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ON THE COVER

The Broward County Bar Association welcomes the newest Judiciary of the 17th Circuit Court of Broward County. Pictured (left to right): Judges Yael Gamm, Thomas J. Coleman & Fabienne Fahnestock. This year these Judges will be introduced at our NEW Event Judicial Procession & State of the Circuit. To learn more about the new Judges and event see pages 14 & 15.

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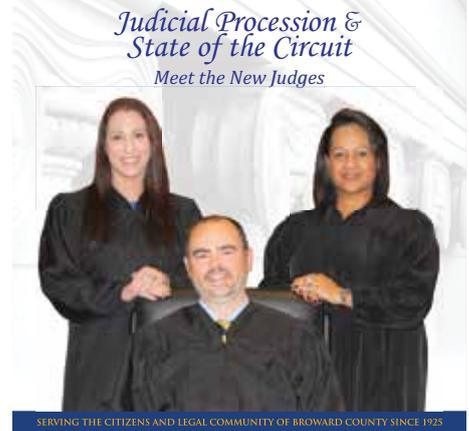
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Thomas Daniel Oates

January, the month of new beginnings, is a time to look forward to the year ahead. As we move on from 2017, we evaluate the last year and prepare for the next. This year my resolution for the Broward County Bar is to reach out to those attorneys that we don't see very often. In my mind's eye, the Bar plays an important role in the health and well-being of our membership. There is no better place than a Bar event to share your accomplishments, and your losses with your fellow lawyer.

As you review or draft your list of New Year resolutions, consider some of my top contenders:

1. Take care of yourself. Create or change your workout regimen. Eat better, and get more sleep.
2. Evaluate your website and branding. Time for a refresh of your online image.
3. Review your rates. The practice of law is still beholden to the theory of supply and demand.
4. Pay it forward. Do more for others without expectation of return.
5. Invite a colleague to lunch. Catch up with old friends and share war stories.
6. Write an article for the Barrister. Share your expertise with others.
7. Take more time off. Your family and friends will appreciate it.

Last month we had a fantastic holiday party. Thank you to everyone who came out in good cheer to the annual BCBA holiday party on November 30. The well-organized event attracted more than 400 registrants and took place at the Fort Lauderdale Antique Car Museum, Inc. Guests admired the collection of 22 pre-war Packard automobiles and memorabilia from 1900 to the 1940's. The museum, founded by Arthur O. Stone, includes a gallery dedicated to the late President Franklin D. Roosevelt, and several collections of automobile memorabilia.

We also celebrate the recent nominations of two Broward jurists. The Honorable Raag Singhal (BCBA Judicial Liaison) and The Honorable David Haimes have been nominated by the Southern District Conference of the Florida Federal Judicial Nominating Commission for U.S. District Judge. From the list of ten nominees, including seven state court judges and an acting U.S. attorney, five will be selected to fill vacancies for the Southern District of Florida. While it would be a loss for the 17th Judicial Circuit to lose either of these fine judges, the odds are in their favor and we wish them luck in their interviews in Washington D.C. and during the confirmation process.

Many of you may be familiar with our format change for robing ceremonies. This year we moved to individual ceremonies for newly elected or appointed judges. The new format is working well and this month we will transform our historical mass robing ceremony to a Judicial Procession and State of the Circuit. The Broward County legal community, elected officials, and the public are welcome on January 19 to the jury assembly room for the event. The BCBA will recognize those judges who have been robed in the past year, and we will hear from Chief Judge Jack Tuter on the State of our Circuit.

On behalf of the entire Broward Bar, BCBA staff, and the Board of Directors, we look forward to seeing you at future BCBA events, and wish you a prosperous and Happy New Year. 

