



# INTER ALIA

NOVEMBER /DECEMBER 2017

NEWSLETTER OF THE MANATEE COUNTY BAR ASSOCIATION

## Daubert's Second Trip To Tallahassee

by James M. Horne, Esq.



Earlier this year, the Florida Supreme Court declined to adopt the *Daubert* standard to the extent it is procedural in nature. The Legislature amended Florida Statutes §90.702 and 90.704 to replace the *Frye* standard with *Daubert*. The Dicta of the Court's ruling called into question the constitutionality of the *Daubert* standard because the Court had "grave constitutional concerns"

as the Court feared the amendments to the admissibility of expert testimony would undermine the right to a jury trial and access to courts. The Court reserved ruling regarding the constitutionality of the provisions for the right case or controversy.

In July of this year, the Court accepted jurisdiction of a case by a 4-3 vote that will decide the fate of *Daubert*. *Richard Delisle v. Crane Co., et. al.*, Case No. SC16-2182, involves a plaintiff who was diagnosed with mesothelioma from smoking Kent cigarettes containing asbestos in the filters and handling gaskets that contained asbestos. The Plaintiff won a large verdict after going to trial and the Defendants appealed the verdict challenging expert witness testimony offered by the Plaintiff's experts.

The Fourth DCA rendered their opinion before the Supreme Court

declined to adopt the changes to the evidence code. The Fourth DCA held that the amendments to the evidence code are presumed valid and therefore, the *Daubert* standard was applicable. The Fourth DCA went on to say that two of the three Plaintiff's experts should have been barred from testifying and reversed the jury's verdict.

A look at the *Delisle*'s on-line docket shows great interest in this case from various trade organizations. The Florida Justice Association and Concerned Physicians, Scientists and Scholars have filed amicus briefs for *Delisle*. The Florida Defense Lawyers Association, the Washington Legal Foundation, and the Florida Justice Reform Institute are seeking to file amicus briefs on behalf of the defendants.

I tend to believe that if it "ain't" broke don't fix it. It seems as though the reason *Daubert* was implemented in the first place was to weed out "junk" science. While this is a noble pursuit, there are other ways to accomplish that goal, such as allowing authoritative texts and treatises be introduced as substantive evidence, instead of just to impeach the expert witness. The Federal Rules of Evidence allow authoritative texts to be introduced as substantive evidence. A skilled, well prepared trial lawyer should be able effectively and persuasively convey to a jury of fair and impartial people, the absurdity of the "junk" science the expert witness is trying to peddle.

MANATEE COUNTY BAR ASSOCIATION  
Holiday Party 2017  
December 1st | 5:30 - 8:00 PM  
ArtCenter Manatee  
209 9th St W, Bradenton, FL 34205

All Members of the Bench and Bar and their spouse/guest are invited to attend. Join us for our Hosted Bar and Cocktail Buffet by enRich Bistro.  
Casual Festive Attire

No Cost for MCBA Members. Spouses/Guests \$25

In the giving spirit of the season, we will be collecting donations for the Food Bank of Manatee. Please bring your non-perishable food items. Checks and cash donations are always appreciated.

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## The Florida Bar Board Of Governors Seeks To Fill Judicial Ethics Advisory Committee Vacancy

The Florida Bar Board of Governors is seeking applicants for the following vacancy to be filled during its January 26, 2018 meeting:

**Supreme Court's Judicial Ethics Advisory Committee:** One lawyer to fill an expiring term commencing March 1, 2018 and ending June 30, 2022. This is a 12-member committee that renders 20-25 written advisory opinions a year to inquiring judges and judicial candidates regarding application of the Code of Judicial Conduct to specific instances of contemplated judicial and non-judicial conduct. The committee meets once a year at The Florida Bar's Annual Convention and attendance is strongly encouraged. The majority of the committee's work, however, is undertaken via

e-mail and phone conferencing. The committee is also responsible for judicial campaign conduct forums scheduled in election years.

