



DECEMBER 2021 EDITION



President's Message

Each year, as I enter the holiday season, I try and take the time to think about what I am thankful for, reflect on the past year, and envision what I would like to manifest in the next. As my thoughts turn to the Miami Dade Bar, I start with what I am thankful for. I am thankful for the support that I have received as President – support that has come in the form of advice, financial sponsorship, friendship, hours of volunteer service, and most importantly the staff at the MDB, that never acts as if this is just a job. I am so grateful to the past-presidents for their leadership and constant support, my officers and directors, committee chairs and YLS for the many hours that they donate to the organization.

While this year has not been easy, we at the Bar have done and continue to do everything that we can to provide valuable benefits to our members. In addition to new member benefits, we are providing more CLE's and in-person events than any other voluntary bar organization in the State of Florida. Our goal at the Miami Dade Bar is to make sure that every single attorney and paralegal in our community has all the tools that they need to be the best that they can be in their practice area. Our motto is, "we at the Bar are ready to serve." But, the second half is a question: "are you?" I pose this question because, in the words of Woodrow Wilson, "You are not here merely to make a living, you are here in order to enable the world to live more amply, with greater vision, with a finer spirit of hope and achievement. You are here to enrich the world, and you impoverish yourself if you forget the errand." I know that it is not a lack of desire to give back, but rather a question of how and what can I do to help. Here are a few ideas: 1) Take a pro bono case from Dade Legal Aid's, Put Something Back Program; 2) join a MDB Committee; 3) participate in the Community Service Committee events including our upcoming Blood Drive; 4) bring a toy or gift card to our holiday party on December 14th. It is my goal to make sure that the MDB is providing opportunities for each one of us to live more amply and to enrich the world.

I start this holiday season and the end of the year with feelings of hope. I ask that you take advantage of all that the Bar has to offer; and when you feel comfortable, come and join us at one of our many in-person events. I wish all of you a very joyous and healthy holiday and happy New Year. I look forward to seeing you.

We at the Miami-Dade Bar are ready to serve, are you?

Sabrina Puglisi
MDB President

YLS President's Message



The Miami Dade Bar Young Lawyers' Section has been busy. The Young Lawyers Section has made it our priority to give back to the Miami community. We have successfully produced a back-to-school drive, Halloween costume drive, Thanksgiving fundraiser, and soon we will be rolling out a toy drive. On behalf of all the Miami Dade Bar Association, thank you to everyone who has participated or donated to these great causes.

We have also done our best to safely host several social events starting with our kickoff joint bar association happy hour on August 12, 2021 at Brewery 13 in Coral Gables together with the Russian American Bar Association ("RABA"), the Hispanic National Bar Association ("HNBA"), and the Florida Association for Women Lawyers ("FAWL") where we had close to 100 attendees!

Editor in Chief: Alice Weeks
Note from EIC on Page 2

YLS President's Message continued...



We hosted successful social events in October at Bulla and in November at La Cerveceria Tropical in Wynwood. At each happy hour we have made it a point to be COVID safe, but also community oriented and incorporated a service component.

As we are winding down 2021, we look forward to welcoming all lawyers across Miami, to come out to the Miami Dade Bar Young Lawyer's events. We all have been home for nearly two years due to COVID-19. But when you are ready to safely leave your "home" office and get back to what all lawyers enjoy: networking and seeing fellow lawyers, check the Miami Dade Bar Calendar for events. We would love to see you again!

Lastly, happy Holidays to everyone! As always, if you are a young lawyer in Miami wanting to get involved with the Miami Dade Bar Association please feel free to email me directly, smeryl@scottmerllaw.com.



Scott Merl
YLS President

A Letter from the Editor-in-Chief

I am pleased to provide the second issue of the revived Bulletin! We are very excited about the interest in our publication and the number of submissions we received for this issue. Please continue to submit your articles [here](#). Wishing everyone a happy and healthy holiday season.



Alice Weeks is an associate at Hunton Andrews Kurth, where she represents policyholders in complex coverage disputes. Alice is also a director for the Miami Dade Bar Young Lawyers Section.

**CHECK OUT OUR
UPCOMING EVENTS AT
MIAMIDADEBAR.ORG/CALENDAR**

Miami-Dade Bar COVID - 19 Resources

In light of the extraordinary challenges we are facing during this global pandemic, our commitment to your success is stronger than ever. Our immediate focus is on virtual resources you can use now. Additionally, many court systems have created dedicated web pages as a one-stop source for all information relating to on-going operations. We encourage you to bookmark and visit each page frequently for future updates.

- [Florida Supreme Court](#)
- [Eleventh Judicial Court](#)
- [Third District Court of Appeal](#)

We are encouraging everyday preventive actions to help prevent the spread of COVID-19. For additional information about good health practices and the coronavirus, visit the following sources:

- [World Health Organization](#)
- [Centers for Disease Control and Prevention](#)
- [The Florida Department of Health in Miami Dade County](#)

Ten Things To Think About Before Your First Motion Calendar Hearing In Circuit Civil

Roger Slade

Many lawyers stumble at their first motion calendar hearing. It can take years to learn how to handle such a hearing. Below are a few suggestions as to how to make these hearings go smoothly, particularly if you have never handled one before.

1. Whose motion is it anyway?

Is it your client's motion? If so, it is not going to set itself. You need to be proactive about getting hearing dates from the Court. You should coordinate those dates with opposing counsel; otherwise, you may have a very unhappy adversary. If the motion is filed by the other side, it is usually their decision as to whether to set it. If the other side's motion may advance your case, you may want to set it.

2. How long will I need for the hearing?

Surprisingly, this can be a big issue. How often do we see counsel sent away from the motion calendar hearing with the Judge telling the lawyers that "this motion needs to be special set." This can be a tremendous time waster for the lawyers and the Court. You should give this issue careful consideration. If the motion cannot be argued in five minutes, you should ask for a special setting.

3. Send in the materials in advance.

Sending the materials to the Judge the day before the hearing (or, even worse, at 4 o'clock in the morning on the day of the hearing) is a bad practice. Consider reviewing the Judge's rules about submissions first and then sending your materials at least one week in advance. Also, for a motion calendar hearing you may want to reconsider your decision to send 100 cases. It seems unlikely that the Judge can read all that material before the hearing. Consider sending in just your best cases, highlighted for the Court's convenience.

4. Be prepared to explain yourself succinctly.

At a five-minute motion calendar hearing, you are not going to have a lot of time to talk. Sometimes, Judges allow you to elaborate beyond your allotted time, but not often

Therefore, in your motion it pays to explain in the opening paragraph what relief you are seeking and why you are entitled to it.

