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MARCH 2018



*Fourth District Court of Appeal
Comes to Broward*



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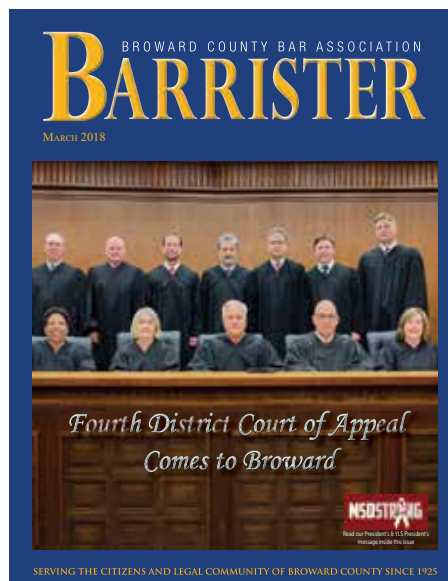
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letter from the president



Thomas Daniel Oates

As the national conversation following the Marjory Stoneman Douglas tragedy continues, I want to remember the victims. I don't want their memories lost among the political rhetoric and finger pointing. The resiliency of Broward County, the City of Parkland and our children will be a living testament to those whose lives were lost. Let us not forget Aaron Feis (37), Jamie Guttenberg (14), Martin Duque Anguiano (14), Gina Montalto (14), Alyssa Alhadeff (14), Nicholas Dworet (17), Luke Hoyer (15), Carmen Schentrup (16), Meadow Pollack (18), Alaina Petty (14), Chris Hixon (49), Cara Loughran (14), Alex Schachter (14), Scott Beigel (35), Joaquin Oliver (17), Peter Wang (15), and Helena Ramsay (17).


The Country will be watching as Broward County's 17th Judicial Circuit brings justice for the families and the victims affected by this unfortunate tragedy. From student protests, to Hollywood celebrities' endorsements, and disagreements between gun activists and proponents of more gun control laws — the 17th Judicial Circuit will remain in the national spotlight as the criminal case unfolds. Together, we will demonstrate to the Country that Broward County is resilient but in the face of adversity, our system of justice will prevail.

Our law enforcement, our Broward County Bar Association, our court personnel, and our judges are up to the task. Broward's legal community will treat this case like any other, with its highest-level of professionalism. We will ensure that the Judicial Branch works as intended.

As a legal community it will be incumbent on us to make sure we contribute to the discussion in a meaningful way. Mental health treatment and a living wage for our government attorneys are two issues which we can highlight. People expect our system of justice to work. Rarely do they consider how it is funded. Perhaps only after a tragedy like this do they wonder how mental health treatment is delivered to those in need. Unfortunately, our jail has become the provider of last resort for mental health issues. It isn't right, and more importantly it is a disservice to those that need help.

A day after the tragedy, I attended a meeting hosted by the Fort Lauderdale Chamber of Commerce and their constituent business members to discuss how to solve the low compensation for assistant state attorneys and assistant public defenders. With retirements, student loan debt, high turnover, and an inability to attract experienced attorneys, The Honorable Chief Judge Tuter, Public Defender Howard Finkelstein and the State Attorney's Executive Director, Monica Hofheinz, warned that major cases are being handled by relatively inexperienced attorneys with burdensome caseloads.

The Broward County Bar will explore the possibility of alternate sources of funding to help government attorneys with their student loan debt. If we cannot count on our legislature to properly fund the needs of our justice system we will need to think outside the box.

Hold your children and loved ones close. My children are too young to understand these tragic events. I struggle with how other parents will explain to their kids how and why events like this happen. But together we are a community of people who will continue to rely on one another and our faith to get us through. #MSDSTRONG 

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letter from the young lawyers' president



Sara M. Sandler

Members of the Broward Community,

It is with heavy heart that I write this month's article. To anyone who was personally affected by the tragedy at Marjory Stoneman Douglas High School last month, you have the community's deepest sympathies. The entire community stands with you and is here to support you.

Many of us in this legal community grew up in Broward County. Many of us remember what it was like to attend school in a portable classroom while our own school was being built. Many of us remember when Sawgrass Mills Mall was, well, just a mall and that the Fashion Mall ever even was a mall. We have memories of getting our first job bagging groceries at Publix or making blizzards at Dairy Queen.

We remember when having prom or homecoming at the brand new Signature Grand was a big deal. We remember when our biggest concern in high school on Valentine's Day was whether someone would give us a balloon or a flower.


We have seen so much happen in Broward, good and bad, but when it came to national tragedies, we had only ever seen them from a distance. From a distance, we would be outraged. From a distance, we would grieve. From a distance, we would be grateful that the tragedy was not our own. But today, the tragedy is ours. Up close, in our own backyard. There is no more distance. We are a different Broward County today than we were on February 13th.

