2023 OCTOBER EDITION

MIAMI-DADE BAR BULLETIN

President's Message

Leading By Example: Miami-Dade Bar's Talking the Talk and Walking the Walk

It is hard to believe that it has been almost three months since I proudly stepped into my role as the newly appointed president of the Miami-Dade Bar. I am honored to be the first Cuban-American female to hold this esteemed position. This historic milestone is not only a personal achievement, but also a testament to the progress we are making toward a more diverse and inclusive legal profession. Significant work remains and the Miami-Dade Bar's talented board is up to the task. I am pleased to share with you what our board has accomplished in these last few months.

Upholding Professionalism

Maintaining the highest standards of professionalism is a cornerstone of our agenda. Ethical behavior, integrity, and respect are vital components in fostering trust among legal professionals and the public they serve. Emphasizing the importance of professionalism helps to enhance the reputation of the legal profession, while ensuring justice and fairness for all.

We are so grateful to have recently partnered with Chief Judge Nushin Sayfie and the Eleventh Judicial Circuit Committee on Professionalism in publishing a survey to help raise the level of professionalism across Miami-Dade County.

Thank you to all those who thoughtfully completed the survey and provided us feedback on how we continue to improve it. We look forward to sharing the results of that survey soon and taking a deeper look at how the way we interact with one another in and out of the courtroom may be affecting our mental health and well-being. This is an issue that I am passionate about and encourage our members to assist us in planning programs and creating content that makes a lasting impact on our professional community.

Protecting Access to Courts

As our Program Manager, Ben Weaver, so inspiringly narrated in a video montage about The Miami-Dade Bar's long-standing civic history, "the Miami-Dade Bar has the threads of action woven into the tapestry of our story." That is why when our organization learned the Supreme Court ordered a Judicial Consolidation Study in response to House Speaker Paul Renner's request for the court to consider whether consolidation of the state's existing judicial circuits was warranted, the Miami-Dade Bar took action.

The board recently voted to provide written comments to the Judicial Circuit Assessment Committee, led by the Honorable Jonathan Gerber of the Fourth District Court of Appeal, advising against the consolidation of the Eleventh Judicial Circuit with any other judicial circuit in the state.

Suzette L. Russomanno
MDB President

We plan to make it the best bar year ever – join us.
The Miami Dade Bar: You Belong.

The Miami-Dade Bar will also be hosting its first **General Membership Luncheon** on October 6, 2023 at 12:00 p.m. in the Hyatt Regency in Downtown Miami where Judge Gerber and Miami-Dade County Public Defender Carlos Martinez and Judicial Circuit Committee member will share with our membership the work the committee is performing in studying the proposed consolidation of the judicial circuits. We encourage you all to attend and have your voices heard on this very important issue. Click here to register.

Community Engagement and Outreach

Recognizing the essential role that the legal profession plays within the community, the Bar's initiatives include robust community engagement and outreach programs. Community Service Committee Chair Marlon Hill and Vice Chair Belinda Bacon have hit the ground running since our July board retreat and organized a Town Hall Meeting for our community on October 17, 2023 at 6:00 p.m. at the Westchester Regional Library. Thank you to Chief Judge Sayfie and Miami-Dade County Clerk of Court and Comptroller Juan Fernandez-Barquin for agreeing to present at the event and provide our community an update on the state of our courts and the legal system in Miami-Dade County.

The Miami-Dade Bar is committed to championing crucial initiatives in the areas of mental health, diversity, professionalism, and community engagement and outreach, recognizing the pressing needs of today's legal landscape. However, we cannot do it alone. Join us and make a difference for our community and our profession. I promise you will not regret it.

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

HM&B
HAMILTON, MILLER&BIRTHISEL
Attorneys At Law

MDB YLS Presidential Newsletter In The Bulletin

Beau Blumberg, Esq.

The YLS hit the ground running building off the success of past **MDB YLS Presidents Tiffany- Ashley Disney** and **Scott Merl** and we are excited for our upcoming Fall programming. Our programs this year include happy hours, service projects, and cocktail receptions. Our largest Fall event, **Breakfast with the Judiciary**, which is a judicial reception, is back again on November 9, 2023, from 8:30-10:30 am at Coffey Burlington. To register please click here. Over 25 judges have confirmed their attendance so far and we anticipate this will be a sold-out event. Sponsorships are available, please contact the YLS if you are interested in this opportunity to meet members of our Bench. The MDB YLS will also be presenting our inaugural Judicial Vanguard Awards at **Breakfast with the Judiciary** to **Judge Bronwyn Miller** and **Chief Judge Nushin Sayfie**.

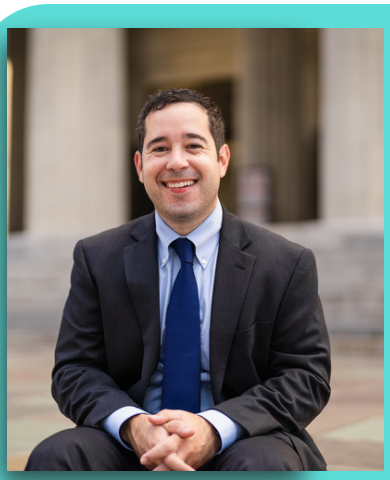
The MDB YLS is proud to announce that our second-annual **40 Under 40 Awards** will be presented at our largest signature event of the year, **Miami Nights**, which will take place on February 22, 2024, at the Coral Gables Museum starting at 5:30 pm. To nominate an attorney for the 40 Under 40 Awards, please fill out the **form here**. Nominations are due by December 31, 2023. Nominees must be MDB members in good standing and no individual can win two years in a row.

How can you support the YLS? By coming out to our events and mentoring young lawyers! We love seeing law students, young attorneys, and experienced attorneys at our all of our events. Our next event is our "**Oktoberfest Joint Networking Mixer**" with the Coral Gables Bar Association on October 11, 2023, from 5:30-7:30pm at Fritz & Franz Bierhaus in Coral Gables. Please click here to register. Furthermore, our next **Coffee with the Court with Judge Hersch** is on October 18, 2023, starting at noon at Lewis Brisbois. The link to register is here.

Additionally, the MDB YLS wants to thank the Miami-Dade Bar Board at Large Officers and Directors for empowering and supporting a diverse group of young attorneys that comprise the Young Lawyers Section. **Suzette L. Russomanno**, President (Past MDB YLS President); **Charise Morgan-Joseph**, President-elect; **Stuart Weissman**, Vice President (Past MDB YLS President); **Melissa Jordan**, Secretary; **Adam Finkel**, Treasurer - Thank you.

Lastly, 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; **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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The Road to Resolution.

Alejandra M. Diaz, Esq.

It is not surprising to say that most personal injury cases, legal disputes when one person suffers an injury as a result of the negligence or carelessness of another person or entity, are resolved through informal early settlement, prior to the claim being filed with the Court. Yet, when a case comes across my desk, there could be no early resolution, and it is up to me to advocate for the client and place the case in suit. As a litigator, I've had experience with all sorts of cases and defense attorneys.

In the past two months, I have resolved more cases than any other attorney at my firm, I've done this with one very simple tactic. It has helped me reach settlements to the benefit of my clients, kept these clients happy, and perform for my firm.

So, what is it? What is the first magical tactic that I use? I simply, pick up the phone.

This is the first and best step towards resolving any case.

Steve Jobs said it best: "[m]ost people never pick up the phone and call. Most people never ask, and that's what separates the people who do things from the people who just dream about them."

I don't dream about a favorable resolution for my cases, I take action. And action here does not always mean aggressive advocation. In fact, it usually never means that.

What is the second step towards the road to resolution?

Again, very simply, it is **how** you speak to opposing counsel on the phone.

I speak to opposing counsel like the human being he or she is and in a very professional manner. I advocate for my clients without ever offending the person I am speaking to, as one can be done without the other. I use facts and records to back me, I don't ever make statements that I cannot support, and this provides credibility to my client's case. It makes opposing counsel pay attention and you can be sure that the information you provide will be relayed to their client(s) for resolution of the case.

If you want to resolve a case, try it, pick up the phone and take action.

