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OCTOBER 2018



South Florida Legal Mentoring Picnic
Saturday, October 27, 2018
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The image shows the interior of the RPRSC law firm office. In the foreground, there are four red armchairs arranged around a glass coffee table with a vase of white flowers. The background features a large window with a grid pattern. Overlaid on the image are several text boxes. On the left, a box lists the names of five attorneys. In the center, a large box contains the firm's logo 'RPRSC' and its full name. Below the logo is a red box with the text 'ATTORNEYS AT LAW'. On the right, another box lists the names of five more attorneys. At the bottom of the image, a text box provides the firm's address, phone numbers, and website.

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ON THE COVER

Join your local VBA's on **October 27th** for the South Florida Legal Mentoring Picnic, visit Browardbar.org/calendar for more information! L to R front row: Edwina V. Kessler (BCBA President), Brendalyn V.A. Edwards (GSCB-WLA President Elect), Madeleine Q. Mannello (BCWLA President), Janice C. Haywood (TJRBA President Elect). L to R back row: Aron J. Gibson (BCHBA President Elect), Benjamin W. Dowers (APABA President), E. Scott Golden (BCCLA), Braulio Rosa (BCBA Executive Director).

5 Letter from the President *Edwina V. Kessler*

7 Young Lawyers' Section Letter from the President *Brent M. Reitman*

9 The Nuts & Bolts of Family Law *Kemie King Lindsey*

11 Green Light For The "Red-Flag" Law *Brooke Latta*

13 Hispanic Heritage Month *Krystine Espina*

15 Patent & Trademark Matters *Andrew Rapacke*

17 Ethical Campaigning *Robert Meyers*

18 Civil Jury Improvement Luncheon *Anthony Quackenbush*

20 Solo/Small Firm Section of the BCBA *Joshua Lida*

21 Case Law Update *Debra P. Klauber*

22 Legal Health Corner *Sara Sandler*

23 Calendar of Events



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inside this issue



South Florida Legal Mentoring Picnic
Saturday, October 27, 2018



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letter from the president



Edwina V. Kessler

Happy Fall everyone. It is hard to think of it being fall when it is still so hot out and we are still keeping tracks of Hurricanes. The Broward County Bar Association has some exciting events planned for this month!

On October 12, 2018, for Hispanic Heritage month we will host Salsa Nights at the BCBA. The celebration will include Salsa lessons, dancing, dominos, paella Cuban cocktails and Cuban Cigars. This event is always a lot of fun with great music.

The Family Law Section will present its "Nuts and Bolts" family law seminar on Friday, October 26, 2018, from 8:35am until 5:00pm, in the

Broward County Bar Association Conference Room. The topics this year will include: Parenting issues, Equitable Distributions, Attorney's fees, the ABC's of support, getting to know the Judicial Assistants, Trial Techniques, as well as various other topics. If you wish to attend this event, I would suggest you register early as space fills up quickly. You can find more information about the topics that will be discussed, as well as the panel, on our website at <https://www.browardbar.org/>.

October 27, 2018, between 12:00pm and 4:00pm the Broward County Bar Association's First Annual South Florida Legal Mentoring Picnic will be held at CB Smith Park, 900 N Flamingo Rd, Pembroke Pines. The BCBA is cosponsoring this event with many of Broward's Voluntary Bar Associations in Broward County, as well as Miami-Dade and Palm Beach Counties Bar Associations. The various Bar Associations will have booths for its members to meet and find a mentee. If you are an attorney interested in having a mentee, please join us, there will also be games for the family. The following Law Schools will be participating: FIU College of Law, University of Miami School of Law, Shepard Broad College of Law & St. Thomas University School of Law.

The Mayor of Broward County, Mr. Beam Furr, has declared Saturday, October 27, 2018, as "Love your Broward County Lawyer Day". The cover of our Barrister is in recognition of this day and will be recognized at our South Florida Legal Mentoring Picnic. Thank you to the members of voluntary bar association members that are participating in the Mentoring Picnic and for participating in the photograph.

Save the date for our annual Holiday Party that will take place on November 29th from 5:30- 8:30. The Party has a new location at the NSU Museum of Art located One East Las Olas Boulevard. Registration has already stated for this event.

There are a number of other activities that are going on at the Broward County Bar Association this month. I hope to see you at some of these events. Visit [browardbar.org/calendar](https://www.browardbar.org/calendar) to register for events! **B**

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letter from the young lawyers' president



Brent M. Reitman

How is it October already? It seems like we were celebrating the New Year not so long ago. This year has really flown by, but there are still some amazing and important Young Lawyer's Events coming up before the December holidays that we hope you can attend.

We are looking forward to hosting the Young Lawyers for our (whatever number) annual Golf Tournament this year. The Golf tournament is one of our marquee events and has raised more than thirty-thousand dollars for charity for each of the last five years. The golf tournament will be held at Jacaranda Country Club on November 10, 2018 at 8:00am. The day will begin with a complimentary breakfast, followed by

the tournament, and concluded with our lunch banquet, raffle and award ceremony. Also, in traditional fashion, we will be hosting a happy hour to kick off the golf tournament which will take place on November 8, 2018 (check calendar of location updates) & there will also be raffles and prizes. This year, the Young Lawyer's Section has partnered with Experience Camps as our charitable beneficiary. Experience Camps is a wonderful organization that strives to provide boys and girls whose parent, sibling or primary caregiver has died, with a program that helps build confidence, encourages laughter and allows them to navigate their grief through friendship, teamwork, athletics, and the common bond of loss.

