that certifications must be issued by licensed physicians, providing state immunization for physicians, and defining debilitating illnesses. The 2014 initiative was rejected because it fell 2% below the 60% or more votes needed for passage.

Amendment 2 would expand the legal

use of medical marijuana beyond what is currently permitted in Florida by the Compassionate Medical Cannabis Act of 2014 (section 381.986, Florida Statutes). Now, medical marijuana would be available to patients who suffer from specific "Debilitating Medical Conditions," a list of nine specific diseases, including cancer, epilepsy, glaucoma, AIDS, PTSD, as well as "other debilitating medical conditions of the same kind or class" as those listed. Amendment 2 would also open up physician certifications for patients, and registered caregivers, to obtain marijuana from a state-regulated Medical Marijuana Treatment Center, which would replace the current limited-defined dispensaries.

Amendment 2 would have no effect on the prohibitions imposed by federal law. In an attempt to avoid federal enforcement, the Act of 2014 provides that only physicians who take an eight-hour course, pass an exam, and register with the state, can provide an order for a patient to obtain marijuana from one of only six approved dispensaries in the state, with a physician's certification. With the passage of Amendment 2, the nature of a physician's certification would not change. However, instead of requiring prerequisites and state registration for Florida physicians, any doctor who is licensed to practice medicine in Florida would be permitted to issue a marijuana certification.

The Act of 2014 specifically prohibits smoking of marijuana, however, the proposed amendment does not retain that prohibition. Amendment 2 also permits the delivery of food, tinctures, aerosols,

oils, or ointments, along with the plant itself. Marketing of marijuana would remain prohibited by Amendment 2, as will any right to privately grow the plant. Parental consent will be required for physician certifications for minors. With a physician certification, patients will receive a state-issued ID card, and will be able to purchase marijuana from any of the state regulated treatment centers.

Recently, Florida's Department of Health issued a report that estimates that, with the passage of Amendment 2, the number of qualified patients will be 440,552, caregivers will be 130,844, and there will be 1,993 registered treatment centers statewide. If Amendment 2 receives 60% or more votes, it would go into effect on January 3, 2017.

In part 2 of this 3-part series we will address: Where are we now? Legal and business perspectives. The Broward County Bar Association is committed to keep our members informed about the legal issues surrounding Amendment 2. Save the date for our Marijuana Legalization Summit on Friday, February 10, 2017. **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 or by calling 954-364-6294.*





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# Pokémon Go: The Legal Issues We All Knew Were Coming

by Kimberly A. Gessner

It's a sobering moment when you realize that you are no longer the younger generation. While I have been avoiding acknowledgement of this change, two things this year slapped me into accepting reality: the presidential campaigns and Pokémon Go. I could argue that both are based on the same concept: augmented reality. But don't worry, we'll keep this on the lighter side and talk about it in the context of a video game. Like many others, my reaction was, Pokémon...huh?

The premise of the game is to capture as many Pokémon characters as possible through a downloaded app on your phone. Through GPS, the app tracks your location and the characters appear on your screen. The characters can be anywhere: parks, beaches, etc., and there are even reports of them in the courthouse (I bet they are strolling the halls of the new courthouse wondering where everyone is...)! Here's the problem: players are trespassing on property, walking into traffic, playing and driving, and even falling from cliffs in search of Pokémon. Some of the questions this game has raised include: does placing a Pokémon character on a private property, without permission, affect the owner's interest in exclusive possession of the property? Does it create an attractive nuisance? Does owning real property extend property rights to intellectual property elements that are placed on it? Is there liability for placing the characters on private property or in dangerous locations?<sup>1</sup>

These questions are only becoming more relevant. The Pokémon app produced 15 million downloads in the first week it was released—confirmed by Apple as the most downloaded app ever in its first week of availability. Nintendo's stock has risen nearly 50%, surpassing Candy Crush as the most popular mobile game ever. In fact, mobile users are spending more time on Pokémon Go than Facebook, Twitter, Snapchat or Instagram.<sup>2</sup> Businesses are even adding fantasy characters to their stores.

