2024 JANUARY EDITION

MIAMI-DADE BAR BULLETIN

JANUARY 2024 EDITION

President's Message

Can Law Firms Compete with Trendy Employee-Retention Tactics?

One of my goals as President this year was to focus on effective ways we as lawyers could improve our mental health and wellness. Time and time again I find myself having the same conversations with my colleagues as to how our professional lives and caseloads have significantly changed since the pandemic and Florida's March 2023 tort reform. As typical type- A personalities, many of us grin and bear it hoping things will get better. Unfortunately, for many lawyers, that has not been the case. That is why law firms are continuously seeking innovative ways to attract and retain top talent. This includes finding ways to adapt and consider unconventional employee retention tactics. The feasibility and implications of implementing trendy strategies such as the four-day workweek and restricting email communication after certain hours have been called into question by many in the profession. Which begs the question are we lawyers opposed to these trendy employee-retention tactics because they are not conducive to the demands of our profession or because we are simply afraid of change? In this article we will take a look at some of the trendy employee-retention tactics that may work in a law firm setting if implemented thoughtfully and intentionally.

Four Day Workweek

The four-hour workweek, popularized by Timothy Ferriss, is a radical departure from traditional work hours. In response, businesses began discussing a four-day workweek. While less extreme in comparison, leaders in law firms are left wondering if it is realistic to embrace this concept while maintaining high service standards and commitment to clients.

In practice, implementing a four-day workweek within a law firm may present significant challenges. Lawyers often find themselves juggling multiple cases with tight deadlines. Reducing the workweek to four days may compromise the quality of legal work, negatively impacting clients and the firm's reputation.

However, in today's dynamic work environment, it is essential to reassess this convention. A UK four-day workweek trial involving 2,900 employees across 61 companies showed improved job satisfaction, work-life balance, and reduced stress. Attorneys who often find themselves navigating intense workloads, complex cases, and high-stress levels, which can lead to burnout, could significantly benefit from a less conventional workweek. By redistributing their work hours into a condensed schedule, attorneys could become more focused and productive, potentially enhancing the quality of their work.

Additionally, with technological advances and remote work capabilities, many legal tasks can be completed efficiently outside the traditional office setting.

We plan to make it the best bar year ever – join us.

The Miami Dade Bar: You Belong.

Suzette L. Russomanno
MDB President

By implementing a four-day workweek while maintaining stringent client service standards, law firms could create an attractive and sustainable work environment that promotes employee retention and satisfaction.

Restricted Email After Certain Hours

In 2017, France passed the "right to disconnect" law granting employees the legal right to ignore emails outside of working hours. Spain, Germany, Italy, Ireland and the Philippines have established similar statutes. The US government has yet to tackle the issue but some employers, especially those with international offices, have started considering implementing limited email communications during specific times of day.

While this approach can help maintain work-life boundaries and reduce employee burnout, its effectiveness in a law firm context depends on various factors. Attorneys frequently work on time-sensitive matters, and clients may require urgent legal assistance at any hour. Restricting email communication may hinder responsiveness and impact client relationships.

The key in the legal setting lies in careful planning and collaboration. Firms may need to establish a system for addressing emergencies and ensure seamless client communication outside regular working hours.

Flexibility and Remote Work

Embracing flexible work arrangements and remote work options is a trend that has gained prominence across many industries.

The legal profession is no exception, as the COVID-19 pandemic accelerated the adoption of remote work practices. However, many law firms were the first to head back to the office and in fact have garnered media attention for their stringent policies.

There are certainly potential challenges associated with remote work including maintaining data security, ensuring team cohesion, measuring attorney productivity and mentoring first year attorneys. There is also a significant upside especially for firms which have committed to supporting parents. Remote work and flexible hours can have a positive impact on the career
lifespan of attorneys with young children or aging family members.

The legal profession, steeped in tradition and defined by its rigorous demands, is not immune to the allure of contemporary employee retention tactics. While concepts like the four-hour workweek and restricted email communication after certain hours may seem appealing, their feasibility within a law firm setting depends on careful planning, adaptability, and a commitment to maintaining client service standards.

As the legal landscape evolves, law firms should assess the potential benefits and challenges of implementing these tactics, striving for a balance between employee satisfaction and the firm's operational needs. Ultimately, the successful integration of retention strategies within law firms hinges on a thorough understanding of the unique demands of the profession and a commitment to adapting to the changing needs of attorneys in the 21st century.

Suzette L. Russomanno is a partner at HM&B's Miami office. She focuses her practice on commercial litigation, complex tort litigation, construction defect litigation, and medical malpractice defense.