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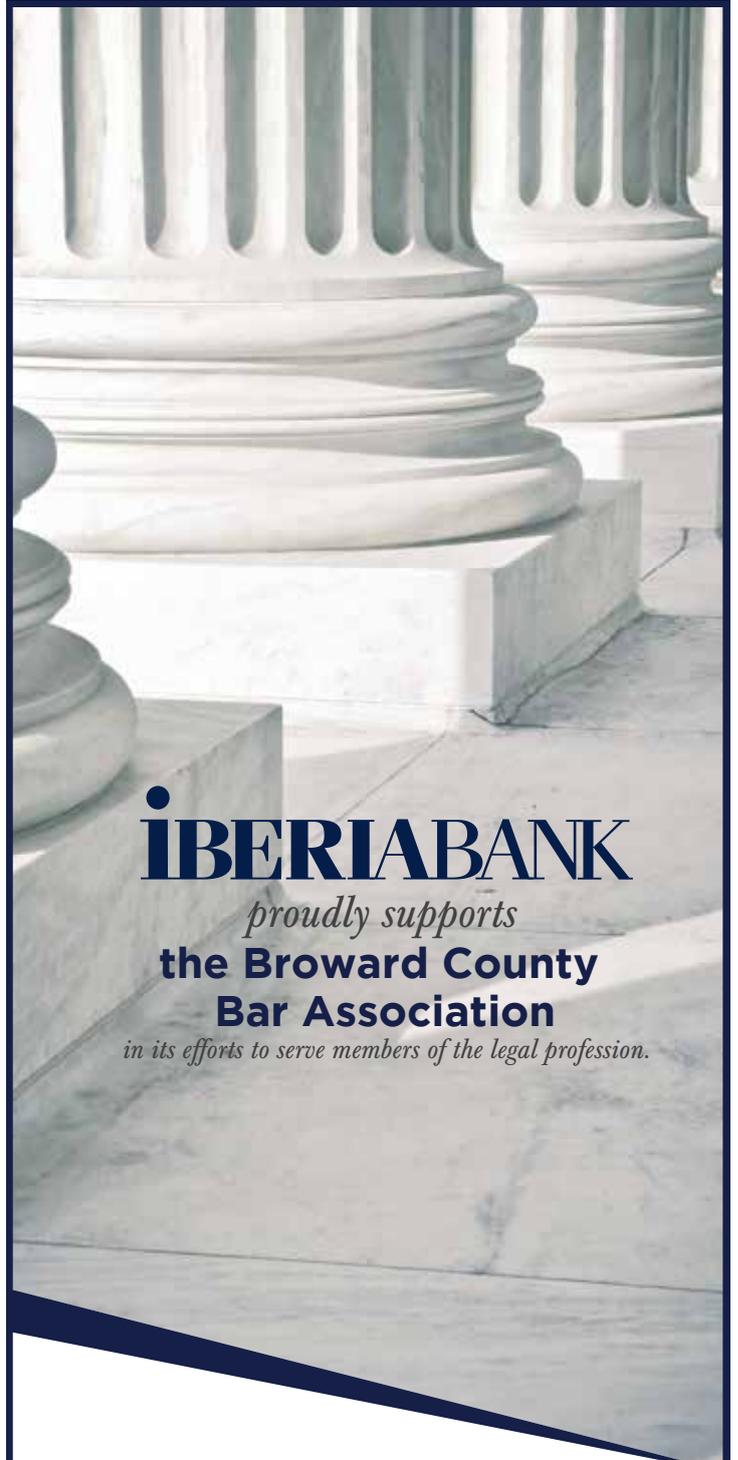
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letter from the young lawyers' president



Sara M. Sandler

Happy New Year, Broward County! As with every year, 2018 provides us all with the opportunity to start fresh. Nothing provides the same kind of feeling of hope and relief as opening your calendar to January 1st. The New Year gives us the opportunity to reflect on the past year, allowing us to consider what went well and what we can work on. It is the quintessential Monday Morning Quarterback. And, while I encourage you all to watch your game film, I also encourage you to focus on this season. What can you do in 2018 to be a better you, to be a better attorney, to be a better member of the Broward community?

The Young Lawyers Section is here to help you with all three of these goals. Our sweatworking events will get you motivated to try fun and different ways to exercise (a better you!) and our award-winning Boot Camp Series will be

back in action beginning in February (a better attorney!). If you're up for the trifecta, what better way to be a better member of the Broward community than by starting in our own backyard?

As those of you who attended the Installation Dinner know, YLS started working on one of its 2018 goals back in June. Motivated by my stepmom's courageous fight with Stage IV pancreatic cancer, YLS decided it would find a way to honor those in our community who have fought their own battles against cancer with a charity fashion show. After months of planning, I am proud to tell you that the YLS Catwalk Conquers Cancer is a go (mark your calendars for Saturday, February 24th)! All proceeds will be donated to Gilda's Club South Florida – which is, quite literally, in the BCBA's backyard.

Gilda's Club provides professionally-led support and networking groups, healthy lifestyle groups, educational workshops and lectures, social activities, and resources to all those impacted by cancer – those being treated, those with loved ones being treated, and those who have recently lost a loved one to this disease. Catwalk Conquers Cancer seeks to bring our community together to raise funds for Gilda's Club that will directly benefit those who suffer most from cancer. Our models will be cancer survivors and those currently undergoing treatment. My stepmom will be walking the runway and I look forward to seeing other brave and strong members of our community do the same. We are currently seeking sponsors and vendors to help ensure this event is a success. We are also looking for local businesses, restaurants, and organizations to get involved, donating services, raffle items, food, or making monetary donations. If your New Year's resolution includes making your community a better place, this is the perfect way to get a jump start on your 2018 goal. Please visit the YLS website for sponsorship and donation opportunities or to purchase a ticket to the event and please don't hesitate to reach out to me directly if you'd like to get involved with Catwalk Conquers Cancer.

Whatever your 2018 goals and resolutions may be, don't give up on them. As the Grateful Dead would have you remind yourself, "Someday, everything is gonna be different when I paint my masterpiece." Don't wait for life to give you a new perspective – use the New Year as an opportunity to commit to your goals and work on achieving them. Remember that YLS is here as a resource to assist you in bettering yourself, our profession, and our community. On behalf of YLS, I wish you all a happy, healthy, and successful 2018.

Until next time, keep truckin'. 



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Learning Professionalism from Women Leaders

by Kemie King and Brian Koch

“Women belong in all places where decisions are being made... It shouldn't be that women are the exception.” -- Supreme Court Justice Ruth Bader Ginsburg

It is advantageous and necessary for men and women to come together to share information, ideas and solutions that impact each of us in the legal field. It is undeniable that men and women have different perspectives, but it is also undeniable that there are many shared experiences. Bringing people together to discuss these experiences and develop solutions to bring about change in our profession will ensure that we make our profession better for future women lawyers.