Finally, we are starting to see the legal issues embodied in lawsuits, with one of the latest suits filed by the South Florida Condominium Association, The Villas of Positano (the Villas). The suit, filed in the U.S. District Court for the Northern District of California, is part of a wave of litigation by lawyers at Pomerantz LLP against San Francisco-based developer Niantic and two of the game's financial backers. According to the suit, players have been drawn to the Villas to capture rare Pokémon creatures programmed to spawn within the game late at night or during the early morning hours. Obviously, late-night lurkers of this sort do not invite the kind of foot-traffic property owners care to tolerate—leaving trails of waste behind them as they wander like zombies through the complex.<sup>3</sup>

This is only the beginning, as Pokémon appears to be more than just a passing fad,

and it will be interesting to see where the responsibility of these legal issues fall. Whether Niantic is liable is unsettled, as its terms of service disclaim liability related to any property damage, personal injury, or the like that may occur. **B**

<sup>1</sup> Pokémon Go spurs lawyers to stop and consider legal issues, ABA Journal, Weiss, July 13, 2016.

<sup>2</sup> Is Nintendo Liable for Pokemon Go Injuries? Are Lawsuits Coming?, www.dopplr.com, Clausen, July 13, 2016

<sup>3</sup> Fla. Condo latest to Sue over Hordes of Pokemon Players, www.law.com, Todd, September 6, 2016.



*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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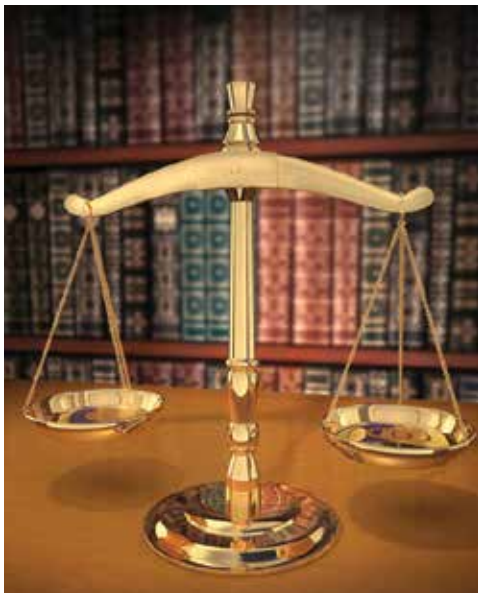
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# October is National Pro Bono Month

*by Melisa Malone*

Each year in October we celebrate National Pro Bono Month. The American Bar Association designated this month for the recognition of attorneys who dedicate their time and resources to help low income people gain access to justice in the legal system.

There are a number of ways that attorneys contribute. The Florida Bar Rule 4-6.1 advocates twenty hours of pro bono service per year and/or making a \$350 or greater contribution. Many attorneys in Broward county make these contributions – and by doing so make a difference in our community. Some attorneys go far and above this recommendation and contribute hundreds of hours and/or thousands of dollars. These attorneys are recognized in a number of ways, including recognition by the 17th Judicial Circuit Pro Bono Committee during Law Day in May, and at the annual fundraiser for Legal Aid Service of Broward County and Coast to Coast Legal Aid of South Florida, For the Public Good, coming up on October 27th.

One group that should be recognized this month is the Young Lawyers Section of the Broward County Bar Association

(YLS). Through their efforts over the past several years, literally thousands of people have been helped with legal issues pertaining to housing conditions, debt collection and family law. For the past 4 years the pro bono committee chair of the YLS has led the way to challenge all of the other voluntary bar associations in Broward County to provide volunteer attorneys for the Broward Lawyers Care Advice and Counsel Hotline. The committee chair has changed each year, and each year the baton has been passed successfully to the next person, resulting in coverage of the Hotline for the entire year. For example, the Broward County Bar Association's Board of Directors has committed to provide volunteer attorneys this month as part of their own contribution to celebrate National Pro Bono Month. This "challenge" is led by the newest attorneys in our community. Their dedication and leadership by example is admirable and inspiring.

There are other ways to make a pro bono contribution that will make a difference. One way is to help the most vulnerable members of our community – our children. The Tracey McPharlin Pro Bono Dependency Project was launched in 2012 with a goal to recruit, train and support attorneys to represent at-risk children at all court proceedings affecting their safety, permanency, health and well-being. Interested attorneys need not

be knowledgeable about this area of law to volunteer, because they will receive training and access to mentors for each case.

Another pro bono opportunity is the MISSION UNITED Veterans Pro Bono Legal Project, which offers free civil legal services to income-eligible military members, veterans and their families. Pro bono attorneys handle a variety of subject matters, including family law, consumer issues, housing and employment law, to name a few. This is an opportunity for attorneys to show their appreciation to our Veterans.