Persons interested in applying for these vacancies may click here to download the Application for Special Appointment from the Bar's website, [www.floridabar.org](http://www.floridabar.org), or may call Bar headquarters at (850)561-5757, to obtain the application form. Completed applications must be submitted to the Executive Director, The Florida Bar, 651 East Jefferson Street, Tallahassee, 32399-2300 **no later than the close of business on Monday, December 11, 2017**. Resumes will not be accepted in lieu of an application.

## Two Florida Bar Foundation Board Of Directors Vacancies To Be Filled In January

The Florida Bar Board of Governors is seeking applicants for the following vacancies to be filled during its January 26, 2018 meeting:

**The Florida Bar Foundation Board of Directors:** Two lawyers to serve three-year terms, commencing July 1, 2018 and ending June 30, 2021. This 33-member Board of Directors administers Florida's IOTA program. Directors shall be members of the Foundation during their term(s) as directors.

Persons interested in applying for these vacancies may click here

to download the Application for Special Appointment and review the "Expectations for Service of Board Members" from the Bar's website, [www.floridabar.org](http://www.floridabar.org), or may call Bar headquarters at (850)561-5757, to obtain these documents. Completed applications must be submitted to the Executive Director, The Florida Bar, 651 East Jefferson Street, Tallahassee, 32399-2300 **no later than the close of business on Monday, December 11, 2017**. Resumes will not be accepted in lieu of an application.



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## 2018 JUDICIAL NOMINATING COMMISSION NOMINATIONS TO BE MADE BY THE FLORIDA BAR

**Judicial Nominating Commissions:** Two lawyer vacancies for each of the 26 JNCs. The Florida Bar has the opportunity to nominate six lawyers for each Judicial Nominating Commission to Gov. Rick Scott for his appointment. Each appointee will serve a four-year term, commencing July 1, 2018. Applicants must be members of The Florida Bar engaged in the practice of law and a **resident of the territorial jurisdiction** served by the commission to which the member is applying. Commissioners are not eligible for state judicial office for vacancies filled by the JNC on which they sit for two years following completion of their term.

Applications must be **submitted no later than 5:30 p.m., Wednesday, January 3, 2018** in the Executive Director's office

of The Florida Bar. Resumes will not be accepted in lieu of an application. Screening committees of the Board of Governors will review all JNC applications. The Executive Committee will then make recommendations to the Board of Governors.

Persons interested in applying for any of these vacancies may click here to complete and download the new application form from the Bar's website, [www.floridabar.org](http://www.floridabar.org), or should call Bar headquarters at (850) 561-5757, to obtain the application. Completed applications must be received by the Executive Director, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300 by the January 3rd deadline date.



### MCBA & FAWL Members — “Pink Party Night”

On October 20, 2017, members and friends joined together at the home of MCBA member, Terri Cromley, to raise money to help fight breast cancer. Food, fun, raffles, and prizes made the evening a great event.



MCBA members l to r: Grace Reeves, Esq., Terri Cromley, Esq., Alyson Battaglia, Esq., Andrea Johnson, MCBA Past President, and Graceann Frederico, MCBA Executive Director

## Clerk Of The Court 2018 Schedule

Below is the newly released schedule for the 2018 year. Please keep it handy!

Jan. 1 New Year's Day Observed Monday 1 day  
 Jan. 15 Martin Luther King Jr. Day Monday 1 day  
 Feb. 19 Presidents' Day Monday 1 day  
 Mar. 30 Good Friday Friday 1 day  
 May 28 Memorial Day Monday 1 day  
 July 4 Independence Day Wednesday 1 day  
 Sept. 3 Labor Day Monday 1 day  
 Sept 19 Clerk's In-Service Day/Closed to Public Wednesday 1 day  
 Nov. 12 Veterans Day Observed Monday 1 day  
 Nov. 22 Thanksgiving Day Thursday 1 day  
 Nov. 23 Thanksgiving Friday Friday 1 day  
 Dec. 24 Christmas Eve Monday 1 day  
 Dec. 25 Christmas Day Tuesday 1 day



The law firm of **Icard, Merrill, Cullis, Timm, Furen & Ginsburg, P.A.** is pleased to announce the addition of **Telese Brown McKay, Esq.** as its newest shareholder, practicing in the area of Community Association Law.

