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OCTOBER 2021

NEWSLETTER OF THE MANATEE COUNTY BAR ASSOCIATION

Civil Practitioners - know the new standard (and deadlines)!

By Aaron Crittenden, Esq., MCBA Director



Florida Rule of Civil Procedure 1.510, governing Motions for Summary Judgment within Florida, was recently changed to bring Florida in line with "that of the federal courts and of the supermajority of states that have already adopted the federal summary judgment standard." See, In re Amendments to Florida Rule of Civil Procedure 1.510, 309 So. 3d 192 (Fla. 2020). Effective May 1, 2021, pursuant to multiple opinions of the Florida Supreme Court, Florida adopted the federal summary judgment standard that

altered the language and application of 1.510 moving forward. These changes not only effect the timing and standard for practitioners, but also put additional requirements upon the judiciary.

On the timing changes enacted, under the old rule movants were required to serve their summary judgment motion/evidence 20 days before the hearing date and the non-moving party could designate its counter evidence by electronic notice 2 days prior to the hearing. This had the effect of leaving the movant feeling "sandbagged" and rushing, last minute, to respond to the opposition supplied so close to the hearing date. Under the new rule, the movant must serve the summary judgment motion at least 40 days in advance of the hearing and the non-moving party is required to serve its response no later than 20 days prior to the hearing. Fla. Rule of Civ. Pro. 1.510. The Court applied this change "to reduce gamesmanship and surprise and to allow for more deliberative consideration of summary judgment motions." In re: Amendments to Florida Rule of Civil Procedure 1.510, No. SC20-1490, 2021 WL 1684095 (Fla. Apr. 29, 2021) at 12.

Substantively, applying the new standard means recognizing "the fundamental similarity between the summary judgment standard and the directed verdict standard." Id. at 6. Further, under the new rule, "summary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part" of rules aimed at "the just, speedy and inexpensive determination of every action." Id. Under the old standard, if there existed "any genuine issue of material fact, or the possibility of any issue, or if the record raises even the slightest doubt that an issue might exist, summary judgment [was] improper." St. Pierre v. United Pacific Life Ins. Co., 644 So. 2d 1030, 1031 (Fla. 2d DCA 1994). Under the amended rule, however, summary judgment is permitted where one party's version of the facts is blatantly contradicted by the record "so that no reasonable jury could believe it." In re Amendments to Florida Rule of Civil Procedure 1.510, 309 So. 3d at 193. "The mere existence of some alleged factual dispute between the parties will

not defeat an otherwise properly supported motion for summary judgment." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986). In the amendment opinions, the Court states that the correct test for a genuine factual dispute under the new standard is "whether the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *In re: Amendments to Florida Rule of Civil Procedure 1.510*, No. SC20-1490, 2021 WL 1684095 (Fla. Apr. 29, 2021) at 7 (quoting Anderson, 477 U.S. at 248).

For the judiciary, the new rule requires additional detail be provided in ruling on a motion for summary judgment. Rule 1.510 now states that, "The court shall state on the record the reasons for granting or denying the motion. The summary judgment standard provided for in this rule shall be construed and applied in accordance with the federal summary judgment standard." The Florida Supreme Court ruled that, "To comply with this requirement, it will not be enough for the court to make a conclusory statement that there is or is not a genuine dispute as to a material fact. The court must state the reasons for its decision with enough specificity to provide useful guidance to the parties and, if necessary, to allow for appellate review." *In re: Amendments to Florida Rule of Civil Procedure 1.510*, No. SC20-1490, 2021 WL 1684095 (Fla. Apr. 29, 2021) at 11.

Interestingly, the Court comes close to encouraging litigants to test out the new standard, even in cases where a motion for summary judgment has already been denied upon under the prior standard. In these instances, "the court should give the parties a reasonable opportunity to file a renewed summary judgment under the new rule." Id. at 13.

