

# TALLAHASSEE BAR BULLETIN



TALLAHASSEE  
BAR ASSOCIATION

Quarter 4, 2025

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# INDEX

President’s Message.....	3
A Conversation with Elizabeth ‘Bib’ Willis: Recipient of TBA’s 2025 Lifetime Professionalism Award.....	4
Why Attorneys Should Join the Nikki A. Clark Low Bono Center.....	6-8
Event Recap.....	9
The New AI: Authentic Impact.....	12
Navigating Heirs Property Under Florida’s Chapter 64: A Court-Driven Process.....	14-15
The Power of the Right Portrait.....	17-18
The OBBBA Blind Spot: What You’re Missing in Ownership, Succession, Trusts, and Tax Strategy.....	20-21
Fight Fire with Water, Silly.....	22
Annual Sponsors 2025.....	23
What All Lawyers Need to Know About HIPAA.....	25-27
2026 Annual Partnership Opportunities.....	30-32
2026 Officers and Directors.....	33
TBA Calendar of Upcoming Events.....	34

## THANK YOU *Presenting Partners*



# PRESIDENT'S MESSAGE – FINAL REFLECTIONS

As my term as President of the Tallahassee Bar Association comes to a close, I find myself reflective and grateful. Serving in this role has been one of the highlights of my career, and it has been an honor to lead during a year marked by both progress and transition.

This year has not been without its challenges. It has been a time of uncertainty for many Americans, including our neighbors right here in Tallahassee. In moments like these, bar associations become even more critical, serving as sources of community, stability, and public service. I am proud that the TBA rose to meet that moment. We remained active, visible, and connected to our members and the community at large.

I am especially thankful for the opportunity to work alongside such an outstanding Board of Directors. Every board member gave their time, talents, and heart this year. Your dedication never wavered, and your teamwork never failed. During my tenure, three of us—Crystal Stephens, Cayelan Cwirka, and myself—welcomed new babies into our lives. It was a beautiful reminder that leadership and the goodness of life can and do unfold at the same time. It also reminded me that effective leadership is often rooted in grace, professionalism, and a quiet strength. I have been proud to witness that kind of leadership on this board and throughout our legal community.

I would be remiss if I didn't highlight one of the most meaningful initiatives of this year: our continued partnership with the Leon County Clerk's Office and Clerk Gwendolyn Marshall Knight. The Low Bono Program has not only provided critical legal access to those in need but has also reminded us of the impact we can have when institutions work together. Clerk Marshall Knight's leadership and vision have been nothing short of exemplary.

But the best part of the Tallahassee Bar Association is, without question, our members, community partners, and sponsors. Without your support, we would not be able to accomplish our mission or bring our initiatives to life. Your continued investment in this organization is what makes our work possible, meaningful, and impactful.

Finally, I want to share how truly excited I am about the future of the TBA under the leadership of our incoming President, Elizabeth "Liz" Ellis. Serving alongside Liz this past year has been a pleasure and a privilege. Her commitment to the profession makes her exactly the kind of leader we need in this next chapter. We are in even greater hands, and I cannot wait to see all that she and this exceptional board will accomplish.

It has been my honor to serve. Thank you for trusting me, for showing up, and for helping move the Tallahassee Bar Association forward. I look ahead with confidence, knowing that this organization is in excellent hands and that its best chapters are still being written.

With gratitude,

*Jami Coleman*

President, Tallahassee Bar Association



## Apply to become a Florida Bar Leadership Academy Fellow:

Applications are now being accepted for 2026-2027 Class XIV of The Florida Bar's Wm. Reece Smith, Jr., Leadership Academy. The leadership program is open to all Florida Bar members in good standing. [Click here to apply.](#) During their one-year term, Academy Fellows follow a tailored curriculum, attending Florida Bar events and special educational programs designed to enhance their professional development and personal leadership skills while gaining insights into the legal profession as well as the inner workings of the Bar. There are seven required meetings, totaling up to 14 business days throughout the year. Class XIV will begin in June 2026 at the [Annual Florida Bar Convention](#) and end in June 2027 with graduation at the Bar convention. Remaining meetings will be in August 2026 in Jacksonville; October 2026 in Tampa; January 2027 in Tallahassee; March 2027 in Orlando; and May 2027 in Ft. Lauderdale. Applications are due by January 30, 2026.

## A Conversation with Elizabeth 'Bib' Willis: Recipient of TBA's 2025 Lifetime Professionalism Award



### **When you look back over your career, what moments pop into your mind first?**

The first is the Legal Aid Foundation's creation of the Elizabeth 'Bib' Willis Outstanding Thunderdome Mentor Award, in recognition of recipients' being helpful to young lawyers. The second is getting the Volunteer of the Year Award in 1973 in Jacksonville when I was just a housewife and had not finished college or done anything beyond being a Mother to four lovely children. Catherine (deceased), John (deceased), Beth Tedio and Dan. Now I have 10 grandchildren ranging in age from 25 to 40, and 6 great grandchildren.