5. Follow the basic script.

One Judge in Broward, perhaps exhausted at the prospect of having to instruct hundreds of lawyers on how to present a motion calendar argument, prepared a script that he required all lawyers to follow. It read like this:

1. Hello my name is _____.
2. I represent _____.
3. The relief I am seeking is _____.

This may seem funny to you (it did to me) but, after years of watching motion calendar hearings gone awry it is now more understandable.

6. Moving party goes first.

Your opposing counsel may attempt to seize the advantage by launching into the argument before you do. When it's your motion, this is not appropriate. The moving party should be allowed to go first unless the Judge wants the hearing to be conducted differently.

7. Don't interrupt.

Don't interrupt – anyone, but, especially not the Judge. Two or three lawyers talking over one another is also a court reporter's nightmare.

8. Be ready on Zoom.

In the old days, you used to have to worry about traffic and finding a parking space. No more. Now you have to worry about your internet connection, your Zoom dial in number and your dog (or the neighbor's dog). Find yourself a quiet space and be prepared in advance.

Remember that at Motion Calendar you could be listed as number 50 on the docket. If you are new to this, you should watch the arguments. It can be fun, and then you can keep track of how many lawyers violate these rules.

9. Read the bench.

One technique that takes some time to master is the ability to read the bench. This means trying to get a sense of where the Court is going and where it will end up.

It is likely a mistake for junior lawyers to try to do this until they either know the judge better or become more seasoned. In any event, one basic rule to follow once you have mastered the ability to read the bench is: "if you are winning, just shut up." Too many lawyers ramble on and on and may actually be snatching defeat from the jaws of victory. Conversely, just because it seems like you are losing does not mean you should give up. Until the Judge is ready to rule, you are not a loser yet.

10. Submit the order promptly following the hearing.

Judges in state court want to enter an order that reflects their ruling. If you wait a week after the hearing before you submit the order to the Court, it is more likely the Judge is going to want to see the transcript. You should prepare the order following the hearing and promptly submit it to the other side for review. If the other side does not agree to your form of the order, and you think you're right, you could order the transcript (time consuming and expensive) or you could submit your own order. If you do that, make sure you tell the Judge that the parties could not agree on the form of an order and that the other side plans to submit their own order.

These are only ten things to think about before your first motion calendar hearing. There are others. Many others. You will learn them by watching and, occasionally, making your own mistakes. If you follow these basic rules, you are more likely to be in good standing with your opposing counsel and the Court.



Roger Slade is a partner in the Miami law firm of David B. Haber, P.A. Mr. Slade is an AV rated commercial litigator with over 19 years of business litigation experience.

Networking In The New Normal: Choose Quality Over Quantity

Paula Black

One sign that life is (slowly) returning to “normal” is that in-person, face-to-face networking events are starting to happen again. After more than a year of Zoom conversations, this is welcome news for many people. But, as a coach who has advised thousands of professionals over the last two decades, I can tell you that a lot of the networking people engage in is a waste of time. Before you jump back into your pre-pandemic networking routine, there are a few things that I encourage you to consider.

While it’s true that professionals develop business in large part through relationships, it’s equally true that deep, valuable relationships aren’t created through 60 seconds of forced small talk. The problem with so many networking groups and events is that they focus on quantity not quality. Most participants are focused on making as many superficial connections as possible so that they can hand out all of their business cards – which doesn’t leave much time for real relationships to develop.

Generally speaking, I counsel my clients to avoid this type of networking event. Instead, I encourage them to take a strategic, deliberate approach to their networking. Here’s how:

1. Get clear on who you’d like to meet.

Who are the types of people who could become great clients or referral sources? Many of my clients have built their businesses primarily through referrals, and many of their referrals come from a very small group of people. Look for opportunities to connect with other professionals who serve similar clients as you do, but don’t offer the same services. For example, if you’re a financial planner, developing relationships with family law attorneys could be very helpful.

2. Get clear on where you’re going to find these people.

The problem with many networking events is that they’re generic. You never know who you’re going to meet. And while there could be 30 people in the room, the vast majority likely aren’t good sources of business or referrals for your practice. Instead, get hyper-targeted. If you’re targeting family lawyers, look for family law-specific events and organizations that you can get involved with. Often, volunteering with an organization (serving on the board of directors, for example) is a great way to build deep relationships. It’s much better to be deeply involved with just one or two carefully selected organizations than it is to join dozens and never have time to create real relationships within any of them.

3. Provide value before you ask for anything in return.

As you begin building relationships, look for opportunities to create value for the other person. If they mention a problem or a challenge within their business or their life, look for opportunities to make a referral or recommendation. If they’re struggling with a project, see if there’s a way that you can help. Find a way to make their life better – this is how you take your relationship to the next level. And yes, it may not happen overnight, but if you give enough, you will eventually get plenty out of the relationship as well.

4. Stay in touch with your network.

As you begin to cultivate relationships and build your network, don’t let the connections grow cold. Stay in touch with your network by connecting on LinkedIn and by including them on your email newsletter. But don’t neglect real human connection either. Look for opportunities to send thank you cards and notes.

Pick up the phone every once in a while. Don’t just text, call! And schedule time for lunches and one-on-one coffee meetings. These “touches” are essential as you continue to develop key relationships.

5. Take full advantage of digital networking opportunities.

One positive side-effect of the pandemic is that it forced most business professionals to get comfortable operating virtually. And even as life begins to feel more “normal,” there are still great opportunities available to build your network digitally. For example, Zoom makes it very easy to have a one-on-one conversation with somebody on the other side of the country. LinkedIn makes it easy not only to connect with potential clients and referral sources, but also to stay top-of-mind by creating and sharing content consistently. Take advantage of these tools as you sharpen your networking strategy.

Relationships are essential for developing your professional practice. But as traditional networking opportunities begin to open back up, be strategic about how you use your time. Focus on quality, not quantity. Build meaningful relationships instead of superficial exchanges. Take full advantage of digital tools. In my experience, the relationships you create will benefit your career for years to come!



Paula Black is one of the world’s leading business development coaches for lawyers, entrepreneurs, and service providers. She teaches her clients how to attract more clients and grow their businesses while still having the personal life they want.

Paula was voted the Top Legal Business Development Coach by the readers of the Daily Business Review and is a member of the Forbes Coaches Council.