The Young Lawyers Section is also pleased to be working with the Honorable John Bowman to assist him with National Adoption Day, which is on November 17, 2018 at the Broward County Courthouse from 9:00am to 3:00pm. National Adoption Day is a wonderful experience where Judges from around the Circuit host Saturday dockets hearing only adoption cases. It is a wonderful occasion that creates a memorable day for the children and the adoptive parents. After the adoptions are finalized, commemorative family photos are taken, and a celebration is hosted with food, games, a live DJ, and entertainment. In addition, National Adoption Day will be kicked-off by the "Eat Your Heart Out" event at the Galleria Mall on Thursday, October 4, 2018 from 6:00pm to 8:00pm. Last year was our best year in terms of the number of adoptions and was most likely the highest number of adoptions nationally. We hope to exceed that number this year!

We are very excited to be announcing a new educational event for our members and Young Lawyers throughout the State. This year, on December 7, 2018, the Young Lawyers Section will be hosting the first Law-LaPalooza. This is a full-day event at the Courthouse where young lawyers can learn from judges as well as both young and experienced practitioners about relevant and contemporary areas of law. The day of programming will finish with a Happy Hour at the Downtowner for all registered guests. Stayed tuned for more details! **B**



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The Nuts & Bolts of Family Law

by Kemie King Lindsey

We all know, or know of, someone who has gone through a divorce, a custody battle or a fight about child or spousal support. Whether it is a neighbor, community member, or even that Facebook friend who you have not spoken to since high school, at some point, someone has sought your expertise as a lawyer about their family law matter. The practice of family law deals with representing clients in with issues such as a divorce, division of marital property, child custody/timesharing, and support. It is an area of the law that requires not only knowledge of the law, but practitioners must be skilled in managing emotionally volatile situations.

On the surface, it may seem easy to some. But the nuances of family law make this area of the law highly specialized. Most family law practitioners have a wide range of legal skills as they draft contracts, pleadings, and other legal documents; litigate contested matters; counsel clients on their legal rights and options; and attempt to negotiate and resolve disputes. Even the seemingly easy uncontested divorce presents its own sets of problems for the attorney who does not practice this area of law. A poorly drafted document, such as a marital settlement agreement or a final judgment, can have lasting effects on the parties; not to mention the costs it takes to litigate the issues created.

Family law cases present high emotions, drama, heartache, anger and frustration. Family attorneys some-

times act as their client's social worker, therapist, spiritual leader, in addition to providing legal representation. The knowledgeable and experienced family attorney is able to maintain a level head and a reasonable and rational approach to resolving their client's legal issues. The high level of emotions involved in this area of practice is why it is never a good idea to represent that family member, friend, or neighbor in their family court case. The high level of emotions is also why family attorneys maintain an expertise this area of practice. Attorneys who specialize in this area of the law are able to focus on the law and not get distracted by the "drama" in the case.

The Broward County Bar Association's Family Law Section will present its biennial "Nuts and Bolts of Family Law" CLE seminar on Friday, October 26, 2018. This type of seminar helps practitioners understand the law, skills, and knowledge necessary to successfully handle a family law case. Attendees will benefit from tips, techniques, and checklists that will help lawyers new to the practice of family law. The seminar will cover topics such as: the ABCs of Support; Parenting Issues; Attorney's Fees; Mediations; Evidence 101; and Trial Techniques.

This program is designed to introduce attorneys, those new to the practice of law or those transitioning from other areas of law to practicing family law, to the nuts and bolts of practicing in this highly emotional and specialized area of law. The

panelists, including both practicing attorneys and members of the judiciary, will discuss updates to the law, and provide strategies and techniques to succeed in their practice. The panelists will share information on various stages of the case, from the initial consultation to trial. Attendees will be provided practical knowledge and skills sets to apply to their cases.

The Nuts and Bolts of Family Law, and programs like it, help family law practitioners engage and develop in this area of the law. Attending The Nuts and Bolts of Family Law, and other similar seminars, ensures that attorneys are not only knowledgeable of the law, but it ensures that you learn techniques and practices to help those who have entrusted you with their family's legal matter. The practice of family law is not for everyone. But, for those who want to help people, be in the courtroom, and deal with sophisticated issues, it can be a practice area that is very rewarding. **B**



Kemie King Lindsey is the founding partner at King Lindsey, PA. Her practice focuses on Marital and Family Law. Kemie is the Co-Chair of the Broward County Bar Association's Family Law Section, Vice President of the Broward County Women Lawyer's Association, and serves as a Board Member for TJ Reddick Bar Association and the Heart Gallery of Broward County. She is a loving Wife and the Mother of two beautiful children. She can be reached at kking@kinglindsey.com or by calling 954-867-6518