Attorney Alejandra *was born in a small town in Havana, Cuba. She was raised by a hard-working Cuban family who migrated to Florida when she was only 4 years old. It was her family who taught her the meaning of hard work and helping others.*

After graduating from Florida International University with Honors, Alejandra decided to pursue her passion for helping others and obtained her law degree at Nova Southeastern University. While in law school, Alejandra was president of the Tort Legal Society and the Intellectual Property Legal Society. She finished her law school education having graduated at the top of her class. Attorney Alejandra has worked at the largest insurance defense firm in Florida and spear-headed its Women's Initiative to help female attorneys obtain mentorship and experience. After

Summary Judgment Update: Third DCA holds the continuance of a summary judgment hearing does not extend the time to file responses under Fla. R. Civ. P. 1.510(c)(5).

Jeffrey J. Molinaro, B.C.S.,

The appellate courts continue to explore the bounds of Florida's "new" summary judgment standard. On August 9, 2023, in State Farm Mut. Automobile Ins. Co. v. Advanced X-Ray Analysis, Inc., No. 3D22-739 (Fla. 3d DCA August 9, 2023), Third District held that the continuance of a summary judgment hearing does not reset the time in which a nonmovant has to file its response and supporting factual position under Fla. R. Civ. P. 1.510(c)(5). Thus, the lower court did not abuse its discretion in striking additional evidence filed by the nonmovant between the continued hearing.

Below, the original summary judgment hearing was scheduled for October 21, 2021. During that hearing, the scheduled time ended before the parties could finish their arguments. As a result, the trial court continued the hearing. The continued hearing was scheduled for November 9, 2021. On October 28, 2021, State Farm, the nonmoving party, filed a new pleading attaching previously unfiled evidence, which it asserted was in response to Advanced's motion. At the November 9, 2021 hearing, the lower court struck this evidence as untimely under Rule 1.510(c)(5). State Farm appealed, arguing that the continuance of the originally scheduled hearing tolled the time for it to file a response because the trial court did not rule on the merits of Advanced's summary judgment motion prior to the continued hearing.

In rejecting this argument, the Third District noted that Rule 1.510(c)(5) provides that the nonmovant has twenty days "before the time fixed for the hearing," here on October 21, 2021, to file a response. The trial court's discretionary decision to continue the scheduled hearing does not automatically reset the clock for a nonmovant to file a response under 1.510. Put simply, "[a] party cannot evade the requirement to timely file based on a trial court's discretionary choice to continue a hearing and allow more time for argument." Moreover, the Third District found that even if the clock had been reset, State Farm's evidentiary submission would still have been untimely because it was filed twelve days before the November 9, 2021 continued hearing. Under either reading, State Farm's submission would be untimely.

About the author:

Jeffrey J. Molinaro, B.C.S., is board certified in appellate practice and chairs the appellate practice group at Fuerst Ittleman David & Joseph. Mr. Molinaro represents clients throughout Florida and the United States on various appellate matters. He can be reached at jmolinaro@fidjlaw.com or 305-350-5690.

Genuine Issue or Genuine Dispute – What's the Difference?

Peter Klock

In 2021, the Supreme Court of Florida amended the text of Rule 1.510 of the Florida Rules of Civil Procedure to bring it in line with Rule 56 of the Federal Rules of Civil Procedure, and to thereby provide Florida litigants and judges with "the full benefit of the large body of case law interpreting and applying federal rule 56." *In re Amends to Fla. R. of Civ. Pro 1.510*, 317 So. 3d 72 (Fla. 2021). Initially, the Court had determined to limit its amendments to revise one word: "The judgment sought must be rendered immediately if the pleadings and summary judgment evidence on file show that there is no genuine dispute as to any material fact and that the moving party is entitled to a judgment as a matter of law," and to add the following sentence at the end of Rule 1.510(c): "The summary judgment standard provided for in this rule shall be construed and applied in accordance with the federal summary judgment standard articulated in [*Celotex*]." *Id.* at 74. However, after receiving comments and hearing oral argument, the Court decided to instead re-write the rule and adopt the text of the federal summary judgment rule wholesale.

Under the old Florida rule, a movant faced a heavy burden of affirmatively showing that the respondent could not possibly prove its case. *Visingardi v. Tirone*, 193 So. 2d 601, 605 (Fla. 1966). The old rule required a movant to affirmatively identify "affidavits, answers to interrogatories, admissions, depositions, and other materials as would be admissible in evidence" sufficient to entirely negate the respondent's claim. *Id.;* Fla. R. Civ. P. 1.510(c). The new rule, by contrast, is "far from stringent" and can be "regularly discharged with ease." *In re Amends.*, 317 So. 3d at 77. A Florida movant's evidentiary burden is now akin to the directed verdict standard – "whether the evidence presents a sufficient disagreement to require submission to a jury." *Id.* at 75. In the same vein, if the moving party does not bear the burden of persuasion at trial, the movant can meet its burden even without setting forth evidence by pointing out that the nonmoving party lacks evidence necessary to prove an element of its claim. *Id.* And finally, the correct test for the existence of a genuine *dispute* of fact is simply whether "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id.* at 77 (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). Gone are the days of Florida jurisprudence when summary judgment could be defeated by *any* competent evidence. Now, "[w]hen opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment." *Id.* at 75–76 (quoting *Scott v. Harris*, 550 U.S. 372, 380 (2007)).

BastAmron Attorneys

Florida Trend 2023 Winner Best Companies to Work for in Florida

Peter practices in the area of complex business litigation, with an emphasis on commercial disputes and the prosecution of director, officer, and fiduciary liability claims. In his commercial disputes practice, Peter prides himself on being an advisor and a problem solver, as well as his ability to deftly avoid unnecessary litigation and obtain favorable results for his clients. In his director and officer liability practice, Peter represents trustees, receivers, and assignees in complex litigation against former fiduciaries of companies in a wide range of industries.

Pioneering Legal Evolution: AI Ethics, Quantum Logic, and Accessible Justice

Anthony Barreto, Esq.

In the dynamic realm of law and technology, a pivotal question prevails: How can Miami swiftly, efficiently, and affordably address legal challenges? This article, inquired to by Anthony Barreto, Esq., delves into AI ethics, quantum insights, legal economics, and more, illuminating the quest for accessible justice and transformative legal evolution.

Unveiling AI Ethics and the Quest for Efficient Justice

Financial Dynamics: AI ethics discussions often mask financial concerns. Lawyers' anxieties about AI's ethics stem from job security worries in an evolving landscape. Upholding Legal Authority: The AI resistance can be traced to a desire to maintain legal authority. Fear of AI efficiency overshadowing traditional roles fuels this resistance.

Quantum Logic in Legal Thought: An Innovative Lens

Binary Foundations of Legal Reasoning: Legal education drills binary thinking, mirroring digital 0's and 1's. Yet, the quantum realm's complexity resonates with legal issues, defying binary categorization. Quantum logic illuminates the subtleties within.

Beyond Binary Ethics: In the quantum universe of possibilities, legal analysis evolves from binary notions to a spectrum of ethical considerations. Quantum ethics adapts to the intricate tapestry of human values.

Quantum Blockchain Scenario: Imagine a blockchain-based asset dispute involving quantum computing and AI. Traditional binary analysis falls short.

A quantum perspective acknowledges the entangled nature of ownership, superposition of rights, uncertainties in contracts, and ethics.

This nuanced approach aligns with complex technological landscapes.

A Paradigm Shift: Questioning the Right Questions

As the legal landscape evolves, the focus shifts from what one knows to whether one can ask the right questions. This uniquely human ability to inquire, untangle complexities, and navigate nuances will stand out amid the technological surge. AI may generate solutions, but it's the human touch that frames the right problems.

Shifting Ownership through Observation

By engaging with this article, you transition into the role of owner and author, for the observer is the observed. Similar to the observer effect in quantum physics, where observing alters reality, your interaction transforms your relationship to the content. This connection underscores the interplay between perception, consciousness, and meaning creation.