Russomanno is a trial attorney who defends companies against claims involving contractual disputes, catastrophic personal injuries involving a wide variety of negligence claims, and wrongful death claims. She has also litigated medical malpractice matters for hospitals, doctors, and other healthcare providers. Mrs. Russomanno has successfully tried cases to verdict, including obtaining favorable verdicts in favor of a Fortune 500 corporate client.

Suzette L. Russomanno
MDB President

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Attorneys At Law

MDB YLS Presidential Newsletter In The Bulletin

Beau Blumberg, Esq.

As we begin the New Year, the MDB Young Lawyers Section ("MDB YLS") wants to extend our deepest and most heartfelt thanks to everyone who supported the MDB YLS last year. From selling out Miami Nights, to our lively Happy Hours, intellectual CLEs, intimate Coffees with the Court, Service Projects, and our 2nd Annual Breakfast with the Judiciary, we could not have done it without your support.

Our **Miami Nights** reception will take place on **February 22, 2024**, starting at **5:30 pm** at the **Coral Gables Museum**. This is the MDB YLS single largest event, and we expect over 400 lawyers and judges to be in attendance. Sponsorships are available and to purchase a ticket please click here: Miami Nights Tickets.

Also, we are excited to announce that we are collaborating with MDFAWL on the annual **Lunch with the Leadership of the Florida Bar**. This event will take place on **February 8, 2024**, at **Trulucks** on Brickell starting at **11:30 am**. Tickets and sponsorships are now available. Please click Here.

Please save the Date: **International Women's Day CLE Panel** will take place on **March 6, 2024**, at **Reed Smith** starting at **11:30 am.**

MDB YLS Presidential Newsletter In The Bulletin

Beau Blumberg, Esq.

Finally, I would like to thank the current MDB YLS Officers and Directors who have made all of the events possible: **Lauren M. Allen**, President-Elect; **Jessica Gopiao**, Treasurer; **Erin Weinstock**, Secretary; **Tiffany-Ashley Disney**, Immediate Past President; **Phoenix Barker**, Executive Committee Member, **Veronica Lopez-Calleja**, Executive Committee Member, and Directors: **Arda Barlas**, **Jake Bland**, **Megan Gonzalez**, **Kayla Hernandez**, **Jae Lynn Huckaba**, **Amber Kornreich**, **Spencer Mayer**, **Daniel Robinson**, **Audrey-Jade Salbo**, **Ashley Saul**, **Oliver Silva**, and **Tyler Walters.**

If you are a lawyer under the age of 36 in Miami wanting to get involved with the MDB YLS, please email YLS@Miamidadebar.org.

Robert (Beau) Blumberg was born and raised in Miami, Florida. He is a Partner with Deutsch, Blumberg & Caballero P.A., where he practices personal injury, medical malpractice, and product liability law. Mr. Blumberg is admitted to practice in Florida and before the United States District Court for the Southern and Middle Districts of Florida.

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MDB YLS President
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Beau B.

NAVIGATING THE CORPORATE TRANSPARENCY ACT AND BENEFICIAL OWNERSHIP REPORTING REQUIREMENTS

Ricardo A. Arce, Esq., LL.M, Co-Managing Partner at Zumpano Castro, PLLC

The Corporate Transparency Act ("CTA") was enacted on January 1, 2021, as part of the Anti-Money Laundering Act of 2020 in the National Defense Authorization Act for Fiscal Year 2021. On September 30, 2022, FinCEN issued a final rule (87 Fed. Reg. 59,498 (Sept. 30, 2022)) (the "Final Rule") implementing the CTA's Beneficial ownership information ("BOI") reporting requirements which take effect on **January 1, 2024** (the "Effective Date"). The principal mandate of the CTA is to require certain business entities to information about the reporting company, any company applicants, and its beneficial owners.

THE INFORMATION THAT MUST BE REPORTED

Report certain beneficial ownership information ("BOI") to the US Department of the Treasury's Financial Crimes Enforcement Network ("FinCEN") to promptly report any subsequent change in BOI, and disclose information about the "reporting company" and "applicant" who created such entity or registered it to do business in the US.

The term "beneficial owner" means, with respect to a reporting company, any individual who, directly or indirectly, either exercises substantial control over such reporting company or owns or controls at least 25 percent of the ownership interests of such reporting company.

The term "applicant" means any individual who--files an application to form a reporting company; or registers or files an application to register a foreign reporting company to do business in the US.