Paula Black Tribute

Jane Muir

My first encounter with Paula Black was at my first board meeting as a group 1 director, during the presidency of Steve Davis. Steve invited Paula to speak to the board about how we could attract more members to our association. There had been discussion about different options to attract members, such as reduce the amount of dues. Paula got up and said, "You have to provide VALUE!" and proceeded to drop pearl after pearl of wisdom on the board.



I remember her advice during that meeting to this day. It guided me when I became chair of the Bulletin committee in 2012. I immediately contacted Paula and asked her help to redesign the publication. She spent (at least!) eight Saturdays with me getting the redesigned publication together, offering her own staff support for the graphic design and layout. For the next two years, we would work together one Saturday a month getting the publication completed on deadline.

Paula was an important leader in our Solo & Small Firm committee for many years. She coached countless young attorneys who were starting their firms and developing their professional reputations. When I eventually became president of our association myself, it was Paula Black's advice from ten years earlier that helped inspire the redesign of our logo and color scheme.

Although her wisdom will still be available to her coaching clients, (who are lucky to have the best Legal Development Coach three years running according to the Daily Business Review) and the readers of her best-selling books, Paula Black is leaving Miami for Asheville, North Carolina. We must all thank Paula Black for her inspiration, support, and leadership for the Miami-Dade Bar over the last twelve years. I cannot thank her enough.



Jane Muir is an attorney, whose practice focuses on complex commercial litigation, business transactions, and general counsel. She has been appointed to serve as Receiver in the Eleventh Judicial Circuit of Florida. Jane served as Miami-Dade Bar President from 2020-21

Let's get together and save lives during this holiday season!

Donating blood is one of the best gifts that we can give to another person. Our very own Executive Director Bret Berlin was someone whose life was saved by a blood donation. "On a personal note, I want to offer heartfelt appreciation to everyone who participates in our blood drive," says Bret. "There is no greater gift of charity. By participating, you are giving life to someone who would die without your gift. I know because someone saved my life. I don't know who they are and will never be able to thank them. But some kind soul gave me life while I lay in intensive care dying. You see, they don't give blood to people unless they need it. In my case, it was life and death and I am only here today because someone gave. So I am asking: give blood. It is the ultimate charitable act, the gift of life; a few minutes of your time in exchange for allowing a stranger to live and continue to serve the community."

Please join us on Saturday, December 11th from 10-3 when the One Blood bus will be parked on the corner of 1st Avenue and NW 2nd Street. If you are unable to attend the downtown location, please go to the One Blood website and find a location near you, which can be found [here](#).

After you donate, please don't forget to take a selfie pic of yourself with the One Blood bus behind you and email to marketing@miamidadebar.org. We will post our wall of heroes on the Miami Dade Bar facebook page and Instagram on Tuesday, December 14th.

oneblood
Share your power.

GIVE BACK TO OUR COMMUNITY

**MIAMI DADE BAR'S
BLOOD DRIVE**

SATURDAY, DECEMBER 11TH | 10:00AM - 3:00PM

**ALL DONORS WILL RECEIVE A ONEBLOOD
BLANKET, A \$10 EGIFT CARD, AND A FREE
WELLNESS CHECKUP!**

Appointments are encouraged, please visit
www.oneblood.org/donate-now and use sponsor code #56525

SPECIAL THANK YOU TO OUR EVENT SPONSORS:

MDB ECL FACDL GOWIA CDBA CABA

Documents an Association is Required to Provide to Prospective Purchasers

Tiffany-Ashley Disney

In today's market, home buyers need to act swiftly and are often under time constraints dictated by the purchase contract. Knowing what information you are entitled to as a buyer can help you make an informed decision when purchasing a condominium. Thus, it is important to know what documents a condominium association is required to provide under Florida Statutes 718.111(12).

What Documents Must an Association Provide?

Under Florida Statutes 718.111(12)(c) and (e), as a prospective purchaser, an association is required to provide you with the following documents:

1. The Declaration and any amendments;
2. Articles of Incorporation and any amendments;
3. Bylaws and any amendments;
4. Rules of the association;
5. Question and Answer Sheet*; and
6. Year-End Financial Reports.

*A Question and Answer Sheet contains information regarding voting rights; unit use restrictions; leasing restrictions; rent or fees for common use facilities; amount of assessments per unit type and whether they are collected monthly, quarterly or otherwise; whether membership in the recreational facilities is mandatory and the membership fee; and any court cases in which the association is a party and may face liability in excess of \$100,000.

How Can the Documents Be Provided?

An association is most likely to provide the documents in electronic format. However, an association is also required to provide a paper copy if requested. Additionally, an association must make the documents available for you to scan, copy, or take a picture of (for example using your smartphone to take pictures).

Can an Association Charge for Providing the Documents?

An association can only charge the "actual costs" in providing the above documents, so there probably will not be a fee for electronic copies. If paper copies of the above documents are requested, the association can charge for the cost of copies.

Under Florida Statutes Section 718.503, this cost can be paid by the seller. An association must also make the documents available for scanning, copying, or taking pictures, free of charge.

Can Additional Information Be Requested Beyond What is Required?

An association is not obligated to provide any documents beyond what is listed above. However, that does not mean a prospective purchaser cannot request additional information, such as structural reports, budgets, reserve studies, etc. Ultimately, it is the association's decision whether to provide a prospective purchaser with materials beyond the above-listed required documents.

However, an association can charge a reasonable fee (not to exceed \$150) plus the cost of photocopying and any attorney's fees incurred by the association in connection with providing a response to additionally requested information. Frequently, in order to be approved for a loan to purchase a condominium unit, the lender will require the prospective purchaser to secure from the association information concerning all pending litigation, including a brief summary of the cases (sometimes called a "litigation letter").

Other Ways to Obtain Further Information

One way a prospective purchaser could obtain additional documents is by requesting that the seller, as the current unit owner, make an official records request under Florida Statute Section 718.111(12), and then share the results with the prospective purchaser. Some of the documents to which a unit owner is entitled under Florida Statutes Section 718.111(12) are the following: plans, permits, and warranties provided by the developer; minutes of all meetings of the association, the board of administration, and the unit owners; current roster of all unit owners and their mailing address; insurance policies of the association; management agreements, leases, or other association contracts; bills of sale or transfer for all property;

accounting records for the association and other financial records; ballots, sign-in sheets, and voting proxies; rental records; and inspection reports.

In addition, under Florida Statutes Section 718.503(2), the seller is also required to provide the prospective purchaser with a "governance form", which includes information such as the role of the board, meeting notice requirements, maintenance requirements of common areas, special assessments and owners' rights regarding voting, attending and speaking at meetings, and inspecting or copying records.

