



# INTER ALIA

MARCH 2017

NEWSLETTER OF THE MANATEE COUNTY BAR ASSOCIATION

## Is *Daubert* dead in Florida?

James M. Horne, Jr., Esq.



In 2013, the Florida Legislature amended sections 90.702 and 90.704, Florida Statutes (2012) to change the standard of admissibility for scientific expert evidence from the *Frye* standard to the *Daubert* standard and the standard found in Federal Rule of Evidence 702. The Florida Supreme Court recently opined on whether to adopt or reject those amendments to the Florida Evidence Code.

The Florida Supreme Court rejected the *Daubert* amendments to the extent that they are procedural in nature. To the extent that the *Daubert* amendments are substantive in nature, the Court could not decide until the constitutionality of the amendments were before the Court on a case or controversy. The Court did state it had "grave constitutional concerns" over the amendments. The Court's concerns included undermining the right to a jury trial and denying access to the courts.

The *Daubert* standard has been the law of the land in Federal Courts since 1993. In determining whether the amendments are procedural or substantive in nature or some combination thereof,

Federal Courts routinely recognize *Daubert* as a procedural, and not a substantive law. See *McDowell v. Brown*, 392 F.3d 1283 (11th Cir. 2004) (applying *Daubert* and Rule 702 to determine the admissibility of medical malpractice standard-of-care expert testimony, as federal procedural law). The rationale of the federal courts is that "[r]ules of procedure encompass rules of evidence[.]" *Id.* at 1294.

The Third District Court of Appeal has already found that the *Daubert* amendment was procedural in order to apply it retroactively in *Perez v. Bell South*, 138 So. 3d 492, 498 (Fla. 3d DCA 2014). Interestingly enough, the Court in that case premised their opinion on the Florida Supreme Court adopting the *Daubert* amendments, which we now know the Supreme Court did not.

As with many things with the law, the Florida Supreme Court's opinion is as clear as mud. It will be an interesting fight over the *Daubert* amendments with proponents arguing it is substantive rather than procedural. Make sure to read your Florida Law Weekly until we get some further guidance from the Florida Supreme Court. Let's all hope that it doesn't take almost four years to get that clarity!

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*where*  
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## Thank You MCBA Past Presidents

On March 9, 2017 MCBA's President, Andrea M. Johnson, hosted the first annual MCBA Past Presidents Luncheon at Pier 22. The event included approximately 20 Past Presidents who gathered to learn of the progress and future vision of the MCBA, as well offering their ideas and input regarding the MCBA; all while enjoying a delicious lunch. The MCBA would like to thank Lutz, Bobo and Telfair, PA for their generous support of this event.



*MCBA Past Presidents and guests*



*Left to right: Jack Hawkins, Esq., Judge Scott Brownell, and David Deitrich, Esq.*



*Left to right: Steele Williams, Esq., and President Elect Paul Grondahl, Esq.*

## PROFESSOR MARY ADKINS TO SPEAK AT MCBA MARCH 29TH LUNCHEON

Professor Mary Adkins, who teaches Advocacy and Legal Writing at the University of Florida Levin, College of Law brings the commission and its members to life in her new book *Making Modern Florida* which analyzes the 1966 Constitution Revision Commission and its task to revise the Florida Constitution of 1885. In her book, Professor Adkins brings to life the members of the Commission who served with distinction to complete their task of modernizing the Florida Constitution. We are expecting a large turnout for this luncheon, so please RSVP to [MCBA@ManateeBar.com](mailto:MCBA@ManateeBar.com), or by calling (941)741-4091 to reserve your seat and lunch. The following CLE Credit will be offered to attendees who sign up for it: General 1.0 and State/Federal Government Administrative Practice .5



THE YOUNG LAWYERS' DIVISION OF  
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*Please join us for a special reception  
On the Fifth Floor  
of the Judicial Center  
April 4th, 2017 from 5 to 6:30 P.M.  
Light refreshments will be served.*

RSVP to Graceann at [mcba@manateebar.com](mailto:mcba@manateebar.com)

## Young Lawyers Kindle Burning Desire for Success in Take Stock Seniors



*Student Recipients and YLD Presenters*

The Young Lawyers Division of the Manatee County Bar Association (Manatee County YLD) participated in a Young Professionals Round Table discussion with the Take Stock Manatee Seniors, where each lawyer shared their personal educational journey with the students. After a 40 minute discussion, the group presented each senior with the Amazon Fire tablet gifts to an overwhelmed and grateful group of students, several of whom were so touched by the generosity of the Manatee County YLD that they were moved to tears.