WHEN THE REPORT MUST BE FILED

Reporting Entity	From date of existence or registration
Any domestic reporting company created on or after January 1, 2024, and before January 1, 2025	90 calendar days
Any domestic reporting company created on or after January 1, 2025	30 calendar days
Any entity that becomes a foreign reporting company on or after January 1, 2024, and before January 1, 2025	90 calendar days
Any entity that becomes a foreign reporting company on or after January 1, 2025	30 calendar days
Any domestic reporting company created before January 1, 2024 and any entity that became a foreign reporting company before January 1, 2024	no later than January 1, 2025

PENALTIES FOR VIOLATION; LIMITED SAFE HARBOR

Among other penalties, penalties for willfully providing false or fraudulent information can be up to $10,000 and imprisonment for not more than 2 years, or both.

The CTA provides a penalties safe harbor if a reporting company that has reason to believe that a submitted BOI report contains inaccurate information files a corrected report within 30 days after becoming aware or having reason to know of the inaccuracy.

Rick Arce *is a seasoned attorney specializing in complex commercial litigation and business disputes. As Co-Managing Partner at Zumpano Castro, he is recognized for his strong advocacy, meticulous attention to detail, and unwavering client dedication. With expertise in various industries, including technology, healthcare, finance, and sports, Rick handles cases involving breach of contract, fraud, and other business-related torts in state and federal courts. He also has a track record of success in multi-jurisdictional disputes and appellate proceedings.*

Rick's practice extends to shareholder actions, business dissolutions, intellectual property protection, and corporate transactions. Holding an advanced law degree in taxation, he is adept at addressing domestic and international tax issues, representing clients before the IRS, and providing counsel on mergers, acquisitions, and corporate governance.

Beyond his legal career, Rick values family life, serving as a devoted husband and proud father. An avid surfer, he enjoys exploring global surfing destinations. Committed to community service, Rick is a Board member of Big Brothers Big Sisters of Miami, actively supporting mentoring relationships for children and contributing to various charitable causes.

ZUMPANO CASTRO

ATTORNEYS AT LAW

AI for Lawyers: A Roadmap to Using AI in Your Law Firm (Part 2)

Melissa Rogozinski, Chief Executive Officer, RPC Strategies, LLC

The use and integration of technology into the practice of law is among the most exciting and controversial subjects being addressed in law firms, courtrooms, and law schools everywhere. The reality of AI is causing many legal professionals to wonder whether they may be replaced by the ever-evolving technology.

At a September panel discussion sponsored by the Miami Dade Bar Association Law and Technology Committee, the experts unanimously concluded that AI will not replace lawyers, but lawyers who use AI effectively will replace lawyers who don't. Panelists included Stephanie Wilkins, Editor-in-Chief of Legaltech News, Steve Salkin, Editor-in-Chief of Law Journal Newsletters, and Ralph Losey, Esq. of Losey Law, PLLC.

Artificial intelligence is — and will continue to be — an extraordinarily powerful tool with the potential to provide great benefits to society and one that also poses a serious danger if appropriate guardrails are not constructed while the technology is still young. Importantly, the creators and most enthusiastic promoters of AI all agree that regulation is needed to ensure that AI does not exceed boundaries that threaten national security, the integrity of voting infrastructure, or the trust of the public in the veracity and reliability of the information they receive.

While the U.S. government is progressing in its development of a regulatory framework, the EU seems far ahead in the process of instituting an enforceable set of AI regulations. The EU AI Act may be the first comprehensive set of regulations to limit the use of AI systems and mandate disclosure of content as AI-generated. The regulatory scheme is yet to be formally enacted but it imposes higher obligations on both providers and users as the level of risk increases. The plan bans harmful AI practices such as 'Real-time' remote biometric identification systems in publicly accessible spaces for law enforcement purposes, except in a limited number of cases.

Concerns exist that the EU's regulatory approach may complicate efforts to establish commonly shared regulatory protocol because the EU did not consult extensively with all AI industry leaders in drafting its rules.

Key Steps for Law Firms

The value of AI as a productivity engine is unquestionable. AI can complete dozens of hours of administrative work accurately and efficiently in minutes, freeing up attorneys to apply their expertise to more valuable functions such as helping clients, giving better advice, and honing their skills — all the things that lawyers went to law school to do.

The technology has already demonstrated a remarkable capacity for producing comprehensive drafts of legal memoranda and research-based documents that assist attorneys in writing their own final versions.

However, an AI is not now and may never be reliable enough to draft a document appropriate for submission to a court or a client without an attorney thoroughly checking every fact and legal citation. AI is merely a tool that can reduce an attorney's research and writing time, but it is not a substitute for years of legal practice and human experience.

