



TALLAHASSEE
BAR ASSOCIATION

TALLAHASSEE BAR BULLETIN

Quarter 4 2023

8 ARTICLES

Mickey Mouse and
Copyright, Circuit
Consolidation, E-Verify,
and More

EVENTS

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PRESIDENT'S MESSAGE

LOOKING BACK ON THE PAST YEAR, I COULD NOT BE PROUDER OF THIS ORGANIZATION. Because of you, this has been a record-breaking year for TBA in more ways than one.

In 2023, TBA hosted multiple sold-out events for our local legal community. The year began with our annual Past Presidents Reception and Awards Dinner, celebrating the history of our organization and the many leaders who built and developed it over the course of more than a century. It continued with engaging panel discussions on practicing in the Second Circuit, tort reform, and the proposed consolidation of Florida's judicial circuits. We celebrated Law Day with Legal Services of North Florida and the Legal Aid Foundation, and enjoyed each other's company over multiple member happy hours.

We held our annual Table for 8 event, and did so for the first time in partnership with Florida State University's Center for Academic Retention and Enhancement (CARE). This year, the event focused on diversity and inclusion as part of TBA's ongoing efforts to support first-generation and underrepresented minority law students through the new Bridge to Law School Program. We continued our commitment to the Nikki Ann Clark Low Bono Center in partnership with the Clerk of Court to provide low-cost civil legal services in our community. And we hosted the most successful annual Chili Cookoff to date, raising more than \$17,000 for the Legal Aid Foundation.

Before the year is over, we will host Florida Bar President Scott Westheimer to address the State of the Bar, the TBA Board of Directors and Young Lawyer Section Board of Directors will battle it out in a heated karaoke competition, and we will hold an inaugural joint Bench & Bar Holiday Party with nearly all the other Capital Area voluntary bar associations.

For my final message as TBA President, "thank you" seems like a good place to end. Thank you to the TBA Executive Committee, to the TBA Board of Directors, to our incredibly talented Executive Director, to all TBA members, and to our colleagues in the legal community for your leadership, engagement, and professionalism over the past year. Thank you to my law firm, Stearns Weaver Miller, for the resources it invested—financial and otherwise—to support me in my role as President. And finally, thank you to my family for all the sacrifices they made to allow me to pursue this opportunity.

In closing, I am proud to have had the privilege of serving you as TBA President. Since moving to Tallahassee ten years ago, I found a home in this organization and a family in so many of the folks I've met along the way. I look forward to the heights our new Board will achieve and all the great work I know they will do.

Erin Tilton

TBA President



Erin Tilton is the President of the Tallahassee Bar Association. She is a Shareholder with Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A., where she represents clients on environmental, real estate development, and land use matters with an emphasis on litigation.

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THE QUESTION OF THE DAY—WHA?

By Douglas M. Smith

Over the years, my family has grown significantly. From when I left for college until 2001, I was a household of one. Since then, my household has quadrupled in size. I still drive the same ol' 2000 Toyota Camry I bought after law school (pre-marriage). "Bessie," as we call her, served me well before and after marriage and while my two kids were growing up (both kids learned to drive in Bessie). But now that the family's transportation needs are far greater, I thought it might make sense to ask the Florida Supreme Court to empanel a team of judges, professionals, court clerks, and staff, seek comment from the public and stakeholders, hold numerous public hearings with committees and subcommittees, and answer the ponderous question: Should I get a smaller car with fewer seats to better serve my family's needs?

The above musings are largely contrived, of course, but they are meant to highlight a similarly vague question from Florida's Speaker of the House of Representatives, Paul Renner, to the Florida Supreme Court—one that is currently a topic du jour for our judiciary and the Bar: Given Florida's population explosion since 1969 and changes in demographics, would consolidating Florida's 20 judicial circuits (last established in 1969) into fewer circuits *increase* the public trust and confidence in the judiciary and save taxpayers substantial costs?

Following Speaker Renner's request, Chief Justice Muniz issued Administrative Order [AOSC23-35](#) on June 30, 2023 (the Order). Expressing no view on whether there is a need for consolidation, the Order appointed an assessment committee (Committee) pursuant to Florida Rule of General Practice & Judicial Administration 2.241 to evaluate the issue. Rule 2.241(a) establishes "uniform criteria for the supreme court's determination of the necessity for increasing, decreasing, or redefining judicial circuits."¹ The rule also provides for an assessment committee and a certification process and identifies mandatory criteria to be considered, including "effectiveness," "efficiency," "access to courts," "professionalism," and "public trust and confidence." Additional sub-criteria are also identified.²

Since its creation, the Committee—chaired by the Honorable Jonathan D. Gerber—appears to have taken its role seriously and demonstrated a high degree of contemplation and analysis.³ I attended the September 29, 2023, meeting and the October 13, 2023, public hearing and was highly impressed with the committee members and their work product as well as the thought-provoking participation from the public. Information on Committee meetings along with meeting and public hearing materials for its first six meetings are available at: <https://www.flcourts.gov/Administration-Funding/Court-Councils-Commissions-and-Committees/Judicial-Circuit-Assessment-Committee>. Additional meetings are already scheduled for November 3,⁴ 17, and 29. The Committee intends to submit its final report to the Florida Supreme Court on December 1, 2023.

To date, the rule 2.241 process has produced many thoughtful comments from an array of interested parties. Some of the *more* obvious comments come from lawyers who focus largely on the quadrupling of Florida's population since 1969 and the need for more judges, judicial resources, and (possibly) circuits to meet the demand. To them, "throwing" fewer resources at a growing problem and necessarily expanding the workload for each circuit is a bad idea. Others suggest the very question posed by Speaker Renner appears suspect and politically motivated.⁵

As it turns out, "moving lines" to save costs and increase public trust in our judiciary doesn't just affect the courts or lawyers. Medical examiners, sheriffs, law enforcement agencies, and others have opinions on this issue, too. Relationships, processes, and procedures have developed and been refined over decades. Shifting counties into different judicial circuits and reducing the number of circuits could shock the well-established system while not delivering the desired gains. Suffice it to say, consolidation could have seemingly innumerable unintended consequences.