There is a road, no simple highway,
between the dawn and dark of night.

We have a long road ahead of us, both individually and as a community, before we find a way to heal from this tragedy. I am certainly not here to tell anyone how to go about this process (although, if you need grief counseling, I encourage you to seek it) and this is not the forum to suggest changes that our country should consider. But I do encourage you all to, in some way, honor those we have lost and those who have the most healing to do. Perhaps find an organization or charity that allows you to give back in a way you find most meaningful. Perhaps it is simply in the way you approach life from here on out.

As a legal community, I remind you that while the practice of law is important in our lives, above all, practice kindness first. People will likely not remember a hearing that you won. They will not remember a motion that you wrote or a settlement you skillfully negotiated. But people will remember how you treated them. People will remember that you made them smile, they will remember that you were kind and fair and honest. Perhaps something as simple as kindness is a good place to start for how our legal community can come together and begin to heal.

We cannot separate ourselves from the horrific events that occurred in Parkland. They are engrained in our community's history now and forever. And, frankly, we shouldn't want to separate ourselves from what happened. We cannot shy away from this "new" Broward County. We must approach this head on and find a way to honor those who lost their lives, honor those who lived through the events of that day, and honor the thousands of members of our community who have been directly affected by this tragedy. In whatever way you can, please honor them.

Until next time, keep truckin' 



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TRADEMARK DISPUTES: INITIAL IMPRESSIONS MAY MATTER

by Aaron J. Horowitz, Michael Marcil & Jennifer Nicole

After your workout at the gym, you reach inside the gym's drink cooler for your favorite energy drink. As you stand in line to purchase the drink, you look at the bottle again and realize that, because of a similar name or product shape, you accidentally chose a competitor's product. Despite your mistake, you proceed with the purchase because you do not want to take the time to switch out the drinks and move to the back of the line. Does the company that sells your favorite energy drink have a cause of action for trademark or trade dress infringement against the competitor? What if the only evidence of confusion is your initial confusion that dissipated prior to making your purchase?¹ The answer depends on location.

Initial interest confusion occurs "when a consumer seeks a particular trademark holder's product and instead is lured to the product of a competitor by the competitor's use of the same or a similar mark."² The theory of the initial interest confusion doctrine is that even if the confusion is later dissipated by information obtained by the consumer prior to the actual point of sale, the consumer may decide to purchase the competitor's product such that the competitor has "captured" the trademark holder's potential customers."³

The initial interest confusion doctrine has yet to be welcomed in Florida's federal courts.⁴ As stated by Judge Middlebrooks of the United States District Court for the Southern District of Florida, "[t]he Eleventh Circuit has not embraced this principle, and I find it unpersuasive. When the bottom line is sales of a particular product, initial confusion prior to and concluding before the point of purchase does not seem dispositive in a likelihood of confusion analysis."⁵

However, clients that conduct business in other jurisdictions, such as New York,

Texas, Illinois, California and Colorado, should be familiar with the initial interest confusion doctrine.⁶ In the federal circuits that cover those and other states, the initial interest confusion doctrine has been applied in various contexts. These include: a defendant using a competitor's name as a metatag so that a Google search for the competitor also leads to the defendant⁷; and sales of advertisements by a search engine to a plaintiff's competitor that were displayed when a search was conducted for the plaintiff.⁸

Courts have also applied the initial interest confusion doctrine to advertisements or trade dress outside of the internet context. For instance, one court found that real estate yard signs were used to draw attention at a distance and with "fleeting exposure," and that "such 'drive-by' exposure to the signs increases the risk of initial-interest confusion" with signs of a competing real estate company.⁹ Another court found that a wireless company's use of a plum color to advertise its wireless services on webpages, billboards, television ads, and in its stores, was likely to cause initial interest confusion with T-Mobile, where that plum color was used by T-Mobile as part of its advertising campaign.¹⁰

In today's world, where companies operate more and more frequently across state lines, attorneys should remain aware of the potential for this expansion of the likelihood of confusion analysis and advise their clients accordingly. **B**

¹This fact pattern is loosely borrowed from the facts in *Vital Pharmaceuticals, Inc. v. American Body Building Products, LLC*, 511 F. Supp. 2d 1303, 1318 (S.D. Fla. 2007).

²*Australian Gold, Inc. v. Hatfield*, 436 F. 3d 1228, 1238-1239 (10th Cir. 2006).

³*Id.*

⁴See e.g. *ADT, LLC v. Alarm Protection Technology Florida, LLC*, 646 Fed. Appx. 781 (11th Cir. 2016); *USA Nutraceuticals Group, Inc. v. BPI Sports, LLC*, 165 F. Supp. 3d 1256 (S.D. Fla. 2016); *Suntree Technologies, Inc. v. EcoSense Int'l, Inc.*, 802 F. Supp. 2d 1273 (M.D. Fla. 2011), *affirmed* 693 F. 3d 1338 (11th Cir. 2012); *North America Medical Corp. v. Axiom Worldwide, Inc.*,

522 F. 3d 1211, 1224 n. 10 (11th Cir. 2008).

⁵*Vital Pharmaceuticals, Inc. v. American Body Building Products, LLC*, 511 F. Supp. 2d 1303, 1318 (S.D. Fla. 2007).