AI for Lawyers: A Roadmap to Using AI in Your Law Firm (Part 2)

Melissa Rogozinski, Chief Executive Officer, RPC Strategies, LLC

Data privacy and cybersecurity

To ensure a firm's leaders and their entire staff of associates and administrators observe best practices when using AI, law firms should conduct educational programs on AI.

Every firm should produce and distribute an AI handbook addressing the firm's policy on AI procedures, including strong instructional guidelines. In addition to not relying solely on an AI-drafted filing or memo as mentioned earlier, at the top of that list is that no confidential information or client identification data should ever be entered into a ChatGPT or generative AI program.

In firms with 10 lawyers or more, there should be an individual on board who is a tech-savvy specialist to oversee the use of AI and to help educate new and existing associates and support staff.

Ralph Losey, a senior partner at Losey PLLC and a leading expert, lecturer, and author on legal tech told the Miami Dade Bar Association conference attendees that, "AI is like any advanced tool, it takes study and it takes training."

Experts who participated in the Miami Dade Bar Association panel recommended that any AI tool should be viewed like email: "You wouldn't put anything into an email that would jeopardize the attorney-client privilege. It's the same thing with AI. Once you put client data or anything confidential into ChatGPT, it's going to be out there for anyone to use."

Vetting AI providers

Law firms need to be thorough in their consideration of which AI programs to adopt. AI vendors often exaggerate the potential benefit of their product or describe the program's security features as being more robust than they truly are.

Serious AI product vendors should be willing and able to answer any question you have about their product and AI in general. Consider what your firm's needs are and what pain points the product will serve to remedy. And inquire about the specific plan the vendor has for rolling out the product to the firm's entire staff.

The AI service provider your firm selects should also be prepared to instruct the firm's users about how to construct the most accurate and effective prompts for them and their tasks. Good prompt engineering is a valuable skill that provides the AI program with a more refined, detailed, and specific request that will provide the most useful and helpful results.

Keep in mind that there are new applications being released regularly, new tools with new features. Investigate the market's entire offering before committing to a particular AI program. There may be a product designed to meet your needs more completely than the one you first encounter. Check out TheresAnAIForThat or TheoremLegal for more information on available AI tools.

Melissa Rogozinski, Chief Executive Officer, RPC Strategies, LLC

However, there is no reason to be afraid. Whether they realize it or not, lawyers and support staff have been using some form of AI for years:

- That billing system that somehow magically estimates the number of billable hours a certain matter will take or that the attorney will end up billing for the year.
- A Google search.
- Even texting (how do you think the phone knows that you wanted to type your partner's name?).

That's all AI.

The panelists at the Miami Dade webinar suggested something that can ease the fear: Play with it. Go to ChatGPT, Bard, or any other generative AI tool and ask it what you should make for dinner. Seriously. Give it the ingredients you have on hand and ask it to come up with recipes that you can make. One member even used it to generate a name for a new gin cocktail containing a specified list of mixers. Ask it to write your biography (remember Rule #1 and don't input any personal information that's not already on your LinkedIn profile). Anything non-work related. Once you get comfortable using it in that way, then think of ways you can use it at work. Start slow, but start. Then maybe you'll see that AI isn't some monster hiding under your desk.

AI in the Courts

With AI challenging so many established norms, questions about AI's legal limits, its use of others' creative work to "learn," and whether intellectual property on the internet is protected from AI's mining activities are all being litigated in courts throughout the U.S.

Sara Silverman sued OpenAI (the creator of ChatGPT) alleging that the program's use of her recorded material to "teach" ChatGPT was an unauthorized use of her copyrighted work. See, Silverman v. OpenAI Inc, U.S. District Court for the Northern District of California, No. 3:23-cv-03416.

In June 2023, Mark Walters, a radio personality and vocal proponent of gun rights, sued the owner of ChatGPT for defamation because the program created an entirely false and allegedly libelous biography of Walters including a list of illegal conduct in which it said he was involved. It was an AI "hallucination." See, Walters v. OpenAI, L.L.C., 1:23-cv-03122, (N.D. Ga.).

And a class action lawsuit was filed against OpenAI and Microsoft in California alleging that the program operates by stealing private data from hundreds of millions of people without their consent. See, P.M. v. Open AI, L.L.C., U.S. District Court for the Northern District of California, No. 3:23-cv-03199.

AI is testing the limits of current law and inviting the development of new legal theories that will undoubtedly reshape the way view information.