My "take-away" from the September 29 meeting is that highly qualified, determined, and professional

Committee members and staff are trying admirably to answer a nebulous question—one that probably cannot be answered with any precision, even with a “Dream Team” of economists, sociologists, judges, lawyers, IT professionals, and others needed to evaluate this issue. How does one even answer whether cost savings can be achieved through consolidation without first looking at a particular proposal? Why does this inquiry even need to be evaluated on a state-wide basis? In my opinion, the Committee is being asked too much but has dutifully and professionally tried to meet its charge anyway.

The Committee may also have been tasked with answering an artificially narrow question. Perhaps it should be empowered to evaluate whether there is a need to *increase* the number of circuit courts or consolidate some and add others. In that inquiry, it could consider technological advances and ways to streamline and create uniformity in circuit court practices and procedures, topics being discussed already. It could also consider rule changes currently being vetted in other pending Supreme Court cases.

Whether consolidation of Florida’s circuit courts is an economically sound idea presents many public policy implications affecting the Bar and beyond. Participation in the process is important, and I encourage the TBA membership and legal professionals in the Second Judicial Circuit to get involved in the process. In the interim, I’m off to try out a Porsche.

Douglas M. Smith is Of Counsel with Messer Caparelo, P.A., where he enjoys practicing real property, land use, commercial, and administrative litigation.

Endnotes

¹ While rule 2.241 contemplates a determination of the necessity to increase, decrease, or redefine circuit court boundaries, the Order limits the Committee here to considering whether *consolidation* is needed and expressly notes the district court lines will remain unchanged.

² Discussing the myriad of criteria is beyond the task of this article. I encourage all to review the rule in its entirety.

³ The Committee also established a Fiscal and Resource Subcommittee to look into fiscal impacts of consolidation; those findings were presented on September 29, 2023, and are contained in the meeting packet.

⁴ After this article was submitted for publication, the Committee met on November 3, 2023, and voted unanimously not to recommend consolidation of any judicial circuits. The Committee is set to meet again on November 17, 2023, to discuss the ultimate report to provide to the Florida Supreme Court, which is due December 1. The Committee’s conclusion on the issue does not moot the question presented. The Florida Supreme Court will ostensibly issue a report to the Florida Legislature, which could take up the issue of circuit court consolidation in its 2024 General Session or in a Special Session.

⁵ That the question can be interpreted to suggest the very answer it seeks (consolidation) does not alleviate suspicion, nor does the fact that this is Florida—a state historically rife with litigation when the *Legislature* is asked to redraw jurisdictional boundaries.

LAW AND IMAGE: THE STRATEGIC ROLE OF PROFESSIONAL HEADSHOTS IN FOSTERING ATTORNEY-CLIENT RELATIONSHIPS

By Alena Johnsen



In the increasingly digitalized landscape of the law profession, the quest for client development transcends beyond the realms of in-person consultations to embrace online platforms. A professional image and headshots are fundamental

in this shift, serving as the visual embodiment of an attorney's online persona. These crucial elements provide insights into the credibility, competence, and professional demeanor of a lawyer, playing a pivotal role in shaping client perceptions and development.

The First Impression

In the law, trust and credibility are paramount, and first impressions are indelible. A meticulously curated professional image, exemplified through a high-quality headshot, establishes a positive tone for ensuing interactions with potential clients. A headshot reflecting attentiveness, competence, and professionalism can engender trust and confidence. In contrast, an inadequately presented image could discourage prospective clients, regardless of a lawyer's credentials or expertise, thereby jeopardizing client acquisition efforts.

Building a Personal Brand

Beyond sculpting initial impressions, professional images and headshots are indispensable for lawyers in crafting and fortifying their personal brand. They facilitate a uniform and coherent brand portrayal across diverse platforms—a necessity in a saturated legal market. A distinctive personal brand, visually articulated through refined images, sets an attorney apart from the competition, and enables an attorney to attract and retain clients whose needs and values resonate and align

with the brand ethos.

In the contemporary legal market, building a strong personal brand has become a strategic necessity for attorneys. A well-crafted personal brand serves as a reflection of an attorney's values, expertise, and professionalism. In an industry where trust and credibility are paramount, a consistent and authentic brand image fosters client loyalty and enhances reputation. Furthermore, it opens avenues for networking and collaboration, nurturing relationships with like-minded professionals and clients. In essence, personal branding is an invaluable asset for attorneys seeking to carve a niche and excel in today's competitive legal landscape.

Online Presence and Credibility

With the surge in the reliance on digital platforms for networking and client outreach in the legal field, maintaining a polished and current online image is essential. Websites, social media, and online portfolios often form the initial interaction points between lawyers and potential clients. A professional headshot and image not only amplify online visibility but also boost credibility. Clients are inclined towards engaging with lawyers whose online personas are polished, genuine, and indicative of their legal acumen.

It's On You

The impact of a professional image and headshots on client development in the law profession is profound. These elements are foundational in generating positive first impressions, cultivating a strong personal brand, and bolstering online credibility. In a competitive legal landscape, investing in a professional image transcends vanity and is a strategic imperative for establishing trust, differentiating oneself, and fostering client relationships.

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■ Alena Johnsen is the co-owner of Ti Adoro Studios, Inc.