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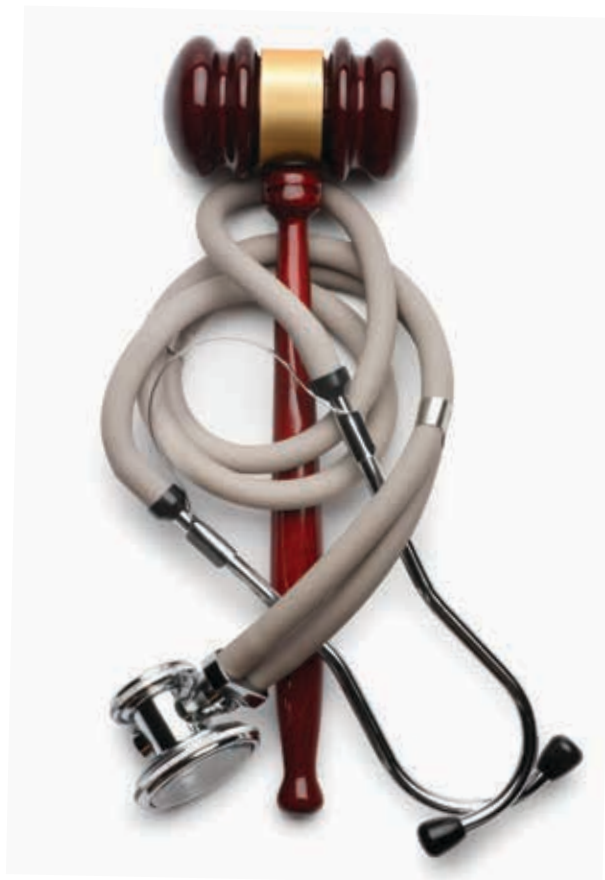
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Questions? Contact Lauren Riegler at lauren@browardbar.org



FLORIDA GIVES THE GREEN LIGHT FOR THE “RED-FLAG” LAW

by Brooke Latta

On February 14, 2018 a tragedy shook our community, taking the lives of 17 victims. Immediately, Florida legislators went into action and 23 days later, Senate Bill 7026, also known as the “Marjory Stoneman Douglas High School Public Safety Act,” was signed into effect. Among other things, it enacted Section 790.401, Florida Statute, also known as the Risk Protection Order (“RPO”).



- Has the individual abused or is the individual abusing controlled substances or alcohol?
- Has the individual recently acquired firearms or ammunition?

How Many Other States Have Similar Laws?

Prior to Florida, there were only five other states that had similar “Red-Flag” laws: California, Oregon, Washington, Indiana and Connecticut. Since the tragic events of February 14, several other states have passed similar legislation and there are at least 25 other states currently considering such laws.

What is Happening in Broward?

To date, there have been at least 200 RPOs filed in Broward County, with circuit-civil judges on a rotation to oversee these hearings for a month at a time. Some have met constitutional challenges based on vagueness or grounds of substantive due process violation. But, thus far, not a single Broward judge has found the RPO law unconstitutional, and the Fourth District Court of Appeals has yet to address the issue on appeal.

Whether you are an opponent or proponent of this new gun legislation, the fact is simple: this law got the green light and all signs point to GO. **E**



Brooke Latta is an Assistant General Counsel for the Broward Sheriff's Office. Prior to joining BSO, she served as an Assistant State Attorney for the 17th Judicial Circuit prosecuting sex-crimes. She can be reached at lattaesq@gmail.com or 954-873-8015

What is a Risk Protection Order?

An RPO is a gun violence prevention measure that permits law enforcement to petition a court to temporarily remove and prohibit the purchase of firearms and ammunition when an individual poses a significant danger to themselves or others.

How Does the Process Work?

- 1) Law enforcement submits a petition to the court laying out factual allegations and sworn statements that give rise to a reasonable fear of dangerous acts, without notice to the individual.
- 2) Within 24 hours of filing the petition, the court will hold an ex parte hearing with the petitioner, whereupon the petition is reviewed and the court may grant a temporary order requiring the seizure or surrender of firearms for up to 14 days.
- 3) If granted, the individual is personally served with the petition and the temporary order from the court, and is put on notice of a final evidentiary hearing scheduled during this 14-day time period.
- 4) At this final hearing, the petitioner has the burden to prove the individ-

ual is a significant danger to themselves or to others by way of clear and convincing evidence. After the final hearing, if the court denies the RPO, the individual's right to possess and purchase a firearm are restored. If the court grants the RPO, the court may issue a final order, which extends the temporary order up to but not exceeding 12 months.

What Factors Does the Court Consider?

In deciding to grant or deny an RPO, our courts may consider any relevant evidence, including evidence relating to the following factors:

- Has the individual been involved in a recent act or threat of violence against themselves or others?
- Does the individual have a serious mental illness or recurring mental health issues?
- Has the individual engaged in an act or threat of violence within the past 12 months?
- Has the individual unlawfully or recklessly displayed or brandished a firearm?
- Has the individual been arrested for, convicted of, had adjudication withheld or pled nolo contendere to a crime involving violence or a threat of violence in Florida or any other state?