Ultimately, the Court decided that "the federal summary judgment standard is more rational, more fair, and more consistent with the structure and purpose of our rules of civil procedure." *In re Amendments to Florida Rule of Civil Procedure 1.510*, 309 So. 3d 192, (Fla. 2020) at 194. For further information and deeper analysis of the new standard, civil practitioners should be sure to read amended Rule 1.510, the Florida Supreme Court's Amendment Opinion's referenced above, as well as the Celotex Trilogy - *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986); and *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986).

¹ In re Amendments to Florida Rule of Civil Procedure 1.510, 309 So. 3d 192, (Fla. 2020) and In re: Amendments to Florida Rule of Civil Procedure 1.510, No. SC20-1490, 2021 WL 1684095 (Fla. Apr. 29, 2021)



Cyber Due Diligence: The Enabling Tool Most Attorneys Should Be Using

By Alvin Brown, Esq.

Disruption to business operations and loss of sensitive data, because of malfeasance, negligence, or both, have become commonplace, leading to the growth of Cybersecurity, Data Protection and Privacy practices across the U.S. Unfortunately, most people only seek legal advice from cyber and privacy practitioners when they believe information technology (IT), personally identifiable information (PII), or personal health

information (PHI) are the main issues. However, almost every facet of our lives is influenced by technology and the transmission of sensitive data. Given the ubiquitous nature of IT, information security and the associated legal risks should be considered even though other areas of law may be the primary matter under consideration. One of the tools that can be used to mitigate these risks is cyber due diligence.

According to cyber professionals, the average time it takes to identify a data breach is 228 days. It is important to note 228 days is the average time for detection and there are documented cases of intrusions going undetected for years. This happens because most IT departments and companies only setup and maintain information systems for day-to-day operations using passive security measures. This can prevent run-of-the-mill malware attacks, but insider threats from personnel acting in a malicious or negligent manner, defects in the operating system itself, and sophisticated cyberattacks can normally only be detected through active investigation.

Cyber due diligence is a proactive measure using legal and technical experts to evaluate the risk to business operations due to of undetected intrusion into information systems. It can include forensic analysis of the IT systems, an evaluation of the security policies and procedures, and a legal review of IT contracts, third-party vendor agreements, procurement contracts. Of course, the list of required proactive measures can grow depending on the needs and complexity of the organization and the proposed activity. Below are just a few examples and hypotheticals where cyber due diligence could, and probably should, be used.

Mergers and acquisitions (M&A) is one area where cyber and privacy attorneys can play a key role in mitigating risk. Due diligence is performed to ensure there are no liens, judgements, lawsuits, or other liabilities that could impact the value of the business interest being acquired. Cyber due diligence is conducted to mitigate the risk from undetected data breaches that can have similar consequences. Imagine a physician or dentist that is buying an existing practice, however none of the parties to the deal are aware of a data breach that occurred several months earlier. Only after the deal is completed does the buyer discover the breach. The buyer is now responsible for notifying Health and Human Services (HHS) about the breach and possible exposure of PHI, thus may be subject to fines and penalties. Similarly, a buyer may acquire an interest in

a technology, pharmaceutical or financial company believing this entity has valuable intellectual property (IP) rights or confidential information. Only after the sale is completed does the buyer discover there was a data breach that may diminish the value of the IP or sensitive information.

Here is a real-life example of M&A gone wrong. The Marriott hotel chain announced a breach in its reservation system in 2018. After forensic analysis the source of the breach was traced to the Starwood hotel chain before it was acquired by Marriott. Nearly 500 million guest records over a four-year period had been exposed in Europe at Starwood hotels. In 2020 a class action lawsuit was filed against Marriott in the EU because it owned the Starwood chain at the time the data breached was discovered. There are no reports of Marriott performing the necessary cyber due diligence of Starwood's information systems and security practices before completing the acquisition. As a result, Marriott brought a vulnerability into its own information systems when it merged with Starwood. Marriott was fined \$120 million dollars by the United Kingdom's Information Commissioner's Office (ICO) for violating British citizen's privacy rights under the European Union's Global Data Protection Regulation (GDPR). The estimated direct and indirect losses could be billions in lost revenue due to the data breach.