**NO GENERAL MEMBERSHIP MEETINGS  
 IN NOVEMBER AND DECEMBER.  
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# HIGHLIGHTS FROM THE OCTOBER 25TH, 2017 GENERAL MEMBERSHIP MEETING – VETERANS DAY PROGRAM



*Dennis Plews, Esq. giving the history of the Veterans Treatment Court*



*Paul Grondahl, MCBA President, Alfred James, VTC Administrator, Alix St. Paul, MCBA President-Elect, Dennis Plews, Esq., and Chief Judge Charles Williams*

At the October 25, 2017 General Membership Luncheon, members celebrated Veterans Day and heard from veterans Dennis Plews, Esq. and Alfred James, Administrator of the Veterans Treatment Court as they detailed the program of the 12th Judicial Circuit. The program began in Manatee County, as a track within the larger Drug Court program, in 2015 and expanded to Sarasota in 2016. Members heard of the successes of the program and how it can specifically assist veterans, who have different needs, than others within the larger Drug Court. Once accepted into the program, veterans are assigned a mentor, attend group sessions, and generally “tend to do well” as described by Mr. James. The program was originally

started in Buffalo, NY in 2008 by Judge Robert Russell and was expanded into Florida when five attorneys, all veterans themselves, formed the board of “Florida Veterans for Common Sense,” as told by Mr. Plews, a founding member of the board. Chief Judge Williams encouraged MCBA members to volunteer their time and get involved with the program. During the special program, veterans were asked to stand and be recognized for their service. For more information on how you can volunteer, please call the Veterans Treatment Court office at (941) 749-3670. To view the program in its entirety, please go to METV’s YouTube channel at: <https://www.youtube.com/watch?v=UkfCgwA34Z4>

## MANATEE COUNTY TAX COLLECTOR ADDRESS CHANGE!

Manatee County Tax Collector’s address for service of legal complaints and summons will be changing as of Monday, December 18, 2017.

The Department that accepts service will be relocating to the SunTrust building at  
**1001 3rd Ave W, Suite 240,  
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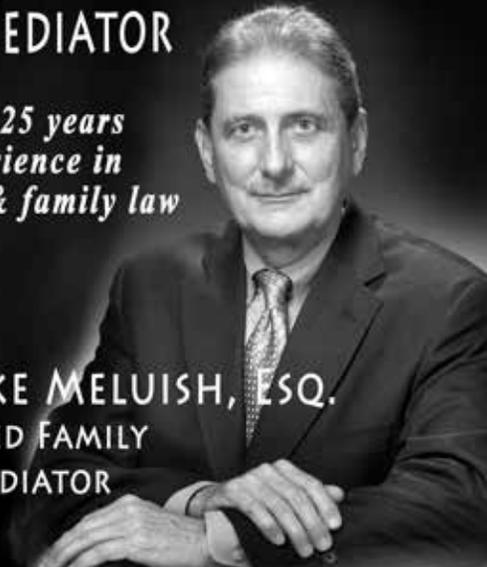


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# YLD News & Happenings

## Eye on 2018: Florida’s Constitution Revision Commission

by Alexandra Nicodemi, Esq.



Article XI, Section 2 of the Florida Constitution establishes the Constitution Revision Commission (“CRC”). The CRC is comprised of a 37-member commission who assemble every 20 years for the purpose of reviewing and proposing amendments to the Florida Constitution. The 2017-2018 election year marks the third time the commission will convene following the enactment of the 1968 Florida Constitution. The commission consists of the Attorney General as well as members appointed by the Governor, the Speaker of the House of Representatives, the Senate President, and the Chief Justice of the Florida Supreme Court.

