

TALLAHASSEE BAR BULLETIN

Quarter 3, 2025



INDEX

President's Message.....	3
In Memory of The Honorable John D.C. Newton, II.....	4-5
Events Recap.....	6
Low Bono Center.....	8
22nd Edition Bluebook Changes.....	11-13
Are ChatGPT Conversations Discoverable?.....	20-21
2025 Annual Sponsors.....	23
Beyond the Billable Hour: Financial Strategies for Attorneys.....	25-26
AI – A Tool or a Significant Replacement.....	28-29
TBA Calendar of Upcoming Events.....	31

THANK YOU *Presenting Partners*



PRESIDENT'S MESSAGE

As we move into the final stretch of the year, I want to thank each of you for your continued support and engagement. The third quarter has been full of momentum, and I am incredibly proud of what we are building together at the Tallahassee Bar Association. The commitment from our members continues to show in every CLE, community event, and volunteer initiative we take on.

This year we have remained focused on three goals: expanding our membership, increasing member value, and deepening our presence in the community. I have seen each of these goals come to life through our board, partners, and members participation. Our recent programs and events reflect the energy and excellence that define this organization. Whether you have joined us at a luncheon, hosted a Table for 8, served on a panel, or mentored a colleague, your contribution matters.

One of the highlights ahead is our Annual Chili Cookoff, which will take place on October sixteenth. This event is a long-standing tradition and one of the most anticipated gatherings of the year. It is fun, it is family friendly, and it supports a cause we all care about. Whether you are cooking or just coming to enjoy the food and fellowship, I hope to see you there.

I also want to take a moment to spotlight our Low Bono Program, made possible through a valuable partnership with the Leon County Clerk's Office and Clerk Gwendolyn Marshall Knight. Through this initiative, TBA attorneys assist self-represented litigants in completing legal forms and pleadings, offering guidance at a critical moment in the legal process. These efforts have made a real impact in

our community, and I want to personally thank every attorney who has volunteered so far. We will be honoring your service at our upcoming Volunteer Appreciation Reception.

That said, we need more attorneys to help us meet the growing demand. Please know that participation does not require you to take on a case. You simply assist with filling out forms, and you are compensated for your time. All it takes is a little of your time to make a big difference in someone else's life. If you have been looking for a way to give back or reengage with meaningful service, this is a great opportunity to do just that.

As we look ahead to the final quarter, I am inspired by what we have accomplished and excited for what is to come. Thank you for the opportunity to serve as your president. Let us continue to show up for one another, for the profession, and for the community we are privileged to serve.

Warm regards,

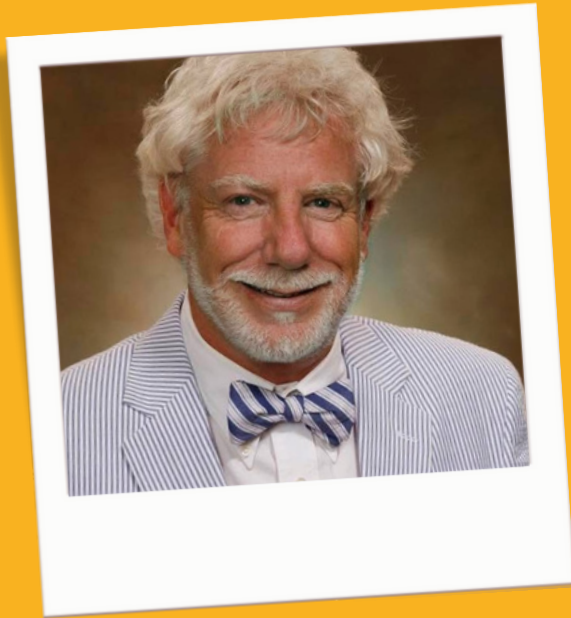
Jami Coleman

President, Tallahassee Bar Association



“TALLAHASSEE BAR ASSOCIATION MEMBERS WORK TOGETHER TO ENHANCE THE LEGAL PROFESSION, PROMOTE FELLOWSHIP AMONG THEIR COLLEAGUES AND SERVE THE COMMUNITY.”

In Memory of The Honorable John D.C. Newton, II



The Tallahassee legal community mourns the passing on September 8, 2025, of local attorney and judge, the Honorable John D.C. Newton, II, whose life and career left an indelible mark in Tallahassee and beyond.

