



The Florida Bar Out-of-State Division

State-to-State

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Spring 2024



Find your place in the OOSD

Florida Ethics Opinion 24-1: Artificial intelligence and legal ethics

Spring into success: A strategic guide to revitalizing your law practice

Proposed OOSD officers and executive council members

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COVER:

Florida First District Court of Appeal

Photo: [Michael Rivera](#), [CC BY-SA 3.0](#), via Wikimedia Commons

The Florida First District Court of Appeal, also known as the First DCA, is headquartered in Tallahassee, Florida, the state capital. It is unique among the six Florida District Courts of Appeal in that, much like the U.S. Court of Appeals for the D.C. Circuit at the federal level, it handles most of the appeals in state administrative law matters. It is also solely responsible for handling appeals in workers' compensation cases. It is the Court of Appeals for 29 Florida counties, covering the Panhandle as well as the north-central parts of the state.

Source: Wikipedia

Find your place in the OOSD

Now is the time to shine as an Out-of-State Division member. We have just returned from a fabulous conference in beautiful San Juan, Puerto Rico, and are gearing up for the year ahead, with a goal of ramping up our member involvement.

For more on our conference, do read on. (Spoiler alert: name-dropping to follow.) But first, did you know that the CLE programming offered by the Out-of-State Division fuels our annual budget and allows us to sponsor networking events across the country? Do you have an idea for a summer CLE program? The Florida Bar will publicize the program, coordinate participant registrations, and manage the “after-market” offerings of your CLE. It’s a win-win that offers you great visibility and a chance to showcase your professional know-how while helping our division position itself to broaden its reach and expand its membership.

If you are interested in supporting our division through committee membership, we’d welcome you to jump in. Our treasurer keeps an eye on the division’s finances and would be happy to round out our Budget Committee with new members. Perhaps you have an interest in information and technology? We have a committee for you. If you’d like to support our Nominating Committee in identifying those who may wish to move into division leadership, let us know.

Now, for more on our conference



Joy Heath

President's message

in Puerto Rico. The OOSD Executive Council convened its meeting at the outset of the conference and welcomed those participating with us in San Juan and attending virtually. The Out-of-State Division was joined in San Juan by the Young Lawyers Division (YLD) and the Solo and Small Firm Section (SSFS). We had a great turnout of lawyers and their families, enjoying networking and fun in the sun at the wonderful La Concha Resort. Anisha Patel and Cristina Alonso took the lead in welcoming OOSD to a productive, fun-filled weekend, including receptions held each night during the conference. As OOSD president, I together with OOSD Past President Brandon Wolff had the honor of attending the YLD meeting as well as networking with members at the close of the SSFS meeting. A word of thanks to our division secretary, Mindi Wells, who worked behind the scenes and then joined the fun with friends in San Juan. And our trip

was made even more special when our own Brian D. Burgoon made his conference appearance in San Juan. Did I mention family? I cannot help but note my “joy” in having my son, Miami marketing-pro Elliot Thomas, and first-year University of Miami law student Ashlyn Aleywine as my conference guests.

It is never too early to get involved with The Florida Bar! If you were not able to join us in San Juan, take heart—several opportunities lie ahead. We look forward to seeing a strong showing of OOSD members at the Annual Florida Bar Convention in Orlando on June 19-22, 2024. The Florida Bar Board of Governors will convene its Out-of-State Meeting in New Orleans on September 25-27, 2024. The Out-of-State Division is proud to have four members—Brian Burgoon, Eric Meeks, Duffy Myrtetus, and Don Workman—on The Florida Bar Board of Governors. And mark your calendars now for next summer’s Annual Florida Bar Convention to be held June 25-28, 2025, in lovely Boca Raton, Florida. Last but certainly not least, we will be continuing our tradition of joining the YLD at its 2025 conference, which is sure to be a marvelous event at The Willard in Washington, D.C., on March 6-9, 2025.

Now is the time to find your place in the OOSD—do join in!