The two previous CRCs occurred in 1977 and 1997<sup>1</sup>. The 1977-1978 CRC referred eight proposals to the ballot for voter consideration. All eight proposals failed to pass the simple majority vote required for an amendment to be made. The last CRC convened in 1997-1998 and proposed nine amendments to the Florida Constitution. Florida voters passed eight of the proposed nine amendments.<sup>2</sup> Examples of these amendments include: Amendment 5 (creating the Fish and Wildlife Conservation Commission); Amendment 6 (modifying Article IX to declare it “a paramount duty of the state” to provide education for children); and Amendment 7 (requiring that state revenue be used to fund the state court system and extending the terms of county judges).<sup>3</sup>

Currently, Florida is the only state in the country that provides voters the unique opportunity to review and revise their Constitution through the CRC. The CRC meets for approximately one year and travels throughout the state, listening to citizen comments and recommendations on potential amendments to the Constitution. Any amendments proposed by the CRC will be placed on the 2018 General Election Ballot. 60% voter approval is necessary for an amendment to pass.<sup>4</sup>

Florida voters play a crucial role throughout this process, the most important of which will be voting on the proposals in November 2018. Additionally, voters had the opportunity to participate in public hearings and were allowed to submit proposed amendments to the

commission until October 6, 2017.<sup>5</sup> The CRC received more than 2,000 written proposals by the October 2017 deadline. This total does not include proposals received through email and those made during public comment at hearings. As of November 10, 2017, the CRC posted 103 proposals on its website.<sup>6</sup> Some examples of these are: establishing additional rights for victims of a crime; requiring circuit court review before a state attorney may pursue prosecution of a child as an adult in criminal court; requiring the Legislature to annually appropriate certain funds to be used toward postsecondary education financial assistance; and prohibiting the expenditure of public funds for campaign spending. The October deadline does not mark the end of public input as the panel intends to hold additional public hearings that have yet to be announced. The CRC is required to file the proposed amendments by May 10, 2018, 180 days before the general election on November 6, 2018.<sup>7</sup>

Florida is now the third largest state in the country. As its population continues to grow, it is important these revisions continue to reflect Florida’s diverse culture. This year the CRC is considering amendments in areas such as: transportation, crime and justice, education reform, healthcare, and representation. Changing the Florida Constitution will have a lasting impact on this, and future generations. While the commissioners will ultimately decide what proposed changes go on the 2018 ballot, it is important to remember the power to change the Constitution resides solely with the voters.

<sup>1</sup><http://www.flcrc.gov>  
<sup>2</sup><http://revisefl.com/images/FloridaCRCCitizens'Guide.pdf>  
<sup>3</sup>[https://ballotpedia.org/Florida\\_Constitution\\_Revision\\_Commission#1997-1998](https://ballotpedia.org/Florida_Constitution_Revision_Commission#1997-1998)  
<sup>4</sup>FLA. CONST. art. XI, § 5  
<sup>5</sup><http://www.flcrc.gov>  
<sup>6</sup><http://www.flcrc.gov/Proposals/Commissioner>  
<sup>7</sup>FLA. CONST. art. XI, § 2  
<sup>8</sup><http://revisefl.com/images/FloridaCRCCitizens'Guide.pdf>



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*Having fun at the Haunted Winery Tour in October*





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The MCBA is proud to have such wonderful members! The “100% Club” is a special recognition within the MCBA reflecting our members’ commitment to the advancement of the legal profession while enhancing the community. The MCBA is proud to announce the following, who have 100% membership in the MCBA, as members of the “100% Club”:

- Law Office of Andrea M. Johnson, P.A.
- Tilden & Prohidney, P.L.
- Porges, Hamlin, Knowles & Hawk, P.A.
- Law Office of Matthew Z. Martell, P.A.
- Lisa Bell, PA
- David P. Johnson, Esq.
- Proctor Elder Law, PA
- Mackey Law Group, P.A.
- Affordable Attorney, Gerling Law Group, Chrtd.
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- Edward B. Sobel, PA
- Donna Irvin Sobel, PA
- Law Office of Mark A. Nelson, PA

### CAN YOU HELP?

#### New Program To Help Vets!

Judge Steve Walker and Jim Dirmann, (US Marine Corps, ret.) are asking Manatee lawyers to volunteer time to represent financially challenged and unrepresented service members pro bono in Family Division. This project intends to make use of unbundled legal services, eliminating the need for attorneys to represent clients for an entire case.