Outsourcing to reduce overhead is a routine business practice, but most vendor agreements do not sufficiently address cybersecurity and the proper handling of private information. In March of 2021, the Volkswagen group was notified that one of its vendors left unsecured data on the internet dating back to August 2019. Nearly 3 million customers in the United States and Canada had phone numbers, emails addresses, and driver's license numbers exposed. In this case, Volkswagen needed to conduct cyber due diligence to assess how its third-party vendors handle, store, and transmit sensitive information. Performing this analysis may have prevented its customer's PII from being exposed on the internet for over a year. It should come as no surprise that Volkswagen is facing a class action lawsuit for failing to safeguard consumer data in accordance with the California Consumer Privacy Act (CCPA) and other state and federal regulations.

Supply Chain Risk Management (SCRM) is another area cyber due diligence can be a critical factor. When discussing supply chain disruptions many people will probably think about the Colonial Pipeline hacking incident that led to temporary gas shortages throughout the Southeastern portion of the U.S. earlier this year. A class action lawsuit has been filed seeking damages for costs and lost profits by more than 11,000 gas stations on the East Coast. The plaintiffs in this case are alleging Colonial did not use adequate security protocols which led to a sudden and dramatic fuel shortage. Additionally, the plaintiffs are seeking injunctive relief to ensure Colonial takes adequate measures to protect the pipeline from future shutdowns.

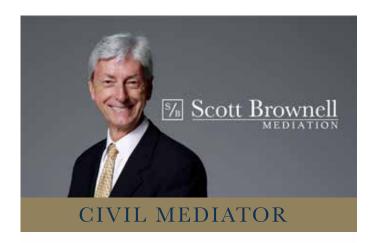
Most companies have provisions in their procurement agreements that cover natural disasters, man-made incidents such as terrorism, and now pandemics. Surprisingly, considering the number of reported cyber incidents, a relatively low percentage of organizations are addressing the possibility of a supply chain disruption due to a

(Cyber Due Diligence, continued from page 2)

cyberattack in their contracts. This is likely because the company never considered its operations could be affected by a cyber incident upstream in the supply chain. In this case cyber due diligence could reveal the possible threat to business operations due to a cyber incident within the supply chain. Armed with this knowledge, provisions can be added to the procurement contracts to address cyber incidents, and crisis management and business continuity plans can be developed to overcome the disruption.

The examples provided here is not an exhaustive list of how cyber due diligence can be used. Technology is a part of our daily interactions and impacts almost everything we do. Attorneys across all practice areas should consider seeking out cyber and privacy professionals to perform due diligence that can inform risk management and litigation avoidance strategies. This proactive measure can reduce the chance of a costly lawsuit or disruption to business operations.

Alvin K. Brown is an attorney and data protection and privacy consultant with over 20 years of Department of Defense (DoD) and Intelligence Community (IC) experience working on National Security, Cybersecurity, Data Protection, and Privacy matters. During his career, Alvin has served in operations, management, policy, compliance and legal positions at the Central Intelligence Agency, Defense Intelligence Agency, Office of Naval Intelligence, U.S Special Operations Command, U.S. Central Command, and U.S. Special Operations Command Central. Al is the Diversity Committee Chairman of the MCBA.



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CIVIL MAGISTRATE IN MANATEE COUNTY

In an effort to further serve the citizens of the Twelfth Judicial Circuit by continuing to provide timely access to the courts, the Court is pleased to announce that it now has a General Magistrate in Manatee County who is available to hear a wide range of matters pending before the Circuit Court in civil cases, including motions to compel discovery, motions for protective orders, motions to dismiss, motions for summary judgment, and other similar motions. With the exception of jury trials, General Magistrate David Caskey, who has been serving as a General Magistrate in the Twelfth Judicial Circuit since 2015, is now available to conduct hearings on motions and discovery issues in all civil cases pending before the Circuit Court in Manatee County, upon the stipulation of the parties and a referral from the Court. Said Judge Nicholas, "Because Judge Sniffen and I are in trial two weeks out of every four, securing hearing time can be a challenge. Using Magistrate Caskey will allow the civil lawyers to find hearing time much faster".