⁶See e.g. *Australian Gold, Inc. v. Hatfield*, 436 F. 3d 1228 (10th Cir. 2006); *Malletier v. Burlington Coat Factory Warehouse Corp.*, 426 F. 3d 532 (2nd Cir. 2005); *Playboy Enterprises, Inc. v. Netscape Comm'n's Corp.*, 354 F. 3d 1020 (9th Cir. 2004); *Promatek Indus. Ltd. v. Equitrac Corp.*, 300 F. 3d 808 (7th Cir. 2002); *Elvis Presley Enterprises, Inc. v. Capece*, 141 F. 3d 188 (5th Cir. 1998); but see *Lamparello v. Falwell*, 420 F. 3d 309, 316 (4th Cir. 2005).

⁷*Brookfield Comm'n's, Inc. v. West Coast Entertainment Corp.*, 174 F. 3d 1036 (9th Cir. 1999).

⁸*Playboy Enterprises*, 354 F. 3d 1020.

⁹*Re/Max Intern., Inc. v. Trendsetter Realty, LLC*, 655 F. Supp. 2d 679 (S.D. Tex. 2009).

¹⁰ 991 F. Supp. 2d 888 (S.D. Tex. 2014).



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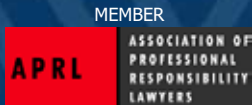
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PRACTICE TIP: Withdrawals

If you have a contingency fee contract and you are withdrawing because the client has discharged you, you should consider stating this fact in your motion and as a finding of fact in the order of withdrawal. Under these circumstances, withdrawal is mandatory under Florida Bar Rule 4-1.16(a), "not of your own volition," and you may still be entitled to a fee if the client ultimately recovers. The same suggestions would apply if you are withdrawing because of client conduct.



Former Trial Counsel, US Army • Former Special Assistant US Attorney
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Representing Members of the First Nations



by Robert Saunooke

As legal practitioners we often speak and work toward a goal of defining and achieving justice. Within many of the voluntary bar associations we host functions and events, present CLE courses to educate one another on any number of topics, and work in our community to change the perception of attorneys and to give back to those we serve.

Like many of you I am continually updating my knowledge of the ever-changing interpretation of law. Each year cases from the Florida Supreme Court down to small claims courts present different analysis of facts, statutes, and prior case law. The Florida Bar has set minimum continuing educational standards for all members of the bar, recently updating the requirement to include professionalism and a new technology requirement.¹

Each year there are hundreds of CLE offerings in any number of areas of the practice of law. The topics range from updates in family law and criminal trial advocacy to increasing your practice revenue and even events on meditation and yoga for attorneys. What is glaringly absent from the many CLE choices are CLE's focusing on the representation, practice, and understanding of the matrix that is Federal and Florida law as applied to tribes and their members. There is no

Native American Bar Association within the State of Florida and, other than the yearly event hosted by the Broward County Women Lawyers Association, there are no other courses, classes, or requirements for representing members of either of the two tribes located in Florida.

Indian tribes exist in almost every state in the U.S., in Florida we have two federally recognized tribes; the Seminole Tribe of Florida and the Miccosukee Tribe of Indians of Florida. In spite of the fact that these two sovereign nations are two of the largest employers in Florida generating billions of dollars in third party revenue that is spent throughout the state, very few attorneys and judges have even a basic understanding of either tribes culture, laws, court system, or history.

The Florida Bar requires that every attorney provide "competent representation . . . including the legal knowledge [and] skill" necessary to provide competent representation.² How can we achieve this requirement when few Florida law schools offer courses dealing with tribal matters and, those that do, offer only topical classes on an irregular basis.³ Even the Florida Bar subject testing does not address any areas of law applicable to tribes even though the subjects of family, criminal, and Florida Constitutional law

involve tribal issues.

To be certain, issues involving members of Florida's two federally recognized tribes are complex. Adding to this fact is the sovereign status of each tribal government and the inherent right of each tribe to enact and enforce its own laws on those individuals and businesses operating within the reservation. One must wonder why there is no requirement for educational competency regarding Native Americans at any level in the state.⁴

How many attorneys are aware that both the Seminole and Miccosukee Tribes have their own court system? How many know that the Florida Constitution acknowledges both the Seminole and Miccosukee Tribal governments, creates special improvement districts for the reservations, or that there is a Florida Governor's Council on Indian Affairs where the State of Florida acknowledge its obligations and duties to both tribes?⁵ What about issues involving tribal members and divorce? Are Florida attorneys trained and competent to understand tribal customs, culture and traditions to properly inform the court of the "best interests of the minor child"?⁶ Tax advice, collection, and enforcement of State and Federal Court orders and judgments, and complex jurisdictional matters all require

special knowledge and training. Native American clients require specialized legal knowledge to determine basic jurisdictional issues and to competently represent their interests.