On November 2, 2017, nearly fifty attorneys came together at the Broward Courthouse to discuss professionalism issues. The event “Women Attorneys: What Does Professionalism Mean to You?” was hosted by the Seventeenth Circuit Professional Panel, and co-sponsored by the Broward County Bar's Professionalism Committee, the Broward County Women Lawyers Association and the TJ Reddick Bar Association. Panelists included the Honorable Fabienne Fahnstock, Honorable Jennifer Hilal, Nancy Brodzki and Stefanie Moon. These esteemed women shared their experiences and gave insightful advice. There were practical tips for everyone to “C” (demonstrating competence, confidence and clarity).

Be competent:

As attorneys, we must always be prepared and knowledgeable about the area of law we practice. It is unfortunate, but too often women lawyers are not given the presumption of competence in comparison to male counterparts. Judge Fahnstock and Judge Hilal pointed out the importance of your presentation to the Court showing a

command of the issues and the law. While we cannot control how we are perceived, we can control our knowledge of the law. You can never be over prepared.

Be confident:

Once you know the law, be confident in your knowledge of the law and your skills. Confidence comes from within. Stefanie Moon noted that when you recognize that you are a Queen, you are not affected by the unprofessional behaviors of others. You do not displace your crown by stooping down to the levels of those who try to disrespect or belittle you. When you are confident in your skill set and your knowledge of the law, you will be able to navigate any situation.

Be clear:

It is important to set a tone early in your career and be comfortable with who you are. Unfortunately, women lawyers often deal with double standards in many aspects of their practice. For instance, while assertive male lawyers may be seen as competent and confident, assertive female lawyers may be seen as abrasive, overly aggressive or angry. Many women struggle to balance how they are received. Whether you are perceived to be aggressive or not, when faced with disrespectful or harassing behavior, you should address it head on. Let that person know that inappropriate behavior will not be tolerated. As Nancy Brodzki suggested, assess the situation and then determine your response. Sometimes the best response is none at all. Whatever method you determine is best, be clear that you will not tolerate lack of respect or harassment.

Each of the panelists stressed the importance of setting realistic personal goals. For many women, that often translates to making choices between career and family obligations. Many attorney moms buy into the idea that they can do it all. Reality often

gets in the way. What we learned from the panelists is that is perfectly OK. The important thing to remember is to find the path that works best for you at each particular point in time in your career. There is no harm in changing paths over time, and you should follow your chosen path while making time to enjoy the scenery along the way.

As the number of women practicing law continues to rise, women must be leaders and must have a seat at the table when decisions are made – which will transform the legal profession in a positive manner that helps everyone. As Facebook's COO Sheryl Sandberg sums up, “We need women at all levels, including the top, to change the dynamic, reshape the conversation, to make sure woman's voices are heard and heeded, not overlooked and ignored.” 



Kemie King is a founding partner of King Lindsey, PA and focuses on family law and criminal law. Kemie currently serves as Treasure for the BCWLA & is a TJ Reddick Bar Association Board Member. Kemie can be reached at kking@kinglindsey.com.



Brian Koch is a business litigation shareholder at Greenberg Traurig. Brian currently serves as Co-Chair of the Broward Bar's Professionalism Committee and is the father of three young girls who he hopes will be inspired to be women leaders. Brian can be reached at kochb@gtlaw.com.



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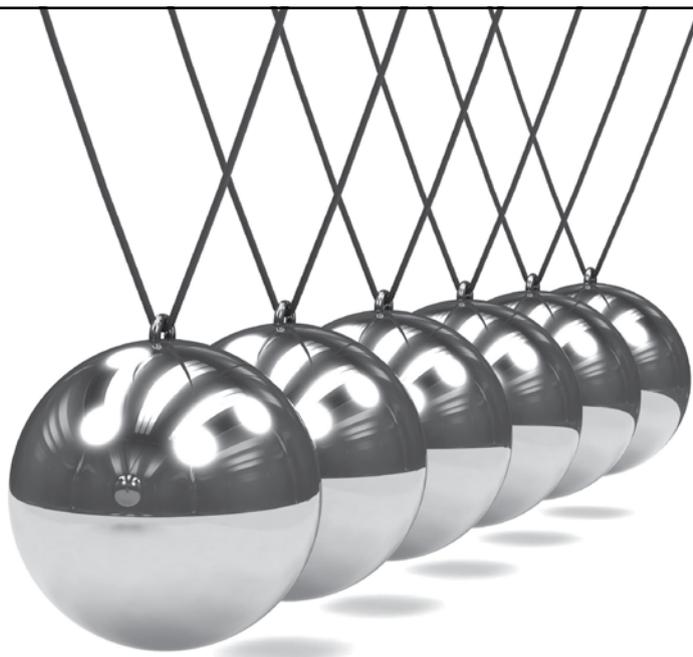
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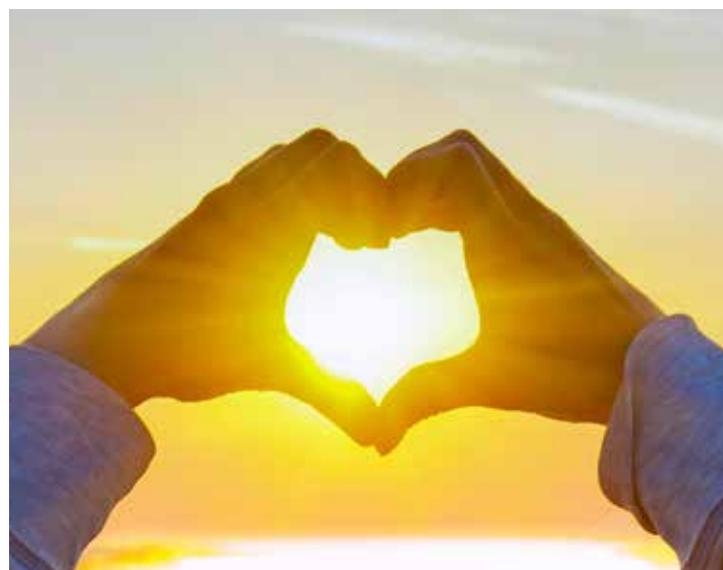
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SEEKING NEW RECRUITS