The referral of any matter to a General Magistrate requires the consent of all parties. Should any party wish to have a civil matter referred to the General Magistrate, the party must first obtain a written Order of Referral from the appropriate Circuit Court Judge, a copy of which can be found under the Forms section of the Circuit Civil page on the Twelfth Judicial Circuit's website. Once an Order of Referral has been entered, the parties may secure hearing time before the General Magistrate on JACS on any docket that has been designated by the Magistrate's office as a civil docket. Should the parties have any questions or concerns regarding the scheduling of civil matters before the General Magistrate, they may contact the Magistrate's assistant by email at khightower@jud12.flcourts.org, or by phone at (941)749-3650.

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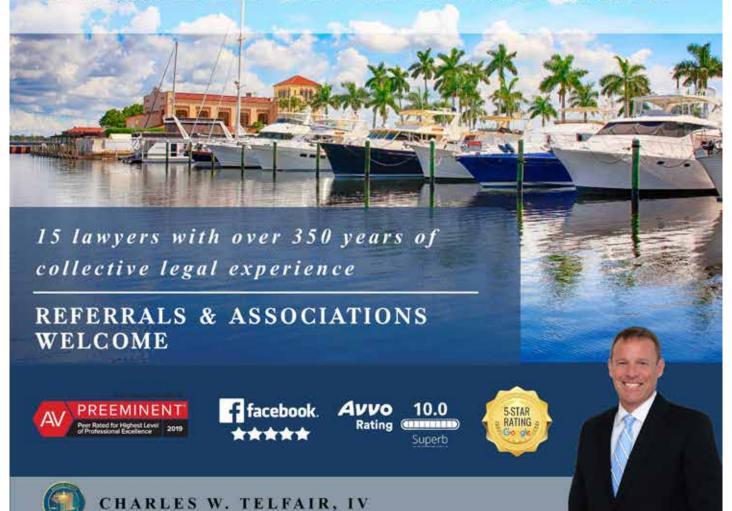
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Highlights of the September 2021 General Membership Luncheon!

September welcomed back the 2021-22 membership luncheons with Dr. Robert V. Barylski as the guest speaker. Members reconnected with each other from a summer break and Dr. Barylski kicked off the luncheons with a dynamic presentation regarding Russian Policy, both domestic and abroad. Dr. Barylski is a retired associate professor in the Department of Government and International Relations at USF Sarasota and former Dean of the University. An expert on civil-military relations in Russia, he published The Soldier in Russian Politics 1988-1996: Duty, Dictatorship and Democracy under Gorbachev and Yeltsin. He travels to Russia frequently and speaks and writes on political and economic reconstruction in the former Soviet Union. He is particularly interested in the development of oil resources in Russia and the newly independent nations on its borders.

In recent years, he has become one of the leading experts on Russian policy towards states and peoples of Islamic heritage. He has also spoken to SILL audiences on the rise of tycoons in the Russian economy and the relationships between Russia, China and Iran. General Membership Luncheons are a great way to connect with other members, and as always, lunch is included in the membership dues. Don't miss the October General Membership Luncheon when we celebrate our veterans with speaker, Col. Larry Bustle. See the

announcement in this issue.



MCBA President Elect Faith Brown, Dr. Robert Barylski and MCBA President Stephen Dye



MCBA President Stephen Dye, MCBA Past President Cliff Walters, MCBA Past President Patty Petruff, MCBA Treasurer David Wilcox and Manatee County Clerk of the Circuit Court Angelina Colonneso



MCBA President Stephen Dye and MCBA Past President Tim Knowles with guest Carlos Baruff



Members stand to say the Pledge of Allegiance led by President Stephen Dye



Dr. Barylski received his MCBA Tumbler from President Elect Faith Brown



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The MCBA's "100 Club" is open to renewal each year, as it does not automatically renew due to changes in firm rosters from year to year. Firms must renew each year to participate. Firms must have two or more attorneys to be eligible.