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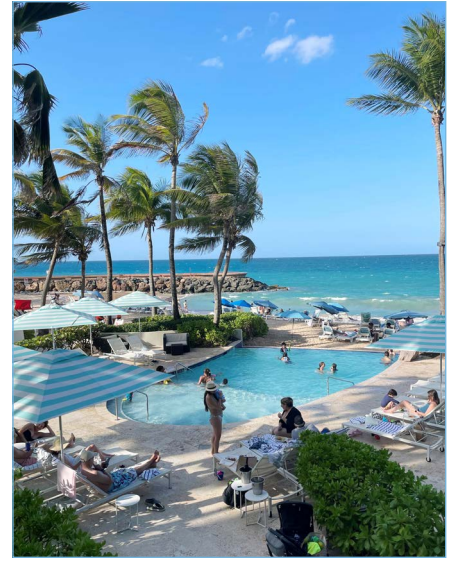
The OOSD in Puerto Rico



Elliot Thomas and Ashlyn Aleywine



Anisha Patel, YLD president, and Joy Heath



La Concha Renaissance San Juan Resort



The Young Lawyers Division welcomes Joy Heath, OOSD president, and Brandon Wolff, OOSD immediate past president and YLD governor, in San Juan, Puerto Rico.



Joy Heath and Brandon Wolff

Florida Ethics Opinion 24-1: Artificial intelligence and legal ethics

by Tim Chinaris



“The more things change, the more they stay the same.” That saying can apply in legal ethics. When a new technology comes on the scene, the legal

profession often scrambles to determine how the rules of legal ethics will apply to it. Over time, answers become clear through court decisions, ethics rule changes, and accepted standard-of-care practices. But at the beginning, lawyers typically find guidance in advisory opinions handed down by bar ethics committees. We have seen this recently with technology-driven developments like outsourcing law firm support functions overseas, and earlier with the widespread adoption of email communication.¹

The latest technology-driven legal ethics questions relate to the use of artificial intelligence (AI) by lawyers in the practice of law. The Florida Bar is one of the first bar organizations to adopt a formal advisory opinion focusing on ethics issues presented by the use of this new technology. Florida Ethics Opinion 24-1 (Opinion) was approved by The Florida Bar Board of Governors in January 2024. This article summarizes the guidance provided by that Opinion, and also highlights some issues that remain to be addressed.

Opinion 24-1 applies to use of “generative AI” by lawyers. The Opinion contains only a very basic definition of that term, noting that generative AI “can create original images, analyze documents, and draft briefs based on written prompts.” The Opinion intentionally does not discuss specific AI products, and so it does not distinguish between familiar products that use aspects of AI (such as Westlaw) and the more robust programs (such as ChatGPT).

A generative AI program draws on huge datasets of information, including all information input into the program by previous users who presented queries. According to the Opinion, these datasets “can include billions of parameters making it virtually impossible to determine how a program came to a specific result.” This lack of certainty with regard to the confidentiality of client information that is input to a generative AI program heads the list of potential ethical issues for lawyers who wish to use generative AI in their practices.

Opinion 24-1 identifies four specific areas of ethical concern for lawyers who use generative AI: (1) confidentiality of client information; (2) reasonable oversight of the product; (3) fees and costs charged by the lawyer; and (4) compliance with lawyer advertising regulations.

Confidentiality

Confidential information is defined quite broadly in Rule 4-1.6(a) as “information relating to a client’s representation.”² Lawyers are obligated to protect this confidential information. Rule 4-1.6(e) specifically imposes an affirmative duty on lawyers to “make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the client’s representation.” In order to provide competent representation to clients, lawyers are expected to have “an understanding of the benefits and risks associated with the use of technology.” Comment, Rule 4-1.1.

Opinion 24-1 points out that generative AI programs operated by third parties “raise [] the possibility that a client’s information may be stored within the program and revealed in response to future inquiries by third parties.”³ The Opinion concludes that the ethical requirements of preserving confidentiality and competently representing clients require a lawyer

using generative AI to take steps such as the following:

- Use only AI providers that the lawyer’s investigation reveals to be reputable, which includes providers that have adequate security measures to preserve confidentiality of information;
- Ensure that the AI provider will notify the lawyer if there is a data breach or if the provider is served a subpoena seeking client information; and
- Determine whether the provider retains information submitted by the lawyer or asserts proprietary rights to the information.