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Melissa Rogozinski, Chief Executive Officer, RPC Strategies, LLC

The main takeaways from the Miami Dade Bar Association conference and for our readers include a wake-up call that AI is a transformational development that will impact every legal practice. Lawyers who use AI well will have a competitive edge over those who fail to integrate the technology into their daily practice.

Firms need to ensure that the AI they take onboard is controlled and operated in line with clear policies and guidelines to safeguard their clients' confidential information and preserve the attorney-client privilege. Vetting of AI product vendors should be sharply focused on the firm's needs, the product's actual capacity for productivity and cybersecurity, and the system's ease of use.

AI is here to stay. Get to know it, work with it informally, and become familiar with how it works and what use you may make of it. Your competition is certainly going to.

RPC Strategies, LLC

Law Firm and Legal Tech Marketing

MELISSA R. ROGOZINSKI

Marketing Dynamo | Pied Piper of Biz Dev | Lead Generation Guru

Since 2004, colleagues and clients have described Melissa "Rogo" Rogozinski as a legal technology pioneer, marketing dynamo, business development expert, lead generation guru, and education and training innovator. She is a former litigation paralegal, legal technology sales executive, guest speaker with numerous paralegal schools and bar associations, CLE presenter and trainer, serial entrepreneur, 2015 Alabama Launchpad Small Business Grant Competition Semi-Finalist, 2016 ACEDS eDiscovery Person of the Year Nominee and is published in LegalTech News and Marketing the Law Firm.

Navigating Social Media and Marketing Tactics: Decoding the Latest FTC Endorsement Guides

Gabrielle Dubilier & Jessica Neer McDonald, Esq. of Neer McD

As key counseling and practice tips continue to evolve in response to the dynamic landscape of social media and emerging marketing strategies, the Federal Trade Commission (FTC)'s recent Endorsement Guides updates should not be overlooked. These Guides offer valuable insight into endorsements, testimonials, and customer reviews, aiming to prevent allegations of unfair or deceptive practices under the FTC Act.

Since the release of these updated Guides, the once standard material connection disclosure of "ad" or "sponsored" may no longer be sufficient in all circumstances. For example, the FTC recently sent warning letters where an abbreviation or a reference to a generic website or a hashtag would not be enough. Indeed, the FTC stated that consumers viewing these posts need to understand not just that the post is sponsored, but by whom it was sponsored.

Additional highlights of the updated Guides include the following:

- **Endorsements.** The definition of "endorsements" now includes fake positive reviews, tags on social media posts, and statements by virtual influencers.
- **Clear and Conspicuous.** The addition of the definition of "clear and conspicuous." This means "a disclosure is difficult to miss (i.e., easily noticeable) and easily understandable by ordinary consumers." The disclosure should be in the same format as the endorsement (i.e., visual endorsement needs a visual disclosure). Disclosures, whether heard or read, should be delivered in a way that is easily noticed and understood by the ordinary consumer.
- **Liability of Endorsers and Intermediaries.** Advertisers, endorsers, and intermediaries may all share the liability for deceptive endorsements. "Advertising agencies, public relations firms, review brokers, reputation management companies, and other similar intermediaries may be liable for their roles in creating or disseminating endorsements containing representations that they know or should know are deceptive."
- **Images with Endorsements.** An endorsement with an "image or likeness of a person other than the actual endorser is deceptive if it misrepresents a material attribute of the endorser." The FTC gives an example of a stock image of someone's clear skin coupled with an endorsement stating the product improved their acne.
- **Incentivized Reviews.** If an advertiser incentivizes a consumer to rate or review their product, the advertiser must communicate that they are free to express negative opinions or ratings without facing any repercussions. If the consumer leaves a rating or review, they must disclose that this is an incentivized review.
- **Presentation of Reviews.** Advertisers should not procure, suppress, boost, organize, publish, upvote, downvote, report, or edit consumer's reviews of their products or services in a way that distorts or misrepresents what the consumer thinks of their product. For example, manufacturers cannot attempt to coerce consumers to delete their reviews by threatening "baseless lawsuits (such as actions for defamation that challenge truthful speech or matters of opinion), or with lawsuits it actually does not intend to file."

Proactively staying on top of these updates is important to provide current guidance in navigating the digital advertising landscape.

Neer McD is a Miami-based Trademark and Copyright law firm. Led by attorney Jessica Neer McDonald, Neer McD works with creatives and entrepreneurs to protect and defend their intellectual property.