John graduated from FSU in 1974 and obtained his law degree from FSU Law in 1977. John's legal career spanned both private law and public service. The bulk of his career, and the one for which he was most proud, was dedicated to public service. After graduating from law school, he clerked for Florida Supreme Court Justice James C. Adkins and United States District Judge Lynn C. Higby. He later served as an assistant public defender, senior assistant attorney general in the Office of the Florida Attorney General, general counsel for the Agency for Persons with Disabilities, and finally a judge for the Florida Division of Administrative Hearings. He was a DOAH judge from 2009 to 2024.

John served as president of the Tallahassee Bar Association and was active in The Florida Bar, Legal Aid Foundation, Tallahassee Women Lawyers, and Legal Services of North Florida. He also taught Florida Administrative Law as an adjunct professor for FSU Law.

Robert Hinkle. "He was precisely what we want our judges to be: conscientious, respectful, unbiased. And perhaps most important of all, a good person. He made the profession a little better than it would have been without him. He was someone I could call and know I would end the call feeling better. And I would almost always end the call having learned something," said Judge Hinkle.

John was a partner at Berger Singerman and a shareholder at Messer, Caparello, Madsen, Lewis & Goldman, P.A. While at Berger Singerman, his career intersected with one of the most important legal moments in modern American history. He served on the team of attorneys working for Vice President Al Gore during the historic Bush v. Gore legal battle in the aftermath of the 2000 presidential election.

John's love for North Florida was contagious. FSU Law Dean and Professor Emeritus Don Weidner credits John for his return to sailing after he retired

from FSU Law after 25 years of serving as Dean. “It was impossible to not get swept up in John's sheer love of life, people, and of sailing. His approach to life was inspirational. John was an absolutely lovely guy I'll miss very much.”

Close friend and fellow attorney Cari Roth said John's real superpower was connecting people. “Untold numbers of jobs were obtained, help received, or friendships forged from a Newton connection. His network was wide, and he used it for good in so many ways,” said Roth.

I count myself lucky to be one of those friends. John was my next-door neighbor for close to 25 years, and our friendship, forged over years of front porch conversations, was a combination of mentorship, humor, and support. He spoiled my children with weekend donut delivery and later celebrated my move from private practice to FSU Law. His beloved alma mater was where, as he put it, he fell in love with the law. He told me what a great privilege it was to be part of a law student's journey.

John never hesitated to share the less glamorous side of his early career with young lawyers. As a public defender arguing his first case before the Florida Supreme Court, he fainted at the podium. “All the justices were kind and called to check on my well-being,” he said years later. “Now it's a

good story to share with new lawyers, just like Justice Adkins said it would be.”

He served his community with humility. I was his campaign treasurer when he unsuccessfully ran for county judge. The day after the election, he stood on a busy corner waving a “Thank You” sign, grateful for the opportunity to participate in the democratic process. Leon County Circuit Judge Ron Flury remembers his professionalism and integrity, but “more importantly than being a good lawyer and a good administrative law judge, he was a great dad. His daughter [Colleen] meant everything to him.”

John embodied what the Tallahassee legal community prides itself in: professional excellence, public service and deep commitment to community. His legacy lives on in the profession he served so faithfully and the many people he lifted up along the way.

Jennifer Heckman is the Director of Employer Recruitment at FSU College of Law. In this role, she connects law students with law firms and other legal employers to support students' career goals. She also teaches financial regulation and compliance as an adjunct professor. She joined FSU Law in 2023 (at John's encouragement) after over 20 years in private practice.

EVENTS *Recap*

TBA and Young Lawyers Section Host Successful September Happy Hour

On Thursday, September 4th, members of the Tallahassee Bar Association and the Young Lawyers Section (YLS) gathered at Proof Brewing Company for a lively and well-attended Happy Hour. The event provided a relaxed and welcoming atmosphere for attorneys to connect, unwind, and expand their professional networks. With great conversations, local brews, and strong turnout from both new and familiar faces, the evening was a fantastic opportunity to foster camaraderie within the legal community.



August CLE: “Boilerplate, Precedent, or Plagiarism?” — Led by Peggy Hewitt

The Tallahassee Bar Association’s August 12th CLE luncheon at Parkview at Cascades drew a strong crowd for a panel discussion titled “Is it Boilerplate, Precedent, or Plagiarism? Lawyers Copying Lawyers.” Moderated by Peggy Hewitt of Florida Lawyers Mutual Insurance Company, the program featured panelists Kirsten Mood (Board Certified in City, County, and Local Government Law), Kevin Alvarez (Board Certified in Criminal Trial Law), and Melissa VanSickle (Board Certified in Real Estate). Together, they led an engaging conversation exploring the ethical boundaries of legal drafting, precedent use, and professional responsibility. Attendees enjoyed lunch and thoughtful dialogue, earning CLE credit while gaining valuable insights into an often-overlooked area of practice.