Rule 4-1.6 prohibits a lawyer from disclosing confidential information unless the client consents or an exception to confidentiality applies. The Opinion identifies two exceptions to the duty of confidentiality that may be particularly relevant to a lawyer’s use of generative AI.

The first exception is Rule 4-1.6(c)(1), which allows a lawyer to disclose confidential information to “serve the client’s interest unless it is information the client specifically requires not to be disclosed.” The Opinion indicates that this exception may not always apply, and so seems to favor the second exception—client consent. Unfortunately, the Opinion is not entirely clear as to whether client consent to the use of generative AI is required or simply recommended. In one place the Opinion states that it is “*recommended* that a lawyer obtain the affected client’s informed consent prior to utilizing a third-party generative AI program if the utilization would involve the disclosure of any confidential information” (emphasis added). Later in the Opinion, however, it is suggested

Continued, next page

ETHICS OPINION 24-1

from preceding page

that client consent is required rather than discretionary.⁴ Accordingly, the prudent lawyer who uses generative AI will consider including a consent provision in the attorney-client representation agreement.

Reasonable oversight of AI use

Opinion 24-1 draws on rules governing lawyer supervision of nonlawyer assistants to offer guidance for the oversight of generative AI. The lawyer has a duty to review the product of an AI program, just as lawyers traditionally review the work product of subordinates before adopting and using it. Importantly, the Opinion specifically states that “a lawyer must verify the accuracy and sufficiency of all research performed by generative AI.” These supervisory duties apply regardless of whether the generative AI program is operated in-house or by a third party.

The Opinion interestingly suggests that certain tasks should not be delegated to an AI program, using initial client intake performed by a website chatbot as an example. Chatbots may not provide legal advice. Further, the Opinion warns that an “overly welcoming chatbot on a law firm’s website could create an unintended prospective client or attorney-client relationship with a website user. The Opinion suggests using a “clear and reasonably understandable” disclaimer to protect against this possibility.

Fees and cost charges

One attractive feature of AI for lawyers is the ability to accomplish tasks, such as drafting, in a much shorter time. Lawyers who charge for their services by the hour must accurately report their time when billing clients; as the Opinion states, a lawyer must not “falsely inflate the lawyer’s billable hours.” The lawyer may charge a reasonable flat fee for legal work that is enhanced through the use of AI.

May a lawyer charge a client for AI as a cost of the case? The Opinion’s guidance is less clear on this. The Opinion states that the “actual cost associated with a particular client’s matter” can be charged to the client, *if* that “actual cost” is known. If the actual cost is not known, the Opinion cautions that “the lawyer may not ethically prorate the periodic charges of the generative AI and instead should account for those charges as overhead.” This advice, however, may be inconsistent with the language of Rule 4-1.5(b) and the Rule’s Comment, at least with respect to in-house generative AI.⁵ In any event, a lawyer who intends to bill for costs associated with AI should disclose this to the client at the outset of the representation, preferably in writing.

Lawyer advertising regulations

Opinion 24-1 recognizes that AI can replicate voices and images of actual persons—including lawyers. In fact, some law firms are using AI-generated chatbots to communicate with website visitors, and even to perform intake functions for the firm. These activities are permitted,

but the Opinion directs: “To avoid confusion or deception, a lawyer must inform prospective clients that they are communicating with an AI program and not with a lawyer or law firm employee.”

This disclosure requirement is based on Rule 4-7.13(b)(5), which prohibits advertising that uses “a voice or image that creates the erroneous impression that the person speaking or shown is the advertising lawyer or a lawyer or employee of the advertising firm unless the advertisement contains a clear and conspicuous disclaimer that the person is not an employee or member of the law firm.” Law firm websites are a form of advertising.

