



INTER ALIA

NEWSLETTER OF THE MANATEE
COUNTY BAR ASSOCIATION

OCTOBER 2024

*News, invitations,
photos and more*

**LAWYERS, DON'T
FEAR THE REAPER**

100 Club

SEAPORT MANATEE

***Wind of Change: The
Revised Rules of Civil
Procedure Become
Effective January 1, 2025***

**COMING UP: OCTOBER
LUNCHEON MEETING**



Lawyers, Don't Fear the Reaper

By Joseph B. Battaglia, Esq., MCBA Director

One of my favorite benefits of being a licensed Florida attorney is that, every month, without fail, I receive a nice, crisp copy of The Florida Bar News. Last month was like no other, with the September 2024 issue showing up like clockwork.

When I received that issue, however, I was shocked by a headline that appeared just above the fold: "AI filing misappropriates Florida attorney's identity." **Wow...scary...what a headline.**

As a person with an interest in artificial intelligence ("AI"), and as an attorney who doesn't want his identity to be misappropriated, I was hooked by this foldbait (coined it?). "What's this crazy AI up to now?" I thought as I jumped right into the story. One paragraph in, I recognized the name of the attorney who was affected by this incident, Matthew Weidner. Back in the day when I was a consumer bankruptcy attorney, Mr. Weidner was well-known in debtor-creditor circles as a prominent foreclosure defense attorney. It's one thing if this situation happened to one of the hundred-thousand-plus attorneys whom I've never heard of. But to happen to an attorney who I am tangentially familiar with? Hook, line, and sinker.

According to the article, a defendant in a foreclosure lawsuit hired a "litigation services" company to assist him. The article stated that the litigation services company "used generative AI to scoop up some of Weidner's old work in a previous case." Then, that previous work product was revised and was provided to the defendant to be filed in his case. And while the document was modified to include the case caption and party information from the defendant's case, neither the litigation services company nor the defendant had the foresight to remove Mr. Weidner's Florida Bar Number from the signature block of the pleading before it was filed. Upon discovering this mix-up, the plaintiff in the lawsuit asked the trial court to impose sanctions against the defendant for fraud on the court. The article concluded by stating that this incident is a cautionary tale about AI-generated legal documents. It sure is! Or at least I thought...

I was intrigued by the story and curious to learn more. So I did what all knowledgeable, seasoned, experienced lawyers do when setting out to research a complex legal topic -- I went to google.com and I searched it up. Doing this led me to other articles about this incident, some of which provided the defendant's name and the county in which the case was pending (the article in the Bar News, understandably, did not include this). With this, I searched the court records and was able to locate the actual case and began reviewing

the filings on the court docket, including the culprit filing, the one allegedly created with the assistance of AI, which was an Answer and Affirmative Defenses. But I also found some other filed documents relevant to the situation - I found the plaintiff's Motion for Sanctions, and I found the defendant's Response to the Motion for Sanctions. Interestingly, the defendant's Response contained a signed sworn declaration from one of the owners of the litigation services company that is wrapped up in this situation.

I read through each of these documents, wanting to get to the bottom of this to prevent an AI body snatching of me. This proved insightful and revealed a number of details that weren't facially apparent from the article in The Florida Bar News. A close examination of these documents told a telling story, one replete with red flags and OMGs. The allegations, assertions, and sworn states in the various documents paint a picture that is, in my opinion, classic unlicensed practice of law - textbook. But! Notably absent from the four corners of the motion, the response, and the sworn declaration is any reference, whatsoever, to AI or artificial intelligence. Not a single mention of it - not an iota.

What did I see? The defendant's response to the plaintiff's motion for sanctions stated that the defendant required immediate assistance with the foreclosure action and so, "in an effort to bypass reviewing all of the local rules related to pleadings, the [litigation services company] occasionally utilizes [an online database] by downloading numerous pleadings from [the online database] and that derive from the jurisdiction or even courthouse." "Those pleadings are then used as a template when preparing the appropriate complaint, motion, answer, or response." Further, the declaration from the owner of the litigation services company (signed under penalties of perjury) stated, "[i]n some cases, like the Defendant's case, we did turn over his matter to a local attorney in Florida. However, that attorney later had a change of heart, and so we agreed to help the Defendant with his paperwork until he could locate someone to represent him. In order to ensure the pleadings that are filed conform to the local rules of the respective courthouses, I personally download pleadings from [an online database] and reference those pleadings against the local rules to ensure compliance." *Wow.*