Changes After the Champlain Towers Tragedy

Based upon the recommendations contained in the Report of the Florida Bar RPPTL Condominium Law and Policy Life Safety Advisory Task Force, there may be some forthcoming changes to the current rights of prospective purchasers, and an association may be required to provide additional documents. In its Report, the Task Force discusses at length how an association is not required to provide prospective purchasers with reports that were procured regarding the structure of the condominium or building inspection reports. The Task Force specifically recommended that if an association procures a report regarding the building structure, life safety, or other inspection reports, that the reports should be made available to a prospective purchaser. This recommendation could be implemented in the future by way of statutory amendments.



Tiffany-Ashley Disney is an associate attorney at Haber Law who concentrates her practice in the areas of complex business and condominium litigation.

Join a Committee!

The Miami Dade Bar, formerly known as the Dade County Bar Association, is looking for attorneys who are interested in getting more involved. Through membership in various committees, lawyers can focus their involvement in an area of the law that interests them most. Committees provide attorneys with access to other lawyers who share similar interests and are involved in the production of specialized continuing legal education seminars. The opportunities are endless and with all these committees to choose from, there is something for everyone.



- APPELLATE COURT
- ALTERNATIVE DISPUTE RESOLUTION/ARBITRATION
- BANKRUPTCY LAW
- BUSINESS LAW
- CIVIL LITIGATION
- COMMUNITY SERVICE
- COUNTY COURT
- CRIMINAL COURT
- ENVIRONMENTAL & LAND USE
- FAMILY LAW
- FEDERAL COURT
- FL REGISTERED PARALEGAL
- FORECLOSURE
- GOVERNMENT RELATIONS
- HEALTH & WELLNESS
- IMMIGRATION
- INTELLECTUAL PROPERTY
- JUVENILE COURT
- LABOR & EMPLOYMENT
- LAW & TECHNOLOGY
- PERSONAL INJURY
- PROBATE & GUARDIANSHIP
- PROFESSIONALISM
- REAL PROPERTY
- SOLO/SMALL FIRM
- WORKERS' COMPENSATION

JOIN TODAY!

In a Time of Uncertainty, Your Ediscovery Technology Should Bring You Certainty

Anush Emelianova

If the COVID-19 pandemic has taught us anything, it's that you can never really predict what's going to happen. Lawyers and their clients are facing an increasing number of novel COVID-related legal issues, including employment litigation over work conditions and vaccine mandates; insurance litigation over policy coverage during the pandemic; commercial lease disputes relating to pandemic disruption; not to mention the high-profile trials delayed due to witness or juror exposures. At the same time, litigation is growing even more expensive as cases drag on longer than ever before.

While clients continue to expect top-notch service, counsel dealing with COVID-related litigation are facing a host of new issues. For example, the shift to remote work means discovery now involves new document formats, such as Zoom recordings and Slack messages. Counsel are also managing costs during a cash-strapped time when office budgets are uncertain as well as dealing with a rising ediscovery burden despite working remotely. Here are four methods tech-savvy lawyers are using to win COVID litigation and prepare for the next crisis.

1. Budget right the first time

Today, many companies seek the predictability – especially cost predictability – that was sorely missed in 2020. At the same time, ediscovery costs have a way of ballooning beyond what is expected. Bloomberg's 2020 report found that legaltech costs exceeded estimates for more than half of firms and one-third of in-house departments in the previous year. Budgetary concerns are top of mind for attorneys considering new technologies today.

When budgeting for ediscovery, pay close attention to what is and what is not included in pricing to ensure you don't end up being nickel and dimed. Many ediscovery providers will charge per GB for analytics or charge per-user license fees, as this pricing survey from JDSupra reflects. Per-document costs for imaging and OCR (text recognition) will add up once documents are ready to produce. Industry standard production costs can exceed \$300 per GB.

Mitigate surprise costs by finding an ediscovery provider that charges you an all-inclusive price and seek a budget guarantee.

2. Use modern technology and AI to get to evidence faster

Increasing data volumes mean it's more difficult for practitioners to resolve cases efficiently. At the same time, lawyers are reluctant to rely on black-box artificial intelligence technologies. According to Bloomberg Law's 2021 Legal Technology Survey from September 2021, only 13% of respondents used any form of technology-assisted review (TAR). At the same time, Bloomberg's 2020 survey found 90% of respondents agreeing that use of legal technology has increased efficiency in the organization in general.

According to Magistrate Judge Andrew J. Peck in 2015, "[t]he case law has developed to the point that it is now black letter law that where the producing party wants to utilize TAR for document review, courts will permit it." Yet the legal industry has been slow to adopt AI despite the strong judicial vote of confidence.

The percentage of lawyers who use TAR (13%) is both shockingly low and completely unsurprising to any litigator. Note that attorneys can still review the exact same documents while using TAR if they want to – at a bare minimum, TAR should be used to prioritize documents and to provide an automatic double-check to human review. Of course, if used to its fullest potential in a feature-rich ediscovery platform, AI can yield truly impressive results. For example, global law firm Kennedys was able to go from collection to discovery with 1.4 million documents in just 11 days using AI models, automatic email threading, similar document detection, and fast doc-to-doc platform speed.

3. Be prepared to handle new types of discovery

Today's coworkers nod along in Zoom meetings while running side commentary in Slack or chat. For in-house counsel and firm lawyers, the move to Zoom comes within some new considerations.

No doubt many lawyers died of second-hand embarrassment and double-checked their Zoom settings after seeing the "I am not a cat" video.



When litigation looks reasonably imminent – when considering which ediscovery solution to use – make sure your pick is able to handle modern data types, including Zoom, Slack, and others. Failure to adequately capture metadata may result in sanctions. For lawyers handling COVID-related matters, the shift to virtual in 2020 may only now be impacting data collections.

Taking a forward-looking approach to new discovery data types is part of looking at the big picture and creating value for clients over the long term, rather than reacting only to the case in front of you. In a recent interview, Jason Barnwell, an attorney in Microsoft's Corporate, External, and Legal Affairs department, said he is delighted when a law firm invests in technological development, because it results in cost savings for each case down the line.

4. Demand remote-first capability

According to an April 2021 McKinsey study, 52% of workers prefer a hybrid model post-pandemic, up 22% from pre-COVID19. Unsurprisingly, one 2021 survey of IT leaders showed that nearly half said that accelerating cloud adoption and migration continued to be a priority. Smart counsel should expect companies to cater to remote workers and take their own steps to ensure collaboration despite physical distance. For lawyers working in ediscovery, document review should be available from anywhere.