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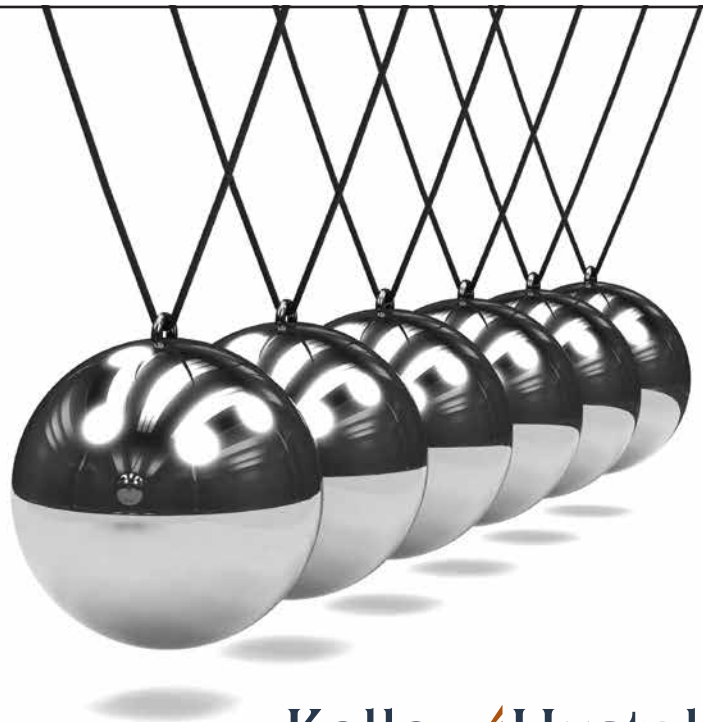
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Hispanic Heritage Month

by Krystine Espina

Statistically, it is unlikely for me to be writing this article as a licensed attorney. As my level of education increased through the years, I realized that there was a stark contrast between my circumstances and those of my fellow colleagues. My parents emigrated from Cuba. They had not attained a four-year college degree. English was not my first language. No one in my family was in the legal field. I am one of the 5% of Hispanic attorneys in this country according to the American Bar Association's National Lawyer Population Survey for 2018.

Hispanics and Latino Americans are underrepresented in the legal field. Despite South Florida's diverse population, it does not compensate for the very low percentage of Hispanic attorneys on our national level. Perhaps it is the language barrier, perhaps it is the difficulty in attempting to enter higher education upon arriving to this country, or perhaps it is a lack of guidance in light of the small number of fellow Hispanic and Latino attorneys.

Seasoned attorneys and judges serve as a beacon of inspiration for

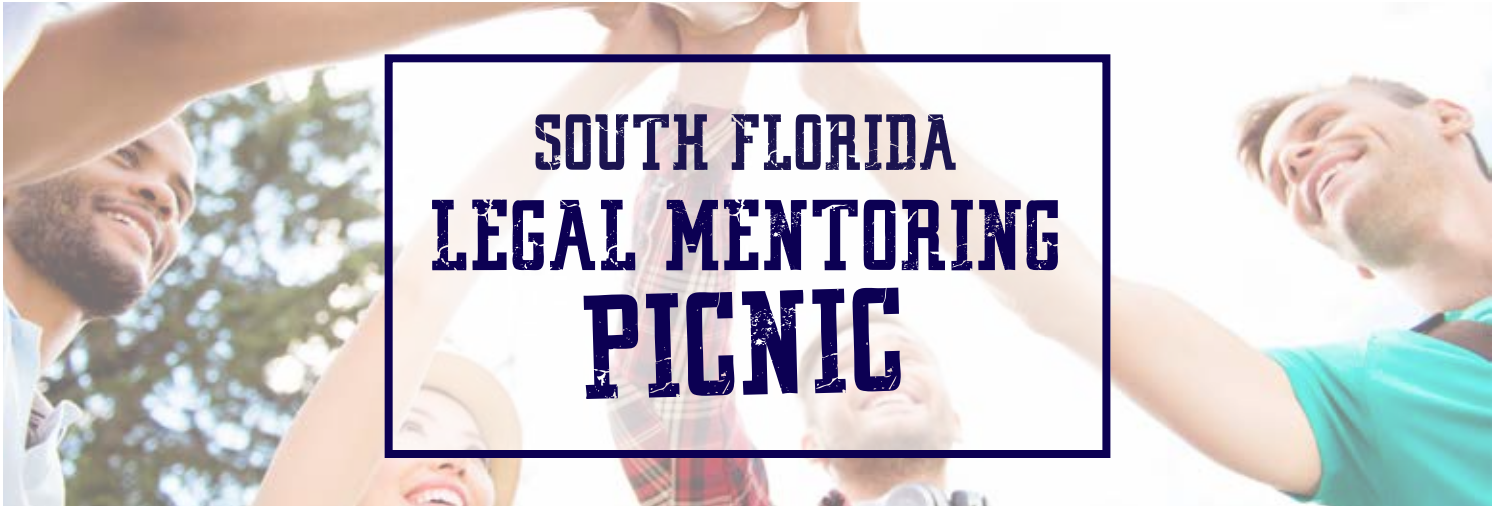
young attorneys like myself. The dream of becoming an attorney or a judge becomes more attainable when you can envision it; often it is easier to envision a goal when the person shares many similarities with you. It reinforces the concept that if someone, like you, has ever achieved it then it is well within the realm of possibility. It is important for Hispanic and Latino attorneys to help each other flourish and grow in the legal field, to serve as mentors, to lend a hand.