This was not a case of Chatbots Gone Wild. This was a case of a person who, in my opinion based upon his own admission, engaged in the unlicensed practice of law in Florida. In the article's defense, it did state that an unlicensed practice of law complaint had been filed due to this incident. And that should have been the focus of

Continued on Page 5

Welcome New Members

Christopher J. Czaia, Esq.
 Western Michigan University,
 Thomas M. Cooley Law School, 1992
 Year Admitted to The Florida Bar, 1992
 Firm/Office: Czaia Law
 Area(s) of Practice: Personal Injury,
 Social Security Disability

Jennifer L. Myers, Esq.
 Florida International University, 2022
 Year Admitted to The Florida Bar, 2023
 Firm/Office: State Attorney’s Office
 Area(s) of Practice: Government

Meghan E. O’Connell, Esq.
 Stetson University College of Law, 2022
 Year Admitted to The Florida Bar, 2022
 Firm/Office: Icard Merrill
 Area(s) of Practice: Civil Litigation,
 Commercial Litigation, Litigation

Keanu L. Schnepf, Esq.
 Stetson University College of Law, 2023
 Year Admitted to The Florida Bar, 2024
 Firm/Office: Esposito Law Group, P.A.
 Area(s) of Practice: Business Law,
 Banking Law, Estate Planning

MCBA CALENDAR OF EVENTS

- Wed., October 9, 2024..... MCBA YLD Board of Directors Meeting
- Sat., October 19, 2024 Arcadia Fall Rodeo Event
- Tue., October 29, 2024 Intellectual Property CLE
- Wed., October 30, 2024 MCBA Membership Luncheon
- Tue., November 5, 2024..... CLE Malpractice with Jesse Butler
- Wed., November 6, 2024 MCBA Board of Directors Meeting
YLD Table for 8 with Judge Smith
- Wed., November 13, 2024 MCBA YLD Board of Directors Meeting
- Wed., December 4, 2024..... MCBA Board of Directors Meeting
- Fri., December 6, 2024MCBA HOLIDAY PARTY
- Tue., December 10, 2024 CIA Security CLE - more details to come
- Wed., December 11, 2024..... MCBA YLD Board of Directors Meeting
- Wed., January 8, 2025 MCBA Board of Directors Meeting
- Wed., January 15, 2025 MCBA YLD Board of Directors Meeting
- Fri., January 17, 2025 CLE Mental Health - more details to come
- Wed., January 29, 2025 MCBA Membership Luncheon
- Wed., February 5, 2025..... MCBA Board of Directors Meeting
- Wed., February 12, 2025 MCBA YLD Board of Directors Meeting
- Wed., February 26, 2025..... MCBA Membership Luncheon
- Wed., March 5, 2025..... MCBA Board of Directors Meeting
- Wed., March 12, 2025..... MCBA YLD Board of Directors Meeting
- Wed., March 26, 2025..... MCBA Membership Luncheon
- Wed., April 2, 2025 MCBA Board of Directors Meeting
- Wed., April 9, 2025 MCBA YLD Board of Directors Meeting
- Fri., April 25, 2025 Annual Spring Beach Party Social
- Wed., May 7, 2025 MCBA Board of Directors Meeting
- Wed., May 14, 2025 MCBA YLD Board of Directors Meeting
- Wed., May 21, 2025 MCBA Membership Luncheon
- Wed., June 4, 2025 MCBA Board of Directors Meeting
- Wed., June 11, 2025 MCBA YLD Board of Directors Meeting
- Wed., June 25, 2025 MCBA Membership Luncheon

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CIRCUIT CIVIL DIVISION



VIRTUAL TOWN HALL

THE WIND OF CHANGE:

How the revised civil rules will impact the Circuit Civil Division and you



OCTOBER 17
12:00 - 1:15 PM

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CLE COURSE

INTELLECTUAL PROPERTY FOR THE CORPORATE & GENERAL PRACTITIONER

The seminar will cover general topics including trademarks, service marks, trade secrets, patents, copyrights and more!