Proud Sponsors of the Miami-Dade Bar

Announcing the Celeste H. Muir Excellence Award

Elizabeth M. Hughes

Beginning in 2021, the Miami Dade Bar (formerly the Dade County Bar Association) will annually honor a member of the judiciary whose conduct personifies judicial excellence and professionalism with the Celeste H. Muir Excellence Award.

The award will be presented to a member of the judiciary who, like Judge Muir, is considered by the legal community to be patient, generous, thoughtful, and kind in their communications and dealings with all litigants while being fair, resolute, and reasoned in their rulings.

The Miami Dade Bar will honor Judge Celeste Muir as the inaugural award recipient at the 2022 Miami Dade Bar annual awards luncheon.

"It is a distinct honor on behalf of Deborah Corbishley and myself as co-chairs of the Professionalism Committee of the Miami Dade Bar to bestow this most deserving award upon Judge Celeste Muir. May she serve as a shining light and an example for all of those who seek justice and fairness in the courtrooms of our community. Especially in our present times, this award is a wonderful opportunity to recognize the judges in our community for their leadership and balance to all who appear before them," said Russell S. Jacobs, Esq., Co-chair of the Professionalism Committee.

Judge Muir began her career in 1973 as a law clerk for U.S. District Judge William Mehrtens of the Southern District of Florida. She was his first female law clerk.

Judge Muir spent the early part of her career in private practice with the legendary trial law firm of Frates, Floyd, Pearson, Stewart, Richman & Greer. She then joined the firm of Brigham, Moore, Muir, Gaylord, Schuster & Sachs, where she became a named partner in 1978, practicing in the area of eminent domain.



Prior to going on the bench, she was the first female President of the Dade County Bar Association's Young Lawyers Section.

In 1985, she became a judge on the Miami-Dade bench, a position she held for thirty-five (35) years, until December 31, 2020, while garnering many accolades for her demeanor, refined listening skills, considerate nature, intellect, and unsurpassed judgment.

Past President of the Miami Dade Bar, Richard Milstein, Esq. said, "The establishment of the Judge Celeste H. Muir Award of Excellence permanently recognizes the quality of the legal profession and judiciary in Miami. As the first female president of the Young Lawyer's Section of the then Dade County Bar, meant that Celeste Muir was the first woman to succeed to the highest levels of leadership in the local Bar. This noble task was just a demonstration of the aspirations to be the best of our profession and to establish a role model, not only for women, but for all minorities to succeed in life. Judge Muir is iconic and through this recognition to future generations, Judge Muir's legacy will endure and be extolled for others to emulate."

Nominees for the award should meet the following criteria:

1. At least five years of experience on the bench
2. Possesses the ability and attitude that makes the courts accessible and inviting to all
3. Recognized by members of the bar, litigants, court personnel, jurors, and the community at-large as respectful and even-handed, but in firm control of activities within the courtroom
4. Encourages a high level of open, honest communication
5. Respected by, and has the confidence of, other judges, court staff, lawyers, and others in the legal community.

The Professionalism Committee of the Miami Dade Bar Association will accept a short paragraph of a few sentences as to why a particular judge who meets the criteria above is deserving of the award. The nominations are open to anyone in the community, be they citizens who have appeared before the judge, lawyers in the community, fellow jurists, court staff or any other person in the Miami Dade County community who wishes to recognize a judge who meets the above criteria. Nominations may take the form of an email, a letter, or any other writing submitted with attention to the Professionalism Committee to Deborah Corbishley dsc@kennynachwalter.com

We welcome any and all nominations for this prestigious and important award.



Elizabeth M. Hughes

concentrates her practice to the areas of trust and estate litigation, including guardianship and mental health litigation. Elizabeth serves as Chair of the Probate and Guardianship Committee of the Miami Dade Bar.

36th Annual View from The Bench Seminar

Karen J. Ladis

On Friday, November 5, 2021, nearly 200 judges, general magistrates, bar leaders, family attorneys, court employees and others zoomed in for the 36th Annual View from the Bench Family Law seminar. The program began with an interactive Meet & Greet followed by introductions by **Dade Legal Aid, Amber Kornreich, Esq.**, President of The First Family Law American Inn of Court and Board Member of the Miami Dade Bar and its Young Lawyers Section, and **Gerald I. Kornreich, Esq.**, Moderator, and the only lawyer to be Board-Certified eight consecutive times in Marital and Family Law in Miami-Dade County. **Mr. Kornreich** welcomed guests, spoke about the legacy of **Judge Richard Yale Feder**, the first Administrative Judge of the Family Division, and provided perspective about the seminar and its 36-year history. Following opening remarks, **Kornreich** introduced **Former Chief Judge Joel Brown** who served as the Administrative Judge in the Family Division of the 11th Judicial Circuit from 2001 to 2009.

Former Chief Judge Brown, who has been a **Partner at Freidin Brown, P.A.**, since serving on the bench, fondly recalled his time in the Family Division and expressed his gratitude to the group for their hard work on this seminar for over three decades noting the value and importance of accepting pro bono cases from Put Something Back Pro Bono Project. By accepting pro bono cases from Put Something Back, **Judge Brown** explained that you do several things. "You provide a valuable service to the legal

profession, you enhance the opinion of the legal profession, and you provide access to the courts and much needed representation to those who cannot afford it. You also obtain tremendous personal satisfaction, which I found out firsthand by accepting a case. These are some of the most challenging and rewarding to take." **Judge Brown** continued, emphasizing the human element of pro bono service: "We became lawyers to provide a service, and to represent people, and at the end of the day when you take a pro-bono case, the clients are so appreciative and grateful, you feel very satisfied."

Following **Former Chief Judge Joel Brown's** remarks, the **Honorable Judge Spencer Multack** presented on hearsay using a powerpoint containing several examples from pop culture. Next, **Former Administrative Judge Sandy Karlan** gave her remarks about the View from the Bench recognizing all the innovations in the Family Division during her time as Administrative Judge. **The Honorable Judge Victoria del Pino** presented her "Top 10 Do's and Don'ts in the Family Division" and discussed ethics and best practices for using courtMAP effectively. **The Honorable Judge**

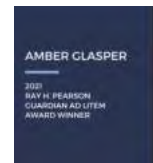
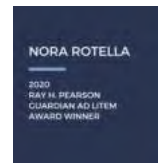
Samantha Ruiz-Cohen, Administrative Judge, provided valuable Court Updates During the Pandemic for the Family Division highlighting various Administrative Orders and offering her optimistic view of "Pandemic Positives."