Token Economics: Financing Human Legal Expertise in an AI Era

Amidst the growing influence of AI automation, not only in general but also within the legal profession, token economics steps in to reshape how humans acting as lawyers can get paid. As smart contracts become mass-adopted, token systems incentivize decentralized legal solutions. These tokens reward the creation and execution of smart contracts, fostering affordable, efficient resolutions while adapting to evolving complexities. In this evolving landscape, legal expertise and problem-solving retain their value, but compensation structures adapt to the decentralized and efficient nature of token economics necessitated by AI automation's rise.

Redefining the Legal Horizon

Justice access supersedes AI's existence, focusing on its impact. As quantum logic reshapes legal analysis and token economics redesigns finance, the profession evolves. The question isn't whether AI generates, but how it caters to legal needs. Miami's legal landscape pioneers an era of accessible, affordable solutions.

The fusion of AI ethics, quantum reasoning, and token economics centers on democratizing legal access. Just as quantum particles explore states, the legal landscape diversifies, and AI accelerates evolution toward a fairer, inclusive legal future for all Miamians.

President of The Board of Directors, Miami Recovery Project

Miami Dade Bar Association Law and Tech Subcommittee

Florida Bar Leadership Academy Class of XI, 2023-2024

Supplementary Proceedings: A Potential Avenue for Misuse and Undue Burden

Partner Eleanor Barnett and Summer Associate Erick Wilson, Armstrong Teasdale

Supplementary proceedings, which are found in Florida Statutes Section 56.29, are designed to be a vehicle for judgment creditors to satisfy their judgments against debtors by allowing creditors to seek interests or funds of the judgment debtor that may be held by others. While the statute provides for an efficient process by which creditors can learn the extent of a judgment debtor's holdings and can obtain a charging order where appropriate, in reality, the process can be lengthy and expensive for implied third parties who at the end of the proceedings have no recourse against the party who brought them into the proceedings. Florida Statute 56.28(8) addresses the ability of third parties who have been brought into supplementary proceedings to recover attorneys' fees and costs. Yet, the only party from whom the statute permits parties to recover is the debtor – the same party without the necessary funds to satisfy the underlying judgment at issue. A judgment creditor can subject a third party to costly proceedings, and if the implied third party ultimately prevails, it has no ability to recover legal expenses.

While the statue provides that a prevailing party may recover costs and fees, they can only be collected against the judgment debtor. The statute ignores the reality that the debtor does not have the funds to pay for those legal expenses and allows a judgment creditor to escape fee shifting when it caused the implied third party to incur attorneys' fees and costs in the first instance.

Consider a bank that has secured a judgment against a debtor. The bank, in pursuit of repayment, decides to bring in third parties to the supplementary proceeding, alleging pursuant to Fla. Stat § 56.29(3) that the third parties have assisted in delaying, hindering or defrauding the bank in its recovery efforts. Litigating those issues can be burdensome and costly for third parties, but if they prevail and the bank fails to prove any assistance in interfering with its ability to recover from the judgment debtor, the third parties have no mechanism in the supplementary proceedings statute to recover their attorneys' fees or costs from the bank. What makes the framework particularly frustrating is that supplementary proceedings are initiated because a judgment creditor cannot satisfy its judgment. It would follow, then, that the judgment debtor does not have the funds to reimburse the implied third parties for their legal expenses.

Under the traditional fee-shifting principle, whether statutory or contractual, the prevailing defendant typically recovers its legal fees from the party that initiated the lawsuit. This sensibly places the financial risk on the party initiating the lawsuit and prevents meritless claims. The supplementary proceedings statute deviates from this principle and reaches beyond financial implications. It challenges the core principles of fairness by on one hand providing no risk to a party bringing potentially baseless claims, while on the other hand disincentivizing third parties from vigorously defending themselves because of the potential of unrecoverable costs. The statute can only embolden resourceful judgment creditors to bring in multiple third parties to supplementary proceedings, knowing that there is no financial repercussion to them directly, even if they lose.

A reevaluation and potential amendment of Florida Statutes Section 56.28 to allow for a true fee-shifting would solve the problem. If a party initiates proceedings supplementary and brings in third parties, then the statute should mandate that if the third party prevails, they have a right to collect their costs and attorney's fees from the initiating party, not only the judgment debtor.

This would ensure that parties think twice before alleging claims against third parties without substantial merit and protect the rights and financial wellbeing of those who are brought into legal proceedings through no direct fault of their own.

In conclusion, while the intent behind the supplementary proceedings is to streamline the process for judgment creditors to recover on their judgment, it inadvertently creates a potential avenue for misuse and undue financial burden on innocent third parties.

Eleanor Barnett *is a partner and trial lawyer at Armstrong Teasdale in Miami. She focuses her practice on complex commercial and business litigation, real estate litigation, trust and probate litigation, and employment litigation.*

Erick Wilson *was a 2023 summer associate at Armstrong Teasdale and is currently a 3L at the University of Miami.*

The Holidays Are Upon Us. Please Be Careful!

Adam Finkel, Esq.

Holiday season is officially upon us, which means the return of end of the year happy hours, social club mixers, late family dinners, and frankly just more alcohol. For our collective safety, let's all be mindful, drink responsibly, and stay off the roads as much as possible. For lawyers, restaurant and bar owners, and those with knowledge of the dram shop laws in Florida, we know this is especially true in our state.

When we think about a bar's responsibility to the general public, we often assume that a bar cannot overserve their patrons, or else face consequences. That is, that the bar would be liable if they overserved a patron, who then drove home from the bar and injured someone. We'd think that the laws seek to holding bars responsible in this way, in order to incentivize bar owners to train their employees not to overserve patrons. Disturbingly, in Florida, this is *not* the case!

Instead, Florida's Dram Shop Act (Fla. Stat. § 768.125) details that a bar is not liable for damage or injury caused by one of their intoxicated patrons, unless the intoxicated person is a minor or the bar "knowingly serves a person habitually addicted to ... alcohol." For bar owners, this often means skating liability if they overserve an adult, if they did not previously know the patron. Often, in fact, in the face of litigation regarding harm done by an overserved patron, bar owners and their employees may bury their hands in the sand, plead ignorance, and deny knowing the overserved patron in order to avoid being held liable for the carnage caused by the bar's drunk and reckless patron.

Because of the difficulty in satisfying the requirements of Florida's Dram Shop Act, many attorneys shy away from representing those that are hurt by intoxicated persons that were overserved at a bar or restaurant.

Are dram shop cases difficult? Yes. To that point, too few bars are held responsible for reckless service practices, they continue overserving with impunity, and there are more drunk drivers on the road. This evermore true during the holidays, and so sadly, the best cautionary measure is to stay home as often as you can. But with that said, the bars can be held responsible and forced to answer for their actions and inactions.

For instance, in a dram shop action against a well-known Fort Lauderdale bar, Round-Up Country, The Haggard Law Firm sued the bar for overserving a patron, who then left the bar and crashed head-on into a young father. Faced with allegations of knowingly serving a habitual drunk, the bar's primary defense was that the bartenders did not know the drunk patron, and certainly did not know he was habitually addicted to alcohol. While The Haggard Law Firm argued that the patron was a regular at the bar, and that Round Up knew he was an alcoholic, the bar and their insurance carriers long rejected the premise. Survived by his wife and infant daughter, however, the bar eventually opted to tender its One Million Dollar policy limit days before mediation.

In the end, critical to securing the tender of the bar's available policy limits was The Haggard Law Firm's deposition of the bar's general manager, who all but admitted that his staff was trained to mix drinks, but inadequately trained regarding how to identify whether a patron was a habitual drunkard.

There is no doubt that the case would not have settled, if not for deliberate and careful deposition tactics. In fact, The Haggard Law Firm has a long history of obtaining the total insurance policy limits from bars in dram shop actions, despite their initial refusals to acknowledge liability. Bars can be held responsible, and families given some measure of justice, as long as skilled attorneys are at the helm in litigation.