Gabrielle Dubilier is a legal intern at Neer McD PLLC and third-year student at the University of Miami School of Law. Born in Lexington, Kentucky, she has a keen interest in intellectual property that stems from her background in advertising and design. Combining her legal knowledge and creative background, she aims to be an advocate for the rights of artists, designers, and innovators.

Jessica Neer McDonald, Esq. is a Trademark and Copyright attorney and founder of the IP law firm Neer McD PLLC. Jessica assists clients and their attorneys with global trademark portfolios, IP licensing, domain names, advertising counseling, and related transactions. Jessica also educates on IP issues in emerging technology through Blockish IP, a web3 and beyond IP education resource.

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Recent Amendments to Rule 702 Could Impact Expert Testimony Admissibility

Adam Rabinowitz, Kaufman Rossin

Federal Rules of Evidence 702 governs the admissibility of expert evidence. It's intended to safeguard the expert testimony presented to the jury. The first amendments to this rule in more than two decades go into effect December 1, 2023, and could affect how courts will admit certain expert testimony.

Prior to the recent changes, Rule 702 was last amended in 2000 in response to Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993), and the other cases applying Daubert. This amendment addressed the requirements that expert testimony be admissible if it is: based on sufficient facts or data (702(b)), reliable principles and methods (702(c)) and relevant to the facts of the case (702(d)). The party seeking to admit expert testimony has the burden of establishing that these admissibility requirements within Rule 702 are met by a preponderance of the evidence ("more likely than not").

On April 24, 2023, the Supreme Court of the United States approved new amendments to Rule 702, intended to clarify two main points: The first is to make clear that the proponent bears the burden of laying the proper foundation for its admissibility by a preponderance of the evidence. The second is to clarify that the expert's opinions should demonstrate a reliable application of principles or methodology to the facts of the case.

The Amended Rule 702 Reads as Follows
Rule 702: Testimony by Expert Witnesses

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise, if *the proponent demonstrates to the court that it is more likely than not that:*

(a) The expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;

(b) The testimony is based on sufficient facts or data;

(c) The testimony is the product of reliable principles and methods; and

(d) The *expert's opinion reflects a reliable application of* the principles and methods to the facts of the case.

Lack of Uniformity in Application of Rule 702

As discussed below, the genesis of these amendments mainly relates to a lack of uniformity among the courts in the application of Rule 702. A 2021 study by the Lawyers for Civil Justice researched 1,059 federal opinions in 2020 that addressed expert admissibility under Rule 702. Key findings from this study included that:

- 65% of the cases did not mention the preponderance standard.
- 61% of the federal districts have courts that are split on whether to apply the preponderance standard.
- 13% of the cases, courts used language indicating that there was a presumption of admissibility among expert testimony.

These results indicated that Rule 702 is not applied the same way throughout the country or even within the same district. This is primarily because of the inconsistent application of the preponderance standard and that some courts have a "liberal policy favoring admissibility."

The study ultimately concluded that "the need for an amendment clarifying that the court must find Rule 702's admissibility requirements to be established by a preponderance of the evidence prior to admitting expert evidence."

The language approved by the Supreme Court this April was modified from the original language of the proposed amendments approved by the Advisory Committee on Evidence Rules, which initially included the phrase "preponderance of the evidence." However, as shown above, that was changed to "more likely than not."

Impact of Rule 702 Amendments

The amendments clarify the idea that Rule 702 requires that proponents establish by a preponderance of the evidence that the expert's opinion is reliable and relevant, not necessarily correct. As stated in the Committee Notes on Rules – 2000 Amendment, experts sometimes reach different conclusions based on competing versions of the facts, and the court can find that both are admissible, leaving the jury with the ultimate task of weigh the evidence.

The amendments simply clarify the existing Rule 702 and aim to address inconsistent applications of the rule with the intention of promoting uniformity throughout the courts nationwide. Nevertheless, counsel may see judges conducting more comprehensive considerations, as opposed to favoring admissibility when considering whether to admit expert testimony to the jury. Given this potential shift, counsel should be aware of the amended Rule 702 and the rationale for the amendments. They should also communicate these amendments to their experts and confirm that they are prepared to address each admissibility requirement prior to issuing their expert opinions.

This article was originally published in the Attorney at Law magazine https://attorneyatlawmagazine.com/legal/legal-trends/recent-amendments-to-rule-702-could-impact-expert-testimony-admissibility

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Adam Rabinowitz

Adam Rabinowitz, CPA/CFF, CVA, CFE, is a certified public accountant, specializing in financial forensics, with more than 17 years of experience providing expert witness and litigation consulting services relating to economic damages, business valuation, and fraud investigations. He leads the forensic, advisory, and valuation services practice at Kaufman Rossin. He assists counsel and triers of fact with complex economic damage and valuation issues, including lost profits, diminished and lost business value, disgorgement of profits, and other damage-related remedies. He has served as an expert witness in federal court, state court, and arbitration matters and is an American Arbitration Association panel member.