### **Who were the people who helped shape you as a lawyer—mentors, colleagues, or even clients?**

My Father was a lawyer. I always wanted to go to law school, but I could not because I had to care for all of my children and was divorced. The only person who thought I could do it was Jim Tillman, a member of the House of Representatives. I was a lobbyist for years and everyone in the rotunda said I shouldn't. Tillman actually gave me a thousand dollars when I ran out of money!

### **You dedicated so much time to the Low Bono Center. Why do you think other attorneys should get involved with the Low Bono Center?**

The Low Bono center is only open 2 days a week and it pays \$100.00! They give you forms to fill out, so it's so easy. I cannot imagine why no one wants to do it. There are only two of us; me in the morning and Mark in the afternoon. When I resigned effective November 1, it just meant that I only worked on Tuesday mornings and Mark worked all day on Thursday.



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BAR ASSOCIATION**



# WE NEED ATTORNEYS

Attorneys — your experience can make a real difference in our community. The Low Bono Center offers a simple, flexible way to give back while getting compensated for your time.

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OR FROM 12:30 P.M. TO 4:00 P.M.**



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# Why Attorneys Should Join the Nikki A. Clark Low Bono Center

By Mark Hanson

The Honorable Nikki A. Clark Low Bono Center is a program, with an office in the Judge August D. Aikens, Jr. Leon County Courthouse in Tallahassee, which provides assistance to people who are representing themselves (or who wish to do so) in civil cases in Circuit or County Court.<sup>1</sup>

The Low Bono Center is named in honor of former Circuit and District Court of Appeal Judge Nikki A. Clark. The Low Bono Center was created in 2021 as a collaboration between Gwen Marshall, Clerk of the Circuit Court and Comptroller, and the Tallahassee Bar Association. It is modeled after similar offices like the Self Help Centers in Orange and Pinellas counties.

The Low Bono Center is served by attorneys who are paid a small fee<sup>2</sup> for their services, but who essentially work as volunteers, and the Center is seeking additional attorneys to do this. The Low Bono Center is open on Tuesdays and Thursdays. Attorneys who help are asked to work a full “shift,” either from 9:00 a.m. until 12:30 p.m., or from 12:30 p.m. until 4:00 p.m. Attorneys can work a full day (from 9:00 a.m. until 4:00 p.m., with a break for lunch) if they wish to do so, but there is no minimum requirement, and attorneys can work as few as one shift per month, or even less than that.

Working in the Low Bono Center is very rewarding, for the Court, the Clerk’s Office, the customers who come to the Low Bono Center, and the attorneys who work there. The Low Bono Center helps people present their cases to the Court in a clear and proper manner, and to understand the court process. The Circuit and County Judges, and

the Magistrates, know this, and they appreciate the work of the Low Bono Center. Many of the Judges and Magistrates know which attorneys are helping in the Low Bono Center, and the Low Bono Center occasionally hosts morning open houses or coffee hours to let the Judges meet and know some of the attorneys working in the Low Bono Center.

The Low Bono Center greatly assists the Clerk’s Office, because it serves as a place where the Clerk’s Office can send people who ask legal questions which the staff in the Clerk’s Office cannot answer.

The biggest service of the Low Bono Center is to the people who come to the Center for help with legal matters they have filed, or want to file, and for cases where they are defendants and respondents. Anyone who remembers their first interaction with the court system will understand this. Our legal system is complicated, and courthouses can be intimidating, even to attorneys. Many of the people who come to the Low Bono Center for help are without any college education, and without any understanding of the legal system. Many of these customers have relatively simple legal problems or issues, but to these people these problems and issues can be confusing and overwhelming.

The Low Bono Center does not have any low-income requirement, and it serves anyone, regardless of their income or financial resources. Some of the people who use the Low Bono Center could easily afford to consult an attorney in private practice, but most of the Low Bono customers have lower incomes, and many are unemployed. The Low Bono Center does charge a fee, but this fee is only \$1 per minute (with sessions of fifteen, thirty, forty-five or sixty minutes)—far less than private attorneys would charge.

<sup>1</sup> The Low Bono Center sometimes provides assistance with criminal cases or cases filed in federal court, but only rarely and to a very limited degree.

<sup>2</sup> The fee is currently one hundred dollars (\$100.00) per shift, with a morning shift from 9:00 a.m. until 12:30 p.m., and an afternoon shift from 12:30 p.m. until 4:00 p.m.

Some of the people who come into the Low Bono Center for help have problems or issues which are not “legal” ones, or which cannot be resolved in the courts, and some others have legal issues which the Low Bono Center usually does not address, such as criminal cases or cases that are in, or belong in, federal court. But the Low Bono Center does provide at least some assistance to the great majority of people who use the Center. Those who get that help are almost always extremely grateful for it, and thankful for someone who listened to and helped them. Any attorney who has provided any sort of pro bono assistance in the past will probably know and appreciate this.

The rewards for any attorney working in the Low Bono Center are many. They include the satisfaction from helping someone who has a legal issue or problem but cannot afford to hire an attorney in private practice for help with that.

An additional award or benefit from working in the Low Bono Center is the opportunity for the attorney to learn new things, including areas of the law in which the attorney does not usually practice.