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Continued from Page 1

the article – the unlicensed practice of law – not implicating AI when it was not the culprit. Let’s save that for if and when it really happens. But that sensational headline, parked just above the fold, **is now fodder** for all of our Luddittical colleagues who fear that AI is rounding the corner to steal our lunch money. This is unfortunate, because that’s not what happened here.

AI is coming whether we like it or not, and it has the potential to revolutionize the legal industry unlike anything that’s happened during the careers of anyone reading these words. AI is likely the biggest benefit to our profession while also simultaneously the largest threat, and so it needs to be treated with the respect it deserves. You don’t ignore the most magnificent rose you’ve ever seen because it has thorns; you just handle it a little more carefully. But if our profession looks to vilify AI at every turn by telling scary stories of the AI bogeyman, we will be doing ourselves and, ultimately, our clients, a disservice. Don’t fear the reaper.

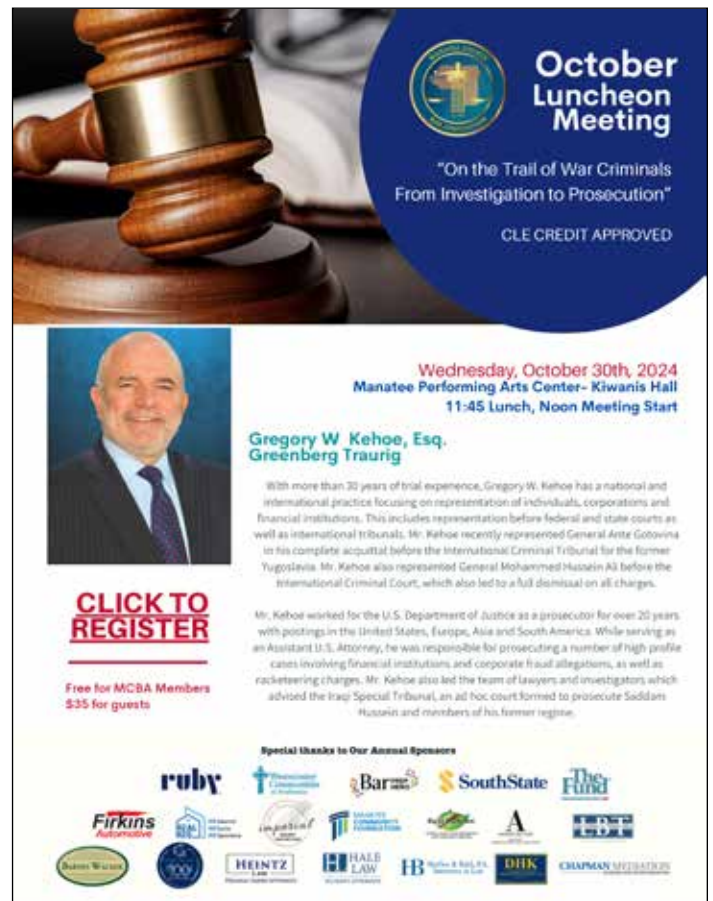
1. The Bar News article stated it was an eviction case, but it was, in fact, a foreclosure case.
2. Indeed, the plaintiff’s motion for sanctions asserts that a person with the same name as the owner of the litigation services company was disbarred in California in 2015. Coincidence? You can be the judge.

SAVE THE DATE

**OCTOBER 30TH
NOON - 1:00 PM**

MCBA MEMBERSHIP LUNCHEON!


DETAILS COMING SOON

October Luncheon Meeting

“On the Trail of War Criminals From Investigation to Prosecution”

CLE CREDIT APPROVED



Wednesday, October 30th, 2024
Manatee Performing Arts Center- Kiwanis Hall
11:45 Lunch, Noon Meeting Start

**Gregory W. Kehoe, Esq.
Greenberg Traurig**


With more than 30 years of trial experience, Gregory W. Kehoe has a national and international practice focusing on representation of individuals, corporations and financial institutions. This includes representation before federal and state courts as well as international tribunals. Mr. Kehoe recently represented General Ante Gotovina in his complete acquittal before the International Criminal Tribunal for the former Yugoslavia. Mr. Kehoe also represented General Mohammed Hussein Ali before the International Criminal Court, which also led to a full dismissal on all charges.