While success in court brings a measure of solace to those injured, these cases also help to send a message to other bar owners. If bar owners recognize a risk to their wallet, they'll start training their staff, because the fact is, most bars and restaurants fail to adequately train their staff how to identify whether a patron is addicted to alcohol. As a result, more people may be overserved and drive away from bars. That it has become exceedingly difficult to hire staff, as seemingly everyone looking for a job wants to work from home, the danger linked to poorly trained staff has only increased. Today, desperate for staff – and more staff with the holidays approaching – bar and restaurant owners are more often placing inexperienced bartenders behind the bottle.

Above all else, please be even more careful over these next few months. That means not only being careful on the road, but being aware when at bars and restaurants. Take note of overserved patrons, but also to bartenders paying no mind, and more focused on tips than telling someone 'no' to another drink. And if someone is injured, they are not powerless against Florida's laws and these brazen bars. Skilled attorneys can obtain justice and show these bars that their reckless behavior will not be tolerated.

Adam Finkel *is an associate attorney with The Haggard Law Firm with extensive experience working with victims of crime as a former state prosecutor. Prior to joining The Haggard Law Firm, Adam was an associate attorney at Mase, Tinelli, Mebane & Briggs practicing in the areas of admiralty and maritime, personal injury, and general civil litigation matters. Before entering into private practice, Adam spent almost six years working for the Miami-Dade County State Attorney's Office. Mr. Finkel was a member of the Gang Unit and was asked to serve in the county's specialized Gun Violence Unit, as the lead attorney prosecuting hundreds of violent criminals. In order to investigate crime and prepare for trial, Mr. Finkel worked closely with local law enforcement, as well as Federal agencies such as the Federal Bureau of Investigation, Bureau of Alcohol, Tobacco, Firearms and Explosives, and the Department of Homeland Security. Though obtaining many guilty verdicts and prevailing at trial against some of the county's most heinous gang members, Finkel also worked within the community to help troubled youths enroll in college.*

Establishing Mentorship Programs for Women And Minorities

How mentoring can help retain women and other minorities in their respective professions

Natasha Cortes, Senior Partner at Grossman Roth Yaffa Cohen

Recent years have brought about many changes for women and other minorities in the workplace. However, they still face many challenges when it comes to moving up ranks in the offices and firms that employ them.

Why is that?

While there are many reasons, it often boils down to a lack of role models to look up to and learn from. It's extremely beneficial for women and minorities to see other minorities who have found success in their careers. One study looked at how mentorship programs impact the careers of minority groups and found that an overwhelming majority find mentoring to be extremely beneficial to their success.

By understanding how mentorship programs work and the benefits they bring to women and minorities, we can create effective programs that increase the retention rate of minority groups in the workplace.

Mentorship Programs as the Solution

These mentorship programs are especially important in professions such as law, where it's still not as common to see women as trailblazers who work their way up to partner status. While diversity has become a priority for corporate America, more needs to be done when it comes to establishing mentorship programs for women and minorities. Because minorities don't have the same opportunities right out of the gate, they don't tend to advance in their career as quickly as the majority does. Mentoring allows women and minorities to work alongside someone who will support their professional development and help them through challenges that come up as they climb the corporate ladder.

Mentorship for Women

The idea of mentorship for minorities in law isn't new. There are many existing programs in place that are designed to benefit young lawyers of color but there hasn't been much of an emphasis on helping young female attorneys move up in their firms. Looking at law as an example, the American Bar Association (ABA) addresses research that shows that women make up 45% of law firm associates and people of color make up only 22%. It's more significant when we see these numbers plummet at larger and more prestigious firms. This makes it more challenging for minority women especially, to achieve supervisory or partner status. If minority women want to get to that point in their careers, they're often left to search for more 'attainable' opportunities at smaller firms.

With a staggering 75% of female minority lawyers considering leaving or having already left the legal profession, according to a 2020 article from the ABA Journal, it's clear that minority women are not receiving the support they need and aren't being sufficiently recognized for their work. The same can be said for STEM occupations (science, technology, engineering, and mathematics), where studies discuss how careers in STEM are less-conducive to building a family than other industries and undergo stereotypes that affect women's performance in STEM. Women are also much more likely to leave a STEM job after 12 years of work (50%) than women working in other professions (20%).

One way that we can start reversing these negative trends is by providing minority women with mentorship programs that are designed to provide guidance and advice to those at a disadvantage in the workplace.

Benefits of Mentorship Programs

It's clear that mentoring offers women and minorities a chance to advance in their careers. This is due to a few advantages that these programs offer.

Overcoming Feelings of Isolation

White men still dominate many industries including, but not limited to fintech, engineering, insurance, and law. Minorities working in these fields often feel alone, unseen, and as if their opinions regarding important issues don't matter. With this overwhelming feeling across the board, minority groups struggle to assert dominance and express their ideas at work.

Mentorship allows women and minorities to connect with people who have been in their position and found success. This can create a sense of community and inclusion that would be hard to cultivate without a mentor-mentee relationship.

Reducing Anxiety

The pandemic brought about a new level of stress and anxiety for female and minority professionals who were already dealing with significant anxiety in the workplace. Mentorship programs offered support to the mentors and mentees who needed additional support.

While those being mentored gain many benefits, mentors have also expressed improved anxiety levels and job satisfaction.

Establishing Mentorship Programs for Women And Minorities

continued...

Creating Lasting Relationships

It's not uncommon to see mentoring relationships that extend far beyond the initial mentoring period. In fact, many mentorship programs have led to deep and meaningful relationships that last for years and carry on throughout both parties' careers.

It's in the mentor's best interest to cultivate a strong relationship with their mentee, as that relationship could be beneficial in the workplace. For example, if a successful lawyer mentors a law student, they'll have a strong professional connection if they need assistance with a case down the line.

Improving Diversity in the Workplace

Mentoring programs illustrate the value of diversity, even to partners and staff who have not yet embraced it. These programs can also broaden the company's sense of purpose and commitment to community relations by demonstrating compassion for those in less fortunate positions. Companies that encourage diversity often increase their bottom line, as they have valuable employees who have different perspectives. This is great when working with new clients who are also from minority groups because they have the ability to speak to these clients from the same level.

Creating Effective Mentorship Programs

Once a company or firm has decided to move forward with a mentorship program, the next step is content. An effective mentorship program should place a main focus on inclusion. There should be a defined plan in place that takes all parties into consideration.

In the legal field, for example, this would look like including younger legal staffers in client meetings, hearings, depositions, mediation, and strategy sessions. This should be followed by the time allotted to review and ask questions. This method of mentorship can be done in any field and it's often easier than most companies think to intertwine work and mentorship.

Focus on allowing women and minorities to join in and contribute to areas of work that could cause additional isolation is a great place to start. Providing extra work assignments is not the best way to go about a mentorship program, as it can lead to more isolation.

Mentorships Are the Future

Properly designed and executed mentoring programs offer great value to minorities and those who employ them. It's a step closer to equality in the workplace and will allow women and minorities a better chance at achieving or surpassing their goals. It will also help ensure that qualified minorities don't leave a career path they excel at and enjoy due to systemic issues.

Natasha Cortes is a senior partner who practices in the areas of wrongful death, medical malpractice, complex personal injury matters, and complex commercial litigation.

Natasha shares the firm's commitment to seeking justice for her clients. Since joining the firm in 1998, she has handled more than a hundred multi-million-dollar lawsuits throughout the state of Florida. Her cases have resulted in recovering over $150 million dollars for her clients and families in a wide variety of cases including birth-related brain injuries, spinal injuries and paralysis, delayed diagnosis of cancers, and wrongful death suits. Natasha has also achieved multiple eight-figure settlements for the firm's most catastrophically injured clients that have served to help ease their financial burdens and transform their lives for the better.

As the firm's only female Hispanic partner, Natasha also serves as a liaison to the various multi-cultural and minority communities in South Florida. She is one of the founding members of the Puerto Rican Bar Association of Florida.

Mediation Evangelism and Other Bubbe-Meises

Gary Birnberg, Esq., FCIArb

What is a bubbe-meise? It's a myth, a fairy tale, an urban legend. Translated from Yiddish, it is literally "a grandmother's fable." Yes, I may have misappropriated this term by nuance: Mediation evangelism surely exists. However, the use of the term is a reflection of a mentality that ignores the essential role of the law, lawyers and dispute resolution constructs in furthering the best interests of the client.