Most of the cases for which people seek help at the Low Bono Center involve issues of family law (including divorce, child custody, and child support), residential landlord/tenant matters, and cases filed in the Small Claims Division of the County Court. The Low Bono Center has a large variety of court-approved forms which can be used for these types of cases, and these forms make the work of advising people about these types of cases very easy, even for attorneys who are not familiar with these areas of law.

Some people come to the Low Bono Center for help with probate matters. The Low Bono Center does not describe itself as offering assistance with probate issues, but the Center does have access to the large set of forms for probate cases developed by Florida Lawyers Support Services, Inc. Attorneys who are comfortable doing so can use

those forms to assist people with probate issues at the Low Bono Center.<sup>3</sup>

The Low Bono Center has resources to assist the attorneys who work there, including the forms mentioned above, and the work is not difficult, even for attorneys who do not have much experience with or knowledge about any customer’s particular issue. Most of the people who come to the Low Bono Center just need help and guidance in completing and using the many forms that are available.

Tara Dugan, the administrator of the Low Bono Center, is a Deputy Clerk in the Clerk’s Office. She is very knowledgeable about how the Clerk’s Office and the court system work, and also about the many forms available.

Attorneys who are new to the Low Bono Center can start out by sitting in on one or more shifts with one of the attorneys who has been working in the Low Bono Center, to get guidance as to how the Center works.

Working at the Low Bono Center is a very valuable service to persons who are representing themselves in court cases, and to those who want or need to do so. It is also very rewarding for the attorneys who work there, and the Low Bono Center encourages other attorneys to join the Center.

Attorneys who have little or no knowledge and experience with family law, landlord/tenant, small claims, or probate issues should not be reluctant to help at the Low Bono Center because of that lack of knowledge or experience. As noted earlier, the Low Bono Center has a large set of forms that can be used in most cases, and these forms help lawyers with little experience successfully assist people who can use those forms.

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<sup>3</sup> Any assistance with probate matters is, of course, limited by Rule 5.030(a) of the Florida Probate Rules, which states that most personal representatives must be represented by an attorney.

Sometimes an attorney at the Low Bono Center will get a question for which the attorney does not know the answer. One solution to that is that the attorneys in the Low Bono Center have computers which the attorneys can use to access the Internet and review the Florida Statutes (through the web site for the Florida Senate) and the Rules of Court Procedure (through the web site for the Florida Bar). An attorney can also use these computers to do legal research (if the attorney has the time for that), through the Fastcase service provided (for free) by the Florida Bar, or a service such as Westlaw or Lexis, if the attorney has an account for that.

If an attorney at the Low Bono Center gets a question the attorney cannot answer, sometimes the office administrator, Tara Dugan, can provide an answer or a suggestion.

If an attorney does not want to do (or have time for) legal research, the attorney can always just tell the customer that the attorney does not know the answer, and leave it at that. Most customers are grateful for the help they do receive, and they do not expect the attorneys to have answers for every question.

If an attorney gets a question which the attorney cannot answer during a session at the Low Bono Center, the attorney can offer to do some research (or call another attorney) later, after the customer's Low Bono session ends, and then let the customer know (through e-mail or a telephone call) what the attorney found out, but this extra service is not at all required or expected.

Doing the above, however, is a great way to sharpen your legal skills, and learn new things.

Please consider joining the Nikki A. Clark Low Bono Center.<sup>4</sup>

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<sup>4</sup> More information is available on the Clerk's [website](#), and attorneys can sign-up to volunteer or request additional information on the TBA's [website](#).

# EVENT *Recap*

On October 16th, TBA held its 28th Annual Chili Cook-Off benefiting the Legal Aid Foundation. Teams competed in a variety of categories, including Best Five-Alarm Chili, Most Unusual Chili, Most Magnificent Margarita, and the ever-popular People's Choice Awards for Chili and Margarita. Congratulations to all of our **2025 winners**, whose recipes impressed the crowd!

A huge thank you to our judges, our sponsors, and everyone who attended, cooked, donated, and cheered — your support made this year record-breaking, with **308 attendees** and **\$32,602 raised** for the Legal Aid Foundation. These funds will allow the Foundation to continue providing vital legal services to those who would otherwise not have access to legal representation.

Thank you again to everyone — we couldn't have done it without you! See you next year!





The 28th Annual Chili Cook-Off broke records this year with 308 attendees and over \$32,000 raised for the Legal Aid Foundation of Tallahassee. Co-chairs **Elizabeth Desloge Ellis** (TBA President-Elect) and **Erin Tilton** (TBA Past President) helped make it a standout year.

We are proud to be long-standing, active members and leaders of the Tallahassee Bar Association.

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**RECORD ATTENDANCE**

**RECORD IMPACT**

**RECORD FUNDRAISING**

*"At The Radley Firm, we're proud to help amplify meaningful community events. This year's Cook-Off set new records — and we're honored to be part of that success."*

**Marketing That  
Moves Communities**



# The New AI: Authentic Impact

By Jamie Van Pelt  
CEO The Radley Firm, Inc.