You do not need to be a family law attorney. Training will occur later for those who practice other specialties. Malpractice insurance coverage will be provided for attorneys whose clients are qualified by Legal Aid of Manasota.

Members are invited to a meeting 3:00 p.m., December 7, 2017, Silvertooth Judicial Center, Sarasota, Courtroom 6 A to learn about this initiative. This is an opportunity to show support and appreciation for those who have served.

### MCBA SECTION CHAIRS:

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

## Welcome New Members

**KYLE W. GRIMES** – B.S., University of Florida, (2013), Florida State University (2017), Year Admitted to The Florida Bar, 2017. Mr. Grimes is an associate with Grimes Goebel Grimes Hawkins Gladfelter & Galvano, P.L.,

1023 Manatee Ave. W., Bradenton, FL 34205.  
Phone: 748-0151

**WENDY A. MAKHOLM** - Barry University, 1996, J.D., Stetson University College of Law, (1999), Year admitted to The Florida Bar, 2000. Ms. Makhholm is a Supervising Attorney with the Manatee County Clerk of Court,

P.O. Box 25400, Bradenton, FL 34206.  
Telephone: 741-4044

The Inter Alia is a great way to advertise your services to fellow members! It's inexpensive and gets results. Please contact Graceann at [MCBA@ManateeBar.com](mailto:MCBA@ManateeBar.com) for more information.

## DATES TO REMEMBER:

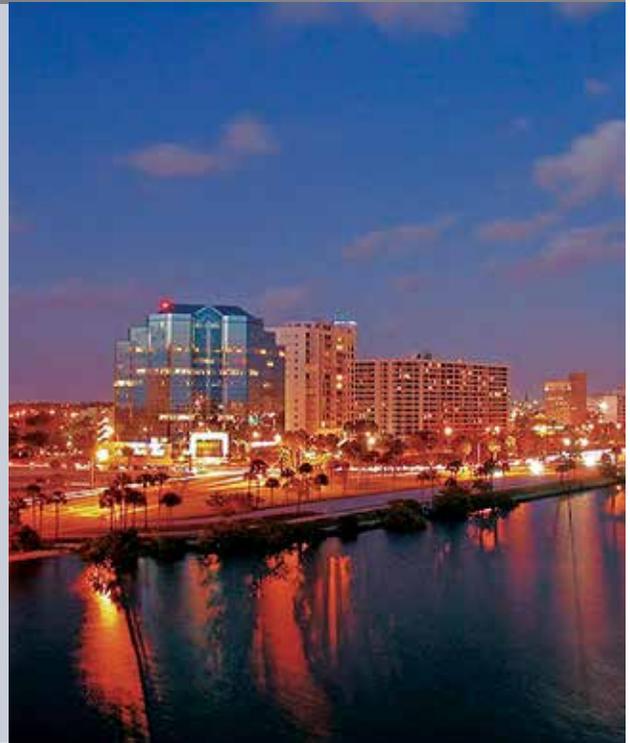
- November, 2017 NO GENERAL MEMBERSHIP MEETING
- December 1, 2017 MCBA HOLIDAY PARTY:  
ArtCenter Manatee, 5:30 pm
- December, 2017 NO GENERAL MEMBERSHIP MEETING
- January 31, 2018 GENERAL MEMBERSHIP MEETING,  
PIER 22, NOON
- February 28, 2018 GENERAL MEMBERSHIP MEETING,  
PIER 22, NOON
- March 28, 2018 GENERAL MEMBERSHIP MEETING,  
PIER 22, NOON
- April, 2018 NO GENERAL MEMBERSHIP MEETING
- April 13, 2018 BEACH PARTY – Caya Casa
- May 30, 2018 GENERAL MEMBERSHIP MEETING,  
PIER 22, NOON: LAW DAY PROGRAM
- June 27, 2018 GENERAL MEMBERSHIP MEETING,  
PIER 22, NOON

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# MANATEE COUNTY BAR ASSOCIATION

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**Mailing address:** P.O. Box 796,  
 Bradenton, FL 34206  
**Phone:** (941) 741-4091  
**Email:** [MCBA@manateebar.com](mailto:MCBA@manateebar.com)



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