The Opinion also suggests that, because some visitors to law firm websites are currently represented by another law firm but may be thinking of changing firms, the advertising firm “should consider including screening questions that limit the chatbot’s communications if a person is already represented by another lawyer.” This is a suggestion rather than an ethical requirement because Florida Ethics Opinion 02-5 specifically opines that “a lawyer may provide a second opinion to a person who is represented by counsel at the person’s request.”

Issues not addressed in Opinion 24-1

One potentially important issue not addressed in Opinion 24-1 is whether, or under what circumstances, the use of generative AI by a nonlawyer will constitute the unlicensed practice of

Mission of the Out-of-State Division

The purpose of the Out-of-State Division of The Florida Bar is to provide an organization for all Florida Bar members who reside outside of the state of Florida. The division focuses not on any specific practice area, but rather on the common interests and needs of out-of-state Florida Bar members as a whole. The division works toward the goal of ensuring equitable treatment for in-state and out-of-state Florida Bar members. This is accomplished through education, legislative, and administrative review; the production and update of a website for division members and the public at large; and the publication of a newsletter sent to the division’s membership.

law (UPL). For example, for many years nonlawyers have been permitted to sell legal forms and provide very limited assistance to help persons complete those forms. In doing so, of course, the nonlawyer cannot give legal advice.⁶

The Opinion addresses the ethics rules that govern a lawyer's use of generative AI, so a discussion of UPL issues involving nonlawyers is outside of its scope. But it may be difficult to ignore the UPL question going forward. For example, one can imagine a nonlawyer opening a business to "assist customers" in getting answers to legal questions by inputting the "facts" of a customer's situation into an AI platform, getting an answer, and providing the answer to the customer. Would that be UPL? It could be, when we consider that the Florida Supreme Court has generally defined the practice of law in the following terms:

[I]n determining whether the giving of advice and counsel and the performance of services in legal matters for compensation constitute the practice of law it is safe to follow the rule that if the giving of such advice and performance of such services affect important rights of a person under the law, and if the reasonable protection of the rights and property of those advised and served requires that the persons giving such advice possess legal skill and a knowledge of the law greater than that possessed by the average citizen, then the giving of such advice and the performance of such services by one for another as a course of conduct constitute the practice of law.

State ex rel. Florida Bar v. Sperry, 140 So. 2d 587, 591 (Fla. 1962), vacated on other grounds, 373 U.S. 379, 83 S. Ct. 1322, 10 L.Ed.2d 428 (1963).

Another important point not covered in the Opinion is worth considering. Rule 4-2.1, Rules Regulating The Florida Bar, provides:

In representing a client, a lawyer shall exercise independent

professional judgment and render candid advice. In rendering advice, *a lawyer may refer not only to law but to other considerations* such as moral, economic, social, and political factors that may be relevant to the client's situation. [Emphasis added.]

Rule 4-2.1 is not mentioned in Opinion 24-1 and may be overlooked by some when discussing generative AI, but it is among the most important ethical principles to consider. Clients hire lawyers not just to perform "legal services," but to give comprehensive advice tailored to the client and the client's circumstances. It is difficult to see how even the most sophisticated AI tool could fulfill this important function. Properly advising a client involves sizing up the client in light of verbal and nonverbal communication and using professional judgment, developed over years of experience, to guide a client in the path that is most likely to be successful in a given situation. As the Rule suggests, there is *more* than simply giving legal advice involved—a skillful lawyer who cares about the welfare of the client must also consider other, less tangible factors when advising.

Finally, there is a related issue to consider. Because of their ability to synthesize vast amounts of data, AI tools are becoming better at predicting outcomes based on factors particular to a case. We can imagine a situation where a lawyer has received a settlement offer for the client that AI shows would be difficult to top if the case went to trial. Is the lawyer acting unethically by not advising the client to accept the offer, based on the AI prediction—even if the lawyer's own instincts do not agree? This kind of issue bears on what role the use of generative AI will play in establishing the standard of care for civil malpractice liability—an issue that is beyond the scope of Opinion 24-1, but one that is interesting to consider as we move into the future.

Endnotes

1 Regarding outsourcing, see Florida Ethics Opinion 07-2 (2008); ABA Formal Opinion 451 (2008). Regarding email, see ABA Formal Opinions 413 (1999) and 477 (2017).