We urge attorneys to support pro bono efforts in one or more of these areas. The need is great and attorneys have a unique skill set that can make a difference in a person's life! To get involved visit [www.BrowardLegalAid.org/probono](http://www.BrowardLegalAid.org/probono). **B**



*Melisa Malone is the Marketing & Communications Manager at Legal Service of Broward County and Coast to Coast Legal Aid of South Florida. For more information visit [www.browardlegalaaid.org](http://www.browardlegalaaid.org).*



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# Amnesty Trump Card: New Program Helps Undocumented Foreigners Get Green Cards

by Elizabeth Blandon

Marvin C. came to the United States after two of his childhood friends were killed in Guatemala. Afraid that he would be next, Marvin hastily left his homeland for the safety of this one. Over 630,000 undocumented foreign nationals like Marvin live in the state and South Florida is home to more than 41 percent of them.<sup>1</sup>

Until now, many undocumented foreigners were forced to live a life of uncertainty. This was the case for Marvin: he found a job; met and married his wife; and the couple had a baby. His new family relied on his income and returning to dangerous Guatemala was not an option. Although foreigners can be married to (and have children who are) U.S. citizens, those relationships do not result in legal status for persons who entered without authorization. Deportation always looms as a real possibility.

Thanks to a new process, however, Marvin became a legal permanent resident. He has the much-coveted green card. Like him, those who qualify under the Provisional Waiver Program can emerge from the shadows. This is a path to citizenship, but not an amnesty. No one is cutting any line. They can become legal permanent residents (the step before citizenship) regardless of whether they entered the United States illegally, have orders of deportation, or have been in the

country for more than six months without permission.

As of August 29, 2016, anyone who is eligible for an immigrant visa can apply for a Provisional Waiver if they have a U.S. citizen or legal permanent resident spouse or parent. This includes those who are eligible through employment or through the following family relationships:

- adult and married children of U.S. citizens
- spouses and unmarried children (any age) of Legal Permanent Residents
- siblings of U.S. citizens
- parent, spouse and child of U.S. citizens

First, a petition has to be filed with U.S. Citizenship and Immigration Services (USCIS). Second, the approved petition is sent to the National Visa Center. Finally, after CIS approves the Provisional Waiver, the case is sent to the Department of State for an interview abroad. Cases of persons with deportation orders will require additional work with the Immigration Courts.

This expansion could be a game-changer for millions of individuals who are in the United States without authorization, but the assistance of an experienced immigration attorney is critical. Not only does the case depend on making a strong legal

argument, but parts of the regulations are still unclear. For example, some foreigners with orders of deportation who have accepted voluntary departure may not be eligible for a green card.

As for Marvin, he continues working hard to support his family, which recently welcomed a second child. **B**

<sup>1</sup> Ann Choi and South Florida Sun-Sentinel, South Florida's undocumented population by the numbers (Sun-Sentinel.com Feb. 2, 2015), <http://www.sun-sentinel.com/news/florida/sfl-interactive-south-floridas-undocumented-by-the-numbers-20150128-html-story.html>.



*Elizabeth R. Blandon is the founder of Blandon Law, a Weston-based firm specializing in immigration, naturalization and consular law matters for foreign nationals worldwide. Board-Certified in Immigration and Nationality law, Ms. Blandon was named by The Miami Herald as one of the top-rated South Florida immigration attorneys for 2015. Currently Ms. Blandon serves as Chairperson of the Immigration Section of the Broward County Bar Association and on the Nationality & Law Certification Committee for the Florida Bar. For more details on the Provisional Waiver and a free pamphlet, she can be reached at (954) 385-0157 or ERBlandon@blandon-law.com.*

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## Buzzkill: How to Make the Most of Professional-Social Events and Networking When You're Not a Drinker.

by Michelle K. Suarez

When I was originally assigned this article, I thought I would be approaching it from a practical health perspective. But recently, as life would have it, my boyfriend Tim (also an attorney) decided to forego drinking for an entire year to see how fit we could get. Obviously, I've taken on the challenge. Opportunistically, it turned out to be a great time to start writing this article, because after all: How do you make the most of an event and networking when you don't drink?

After a conversation with a few people I realized, duh! The question presumes that you will be a buzzkill if you don't drink when that's not true at all. You can still have a great time and not be a buzzkill at social events because the fact is: a) no one really cares whether or not you drink; b) there are plenty of events that have nothing to do with drinking where you can network; and c) if you really care what people think and don't feel like explaining why you're not drinking, you can always order a decoy drink.