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10 YEARS OF *DAUBERT* IN FLORIDA: REFLECTIONS AND TIPS FROM A LITIGATOR

By Saray N. Ravelo



In 2013, the Florida legislature passed section 90.702, Florida Statutes, which amended the evidence statutes and adopted the *Daubert* standard for expert testimony. Following the Florida Supreme Court's rejection of the *Daubert* standard and

the decision in *DeLisle v. Crane*,¹ the Court eventually adopted *Daubert* as a procedural rule in 2019.² The underlying *Daubert* decision and its progeny sought to ensure an expert "employs in the courtroom the same level of intellectual rigor that characterizes the practice of an expert in the relevant field."³ By adopting section 90.702, the Legislature sought to prohibit "pure opinion testimony."⁴

As a litigator, I often wonder if Florida's passage of *Daubert* has made a difference. One of the potential impacts raised in legislative analysis prior to the passage of *Daubert* was "the number of pre-trial hearings needed."⁵ Further, the new standard would require that judges become more familiar with scientific principles.⁶ From my perspective, I agree that section 90.702 has increased the amount of pre-trial motions and hearings, especially in complex medical malpractice matters. I have also argued *Daubert* motions, which required the court to sift through incredibly complicated medical studies and articles. Despite the required legwork and expended time, it has also kept experts "honest" in expressing opinions with no scientific support. Further, *Daubert* has compelled experts to produce medical literature that supports their opinions. In my experience, if there is medical literature to support the expert's opinions and the *Daubert* challenge, the court may be inclined to deny the motion.

Here are some tips and things to keep in mind while considering and/or preparing a *Daubert* motion or objection:

- Work with your expert to identify areas of inquiry at the opposing expert's deposition, including any weaknesses in the expert's opinion and applicable medical literature.
- If applicable, analyze the medical literature to understand any medical studies in the area of testimony. If the expert's opinions contradict or are not supported by the medical literature, cite to the specific studies within your motion.
- Ensure that any *Daubert* motions or objections are timely raised.⁷ Please note, some trial orders specifically set the deadline for filing and/or hearing of *Daubert* motions before trial.
- The *Daubert* motion or objection "must be directed to specific opinion testimony and state a basis for the objection beyond just stating she was raising a *Daubert* objection in order to allow opposing counsel an opportunity to have the [expert] address the perceived defect in his testimony."⁸
- Based on the motion, a hearing may not be required—the trial court has broad discretion as the gatekeeper.⁹
- Provide any applicable medical literature or studies to the court for review.

As *Daubert* passes its ten-year anniversary, I hope that experts, litigators, and the courts continue to honor the intent of section 90.702 and ensure the reliability of presented expert testimony.

Saray is an associate at Carlton Fields in Tallahassee. She handles professional liability matters, including medical malpractice, and uses her nursing training and interest in health care in defending physicians, nurses, and clinical laboratories. She also handles employment and commercial litigation matters.

Endnotes

¹ *DeLisle v. Crane*, 258 So. 3d 1219 (Fla. 2018).

² *In re Amends. to Fla. Evid. Code*, 275 So. 3d 551 (Fla. 2019).

³ *Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137, 152 (1999).

⁴ *Booker v. Sumter Cnty. Sheriff's Off./N. Am. Risk Servs.*, 166 So. 3d 189, 193 (Fla. 1st DCA 2015).

⁵ Fla. H.R., HB 7015 (2013) Final Bill Analysis 3 (May 16, 2013).

⁶ *Id.*

⁷ See *Booker*, 166 So. 3d at 193 ("The failure to timely raise a Daubert challenge may result in the court refusing to consider the untimely motion.").

⁸ *Id.* (internal quotation marks omitted).

⁹ See, e.g., *United States v. Hansen*, 262 F.3d 1217, 1234 (11th Cir. 2001).



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WHAT IS THIS, SOME SORT OF MICKEY MOUSE ARTICLE?

By Joshua S. Stratton



The Walt Disney Company has played a major role in Florida ever since it began to buy land for what is now Walt Disney World in the mid-1960s, and little needs to be said about its current dispute with the DeSantis administration.

Disney's initial success, however, came from the Mickey Mouse short films and related merchandising beginning with 1928's *Steamboat Willie*. While Disney has carefully guarded its copyrights and trademarks to control use of the Mickey Mouse character, the time is swiftly approaching that it will lose some of its exclusive rights over Mickey Mouse.

U.S. copyright law initially granted protection for a term of 14 years, with the option to renew for another 14. By 1928, the U.S. granted copyrights on creative works (such as short films) for 28 years with an option for another 28. That time period was retroactively extended by the 1976 Copyright Act, and again by the infamous Sonny Bono Copyright Term Extension Act of 1998—sometimes called the “Mickey Mouse Protection Act.”¹ As a result, the original *Steamboat Willie* copyright from 1928 will finally expire as of January 1, 2024.²

The copyright is not technically on the character himself, but on the creative works in which the character was part of. An interesting side effect is that only the version of Mickey Mouse from 1928 will be in the public domain next year. Later changes and additions to the character in subsequent works will remain under copyright until the copyrights on the works in which those changes and additions were introduced also expire over time. For example, next year's public domain Mickey will be in black and white, will not wear white gloves, and will have no voice; many of the various attributes of the “modern” Mickey all came along later. New users of the public domain character can add new attributes so long as they

are not copying works still under copyright.³ So a third-party Mickey Mouse cartoon might give him a deep voice, or clothes other than his iconic red shorts and yellow shoes.

However, Disney's trademark rights in the Mickey Mouse name, character, design, etc. will not all expire at the end of the year (or ever, if properly maintained), but some of them are likely to be substantially weakened or lost along with the copyright. It is possible and common for trademarks to exist using public domain characters; e.g., Peter Pan peanut butter, Three Musketeers candy bars, and King Arthur flour, which can all be found in your local grocery store. But federal case law makes it clear that trademarks are no substitute for copyrights and cannot be used to control copying creative works, creating new derivative works, or anything else properly and exclusively in the field of copyright. To the extent the Mickey Mouse trademark pertains to the content of creative works, it will likely be held to be generic, as it can no longer indicate that the source of the work was Disney.