So what can be done to insure that the interests of tribal members and governments are adequately represented? I would offer the following suggestions.

Native American Judges

Perceptions of justice begin and end with the court system. A diverse judiciary from all communities, walks of life, gender orientation, sexual preference and racial identification classes lends itself to the idea that courts cannot be fair or do not understand those who appear before the court. Currently there is one Native American sitting as an Article III judge in any federal capacity. There are no Native American judges sitting in any capacity within the State of Florida in either the state or federal court system. In contrast, there have been 151 African Americans, sixteen Asian Americans, and eighty-eight Hispanic Americans appointed as federal judges. In Florida 83% of the judiciary are white/non-hispanic, 7% African American and 7% Hispanic American.⁷ This fact is astounding since more issues involving tribes are appealed in the State and federal courts than any other subject matter or issue.

Recently Justice Stephen Breyer and members of the House Judiciary Committee expressed concern over a lack of diversity on the federal bench. It was clear during the hearings on the judiciary that unless more was done to increase diversity, the public would fast become convinced that courts are open only to the most privileged.⁸

Education on representing Native Amer-

ican clients

Education of attorneys and judges as to the unique and diverse status of Native Americans in criminal and civil matters would further increase awareness and confidence in the judicial process. Currently, only two states pose any questions on their bar exams regarding Native American issues. Few law schools offer classes regarding Native American legal process or legal history. Limited, if any, CLE programs are presented on the subject matter. This must change.

Dialogue and communication between courts

Recently, the Broward County Courts have begun a dialogue with the Seminole Tribal Court. There are currently dependency hearings being held within the reservation of the Seminole Tribe and presided over by Broward County judges. This is only a beginning point.

If we are to meet the goal of “Justice for All” then we must increase our knowledge and understanding of this area of law. We must require that tribal subject matters be taught in our law schools. We must require that the Florida Bar include tribally related issues on the bar exam and within the basic skills requirements of young lawyers.

One of the best things we do as attorneys is to help facilitate change. We are at our best when we provide a voice for those who cannot speak, protect the interests of those who are unable, and champion the rights of those who cannot fight. In so doing we are able to increase the perception of justice and insure that the courts are accessible to all through competent, knowledgeable and informed legal counsel. ■

¹ See Rules Regulating the Florida Bar Rule 6-10.3

² See Rules Regulating the Florida Bar Rule 4-1.1

³ A review of current course offerings at Florida law schools showed only the University of Florida listing a course in Indian Law that was not offered every year. Florida State University College of Law lists a gaming class which discusses various gaming issues but would not be considered a class on tribal or Federal Indian Law.

⁴ It is ironic that the Florida Bar has recognized and amended its rules regulating the Florida Bar to include technology, professionalism and even the new family law arena of collaborative divorce, but has not made any requirement for competency in representing members of Native American tribes.

⁵ The Florida Governor’s Council was established by Executive Order 74-23 on April 10, 1974.

⁶ Historically the lack of tribal cultural understanding created a presumption that being raised within a tribe and its reservation was prima facie evidence of an unacceptable environment for children leading to social workers throughout Indian country automatically removing tribal children from tribal parents. This uninformed action led to the creation of the Indian Child Welfare Act in 1978.

⁷ Florida Bar Report on Perceptions of Fairness and Diversity in the Florida Courts, 2008.

⁸ Hearings on Judicial Pay Raises, May 2007



An enrolled member of the Eastern Band of Cherokee Indians and adjunct professor of Federal Indian Law at Emory Law School in Atlanta the author is a graduate of Washington and Lee Law School in 1992 concentrating his practice in litigating Native American issues and is currently serving on the 17th Judicial Circuit Prof. Committee, Fla. Diversity and Inclusion Co Chair, National Native American Bar Association Executive Board, ABA Tribal Courts Council and Board of Directors for the BCWLA

4th DCA Comes to Broward

by Michele K. Feinzig


The Broward County Bar Association and Appellate Practice Section are excited to announce that the Fourth District Court of Appeal is coming to Broward County! On April 4, 2018, the Fourth DCA will not only hold oral arguments at Nova Southeastern University Shepard Broad College of Law (NSU Law), but will also participate in two other events.

The first is an afternoon seminar on legal writing and oral advocacy, including an ethics portion. Three Fourth DCA judges will conduct the seminar, accompanied by two NSU Law professors who teach legal writing. The seminar will be geared toward appellate lawyers and trial lawyers. It will refresh practitioners on the finer points of effective written communication and proper use of the English language.