A couple parallel considerations are other oft-heard statements, such as "mediation is for divorces" and "I do not need mediation; I am an excellent negotiator."

It is true that mediation is an unassailably effective mode of dispute resolution in family disputes. I contend that it is so effective because, in the classic case, a neutral mediator is injected into a bilateral contest between heavily entrenched combatants who have lost sight of common objectives in favor of investing in winning the biggest share of the spoils possible. The mediator enters with an agenda to refocus from advantageous distribution of the spoils to the long game: a general detente to hone in on what likely is more important to the parties than extracting a pound of flesh from the other side: establishing a safe and healthy environment for children and creating the conditions by which separating spouses can survive, both financially and emotionally.

Commercial mediation is much the same. We lawyers have a tendency to become over invested in winning our vision of our clients' battles: pursuing maximum defense of our clients' rights, at the expense of the other party, rather than investigating what is the most commercially advantageous way for our clients to resolve difficult situations with suppliers, clients or business partners. We lawyers should be prepared to go to war for our clients, as a failure to recognize the contours and impact of the legal comparative rights and responsibilities involved in any conflict robs us of the vision of the elephant in the room: the alternative to a negotiated settlement. But chasing after the best such option (BATNA) or running from the worst such option (WATNA) is not the goal. The goal is to use these parameters as metrics to quantify the urgency of settlement and the limits of commercially acceptable resolutions.

Enter the mediator, who acts as a recalibrating agent, encouraging the parties to focus not on winning (in court, in arbitration), but on liberating themselves from the diversion of the economic resources required in battle (property, capital and labor) to focus the same on profitability and strategic commercial interests.

At this point, the promulgator of the bubbe-meise will state that the foregoing may be applicable in some situations but not all. Here, the skeptic has inverted the equation: The cases are rare in which attempts at consensual conflict resolution under the guidance of an experienced mediator will fail to resolve the conflict, reduce the scope of issues that need to be resolved at trial or in arbitration, or otherwise create a more productive environment for the continuity of business interests.

We must remember, as lawyers, that we can never guarantee the outcome of an adjudicative process. But we always have the opportunity to pursue consensual resolution to these costly, lengthy, resource-draining and risky processes. When witnessing criticisms of mediation evangelism, the legal professional should consider whether the critic is not weaponizing a nifty turn of phrase to obscure a universal truth: The costs of war are great, and its outcome is uncertain. Mediation evangelism, as a concept, not a moniker, merely reflects this truism by reminding us that, in the hands of a skilled mediator, the high cost of war can be diminished, if not avoided, while the parties cooperate to create an acceptable, if not superior, outcome, one that is molded by their own hands.

JAMS® Local Solutions. Global Reach.®

Gary Birnberg serves as a mediator, arbitrator, and settlement negotiator in a diverse array of complex commercial matters, both internationally and domestically. Mr. Birnberg's significant, hands-on business experience coupled with his legal acumen allow him to quickly grasp the facts in multifaceted cases, and nurture trust amongst the parties. He employs determination and creativity to assist parties in reaching resolution. His ADR practice is concentrated on business and commercial, aviation, insurance/reinsurance, financial markets, and intellectual property disputes.

Prior to joining JAMS, Mr. Birnberg spent 20 years providing strategic and business consulting services to companies in a wide variety of industries, including aviation, technology and communications, energy, life sciences, sports and entertainment, and maritime, among others.

Trust, Wills, and Using Them Wisely

H Frances Reaves, Esq.

Wills and Trusts are the documents that disburse your assets after you die. The intricacies of each are dull reading, hence this simple explanation of what can be a highly complex process.

When you create a trust, you pay upfront, and it's expensive. The more complicated it is, the more it costs. The creator of the trust is usually the grantor and trustee. When the grantor-trustee dies, the successor trustee takes over and disburses the assets per the instructions of the Trust. A trust does not go through probate (the Courts), and everything remains private. If you have a trust, no creditors can collect debts unless they are specifically mentioned.

All your assets (house, bank accounts, stocks, etc.) MUST be titled in the name of the Trust. If an asset is not named in the trust, it goes through probate. If the entire trust is unfunded, it is treated as a will and goes through probate.

A Will is less expensive up front, but the same amount will be used to hire lawyers for the probate process. Again, the more complicated the Will, the more complicated the process. The money is spent AFTER death, and some think, "What do I care? I'll be dead." The Will is a public document ergo, anyone can see the worth of your estate. Wills are easier to challenge in court because the law is settled. If you have a Will, creditors can file for payment in the Probate Court and are first in line for payment.

The wealthier you are, the more you need an estate plan – often including insurance to cover the estate taxes. Joe Robbie, the owner of the Miami Dolphins and the Joe Robbie Stadium, was a real estate attorney who, upon his death, left everything to his wife Elizabeth through an intervivos trust. This allowed her to receive income for the rest of her life. Upon her death, the assets would be distributed to the named beneficiaries.

Mr. Robbie's most significant assets were the football team and the stadium. At his death (1990), nine of his eleven children were alive. Three were trustees of the trust, and one, Mike, worked for the Dolphins. The trustees immediately fired Mike and sold 15% of the team.

This infuriated their mother, who demanded her elective share. (An elective share allows a married spouse to claim 30% of the other spouse's estate after his/her death). She rewrote her trust, disinheriting the three trustee-children.

The chink in this scenario was that the trust was set up to defer taxes until the mother's death. If she were given her 'share,' estate taxes would be due, which meant selling a portion of the team and stadium. The legal fight began and ended in the Florida Supreme Court which ruled in Mrs. Robbie's favor. The Joe Robbie estate owed $47 million in taxes, which triggered the sale of the team and the stadium. Her estate received her equitable share, distributed to her six beneficiaries. The nine living children shared the money from the sale, and the football team belonged to someone else. The family is still not on speaking terms.

This could have been avoided with a different estate planning strategy that included more complicated trust structures and some life insurance. Had that happened, the "Joe Robbie Stadium", and his legacy would be intact, and the family would be speaking. The postscript to this story is that Joe Robbie was a lawyer – what's that axiom, an attorney who represents himself has a fool for a client.

A graduate of University of Miami Law School, Frances spent ten years as a litigator/lobbyist. Today, she is an accomplished business woman who, when her parents could no longer take care of themselves, learned the ins and outs of senior care (or the lack thereof). She founded Parent Your Parents to assist seniors and their children through the myriad of pitfalls and options of "senior care" in the 21st century.

The Modern Methodology of Jury Pool Vetting in Voir Dire: A Deep Dive into Private Investigations

Marc Hurwitz, President of Crossroads Investigations

In the annals of legal history, the concept of 'voir dire' - the preliminary examination of potential jurors - remains paramount in ensuring fair trials. The endeavor is to identify any inherent biases, beliefs, or backgrounds that might prejudice the juror's decision. As the legal landscape evolves, so do the techniques employed in voir dire. Enter the realm of private investigators (PIs), who have brought an unprecedented level of scrutiny and sophistication to this centuries-old process.

Client Consultation: Crafting the Blueprint of an Ideal Juror

The process often commences with an in-depth meeting between the investigative team and the client. This meeting's objective is not just to understand the case but also to co-create a prototype of the 'ideal juror'. Various factors are considered, from socio-economic background and education to personal beliefs and past experiences. This blueprint serves as a guideline, a measure against which potential jurors can be evaluated.

Live Analysis on Voir Dire Day: The Power of Collaborative Data Mining

Perhaps the most innovative adaptation in recent years has been the use of technology, specifically live Google Sheets, on the day of voir dire. Our investigators, in a symphony of coordinated efforts, fill out this live document with real-time data. With as many as six PI staff working concurrently, a panoramic view of the potential juror's background is quickly sketched.