We are proud to be long-standing, active members and leaders of the Tallahassee Bar Association. Join us on October 16 at the Goodwood Museum & Gardens for the 28th Annual Chili Cook-Off as we keep the tradition alive with another over-the-top theme!



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22nd Edition Bluebook Changes! And an End to the One Versus Two Space Debate? Oh, My!

By Kyle Sill



Hot off the presses in May 2025, *The Bluebook* has been released in its twenty-second edition.¹

But before we all get too excited, note that *The Bluebook* has slightly limited value to Florida

practitioners in Florida courts. Florida Rule of Appellate Procedure 9.800 controls and is the first, and nearly always last, stop.² But *The Bluebook* sits in second place when it comes to citations in Florida courts, and there are issues not covered by rule 9.800 that consistently arise. So updates and changes to *The Bluebook* are worthy of some practical discussion. Not least of which, the Twenty-Second Edition has jumped in—headfirst—on “the great debate”: one space or two spaces after a period!

Also note that *The Bluebook* is separated into Blue and White pages. The Blue Pages govern court papers and writing. The more expansive White Pages govern academic writing and are largely unnecessary, unless the Blue Pages refer you to the full White Pages rule, you need extra clarification or examples, or you are writing a law review article.

1. “Typefaces” is Now “Typography”—and The Great Debate

¹ THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION (Columbia Law Review Ass’n et al. eds., 22nd ed. 2025).

² See Fla. R. App. P. 9.800(o) (mandating using rule 9.800 first, the latest edition of *The Bluebook* if not covered in rule 9.800, and the *Florida Style Manual* if not in *The Bluebook*).

Make no mistake, *The Bluebook* always covered typography—“the art and technique of arranging type to make written language legible, readable and appealing when displayed,”³ or simply “the visual component of the written word.”⁴ Typography includes typeface, point size, line length and spacing, and spaces between letters. *The Bluebook* has consistently covered indentation and spacing of block quotes, using underline or italics, and other facets of typography. But now, it has expanded even more, and as a signal of that, the editors renamed Rule 2: it was “Typefaces for Law Reviews; it is now “Typography for Law Reviews.”

As part of the expansion, there is new Rule 2.3: Other Punctuation Conventions. Rule 2.3 now dictates to only use one space after punctuation.⁵ And there it is. The “great debate” settled by *The Bluebook*. One space after periods. But wait!

There is a caveat: the one-space rule only applies to proportional fonts.⁶ Proportional fonts are just about every font we use—and what the appellate rules require attorneys to use.⁷ Monospaced fonts are fonts like `Courier`, or other typewriter style

³ <https://en.wikipedia.org/wiki/Typography>.

⁴ Matthew Butterick, *TYPOGRAPHY FOR LAWYERS* (2d ed. Thompson Reuters 2018), <https://typographyforlawyers.com/what-is-typography.html>.

⁵ Not only did *The Bluebook* change the title of the section and add a new rule, it took aim at two-spacers: “Double spacing after periods is a relic” and “double spacing proportional fonts will result in formatting errors.” THE BLUEBOOK, *supra* note 2, R. 2.3, at 76.

⁶ *Id.*

⁷ Florida Rule of Appellate Procedure 9.045(b) requires either Arial or Bookman Old Style, both of which are proportional.

fonts. For monospaced fonts, one space does not apply. For monospaced fonts, *The Bluebook* requires two spaces.⁸

Side note: two spaces have always been required for monospaced fonts. Indeed, that is how the rule of two spaces began. Because all the letters are the same width in a monospaced font,⁹ a single space after was insufficient. With the advent and rise of proportional fonts, though, the technical need for two spaces diminished. As a result, there was no “rule” anymore—other than monospaced fonts required two spaces. And that remains the rule today. The issue then became a matter of style and preference—and of staunch debate.¹⁰

All that said, for any fervent two-spacers, fret not! There is hope. First, this new rule only appears in the White Pages—the academic, non-practitioner, non-court part. Second, Rule 2 is titled “**Typography for Law Reviews.**” Third, the Blue Pages rule did not change—it is still titled “Typeface for Court Documents.”¹¹ And Rule B2, the court document, practitioner rule, says nothing about spacing, and it does not reference Rule 2.3. Thus, the one-space rule, plainly read and interpreted according to its text and context, only applies to non-court documents and to Law Reviews; there was no change to the rules for court documents. *The Bluebook*, then, as far as court documents are concerned, does not require one space.¹²

In sum, *The Bluebook* has spoken—maybe only to law reviews: one space. But as far as Florida courts, citations, and documents are concerned, there very likely is no “rule.” Follow typographers, *The Chicago Manual*, or a typography convention

from *The Bluebook* academic provisions, and one space proportional fonts. Or decide it looks better to two space proportional fonts, and two space. Just don’t say there is a Florida rule.