2018 Young Lawyers' Boot Camp



by Brent M. Reitman

I am pleased to announce this year's amazing lineup for the YLS Bootcamp Series! As you may or may not know, the Broward County Bar Association and the Young Lawyer's Section have been teaming up for the past three years to bringing together this wonderful series designed to educate and teach important skills to young attorneys. Each session is designed to focus on a different legal arena and sheds light on the practicalities of being in the Courtroom. Our goal is to provide the type of knowledge to new attorneys that are usually learned by reflecting on a mistake. The aim is for attendees to gain this experience without the necessity of having to make the mistake first. Our Bootcamp program has been voted the Member Service Project of the Year by the Young Lawyers Division of the Florida Bar for 2017. This year's program stands to be even better!

Our first session, which will take place on Thursday, February 15th, 2018 at the Broward County Bar Association, will focus on how to best avoid the "pet peeves" of judges and will deal with the importance of knowing your audience as well as adherence to divisional procedures. There will also be a

discussion about considerations to make when practicing outside of your county of familiarity.

The second session will take place on Wednesday, March 14th, 2018 and will take place at the Broward County Central Courthouse. The emphasis of this session will deal with common scenarios that practitioners and jurists deal with on a daily basis – whether an uncooperative counsel or a discovery dispute that goes from a professional disagreement to a war of words – and how to best manage and prevail in such situations.

On April 11th, 2018 at the Broward County Central Courthouse we will be doing the Evidence Bootcamp (back by popular demand) and conducted by legendary trial advocates Judge Mindy Solomon and Charles B. Morton. This session will deal with unique evidentiary issues and show some of the basics of authentication. There will be live evidence drills where participants will be asked to attempt to enter certain items into evidence.

Finally, on Wednesday, May 9, 2018, the Bootcamp will have its most ambitious session yet, titled, "What Does the Jury

Think?" This presentation will see the reactions of a number of volunteers acting as jurors as to what arguments and techniques they find persuasive, ineffective, or even distracting. This session will take place at the Law Office of Kelley/Uustal.

We are looking forward to another successful year of the Broward County Bar Association/Young Lawyer's Section Bootcamp and hope that you will be in attendance! **B**



Brent M. Reitman joined the Law Office of Krupnick Campbell Malone Buser Slama Hancock Liberman, P.A. in 2013. Prior to joining the firm, Brent was a prosecutor for the Office of the State Attorney where he was responsible for thousands of criminal convictions and conducted scores of jury trials. Brent is a Board-Certified Trial Attorney in the area of Criminal Law and is AV Rated by Martindale-Hubbell, which is the highest rating in both Legal Ability and Ethical Standards. While not working, Brent volunteers his time on the Board of Directors for the B'Nai B'Rith Justice Unit for Broward County. Brent also serves as the President-Elect on the Executive Board of the Young Lawyer's Section of the BCBA. He can be reached at breitman@krupnicklaw.com

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INTRODUCTION OF NEW JUDGES



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Thomas J. Coleman



The Honorable
Fabienne Fahnstock



The Honorable
Yael Gamm

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A Dedication to Service

WELCOMING OUR NEWEST MEMBERS OF THE JUDICIARY

The Broward County Bar Association has traditionally hosted the investitures of the new judges in the 17th Circuit. We continue this tradition today, but time evolves all things. Now, the BCBA, in conjunction with the 17th Judicial Circuit, has added a new twist to recognize and honor our judiciary and at the same time, connect them to the community which they serve. On January 19, 2018, the BCBA and the 17th Judicial Circuit will host their 2018 Judicial Procession and State of the Circuit. Imbued with dignity and solemn pomp and circumstance, all the judges will process into the chamber announced individually. Chief Judge Jack Tuter will present his State of the Circuit speech. This will be followed by the BCBA recognizing the three newest judges who will then each have short remarks. Afterward, the BCBA will recognize two judges, one circuit and one county, as a “Friend of the Bar.” This award will be given annually to individuals for their efforts and commitment to the BCBA. This year, the Honorable Jeffrey R. Levenson and the Honorable Jennifer Hilal will be the recipients.

The ceremony is scheduled at the main courthouse in Fort Lauderdale, 1 p.m. in the Jury Room, where lawyers, judges, and the community can gather in celebration. We thank ALL the judges for their dedication and commitment to serving the good of our community. Please join us in welcoming and congratulating our new judges, as well as those who continue to serve.

The Honorable Thomas J. Coleman

by Brooke Latta



I met Judge Thomas Coleman while I was a first-year Assistant State Attorney in Broward County. At the time, he was one of the office’s senior Homicide Prosecutors. He was a 20-year lawyer, had prosecuted thousands of cases, served in various units – Juvenile, Felony, Domestic

Violence, Career Criminal and Homicide – and he still talked about the profession of law with passion, respect, and admiration. As a young and new attorney, he gave me this piece of advice: “Try as many cases as you can, learn from each one, try something new every time and have your experiences to fall back on.”