Throughout the year, the Broward County Bar Association's Hispanic Lawyer Committee will be hosting several events to promote diversity and provide a sense of community between the Hispanic and Latino attorneys in Broward County. These events are a great opportunity to mingle with legal professionals in a casual atmosphere. On October 12th, during Hispanic Heritage Month, the Broward County Bar Association's Hispanic Lawyers Committee is hosting Salsa Nights, which includes paella, authentic Cuban cocktails, salsa music, and salsa dancing with instructors. In Spring of 2019, the Broward

County Bar Association's Hispanic Lawyers Committee will also be hosting a luncheon with a panel of Hispanic attorneys and judges who will provide guidance and insight into the struggles and journey that led them to their current position. Future events will be posted in the Broward County Bar Association's website. I look forward to seeing you there. **B**



Krystine Espina is an attorney at GrayRobinson, P.A., where she focuses her practice in matrimonial and family law. She is committed to providing proficient and high quality legal representation.



SOUTH FLORIDA LEGAL MENTORING PICNIC

An afternoon for South Florida Judiciary, Attorneys & Law Students to have the opportunity to find a mentor or mentee in a fun & informal setting!

Saturday, October 27, 2018

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Is Your Firm Able to Handle Patent and Trademark Matters?

by Andrew Rapacke

Many clients, especially business clients, often have intellectual property (IP) concerns or needs. The client might need to obtain trademark protection on a company name or logo or might need to put a stop to a competitor who is producing low-quality knock-off products that bear a trademark that is confusingly similar to the one used by the client. Or the client might be involved in the development of an innovative new technology and requires securing patent protection. When clients have IP issues involving, for example, patent or trademarks, it is in the best interest of the client to consult with an experienced patent and trademark attorney.

Patent and trademark law is a highly specialized area of IP law. In order to practice patent prosecution (i.e., to seek patent protection from the federal government on behalf of patent applicants), patent attorneys are not only required to have a technical background in science or engineering, but they must also pass the Examination for Registration to Practice in Patent Cases Before the United States Patent and Trademark Office (USPTO)—more commonly referred to as the “patent bar exam.” Due to the additional qualifications that are often required for the practice of patent and trademark law, many major law firms have established dedicated practice groups for patent and trademark law, and a number of small-to-mid-sized boutique law firms exist that solely prac-

tice intellectual property law.

What Are Patents and Trademarks?

Patents and trademarks are forms of intellectual property. A patent is issued for a novel (i.e., new) and non-obvious invention. Patents can also be issued for ornamental designs. A patent is sought by filing an application with the United States Patent and Trademark Office. Once the USPTO grants a patent, the patent owner has the right to exclude others from making, using, selling, or importing the protected invention in the United States. Patent protection is time-limited, and once the life of the patent expires anyone is free to use the patented invention.

A trademark is a symbol, word(s), or mark that is used by a business to help consumers distinguish the source of a good. Use of a trademark in commerce automatically creates common law rights in the mark, but the protection offered by those rights is limited. To expand the scope of protection, a trademark can be registered at the state level, and/or at the federal level at the USPTO.

Helping Clients Control IP Legal Costs

For many businesses, patents and trademarks are significant company assets that help create and maintain a competitive advantage. When clients need IP legal services but have budget

constraints, they may be looking for ways to control costs since traditional hourly billing methods are notoriously unpredictable. The answer might take the form of a fixed-fee payment structure for IP legal services.

Fixed fee is a value-focused way for clients to obtain patent and trademark legal services packaged as a product for a given price. Some IP law firms offer fixed fee payment structures. A fixed fee structure is designed to offer clients several benefits. For starters, a fixed fee arrangement provides transparency and certainty for business clients. IP-related legal costs will be assessed up front so the client is unlikely to face any surprise charges or fees later down the road (unless there are extenuating circumstances).

In conclusion, attorneys should only take on patent and trademark work if they are qualified to do so. Make sure your clients understand that patent and trademark issues require the attention of a patent and trademark attorney. **E**



Andrew Rapacke is a registered patent attorney and managing partner at the boutique intellectual property law firm The Rapacke Law Group, P.A. Andrew works with business clients in a variety of industries, including medical devices, mobile apps and software, and more, to obtain and protect valuable patent and trademark assets. For more information, visit the firm's website at arapackelaw.com.

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THE CASE FOR ETHICAL CAMPAIGNING

by Robert Meyers

Unfortunately, the public perception of elected officials is generally not very positive, as evidenced by polls that routinely rank politicians as untrustworthy and dishonest. One possible explanation for these low levels of trust is the expectation that politicians should take consistent positions on the issues, and when inconsistencies in their voting records are revealed, the public labels them as unethical. Much of the information voters obtain about candidates come from media outlets and direct communications from the candidates. Candidates, their parties, independent groups and committees go to great lengths and expense to position their candidates as the worthy ones, recognizing that they have limited opportunities to deliver their messages to leave an impression on the voters.

History teaches us that incumbents enjoy a decided advantage over challengers in large part because they have much greater name recognition. Consequently, challengers must find a way to reach potential voters by making a splash and many resort to negative campaigning to achieve this objective. With the advent of social media and the fragmentation of traditional media, the methods used to reach potential voters have dramatically changed, with more emphasis on style over substance. This is not to suggest that negative campaigning and attacks ads are new to the political landscape, but it appears that tearing down one's opponents by publishing misleading, partially untrue, or outright lies has gained a foothold in our politics to the detriment of all concerned. When candidates ignore the substantive issues and focus almost exclusively on denigrating their opponents, it leaves a lasting mark on the voters and public at large and serves to reinforce the negative images associated with elections and politics.