2. Explanatory Parentheticals are now Required for *See also*, *See generally*, and *Cf.*

Rule 1.2(a) and (d) now require an explanatory parenthetical if you use any of these three signals. Before, explanatory parentheticals were only strongly recommended (*cf.*) or encouraged (*see also and see generally*). Note: the same mandatory language does not appear in the Blue Pages version of the rule.¹³ But Rule B1.2 refers you to Rule 1.2 “for more information,” so it is fair for the full Rule 1.2 to be referenced and used in court documents.

3. There is a New “Contrast” Signal

Rules 1.2 and B1.2 were amended to add a new signal: *Contrast . . . with . . .*. Before, there was only *Compare . . . with . . .*; and *compare* was used to signal both similarity and difference between the authorities. Now, if the authorities are similar, you use *compare*; if the authorities are different, you use *contrast*.

And on using signals and parentheticals, three pro-tips. First, if you use a quoting or citing parenthetical to indicate your authority was citing or quoting another authority, and there is more than one authority cited or quoted, you must use semi-colons, first, and, and then.¹⁴ So:

Stuart v. State, 361 So. 3d 921, 921–26 (Fla. 6th DCA 2025) (**first** citing Art. V, § 4, Fla. Const.; **and quoting** § 90.402, Fla. Stat.; **and then citing** *Henry v. Orange Cnty.*, 290 So. 2d 9, 14 (Fla. 2000)).¹⁵

Second, if you use multiple signals in a citation, you separate signals of the same type (supportive,

¹³ THE BLUEBOOK, *supra* note 2, B. 1.2, at 4–5.

¹⁴ *Id.* R. 1.5(b), at 70.

¹⁵ The citation is only bolded to highlight the proper usage; it would not be in a real citation.

⁸ THE BLUEBOOK, *supra* note 2, R. 2.3, at 76.

⁹ All letters are the same width.

All letters are not the same width.

¹⁰ Nothing gets a room full of lawyers as heated as asking “one space or two”?

¹¹ THE BLUEBOOK, *supra* note 2, B. 2, at 6.

¹² This author is an adamant two-spacer—and will remain one when writing in Florida courts.

comparison/contrast, contradiction, background) with semi-colons. But if the signals are of different types, you use a period and capital letter.¹⁶ So:

Stuart v. State, 36 So. 3d 92, 92 (Fla. 6th DCA 2025); see *Henry v. Orange Cnty.*, 290 So. 2d 9, 11 (Fla. 2000). But see *State v. Power*, 100 So 2d. 3, 6 (Fla. 1935).

Third, within the string, there is no longer a strict requirement for the order. Before, *The Bluebook* mandated an order: federal, then state; and within those, constitutions, statutes, then cases, etc.; and within those by year; etc. For at least the last two iterations of *The Bluebook*, this is no longer required. You may now simply put them “in a logical order.”¹⁷

4. A Pincite is Required for Every Signal Except See generally

Rule 1.2(f) now adds the requirement of a pincite for every citation except if preceded by *see generally*. Before, Rule 1.2 did not address pincites. Note: Rule B1.2 does not address pincites, but it refers you to Rule 1.2 “for more information,” so it is fair for the full Rule 1.2 to be referenced and used in court documents.

5. (cleaned up) Cannot Be Used—Use (citation modified) Instead

Rule B5.3, specific to court documents and practitioners, permits using “(citation modified)” but prohibits using “(cleaned up).” The recent practice of (cleaned up) citations and quotations addressed the mess that sometimes occurs with multiple quotes inside quotes and brackets being technically necessary but entirely distracting and difficult to read. Attorneys—and even United States Supreme Court Justices—simply modified the quote or citation for clarity or appearance and put (cleaned up) at the end. *The Bluebook* does not prohibit this cleaning up trend, but it chose a different phrase to signify it. Use (citation modified).

¹⁶ THE BLUEBOOK, *supra* note 2, R. 1.3, at 68; see *id.* B. 1.2, at 5.

¹⁷ *Id.* B. 1.2, at 5; *id.* R. 1.4, at 69.