Mr. Kehoe worked for the U.S. Department of Justice as a prosecutor for over 20 years, with postings in the United States, Europe, Asia and South America. While serving as an Assistant U.S. Attorney, he was responsible for prosecuting a number of high profile cases involving financial institutions and corporate fraud allegations, as well as racketeering charges. Mr. Kehoe also led the team of lawyers and investigators which advised the Iraqi Special Tribunal, an ad hoc court formed to prosecute Saddam Hussein and members of his former regime.

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\$35 for guests

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CLE: Legal Principles and Ethics
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of the Second District Court of Appeal

(1.5 CLE credit, pending approval)

RESCHEDULED DATE:
November 1, 2024
via ZOOM 11:30 a.m. to 1:00 p.m.

RSVP to fawlmanatee@gmail.com to receive zoom information. No fee for attendance.

We look forward to seeing you there!



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CLE COURSE
MINIMIZING RISKS OF
LEGAL MALPRACTICE

Legal malpractice can arise in every practice area. Many malpractice claims contain similar mistakes which could have been avoided. The presentation will cover common mistakes lawyers make which give rise to legal malpractice claims, and advice on how to improve your practice to minimize those risks. The presentation will cover the intersection of the Rules of Professional Conduct and the attorney's standard of care, conflicts of interest, record keeping, "CYA" practices, and effective retainer agreements, among other topics of advice to help attorneys avoid a malpractice catastrophe.



JESSE BUTLER, ESQ.

Jesse Butler is a shareholder at the Sarasota litigation firm of Dickinson & Gibbons. He is an "AV Rated" Board-Certified Appellate Attorney and civil litigator whose practice focuses on cases of professional liability and legal malpractice. Jesse routinely handles legal malpractice matters throughout Florida. He has represented individuals, corporations, trusts, estates, and municipalities, in legal malpractice cases arising from a wide-variety of underlying subject areas of the law. He has also defended lawyers and law firms and has presented to the Florida Defense Lawyers Association on legal malpractice.

He is also a member of The Florida Bar's Board of Governors, where he serves on the Disciplinary Review Committee, which oversees prosecution and appeals for disciplinary violations by Florida lawyers. He also is the Designated Reviewer for the Twelfth Judicial Circuit's Grievance Committees, and is charged with evaluating the actions of the grievance committee.

TUESDAY, NOVEMBER 5, 2024

Manatee County Judicial Center,
Multipurpose Room
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2023-2024 YLD Presidency Recap

*By Patrick Barnes, Esq.;
YLD Past President*

As the YLD transitions to a new presidency under Patrick Iyampillai, I wanted to take a moment to reflect on the highlights of my year. We covered a lot of ground and raised a lot of money for an amazing cause!

To start the year, we teamed up with the Clearwater and Hillsborough Bar Association's Young Lawyer Division for a Rowdies game. We had some great vendors join us with tents, great weather, and a good turnout from the members. We went on to repeat this event this year, and hope to keep it going for years to come.

Next, we attended the annual Affiliate Outreach Conference in Orlando. Patrick I. and Chad M. joined me as we presented our fundraiser for a crucially important organization, SELAH Freedom. This organization raises awareness, consults on prevention, and houses girls recovered from human trafficking. We were able to win best project for the year!

We raised hundreds of dollars for SELAH Freedom thanks to our wonderful members. We also provided all of the residents with a basket full of special items like headphones, a blanket, a notebook, and much more. This project is very special to me, and we look forward to organizing an event yearly.

We had an amazing turnout at the rodeo, hosted by Hale Law. This was an opportunity for our members to get out of the office and into the country for some networking and socializing with other attorneys and judges.

Abigail Galati with Barnes Walker hosted a social right on the parade route. We had food, drinks, and fun. Having one of our firms host an event at such a major Bradenton event does so much to spread the word about the MCBA and connect with the community.

In addition to the major events, we also accomplished a lot for our community. We added books to the children's library at the courthouse, we hosted our annual art at the courthouse event, hosted Java for the Judges, packaged thanksgiving dinners with Ray Bellamy, and so much more.