The seminar will also address oral advocacy in both appellate and trial courts.

That portion of the seminar will be presented through a panel discussion, in which valuable information for both appellate and trial practitioners will be provided by the same judges who read your briefs and transcripts every day. The judges will address common questions concerning appellate oral argument, and suggest skills and techniques for maximizing trial court advocacy, including creating an optimal record for appeal.

The second event of the day is a cocktail reception for Fourth DCA judges. This is the practitioner's chance to mingle with the judges in a less formal environment, get to know them on a more personal level, and have fun too!

We look forward to seeing you at these great events! 

This article is 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 Kelley Kronenberg, Vice Chair. For more information about the Appellate Practice Section, please check the BCBA calendar, or email mfeinzig@breskyappellate.com or LReinstein@kelleykronenberg.com.



Michele K. Feinzig, Of Counsel at the Law Offices of Robin Bresky, has been practicing law in Florida for 29 years. Her practice is exclusively appeals and litigation support, and she is the Chair of the Appellate Practice Section of the Broward County Bar Association. Michele can be reached at 954-255-5810 or mfeinzig@breskyappellate.com.

4th DCA Comes to Broward CLE & JUDICIAL RECEPTION

Maximize Your Writing and Oral Advocacy Skills:
Thoughts from Appellate Court Judges and Law Professors

Wednesday, April 4, 2018

CLE - 2:00 p.m. – 4:30 p.m. | Judicial Reception - 5:00 p.m. - 7:00 p.m.

Location: Signature Grand

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2018 Raising the Bar

by Ava-Gaye Hue




The 2018 Raising the Bar seminar offers increased value for family law practitioners of all experience levels. Leading BCBA attorneys and seasoned experts will present the most recent information and practice tips on topics ranging from the effects of the new tax laws on the practice of family law in Florida to proper preparation of settlement agreements. Members of the Seventeenth Judicial Circuit judiciary are also scheduled to participate in the daylong event, to be held on Friday, April 13, 2018.

2018 seminar attendees will be able to select a schedule of presentations tailored to their practice needs and experience during the optional sessions portion of the program, while earning up to 7.5 general, 1 technology & 2 ethics CLE credits. Optional sessions are scheduled to include advanced trial litigation, preparation of financial affidavits and real estate and estate planning in family law cases. "This year's program was designed with all members of the Family Law Section in mind. We hope that the new format will enhance the value of the seminar and facilitate fellowship between membership, the judiciary

and our community," said section co-chair, Stephanie Matalon of Boies Schiller Flexner, LLP.

Raising the Bar is the Broward County Bar Association Family Law Section's annual signature seminar. The purpose of the event is to provide relevant and current information to the BCBA Family Law Section's membership. This year's program was designed with all members of the Family Law Section in mind, in hopes that the new format will enhance the value of the seminar and facilitate fellowship between membership, the judiciary and the community. More

information can be found on the registration page at www.browardbar.org/calendar or you may contact Lauren Riegler, BCBA Events and CLE Manager at lauren@browardbar.org. 



Ava-Gaye Hue, Esq. is experienced in family law, real estate and criminal law. She serves on T.J. Reddick Bar Association's board of directors and is co-chair of BCBA's Family Law Section.



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2018 RAISING THE BAR

Friday, April 13, 2018
8:30 a.m. - 5:00 p.m.

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WITH ALL DUE RESPECT...

by The Honorable Yael Gamm

As attorneys, we find ourselves lectured regularly on the many rules and guidelines governing professionalism standards in our field. We study them, we get tested on them, we lecture our mentees about them, and yet, attorneys continuously fall into those rabbit holes which lead to the tarnishing of reputations, the breakdown of professional relationships, and disciplinary action. Metaphorically, the “Why” is clear: trial advocacy is the war of all wars in what we do. It is the battlefield on which we kill or be killed. With this background, how can a lawyer be expected to control emotions and behave with civility and professionalism? The answer is just as clear: “Freedom may be born in protest, but it survives in civility.”¹ Rationality and civility are the structure for the social order we seek to preserve; these precepts must always be the hallmark of this profession.²

In a courtroom, one of the most common phrases to precede an argument that bears little resemblance to respectful is, of course, “with all due respect.” Zealous representation, especially in a trial setting, is at the core of an attorney’s job description. No self-respecting trial lawyer can say otherwise. However, a lawyer cannot justify unprofessional conduct by elevating the perceived duty of zealous representation over all other duties, for counsel has a concurrent duty to the legal system and the public good to ensure actions are pursued in good faith.³ An attorney is further charged

with a duty to refrain from advocacy that undermines or interferes with the functioning of the judicial system.⁴ In balancing conflicting professional obligations, the lawyer’s function includes a measure of objectivity in the implementation of legal skills, goals, or practices.⁵

If the trial lawyer’s undercurrent of fear stems from equating civility with weakness, that fear must be laid to rest. Civility does not mean a lawyer’s arguments must be lacking in force, nor does it overlook the vital role played by a lawyer who must protest injustice...but that does not mean it lacks civility. It is incumbent upon trial advocates to avoid undignified or discourteous conduct that is degrading to the court or the proceedings. Effective and persuasive advocacy stems from an attorney’s preparedness, knowledge of the facts and law, and credibility through professionalism and decorum in the courtroom.