I spoke with Attorney Christine Venezia who doesn't really like the taste of alcohol and who shared some of her tips of what she does at networking events. She said "I just order something that looks like a cocktail, like tonic water or sprite, and have the bartender put a lime in




it. Then it looks like I'm drinking anyway and nobody asks."

As professionals we tend to find that networking may often be surrounded by cocktail hours, happy hours and other events where alcohol is served. But the purpose of the event is not about drinking, even if drinks may be served there. The purpose is to grow and build meaningful relationships with our colleagues, with professionals and with businesses in our community. While some people do not prefer drinking, there are others that purposely choose not to drink at social events as a means of maintaining a particular image or demeanor in the professional-social setting.

At the end of the day, most people are making healthier decisions anyway, so it is not unprecedented for someone not to drink simply because it does not align with their health and fitness goals. Moreover, the Broward County Bar Association routinely

hosts several events that allow non-drinkers or people who don't prefer to drink in professional-social settings the opportunity to network, get involved in their community, and in some cases, get some exercise. Just to name a few examples, there is the YLS Golf Tournament, the Annual 5K Mercedes-Benz Corporate Run, YLS Lawyers for Literacy, and an Appellate Section sponsored Yoga Event, plus many more events in the works.

The truth is, you can absolutely have a great time without drinking and still make the most of professional-social networking events! You might actually find, like I did, that you can have more fun by not drinking! It makes people watching so much more interesting. Until next time, have a whiskey on my behalf! 



*Michelle Karinne Suarez, Esq. is a business attorney practicing transactional and litigation work at Kelley Kronenberg, P.A.'s Fort Lauderdale office. She is also a fitness competitor. She can be reached at (954) 370-9970 or via email at msuarez@kelleykronenberg.com.*



# Recent Developments In The Law

by Nancy Little Hoffman

## **FOURTH DISTRICT SEEKS CLARITY AND UNIFORMITY REGARDING BOUNDARIES IN JUVENILE SENTENCING AFTER GRAHAM V. FLORIDA; CERTIFIES QUESTIONS.**

The Fourth District affirmed an aggregate 75-year sentence for non-homicide offenses committed when the defendant was 16 years old, holding that since he would be eligible for substantial gain time, he was expected to be released when he was in his mid-50s. The court recognized that questions remain unanswered after the U.S. Supreme Court's decision in *Graham v. Florida* (life without parole for a juvenile who did not commit homicide was cruel and unusual punishment) and the Florida Supreme Court's holding in *Henry v. State* (a lengthy term-of-years sentence can also constitute cruel and unusual punishment under *Graham*). Accordingly, it certified the following questions: (1) At what point does a term-of-years sentence become unconstitutional? (2) Should courts consider life expectancy in determining constitutionality of the sentence, and if so, what measure should be used? (3) Should courts consider the expected release date (including gain time) or look solely to the number of years imposed? (4) Do Florida's sentence review provisions apply to juveniles whose sentences exceed the guidelines even if convicted prior to the provisions' enactment in 2014? *Davis v. State*, 41 Fla. L. Weekly D2128 (Fla. Sept. 14, 2016).

## **FOURTH DISTRICT HELD TRIAL COURT SHOULD HAVE REJECTED**

## **THREE OF PLAINTIFFS' EXPERTS UNDER DAUBERT; SET ASIDE VERDICT AND ORDERED A DIRECTED VERDICT AS TO ONE DEFENDANT AND A NEW TRIAL AS TO THE OTHERS.**

In this tobacco case, the Fourth District engaged in an extensive discussion of the trial court's gatekeeping role under *Daubert* and found that the trial court failed to properly exercise its function as to three of the experts. The sole expert as to a causative link between asbestos-containing filters and mesothelioma failed to provide sufficient data under a *Daubert* analysis, so that a directed verdict should have been granted as to one manufacturer. As to the tobacco defendants, two of the experts fell short, in part, of demonstrating reliable data for their opinions. For that reason, as well as improper closing argument, those defendants were entitled to a new trial. *Crane Co. et al v. DeLisle*, 41 Fla. L. Weekly D2133 (Fla. 4th DCA Sept. 14, 2016).