Have you ever heard the phrase, “Well, well, well - if it isn’t the consequences of my own actions?” As the rise of artificial intelligence is making things easier on businesses and organizations across

the world, there is also a very real negative undercurrent starting to rear its ugly head. When potential clients and customers come across a brand that is very clearly using AI in its communications and marketing - they are immediately turned off. The stats back it up:

- Roughly 40% of U.S. adults have a negative opinion of brands using AI in advertising, with 23% feeling “very” negative (CivicScience, May 2025).
- 36% of U.S. adults are less likely to buy from a brand using AI in ads (CivicScience, May 2025).

And if those numbers aren’t compelling enough for you - Nielsen reports that 55% of audiences are uncomfortable on websites that rely heavily on AI-generated articles or content. Further, 48% of folks don’t trust brands who advertise on those sites.

With the ever-increasing usage of Artificial Intelligence in professional services, we are seeing a very real shift back into the “storytelling” aspect of marketing. As we move further away from a basic understanding of what is real and what is AI-generated, the importance of authenticity is rapidly increasing. The fact remains, even in the age of AI making things easier in our lives, people spend their money with organizations they trust and can relate to.

That fact becomes alarmingly important when held next to Nielsen’s report that about 40%

of respondents say that AI-generated advertisements fail to adequately represent their culture or values. In marketing and advertising, cultural nuance is paramount - without it, you alienate a major part of your audience - and AI just simply cannot adequately reflect that nuance.

However, this is not to say that AI has no place in the world - it very obviously does. But the next time that you ask an intern or a legal assistant to use chatGPT for next month’s social media calendar or to refresh the copy on your website, remember that your audience can tell the difference, and they probably don’t love it.

So instead, find a great team of Authentic Impact (AI) professionals, like the ones at the Radley Firm, and let us help you tell your authentic story. It’s what your audience wants.

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# Navigating Heirs Property Under Florida's Chapter 64: A Court-Driven Process

By Jami Coleman



When multiple family members inherit real estate, often without a will or clear title, they typically become tenants in common. This type of jointly held property, referred to as heirs property, can present legal

challenges when one or more co-owners seek to sell or divide the land.

To address these disputes and preserve generational wealth, Florida adopted Part II of Chapter 64, Florida Statutes, known as the Uniform Partition of Heirs Property Act. The law establishes a structured, court-driven process that governs how heirs property must be partitioned through buyouts, physical division, or sale, ensuring fairness among family members.

## Step 1: The Court Must First Determine Heirs Property Status

The court cannot apply these procedures unless it first determines that the property qualifies as heirs property under § 64.202(6), Fla. Stat. That determination is mandatory and must be made early in the case. The statute defines heirs property as:

- Real property held in tenancy in common;
- With no binding written agreement among all cotenants about partition;
- Where one or more cotenants acquired title from a relative (living or deceased);
- And where 20% or more of the cotenants are relatives or acquired their interests from a relative.

Once this finding is made, the court is required to apply the additional procedural safeguards laid out in the statute.

## Step 2: Determining the Value

Unless all parties waive the requirement or stipulate to a value, the court must appoint a disinterested, certified appraiser to determine the fair market value of the property under § 64.206. The appraisal is filed and served on all parties, who may object and request a hearing. The court also has discretion in reviewing each party's appraisal and averaging the value of the real property. But a value must be determined before moving onto the next step.

## Step 3: Court Issues Notice of Buyout Rights

Once the court determines the value, it is required to send a formal notice to all cotenants who did not request partition by sale. This notice must advise them of their statutory right to buy out the interest of the cotenant who is seeking to sell. The notice is mandatory and starts the timeline under section § 64.207 of the Florida Statutes.

After the notice is sent, cotenants have 45 days to file an election to purchase the petitioning cotenant's interest. If an election is filed within that time, the court will then set a deadline for payment that gives the electing cotenant no fewer than 60 days from the date the election period ends to complete the buyout.

After this process, it is often appropriate to ask the court to consider whether one or more cotenants should receive setoffs, credits, or reimbursement. In many families, a single cotenant may have spent significant funds over the years to maintain, preserve, or improve the property. If another cotenant has not contributed,

the investing party may be entitled to some form of financial adjustment before the final division or sale proceeds are distributed.

If the parties cannot agree on how to handle these contributions, asking the court to schedule an evidentiary hearing is a helpful step. This allows the court to hear testimony, review records, and make a fair determination on how to resolve the issue. Doing so helps protect your client's investment and moves the case toward a more equitable resolution.

#### **Step 4: Buyout or Partition**

If the buyout occurs, the court reallocates ownership and enters the necessary order. If the buyout is not completed, the court must determine whether partition in kind is feasible under § 64.209. If it is not, the court orders a partition by open-market sale under § 64.210, or by auction if necessary.

#### **Attorney Involvement Is Crucial**

Attorneys handling partition actions involving family-owned property must recognize when Chapter 64's heirs property provisions apply. These procedures are not automatic—they must be raised, facilitated, and followed through the court. Counsel should assist the court in issuing proper notices, track statutory deadlines, and ensure their clients' buyout rights are preserved and exercised in a timely manner. Understanding and advocating for these protections is essential to safeguarding clients' interests in family land and preventing avoidable loss of generational property.