The Bluebook, and its 390 pages, can be daunting—particularly when new editions come and change things we all thought we knew or were sure of. But the Twenty-Second Edition is a part of Florida legal citations—whether we like it or not. And with these few pages, you now have the highlights,¹⁸ and **maybe** an end to the one space or two debate.

Author Bio

Kyle is a Senior Law Clerk for Judge Susan Kelsey at the First District Court of Appeal. He also teaches International Sales & Arbitration at FSU Law and coaches the Vis Moot team there. He has taught and presents on appellate advocacy, persuasion, research, writing, and citations. The views expressed in this article are solely his and do not represent the views of his or any judge, the Court, or any other organization or entity.

¹⁸ The Gallagher Law Library at the University of Washington School of Law has a detailed breakdown of all the changes in the Twenty-Second Edition. See <https://lib.law.uw.edu/c.php?g=1236949&p=10950878>.



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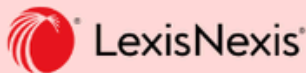
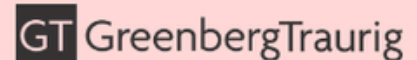
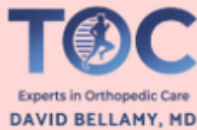
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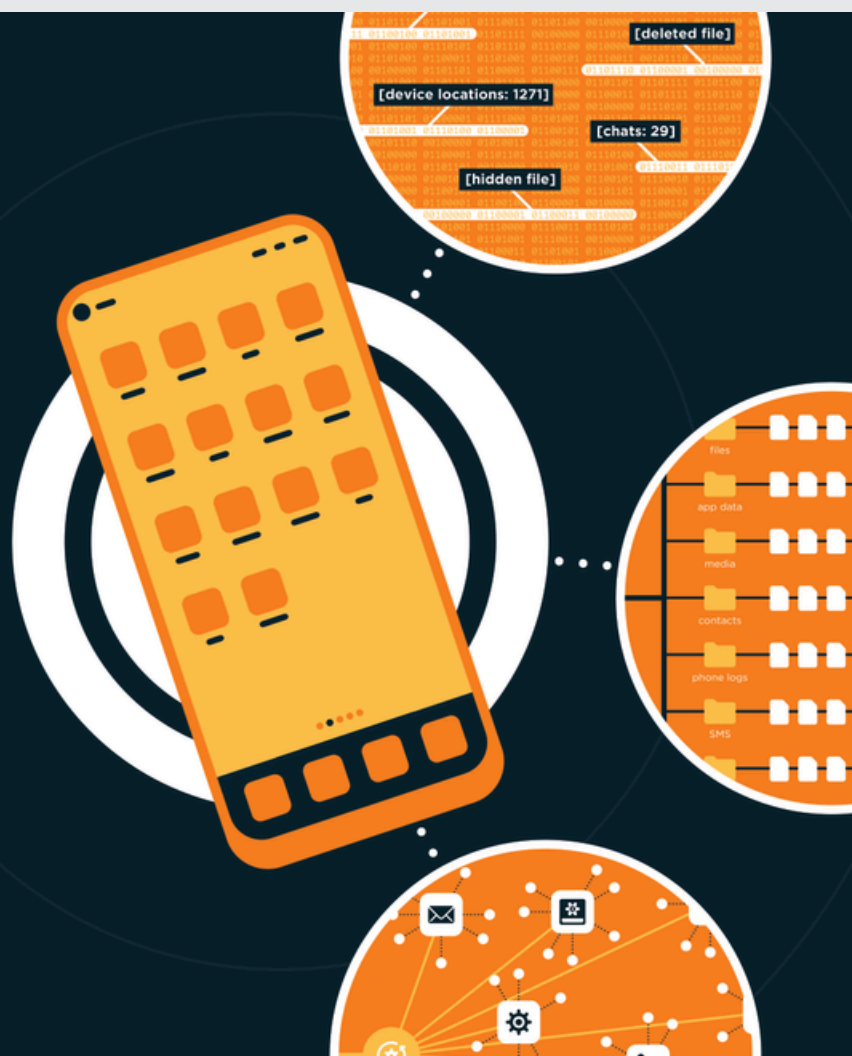
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Are ChatGPT Conversations Discoverable?

By Jonathan Hayes



Recently, in the criminal case against the alleged mass shooter at Florida State University, state prosecutors answered discovery demands that revealed they intend to introduce hundreds of

ChatGPT conversations into evidence as exhibits. See *State V. Ikner*, Case No. 25CF01241 (Amended Answer to Demand for Discovery, filed Jul. 31, 2025). Presumably, these represent conversations between the defendant and ChatGPT that are incriminating in some way, or at least relevant to issues anticipated at trial.