It was during Judge Coleman’s experience as a Prosecutor – having daily hearings in court before different judges and working with opposing counsels

– that he developed a new passion: he wanted to do more for the Judiciary. Judge Coleman wanted to bring consistency and courtesy to the Bench – just as he had seen some of his mentors do – and he wanted “every lawyer to be heard, getting a say and being able to make their point; even if it’s not the one that carries the day.”

When he’s not on the Bench, Judge Coleman spends his free time traveling with his family. They’ve enjoyed surfing lessons in Hawaii, his daughters’ dance rehearsals in Chicago or New Orleans, and road trips along the East Coast seeing some of our country’s most historical sites.

Judge Coleman is looking forward to his future on the Bench, he hopes to continue to have a positive impact on the families that come before him, the youth that need a mentor, and his service to the people of Broward County.

The Honorable Fabienne Fahnestock

by Jacqueline DerOvanesian

Judge Fabienne Fahnestock is a Broward County native with over seventeen years of complex litigation experience in health care disputes, business and employment law, probate and appellate issues in federal and state courts. After obtaining her bachelor's degree from the University of Miami and her law degree from the University of Florida, Judge Fahnestock began as a law clerk for the Honorable Gary M. Farmer of the Fourth District Court of Appeal of Florida.

In 2002, Judge Fahnestock joined Gunster. While at Gunster, Judge Fahnestock became a business litigation shareholder with a long list of recognized accomplishments, including an AV Preeminent ranking by Martindale-Hubbell, inclusion in The Best Lawyers in America in 2013 and 2014, recognition as one of the "100 Outstanding Women of Broward County," recognition as a Florida Super Lawyer, a "Top Lawyer" and "Up & Comer" according to South Florida Legal Guide.

Judge Fahnestock is also known for her commitment to her family, the Broward County community, and the

professional development of other lawyers. Judge Fahnestock lives in Parkland with her husband Kyle, her daughter Isabella and her son Sebastian. She has served on the board for Jack & Jill Children's Center and the Early Learning Coalition Community Relations Development Committee among others. Her former Gunster colleagues know her as an excellent mentor, advisor and friend.



On February 14, 2017, Florida Governor Rick Scott appointed Judge Fahnestock to the judicial bench of the 17th Circuit Court in Fort Lauderdale. Judge Fahnestock is assigned to the Unified Family Court Division, and presides over a family law docket that consists of divorces, adoptions, paternity actions, child support and domestic violence. Since taking the bench, Judge Fahnestock has earned a reputation for being hardworking, professional, and passionate and maintains her involvement in the Broward County community.

The Honorable Yael Gamm

by Alejandra R. Mendoza



Prior to being appointed by Governor Rick Scott to the 17th Circuit Court bench, Judge Yael Gamm was a practicing attorney for sixteen years. During that time, Judge Gamm was a prosecutor with the Broward County State Attorney's Office for thirteen years, where she tried career criminal, sexual battery, felony, and homicide cases. Judge Gamm also worked for three years in private practice and clerked at the Third District Court of Appeal.

Judge Gamm's childhood dream was to become a judge and she is extremely honored to serve as a member of the

judiciary. Her extensive trial experience, patience, and passion for seeking the truth serve her well on the bench. She believes all parties should be treated with respect and courtesy, and should be given a fair opportunity to be heard and understood. Additionally, Judge Gamm takes the time to read and prepare as much as possible, as well as conduct her own research prior to all hearings.

Judge Gamm is involved with several charities benefitting children. In her spare time, she enjoys spending time with her husband and two daughters, as well as her beloved Collie, Gracie. She also loves to read, particularly historical fiction, and write, whenever she has the opportunity. Her lifelong passion for the ballet is also a treasured part of her personal life.

The Appeal of Mentorships: The BCBA's Revamped Mentorship Program

by Kristin Bianculli



so that each mentee and each mentor can bring a guest of their choice who they feel would benefit from or want to participate in the Mentorship Program the following year. We will be extending invitations to lawyers who are not yet members of the BCBA, law students, and judges. At the Social, we will be playing some video highlights and make the Program's materials available to any attendees from other organizations and bar associations who wish to replicate this program and unite members.

Part 4 - Mentorship Program Success Panel – “The Appeal and Success of Mentorships”:

– This date is not set yet, but will hopefully be in late spring of 2018. This will be a follow-up event where a small panel of Mentees and Mentors will get to share their stories of finding someone in the group with whom they connected and how. This event will be open to any member of the BCBA interested in joining the Program in the future. It will be followed by an open discussion among the members for feedback on how to improve and grow the following year when we kick off with the 2018-2019 Mentee Orientation in the fall.

We encourage anyone interested in being a Mentor or Mentee to contact the BCBA and look forward to sharing some success stories in future Barrister editions. **B**



Kristin Bianculli is a partner at Kelley/Ustul, a personal injury trial law firm in Fort Lauderdale. She focuses her practice representing people who have been catastrophically injured due to the negligence of others. .