I am so privileged to be the YLD president, and I am proud of the work that the team accomplished this past year. I think a lot of our events deserve to be repeated and hopefully become staples for the YLD for years to come. Thank you for the opportunity, it means so much to me.

I am confident that Patrick Iyampillai will continue to carry the torch for this amazing organization!

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ATTORNEYS

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JCID

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The Twelfth Judicial Circuit's Judicial Center Identification

Identification (JCID) card application period has begun. [Administrative Order 2022-10.2](#), provides that when feasible and practical, during times of high volume, judicial security at the Manatee County Judicial Center and the Silvertooth Judicial Center will open dedicated, expedited screening lines for attorneys displaying a current JCID card. Attorneys presenting the JCID card will not have to remove shoes or belts when going through the expedited screening line. All other personal belongings must be screened for security purposes. The application period for the JCID card runs October 1 through November 30, each year.

Attorneys can visit the [Twelfth Judicial Circuit's JCID application page](#) from October 1 through November 30, to submit their application and associated fee. The application fee for the JCID card, which is waived for government attorneys*, is \$25 each year. The fee for a replacement card is \$10; this fee will not be waived. The application and all fees must be submitted online. Attorneys should attach a headshot to their application. Photos can also be taken in Court Administration's office in the Manatee and Silvertooth Judicial Centers. However, this may delay receipt of the JCID card.

Attorneys who miss this application period cannot apply again until next October. Questions about the JCID card or the status of an application may be submitted to Court Administration in Sarasota at 941-861-7800.

*Government attorneys include SAO, PD, AGO, ORC, GAL, DCF, county attorneys, city attorneys, clerk's office attorneys, attorneys employed by LEOS, etc. The government employer must be listed on the applicant's Florida Bar profile to qualify for the fee waiver.

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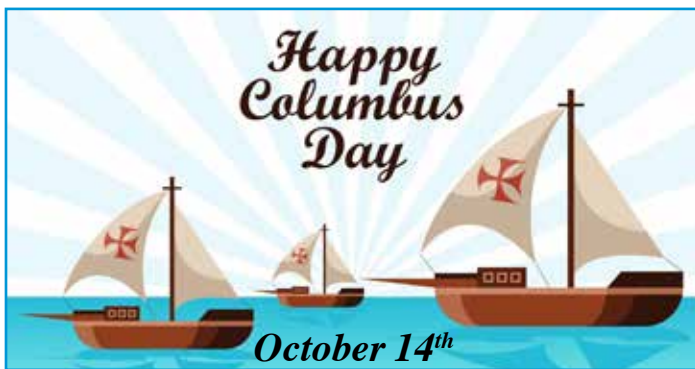
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3:00 PM Tailgate hosted by Silverio & Hall, P.A. outside the Mosaic Arena , Manatee, DeSoto, & Collier County Bars are invited!

Gates Open at 3:00 PM
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Wind of Change: The Revised Rules of Civil Procedure Become Effective January 1, 2025

By Hon. Hunter W. Carroll

By now, most of us have heard changes are coming to several civil procedure rules. Despite sounding innocuous, the effect is immense.

On May 23, 2024, the Florida Supreme Court released SC2023-0962 and SC2024-0662, changing and adding several rules. The circuit civil judges encourage attorneys to learn these new rules and think through how they will impact your practice. The rule changes become effective January 1, 2025.

At their core, these rule changes seek to require trial judges to actively manage civil cases and to reduce delay in a case's progression to trial. Once filed, cases should not stagnate.

This article explores some, but not all, of the more major changes. The circuit civil judges are evaluating how these changes will impact our normal processing of cases and steps we will take due to these changes. Also, we are striving to be as uniform between judges as possible.

On October 17, 2024, the circuit civil judges will discuss these changes in a Zoom Town Hall. The flyer insert has the details on how to sign up. The bar associations are applying for CLE credit.

The major changes

The rule changes are not final. The Florida Supreme Court invited comments when it issued its May 23 decisions, and many were filed. This article addresses some rule changes as they existed in early September when the article was written. The Florida Supreme Court may further revise these rules before publication or later. The circuit civil judges will update everyone on the status of the rule changes during the Town Hall.

Discovery. Discovery will change in four significant ways. These changes likely will impact attorneys' practices the most.