As a result, Disney will probably not be able to prevent third parties from creating new Mickey Mouse cartoons, but probably can prevent them from using Mickey Mouse as an advertising mascot for goods and services as diverse as theme parks, television channels, animation studios, or even ice cream bars. There, Disney is entitled to prevent consumers from being confused as to the source of Mickey-branded goods and services, and to protect the goodwill it has generated.

Nevertheless, Disney is also a famously litigious multibillion-dollar company, so it will be interesting to see who dares to go first, and how far they will try their luck. Also, thanks to a lack of further retroactive copyright extensions, expect to see many more well-known characters enter the public domain in coming years, ranging from Bilbo Baggins and Gandalf the wizard to Batman and Superman.

Joshua is a partner in the Tallahassee office of Berger Singerman. He represents clients statewide, primarily in litigation against state agencies and local governments.

Endnotes

¹ For a useful timeline of American federal copyright law, see Ass'n of Rsch. Librs., *Copyright Timeline: A History of Copyright in the United States* (2023), <https://www.arl.org/copyright-timeline/>.

² Under current copyright law, the duration of a U.S. copyright can vary substantially depending on when and under what circumstances the work was created, published, and copyrighted. With regard to the original Mickey Mouse cartoons, such as 1928's *Steamboat Willie*, 17 U.S.C. § 304(b) applies, providing for a term of 95 years from the date the copyright was originally secured. All copyrights terminate at the end of the calendar year, however. 17 U.S.C. § 305. Copyrights are also fundamentally national in nature, so it is not uncommon for a work to be in the public domain in one country but still copyrighted in another.

³ *Dastar Corp. v. Twentieth Century Fox Film Corp.*, 539 U.S. 23 (2003).

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LEGAL STRENGTH IN BRANDING: SELECTING A STRONG TRADEMARK AND PROTECTING IT

By Adrienne Love



What types of words create legally strong trademarks for your goods and services?

Branding a product can greatly impact its success. If you create a great product but can only secure trademark rights in it, and not other intellectual property protection such as patent rights, there is nothing stopping a competitor from knocking off your product. When that occurs, you are left to rely on your trademark to set your product apart from the others. Then, a consumer may associate your superior product quality with your trademark, hopefully resulting in additional purchases and consumer recognition. Thus, a trademark that stands out from others is an extremely valuable company asset because it drives consumers to your business.

Selecting a strong trademark is important—the stronger a trademark, the more likely it is protectable and memorable to a consumer. Although it is counterintuitive, and although you may want consumers to immediately know the functionality of your product from your mark itself, a descriptive or generic name for a product is not a strong mark, and therefore is nearly always an unwise option. For example, if you develop a new pizza toaster, the trademark “Crispy Pizza” is quite weak. It probably will not stick in the minds of customers, and others can legally use the descriptive and generic words “crispy” and “pizza” to describe similar products, which weakens the scope of your trademark protection. Additionally, a customer running a web search for your Crispy Pizza toaster is unlikely to find it on the first page of the search engine results.

A distinctive trademark, on the other hand, is legally strong and more memorable to a consumer. A distinctive trademark is a mark that either *suggests* a connection with your product or is completely arbitrary or fanciful when used in connection with your product. For

example, the trademark “Special Delivery” is suggestive of a pizza toaster because the term “delivery” is loosely associated with pizza, whereas the mark “Orlinal” is a new word that is completely fanciful when used in connection with a pizza toaster device—having no relation at all to the product. Although trademarks can gain distinctiveness over time, which results in consumer recognition of the mark, an inherently distinctive trademark like “Orlinal,” immediately creates a market advantage. By its nature, an inherently distinctive trademark (1) is more likely to move through the federal application process for registration of the trademark without issue, thereby reducing the legal cost and time it takes to register, (2) provides broader protection to the mark holder, and (3) is more memorable to the consumer (and certainly easier to find online). Examples of inherently distinctive and memorable trademarks include Google®, Kodak®, Pepsi®, and Exxon®.

What are some ways to increase and maintain the legal strength of a trademark?

Trademark Registration:

It is important to federally register your mark. Although unregistered trademarks can gain some common law rights over time, an unregistered mark is only protected in the geographic area in which you can prove that consumers recognize your mark. Geographic recognition can be difficult (and expensive) to prove. If you federally register your mark, however, you do not have to prove that it is a geographically recognizable trademark to stop another entity from using a similar trademark. Therefore, seeking a federal trademark registration is an important step in increasing the legal strength of a trademark. Federally registered trademarks allow the owner to file trademark infringement actions in federal court and give some protection in foreign countries, among other benefits.

Consistent and Continuous Use:

It is also important to use your mark. A trademark must

be used consistently and continuously in connection with the products it identifies. Consistent use means, for example, use of the mark regularly in the same font, color, and design. Consistent use contributes to brand recognition. It therefore adds to the strength of your trademark, which is an important factor in determining whether a similar trademark is infringing on your mark.

Additionally, continuous use is extremely important. Trademark rights are only valid if the trademark is in use with goods or services actually offered for sale. If you stop offering your product, you may be at risk of losing your trademark rights altogether.

Trademark Licensing:

Trademark law requires that the owner of a trademark control the quality and nature of the goods/services offered in connection with that trademark. Of course, if you own the trademark and are the entity offering the goods/services for sale (whether to consumers, distributors, or retailers), you have adequate control – you are exercising it yourself. However, if you allow other entities to use your trademark, it is wise to have a written license agreement with those other entities. A trademark license should define how you control the quality and nature of the products offered by the licensee under your trademark. For example, you may require inspections of the trademarked products to ensure their quality meets your standards. The terms of a trademark license are extremely important. Poorly worded licenses can result in loss of trademark rights. Therefore, it is advisable to consult a trademark attorney to review or draft a trademark license.