2 The evidentiary attorney-client privilege is narrower than the ethical duty

of confidentiality. Because privilege is a legal rather than ethical doctrine, it is not addressed in Opinion 24-1. It is possible that use of generative AI poses a risk of waiving attorney-client privilege, but this has yet to be determined by the courts.

3 The Opinion advises that these confidentiality concerns "may be mitigated by use of an in-house generative AI program rather than an outside generative AI where the data is hosted and stored by a third-party." Using an in-house program may not be a desirable alternative for some lawyers, however, because the utility of a generative AI program would seem to increase based on the amount and variety of data it evaluates.

4 In the concluding paragraph of the confidentiality discussion, the Opinion states: "If the use of a generative AI program does not involve the disclosure of confidential information to a third-party, a lawyer is *not required* to obtain a client's informed consent pursuant to Rule 4-1.6" (emphasis added).

5 Rule 4-1.5(b)(2), Rules Regulating The Florida Bar, states in pertinent part:

Factors to be considered as guides in determining reasonable costs include:

* * *

(E) *the reasonable charges for providing in-house service to a client if the cost is an in-house charge for services*; and

(F) *the relationship and past course of conduct between the lawyer and the client*.

All costs are subject to the test of reasonableness set forth in subdivision (a) above. *When the parties have a written contract in which the method is established for charging costs, the costs charged under that contract will be presumed reasonable* (emphasis added).

Further, the Comment to Rule 4-1.5 provides in pertinent part:

A lawyer may agree with the client to charge a reasonable amount for in-house costs or services. In-house costs include items such as copying, faxing, long distance telephone, and computerized research. In-house services include paralegal services, investigative services, accounting services, and courier services. The lawyer should sufficiently communicate with the client regarding the costs charged to the client so that the client understands the amount of costs being charged or the method for calculation of those costs (emphasis added).

6 See Rule 10-2.2(a), Rules Regulating The Florida Bar, which provides in part:

It is not the unlicensed practice of law for a nonlawyer to engage in limited oral communication to assist a self-represented person in the completion of blanks on a Supreme Court Approved Form. In assisting in the completion of the form, oral communication by nonlawyers is restricted to those communications reasonably necessary to elicit factual information to complete the blanks on the form and inform the self-represented person how to file the form. The nonlawyer may not give legal advice or give advice on remedies or courses of action.

Spring into success: A strategic guide to revitalizing your law practice

by G. C. Murray II



G.C. MURRAY II

The concept of “spring cleaning” refers to the annual tradition of thoroughly cleaning one’s home in preparation for the spring season. This idea can also be usefully applied to law

firms, particularly smaller practices, as an opportunity to clear out clutter and refocus priorities. Though the weather may not change, setting aside time each year for an organizational and performance review offers many benefits. Just as individuals often feel refreshed and motivated after tidying their living spaces, an annual “cleaning” of your firm’s operations can boost productivity and efficiency.

The spring is a natural time for renewal and growth. As such, it presents the perfect occasion for solo practitioners and small firm lawyers to step back and evaluate what’s working, what’s not, and what could be improved. An annual checkup enables you to identify areas of your practice that have become disorganized or inefficient over time. It also allows you to audit your finances, technology, marketing, and case management.

A thorough spring cleaning allows you to streamline operations, cut unnecessary costs, and align your practice to focus on your core goals for the coming year. The process can uncover new opportunities for growth and profitability. Most importantly, it helps ensure you deliver excellent and timely service to your clients.

Review current cases

One of the most critical spring-cleaning tasks for solo and small law firms is reviewing current cases to identify opportunities for improvement. This involves examining each active case closely to determine whether it can be closed out or referred to another

lawyer within the firm, referred to another firm, or dropped.

When reviewing cases, focus on identifying those that are stagnant or have hit a dead end. These may be cases that have been waiting on client documentation or responses for an extended period. If you’ve exhausted efforts to move the case forward, refer it to another firm better positioned to resolve the issues. Also, look for cases that take up a disproportionate amount of time compared to the potential value or billable hours. These types of cases drain resources that may be better spent on more promising work. Consider referring them out to free up internal bandwidth.