This process delves deep into a juror's past, examining facets such as:

- Criminal records: Any history of illegal activities might suggest a bias.
- Properties and Address: Insights into a person's socio-economic status.
- Age and Education: Could be indicators of a person's worldview and belief system.
- Employment History and Professional Licenses: Can show inclinations and potential biases.
- Political Affiliations and Donations: These can sometimes reflect deep-seated beliefs.
- Social Media Footprint: Opinions, posts, and even news sources they subscribe to can be indicative of their stand on various issues.
- Financial Records: Bankruptcies, liens, judgments, and evictions can suggest financial strains or behavioral patterns.

Once this data is collated and analyzed, our PIs categorize potential jurors into one of three categories for the client: "Yes", "No", or "Maybe". This swift and real-time categorization allows the legal team to make informed decisions about who sits in the jury box.

Unveiling Deception: Holding Jurors Accountable

A particularly fascinating offshoot of this thorough background check is catching potential jurors in lies. There have been instances when potential jurors, possibly driven by a myriad of reasons, have presented false information or concealed facts during the voir dire. With our team's meticulous data gathering, such deceptions are quickly spotted. Such discoveries not only exclude the dishonest juror but also grant the legal team additional free strikes, aiding in the process of ensuring a more impartial jury.

Conclusion

The modernization of the voir dire process through private investigations encapsulates the evolving synergy between law and technology. While some purists might argue against such 'intrusive' methodologies, proponents highlight the need for such measures in an age of misinformation and inherent biases.

PIs role in jury vetting has undeniably added layers of depth to the voir dire, making it a more comprehensive, transparent, and, arguably, fairer process. As technology continues to progress and societal dynamics shift, it will be intriguing to observe how these methodologies adapt and evolve in the pursuit of justice.

***Marc Hurwitz** attended SUNY Buffalo for a B.A. degree in Political Science, and The George Washington University for a M.A. degree in National Security Policy.*

Marc began government service with Senator Daniel Patrick Moynihan, and continued in the U.S. Department of State's Human Rights Bureau. He then worked in the White House for three years, where he served as the aide to the Deputy National Security Advisor.

Marc went on to become a counter-terrorism officer for the Central Intelligence Agency (CIA), and later worked for the government in multiple overseas posts, earning several commendations for meritorious service.

The Judicial Intern Academy

Beth Bloom, United States District Judge

Federal judicial internships are highly competitive and selective. As a result, well-qualified and motivated students are often denied an opportunity to learn. Other students are unable to commit to a full-time, unpaid summer internship due to financial or personal obligations.

The Judicial Intern Academy (JIA) was created in 2021 to provide more law students with the "coveted" opportunity to learn. The JIA is a 20-hour per week summer program, offered remotely and in-person for 8 weeks, to incoming 2L law students. The interns are immersed in programming from day one, beginning with an intern orientation and ethics program presented by judges, law clerks, and the courthouse family (Clerk of Court, Information Technology, Human Resources, Law Library, U.S. Marshals Service, United States Probation, and the Jury Pool) and an afternoon panel of judges and lawyers who discuss mental health and wellness in the legal profession and tools/resources available to law students.

A weekly schedule provides varied programming exposing students to state and federal court proceedings. Interns are given the opportunity to attend a naturalization ceremony, participate in legal writing and oral advocacy seminars, engage with leaders in the local legal community through the Conversations with the Court and Learning from the Legends series, visit law firms of varying sizes, public service agencies, and gain other valuable networking experiences.

The JIA also pairs each intern with a former federal judicial law clerk who serves as a mentor throughout the summer. Through the Federal Bar Association, Law Clerk Advisors (LCAs) volunteer their time and expertise each week and students develop and refine their oral advocacy, research, analytical, and writing skills. The LCAs serve as a resource to the intern, similar to the experience given to other full-time judicial interns who work with a federal judicial law clerk in chambers.

The interns receive a case-specific writing and oral advocacy assignment and are expected to research and draft a bench memorandum and then present argument at a mock hearing.

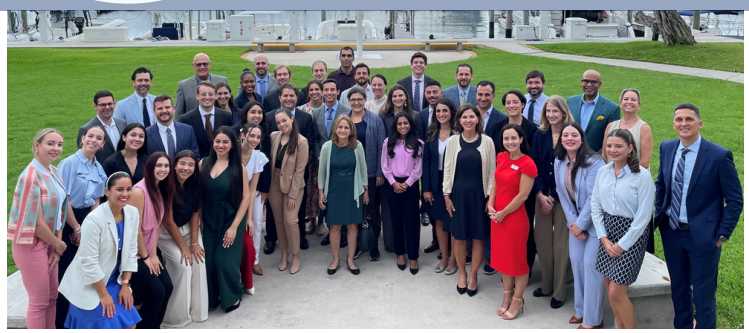
In 2022, the inaugural JIA class consisted of 18 incoming 2L students from University of Miami and FIU.

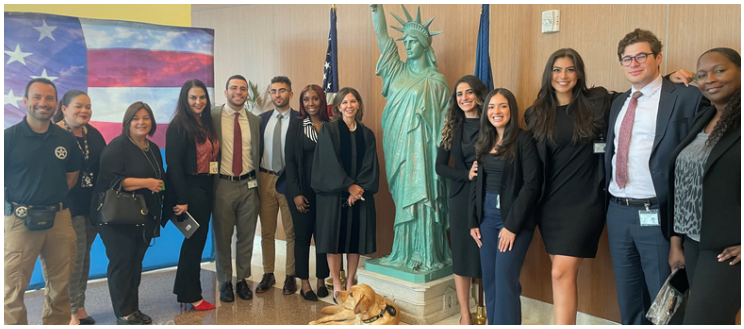
This past summer, The JIA expanded its reach and welcomed 31 incoming 2L students from all four law schools in the Southern District – University of Miami, FIU, St. Thomas, and Nova. Many of the JIA interns were able to also work to earn needed money for school, several attended summer classes and study abroad programs, and several were able to serve as caregivers. The Federal Bar Association has adopted the JIA as a national program, with 7 districts already participating: the District of Massachusetts, Southern District of Mississippi, Southern District of Ohio, Northern District of California, Eastern District of New York, and the District of Oregon.

A judicial internship is a tremendous learning opportunity, providing invaluable experiences and opening many doors. I hope you will join our efforts.

For more information, please contact Beth_Bloom@flsd.uscourts.gov.

Beth Bloom has served as a United States District Judge in the Southern District of Florida since 2014. She was appointed by President Barack Obama and confirmed by the United States Senate (95-0) on June 24, 2014 (her birthday).





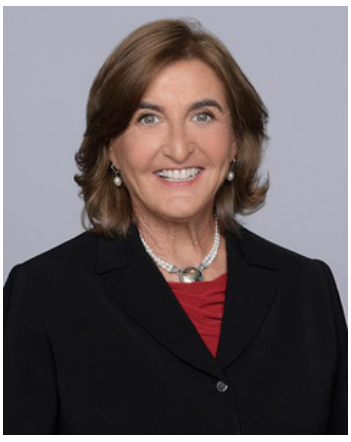
A MEDIATOR'S PERSPECTIVE

Jeanne K. Spital

No longer do attorneys have to fear "looking weak" when suggesting mediation. Mediation is now required by almost every court order. Some attorneys, however, may inadvertently hinder the mediators' ability to maximize their "tools" used during this process. For example:

1**."Don't answer her question**." This instruction was given by the Plaintiff's attorney during a caucus session. The attorney explained that s/he had not prepared the Plaintiff for the mediation. This attorney should have welcomed the opportunity to see how the Plaintiff would answer questions; the mediation setting is completely confidential. Unless an attorney authorizes a mediator to disclose information, that information is confidential and will not be disclosed to the opposing party. Therefore, an attorney should feel comfortable allowing any client to freely discuss issues with the mediator during a caucus. It is very helpful to a mediator to get a sense of what type of witness the Plaintiff will make at trial. In fact, experienced trial attorneys have commented that a great client trumps great facts.
Also, to be the most helpful, mediators need to understand what the Plaintiff understands. Often, lawyers are throwing around terms such as, "comparative negligence," "PFS," "prevailing party. Mediators strive to ensure that the parties understand these terms and the risks they present. Such understanding of the issues helps the parties make informed decisions. If the mediator cannot speak directly to a party, then the mediator cannot gauge whether a party understands the risks of continuing to trial.