First, parties will now be required to make initial discovery disclosures. This includes identifying those individuals likely to have discoverable information. It also requires a copy of, or description by category and location of, all documents, ESI, and other tangible items a party may use to support the party's claims or defenses. The party must also provide a computation of any claimed damage and any relevant insurance policies.

Second, a party will now have an ongoing duty to supplement "in a timely manner" incomplete or incorrect discovery responses.

Third, proportionality is now explicitly required to be considered. Please note, there are many comments filed with the Florida Supreme Court seeking to eliminate this requirement.

Fourth, the initial disclosure and each discovery request, response, or objection must contain a detailed certification signed by an attorney or self-represented litigant.

Motion practice. There must now be a meaningful conferral on most motions before the motion is filed. The filer must state in the motion the opposing party's position or detail attempts taken to confer.

Summary judgment. The Florida Supreme Court will now "tie the deadline to respond to a motion for summary judgment to the date of service of the motion rather than to the hearing date." A party's "response will be due no later than 60 days after service of the motion for summary judgment." This change has generated many comments.

Case Management. Rule 1.200 is completely rewritten. The new case management rule applies to most, but not all, civil actions. Notable exceptions include some small claim, probate, estate, trust, and guardianship matters.

Within 120 days of the lawsuit being filed, the judge must issue a track assignment, establish a proposed or actual trial date, and enter a case management order. The case management order must contain at least 8 separate deadlines that are "consistent with the time standards." Once set, "the deadlines in the order will be strictly enforced by the court."

Courts are encouraged to conduct case management conferences. The judge may convert a motion hearing into a case management conference. A judge may hear any pending motion except summary judgment motions or those requiring evidentiary hearings at a case management conference.

Setting cases for trial. The "at issue" rule is eliminated, and pleadings no longer need to be closed to set a trial period. The judge must establish a projected trial period or an actual trial period in the case management order.

The 18-month (jury) and 12-month (nonjury) time standards established by the Florida Supreme Court continue to govern

Continued on Page 17

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Continued from Page 15

the “time-to-trial.” Historically, those times began the date the lawsuit was filed but will now begin the earlier of the last defendant served or 120 days after the lawsuit was filed. This ameliorates somewhat the problem encountered if there is a delay in serving the defendant with initial process.

Trial continuances. Trial continuances are disfavored, and strict rules now apply. Parties must detail the reasons, and the judge must explain the factual basis for continuance. Judges may sanction a party or attorney or both whose dilatory conduct caused the continuance.

If continued, “the new trial must be set for the earliest date practicable, given the needs of the case and resources of the court.” Further, the continuance order “must reflect what further activity will or will not be permitted.”

The New Circuit Civil Procedures

The circuit civil judges continue to work through how these rule changes will impact our handling of general and streamlined cases. Complex cases will be handled individually by the judge. By the October 17 Town Hall, we should have concrete procedures identified, assuming the Florida Supreme Court makes these rule changes final.

In our revised processes, we strive for as much uniformity within the circuit as possible. And we seek to make the process plain and transparent. Together, we will make the transition as smooth as possible.

The circuit civil judges currently anticipate several changes to existing procedures. These changes are consistent with the Florida Supreme Court’s direction to actively manage cases, eliminate delay, and speed up the time-to-trial. Please understand under the revised rules judges are to be less tolerant of delay caused by a party’s or attorney’s actions or inactions. Having said that, we understand that “life happens” and some things are out of a party’s or attorney’s control. I envision judges being more tolerant of those situations.

Judges also know there is no “one-size fits all” process that can, or should, apply to all cases. But we anticipate these new processes applying in a majority of cases. The judge, though, will remain flexible if changes are needed in a particular case for a particular reason. The key is to address any suggested changes sooner rather than later. Now the anticipated changes.

First, we anticipate issuing a trial order with a firm trial period soon after the lawsuit is filed, together with a case management order containing standard deadlines for that trial period. The selected trial period usually will be at the end of the allowable time under the Florida Supreme Court’s time standards. If a different trial period is needed, the parties must confer and bring that to the judge’s attention immediately.

By using standard deadlines, we seek to save attorneys time while retaining an attorney’s ability to seek different deadlines if warranted. No more sitting through Initial Case Management Conferences simply to be given a trial period and then be required to meet and confer on creating the deadlines.