In some communities, including Broward County, a concerted effort has been undertaken to encourage candidates to

run ethical campaigns by enacting ethical campaign practices laws. The purpose of such legislation is to obtain written commitments from candidates to abide by fair campaign principles during the campaign and pledge not to degrade or disparage their opponents, but rather focus on their platform and the issues. Ideally, the goal is for all candidates to agree to run positive, issue-oriented campaigns, and adhere to the ethical campaign principles, yet the vast majority of candidates are reluctant to commit in writing to these ground rules. Given First Amendment concerns against regulating constitutionally-protected speech, governments cannot impose ethical campaigning standards on individuals running for office and must rely on candidates who believe it is in their best interest to vow to campaign in an ethical manner.

Since ethical campaign practice laws have no ability to compel candidates to conduct ethical campaigns, the question remains whether ethical campaign laws are beneficial. One assumes the public would prefer clean, issue-driven campaigns, where distortions and misrepresentations are kept to a minimum. If this assumption is true, then the public ought to choose those candidates who stay on message and reject candidates who rely on attack ads and negative campaigning. If the public truly favors ethical candidates, which could be measured in part by the type of campaign the candidate runs, the choice becomes more complicated when all candidates in a race choose to "go negative."

An assurance to abide by ethical campaign principles may register with voters and it may give the candidate ammunition against an opponent who refuses to sign the pledge. It may also signal to the voters that a candidate is operating above the fray and will continue such behavior once elected to office. The carryover effect may exist as well for the candidate who does not assign much value to ethical

campaigning (by declining to subscribe to the principles of ethical campaigning) and may be regarded as unethical if he or she is elected to office. Although it is practically impossible to isolate all of the reasons for winning elections, the public deserves political campaigns whereby the candidates concentrate on the issues and articulate the reasons why they would best serve the public. One of the tools to realize substantive, issue-oriented campaigns is for candidates, no matter the office, to pledge in writing their commitment to ethical campaigning. **B**

Broward County Ethical Campaign Practices Act (Section 11-4 of the Broward County Code)

Can be signed by any candidate whose constituency resides, in whole or in part, within Broward County.

Form is available through local government's filing officer.

Executing a Statement of Ethical Campaign Practices is strictly voluntary.

On September 13, 2018, the Broward County Commission directed the County Attorney to draft an ordinance to establish a Fair Campaign Practice Committee to provide for enforcement of the ordinance's provisions.



Robert Meyers is a Partner at Weiss Serota Helfman Cole & Bierman and practices in the areas of ethics and governance. He is the immediate past Executive Director of the Miami-Dade Commission on Ethics and Public Trust.

Civil Jury Improvement Luncheon

by Anthony Quackenbush

On November 1, 2018, the Broward Chapter of ABOTA, the Broward County Bar Association and the Broward County Chapter of the Federal Bar Association will be hosting a Jury Improvement Luncheon in conjunction with the Civil Jury Project. The event will take place at the Tower Club in Fort Lauderdale from 12pm-1:30pm. Attendees will receive 2 General CLE Credits & 2 Civil Trial Certification Credits.

The Civil Jury Project is an academic center based at the New York University School of Law. The purpose of the Project is to study the current state of civil jury trials. The Project was begun in response to the decline of civil jury trials in recent years (in 2017, for instance, fewer than one percent of civil cases nationwide were tried before juries – down from 5.5 percent in 1962), and the Project is intended to investigate if there is any way that the trend can be reversed.

As part of this effort, the Civil Jury Project regularly coordinates State and Federal Judicial Workshops, which provide an off-the-record forum for judges to share expertise about such subjects as voir dire and efforts aimed at improving the comprehension and experience of civil jurors. The Project also organizes educational programs for legal practitioners around the country. These programs are referred to as

“Jury Improvement Lunches” and involve inviting citizens who have recently served on juries to discuss their jury service experience in front of an audience of trial lawyers and judges. The objective of these events is to consider reforms that might strengthen the civil jury system.

At the Jury Improvement Luncheon at the Tower Club on November 1, local civil trial judges will be invited as guests and asked to invite jurors they have recently discharged (thank you Chief Judge Jack Tuter and Judge Jeffrey Levenson for coordinating this effort). The Civil Jury Project will then contact the jurors who RSVP to see which jurors are willing to participate in panel discussions (interestingly, almost all jurors contacted agree to participate). Attendees of the event will be able to witness the panel discussions of the jurors.

The event is a great opportunity for practicing trial attorneys and judges to learn about the likes, dislikes, wants, complaints, etc. of actual jurors. It is also a great opportunity for practicing trial attorneys to improve their trial skills based on the opinions and feedback of the jurors. We hope you won't pass up this opportunity.

Thank you to the event sponsors for making the event possible. Gold sponsors include the Miami Chapter of ABOTA; Kelley/Uustal; Billing,

Cochran, Lyles, Mauro & Ramsey, PA; Conroy Simberg; Greenberg Traurig; GRYC Trial Lawyers; The Law Office of Joseph S. Kashi, P.A.; Malove Henratty, P.A.; Miles A. McGrane, III; and Tripp Scott. Silver sponsors include Boyd Richards Parker Colonnelli; The Ellsley Law Firm; Scott R Gill PA; Martin, Lister & Alvarez; Blaut Weiss Law Group; the Law Offices of Diana Santa Maria P.A.; the Law Office of David R. Strong, P.A.; Wicker Smith; Catri Holton Kessler & Kessler, P.A.; and Cohen Blostein & Ayala PA.