Former Administrative Judge Scott Bernstein encouraged all attendees to take just one pro bono Guardian ad Litem case from Put Something Back and described the impact that pro bono attorneys make when they accept GAL cases. "There is always the need for more attorneys to take cases," said **Bernstein**.

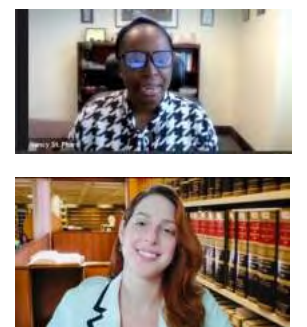
Always a highlight of the seminar is the **Presentation of the Ray Pearson GAL Awards and Judicial Awards**. This year's presentation was extremely meaningful, with the majority of the Family Bench in attendance via Zoom and many of the 31 previous award winners present. All Judges, General Magistrates and Speakers received Certificates of Appreciation and **Chief Judge Nushin Sayfie** recognized all the previous Ray Pearson GAL Award Winners and thanked everyone present for taking pro bono cases. "Congratulations to all who participated in a truly wonderful CLE. It was not only well done, there was such a spirit of friendship and collegiality. I can't wait for next year's program, hopefully in person!" said **Chief Judge Sayfie**.



Judge Ruiz-Cohen announced the winners of the 2020 and 2021 GAL Awards presented by the Court. **Nora Rotella, Esq.** and **Amber Glasper, Esq.**, two outstanding family attorneys who have each gone above and beyond to care for their clients especially in contested divorce cases. **Ms. Rotella** and **Ms. Glasper** were surprised at winning and grateful for the recognition. Each were extended invitations to join The First Family Law American Inn of Court in recognition of their tremendous commitment to pro bono service.



Following a short recess, the group reconvened and heard from the New Judges Panel, another highlight of the program each year. This year's New Panel included: **The Honorable Judge Christina DiRaimondo, The Honorable Judge Fernandez-Karavetsos, The Honorable Judge Spencer Multack, The Honorable Judge Victoria del Pino** and **The Honorable Judge Veronica Diaz** who shared their different perspectives on their unique divisional procedures. **Mr. Kornreich** moderated the New Judges Panel for the thirty-first time, and invited the Judges to discuss case management conferences, their judicial websites, technology, emergency matters vs. urgent matters, and to share their backgrounds.



36th Annual View from The Bench Seminar

continued...

Court Administrator Eugene Carral also shared his memories about the View from the Bench from his many years of involvement behind the scenes and recognized the Court staff's outstanding efforts during pandemic. The next speaker was **Nancy St. Phard** of Family Court Services who provided an update on available services and technological innovations during COVID-19.

Former Chief Judge Bertila Soto then gave her remarks about the View from the Bench and why it is so important to accept a pro bono case. **Maria C. Gonzalez, Esq.**, Board Certified in Marital & Family Law, & Florida Supreme Ct. Certified Family Law Mediator & Fellow, American Academy of Matrimonial Lawyers, provided a detailed Case Law Update and **Former General Magistrate Robert Jones** spoke on Legislative and Rules Update. Following the seminar, **Ms. Gonzalez** said, "I hope you did not miss this year's 36th View From the Bench Seminar. Although the Seminar was in webinar format, the team that put it together literally "hit it a grand slam! I never miss this Seminar because it is one of the best bench/bar events the 11th Judicial Circuit has to offer."



You learn a great deal in a brief amount of time. It also gives you an amazing opportunity to take a pro bono case through Dade Legal Aid and Put Something Back."

This seminar was free to all attorneys who agreed to accept a pro bono case from Put Something Back and would not be possible without the love and support of so many individuals who care deeply about the Family Division, updating the family law bar, training our next generation of lawyers, and instilling in them the importance of "putting something back."



Many thanks to **Gerald I. Kornreich** and **Amber Kornreich, Kornreich and Associates**, for their time and effort, to the Family Division of the Eleventh Judicial Circuit, the First Family Law American Inn of Court, and the Miami Dade Bar for their efforts.

Dade Legal Aid News and Events

JOIN OUR TEAM!

We are now hiring a Family Law Attorney

- 5 years experience
- Bilingual
- Excellent Benefits

Send resume & references to spaulson@dadelegalaid.org

NEED BANKRUPTCY ASSISTANCE?

Apply for free chapter 7 Bankruptcy Attorney to assist with
Consumer Debt
Extraordinary Medical Debt
Reinstatement of Drivers License Due to Judgment

Veterans, Elderly, Others All Welcome to Apply
Contact us today for assistance

www.dadelegalaid.org
thesmorgashteam@dadelegalaid.org

305-579-5733 Ext. 2246



THE JOY OF HOLIDAY GIVING!
BRIGHTEN OUR CLIENTS'
HOLIDAYS WITH A DONATION
THIS SEASON!
WWW.DADELEGALAID.ORG

SAVE THE DATE

WEDNESDAY, JANUARY 19, 2022

9:00 a.m. - 12:30 p.m.

YOU BE THE JUDGE

Probate & Guardianship Seminar

Presented by

Miami Dade Bar

Probate & Guardianship Committee

Dade Legal Aid/Put Something Back

Seminar FREE for attorneys who accept a probate or guardianship case from Put Something Back.



SEE YOUR LOGO HERE! CALL NOW TO BE A SPONSOR!
FOR SPONSORSHIP OPPORTUNITIES CONTACT
305-579-5733 Ext. 2252 or e-mail PSB@dadelegalaid.org

WATCH Your Step: New Innovations in Fitness Trackers Can Lead to Richer Data for Discovery in Personal Injury Lawsuits

Nanci Schanerman

The rise in “wearable technology” has led many attorneys to innovate ways to bring data from fitness trackers into the courtroom. Wearable technology encompasses devices people wear that contain smart sensors and wirelessly connect to smartphones through a web or Bluetooth connection. Certain types of wearable technology can track a user’s activity and store the information for an unlimited amount of time. In civil and criminal litigation, fitness trackers and smart watches are emerging as a potential source of information that could provide valuable data for the prosecution or defense of a lawsuit. From the defense perspective, it is easy to see how fitness tracking data could help prove that a claimant has recovered from their injuries and maybe even prove fraud in the claims process. From a plaintiff perspective, it could help to prove inactivity related to injury.

In one of the more recent Apple Watch updates, an Apple Watch SE or Apple Watch Series 4 or later can detect a hard fall and connect the user to emergency services. Falls are automatically recorded in the Health App, unless the user replies that they did not fall when Apple Watch asks. This kind of data could be extremely useful in a slip and fall or trip and fall litigation.