In addition to referring out cases, look for those that need more attention going forward. Flag cases that have new developments or time-sensitive issues. Make sure you have the capacity and focus to move these cases forward quickly. Identify any additional resources, staffing, or expertise needed to progress the cases.

Regularly reviewing cases and reprioritizing allows small firms to focus their limited resources on the work with the most significant impact and highest value. Pruning stagnant cases and handing off lower-value work creates opportunities to provide better service to the most important clients and cases.

Update case management software

Keeping your case management software up-to-date is a crucial part of spring cleaning for law firms. Start by checking that you have the latest version installed and set to auto-update. Outdated software can lead to security risks and missing out on helpful new features.

Spend time thoroughly reviewing the features and tools in your case management system. Look for ways it can help streamline and automate

routine legal tasks. For example, built-in calendaring and deadlines can save manual tracking work. Document automation can speed up drafting standard documents. AI features like search and review can make eDiscovery faster. Evaluate if any plugins or integrations could make your software even more useful. Look at what’s new and popular in legal tech that could integrate with your system, for example, apps for e-signatures, time tracking, accounting, and more.

Finally, train all staff to fully utilize the software. Set up individual dashboards and workflows tailored to each person’s role. The right technology is only helpful when properly adopted firm-wide. Invest time now, and it will pay off all year long.

Audit current hardware and software

Law firms today rely heavily on technology to manage their practices efficiently and to provide top-notch service to clients. The spring season presents an opportunity to audit your firm’s technology and evaluate potential upgrades.

Take stock of all hardware and software currently used in your practice. Review the performance, efficiency, and security of each system. Identify any sluggish or outdated tools. Pay particular attention to case management, document management, email, calendaring/scheduling, time tracking, accounting, phone systems, and any other programs used daily. Consider speed, storage capacity, ease of use, integration, and security protections. For client-facing technologies like websites, blogs, and social media, evaluate the back-end platforms powering them. Assess site speed, mobile responsiveness, SEO optimization, integrations, security protections, and analytics.

Document any vulnerabilities or limitations uncovered in the audit process. Prioritize upgrades based on

potential productivity enhancements and risk reductions. Once current systems are audited, research new technologies that could benefit your firm. Look for tools to help with efficiency, organization, automation, analytics, security, and client service. Focus on solutions that integrate well together and with existing platforms. Key areas to investigate include paperless workflows, automated intake and forms, AI-powered legal research, virtual meeting platforms, digital signature services, user-friendly client portals, automated legal billing, and cloud-based practice management software.

Staying current on legal tech ensures your firm operates optimally while remaining secure. A spring technology audit prepares you for an efficient and productive year ahead. Consider free and low-cost tools to help maximize value. Reach out to colleagues at other firms to get real-world feedback on technologies they use. Leverage free trials and demos to test out promising solutions before committing.

Analyze finances

A crucial part of spring cleaning for law firms is analyzing finances from the previous year and projecting the year ahead. This allows firms to align their spending and operations with their financial goals. Though not an exhaustive list, doing the following will help give you a better grasp on where your firm is economically:

- Gather financial statements and reports from the last 12 months. Review income, expenses, profits, and cash flow month-by-month or quarter-by-quarter.
- Analyze spending by practice area, client, matter, or other categories. Look for unexpected costs or billing issues. Identify what worked well financially and what needs improvement.
- Compare budgeted amounts to actual amounts in each area. Note any significant discrepancies or problem areas.
- Review accounts receivable aging and collection issues. Follow up on any outstanding payments.

- Forecast revenue by analyzing active caseload, pipeline matters, and expected new business. Consider seasonality and economic factors.
- Project costs like payroll, rent, technology, marketing, etc. Account for planned growth or reductions.
- Create a profit and loss projection based on revenue and expense estimates. Identify profit goals for the firm and partners.
- Establish a new budget aligned with financial projections. Build in contingency amounts.
- Identify areas to optimize like pricing, staffing models, systems, etc., to improve financial performance.
- Plan to compare projections to actual results monthly to keep finances on track. Adjust as needed.