The Mentorship Committee of the Broward County Bar Association has been working incredibly hard this past year to revamp the Association's Mentorship Program. We are very excited to help create some meaningful, life-long mentor/mentee relationships with the participation of dedicated mentees and mentors. The Program is now comprised of four main parts:

Part 1 – “Mentee Orientation”: This event happened on October 12, 2017 and was a complete success! This was the introductory event for BCBA Members interested in finding a mentor. The CLE event focused on what it takes to be a great mentee, how to identify the right Mentor for you, and how to commit to a meaningful Mentee-Mentor connection. We had a panel of guest lawyers from different practice areas who gave tips and advice to the attendees on how to handle approaching a potential mentor and the responsibilities mentees have as part of this Program. The feedback from the Mentees who enrolled for the 2017-2018 calendar year was great. “Even in its early stages, the Mentorship Program has been extremely helpful to me. I’ve already met attorneys who want to see me succeed in this profession and who are willing to help at every turn.” -- Kristen Odijk, Mentee 2017-18

The committee is currently establishing a group of Mentors who are all eager to get

involved with the new program. We will be compiling a database of profiles and information for the Mentees enrolled in the program to access later this month so they can learn about the Mentors that will be in attendance at the next event.

Part 2 - Mentee/Mentor Meet-Up – “The Appeal of Mentorships”: This event is set for January 25, 2018. In preparation for the event, we will be creating a Listserv for the Mentors and providing some tips for them based on the feedback we received from the Mentee Orientation. At the event, which is designed to be a relaxed and more informal setting than it has been in the past, the committee will be presenting a short video called “The Appeal of Mentorships” which we made with the assistance of a few 4th DCA judges, lawyers from different practice areas, law students, and Dick Smothers (from the Smothers Brothers Comedy Show) and initiating a general discussion among the entire group. The second part of the event will give the Mentees a chance to approach and talk with many of the Mentors they are interested in meeting.

Part 3 - The Mentorship Social – “The Appeal and Expansion of Mentorships”: This event is set for February 22, 2018. This will be the one event not held at the BCBA headquarters. Instead, it will be at a larger venue (we are still scouting out possibilities)

BROWARD COUNTY BAR ASSOCIATION PRESENTS

WORKERS' COMPENSATION CONFERENCE

Friday, February 23, 2018

11:30 a.m. - 5:00 p.m. • Conference

5:00 p.m. • Cocktail Reception

4.5 CLE Credits

Venue: Bahia Mar Fort Lauderdale Beach
801 Seabreeze Blvd, Fort Lauderdale, FL 33316

Cost: \$85 BCBA Member; \$100 Non-Member
Includes Lunch, Parking, and Cocktail Reception

Register Today at browardbar.org/calendar
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Questions? Contact Lauren Riegler at lauren@browardbar.org

UPDATES AND STRATEGIES FOR THE
WORKERS COMPENSATION PRACTITIONER

Topics Include:

- Prosecuting and Defending a Permanent Total Disability Case
- Mediation Technique: Preparation and Ethical Considerations
- Case Law Update, Emerging Trends from the 1st DCA
- Q & A Session with the Broward Judges of Compensation Claims

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“A Move-Out Guide for Florida Tenants”

by Joseph S. Hughes

In my last article, “Tenant Remedies in the Wake of Irma”, I summarized the procedures a residential tenant must take before terminating a lease and vacating for lack of habitability or failure of a landlord to comply with his or her statutory duties. Here, I provide some additional precautions a tenant should take during the move-out process to further reduce the chances of entering into a legal dispute with the landlord.

If the tenant relies on terminating the lease through ordinary methods of terminating a month to month tenancy that are not dependent on any uninhabitability or material violations claims, the tenant must give the notice by mail or personal delivery to the landlord at least 15 days prior to the end of the rental period by personal delivery, or a minimum of 22 days prior to the end of the rental period if given by mail. The rental period ends on the day immediately prior to the date that rent is periodically paid on.

Any notice sent to the landlord by mail should be simultaneously sent by certified mail, return receipt requested, and by regular U.S. mail. The certified mail tracking number should be written on the notice, with a copy retained by the tenant. To avoid any arguments by the landlord relating to the return of the security deposit, any notice of termination should include the

tenant’s forwarding address. If the tenant does not yet have a new address, the tenant should provide a friend or family member’s address. If a notice is given by personal delivery, the tenant should deliver the notice in the presence of a witness.

The tenant should provide the USPS with a forwarding address as early as possible, regardless of whether or not the tenant already provided the landlord with one. If the landlord claims that the tenant never provided a forwarding address, the landlord will still be required to have sent the notice to the last known mailing address, which is usually that of the leased premises.

On the date of vacating, the tenant should clean the property thoroughly, and restore the premises to the condition that it was on the date of move-in, normal wear and tear excepted. Afterwards the tenant should take pictures documenting the condition of the premises, and walk through the property with a video camera, while stating the date and time of the recording. The tenant should also bring witnesses to the property to inspect its condition. Any recordings and pictures should be backed up on a cloud-based drive.

The tenant should request a move-out walkthrough from the landlord. Any refusal to do so should be documented. The tenant should ask

the landlord or landlord’s agent at the walkthrough if there is anything that the landlord or agent is concerned about that needs attention prior to vacating, and if possible remediate any issues prior to vacating.

The tenant should return by personal delivery to the landlord all keys and gate/garage openers to the premises no later than the date that he or she physically vacates. The tenant may be liable for rent pro rata for each day the keys and openers remain unreturned, or even for an entire additional month. It is therefore important for the tenant to document the return of the keys and openers by obtaining written acknowledgment of receipt from the landlord, or by returning them in the presence of a witness.