Trademark Enforcement:

Trademark owners must enforce their trademark rights; a mark owner may lose its trademark rights entirely if it does not enforce them against infringers. Thus, if another entity begins using a trademark that is confusingly similar to yours, you must stop them from doing so or come to a mutual agreement about precisely how each of you will use your respective marks to prevent consumer confusion. Otherwise, you may lose your ability to enforce your rights against that competitor, your trademark rights may weaken, and in some instances, you may be unable to expand the goods/services you offer under your own trademark. Because it is important to monitor third-party use, intellectual property lawyers often use specialized software and regularly scheduled

searches to ensure a company's trademark rights remain strong and protected.

Employee Guidance:

Creating in-house brand guidelines and holding intellectual property training for employees is a great way to ensure that they understand how to use company trademarks consistently and correctly. Employee training can be broad, encompassing other areas of intellectual property law, but can also be tailored to that company's intellectual property. A trademark attorney can assist in drafting and enforcing brand guidelines as well as conduct training sessions for employees.

Overall, there are many practical and legal reasons to choose a strong trademark and to protect it. If you have any questions, please contact Adrienne Love.

Adrienne Love is a Shareholder at Stearns Weaver Miller in Tallahassee. For over 17 years, she has devoted her practice to patent, copyright, and trademark matters, including litigation of such intellectual property cases in federal courts throughout the United States. You can reach her at 850-329-4847 or alove@stearnsweaver.com.



ASK A JUDGE

In our second installment of “Ask a Judge,” we asked TBA member ALJs from the Division of Administrative Hearings to answer a lighter, non-legal question—an icebreaker, get-to-know-you.

Which famous person from history would you want on your team during a zombie apocalypse; and why?

JUDGE COHEN:

I’ll go with Teddy Roosevelt for my historical figure. He said, “Speak softly and carry a big stick.” In the zombie apocalypse, when you run out of bullets, a partner with a big stick will help you carry the day!

JUDGE SILVER:

If we’re limited to *real* people and I can’t choose Batman, I’m going to have to go with Elon Musk. If one of his many subsidiaries doesn’t discover the cure, they at least have a lot of flame throwers.

JUDGE KILBRIDE:

If I’m confronting a hostile “zombie apocalypse,” I’d want a proven military leader, “Alexander the Great,” on my team. His epic odyssey of world domination included all of the Mediterranean basin, Turkey, Egypt, Syria, Iraq, Iran, Afghanistan, and Pakistan. He successfully dealt with a great deal of adversity along the way!

JUDGE NEWTON:

I choose Dwight Eisenhower. There will be a lot of zombies coming from many directions. Eisenhower has the skills to manage a multi-front war with tens of thousands of enemy soldiers, choose and empower good leaders, and draw up complex, successful plans. Those skills will be needed to combat the onslaught of zombies.

JUDGE VAN WYK:

If I have to choose a non-fictional character (because I’d like to have Dracula, who knows a thing or two about killing the undead), I’d choose Sacagawea. She could navigate the “backroads” to avoid the zombies and teach me how to survive in the woods. Plus, I like to have another strong woman with me in a crisis.

JUDGE CHISENHALL:

I would choose Jonas Salk. If he was able to create the polio vaccine without any help from computers, then he could probably develop a cure for the zombies while I hold them off with whatever weapons I can find.

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THE POWER OF PRO BONO: ONE CASE AT A TIME

By Jessica Lumpkin



Lawyers, your role in society is not confined to the courtroom; it extends into our communities, touching the lives of individuals and families. The legal world often meets the most vulnerable among us, and within this dynamic lies a potent tool for justice and empowerment: pro bono work. This message is not an introduction to the term pro bono, as you're well-acquainted with its origin and significance. It's a call to action, a reminder of why making pro bono an integral part of your legal journey as members of the Tallahassee Bar Association is essential.

Embracing pro bono work transcends the realm of legal obligations; it becomes a moral imperative, carrying the power to uplift not only those in need but also entire communities. As you take on pro bono cases, you embody the very essence of your profession: the pursuit of justice.

This commitment ensures that the legal system serves the greater good. It's not just a responsibility; it's a privilege, one that should inspire each member of this esteemed association to create a lasting impact, one pro bono case at a time.

The true power of pro bono work lies not only in its transformative potential for those who need it most, but also in its capacity to transform you—lawyers—into more compassionate, understanding, and effective advocates for our community.

As legal professionals, you are undoubtedly familiar with the Latin phrase "pro bono publico," meaning "for the public good." The concept of pro bono work is deeply woven into the fabric of your profession. It's more than commendable; it's essential, especially within the context

of the Tallahassee Bar Association. Engaging in pro bono cases presents a tangible way for each lawyer to fulfill their solemn oath to uphold the law and seek justice. It offers the unique opportunity to level the playing field within the justice system, protect constitutional rights, and contribute actively to a just and equitable society.

Your journey in the field of law is an ever-evolving one. Each case brings unique challenges, prompting you to step out of your comfort zones to embrace pro bono work, fostering growth both professionally and personally. These cases often lead you to areas of law that may not be part of your regular practice, providing a broader perspective on the diverse issues and challenges faced by our community.

Through pro bono work, you develop empathy and a deeper understanding of your clients' lives, significantly enhancing your ability to represent all clients, irrespective of their background or circumstances. This newfound compassion extends beyond the courtroom, creating a ripple effect in our community, fostering a more compassionate and understanding environment.

In the fast-paced and often complex world of legal practice, it's easy to lose sight of the passion that initially drew you to this profession. However, pro bono work has a unique ability to reignite and refocus your sense of purpose and your connection to the community. There's unparalleled satisfaction in witnessing the relief and joy on a person's face when you've helped them overcome a significant problem. This experience reinforces your commitment to the highest ideals of the law.