To become a member of the "100 Club" for the 2021-22 year, please submit your request via email to Executive Director, Graceann Frederico at MCBA@ManateeBar.com no later than, October 31, 2021. Include a listing of all attorneys in your firm. Once the names are verified as active members of the MCBA, and approved, your firm will be added to the MCBA 2021-22 "100 Club" listings and sent the official badge.



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Welcome New Members

Cameron Allen, Esq.

University of Florida, 2021 Admitted to The Florida Bar, 2021 Firm: Berlin Patten Ebling, PLLC Area(s) of Practice: Real Estate

Casey Cahall, Esq.

Stetson Law School Admitted to The Florida Bar, 2014 State Attorney's Office Area(s) of Practice: Criminal Law, Trial, Litigation/Trial Advocacy/Advocacy

Courtney Isop Flandreau, Esq.

Albany Law School
Admitted to The Florida Bar, 2006
Firm: Mallard Law Firm
Area(s) of Practice: Personal Injury, Civil Litigation,
Civil Trial

Marissa Milazzo, Esq.

Stetson Law School, 2021 Admitted to The Florida Bar, 2021 Firm: Berlin Patten Ebling, PLLC Area(s) of Practice: Real Estate

Karen B. Schapira, Esq. NSU, UM

Admitted to The Florida Bar, 2001 Firm: Karen B. Schapira, PLLC Area(s) of Practice: Health Law, Mergers & Acquisitions, Business

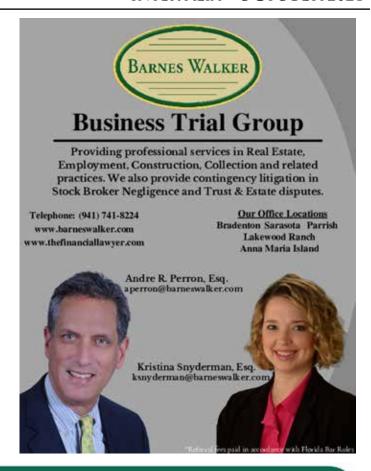
Solo & Small Firms Section Holds "QuickBooks for Law Firms" CLE!

On October 12, 2021, the Solo & Small Firm Section of the MCBA held a CLE entitled "QuickBooks for Law Firms" which included technology credit. Carrie Kane, owner of Total QuickBooks Solutions in Ft. Myers presented the CLE which was chock full of tips and techniques specific to law firms. Discussed was trust accounting, QuickBooks platforms, taxes, expenses, billing, reports and more. If you missed the one hour CLE, and would like to watch the recording, please contact MCBA Executive Director Graceann Frederico at MCBA@ManateeBar.com. The CLE is available for only \$10 for MCBA members, and \$20 for non MCBA members. Special thanks to Solo & Small Firm Chairman, Steele Williams, Esq. for his leadership of the Solo & Small Firm Section.









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Judge Gilbert A. Smith, Jr. Sworn-In as Bradenton Kiwanis President!



On October 5, 2021, Judge Gilbert A. Smith, Jr. was sworn in as the president of Bradenton Kiwanis. Judge Smith becomes the 4th sitting judge to become president of Bradenton Kiwanis after Judge George Hitchcolk (1954), Judge Robert Hensley (1967), Judge Ed Nicholas (2014/2015, 2015/2016 – two terms) served.

Judge Robert Willis and Judge Heather Doyle also both served as president of Bradenton Kiwanis before they were elected. Judge Willis served in 1949 and Judge Doyle served in 2017/2018.

Judge Smith will be in office as president when Bradenton Kiwanis turns 100 years old on August 22, 2022.

Many other members of the MCBA have served as president of Bradenton Kiwanis including Dewey Dye Sr. (1927), Edward C. Rice (1929), Sibley White (1931), Gordon Brown Knowles (1934), Sam Cornwell (1939), Edgar Johnston (1966), Cliff Walters (1985/1986), Jack Hawkins (1998/1999), Julia Ross (1999/2000), Phil Perrey (2007/2008) and Tom Moseley (2010/2011).