Although these steps do not guarantee avoidance of a legal dispute, exercising them will increase the tenant’s chances of vacating without triggering liability to the landlord for further rent and damages. **B**



Joseph Hughes is a sole practitioner and trial lawyer in Fort Lauderdale, practicing in South Florida and around the state. He can be contacted at Jhughes@Jhugheslegal.com or (954) 256-5125.



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2018 ANNUAL INSTALLATION GALA

JUNE 23, 2018
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GOING FOURTH

Musings By the Fourth District Court of Appeal

Sorry Seems to Be The Hardest Word

by Alan Bryce Grossman

It is improper for counsel during closing argument to ask a jury to punish a defendant for defending its case in court when a punitive damages claim is coupled at trial with the compensatory damages claim.¹ Where that happened, if properly preserved, the defendant would be entitled to a new trial.

Such comments are improper because damages are to be awarded to an injured defendant to provide compensation for the loss suffered. Compensatory damages are “not to make the defendant care, ‘take responsibility’ or say it was sorry.” *Intramed, Inc. v. Guider*, 93 So.2d 503, 507 (Fla. 4th DCA 2012).

In *Tullo*, *Cohen*, and *Calloway*, the offending arguments were presented when the jury was considering both compensatory damages and punitive damages in a single phase of the trial. A recent case decided by the Fourth District held differently where compensatory damages had already been determined, and the punitive damage award amount was all that was left for the jury to decide. In *Tullo*, *Cohen*, and *Calloway*, such argument was seen as tainting the jury’s consideration of whether to award compensatory damages, or in what amount. However, in *R.J.R.*

Reynolds Tobacco Company v. Odom, 210 So.3d 696 (Fla. 4th DCA 2016), *Review Granted*, 2017 WL 6014274, the Fourth District carved out a clear exception to the prohibition. Thus, in the final phase of a trial, when all that is left for the jury is to determine the proper amount of punitive damages, there can be no such taint to the jury’s deliberation as to the compensatory nature of damages.

In *Odom* the plaintiff’s mother died from lung cancer. The jury had already determined that the plaintiff was in the *Engle*² class, that the defendant’s conduct was the cause of the mother’s death, awarded compensatory damages of \$6 million, and determined that punitive damages were warranted. In the second phase of the trial, solely to determine the amount of punitive damages, the plaintiff’s lawyer argued during closing argument that “RJR deserved to be punished for Mrs. Thurston’s death and had yet to accept responsibility or apologize for its actions.”

As the Court decided, while the substance of the argument was “indistinguishable” from *Tullo*, *Cohen* and *Calloway*, the comments were distinguishable in their context. The key difference is that such comments

cannot be used to “send a message” where the discussion involves the question of compensation to the plaintiff.

Such “conscience of the community” arguments are fair game, however, when the question is how much to punish the plaintiff. With liability a foregone conclusion by that point, that a defendant defends rather conceding at a prior moment can be tossed to the jury. ■

¹ *Philip Morris USA, Inc. v. Tullo*, 121 So.3d 595 (Fla. 4th DCA 2013), *Cohen v. Philip Morris USA, Inc.*, 203 So.3d 942 (Fla. 4th DCA 2016), *Tobacco Co. v. Calloway*, 201 So.3d 753 (Fla. 4th DCA 2016) (referred to as “*Tullo*, *Cohen*, and *Calloway*”).

² *Engle v. Liggett Grp., Inc.*, 945 So.2d 1246 (Fla. 2006).



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.

17TH JUDICIAL CIRCUIT & THE BROWARD COUNTY BAR ASSOCIATION

PRESENT

Black History Month:
A Celebration of the Black Legal Community

BROWARD'S LEGAL FIRSTS

Join us as we recognize our
Legal Pioneers in the Black Community.

FRIDAY, FEBRUARY 16, 2018

9:00 a.m. - 1:00 p.m.

Broward Courthouse Jury Assembly Room 3320

Free Admission; *Space is limited*

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The Honorable Zebedee Wright

Image Courtesy of Fort Lauderdale Historical Society

For More Information, Contact Lauren Riegler, BCBA Events and CLE Manager at lauren@browardbar.org or 954.832.3618

2018 Mercedes-Benz Corporate Run Team BCBA/Legal Aid



Date: April 5, 2018

Registration Deadline: March 7, 2018

Time: 6:45 p.m.

Registration Fee: \$40

For Registration & Sponsorship information visit browardbar.org/calendar

Questions?

Contact Patricia R. Hernandez at patricia@browardbar.org

Tackle Your First 5K in Just 8 Weeks!

by Michelle Karinne Suarez

To many people, running a 5K is daunting. However, with the right mindset and preparation, a 5K should be a walk in the park.

The first thing to get started is a good pair of running shoes. Asics, Brooks, Mizunos, Sauconys, or even an old pair in good condition will do the job. These shoes should be used for training and on the day of the race. They should fit comfortably and be properly sized. Most running shoe stores will be able to tell which shoe is best for a given foot type.

Now that you have your running shoes laced up, the next consideration is food. It is important to eat early enough before the race to digest most of the food, but still have enough energy left to get through the run.