This raises a number of questions for civil litigants as to whether an individual's conversations with ChatGPT are discoverable. Florida appellate cases have not apparently faced this question specifically, but recent cases suggest a possible standard for civil discovery.

The Third District Court of Appeal, in *Roque v. Swezy*, 390 So. 3d 193, 197 (Fla. 3d DCA 2024), applied Florida's constitutional right to privacy in a civil discovery matter over scanning data within a party's mobile phone, opining that "Court orders compelling discovery constitute state action that may impinge on constitutional rights, including the constitutional right of privacy." *Id.* at n.1.

Importantly, if there is a reasonable expectation of privacy in the data, the party seeking the data must show that their need outweighs this privacy right, but also that the least intrusive means are utilized to obtain the discovery sought. *Id.* The Third District found that there was a reasonable expectation of privacy in mobile phone data,

namely, data regarding how the defendant used her mobile phone around the time of an auto accident.

The Third District has also found there is a reasonable expectation of privacy in Google search history. *William Hamilton Arthur Architect, Inc. v. Schneider*, 342 So. 3d 757, 760 (Fla. 3d DCA 2022) (applying least intrusive means analysis to Google searches). The Third District has also applied this same logic regarding non-party financial discovery. *Oramas v. Asencio*, Case No. 3D25-0660, 2025 WL 1819273 (Fla. 3d DCA July 2, 2025). It's not clear how closely other districts will follow this standard.

These cases also raise a natural question: is AI different? Does a person communicating with ChatGPT really expect their data to be private in the way they expect their personal phone data, or their Google searches to be private? Isn't the AI understood to be a single separate entity that the user is communicating with, and the AI may share or leak that data to millions of others at will? Is there any *legal* difference between communicating with an AI, which may share your information with the internet generally, and communicating with a human being, which you may expect to maintain your confidence?

Similarly, the Florida Supreme Court has recently federalized discovery in multiple respects. But federal courts are not apparently following the same process regarding Florida's constitutional privacy rights. See *Measured Wealth Private Client Grp., LLC v. Foster*, No. 20-CV-80148, 2021 WL 309033, at *1 (S.D. Fla. Jan. 29, 2021) (ordering forensic exam of mobile data, if relevant and proportional, any showing that something has been deleted is enough for full phone scan). If the phone

at issue is a work device, just missing metadata in discovery may be enough to scan the whole phone in federal court. *HealthPlan Servs., Inc. v. Dixit*, No. 8:18-CV-2608-T-23AAS, 2019 WL 6910139, at *2 (M.D. Fla. Dec. 19, 2019). The Florida Supreme Court recently clarified and reaffirmed the meaning of Article 1, section 23 of the Florida Constitution, namely the right to privacy means the right to informational privacy. See *Planned Parenthood of Sw. & Cent. Fla. v. State*, 384 So. 3d 67, 83 (Fla. 2024). Where will the Florida Supreme Court draw the line in discovery regarding AI?

This also raises technical questions. Chris Korta (Certified eDiscovery Specialist (ACEDS) and Cellebrite Certified Operator-COO) and Matt Dufek (Managing Director) at Harvest Discovery had this to say about the extraction of AI-generated data:

“From an e-Discovery perspective, it is important to know that AI-generated data (such as ChatGPT) is extracted and processed just like many other forms of data. If it is on a device, it can be found and extracted.”

Generally speaking, AI data is accessed by most users through either a web browser or an installed app.

- *Browser-based AI sessions may leave artifacts in local cache, cookies, indexed DB storage, or synced browser history (sometimes even when the user believes they have cleared their history).*
- *App-based sessions are analogous to a chat thread between friends and they are extracted accordingly. The prompts entered by the app user (Friend 1) are considered messages to the AI app (Friend 2). The data provided back to the app user by the AI app (Friend 2) are considered messages back to the app user (Friend 1).*

AI data can be stored in several ways across a device and it is not always “deleted” when deleted.

Additionally, if the device is backed up to a cloud service, those backups may contain recoverable conversation data long after deletion from the device itself. AI companies internal retention policies also affect which data is available for extraction. The scope, duration, and accessibility of stored content may vary over time.

For eDiscovery purposes, the source of truth for ChatGPT conversations could include:

- 1. The end-user’s device (PC, tablet, mobile phone).*
- 2. Associated browser or app cloud backups.*
- 3. Enterprise log aggregators, if the user accessed ChatGPT through a corporate SSO or monitored network.*
- 4. The AI provider’s own records, if obtainable.*

As with any emerging technology, the discoverability of this data will be shaped not just by privacy law and proportionality standards, but also by the practical realities of where the data is stored, who controls it, and whether it can be collected in a forensically sound manner.”