## **SUPREME COURT AMENDS CRIMINAL STANDARD JURY INSTRUCTIONS AND RULES OF CRIMINAL PROCEDURE**

The Supreme Court amended instruction 29.24 based on 2016 legislative changes to section 787.06, Florida Statutes, reclassifying second-degree Human Trafficking to a first-degree felony and first-degree trafficking to a life felony, if the defendant causes great bodily harm. A section was also added

providing that a minor victim's willingness, consent or lack of chastity was not a defense to prosecution under the statute. 41 Fla. L. Weekly S382 (Fla. Sept. 15, 2016).

The Court adopted a new rule of Criminal Procedure, rule 3.181, which requires the prosecutor to give the defendant notice of intent to seek the death penalty and file the notice with the court within 45 days after arraignment. The Court also amended rule 3.220(h)(4) providing for depositions of sensitive witnesses, by changing the maximum age of witnesses whose depositions must be videotaped from 16 to 18 and adding witnesses with an intellectual disability to the category of sensitive witnesses. 41 Fla. L. Weekly S381 (Fla. Sept. 15, 2016). **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)*

### 6 The Cuban Enigma: A Year Later CLE & Reception

**Time:** 5:30 p.m. – 8:30 p.m.

**Venue:** BCBA Conference Center

**Cost:** \$25 General Admission; No Charge BCBA Judiciary

### 11 Northeast Broward Section Luncheon

**Topic:** Mediation Techniques and Strategies

**Time:** 12:00 p.m. – 1:30 p.m.

**Venue:** ROIG Lawyers

**Cost:** \$15 BCBA Member; \$25 Non-Member; Oct. 10 - Late Registration Fee Applies

### 13 West Broward Section Luncheon

**Topic:** Resources to Make Your Solo & Small Firm a Lean Mean Machine

**Time:** 12:00 p.m. – 1:30 p.m.

**NEW Venue:** Bonaventure Country Club

**Cost:** \$25 BCBA Member; \$35 Non-Member; \*\$5 Walk-in fee

### 13 YLS Regional Lunches

**Time:** 12:00 p.m. – 1:30 p.m.

**Venues:** See locations on website

**Cost:** \$20 General Admission

### 14 2016 Legal Malpractice Summit

*Sponsored by: Florida Lawyers Mutual Insurance Company*

**Time:** 9:00 a.m. – 1:00 p.m.

**Venue:** BCBA Conference Center

**Cost:** \$60 BCBA Member; \$75 Non-Member

### 19 CLE: Getting Business Clients by Transforming Your Contacts into Profitable Relationships

**Time:** 12:00 p.m. – 1:30 p.m.

**Venue:** BCBA Conference Center

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

### 20 CLE: Cyber Security Breakdown - What Legal Professionals Need to Know

**Time:** 12:00 p.m. – 1:30 p.m.

**Venue:** BCBA Conference Center

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

### 20 YLS Golf Tournament Happy Hour

**Time:** 5:30 p.m. – 7:30 p.m.

**Venue:** Riva (Marriot Harbor Beach)

**Cost:** No Charge

### 21-22 Speaking 4 Kids

**Guardian Ad Litem Training**

**Time:** 8:00 a.m. – 5:00 p.m. (both days)

**Venue:** BCBA Conference Center

**Cost:** \$400 per person

### 26 Construction CLE: Florida State Statute 553

*Sponsored by: Paul J. Del Vecchio Construction Consultants Inc.*

**Time:** 12:00 p.m. – 1:30 p.m.

**Venue:** BCBA Conference Center

**Cost:** Free Construction Section Member; \$10 BCBA Member; \$25 Non-Member

### 27 CLE: Understanding the Power of Story and Connecting in the Digital Age

**Time:** 12:00 p.m. – 1:30 p.m.

**Venue:** BCBA Conference Center

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

### 29 YLS 2016 Golf Tournament

**Time:** 8:00 a.m. Shotgun Start

**Venue:** Jacaranda Golf Club

**Cost:** \$150 Single Player; \$500 Foursome

### Upcoming Special Events

*Visit our online Calendar for more information.*

#### November 18

#### 2016 Nuts and Bolts Family Law Seminar

**Time:** 9:00 a.m. – 5:00 p.m.

**Venue:** BCBA Conference center

**Cost:** \$75 BCBA Member; \$100 Non-Member

#### December 1

#### 2016 BCBA Member Annual Holiday Party

**Time:** 5:30 p.m. – 8:00 p.m.

**Venue:** Fort Lauderdale Antique Car Museum

**Cost:** No Charge BCBA Member; \$25 Guest

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