If the race is early in the morning, breakfast should at least include some branch chain amino acids to help fuel muscles. Otherwise, half a cup of oatmeal with half a banana eaten at least 2-3 hours before the race should be more than enough to fuel a run without giving a heavy or bloated feeling during the run. The idea is to eat slow-releasing, healthy carbohydrates, which is where a lot of energy comes from during a run. The carbohydrates are stored in muscles and the liver in the form of glycogen to sustain blood sugar and energy levels. The rest of the energy will come from fat. Because a 5K is a relatively short distance, your body will have most of the fuel it needs already.

On to training: the fun part! Those who prefer to exercise in a group may want to



gather a buddy or two to help keep each everyone accountable and motivated.

Training starts about eight weeks before the 5K. A “base pace” is the time it takes to comfortably jog one mile. The idea is to start with the base pace and run longer distances over the next eight weeks until hitting the 3.1-mile goal. Some also find that training their bodies to run 3.5 miles makes 3.1 miles feel like a breeze.

Before you begin, it is important to properly warm up for at least 5-10 minutes with brisk walking and light, intermittent stretching before each training session.

TRAINING REGIMEN

- Week 1-3: Run/walk 1 to 2 miles three times weekly
- Week 4-5: Run/walk 2.5 miles three times weekly
- Week 6-7: Run/walk 3.1 miles three times weekly
- Week 8: Run your full 5k 4 to 5 days before your race. Rest 2 to 3 days before the race

TRAINING STRATEGY

- Run/walk should be done at a ratio of 1:2 minutes for less conditioned athletes and at a ratio of 2:1 for more conditioned

athletes. Meaning, you run as fast as you comfortably can for the first portion of your interval and recover for the second portion. This is known as interval training. It will not only help you with endurance, but you can also use this method to improve your speed as you become more conditioned.

- Run two days indoors on a treadmill (less impact to protect your bones/joints) and run one day outside to mimic the 5K conditions.
- As the weeks progress, you can play with your ratios, for instance, increasing your run versus the walk. This will vary depending on your conditioning and goals.

I hope this helps you all lose the fear to try your first 5K! I'll never forget mine. It's a great feeling of accomplishment.

See you all at the Mercedes Benz Corporate Run in April! I'll be running with the BCBA. Stay healthy, my friends! 



Michelle K. Suarez, Esq. is the CEO/ Partner at Florida Entrepreneur Law, P.A. in Fort Lauderdale, FL. Her practice focuses exclusively on helping StartUps, Entrepreneurs and businesses under \$10Million in net worth. She is a former personal trainer and bodybuilder and remains an avid fitness enthusiast.

Save the Date!

Visit our online Calendar for more information.

Black History Month: A Celebration of Black Broward. "Broward's Legal Firsts"

Sponsorships Available!

Date: February 16, 2018

Time: 9:00 a.m. – 1:00 p.m.

Venue: Broward County Courthouse - Jury Assembly Room

Cost: No Cost Attendees must pre-register to receive lunch

2018 Workers' Compensation Conference

Sponsorships Available!

Date: February 23, 2018

Time: 11:30 a.m. – 5:00 p.m.

Venue: Bahia Mar Fort Lauderdale Beach

Cost: \$85 BCBA Member; \$100 Non-Member

2018 Installation Dinner

Date: Saturday, June 23, 2018

Venue: Pier 66

6 Guardianship 8-hour Adult
Time: 9:00 a.m. – 5:00 p.m.
Venue: BCBA Conference Center
Cost: \$180; No Walk-ins accepted

12 YLS Breakfast with the Judiciary
Time: 7:45 a.m. – 8:45 a.m.
Venue: Courthouse Law Library
Cost: \$10 YLS BCBA Member; \$15 Non-Member

13 Guardianship 4-hour Adult
Time: 9:00 a.m. – 1:00 p.m.
Venue: BCBA Conference Center
Cost: \$100; No Walk-ins accepted

17 Solo/Small Networking Dinner
Time: 6:00 p.m. – 8:00 p.m.
Venue: Signature Grand
Cost: \$40 BCBA Member; \$50 Non-Member * \$10 additional at the door

18 Government CLE
Time: 12:00 p.m. – 1:30 p.m.
Venue: BCBA Conference Center
Cost: \$15 BCBA Member; \$25 Non-Member

19 2018 Judicial Procession and State of Circuit
Sponsorships Available!
Time: 1:00 p.m.
Venue: Broward County Courthouse - Jury Assembly Room

25 BCBA Mentor/Mentee Networking Event
BCBA Members Only
Time: 5:30 p.m. - 7:30 p.m.
Venue: BCBA Conference Center
Cost: \$10 BCBA Mentees

26 Fourth DCA New Courthouse Tour
Time: 10:20 a.m.
Venue: Fourth District Court of Appeal NEW Courthouse (110 S. Tamarind Avenue, West Palm Beach)
Cost: No Charge; This event is only open to those members in our Appellate Section

31 Technology Committee: Apps with Apps
Time: 5:30 p.m. - 8:00 p.m.
Venue: Funky Buddha Brewery
Cost: \$20 BCBA Member; \$30 Non-Member; No Cost BCBA Judiciary
Includes Apps & Drink Ticket



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After 43 years of dedicated service to the legal profession, our Co-Founder, Alan Landsberg has retired. We wish him all the best!

We are also pleased to announce that Jose R. Riguera, formerly with Blank Rome LLP and Berman, Kean & Riguera, P.A., has joined our firm.



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