Review key performance indicators

As a solo practitioner or small firm, you must establish and regularly review your key performance indicators (KPIs) to ensure you're meeting your goals and identifying areas for improvement. During your spring cleaning, take time to analyze your KPIs over the past three to six months.

Identify your most important KPIs

Determine which metrics are most vital for your practice by considering factors like profitability, efficiency, and client satisfaction. Common KPIs to track include:

- Billable hours
- Revenue
- Accounts receivable
- Time to complete matters
- Caseload
- Client retention rate

Focus on the three to five KPIs that provide the most significant insight into your performance and growth potential. Analyze your recent KPI results to set specific, measurable goals for improvement. For example, if your net promoter score is 7, aim to increase it to 8 over the next quarter. Or if your accounts receivable cycle is 45 days, work to reduce it to 30 days.

Setting clear objectives will help you prioritize actions to boost your KPIs. Regularly monitoring your progress builds accountability. With a focused effort on your most critical metrics, you can work toward increased productivity and profitability. Conducting a KPI review ensures you have the key data to make smart decisions that enhance your solo or small firm's success.

Conclusion

As the season of renewal beckons, take this opportunity to rejuvenate your law practice through thoughtful and comprehensive spring cleaning. Your commitment to regular audits and updates—from case management to technological enhancements and financial scrutiny—will streamline your operations and elevate your service delivery. Let this spring mark the beginning of a year when your practice is maintained and thrives, ensuring your readiness to meet client needs with efficiency and excellence. Embrace this transformative process, and watch as it fosters growth, optimizes performance, and sets a robust foundation for future successes in your legal career. Embrace the potential of spring, and let it propel you toward unparalleled professional achievements.

Editor's note: This article is part of "Evolving esquire," a series initially proposed for the Out-of-State Division of The Florida Bar and now also featured in the Solo Small Firm Section. The column offers practical advice and insights for legal professionals managing practices, navigating multijurisdictional challenges, or leading within corporate structures. Designed to enhance professional skills and manage legal practices effectively, each installment fosters resilience, emotional intelligence, and leadership, aiming to equip lawyers with tools for success in the dynamic legal landscape. We are excited about this partnership and the opportunity to engage and support a broader audience through actionable and insightful content.

Florida real property and business litigation report

by Manuel Farach

To our readers,

Below you will find a synopsis of recent cases involving real property and business litigation. They were prepared by Manny Farach, a member of The Florida Bar Board of Governors. We hope you enjoy this article.

Department of Agriculture Rural Development Rural Housing Service v. Kirtz, Case No. (2024).

A consumer may sue a federal agency for violating the Fair Credit Reporting Act.

American Coastal Insurance Company v. San Marco Villas Condominium Association, Inc., Case No. SC2021-0883 (Fla. 2024).

A court can compel an insurance appraisal even if coverage issue remains outstanding.

Q.G.S. Development, Inc. v. National Lining Systems, Inc., Case No. 3D22-699 (Fla. 3d DCA 2024).

The factual findings of a trial judge in a bench trial are entitled to the weight of a jury verdict.

Selz v. McKagen, Case 4D2023-0099 (Fla. 4th DCA 2024).

Pleading punitive damages requires a plaintiff to demonstrate specific intent by the defendant, i.e., requires plaintiff to show more than the defendant “knew or should have known” of the wrongfulness of their conduct.

City of Delray Beach v. DeLeonibus, Case No. 4D2023-012 (Fla. 4th DCA 2024).

Equitable estoppel cannot compel local government to abide by a building permit it issued when the government official had no authority to issue the permit, i.e., the permit was void when issued.

Dozier v. Scruggs, Case No. 5D23-0594 (Fla. 5th DCA 2024).

A mediated settlement agreement which requires one party to provide an easement is enforceable even if the settlement agreement does not contain a timeframe to provide the easement.

Xiang v. Ocala Heart Clinic II, LLC, Case No. 5D23-1402 (Fla. 5th DCA 2024).