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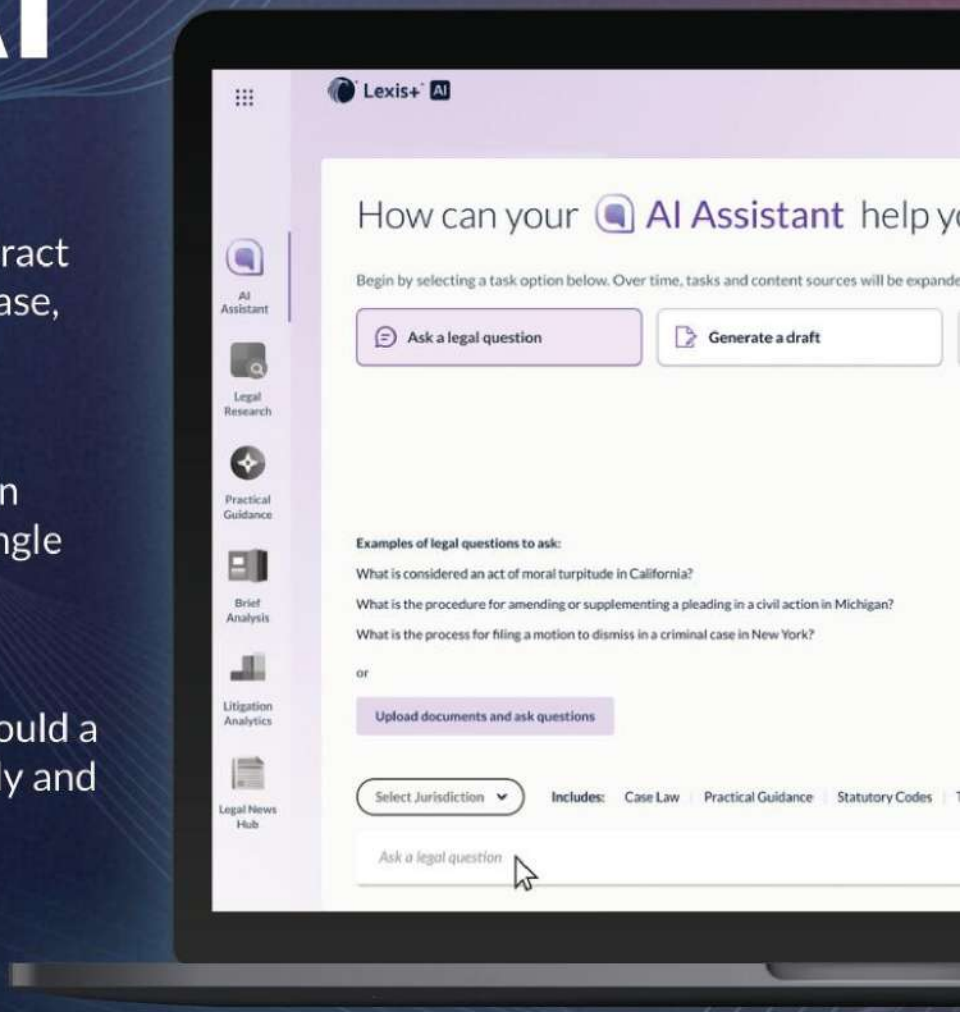

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Legal Leadership Empowered: A Guide to Transforming Your Practice and Powerfully Impacting Your Community

Edward Gelb, ALM Aurora Legal Consulting and Marketing

Attorneys are frequently viewed as advisors, mentors, psychologists, educators, advocates, and crisis managers, in addition to legal assistance.

How can an attorney build significant influence as a community leader?

Here are some inspiring ideas:

Continuous Learning:

- Stay updated on legal changes through seminars and workshops.
- Participate in appropriate professional development opportunities to demonstrate a commitment to ongoing improvement.

Networking:

- Build strong ties with legal professionals through local events.
- Attend bar association meetings and conferences.

Community Involvement:

- Engage in community service and pro bono work.
- Join local organizations to expand your network.

Thought Leadership:

- Speak at conferences to establish yourself as a thought leader.
- Create blogs, articles, social media posts, white papers, and special reports for your clients and potential clients.