Second, we anticipate a concrete, meaningful discovery cut-off several months before trial. The judges wish to avoid parties conducting discovery in the days before trial, and we wish to provide sufficient time for resolution of outstanding motions, including summary judgment motions.

This will require a revised mindset. Discovery must be pursued without delay. With the new initial disclosure and duty to supplement requirements, parties should no longer assume that they can conduct discovery until the trial. This means a party must address immediately any discovery problem impacting the case. And with the discovery deadline being several months before trial, a party will need to carefully think through the timing of discovery.

Third, we anticipate motions to be heard sooner. Because the parties must have a meaningful conferral before a motion is filed, only those motions with disagreement will need to be resolved. No longer will it be permissible to file a motion to obtain an informal continuance.

The goal is to free-up hearing time for truly disputed motions. Setting hearings that will not be heard consumes valuable resources and prevents others from accessing that time. The time for the parties to “work out” the motion is before it is filed, not minutes before the hearing.

Conclusion

The circuit civil judges understand that the civil rule changes made by the Florida Supreme Court will impact how attorneys will handle cases. And the judges are committed to establishing new procedures that are as uniform, plain, and transparent as possible, knowing that they must exist within the framework established by the Florida Supreme Court.

The circuit civil judges encourage you to review the rule changes and think through how they will impact your practice. And we invite you to attend the Town Hall on October 17 where we will discuss these and other matters in further detail.

Together, we will make this transition as smooth as possible.

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Preparing for Mediations - The Advocate

Part 1

By D. Robert Hoyle, Esq.

The litigious spirit is more often found with ignorance than with knowledge of law
Cicero

"The entire legal profession: lawyers, judges, and law professors, has become so mesmerized with the stimulation of the courtroom contest, that we tend to forget that we ought to be healers of conflict. Reliance on the adversarial process as the principal means of resolving conflicts is a mistake that must be corrected. For some disputes, trials will be the only means, but for many claims, trial by adversarial contest must in time go the way of the ancient trial by battle and blood. The existing judicial system is too costly, too painful, too destructive, too inefficient for a truly civilized people." Chief Justice Warren Burger, Annual Report on the State of the Judiciary, 69 A.B.A. Journal 442 (1983).

Chief Justice Burger recognized that the resolution of conflicts and disputes in our society must avoid the narrowly focused "win/lose" situation of a trial. Mediation has been utilized for thousands of years by parties involved in a dispute to craft a mutually acceptable and voluntary resolution. In mediation, the decision-making authority rests with the parties, not a third party such as a jury, or a judge, and it avoids the problems outlined by Chief Justice Burger. Mediation provides the parties with the opportunity to avoid the costly gamble of litigation, control the method of resolution of the dispute, and bring timely closure to the matter. The attorneys, the parties and the mediator must each be prepared in order to reach a successful mediated resolution of the case. This article outlines the role of the attorney in pre-mediation preparation.

The following suggestions will improve your chances of reaching a successful resolution through mediation:

- In your preparations, keep these important points in mind:
 1. You are not going to convince the opposing party that you are right and they are wrong;
 2. Your goal is to persuade the decision maker on the other side of the table that there is a very real risk associated with going to trial and that settlement is the best option; and
 3. You will be hard on the merits of the case, tough on the problem, but easy on the people.
- Take the mediation as seriously as you would a trial. You need to prepare for a trial that may not happen. The importance of this point cannot be overemphasized.
- Focus your energy and talent on using the process to achieve an acceptable resolution to the dispute for your client. Weigh the visible and sometimes unspoken factors: your demeanor, your language, your preparation and your persuasiveness.
- The opposing party will make an assessment of your competency at the mediation. A trial is based upon

persuasive arguments to the trier of fact. Mediation is much the same process. Prepare to be a persuasive negotiator, not a threatening litigator. You are a mediation advocate, not a trial advocate.