Professionalism in trial advocacy does not mean extinguishing passion for one’s cause. Among other things, it means taking the time to disclose the identities and duration of witnesses anticipated to be called the day and the following day of trial. It means rejecting the urge to interrupt an opposing counsel’s question with an objection, unless that question is patently objectionable, or there is a reasonable ground to believe that information is being included that should not be dis-

closed to the jury. It means acceding to reasonable requests for waivers of procedural formalities when the client’s legitimate interests are not adversely affected by the concession. It means striving every day to infuse meaning into our go to phrase, “with all due respect...” **B**

¹Anthony M. Kennedy, *Law and Belief*, 34 JUL Trial 22 (1998)

²Id.;

³*Visoly v. Sec Pac Credit Corp.*, 768 So. 2d 482 (Fla. 3d DCA 2000)

⁴*See Malautea v. Suzuki Motor Co., Ltd.*, 987 F.2d 1536 (11th Cir. 1993)

⁵*Carnival Corp. v. Beverly*, 744 So. 2d 489 (Fla. 1st DCA 1999)

⁶Anthony M. Kennedy, *Law and Belief*, 34 JUL Trial 22 (1998)

⁷*Florida Bar Guidelines for Professional Conduct*



The Honorable Yael Gamm is a Circuit Court Judge within the Unified Family Division, presiding over Juvenile Dependency cases. Her time on the bench is preceded by her 16 year career as a trial lawyer here in Broward County.

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1. Current active and contributing member of the BCBA.
2. Exhibition of the highest degree of professionalism in accordance with BCBA Standards of Professional Conduct and the Florida Rules of Professional Conduct.
3. Demonstrates respect for the law and preservation of decorum and integrity of the legal system.
4. Conduct which has enhanced the image of the legal profession either through practice or programs and activities that educate the public about the law or the American legal system.
5. Professionalism Committee members may not be nominated.

Additional general characteristics:

A role model for the legal community • Integrity • Timeliness and promptness • Mentoring of others • Zealous advocacy while maintaining civility • Decorum and demeanor • Credibility Courtesy to counsel, the court, and the parties • Preparedness

For questions regarding nominations please contact Braulio Rosa, Executive Director at braulio@browardbar.org



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Broward County Women Lawyers' Association
TJ Reddick Bar Association
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Thursday, May 31, 2018

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Thank you to Nancy Little Hoffmann



by Jeni Meunier

The Barrister is taking this opportunity to acknowledge Nancy Little Hoffmann for her dedication to the written word. Ms. Hoffmann has been writing for The Barrister for over 15 years.

Originally from the Washington, D.C. area, Ms. Hoffmann obtained her undergraduate degree from George Washington University as a National Merit Scholar. After spending a number of years working in the travel industry in Puerto Rico and Miami, she attended the University of Miami Law School as a Harvey Reid Scholar, was a member of the Law Review, and received her juris doctorate in 1974. Thereafter, she joined the Broward Bar.

Ms. Hoffmann was on the Appellate Practice Committee and helped develop the Broward County Association of Women Lawyers, serving as the secretary/treasurer when it began in 1980. From her experience, young attorneys can benefit from bar membership by meeting and networking with other attorneys and becoming involved with bar committees, particularly now that the bar provides more opportunities than ever before in its long history.

As an appellate lawyer, being aware of current case law is essential, but Ms. Hoffmann stressed that it is important for all lawyers to make the effort to stay up to date with the law as it affects their practice. Writing for The Barrister has required her to be diligent in reading the weekly appellate decisions and helped her to stay current with new de-

velopments in various areas of the law.

As Ms. Hoffmann looks to retiring, she acknowledges her start as an associate with Druck, Grimmer, Norman, Weaver & Scherer from 1974 to 1977 when she established her own firm. She argued in all Florida appellate courts and the Florida Supreme Court, and is admitted to practice in the United States Supreme Court, the United States Courts of Appeals for the Fifth and Eleventh Circuits and the U.S. District Court for the Southern District of Florida. Since 1974, Ms. Hoffmann has been the sole or lead appellate counsel in hundreds of civil appeals, with over 350 reported opinions to date.