#### **Author Bio**

*Jami is an attorney specializing in tax, business, real estate, estate planning, and probate. She holds a J.D. from Florida State University and an LL.M. in Taxation from Georgetown. A former adjunct tax professor, she is active in pro bono work and nonprofit boards, recognized as a Florida Super Lawyers Rising Star (2017–2022) and recipient of the Tallahassee Bar Association's Distinguished Young Lawyer Award.*

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# The Power of the Right Portrait

By Michael Johnsen, Ti Adoro Studios



**How Attorneys Can Choose Imagery That Reflects Their Professional Identity, Values, and Firm Direction**

*For the Tallahassee Bar Association Bulletin*

In the legal profession, a portrait is never just a photograph. It serves as a signal of credibility, a reflection of competence, and often the very first impression a client, colleague, judge, or potential recruit receives. In a field where preparation and precision matter at every level, the visual representation of an attorney or a firm carries meaningful influence.

Selecting the right portrait is not a cosmetic choice. It is a strategic one grounded in clarity, intention, and the message an attorney wants to convey about their practice and their future.

## What Attorneys Should Consider When Selecting a Professional Portrait

- **Expression That Communicates the Right Message**

An attorney's expression sets the emotional tone of their professional presence. Portraits can express authority, steadiness, empathy, or approachability. The guiding question is simple: What should clients feel when they see this image? A litigator may choose a calm but decisive expression. An attorney practicing collaborative or family law may prefer something warmer and more open. The goal is alignment between daily practice and visual representation.

- **Clear Firm Identity and Alignment**

Portraits also communicate the identity

of a firm. As firms grow, leadership evolves and mission statements shift. Updated portraits that share a cohesive look help reinforce unity and professionalism. Consistent lighting, backgrounds, and overall style signal that the team is aligned and moving forward together. Two questions help guide this decision: Does this represent who we are today? Does it reflect who we are becoming?

- **Authenticity That Builds Trust**

The strongest portraits feel natural. They never appear overly curated or detached from the attorney's true presence. The aim is to portray the individual on their most capable, composed day. Clients rely on authenticity, and portraits should reinforce that trust.

- **Longevity and Timeless Style**

Most attorneys do not revisit their portraits every year, which makes timelessness an asset. Clean styling, refined lighting, and classic wardrobe choices help ensure the portrait remains relevant as careers evolve. Trends fade quickly; professionalism does not.

- **Impact on Firm Marketing and Branding**

Attorney portraits now appear across websites, social platforms, speaking bios, press features, and recruitment materials. Each placement should support the same impression of clarity, consistency, and credibility. A well-crafted portrait becomes a versatile asset that strengthens the firm's narrative wherever it appears.

## What Attorneys Should Consider When Selecting Family Portraits

- **Preserving Personal Legacy**

If professional portraits communicate public

identity, family portraits preserve personal legacy. Attorneys lead busy lives, often moving from milestone to milestone without pause. Portraits help capture the relationships and seasons that define home life and ground an attorney's sense of purpose.

- **Family Imagery That Feels Authentic**

When selecting family portraits, attorneys often look for art that reflects connection, presence, and meaning rather than perfect posing. These portraits serve as daily reminders of the people who inspire their work and the values that guide their decisions.

### **Aligning Portraits with Professional Direction**

Ultimately, portraits do more than illustrate faces. They illustrate identity. A professional portrait reflects the vision of a firm. A family portrait reflects the vision of a life. Both deserve intention.

As Tallahassee attorneys evaluate their next portraits, three questions can clarify the choice:

- Does this image reflect who I am or who our firm is today?
- Does it communicate the values we want our clients to experience?
- Does it support the direction we are growing toward?

When the answers align, the portrait becomes more than an image. It becomes a strategic asset that strengthens an attorney's presence in the courtroom, in the community, and at home.



# FAMILY PORTRAITS ON 30A

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# The OBBBA Blind Spot: What You're Missing in Ownership, Succession, Trusts, and Tax Strategy

The One Big Beautiful Bill Act (OBBBA) introduces a sweeping set of regulatory changes with implications that extend well beyond compliance filings. For attorneys advising business owners, fiduciaries, and high-net-worth families, the act creates new layers of complexity, particularly where legal structure intersects with financial strategy.

You're already managing evolving disclosure rules, entity updates, and document revisions. But some of the biggest risks, and opportunities, live in the practical execution of those structures. That's where collaboration with a financial advisor can help ensure your legal work functions as intended across a client's full financial landscape.

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## **1. Beneficial Ownership Reporting: Completeness Depends on Visibility**

Clients often have more complexity in their financial lives than what's reflected in a single intake meeting. Legacy entities, shared control arrangements, or family partnerships may not be top of mind when preparing ownership disclosures.

Financial advisors frequently maintain visibility into these details through ongoing planning conversations. When you coordinate with the client's advisor, it creates an opportunity to verify ownership roles, identify disclosure thresholds, and align supporting documentation — ultimately helping ensure accuracy and protect the client from filing risk.