*The presenting Manatee County YLD members were (left to right) Grace Reeves, Melissa Casanueva, Trevor Quinlan and Bryony Swift.*

## Where in the world is Lugalo?

The village in Tanzania is just one of many international destinations our students visit virtually during the school year. By interacting regularly with classrooms worldwide, Saint Stephen's students experience different cultures, customs and languages. It's part of our goal to create responsible global citizens.





## **MCBA is Seeking Nominations to the MCBA Board of Directors**

The MCBA is asking anyone who is interested as serving on the Board of Directors to submit their resumé, and statement of interest for consideration. Please have all submissions to the MCBA office by April 15, 2017.

Resumés and supporting documents may be sent via email to [MCBA@ManateeBar.com](mailto:MCBA@ManateeBar.com) or to MCBA, P.O. Box 796, Bradenton, FL 34206.

## **Amended 2017 Holiday Schedule At MCJC**

Please be informed that the Clerk of the Circuit Court's Office will be following a combination of the Board of County Commissioners', Court and State holidays as designated below:

Jan. 2 New Year's Day Observed Monday 1 day  
Jan. 16 Martin Luther King Jr. Day Monday 1 day  
Feb. 20 Presidents' Day Monday 1 day  
Apr. 14 Clerk's In-Service Day/Closed to Public Friday 1 day  
May 29 Memorial Day Monday 1 day  
July 4 Independence Day Tuesday 1 day  
Sept. 4 Labor Day Monday 1 day  
Nov. 10 Veterans Day Observed Friday 1 day  
Nov. 23 Thanksgiving Day Thursday 1 day  
Nov. 24 Thanksgiving Friday Friday 1 day  
Dec. 25 Christmas Day Monday 1 day  
Dec. 26 Christmas Day After Tuesday 1 day

## **MCBA Seeks Nominations for the 2017 Community Service Award**

Each year, the MCBA highlights Bar Association members who provide service to the community through participation in organizations and activities beyond the Bar and mandatory pro bono services. The community service may be in the form of guidance to an organization as an officer, Board member or advisor, participation in an organization's projects such as wielding a hammer for Habitat for Humanity, or any number of other services or commitments. Two awards will be presented at the annual meeting in June and the ultimate selection will be made by a panel of three persons, beyond connection to the Bar Association. To nominate yourself or someone else for these awards, please complete the enclosed nomination form in this newsletter and return it to the MCBA office no later than May 10th. See form for details.



### **Congratulations Judge Williams!!!**

THE MCBA congratulates Judge Charles E. Williams on his re-election as Chief Judge to the Twelfth Judicial Circuit.

### **Tampa Bay**



### **2017 SINGLE GAME TICKETS**

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## 2nd DCA at the MCJC!

On February 22nd, the 2nd DCA heard Oral Arguments at the Manatee County Judicial Center. The Judges were greeted by MCBA Directors and enjoyed a light breakfast prior to the start of their busy day.



(Left to right) Jay Horne, Esq., MCBA President  
Andrea M. Johnson, Judge Douglas A. Wallace,  
Paul Grondahl, Esq., Rebecca Proctor, Esq.,  
Judge Matthew C. Lucas, and Marshal Jo Haynes



## FILM PREMIER

Manatee Educational Television (METV) and BTN Films are proud to announce that their new documentary, **American Dreams...Stories of Immigration**, has been selected as an Official Entry of the 2017 Sarasota Film Festival.

**American Dreams** will premier as part of the Sarasota Film Festival on April 9th at 6pm at the Hollywood 20 in Sarasota. Tickets can be obtained by either going on-line to [www.SarasotaFilmFestival.com](http://www.SarasotaFilmFestival.com) (service fees apply), calling (941) 366-6200 or (866) 575-FILM (service fees apply), or going directly to the box office at the Hollywood 20 at 1900 Main Street in Sarasota to purchase tickets

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## Estate and Trust Practitioners Take Note: Corya v. Sanders is on Course for a Statutory Correction

*By Trevor Quinlan, Esq.*



Trusts are flexible estate planning tools that can satisfy a multitude of tax and non-tax related objectives put forward by clients. However, one potential downside of these planning devices is the imposition of fiduciary obligations on casual family relationships. From time to time, a trustee neglects their obligations in periods of familial harmony, only to face a breach of fiduciary duty action when the family relationships break down. A

breach of trust action in this vein may appear unfair to the trustee, as they merely carried on business as usual, but a trusteeship carries affirmative legal obligations that trustees set aside at their own peril. Yet, the Fourth District Court of Appeal appeared to reduce trustee exposure for fiduciary lapses of this nature in the recent case of *Corya v. Sanders*.