Congratulations Judge Smith!



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- Elder Law Guardianship administration and litigation Public benefits and Medicaid planning



Jeffrey S. Goethe, Esq. Admitted to the Florida Bar in 1990

Florida Bar Board-Certified in Wills, Trusts & Estates Fellow, American College of Trust and Estate Counsel Past President, Manatee County Bar Association



Kevin M. Collver, Esq

Member, Manatee County Bar Association LL.M., Taxation, Univ. of Florida

Lawrence W. Thomas, Esq

Admitted to the Florida Bar in 1985 Past Director and Secretary of the Manatee County Bar Association



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October 13, 2021 MCBA YLD BOD Meeting

October 27, 2021 General Membership Luncheon

November 3, 2021 MCBA BOD Meeting

November 4, 2021 Technology CLE

November 5, 2021 Investiture of Judge Bruning

November 10, 2021 MCBA YLD BOD Meeting

December 1, 2021 MCBA BOD Meeting December 3, 2021 Holiday Party at

Heritage Harbour Golf Club

December 8, 2021 MCBA YLD BOD Meeting

*dates are subject to change – check your weekly News You Can Use email for updates

Probate & Guardianship Section Hold CLE!

In October, the MCBA Probate & Guardianship Section, led by Chairman Jeff Goethe, Esq., held a virtual CLE with a panel of speakers from around the State. The CLE, "What's New For Probate & Trust Attorneys in 2021" was a 2 hour CLE which included Jeff Goethe, Esq. who discussed "Florida Homestead and Revocable Trusts (and Cooperatives)", M. Travis Hayes, Esq. who discussed "All About That Basis – Florida Steps it Up with New Community Property Trust Act, J. Grier Presley, III, Esq., who discussed "Presumed Reasonable Fees in Probate and Trust Proceedings" and Jenna G. Rubin, Esq., who presented "The Uniform Directed Trust Act". The CLE was open to all active members of the MCBA. If you missed the presentations and would like to watch the recording, please email Executive Director Graceann Frederico at MCBA@ ManateeBar.com.

Special thanks to MCBA Probate & Guardianship Section Chairman Jeff Goethe, Esq. for his leadership and planning of this CLE.

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Board of Trial Advocacy







The MCBA Welcomes Col. Larry Bustle to the October General Membership Luncheon!

RSVP Now!

The MCBA will be honoring veterans at its October General Membership Luncheon on Wednesday, October 27, 2021, at noon at Pier 22. The MCBA is thrilled to announce guest speaker as Col. Larry Bustle, USAF, Ret.

Col. Bustle is a native of Manatee County and is a 1953 graduate of Manatee County High School.

After high school, he attended the U.S. Naval Academy in Annapolis, Maryland, and after graduation he was commissioned as a second lieutenant in the United States Air Force. He received his pilot wings in 1958 and enjoyed a distinguished career which included service as a fighter pilot and test pilot with over 3300 flying hours. Mr. Bustle flew 130 combat missions in the F-4D Phantom II aircraft during the Vietnam War. For his service in Vietnam, he was awarded the Silver Star, the Distinguished Flying Cross, nine Air Medals and the Purple Heart, among others. In 1967 he was awarded a Master of Science Degree in Astronautical Engineering from the US Air



Force Institute of Technology, and in 1970 he graduated from the US Air Force Test Pilot School. Later, he served in senior command positions in the Air Force and retired from the Air Force as a Colonel in 1984.

Col. Bustle previously served for seven years as Mayor of Palmetto. On August 26, 2008 he was elected to the Manatee County Commission. He retired from the commission in 2015.