## **2. Business Transitions & Entity Planning: Structure Must Reflect Strategy**

OBBBA may influence how entities are classified, taxed, or reported, which in turn can affect business succession plans, buy-sell agreements, and ownership transitions.

While you're focused on drafting and refining the legal documents, financial advisors can model liquidity scenarios, surface funding gaps, and assess the tax implications of various options. Early alignment helps ensure the plan on paper matches the client's actual financial capabilities and timing, especially when the client is navigating a major ownership change.

## **3. Trust and Estate Planning: Reassessing Exposure and Intent**

Trust structures designed for privacy or asset protection may now intersect with expanded reporting requirements under OBBBA. That shift can create unintended exposure, especially for trusts with layered ownership or control.

Coordinating with an advisor allows for a review of asset titling, trust funding, and beneficiary alignment. Together, you can determine whether updates are needed to keep the client's strategy intact and compliant.

## **4. Tax Strategy: Bridging Legal Design with Financial Outcomes**

Clients with pass-through entities may be impacted by OBBBA-related changes in how income is taxed or reported. These changes can ripple through Qualified Business Income eligibility, deferred compensation structures, and retirement plan contributions.

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# Fight Fire with Water, Silly

By Douglas M. Smith

In litigation and politics, the phrase “fight fire with fire” is often invoked to justify aggressive countermeasures. Someone throws a punch at you, and the best response is to fire back. Or is it? One could readily say the better option when a haymaker is coming for you is to avoid the punch and tackle and restrain your opponent. You could block the punch following Bruce Lee’s “intercepting fist” principle. There are many options other than responding in kind.

In the real world, “fighting fire with fire” seems counterintuitive. Adding fire to an existing fire is arguably counterproductive. Why not use water? Or fire suppression? If my living room is ablaze, I won’t suppress the fire by pouring kerosene on my (as yet) unlit love seat or by setting another fire in my master bedroom.

The phrase FFWF makes sense given its historical roots. The very concept is loosely attributed to Shakespeare but more prominently arose in the nineteenth century to explain in plain terms how to avoid massive wildfires using prescribed burns. In that sense, FFWF is really more about kneecapping a future threat than matching a present threat blow for blow.

Of course, this newsletter is about the law and not about Jeet Kun Do, so what’s the point? The point is, lawyers – both litigators and transactional lawyers – face daily battles with opposing counsel. They have clients to impress, and they often have an inner inclination to fight back. In the courtroom, this mindset can be tempting. A baseless motion invites a scathing reply. Hostile direct examination in a deposition triggers a more aggressive cross. But these reactions, while emotionally satisfying, may not serve the client—or the case. Judges often reward restraint and precision over theatrics. Jurors respond to credibility, not combativeness.

When a “punch” is thrown at you in the law, the wise move is not to punch back blindly, but to evade, control, and redirect. In litigation, this means choosing responses that neutralize threats without escalating conflict. It means preserving judicial goodwill, focusing on the merits, and maintaining the moral high ground.

In the law (as in life), “fighting fire with fire” often leads to cycles of retaliation that erode institutional norms. When oversight is abandoned in favor of loyalty, and aggression becomes the default, governance suffers. So the next time you see an uppercut with your name on it, be mindful there are several ways to more effectively respond and prevail.<sup>1</sup>

## Author Bio

*Douglas M. Smith is Of Counsel with Messer Caparello, P.A., where he enjoys practicing real property, land use, commercial, and administrative litigation. Mr. Smith also recently became a Florida Supreme Court Certified Circuit Court Mediator.*

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<sup>1</sup> Of course, water is not always the right tool for fighting fire. Grease, gasoline, chemical, and electrical fires, for example, should not be extinguished with water. But that’s the point, every aggressive move at your client deserves a thoughtful and effective countermove.

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# What All Lawyers Need to Know About HIPAA

By Eddie Williams, III



When a lawyer is engaged by a client, it goes without saying that the lawyer must understand the rules of professional responsibility to maintain the confidentiality of information and records in connection with that

engagement. However, for certain clients, a lawyer may also need to comply with the Health Insurance Portability and Accountability Act of 1996, as amended by the 2009 Health Information Technology for Economic and Clinical Health Act (“HITECH”), and its implementing regulations (collectively, “HIPAA”).

The information protected under HIPAA is considered “protected health information” or “PHI,” which means individually identifiable health information that is transmitted or maintained in any form or medium that relates to the past, present, or future physical or mental health or condition of an individual.<sup>1</sup> Unless PHI is used or disclosed for certain purposes, HIPAA generally requires an individual to give written authorization in order to use and disclose their PHI.

HIPAA applies to “covered entities,” including health care providers that transmit health information electronically in connection with certain standard transactions, like health insurance claims.<sup>2</sup> It also applies to certain health plans and health care clearinghouses.<sup>3</sup> Additionally, HIPAA applies to entities that require access to PHI to provide certain services to covered entities, referred to as “business associates,” as well as the “subcontractors” of those business associates.