Courts concur in the potential usefulness of fitness tracker information in personal injury lawsuits and have allowed the discovery of this data. At least one federal court has recognized that “a mobile app that indicates Plaintiff performs strenuous activities may be relevant to claims of injury or disability.” *Cory v. George Carden Int’l Circus, Inc.*, No. 4:13-CV-760, 2016 WL 3460781, at *2 (E.D. Tex. Feb. 5, 2016). In a recent decision in Missouri, *Batris v. Biomet, Inc.*, 2021 WL 2092785, No. 4:13-CV-00657-JAR (May 24, 2021), the trial court granted the defendant’s motion to compel discovery responses related to Fitbit data. In the personal injury lawsuit related to an allegedly defective hip implant, the defendants requested production of all data from the Fitbit and any other wearable device or other fitness tracker used by the plaintiff. The plaintiff cited general boilerplate discovery objections, argued that he was unable to obtain the information and that fitness tracker information is “potentially unreliable.” Citing broad discovery rules, the minimal burden of production and limited privacy risks, the court compelled production of a portion of the Fitbit data and found that it was not a fishing expedition. The extent of the plaintiff’s physical activity was relevant to claims of long-term physical injury. Furthermore, the plaintiff’s objection as to the potential accuracy of the data, went to its admissibility and weight, not its discoverability. “Like most discovery disputes, the discoverability of wearable device data depends upon the facts of the particular case.”

In Canada, two court opinions reference Fitbit data to support the conclusion that the petitioners were entitled to disability benefits. In both cases, Fitbit data was used to support claims of insomnia. Fitbits are fitness trackers that also track the quality of a user’s sleep when worn at night. Fitbits use a combination of a heart rate monitor and motion detectors to identify and measure different sleep stages: light sleep, deep sleep and REM. Fitbit advertises that its trackers can measure a user’s time spent in each sleep stage, as well as the user’s time awake. The information from Fitbit trackers provided a valuable alternative source to prove the petitioners’ claims.

Additionally, a personal injury law firm in Canada outfitted their client with a Fitbit tracker with the hope of proving the data will support their claim that their client’s activity was below average. When a personal trainer suffered injuries in an accident, fitness trackers were not widespread. Four years after the accident, the personal trainer’s lawyers outfitted her with a Fitbit Force to show the plaintiff’s current level of activity. The lawyers gave the data to Vivametric, an analytics company, and that data was compared with the activity of the general population, as determined by “industry and public research.” Vivametric takes a single person’s data, compares it to Fitbit’s databank of collected and stored data from other wearers and determines whether that person falls above or below the average.

This case law supports the obvious - that fitness trackers contain relevant data that can be useful in litigation and will provide a road map to its discovery. After discovery of the data, the next step is to lay the foundation for admissibility at trial. The foreseeable challenges to admissibility are most likely going to be the authentication and the accuracy of the data. There are several ways to authenticate the data, such as questioning the user, identifying data unique to the use of the device like references to a particular fitness goal, or hiring a computer forensic expert.

Proving the accuracy of the data will be a bigger problem. For example, Apple admits that its heart rate data is flawed. If anything is blocking the LED lights on the back of the watch which measure the heart rate, like tattoos or irregular skin perfusion, the heart rate reading will not be accurate. Similarly, Apple states on its website that water immersion while swimming could interfere with accurate heart rate data. Furthermore, irregular movements can confuse any device. Fitbit has also had the accuracy of its heart rate data questioned in a class action filed in 2016 currently pending in Northern District of California.

WATCH Your Step: New Innovations in Fitness Trackers Can Lead to Richer Data for Discovery in Personal Injury Lawsuits

continued...

In the suit, consumers from California, Colorado, and Wisconsin allege that the heart rate tracking in the Charge HR and the Surge, two products that came to market in 2015, is inaccurate by a "significant margin," especially during periods of intense exercise. Overcoming challenges to accuracy of the data will surely interfere with its admissibility, but it would still certainly be worth trying to admit overall trends in the data instead of an exact number of steps walked in a day or beats per minute of a person's heart.

Wearable technology is constantly evolving. It will be interesting to see what happens when the law catches up and whether this data will become a regular part of personal injury litigation, much like social media discovery.



Nanci Schanerman focuses her practice on civil litigation matters, including complex products liability, class actions, premises liability and general liability cases. She also represents tire manufacturers and handles litigation involving wrongful death and catastrophic injury.

MIAMI-DADE BAR
MDB
1916

THE MEMBERSHIP COMMITTEE + LAW & TECHNOLOGY COMMITTEE PRESENT...

MINGLE & JINGLE

HOLIDAY HAPPY HOUR

OASIS AT WYNWOOD | DECEMBER 8 | STARTS @ 5:30PM

SPONSORED BY

DISCO

RUSSOMANNO & BORRELLO, P.A.
ATTORNEYS AT LAW
SPONSORS SPECIAL EVENT PRIZE

Be Careful Stopping for Gas this Holiday Season!

Michael A. Haggard, Esq.

Adam Finkel, Esq.

With the holiday season around the corner, more and more of us will pile into our cars and rush off to family reunions, gatherings with friends, and vacations. While we may not all realize it, it's more than traffic and erratic Miami drivers that we should be mindful of: stopping at the gas station may expose you and your family to danger.

When thinking of people being the victim of crime on a property, our minds often think of apartment complexes, bars, shopping malls, and other commercial premises. However, one of the most common places we all find ourselves at, may be the most dangerous place we can possibly go: gas stations. Gas stations and convenience stores are a necessity for Miamians, and travel during this holiday season means, for many, arriving at gas stations that are unfamiliar. For criminals, this leaves us vulnerable to criminal attack. That we're often in a rush at these gas stations, only exacerbates our vulnerability.

According to the Department of Justice, the most frequent location for robberies are at gas stations and convenience stores—more frequent than banks, shopping mall parking lots or apartment complexes. At gas stations, customers are often standing alone, or others inside the car are not paying attention. Further, customers have valuable items with them: their vehicle, and often a wallet in hand. And, as is increasingly important to us during the holidays, most gas stations are open late, and so when one stops during our holiday road trip, it's dark, we're tired, and there are less passersby around. These factors all contribute to the frequency of robberies.

Further, that the gas station clerk is usually alone and not paying attention doesn't help. Too often, gas station operators pay little attention to safety, and the occasional surveillance camera or bright light over the pump, only serves to lull us into a false sense of security. In reality, as people exit cars to fill up the tank, or run into the convenience store for a quick snack or drink, they are left vulnerable to attack. Particularly in high-crime areas – which you may not know you are in when pulling off the highway this holiday season – criminals target gas stations, and wait for unsuspecting customers. Robberies, shootings, and car thefts are all far too common – and far more common than most realize.