By willingly offering your time and expertise, you become guardians of justice for marginalized and vulnerable communities, including low-income families, immigrants, and victims of domestic violence. This, in turn, bolsters the integrity and credibility of legal institutions and sends a powerful message about your unwavering dedication to upholding the rule of law. It reaffirms the principle

that justice should be blind, impartial, and accessible to everyone, regardless of their economic status.

Jessica Lumpkin, MBA is the Content Marketing Director at ESPMedia

As members of the Tallahassee Bar Association, the call to action is clear. Let pro bono work be more than a concept you're familiar with; make it an integral part of your legal journey. Together, you can make a difference—one pro bono case at a time.



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SB1718: A RECAP WITH A FOCUS ON E-VERIFY REQUIREMENTS FOR EMPLOYERS

By Elizabeth Ricci



Senate Bill 1718 became law on July 1, 2023. A comprehensive legislative initiative that limits the ability of approximately 700,000 undocumented individuals to live or work in the Sunshine State, SB1718 empowers state

law enforcement to enforce federal immigration laws,¹ criminalizes the act of transporting an undocumented individual into Florida, compels hospitals that accept Medicaid to request and report patients' immigration status, limits access to driver's licenses as well as State Bar licenses, requires a person in law enforcement custody to submit DNA, and requires E-Verify² use by employers with 25 or more employees.

The SB1718 E-Verify considerations are summarized as follows:

- It is now a violation of state law for any individual to intentionally employ, hire, recruit, or refer an individual present in the country without authorization.
- Private employers who conduct business in Florida and have a workforce of 25 or more employees must now use E-Verify to confirm new hires' identities and eligibility to work within three business days of hire.
- All Florida public agencies must now include contractual provisions mandating that contractors and subcontractors register with and use E-Verify as a prerequisite for contracting.
- Employee leasing firms that explicitly assign E-Verify responsibility to their client companies are exempt from verifying workers' identities and employment authorizations.
- Beginning July 1, 2024, state law enforcement agencies will be authorized to perform random audits of

businesses and request copies of documentation³ relied upon by the employer for employment verification purposes.

- Employers will have 30 days to cure noncompliance. Failure to use the E-Verify system three times in a two-year period will result in a \$1,000 fine per day until proof of compliance is provided. Failure to comply also serves as a basis to suspend all state business licenses.
- Employers must certify use of E-Verify on unemployment compensation or reemployment assistance system returns.

While no large-scale crackdown has taken place to date, the effects of SB1718 are being felt, especially in the state's labor-intensive industries such as construction, farming, and hospitality.

For more information regarding E-verify, visit <https://www.e-verify.gov/>.

Elizabeth Ricci is the managing partner of Rambana & Ricci, PLLC in Tallahassee. She concentrates on complex immigration matters including I-9 compliance and employment-based immigration.

Endnotes

¹ The Farmworker Association of Florida filed suit in July to enjoin section 10 of SB1718 which criminalizes the act of transporting an undocumented individual into the state. The group argues that only the federal government may regulate immigration.

² E-Verify is a free internet-based system that compares information entered by an employer from an employee's Form I-9, Employment Eligibility Verification, to records available to the U.S. Department of Homeland Security and the Social Security Administration to confirm employment eligibility. See <https://www.e-verify.gov/about-e-verify/what-is-e-verify>

³ The I-9 Handbook for Employers M-274 is free to download at <https://www.uscis.gov/i-9-central/>

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WHAT TALLAHASSEE LAWYERS STILL NEED TO KNOW ABOUT ECONOMIC RECESSION

By Aaron H. Wallace, Esq.



As we finish 2023, there seems to be just one word still on every person's mind: **recession**.

With the forecasted recession of 2023, we at Florida Lawyers Mutual want lawyers in our state to be mindful of the relationship between economic recession and lawyers' professional liability.

Did you know that, historically, recessions have meant a significant uptick in the number of malpractice claims brought against lawyers? As tough economic times put pressure on clients, they may look for windfalls in the form of an errors & omissions claim against counsel. Meritorious or not, such claims can become extraordinarily disruptive to the lawyer.

In light of the current economic landscape, we're sharing four essential "Do Nots" for lawyers practicing in the midst of recession:

- 1. Do not sue your clients for failure to pay.** As recession creeps in, it's possible clients will find themselves less willing or less able to timely satisfy outstanding invoices from your firm. The temptation to take legal action can be strong—especially if your firm is similarly feeling the grip of recession. But suing a client for fees is, effectively, inviting a counterclaim for legal malpractice—and [as the ABA points out](#), the malpractice claim "usually seeks an amount far in excess of the legal fees in dispute."
- 2. Do not lower your client screening standards.** In downturned times, it can be tempting to take on clients who you are less than comfortable representing—or simply to take on more clients than you realistically have time or capacity for. Can the client afford your

services? Does he or she have unrealistic expectations or a cumbersome case with very little time left on the filing clock? Has the client already parted ways with multiple other lawyers regarding the same matter? Does he or she strike you as confrontational or angry? Are you thinking of helping a family member or friend against your better judgment simply because they are facing hard times? Heed these red flags!

- 3. Do not venture into unfamiliar practice areas simply to bring in more business.** This has been a common trap for lawyers during previous times of economic uncertainty. So many of those lawyers have found that dabbling does not pay. Unfailingly, what seems like a "simple case" becomes a quagmire, and lawyers without sufficient experience and expertise in a given area may find themselves under fire either for making mistakes or billing clients for "learning on the job." Remember: the duty of competence does not yield to market conditions.
- 4. Don't be without high-quality lawyers' professional liability insurance.** Should you find yourself facing a legal malpractice claim—even an unmeritorious one—you'll want to know that you have high-quality coverage from a provider you can count on. Florida Lawyers Mutual was created by The Florida Bar so that lawyers like you would have a reliable source of coverage. We provide you with robust policy features and a personalized, Florida-based claims experience designed to protect your practice *and* your reputation—and we've been doing that for well over 30 years. It's the reason we're recommended as the professional liability insurance provider for members of the Tallahassee Bar Association. Get a quick, no-obligation, ballpark premium indication at www.flmic.com today.