A “business associate” is a person who, on behalf of a covered entity, creates, receives, maintains or transmits protected health information for a function or activity regulated by HIPAA, including data analysis, processing or administration, data storage, and several other functions. Business associates also include accountants, consultants, data aggregators, e-prescribing gateways, and attorneys. A subcontractor is a person to whom a business associate delegates a function, activity or service.<sup>4</sup>

Therefore, attorneys and their law firms are subject to HIPAA when they are providing legal services to covered entity clients and will have access to PHI. For example, an attorney representing a physician subject to HIPAA in a medical malpractice dispute would likely be considered a business associate where an individual’s PHI is needed in order for the attorney to represent the physician in the matter. Under such circumstances, the attorney and their law firm will be considered a business associate and directly subject to the HIPAA requirements.

As a business associate, a law firm must perform and document a security risk analysis and implement security measures to reduce the potential vulnerabilities and risks to the confidentiality, integrity, and availability of electronic PHI held by the law firm.<sup>5</sup> The documented risk analysis must be accurate and thorough. The Office of the National Coordinator for Health Information Technology (“ONC”), in collaboration with the Department of Health and Human Services (“HHS”) Office for Civil Rights (“OCR”), has developed a Security Risk Assessment Tool<sup>6</sup> that may be useful in assisting law firms in complying with the HIPAA Security

<sup>1</sup> *Id.*

<sup>2</sup> 45 C.F.R. § 160.103.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> 45 C.F.R. § 164.308(a)(1)(ii)(A)-(B).

<sup>6</sup> See HHS’ website at: <https://www.hhs.gov>

Rule requirement to perform the required risk analysis. While the tool alone is not sufficient to constitute a full HIPAA compliance program, it's a valuable resource for many organizations.

Based on the risk analysis, the law firm must perform risk management by implementing security measures to reduce risks and vulnerabilities to PHI.<sup>7</sup> Specifically, the law firm must implement administrative, technical, and physical safeguards as required by the Security Rule. Such safeguards include, without limitation, information system activity reviews,<sup>8</sup> data backup and disaster recovery plans,<sup>9</sup> workstation use and security,<sup>10</sup> media controls, including proper disposal and re-use policies,<sup>11</sup> and access controls, including unique user identification and emergency access procedures.<sup>12</sup> Law firms have flexibility in implementing the standards and specifications required under the HIPAA Security Rule, taking into consideration the law firm's size and capabilities, its technical infrastructure, hardware, and software security capabilities, the cost of the security measures, and the probability and criticality of the potential risks to electronic PHI.<sup>13</sup>

HIPAA also requires covered entities to enter written contracts with business associates that require such business associates to safeguard the PHI.<sup>14</sup> Such business associate agreements will govern the law firm's use or disclosure of PHI and require the law firm to comply with the HIPAA Security Rule requirements.<sup>15</sup> In addition, if the law firm engages a third party subcontractor to assist with performing services to the covered entity client as part of the legal representation, the law firm will be required to enter into a business associate agreement with the subcontractor.

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<sup>7</sup> 45 C.F.R. § 164.308(a)(1)(ii)(B).

<sup>8</sup> 45 C.F.R. § 164.308(a)(1)(ii)(C).

<sup>9</sup> 45 C.F.R. § 164.308(a)(7)(ii)(A)-(B).

<sup>10</sup> 45 C.F.R. § 164.310(b)-(c).

<sup>11</sup> 45 C.F.R. § 164.310(d).

<sup>12</sup> 45 C.F.R. § 164.312(a)(1)-(2).

<sup>13</sup> 45 C.F.R. § 164.306(b).

<sup>14</sup> 45 C.F.R. §§ 164.502, 164.308(b) and 164.314(a).

<sup>15</sup> 45 C.F.R. § 164.308(b)

For example, if the law firm engages a third-party company to perform billing and coding analysis of medical records of a covered entity client, the law firm must first enter into a business associate agreement with the subcontractor prior to disclosing such records. The subcontractor must agree to the same restrictions and conditions that apply to the law firm with respect to such PHI.<sup>16</sup> Both the covered entity and law firm must maintain a copy of the written agreements to demonstrate compliance with HIPAA.

As part of the HITECH amendments to HIPAA, a law firm is required to implement breach response protocols and notify the covered entity client of a security incident and privacy breaches. A security incident is defined as "the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system."<sup>17</sup> A breach is considered the acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule that compromises the privacy or security of the PHI.<sup>18</sup> For purposes of the HIPAA Breach Notification Rule, an impermissible use or disclosure of PHI is presumed to be a breach unless the law firm can demonstrate that there is a low probability that the PHI has been compromised based on a risk assessment of at least the following factors:

1. The nature and extent of the PHI involved, including the types of identifiers and the likelihood of re-identification;
2. The unauthorized person who used the PHI or to whom the disclosure was made;
3. Whether the PHI was actually acquired or viewed; and
4. The extent to which the risk to the PHI has been mitigated.<sup>19</sup>

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<sup>16</sup> 45 C.F.R. § 164.314(a)(2)(iii).

<sup>17</sup> 45 C.F.R. § 164.304.