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Beyond the Billable Hour: Financial Strategies for Attorneys to Help Reduce Taxes, Grow Wealth, and Plan for the Future

By Ben Gantt



As an attorney, you may work long hours serving clients, leaving little time to focus on your own financial future. But ensuring your finances can support you after your legal career ends is just as important as the work you do today.

A strong financial plan integrates both personal and business finances, helping you grow wealth, cover expenses, and minimize your tax burden.

If you've been focused on building your practice, here are four financial strategies you should consider:

1. Reduce Your Tax Burden with Strategic Deductions and Deferral Opportunities

On the business side, exploring the right entity structure and identifying eligible deductions - like home office expenses, continuing education, and bar dues - can help make a difference as profits rise, depending on individual business circumstances.

Personally, high earners can potentially benefit from 401(k) contributions, backdoor Roth IRA conversions, and Health Savings Accounts (HSAs), which offer triple tax advantages.

Tactics like deferring income or shifting bonuses into a lower-income year can also potentially lead to meaningful savings.

2. Maximize Retirement Contributions Through Tax-Advantaged Plans

If you have employees, consider profit-sharing or defined benefit plans. These allow for larger contributions, potentially reduce taxable income, and support your team's future.

On the personal side, staying informed about contribution limits and consistently maxing out your 401(k) and IRA accounts when appropriate can potentially lead to long-term compounding gains. High-income earners might consider exploring backdoor Roth IRAs as an option to build tax-free retirement income, depending on individual circumstances.

3. Optimize Cash Flow & Investments for Long-Term Financial Security

Running a legal practice requires business acumen. Regularly track cash flow, understand your burn rate, and review profit margins. Anticipate cycles of feast and famine, and maintain liquidity to handle liabilities, seize growth opportunities, or weather unexpected events.

Shifting to your personal finances, building an investment strategy that emphasizes tax efficiency, such as exploring municipal bonds, tax loss harvesting, or appropriate asset location, can help maximize returns over time.

4. Plan for Wealth Growth Beyond Your Legal Career

Your financial plan should include an exit strategy. Business succession or transition planning is essential for capturing the value of your practice and facilitating a smooth departure.

Meanwhile, estate planning can help structure your wealth to benefit loved ones and reflect your values. Whether it's through trusts, wills, or charitable giving, a thoughtful legacy plan can help provide peace of mind and potentially reduce tax exposure.

Financial planning is complex, especially when you're balancing the demands of your practice and personal life. That's where a trusted advisor comes in. With deep experience working with attorneys, we help you create a comprehensive plan that addresses your unique needs - professionally and personally. Because your business and personal finances are deeply connected, aligning both can be essential to help optimize wealth today and for generations to come.

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AI – A Tool or a Significant Replacement

I recently attended a course involving mediation that promoted the use of AI tools in litigation and mediation. I was shocked at how advanced AI is. ChatGPT and other language models are apparently taught in law schools now. Incorporating AI into legal studies is evidently a thing. As such, I thought it would be helpful for readers to see a real exchange I had with ChatGPT regarding a legal issue, namely, the economic loss rule's application to construction defect claims. Specifically, I asked ChatGPT to provide a response regarding the application of the economic loss rule to construction defect cases. This is what I received. This is unedited. It is 100% AI.

The Economic Loss Rule in Florida Construction Defect Litigation

By [Your Name], Esq.

In Florida construction litigation, the economic loss rule ("ELR") plays a significant role in defining the boundary between contract and tort claims. For attorneys handling claims involving defective construction or materials, understanding the ELR is essential to evaluating liability and managing the scope of legal exposure.

I. Origin and Evolution of the Economic Loss Rule

Historically, the ELR barred recovery in tort for purely economic damages—such as lost profits, repair costs, or diminution in value—when the parties were in contractual privity. The rationale was to prevent tort law from supplanting contract law where a contract governs the relationship.

The rule was once applied broadly in Florida, particularly in the construction context. However, the Florida Supreme Court dramatically narrowed its scope in *Tiara Condominium Association, Inc. v. Marsh & McLennan Companies, Inc.*, 110 So. 3d 399 (Fla. 2013). There, the Court held that the ELR

applies only in products liability cases and not generally to all cases involving contractual privity.