Col. Bustle served three consecutive years as Chairman of the Port Manatee Port Authority. He served as Chairman of the Tampa Bay Regional Planning Council and served on the Sarasota-Manatee Metropolitan Planning Organization. He also served as Chairman of the Manatee County Public Safety Coordinating Council. He previously served on the American Patriotism Celebration Task Force and the Chamber of Commerce Economic Development Council Advisory Board. He is a past chair of the Sarasota-Manatee Metropolitan Planning Organization, the Manatee Veterans Council, and a past member of the Community Coalition on Homelessness and the Local School Readiness Coalition. He is a graduate of Leadership Florida Class XXIV and in 2007 was presented the Edgar H. Price, Jr. Humanitarian Award at the Palmetto Youth Center Martin Luther King, Jr. Banquet.

He is married to the former Edie Stevenson and they have four grown children, two grandchildren and two great-grandchildren. Col. Bustle is presently fully retired.

To attend, you must RSVP to Executive Director, Graceann Frederico no later than Monday, October 25th by sending your email to: MCBA@ManateeBar.com. Active Members are Free to attend, guests are \$30 and must attend with a member.

WILL SEARCH FOR STEPHANIE MULLING

She was a nurse practitioner at All Childrens Hospital in St Pete. In addition to the will, there may be a trust set up for her children.

Last Known Address: 419 19th Street Court West in Bradenton.

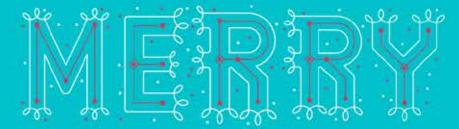
DOB: 9/4/1956 DOD: 9/16/2021

If anyone has any information, please contact Matthew Mulling, at (202) 441-9039.





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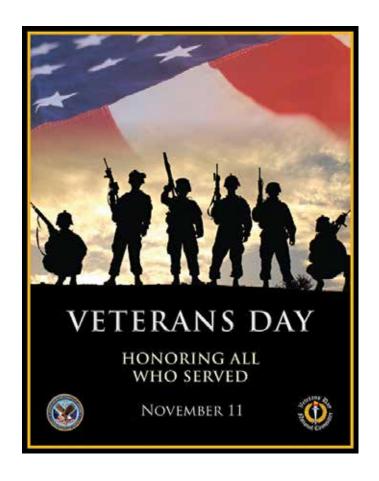
1ST PLACE: \$300 AMAZON GIFT CARD 2ND PLACE: \$150 AMAZON GIFT CARD 3RD PLACE: \$50 AMAZON GIFT CARD

The top three members, listed on a New Member
Application as "Referred By" will win!
Just sign up new members between now and June 1st, 2022!
Winners will be announced at the Annual Meeting in June.

* New Members must not have been a member of the MCBA within the last 3 years.

Applications are online at www.manateebar.com







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INVITE YOU TO COME ENJOY LIVE MUSIC AND NETWORKING. THIS IS A FAMILY FRIENDLY EVENT, KIDS AND SPOUSES ARE WELCOME.

WHEN: Friday, November 5, 2021 at 5:00pm-8:00pm

WHERE: JIGG'S LANDING, PAVILLIONS RESERVED

6106 63rd Street E., Bradenton, FL 34203

\$10.00 Member, \$15.00 Non-Member, Kids free

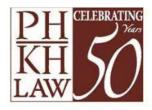
Please pay in advance by credit card, which will serve as your RSVP to the event: https://secure.affinipay.com/pages/manateefawl/payments

Snacks and non-alcoholic beverages will be provided. Food and alcoholic beverages are available for purchase separately. Sunset Boat Tours are also available to be purchased separately. The boat tours begin at 3:00 p.m. or 6:00 p.m. and are \$25 per adult/\$20 per child. Please contact 941-727-4181 or use https://floridaboattours.info/ to reserve your tour.





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Speaker: Pam Fields, Esq, Legal Aid of Manasota, Inc.

Topics include:

Rules Regulations the Florida Bar regarding pro bono;

The importance of access to justice;

The justice gap;

What is considered pro bono and what isn't;

Benefits of taking pro bono matters;

Local needs; how to get started

October 19, 2021 Noon – 1 PM, via Zoom Email: fawlmanatee@gmail.com to register

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thursday, november 4th, 2021 12 noon - 1:30 pm on Zoom





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