<sup>18</sup> 45 C.F.R. § 164.402.

<sup>19</sup> *Id.*

However, there are some situations that would not constitute a “breach” under the Rule. For example, a breach will not include an unintentional access, acquisition, or use of PHI made in good faith by a workforce member acting under the authority of the law firm and there is no further use or disclosure of the PHI not permitted by HIPAA.<sup>20</sup> In addition, a breach does not include an inadvertent disclosure by a person who is authorized to access PHI at the law firm to another person authorized to access PHI at the same law firm, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted by HIPAA.<sup>21</sup> Also a breach does not include a disclosure of PHI where the law firm has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.<sup>22</sup> The law firm must document its breach risk assessments and update its security risk analysis when necessary in response to such incidents.

As part of the law firm’s HIPAA compliance program, the attorneys and staff must receive training on the firm’s HIPAA policies and procedures.<sup>23</sup> Also, access to the PHI held by the law firm should be limited to only those attorneys and staff who have a need to access such information.<sup>24</sup> It is important to note that, as a business associate, the law firm, including its attorneys and staff, may be subject to civil and criminal penalties for noncompliance. Specifically, OCR has the authority to impose penalties for violating HIPAA.<sup>25</sup> Such civil penalties may range from \$141.00 to over \$2 million annually.<sup>26</sup> The Department of Justice may impose criminal penalties for HIPAA violations ranging from up to \$250,000 and 10 years in prison.<sup>27</sup> Therefore, it is important for attorneys to understand that they can be held personally liable for HIPAA violations.

Noncompliance with HIPAA can have significant financial implications for law firms. Therefore, attorneys and law firms should take steps to evaluate their HIPAA compliance. Equally important, HIPAA compliance is not merely a one-time goal but an ongoing process. Law firms must continue to evaluate and modify their HIPAA compliance programs in order to adjust to the ever-changing environment to protect the privacy and security of PHI and other client confidential information.

### **Author Bio**

*Eddie Williams III is a healthcare attorney in Holland & Knight's Tallahassee office. Mr. Williams practices in the firm's Healthcare Section and is a member of the Healthcare Regulatory Compliance Team.*

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<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> 45 C.F.R. §§ 164.308(a)(5) and 164.530(b).

<sup>24</sup> 45 C.F.R. § 164.514(d)(2).

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<sup>25</sup> 45 C.F.R. § 160.402.

<sup>26</sup> 89 Fed. Reg. 64815 (Aug. 8, 2024).

<sup>27</sup> 42 U.S.C. § 1320d-6.

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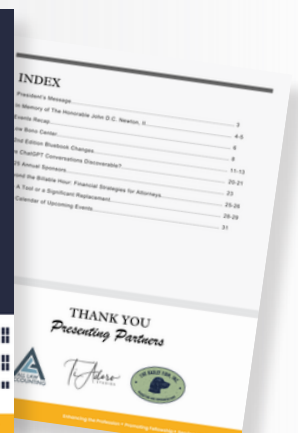
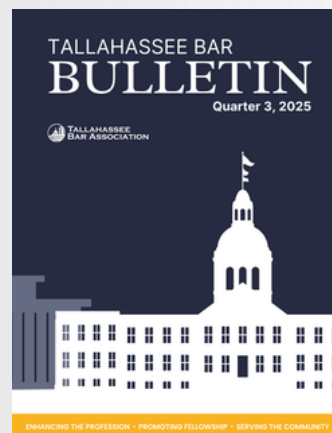
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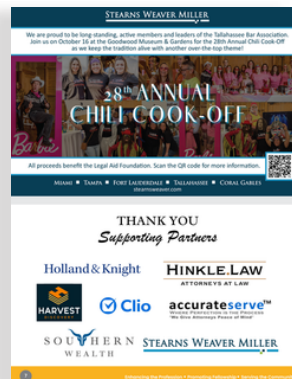
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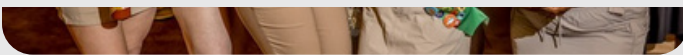
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**Location:** Courthouse

## JANUARY 27

**Event:** CLE with John Lesko

## FEBRUARY 11

**Event:** Past Presidents' Reception

## FEBRUARY 24

**Event:** CLE Luncheon

## MARCH 11

**Event:** Happy Hour

**Location:** DEEP Brewing

## APRIL 15

**Event:** Table for 8 – with Bridge to Law School

## MAY TBD

**Event:** Law Day with LSNF

## JUNE 4

**Event:** Happy Hour

**Location:** Ology Northside

## JULY 22

**Event:** Judicial Candidate Forum

**Location:** Stearns Weaver Miller

## AUGUST 18

**Event:** CLE Luncheon

## SEPTEMBER 10

**Event:** Happy Hour with YLS

## OCTOBER 22

**Event:** 29<sup>th</sup> Annual Chili Cook-Off

## NOVEMBER 10

**Event:** TBA Annual Meeting and Luncheon

## DECEMBER 10

**Event:** Annual Bench & Bar Holiday Party

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Hannah Murphy  
Craig Richards

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