If you are interested in attending the event, you can register at <https://www.browardbar.org/calendar>. The charge to attend the event is \$25 for general admission, and there is no charge for BCBA Judiciary. We look forward to seeing you there! **B**



Anthony Quackenbush is a Plaintiff's personal injury attorney employed at the Kelley/Uustal law firm in Fort Lauderdale. He handles all types of personal injury cases – including catastrophic injury, wrongful death and medical malpractice.

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SOLO/SMALL FIRM SECTION OF THE BCBA: AN AMAZING RESOURCE FOR SMALL FIRMS

by Joshua Lida

For attorneys opening their own practice straight out of law school or those making the leap out on their own, there are some common fears that may cross their minds: where am I going to get referrals, who is going to mentor me through unknown situations, or am I going to miss out on the camaraderie of a larger firm. For attorneys trying to get clients, manage a business, and still have time to practice law, it can feel daunting.

Luckily, there is a great resource provided by the Broward County Bar Association (“BCBA”), namely the Solo/Small Firm Section, to help alleviate these fears and provide a potential attorney network. The group is only open to attorneys (other than a sponsor of an event) who are either solo practitioners or work at a firm that does not exceed 4 attorneys. The events put on by the Solo/Small Firm Section of the BCBA are networking lunches and dinners.

The dinners are held every other month, except December and January, and are held at Dave & Buster’s in Hollywood. The dinners often have 80 or more attorneys in attendance and offer a great opportunity to introduce yourself and your practice to a large group of attorneys. There are 2 speakers per dinner that briefly speak about their practice. In order to be eligible to speak at a dinner, the attorney must have attended at least 2 prior dinners. The dinners also provide

opportunities for attendees to stand up and publicly thank those attorneys who have referred them clients.

The lunches are held every other month, alternating with the dinners, and are scattered throughout the Broward County area at the following locations: DaVinci’s of Boca Raton, Duffy’s in Coconut Creek, JMark’s in Pompano, Tarpon Brewing Company in Fort Lauderdale (a personal favorite as a craft beer fan), Bokampers in Plantation, Blue Moon Diner in Cooper City, and The Field Irish Pub and Eatery in Dania Beach.

The primary focus of the lunches is to network with other attorneys throughout Broward. While some of the “lunch captains” request attorneys to RSVP, walk-ins are always welcome.

As the dinners are only once every other month, and are often so well attended, it may seem difficult to make a lasting connection. However, the dinners in conjunction with the lunches are precisely what makes the Solo/Small Firm Section so great. By attending the dinners and the multiple lunches on a consistent basis, you truly have an opportunity to get to know a larger number of attorneys well.

I can speak from my personal experience that this group is an amazing resource. I have attended several of the lunches over the course of the first year of starting

my firm and have been welcomed with open arms. I see many of the same faces at the lunches in different locations and have gotten to know attorneys from all different areas of practice. For a solo/small firm, having a large network of attorneys is priceless. The group provides consistent opportunities to develop referral networks, mentors, and friends. It is also an excellent resource for those looking to develop or grow a practice and find a consistent source of camaraderie amongst other solo/small firm attorneys.

The Solo/Small Firm Section is yet another example of how the BCBA helps connect attorneys, provide resources to attorneys, and develop a real sense of community for attorneys in Broward County. **B**



Josh Lida is a partner at Lida Law, PLLC. Josh primarily practices criminal defense and professional license defense in Broward, Miami-Dade, and Palm Beach Counties. He can be reached at Josh@lidalaw.com



Case Law Update

by Debra P. Klauber

Third DCA clarifies party's right to rescind contract based on unilateral mistake.

In an en banc decision, the Third District clarified the law regarding a party's right to rescind a contract based on a unilateral mistake. The court concluded that a party seeking rescission of a contract based on a unilateral mistake does not have to prove that he/she was induced into making the mistake by the other party. A contract may be set aside on the basis of a unilateral mistake if: (1) it was not the result of a lack of due care by the party making the mistake; (2) it would be inequitable not to release the party from the contract given the mistake; and (3) the other party has not so changed its position in reliance on the contract that rescission would be unconscionable. *DePrince v. Starboard Cruise Servs., Inc.*, 3D16-1149, 43 Fla. L. Weekly D1734 (Fla. 3d DCA Aug. 1, 2018).

Fourth District upholds fraud statute of repose in legal malpractice case.

In 2016, the plaintiff filed a legal malpractice claim alleging that the defendant law firm had provided a "fill in the blank boilerplate legal opinion" in 2002. The Fourth District upheld the trial court's dismissal of the claim against the law firm based on the 12-year fraud statute of repose. The appellate court found that the plaintiff's argument -- that the law firm had an ongoing and "presumably never-ending" duty to make corrective disclosures -- would subvert the very purpose of the statute of repose. *Garofalo v. Proskauer Rose, LLP*, 4D17-2398, 43 Fla. L. Weekly D1718. (Fla. 4th DCA

Aug. 1, 2018).

Expanded sovereign immunity for nonprofit universities upheld as constitutional.