Her involvement in Bar activities includes selection by the Florida Supreme Court to serve on the Florida Supreme Court Standard Jury Instruction Committee. Ms. Hoffmann received the Chief Justice's Commendation for exemplary service to civil justice in recognition of her fifteen years of service on that committee, a statewide group which consists of selected attorneys and judges. She also served on the Florida Bar Grievance Committee for the Seventeenth Circuit for several years, as well as chairing the appellate courts committee of the Broward County Bar Association, and she has also served on the Board of Governors of the Broward County Trial Lawyers' Association.

Further, Ms. Hoffmann served as a member of the Appellate Practice Section of the Florida Justice Association and served on its

Amicus Curiae Committee for nine years. She was also a member of the Appellate Practice Section of the Florida Bar and was a charter member of that section.

As a result of her contribution in providing case law updates over the years to local bar associations, Ms. Hoffmann received the Broward County Bar Association President's Award in 2011. She also received the Broward County Trial Lawyers' Continuing Legal Education Award for presenting case law updates at its monthly meetings for over ten years.

Ms. Hoffmann is married with two daughters, one of whom is an attorney practicing immigration law in Pennsylvania, and the other teaches elementary school and horseback riding in central Florida. The family recently returned from a trip to northern Finland, where they enjoyed lots of snowy fun, including dog sled rides. She is looking forward to more travels after retirement, as well as continuing her lifelong interest in music. **B**



Jeni Meunier is a Director at Trustpoint. One, Jeni can be contacted at Jeni.Meunier@Trustpoint.One or on her cell (727) 501-4422.



by Debra P. Klauber

Tobacco company's attempt to disqualify plaintiff's counsel reversed and remanded for further proceedings.

When a lawyer "switches sides" in the same or substantially-related litigation, the lawyer and his or her new firm is often disqualified. In this case, however, the lawyer left the new firm before the motion to disqualify was filed, and the Fourth District concluded that a different bar rule applied. The appellate court reversed the disqualification and remanded for further proceedings requiring Philip Morris, the former client, to establish that a lawyer remaining in the firm was in possession of confidential information material to the matter. *Balaban v. Philip Morris USA Inc.*, 43 Fla. L. Weekly D137, 4D17-2479 (Fla. 4th DCA Jan. 10, 2018).

Appellate court upholds new trial where the trial court dismissed jurors after plaintiff's questioning and refused to allow defendants to question them independently.

In this tobacco-related litigation, a number of jurors made it clear during questioning by the plaintiff's counsel that they were subject to being dismissed, for cause, because of their feelings or sentiments about smokers. Although the trial judge origi-

nally struck those jurors without allowing the defense an opportunity to question them, he later granted a new trial on this basis. The Fourth District agreed, essentially holding that counsel should be permitted to inquire into a prospective juror's bias unless it is "conclusively clear" that the juror cannot be impartial. The court also noted that those jurors could have been questioned separately, so as not to taint the entire panel. *Irimi v. R.J. Reynolds Tobacco Co.*, 43 Fla. L. Weekly D138, 4D15-759 (Fla. 4th DCA Jan. 10, 2018).

Fourth District holds that Uber's monthly reports to Broward County are not protected trade secrets.

Uber and Broward County entered into an agreement governing Uber's services at the Fort Lauderdale airport and in Port Everglades. As part of that agreement, Uber provides monthly data, some of which was later requested in a public records request by Yellow Cab. The trial court ultimately found, and the appellate court agreed, that the aggregate number of pick-ups and the sum of money paid by Uber to the County as a usage fee was not protected from public disclosure as "trade secret" information. *Rasier-DC, LLC v. B&L Serv., Inc.*, 43 Fla. L. Weekly D145, 4D 16-3070 (Fla.

4th DCA Jan. 10, 2018).

Trial courts are required to make specific findings when denying protection under the work-product and attorney-client privileges.

Although a trial court has discretion in addressing discovery matters, when a party objects to the disclosure of certain information based on the work-product and attorney-client privileges, the trial court must make specific findings when it denies those objections. Without specific, detailed findings addressing each privilege claim, meaningful appellate review cannot occur. *State Farm Mutual Auto. Ins. Co. v. Knapp*, 43 Fla. L. Weekly D150, 5D17-447 (Fla. 5th DCA Jan. 12, 2018). **B**



Debra P. Klauber, Esq., a partner with Haliczzer Pettis & Schwamm, oversees the firm's trial support and appellate practice and provides guidance to litigators throughout Florida. Debbie can be reached at 954-523-9922 or dklauber@hpslegal.com.

1 Bankruptcy CLE: Real Estate in Bankruptcy Proceedings

Time: 12:00 p.m. – 1:30 p.m.

Venue: BCBA Conference Center

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

2 CLE: Basic Criminal Trial Practice Lunch & Learn Series Session 1 – Arrest to Arraignment

Time: 12:00 p.m. – 1:00 p.m.