*Corya* typified the “casual administration” species of trust dispute. Distilled down, the case involved several family trusts that benefitted a matriarch and her three children. The matriarch, Mrs. Corya, served as trustee of the family trusts for several decades, but Mrs. Corya failed to prepare a single accounting during her term of service. Apparently, Mrs. Corya’s casual administration of the family trusts became unacceptable, as one of Mrs. Corya’s children sued for breach of fiduciary duty in 2011 due to Mrs. Corya’s failure to render the required annual trust accountings.

At trial, the court ordered Mrs. Corya to prepare accountings that reached back to the inception of the family trusts, a substantial undertaking given the thirty year history of the trusts. Mrs. Corya appealed, and the Fourth District Court of Appeals determined that a beneficiary with actual knowledge of its trust beneficiary status cannot seek an accounting for a period more than four years prior to filing suit due to the application of statutory laches. *Corya v. Sanders*,

155 So. 3d 1279, 1285-1286 (Fla. 4th DCA 2015). As Mrs. Corya’s child had the requisite knowledge of his trust beneficiary status, the appellate court applied the four year statutory laches restriction to the breach of fiduciary duty action against Mrs. Corya.

The Real Property Probate and Trust Law (RPPTL) Section of the Florida Bar issued a white paper criticizing the *Corya* decision, both for its legal analysis and its negative public policy implications. See The Real Property, Probate, and Trust Law Section of the Florida Bar, *White Paper: Proposed Amendments of §§ 736.08135 and 736.1008 to Clarify the Period for which Beneficiaries may Compel Trust Accountings*. One of the RPPTL Section’s primary concerns is the undue limitation *Corya* places upon a core trustee function, particularly when divergent guidance has been issued by other appellate courts. *Id.*

After the RPPTL white paper was issued, a statutory fix to the *Corya* decision began working its way through this year’s legislative session embedded in CS/HB 481. CS/HB 481 amends § 736.1008(3) of the Florida Statutes as follows:

“A beneficiary’s actual knowledge that he or she has not received a trust accounting does not cause a claim to accrue against the trustee for breach of trust based upon the failure to provide a trust accounting required by s. 736.0813 or former s. 737.303, and does not commence the running of any period of limitations or laches for such a claim, and paragraph (a) and chapter 95 do not bar any such claim.”

The foregoing language will effectively curb the restrictions on actions for fiduciary accountings imposed by *Corya*. Practitioners currently embroiled in breach trust litigation concerning a trustee’s failure to render accountings should keep a close eye on this proposed statutory correction. It is intended to apply retroactively to all cases pending or commenced on or after July 1, 2017.

## DATES TO REMEMBER:

March 29, 2017	General Membership Luncheon Meeting	Pier 22, 11:45 am
April 4, 2017	Art Creations in the Courthouse	5:00 – 6:30 pm
April 7, 2017	SPRING “BEACH SOCIAL”	RSVP NOW!
April 22, 2017	MCBA COMMUNITY PROJECT – Habitat for Humanity	
May 31, 2017	LAW DAY – General Membership Luncheon Meeting	Pier 22, 11:45 am

*Kindly RSVP to the MCBA@ManateeBar.com or 941-741-4091  
for the March 29, 2017 Membership Luncheon at Pier 22.  
We appreciate your thoughtfulness!*



## Highlights of February General Membership Meeting

### *Thank You, Scott Westheimer!*



*l to r: President Andrea M. Johnson, Scott Westheimer, Esq., and Jay Horne, Esq.*



*Judge Robert Morris greeting the membership*

The February 22, 2017 General Membership meeting had several special guests. Scott Westheimer, Esq., our representative to the 12th Judicial Circuit, presented a very informative PowerPoint discussion regarding legislative priorities and the Florida Constitutional Revision Commission. Scott also touched on benefits available to

members of The Florida Bar that may be found on the The Florida Bar website. Also in attendance that day were 2nd DCA Judges Douglas Wallace, Robert Morris, and Matthew Lucas who were in Bradenton to hear Oral Arguments.



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## YLD Happenings - Professionalism Round Table 2017



*Judge Hunter Carroll and Jesse Tilden, Esq.*

O'Bricks was the gathering place of the MCBA Young Lawyers Division, as they hosted this year's Professionalism Round Table on March 15, 2017. Young Lawyers enjoyed lunch while learning from mentors in the legal community and judiciary. Bob Hoyle, Esq. presented a CLE class regarding the topic of "mediation." This year's mentors were: Bob Hoyle, Esq., Judge Darryl Casanueva, Kimberly Bald, Esq., Judge Charles Sniffen, Paul Grondahl, Esq., Judge Susan Maulucci, Mary Hawk, Esq., Judge Janette Dunnigan, Mike Hamrick, Esq., Magistrate Renee Inman, Anne Chapman, Esq., Charles Telfair, Esq., and Judge Hunter Carroll.