- Prepare the following elements of your case:
 1. Know which facts are disputed and which are undisputed.
 2. Know which facts are critical, which are important, and which are background.
 3. Establish the elements of your cause of action and the facts that will form the basis of your preliminary statement.
 4. Know your damages or other desired relief.
 5. Know your counterclaims, defenses, and liability issues.
 6. Understand and know the law. You can never be over-prepared with the law.
- Devise a strategy for your client's goals by way of a settlement and how you plan to achieve them. In other words, consider your options. Is there a remedy that does not involve the payment of money? Are there additional solutions for the dispute such as giving up one consideration in order to obtain another consideration? Write down the options and let your client review them. Your client should know the limits of settlement: what is reasonable and what is unreasonable.
- Develop a theme of the mediation as you would in any court case. Recite your theme to yourself and your colleagues. Use catch-words and memorable phrases. Make the theme succinct and clear. Remember that to be effective, you should be brief, well prepared, and organized.
- Think outside the box. Make a list of as many possible solutions as you can imagine including intangibles, cash and non-cash items. When you focus on developing creative solutions that meet the needs of the parties, more of your cases will settle. More importantly, your clients will see you as a successful problem solver and think of you in the future for help in preventing and resolving disputes.

A high percentage of cases are resolved without the necessity of a trial. Mediation is an important resolution tool. While there can never be a guarantee of an agreement, adequate preparation by counsel will increase the chances that the parties will resolve the dispute through mediation.

To be continued in next issue!

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PRESS RELEASE

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DISTRICT COURT VACANCY

FOR IMMEDIATE RELEASE

September 30, 2024

CONTACT: Eliot B. Peace, Chair
2d DCA Judicial Nominating Commission
864-980-7351
Eliot.peace@gd-ots.com

TAMPA – Governor Ron DeSantis has asked the Second District Judicial Nominating Commission to provide him with names of highly qualified nominees for one vacancy on the Second District Court of Appeal created by the retirement of Judge Darryl C. Casanueva.

The Commission requests that interested candidates submit an application for consideration. Applicants must meet the qualifications for district court judges described in Article V, Section 8 of the Florida Constitution.

Applicants must submit two copies, one unredacted and one redacted, via email no later than **October 22, 2024, at 4:00 PM**. Personal information not subject to public disclosure—such as the social security number—shall be redacted as permitted by Section 119.071 of the Florida Statutes.

Applications must be emailed in .PDF format to BOTH the following individuals: Eliot Peace at eliot.peace@gd-ots.com AND Ryan Owen at ryan.owen@arlaw.com

Upon receipt of the application, the applicant will receive an email response acknowledging receipt. If an applicant does not receive such an acknowledgement, the applicant should contact Eliot Peace, Chair of the Second District Judicial Nominating Commission at 864-980-7351 to verify receipt of the application.

Untimely applications will not be considered.

The filename for .pdf applications should be as follows "LASTNAME FIRSTNAME District Application (redacted /unredacted)."

Applications may be downloaded from the Florida Bar's website at www.flabar.org and the Office of the Governor at www.flgov.com. Applicants should include a recent photograph.

NOTE TO APPLICANTS: To assist the Judicial Nominating Commission in its review of applications, all questions must be fully and completely answered. Applications must include current contact information, including e-mail addresses, for judges, co-counsel, opposing counsel, and references to facilitate the background investigation that will be conducted by the members of the Commission.

Following the close of the application period, the Commission will convene to discuss scheduling interviews of the most qualified applicants. The Commission will publish an additional notice at that time containing the names of the applicants, the date of applicant interviews, and information for any member of the public who wishes to attend the public portion of that meeting.

The Members of the Second District Court of Appeal Judicial Nominating Commission are:

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SEPTEMBER LUNCHEON: SeaPort Manatee



Pictured from l to r: Bill Galvano, Carlos Buqueras, MCBA President Dustin Wagner, Hon. Gilbert Smith, Jr., MCBA Director Robert Farrance, MCBA President Elect James Lynch

On September 25th, 2024, Carlos Buqueras, Executive Director of SeaPort Manatee, was the guest speaker at our monthly luncheon. Despite a storm that would be Hurricane Helene still far out in the Gulf of Mexico, guests learned very interesting information about the operations of the SeaPort. Of specific interest, was how exactly does SeaPort Manatee prepare and function when a storm is in the area? What happens to the ships, the cargo, and more? A very timely and informative presentation regarding the significant contributions and affects our port has to Florida and beyond. Thank you to all who made this event possible.

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