Aaron H. Wallace is a lawyer and author who serves as Director of Marketing at Florida Lawyers Mutual Insurance Company, the state's only direct-write lawyers' professional liability insurer. A-rated by AM Best for Excellent Financial Strength and owned by its member lawyers, Florida Lawyers Mutual provides high-quality policy features (including a cyber liability endorsement at no additional premium cost), value-added membership benefits (including more than 33 hours of cost-free CLE for each reporting period), and legendary member service. The Company recently declared an historic, first-ever member dividend for 2022. (*Dividends are paid at the sole discretion of the Company's Board of Directors, and last year's dividend does not guarantee the payment or amount of future dividends.*) Get a quick premium indication and learn more about how Florida Lawyers Mutual can add value to your practice at www.flmic.com.

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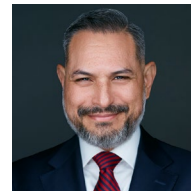
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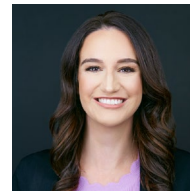
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MEMBER SPOTLIGHT



KELLY ANN KENNEDY

Our Bulletin profile this month is on attorney Kelly Ann Kennedy. Ms. Kennedy is an attorney at the Florida Department of Agriculture and Consumer Services. She has been there since 2019, when she began working as a law clerk. She received her B.S. in Forest Resource Conservation from The University of Florida and obtained her Juris Doctorate from the FSU College of Law in 2021. She serves as counsel to the Florida Forest Service, which administers state forests, purchases land for conservation, prevents and combats wildfires, and assists landowners enhance forestry operations.

Ms. Kennedy is a member of the Florida Government Bar Association, the Environmental Law Section, and the Young Lawyer Division of the Florida Bar. She has been a member of the Tallahassee Bar Association since 2018, continuing her long history of engagement with the local bar association. After serving as a law student representative on the YLS Board of Directors throughout law school, she is now the Young Lawyer Section Secretary.

How did you become involved in voluntary bar associations, like TBA?

My involvement in voluntary bar associations dates back to my childhood. At a young age, I began accompanying my grandfather to meetings of the Jefferson County Bar Association. My grandfather always made sure to bring me with him to our favorite event of the year: the annual fish fry. There weren't many other kids around, but I didn't mind. I got to eat seafood, tour the museum of antique cars, and if I was lucky, I might even have gotten called to

tax law, but also for playing guitar. At the bar association cookouts, he got to share those talents with his colleagues, and over my lifetime, I watched those collegial relationships grow to be true friendships. Looking back, those meetings impressed upon me the value of collaborating with colleagues, so that we can each contribute our own unique talents. Being a part of an organization like the Tallahassee Bar Association, gives me a similar opportunity to collaborate with colleagues in new and interesting ways, so that we can each showcase our talents and skills, and build a culture of teamwork within our profession.



make a guest appearance in the bar association pick-up band. My grandfather not only had a knack for ad-valorem

What motivates you?

I am motivated by a passion for environmental justice, conservation, and restoration of the natural world. The Florida Forest Service administers over 1 million acres of land throughout the state, holding such lands in trust for the benefit of the public and the integrity of the diverse ecosystems in our state. Forests are considered carbon sinks, meaning they pull carbon from the atmosphere, opposite from cars, which add carbon to the atmosphere. Therefore, purchasing, preserving, and improving the health of Florida forests offsets some aspects of climate change and contributes positively to our state's ecological

footprint. Not to mention, it creates habitats for countless creatures and critters, which increases biodiversity. I am privileged to work with a division that has such a large impact across our large state. I strive to ensure the integrity of its mission and further promote conservation, recreation, and appreciation for the vast and varied natural treasures we enjoy here in Florida.

What do you do for fun?

I am a self-proclaimed horse girl. For fun I like to ride my Holsteiner mare Ella around the farm in Monticello where I am fortunate enough to board her. On Ella, I used to practice competitive eventing. That is the type of three-phase competition held at Red Hills Horse Trials. It consists of dressage, cross-country, and show jumping. Ella's favorite phase was jumping. I've seen her blood lines, and she was born for it! Since coming into my life as a spirited 8 year old, Ella never met a jump she wouldn't take. Then in her late teens she developed an area of bone calcification in one of her legs. This led me to make the tough decision to retire her from jumping and find her a new home. It was then that she moved to her greener pastures, at the schooling barn teaching young kids and hosting summer camps. She is loving retirement and the non-stop attention from other, younger, cuter horse girls. I think even when I



can't be at the barn, the thought of new students enjoying time with Ella just like I used to, is also really fun for me.

If you could change one thing about the practice of law, what would it be and why?

I would lower court fees and increase access to courts.

As lawyers, it is our duty to ensure that the justice system serves everyone, not just those with financial means to utilize it. I would hope that more clients are afforded their day in court and given their chance to be heard. Even if it does not enhance a client's chances of prevailing on their claim, the integrity of the legal system requires that everyone at least has the opportunity to make their claim and share their side. As long as the high cost of litigation prohibits access to courts, justice is not being served.



TALLAHASSEE BAR ASSOCIATION
**YOUNG LAWYERS
SECTION** News

**THIS SPRING, YLS WELCOMED
5 NEW REPS**

Taylor Kendall
Maresa Semper
Allison Laudadio
Daniela Marerro
Jacob Osachy

YLS hosted, and moderated a “young lawyer panel” lunch meeting at the law school last month. Board members sat on the panel to answer questions from law students about practicing law as a TBA young lawyer. The meeting was a huge success. **THANK YOU, law students, for your impactful contributions.**

BOARD VACANCY

We will have at least one vacancy on the board. **Anyone interested in joining the board should email tallahasseeyounglawyers@gmail.com with their resume and a brief statement of interest.** Ryan Orbe will be graduating out of his role and become ex officio, and Amanda will become our new YLS president.