2**. "My client has been paying premiums for years."** This statement is often heard by mediators during first party property claims and UM claims. What can a mediator do with this information? Is any policyholder who pays premiums entitled to a pass for coverage defenses? Is anyone who pays premiums entitled to a waiver of proving his or her claim? When the policyholder's attorney makes this statement, it riles up the policyholder(s) who calculates how much money he/ she/they has paid to the insurance company. But the amount paid for premiums per se is not an argument that the mediator can push in caucus with the insurance company. The insurance company understands that the policyholder has been loyal to them, but paying premiums does not negate the need for a policyholder to present evidence and prove his or her case. The mediator needs to hear or see the same legal theories and evidence that the jury will hear so that the mediator can discuss these with the insurance adjuster. If you truly want to resolve your case, mediation is a great process. Negotiation at mediation is a skill to be developed by all attorneys. In my next article, we will address whether to disclose your bottom line to the mediator.



UPCHURCH WATSON UWWM WHITE & MAX MEDIATION GROUP

Jeanne Spital

Mediator at Upchurch Watson White & Max

Combining her lengthy trial/litigation experience with her creative problem-solving skills, Jeanne K. Spital strives to find win/win solutions. Because of her trial experience, Jeanne understands the stressors and unpredictability of jury trials and strongly believes in the mediation process. Mediation provides the parties an opportunity to control their own destiny through innovative and practical solutions without the cost and uncertainty of trial.

Jeanne is a Martindale-Hubbell AV-rated attorney with more than three decades of experience handling cases involving personal injury/torts, professional liability, products liability, construction defect, contractual disputes, and copyright. She has represented both plaintiffs and defendants in Florida state and federal courts. She began her career in Maryland's Office of the Attorney General and has spent the greater part of it in Florida as a civil litigator, becoming a partner at a boutique firm and the

HAPPINESS FOR LAWYERS GUARANTEED...or YOUR MISERY BACK!

Mark Eiglarsh, Esq.

Defining happiness isn't easy. Webster's Dictionary defines "happiness" as "the quality or state of being happy." Huh? "Happy" means, "delighted, pleased, or glad." Other dictionary definitions include, "Good fortune, pleasure, contentment, and joy." United States Supreme Court Justice Potter Stewart must have felt equal frustration when trying to define "obscenity." In the 1964 landmark case of Jacobellis v. Ohio, while explaining why certain material was constitutionally protected and not obscene, Stewart wrote, "I know it when I see it." That's as close as you'll get to defining "happiness": You know it when you see it. You also know it when you feel it. Let's define "happiness" as "the result of choosing thoughts that serve you well." That's probably not the definition you were expecting, but it took many years to come to that understanding. When we choose thoughts that serve us well, we feel happy, free, serene, and joyful. When we embrace thoughts that don't serve us well, we become unhappy, and even miserable or depressed. You have the choice to either adopt or reject the thoughts your brain sends your way. That choice has a pronounced impact on your physical and emotional well-being. Selecting thoughts wisely instead of allowing them to choose themselves is colossally important yet can be extremely challenging.

SADNESS AND UNHAPPINESS IS OKAY

It's okay to choose to feel however you like. Sadness and unhappiness, for example, are normal emotions. The only people who don't have feelings are psychopaths and the dead. Since you're definitely not the latter and hopefully not the former, give yourself permission to feel however you'd like. I'm not telling you to change how you feel; I'm merely informing you that you have the power to choose how you feel.

Imagine you're in traffic and someone cuts you off. Or maybe a judge or difficult opposing counsel presses your buttons. Typically, you feel a swell of a thousand emotions, none of which serves you well. You become filled with anger, convinced that the other person did this to you with the sole intent of ruining your day. Or maybe you feel disrespected, frustrated, victimized, or offended. You cannot trust yourself to make the most rational decisions in these heated moments. The words that flow from our lips and the actions we exhibit when affected by anger or anxiety are almost never the ideal way to respond.

REPLACE YOUR THOUGHTS

The key for me is to shift my thoughts to gratitude. When I'm focusing on what I am grateful for, instead of what I lack and/or how angry and frustrated I am, I feel happier. Once I make this mental shift to an "attitude of gratitude," I begin appreciating the smallest of things I used to take for granted, which opens my heart and my mind. Studies show that people who write down three things they are grateful for each day are significantly happier than those who do not. There is no way to feel bad while thinking or writing a list of things you're grateful for. It's like riding on a wave runner; you never see anyone frowning while cruising across the water at 50 mph. When you center your thoughts on everything, you're grateful for, you replace stinkin' thinkin' with thoughts that fill your heart with happiness.

LAW OFFICES OF
MARK EIGLARSH

ABOUT THE AUTHOR

Mark Eiglarsh is a veteran trial lawyer, adjunct law professor, happiness expert, and author of the book, *'Be Happy By Choice. Happiness Guaranteed or Your Misery Back."* To learn more about Mark, go to *SpeakToMark.com* and *BeHappyByChoice.com*.

Are you keeping up with U.S. immigration "carrot and stick" policy? Special Parole Programs and Title 42 in a nutshell.

***Carem Corvaia**, Esq.*

If you live in the U.S., especially in Florida, immigration-related conversations will inevitably find their way into your life. To keep up with changes in immigration law, you'd have to keep tabs on many different channels aside from reading the regulations and case law because it involves many governmental agencies that directly affect its implementation. Shockingly, even when it feels like immigration law changes every month, the main U.S. immigration legal framework was last revised in the 1990s. Since then, most of the immigration-related programs, executive orders, and guidance issued by the U.S. federal government have been temporary responses.

In this article, I present two important U.S. Immigration changes explained through the "carrot and stick" approach, spanning two different presidential administrations.

Carrot: Special Parole Programs

The "carrot" in the current U.S. Immigration system can be identified as the special parole programs that since 2022 provide legal routes with work authorization to those who are of specific nationalities (i.e., Venezuelan, Haitian, Cuban, Colombian, Nicaragua, Ukrainian, among others) and have a sponsor that financially qualifies to initiate the process. The special parole programs are based on the Immigration and Nationality Act (INA) which authorizes the Secretary of Homeland Security to exercise discretion, for urgent humanitarian or significant public benefit reasons, to temporarily allow certain foreign nationals to physically enter or remain in the U.S. when they do not have a legal basis for entering the U.S. This type of parole does not confer an immigration status nor are foreign nationals considered to be admitted for purposes of immigration law. In other words, parole allows you to physically and legally enter the U.S. but it does not have the same effect as a visa or other entry document.

This path is meant to reduce irregular migration. Through the end of June 2023, thousands of foreign nationals from Cuba, Haiti, Venezuela, and Nicaragua have entered the U.S. using this process.

Stick: Title 42 Expedited Removals

The "stick" in the current U.S. Immigration system can be identified now as the continued expedited removal of foreign nationals under Title 42. Title 42 is a rarely used section of the U.S. Code dating back to 1944. It empowers the federal government to expel immigrants who try to enter the U.S. in the interest of public health. In our era, it was a measure to control the spread of COVID. This prohibition of foreign persons who enter the U.S. was supposed to end on December 21, 2022, based on a court order dictating its termination. However, on December 27, 2022, the Supreme Court of the United States decided that it would allow for postponement of the termination of Title 42 until it can properly weigh in on whether states have legal grounds to intervene in the ongoing Supreme Court case. Until then, millions of foreign nationals seeking refuge in the U.S. are being turned away without being able to explain the basis for seeking entry.

Praise and criticism

The "carrot and stick" approach has been praised by some and countered by others. Praise for the "carrot" lies with the fact that it reduces irregular migration, denies smugglers the opportunity to exploit foreign nationals, allows for a legal humanitarian route to enter the U.S., unites many family members of foreign nationals who are already residing lawfully in the U.S., albeit temporarily. Also, it gives the federal government better control over who enters the U.S. as well as better data and more accurate registration of its immigrant population.

Are you keeping up with U.S. immigration "carrot and stick" policy? Special Parole Programs and Title 42 in a nutshell.