*Dustin Wagner, Esq., Mike Hamrick, Esq., and Aaron Crittenden, Esq.*



*Kristina Cucinotta, Esq., Bryony Swift, Esq., and Mary Hawk, Esq.*



*Judge Darryl Casanueva*

### MCBA SECTION CHAIRS:

Family Law:	Libby McNary
Solo/Small Firm:	Steele Williams
Alternative Dispute Resolution/Mediation:	Bob Hoyle
Probate/Guardianship:	Ben Hunter



### MCBA: Community Project with Habitat for Humanity! Sign Up Now!

It's that time of year, and the MCBA is looking for volunteers to come out and help with our Habitat for Humanity project in Bradenton. We will be working on Saturday, April 22, 2017 from 7:30 am through 12:30 pm. No construction experience is necessary, but if you got it, you got it and we sure do need it! Please be dressed for anything from painting to roofing. Light snacks will be served. Location to be announced as the day draws near. Please let us know you are participating by emailing: [MCBA@ManateeBar.com](mailto:MCBA@ManateeBar.com)

### M.C.B.A. FAMILY LAW SECTION MEETING WEDNESDAY – APRIL 12, 2017 @ Noon MCJC – 8th floor multi-purpose room

Section Chair Libby McNary has scheduled a meeting of the Manatee Bar Family Law Section for Wednesday, April 12, 2017 at 12:00 Noon in the 8th floor multi-purpose room at the Manatee County Judicial Center.

All interested members of the Manatee Bar and their support staff are encouraged to attend.

#### Speakers:

Mitchell Teitelbaum, General Counsel, Manatee County School District will present on the topic of "Enrollment and Other School-Based Issues for Family Law Litigants ~ A light lunch will be served. Cost is \$8.00 ~ Please RSVP to [MCBA@ManateeBar.com](mailto:MCBA@ManateeBar.com)

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# MANATEE COUNTY BAR ASSOCIATION

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### IMMEDIATE PAST PRESIDENT

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## Advertising in the Inter Alia

If you are interested in advertising in the *Inter Alia*, (circulation 385), please contact Graceann Frederico at (941) 741-4091 or at [MCBA@ManateeBar.com](mailto:MCBA@ManateeBar.com)

Copy deadline is approximately the 10th of the month. Payment is expected at time of publication. Checks may be made payable to MCBA, P.O. Box 796, Bradenton, FL 34206.

Ad rates are as follows:

Business card	\$40.00
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## MANATEE FAWL & SARASOTA FAWL PRESENT

### A MORNING WITH THE JUDGES

PLEASE JOIN THE MEMBERS OF MFAWL & SFAWL FOR THIS INTERACTIVE CLE WITH JUDGES FROM THE 12<sup>TH</sup> JUDICIAL CIRCUIT. JUDGES FROM THE CIVIL, FAMILY, AND CRIMINAL BENCH WILL BE IN ATTENDANCE. HERE'S YOUR CHANCE TO PARTICIPATE IN BREAK OUT SESSIONS WITH THE JUDGES; ASK QUESTIONS OF THE JUDGE; AND, OTHERWISE INTERACT WITH THE PARTICIPATING JUDGES. YOU DO NOT WANT TO MISS THIS EVENT!

#### DATE, TIME, LOCATION

APRIL 28, 2017

8:30am – 12:00pm

Sara Bay Country Club  
7011 Willow Street  
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and the  
*\* Lifetime Achievement in Community Service Award \**

This is the official call for nominations for the 19<sup>th</sup> Annual MCBA Community Service Awards. The purpose of these awards is to highlight Bar Association members who provide service to the community through participation in organizations and activities beyond the Bar and mandatory pro bono services. The community service may be in the form of guidance to an organization as an officer, Board member or advisor, participation in an organization's projects such as wielding a hammer for Habitat, or any number of other services or commitments. Two awards will be presented at the annual meeting in June and the ultimate selection will be made by a panel of three persons, beyond connection to the bar association. To nominate yourself or someone else for these awards, please complete the nomination form below and return it to the Bar office no later than May 10th. All nominees will be notified after that date and a one-page resume of service will be requested from them. Resumes from the 18<sup>th</sup> annual awards remain on file and will be resubmitted for consideration.

.....✂.....✂.....✂.....✂.....✂.....✂

NOMINATION FORM

I hereby nominate: \_\_\_\_\_ for the 2017 MCBA Community Service Awards.

Nomination submitted by (optional): \_\_\_\_\_ Please keep my identity confidential: ( ) Yes ( ) No

*Please return this nomination form to:* MCBA ~ P.O. Box 796 ~ Bradenton, FL 34206

ANNOUNCING THE  
**19<sup>th</sup> ANNUAL M.C.B.A. COMMUNITY SERVICE AWARDS**  
*\* Community Service Leader Award \**  
and the  
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