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FALL EVENTS RECAP



Most Unusual Chili Winners: Akbar Thomas



Most Magnificent Margarita Winners: Legal Services of North Florida

- CHILI - COOKOFF TALLAHASSEE BAR ASSOCIATION 26TH ANNUAL • 2023

Chili Cookoff

The 2023 Tallahassee Bar Association Chili Cookoff was a record-breaking event raising \$17,880 for the Legal Aid Foundation of Tallahassee. The 26th Annual Cookoff held at Goodwood Museum & Gardens brought together 200+ people for one of the most popular legal community events of the year. Judges included Second Circuit Chief Judge Frank Allman, Second Circuit Judge Steve Everett, Leon County Judge Nina Ashenafi-Richardson, Tallahassee Commissioner Curtis Richardson, and Leon County Commissioner Christian Caban.

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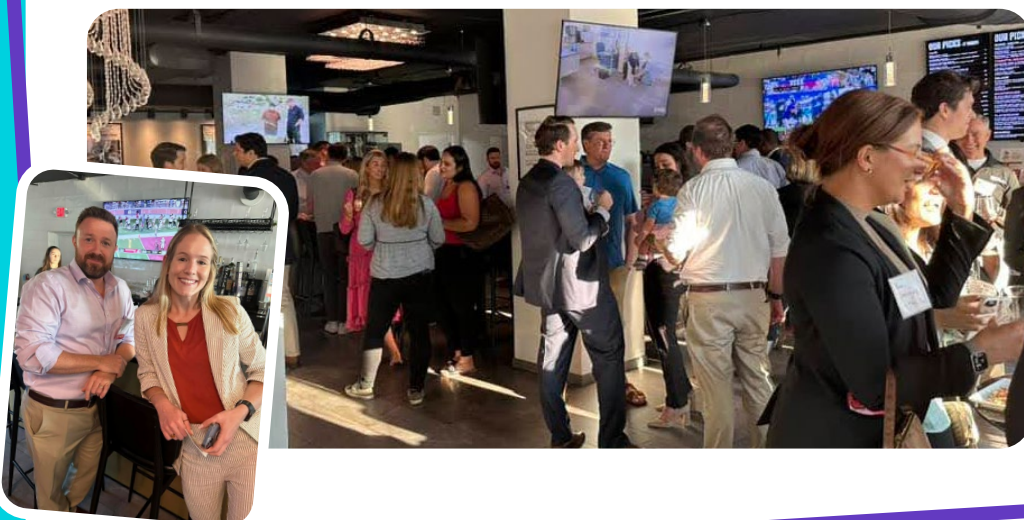


A total of seventeen teams vied for the top prizes.

- Pennington P.A. (*People's Choice*)
- Ausley McMullen (*Best Five Alarm Chili*)
- Florida Government Bar Association (*Best Theme*)
- Akbar Thomas (*Most Unusual Chili*)
- Legal Services of North Florida (*Most Magnificent Margarita*)
- IMS Business
- Stearns Weaver Miller
- ESP Media
- Tallahassee Women Lawyers
- Owen Title Company
- Division of Administrative Hearings
- FSU Law Class of 2021
- Liebenhaut | Hesser
- Berger Singerman
- Kutak Rock LLP
- Max Factor Law
- Stan Chapman & Booter Imhof

End of Summer Social

The Tallahassee Bar Association and TBA Young Lawyers Section joined forces to host the End of Summer Social on September 14th. Members were joined by new and returning students from the FSU College of Law. Nelson Mullins sponsored the event which was held at Vino Beano in Midtown.



END OF SUMMER SOCIAL



TBA CLE LUNCHEON

September CLE Luncheon

The Tallahassee Bar Association’s September Luncheon featured the CLE program “Tort Reform in Florida and its Effect on the Insurance Industry.” Jimmy Fasig moderated the lively and informative discussion. Panelists included Jordan Anderson, Jessica Bowen, Kyle Weaver, and Laura Youmans. Lexitas sponsored the Luncheon.



November CLE Luncheon and ANNUAL MEETING

Florida Bar President Scott Westheimer served as the featured speaker for the Tallahassee Bar Association’s 2023 Annual Meeting. The 2024 Slate of Officers and Directors for the TBA and TBA YLS was presented by President-Elect Sid Bigham and approved by the TBA membership. Larry Sellers was named the recipient of the 2023 Lifetime Professionalism Award. The 2023 Champion for Diversity in the Legal Profession Award was presented to Daryl Parks. The Annual Meeting was sponsored by Berger Singerman, LexisNexis, Ti Adoro Studios, and Lexitas.



Daryl Parks
Champion of Diversity



Larry Sellers
Lifetime Professionalism

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2023/24 UPCOMING

TBA CALENDAR *of Events*

2023

DECEMBER

14

Bench & Bar
Holiday Party
6:00pm-8:30pm

2024

JANUARY

11

Board of Directors
Swearing in Ceremony

2024

FEBRUARY

08

Past Presidents'
Reception
5:30pm-8:00pm

2024

MARCH

TBD

CLE Luncheon
11:45am-1pm

2024

APRIL

11

Table for 8
5:30pm-8:00pm

2024

MAY

TBD

Law Day
Celebration

2024

JUNE

06

Member
Happy Hour
5:30pm-8pm

2024

JULY

17

Judicial
Candidate Forum

2024

AUGUST

06

CLE
Luncheon
11:45am-1:00pm

Save the Date

12-14-23

Bench & Bar Holiday Party

6:00–8:30 PM
Parkview at Cascades

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