***Carem Corvaia**, Esq.*

Criticism for the "carrot" lies with the fact that the special parole programs create a solution for certain nationalities and certain economic classes (i.e., middle-higher income economic classes would benefit more since they would arguably be able to meet the sponsorship requirement in higher percentages).

Praise for the "stick" lies with the fact that it also deters irregular migration, while pointing to the legal routes that the special parole programs offer. Criticism for the "stick" is mainly focused on the fact that foreign nationals are not being allowed to state their case for refuge properly, they are not being allowed to explain their reasons for trying to enter the U.S. which is usually their basis for an asylum application.

The implementation of Title 42 and special parole programs is currently effective. As portrayed in this article, each come with a set of positive and negative consequences in the field of immigration law and mostly respond to humanitarian and U.S. border dynamics. Most importantly, these programs address an issue within the immigration system. However, they do not address the larger reality that current U.S. immigration laws are outdated and should be reviewed and updated comprehensively.

***Carem Corvaia**, Esq. was born in Venezuela and raised in Florida since 2003. She started her own immigration law firm 12 years ago in Miami, FL after earning her undergraduate degree in International Relations from Florida International University (FIU) and her JD degree from St. Thomas University School of Law. Her firm has been exclusively dedicated to U.S. Immigration Law. The firm focuses on investment and employment-based U.S. nonimmigrant visas, labor certification applications, and legal permanent residency based on both employment and family petitions. Carem is a proud member of the American Immigration Lawyers Association (AILA) since 2011. She is currently a member of Global Section Committee and is the immediate past Vice Chair of So. FL AILA Business and Investment as well as Practice Management Committee for So FL. and is the immediate past chair and vice chair of So. FL AILA DMV (Driver's License) and USCIS Liaison (Miami District) Committees, respectively. Carem has served clients from all around the globe for the past 12 years, most clients are born or come from Latin America countries and European countries. As of 2021, she launched her second office in Spain to better serve European countries and launched a podcast in Spanish dedicated to immigrant experience in the U.S.*

corvaia law

A Derivative Lawsuit is Filed – A Special Litigation Committee May Need to be Appointed

Eric N. Assouline and Daniel B. McCain, Assouline & Berlowe

In the corporate world, some claims harm a shareholder directly and some claims that only harm the shareholder derivatively, through harm that is caused to the corporation. When a shareholder brings a claim against one of its officers or directors regarding harm suffered by the corporation the shareholder's standing to bring the claim "derives" from the harm to the corporation and it is brought in a derivative lawsuit.

But, as far as the corporation is concerned, these claims may or may not be worth pursuing. If the corporation has multiple board members, it may be worthwhile for the corporation to appoint a Special Litigation Committee ("SLC"), constituted by board members who are not alleged to have harmed the corporation, in order to allow SLC to determine if the derivative lawsuit should be pursued on behalf of the corporation.

There is a body of law that controls this process, and it is not uniform nationwide. There are two approaches that typically govern the level of review that courts follow regarding whether or not the SLC's decision should be followed: (1) the New York approach, and (2) the Delaware approach.

Under the New York approach, if the SLC is independent and conducts a good-faith thorough investigation, courts should defer to the business judgment of a SLC to determine whether pursuing a derivative suit is in the best interest of a company. New York courts do not proceed further than this point. In essence, beyond the threshold establishments of independence and good faith, no determination needs to be made regarding the SLC's business judgment in pursuit of litigation. *Aurbech v. Bennett*, 393 N.E. 2d 994 (N.Y. 1979).

Under the Delaware approach, courts take a second step in which in their discretion, the court will apply its own notions of business judgment. *In re Baker Hughes*, 2023 Del. Ch. LEXIS 88 at *20 (Del. Ch. Apr. 17, 2023).

Florida follows Fla. Stat. § 605.0804 which states, "Upon motion to enforce the determination of the special litigation committee, the court shall determine whether the members of the committee were disinterested and independent and whether the committee conducted its investigation and made its recommendation in good faith, independently, and with reasonable care, with the committee having the burden of proof. If the court finds that the members of the committee were disinterested and independent and that the committee acted in good faith, independently, and with reasonable care, the court may enforce the determination of the committee." *Taneja v. Saraiya*, 290 So.3d 602, 605 (Fla. 2d DCA 2020).

Florida courts recognize that courts differ on whether trial courts must make an independent business judgment as to the best interests of the corporation before accepting or rejecting a SLC to terminate the litigation. *De Moya v. Fernandez*, 559 So.2d 644, 645 (Fla. 4th DCA 1990). In *De Moya*, Florida's Fourth District references the seminal Delaware and New York cases *Zapata Corp. v. Maldonado,* 430 A.2d 779 (Del. 1981) and *Aurbech v. Bennett*, 393 N.E. 2d 994 (N.Y. 1979), in which, "[The] trial court must make a determination that the committee recommending dismissal is independent, acting in good faith and has a reasonable and objective basis for its report." *De Moya* uniquely dealt with a court appointed receiver in the absence of independent directors, and therefore, because the receiver had been appointed by the court, and it was determined that issues of bias, conflict of interest, reasonableness and objectivity were satisfied, the appellate court felt no need to apply the second stage determination as outlined by *Zapata*.

Although there is no bright line rule in Florida, from the statutory language, it appears that Florida courts are more in alignment with the Delaware approach. Courts will take the approach in evaluating whether the committee acted in good faith, independence, and reasonable care. New York courts provide more deference in the functioning of the SLC, meaning, no burden of proof by the committee is necessary in its formation.

A Derivative Lawsuit is Filed – A Special Litigation Committee May Need to be Appointed

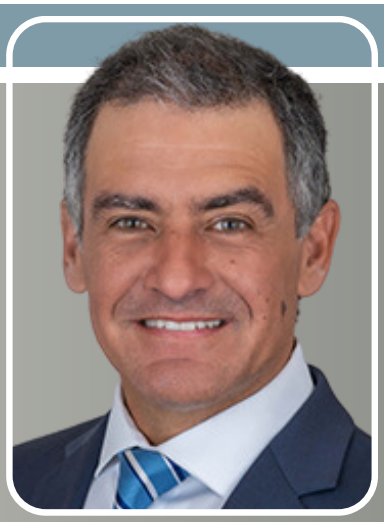
Eric N. Assouline and Daniel B. McCain, Assouline & Berlowe

In evaluating independence, courts will look at personal and business relationships, fees spent, and other relevant factors.

Further, under the Florida approach, if the requisites of good faith, independence and reasonable care are not met, then the court "shall dissolve any stay of derivative action, and allow the derivative action to continue under the control of the plaintiff." Fla. Stat. §605.0804(5).

All-in-all, the general approaches of New York and Delaware are distinguished by self-autonomy and burden of proof with the formation of SLC's. Florida courts follow statutory guidelines, which in application are similar to that of Delaware, with a close view as to the independence of the investigation.

Eric N. Assouline



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Eric N. Assouline is a co-founder of the firm, a litigation partner in the Miami and Ft. Lauderdale offices, and he is the head of the Business Litigation Practice. His practice focuses on: bankruptcy and creditors' rights litigation; complex business litigation; intellectual property and real estate litigation;.

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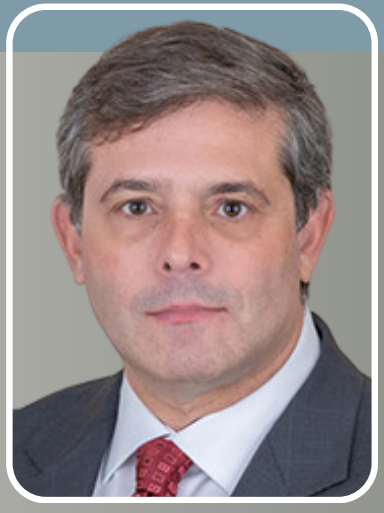
Daniel B. McCain



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Mr. Vielleville works extensively with both the common law and civil law systems. He advises on complex international maritime, finance, mining, energy, and oil and gas transactions. His litigation and arbitration practice includes:

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- *complex jurisdictional disputes*
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