Venue: Broward County Courthouse – Room 4780

Cost: Free of Charge; Open to All

3 Guardianship 8-hour Adult

Time: 9:00 a.m. – 5:00 p.m.

Venue: BCBA Conference Center
Cost: \$180; No Walk-ins accepted

7 Technology Committee: Apps with Apps CLE

Time: 5:30 p.m. – 8:00 p.m.

Venue: Funky Buddha Brewery
Cost: \$20 BCBA Member; \$30 Non-Member

8 CLE: Technology updates in ADR and More

Time: 5:30 p.m. – 7:30 p.m.

Venue: BCBA Conference Center
Cost: \$20 BCBA Member; \$30 Non-Member

9 Cultural Competency CLE

Time: 12:00 p.m. – 1:30 p.m.

Venue: BCBA Conference Center
Cost: \$15 BCBA Member; \$25 Non-Member

10 Guardianship 4-hour Adult

Time: 9:00 a.m. – 1:00 p.m.

Venue: BCBA Conference Center
Cost: \$100; No Walk-ins accepted

14 Young Lawyers' Boot Camp Series

Session 2 – What did the Judge think?

Time: 5:30 p.m. – 7:30 p.m.

Venue: Broward County Courthouse

Cost: \$20 BCBA Member; \$30 Non-Member

16 CLE: Evidence for Litigators

Time: 11:30 a.m. – 1:30 p.m.

Venue: BCBA Conference Center

Cost: \$25 BCBA & TJR Members; \$35 Non-Member

20 Paralegal/JA CLE: Insight from a JA Panel

Time: 5:30 p.m. – 7:30 p.m.

Venue: BCBA Conference Center

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

21 Solo/Small Networking Dinner

Time: 6:00 p.m. – 8:00 p.m.

Venue: Signature Grand
Cost: \$40 BCBA Member; \$55 Non-Member * \$5 additional after 3/14/2018

22 CLE: The Tale of the RPPTL: The Intersection of Real Estate and Trust Law

Time: 12:00 p.m. – 1:30 p.m.

Venue: BCBA Conference Center

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

Save the Date!

Visit our online Calendar for more information.

4th DCA Oral Arguments, CLE and Reception

Date: April 4, 2018

Time: 2:00 p.m. – 4:30 p.m.

Mercedes-Benz Corporate Run with BCBA

Date: April 5, 2018

Time: 6:45 p.m.

Venue: Huizenga Plaza

Cost: \$40

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2018 Raising the Bar

Date: April 13, 2018

Time: 8:30 a.m. – 5:00 p.m.

Venue: Bahia Mar Fort Lauderdale Beach

Cost: \$125 BCBA Member; \$159 Non-member

2018 YLS Judicial Reception

Date: April 19, 2018

Time: 6:00 p.m. – 8:00 p.m.

Venue: Museum of Discovery and Science

2018 Installation Dinner

Date: Saturday, June 23, 2018

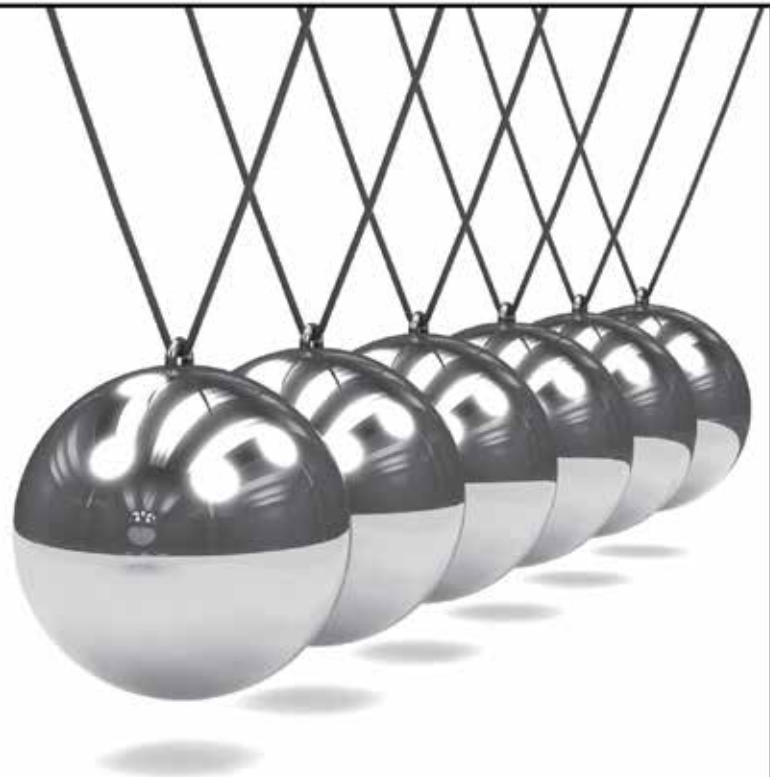
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