II. Post-Tiara Landscape in Construction Cases

While *Tiara* narrowed the ELR, it did not eliminate all protections against duplicative or improper tort claims in the construction setting. Courts now look to common law principles—such as the independent tort doctrine—to determine whether a plaintiff can assert both contract and tort claims.

Under this framework:

- **Tort claims must arise from a duty independent of the contract.**
A plaintiff may not recover in tort for a breach of contract unless the defendant also breached a duty owed outside of the contract.
- **Purely economic losses remain unrecoverable in negligence absent personal injury or property damage.**
This is especially relevant in construction defect litigation where plaintiffs often allege negligence in construction or design, but suffer only economic damages (e.g., repair costs).

III. Application in Construction Defect Litigation

Construction defect litigation often involves claims for negligent workmanship, defective materials, or design errors. When no consequential property damage has occurred—only the product (e.g., a roof, HVAC system, or concrete) failed to perform as intended—Florida courts may dismiss tort claims based on the absence of an independent duty and the lack of personal injury or property damage.

Key Cases:

- **Casa Clara Condominium Ass'n, Inc. v. Charley Toppino & Sons, Inc., 620 So. 2d 1244 (Fla. 1993):**

The Florida Supreme Court held that homeowners could not recover in tort for defective concrete that caused damage only to the structure itself. The concrete was considered part of the product, and no damage occurred to "other property."

- **Companion Prop. & Cas. Ins. Co. v. Built Tops Bldg. Servs., Inc., 2018 WL 1513003 (S.D. Fla. Mar. 27, 2018):**

The federal court, applying Florida law post-Tiara, dismissed negligence claims where no personal injury or damage to other property was alleged.

- **Biscayne Inv. Grp., Ltd. v. Guarantee Mgmt. Servs., Inc., 903 So. 2d 251 (Fla. 3d DCA 2005):**

Even post-Tiara, courts continue to reject tort claims where they are simply repackaged breach of contract claims without an independent duty.

IV. Practical Considerations for Florida Litigators

Attorneys handling construction defect cases in Florida should:

1. Identify whether the claim involves damage to other property.

If the defect only affects the component itself (e.g., cracked stucco, faulty trusses), recovery in tort is unlikely.

2. Examine whether there is a contractual relationship.

In design-bid-build projects, different parties (e.g., subcontractors or suppliers) may not be in privity, possibly opening the door for tort claims.

3. Assess whether the defendant owed an independent duty.

Design professionals (e.g., architects or engineers) may be liable in tort if their duties arise from licensure, statutory obligations, or code compliance—independent of any contract.

4. Use contract provisions to limit exposure.

Well-drafted construction contracts can include disclaimers, limitation of liability clauses, or waiver of consequential damages, thereby minimizing tort-based exposure.

V. Conclusion

The economic loss rule, while narrowed by Tiara, remains relevant in Florida construction defect litigation. Tort claims for defective construction or materials must still be grounded in an independent duty and accompanied by personal injury or damage to other property. Construction attorneys must carefully analyze the nature of the damages, the contractual framework, and applicable duties to navigate these complex claims effectively.

Let me know if you'd like this adapted into a motion for summary judgment, trial memorandum, or answer with affirmative defenses.

—

Human here: Good, bad, or indifferent, this answer doesn't seem off. It would be interesting to find out how folks in the construction defect litigation industry think about this level of analysis and its correctness. Regardless, ChatGPT can mold claimants' mindsets about what they should be paid for construction defects. Similar models apply to just about every available tort claim. Highly specific situations can be input and evaluated for free on ChatGPT. Every lawyer trying to resolve a case should be aware of this tool and know that what it predicts is available for free.

■ **Doug Smith**

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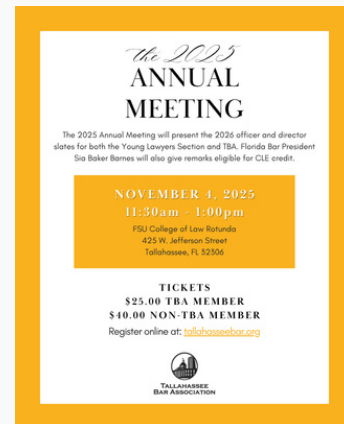
NOVEMBER 4

11:30am – 1:00pm

TBA Annual Meeting

FSU College of Law Rotunda
425 W. Jefferson Street
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Register online at:
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6:00pm – 8:00pm

Bench & Bar Holiday Party

The Monroe
1327 S Monroe St, Suite 5

Register online at:
tallahasseebar.org



TALLAHASSEE BAR BULLETIN

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compiled by The Radley Firm.

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The Bulletin is published quarterly.

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