Client Service Excellence:

- Provide outstanding service to turn satisfied clients into effective advocates through referrals and testimonials.

Ethical Conduct:

Integrity and Transparency:

- Maintain the highest standards of integrity and transparency.
- Be honest with clients, colleagues, and the court, fostering trust and credibility.

Client-Centric Ethical Practice:

- Prioritize clients' best interests.
- Provide diligent representation, avoid conflicts, and ensure complete client understanding.
- Go above and beyond to protect rights, maintain confidentiality, and deliver professional legal services.

Media Presence:

- Contribute legal insights to local media for increased visibility.
- Utilize a professional online presence with a resource-oriented website.
- Build your brand through consistent social media posts
- Maintain and enhance your reputation with new, highly-rated reviews.

Collaboration:

- Work with professionals beyond the legal field to increase impact.

Earning a reputation as a legal leader requires relentless consistency, extensive legal knowledge, and active community participation. Distinguish yourself by learning the law's complexities, engaging with the community, and contributing meaningfully. Blend legal competence with genuine community engagement to earn recognition as a leader, showcasing dedication, clarity, and empathy.

Edward Gelb, ALM, is the CEO and President at Aurora Legal Consulting and Marketing, with a business consulting track record of over two decades. His strength lies in his expertise in online marketing, mainly focusing on SEO, brand development, and digital omnipresence.

He is an alum of the University of Vermont and earned a master's degree from Harvard University, a testament to his commitment to academic and professional excellence. Ed's passion is dedicated to elevating growth and profitability for attorneys and law firms while providing visionary leadership in the legal consulting arena.

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Certiorari update: Sixth DCA reminds us of the importance of specifically addressing irreparable harm when seeking a writ of certiorari.

Jeffrey J. Molinaro, B.C.S.

On September 15, 2023, in *CPPB, LLC v. Taurus Apopka City Center, LLC*, No. 6D23-2649 (Fla. 6th DCA Sept. 15, 2023), the Sixth District held that (1) a petition for writ of certiorari concerning orders denying the dissolution of a notice of lis pendens must establish that the petitioner suffered irreparable harm that cannot be remedied on direct appeal; (2) that such harm is not presumed; and (3) that generalized allegations of harm are insufficient. The Court reasoned that holding otherwise would create a backdoor avenue to automatic interlocutory appeal for a category of cases not specifically listed in Florida Rule of Appellate Procedure 9.130.

In order for a court to grant a petition for certiorari, a petitioner must establish: (i) a departure from the essential requirements of law; (ii) resulting in a material injury for the remainder of the case; (iii) that cannot be corrected on post-judgment appeal. Factors two and three are together referred to as establishing "irreparable harm." The Sixth District explained that because writ practice is an extraordinary remedy, appellate courts should analyze irreparable harm first to determine if jurisdiction exists before deciding whether the trial court's order departed from the essential requirements of law.

In this case, the Sixth District found that the Petitioner's petition did not present any argument on whether it would suffer irreparable harm that cannot be remedied on appeal. Instead, Petitioner cited to case law indicating that certiorari review is available to review orders denying a motion to dissolve a notice of lis pendens. The Court construed this citation as an argument that review is automatically available. The Court rejected such an approach holding that presuming review is automatically available in every case would create a new category of interlocutory appeals which are not provided for under Rule 9.130. The Court further held that a petitioner must not only argue irreparable harm but must do so in more than mere generalized terms. In other words, merely because certiorari *can* be used to review does not mean that in all instances review is *per se* available.

The case is a great reminder of the importance of establishing all the elements of certiorari in your petition and provides a helpful roadmap for those opposing certiorari when a petition merely presumes irreparable harm.

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ABOUT THE AUTHOR

Jeffrey Molinaro, B.C.S., serves as a partner and leads the appellate practice group at Fuerst Ittleman David & Joseph. With over a decade of legal expertise, he specializes in civil and commercial litigation, government agency cases, and anti-money laundering compliance. Molinaro, a Board-Certified Specialist in appellate practice, has a proven track record in both federal and state-level litigation.

In civil and commercial matters, Molinaro adeptly handles claims such as breach of contract and fraud, excelling in real estate disputes, probate litigation, and cases against federal agencies. In the realm of anti-money laundering, he provides compliance opinions, negotiates orders, and conducts regulatory research. Born in Staten Island, New York, and raised in South Florida, Molinaro graduated magna cum laude from Florida Atlantic University and earned his law degree with honors from Florida International University College of Law. Beyond his legal career, he actively contributes to alumni associations and has coached high school football since 2001.

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