In 2011, the Florida Legislature expanded sovereign immunity to apply to nonprofit, independent universities that agree to provide patient services at government teaching hospitals. All services provided under such an affiliation agreement are covered by the sovereign immunity statutes. The trial court and the Third District agreed that this expanded application of sovereign immunity did not violate the sovereign immunity, equal protection, due process, access to courts, jury trial or provide debt provisions of the Florida Constitution. *Bean v. Univ. of Miami*, 3D16-2221 & 3D16-2195, 43 Fla. L. Weekly D1741 (Fla. 3d DCA Aug. 1, 2018).

During presuit, hospital may seek verification that person requesting medical records is legally authorized to obtain them; such request does not waive hospital's entitlement to expert opinion.

The Florida Statutes excuse a medical malpractice plaintiff from obtaining a presuit expert affidavit corroborating his or her claim where the defendant fails or refuses to provide medical records in a timely manner. In this case, however, the defendant did not refuse to provide medical records, but asked for additional information in order to confirm that it was proper to provide those records to the persons seeking them where the decedent's mother and daughter had not

been properly identified in the request for records. The First District granted certiorari in favor of the hospital, finding that it was proper for the hospital to verify the identity of the individuals requesting the confidential medical records, that such request did not waive the hospital's entitlement to a presuit expert affidavit, and that the lawsuit had to be dismissed with prejudice where no affidavit had been provided. *Shands Jacksonville Med. Ctr., Inc. v. Pusha*, 1D17-4634, 43 Fla. L. Weekly D1980 (Fla. 1st DCA Aug. 24, 2018).

Is it medical malpractice or ordinary negligence?

The Third District confronted the ongoing debate between whether a plaintiff is required to comply with the medical malpractice presuit requirements in a case involving injuries at a hospital. Here, the court found that a negligence action by a patient in a psychiatric facility for injuries suffered when he was attacked by another patient did not involve medical malpractice. *Simmons v. Jackson Mem'l Hosp.*, 3D17-2291, 43 Fla. L. Weekly D1749 (Fla. 3d DCA Aug. 1, 2018). 



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.

Dealing with the Unexpected: How Attorneys and Law Firms Can Handle Illness

by Sara Sandler

As attorneys, it is rare that we find ourselves in situations out of our control. We have learned to make the law and the facts of our case work in our favor, we have become professional problem solvers, in true Tim Gunn fashion, we know how to “make it work.” And, while our choice of career lends itself to lives that are often busy and hectic, we have, for the most part, complete control over how we spend our time and where our careers will take us. The dilemma for our Type-A profession comes when uncontrollable circumstances manifest themselves into our lives.

Illness is often the main culprit of such circumstances. Whether we, ourselves, are diagnosed or whether it is one of our loved ones, illness of any form is often unexpected, unplanned for, and, at times, life altering. Not only does it have the power to throw our lives off course, but it also completely changes our priorities. In a career that is so heavily schedule-based and deadline driven, an unexpected illness is perhaps one of the most underestimated threats to our day-to-day practice.

So what is an attorney to do when they or a loved one is faced with a serious illness? What is a law firm to do when it has an attorney whose life has been impacted by a serious illness? In a world, and profession, where self-care has become a focus and priority, it is not only important, but necessary, to consider these questions.

While there is no one correct answer, and while I do not hold myself out

to be an expert on these issues, I can speak from experience. In June of 2016, I was diagnosed with thyroid cancer – a rather trendy diagnosis. In March of 2017, while I was still treating, my stepmother was diagnosed with Stage IV pancreatic cancer. In less than a year, my world completely changed; my way of life – including my practice of law – completely changed and, consequently, my role in my firm and practice group completely changed. At 32 years old, my own illness and the illness of a parent had never been a concern to me; there was no plan or strategy for my personal or professional life should either of the two happen – and then they both did.

My firm was extremely compassionate and supportive of my situation. They allowed me whatever time I needed to treat my own cancer and then were very generous about allowing me to work remotely while I spent time with my stepmom. My boss and I had many honest conversations about the time I had available to complete large assignments or whether I’d have the energy, for example, to handle an oral argument. I can only encourage other employers and law firms to do the same should they find themselves facing a similar situation with a fellow attorney. Knowing that your law firm has your back and is concerned for your own wellbeing is a great relief at a time when someone is dealing with the additional stress that comes with handling an illness.

For anyone who is or may find themselves dealing with an illness in some

way, the best advice I can give you is to be honest with yourself and your firm about your situation. Try to do an honest assessment of what you can and cannot do – whether it be the time you have, the energy and physical ability you have, or what your schedule will allow. While it may be uncomfortable or even downright unpleasant, it is only fair to allow your firm some insight into what will ultimately affect your time and ability to work. There is no need to disclose specifics, but allow your firm the opportunity to both understand and to find a solution to any time you may miss.

More importantly, be kind to yourself. Allow yourself the time to heal physically, mentally, and emotionally. Do not beat yourself up if you do not immediately feel “back to normal” or if you can’t tackle a full work week – this will only set you back.

Most importantly, and no matter what, keep truckin’. **B**



Sara Sandler is a Junior Partner at Walton Lantaff Schroeder & Carson, practicing in appellate law and insurance coverage. She served as the 2017-18 BCBA YLS President.

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27 South Florida Legal Mentoring Picnic

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