The disturbing truth is, gas station owners and operators are generally concerned about one thing, and one thing only: money. This is precisely why we are all too accustomed to gas stations not being maintained in a manner that reasonably ensures our safety—

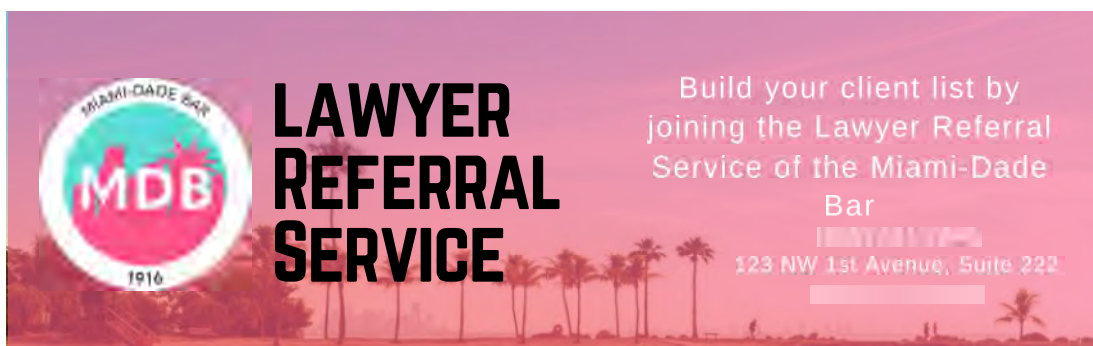
less money spent on security measures, means more profit for gas station owners. For instance, we commonly see security guards at shopping malls and plazas, but rarely at gas stations. There is no reason that this should be an accepted norm. In fact, our Florida legislature put in place mandatory minimum security standards for security at gas stations, but operators and owners often ignore these laws.

For instance, recently, The Haggard Law Firm represented a 20-year-old young man that was shot by a masked man that approached him at a gas pump, and as a result fractured his femur. Attorneys for the gas station owner highlighted that the gas station was clean and well-kept, that the area near the pumps was extremely well-lit, and that there were functioning security cameras in place. You might ask—what more can a gas station do? To you, this may seem reasonable, but experts would appreciate that the vestibule windows were fully covered with advertisements, which violated the law and prevented the clerk from monitoring the property. Further, the station was poorly designed, and the trash collection area gave the shooters the perfect area to hide. In the end, The Haggard Law Firm obtained a \$1.4 Million Dollar settlement for this young man.

The point is, when rushing through the upcoming holiday season, we are increasingly vulnerable when standing at the pump. Gas stations often provide criminals an optimal opportunity to prey upon unsuspecting customers, in unfamiliar neighborhoods, and on properties that are not maintained in accordance with the law. This holiday season, we all want to arrive at our destinations safely. Please be mindful when pulling into the gas station. Stay off your phone. Look around. Is the station well-lit throughout the property? Can you see the clerk? Is the clerk paying attention? Is it clean? Do you see cameras? Are there other patrons using the gas pumps? There's always another gas station down the road or at the next exit. Be careful and drive safely this holiday season.



Adam Finkel is a co-chair of MDB's PI committee and a trial attorney with The Haggard Law Firm, representing victims that sustained catastrophic injuries, and the families of wrongful death victims.



MDB
1916

**LAWYER
REFERRAL
SERVICE**

Build your client list by
joining the Lawyer Referral
Service of the Miami-Dade
Bar
123 NW 1st Avenue, Suite 222

The Miami Foundation

GiveMiamiDay

ANNIVERSARY

THANK YOU TO OUR 2021 DONORS!

LINDSAY HEAD
FREDDI MACK
PATRICIA YOUNG
SARA COURTNEY-BAIGORRI
ROBERT MERLIN
JESSICA SAIONTZ
ROBERT & MARLENE JOSEFSBERG
DEBORAH LOWE
VIVIAN ROSADO
HON. STANFORD BLAKE
PETER BROOKE
FRANK FLORIO
VALORY GREENFIELD
SANDRA GOODMAN
BARBARA SILVERMAN &
JOHN KOZYAK
MELISSA COATES
DAVID MANGIERO
DANA VIGGIANO
THEODORE GAY
KEITH SINGER
JENNIFER OLMEDO-RODRIGUEZ
MARK STEIN
ALEXANDRA SERRA
ELIZABETH HUGHES
HENRY GILLMAN
SUSAN DAVIS
ROBERT BLUMBERG
SHERYL BERKOWITZ
MARILYN LADIS
DANIELLE FOSTER
LINDSEY LINZER
HON. CHRIS MCALILEY
MICHAEL DRIBIN
MICHAEL CHENOWETH
RANDY HUMMEL
JULIE FEIGELES
RICHARD SCHATZ
SALVADOR CASTANER
KAREN J. LADIS

BEVERLEY MARKOWITZ
SHAWN LIBMAN
MICHELLE VARGAS
ALEESHA KHAN
RICARDO GANITSKY
JOYCE MCCLINTOCK
SUSAN & JACK CHRISTIE
DARRELL PAYNE
RICHARD & CAROLE MASINGTON
MONIQUE HAYES
ROBERT MURRAY
JAN JACOBOWITZ
DARREL PRICE
DAVID ROGERO
STEPHANIE RAKOFSKY
MARCUS BACH
FREDRICK FREEDMAN
BRETT AMRON
DORI FOSTER-MORALES
ANDY ELISBURG
GREGORY BAKER
NANCY COPPERTHWAITTE
DAPHNE CONNER
ELLIOT KULA
MARCIA M. REISMAN
REGINA GOLDSTEIN
SARAI CRUZ
MOLLIE WANDER
HON. MINDY GLAZER
EILEEN YASBIN
JOANNE LINARDI
MAXINE LONG
RODERICK PETREY
SARAH STEINBAUM
CATHERINE CATHERS
HON. LAUREL ISICOFF
PHYLLIS CARLIN
MARK GLASSMAN
LAUREN MORSE
GILBERT K. SQUIRES

THANK YOU TO
OUR ANNUAL
SPONSORS



CYPEN & CYPEN



LexisNexis

**SAUL EWING
ARNSTEIN
& LEHR^{LLP}**

IBERIABANK

 **DISCO**



**Florida Lawyers Mutual
INSURANCE COMPANY[®]**

**Law
Business
Research**



**WEISS SEROTA
HELFMAN COLE + BIERMAN**



L&L PROCESS