A party may be the prevailing party for purposes of attorney’s fees even if it fails to prove damages, i.e., fails to prevail on its breach of contract claim.

Loanflight Lending, LLC v. Bankrate, LLC, Case No. 2D22-3394 (Fla. 2d DCA 2024).

A forum selection clause must be agreed to by the parties, and an evidentiary hearing is required if a party raises a colorable claim that it did not assent to the agreement.

Vindel v. Stewart, Case No. 3D22-757 (Fla. 3d DCA 2024).

Certification of business records of a foreign bank account under Florida Statute section 90.803(6) must meet the evidentiary requirements of section 90.803(11) and state that the records were made at or near the time of the occurrence of the matters set forth, by or from information transmitted by, a person having knowledge of those matters and that the records were kept in the course of the regularly conducted activity and were made as a regular practice in the course of the regularly conducted activity.

Arrow Property Insurance Adjusters, Inc. v. People’s Trust Insurance Company, Case No. 3D22-2162 (Fla. 3d DCA 2024).

Parol evidence may be used to interpret an ambiguous contract only when the ambiguity exists on the face of the contract.

Curtis v. City of Hollywood, Case No. 4D2022-3166 (Fla. 4th DCA 2024).

Florida Statute section 163.360(7) (a) requires local government to

provide relocation assistance to tenants displaced by redevelopment but does not require evidentiary hearings and the gathering of testimony to determine the adequacy of the assistance.

Presidio, Inc. v. Feeny, Case No. 4D2023-0045 (Fla. 4th DCA 2024).

Even if there is a schedule to determine the bonus, an incentive program under an employment contract is discretionary if the bonus program is not part of the employment agreement.

Haskell v. PCP Group, LLC, Case No. 2D22-180 (Fla. 2d DCA 2024).

The following provision in an operating agreement applies only when a member attempts to transfer ownership and not when a divorce court deems one spouse the owner of membership units:

(e) Divorce. The attempt by a Member or his or her spouse . . . to Transfer any Units . . . pursuant to any court order issued or court ordered property settlement agreement entered into in connection with, a suit for dissolution of marriage, legal separation or any similar status.

Darst v. West Coast Group Enterprises, LLC, Case No. 2D22-2455 (Fla. 2d DCA 2024).

A trustee may not appear *pro se* for a trust.

Desbrunes v. US Bank National Association, Case No. 4D2022-264 (Fla. 4th DCA 2024).

If a defendant borrower dies during the pendency of a foreclosure case, Florida Rule of Civil Procedure 1.260 requires the plaintiff to open an estate and substitute the personal representative in place of the deceased borrower.

Ningbo Daye Garden Machinery Co., Ltd. International Global Resources Corp., Case No. 4D2023-0803 (Fla. 4th DCA 2024).

The following is a choice of law provision and not a forum selection clause: “The within Agreement shall be governed by the laws of the State of Florida, Martin County. In the event that an action arises by virtue of this agreement, the prevailing party will be entitled to reimbursement of all reasonable attorney fees and costs incurred in such action.”

Yatak v. La Placita Grocery of Fort Pierce Corp., Case No. 4D2023-1102 (Fla. 4th DCA 2024)

Unless there is a duty to disclose under a fiduciary or other trust or confidence relationship, intentional concealment or nondisclosure of known material facts in a commercial real estate transaction is not actionable.

Kovar Law Group, PLLC v. Jordan, Case No. 2D23-279 (Fla. 4th DCA 2024).

A claimant seeking unjust enrichment ordinarily bears its own fees, and an award for fees under Florida Statute section 448.08 applies only to employees (not independent contractors).

Green Terrace E33, LLC v. Abruzzo, Case No. 4D2022-2495 (Fla. 4th DCA 2024).

A code enforcement lien against a condominium unit is not a lien against the common elements of the condominium.

SBP Homes, LLC 84 v. Lumber Company, Case No. 4D2022-2603 (Fla. 4th DCA 2024).

A credit agreement between a construction supplier and a builder does not negate implied breach of contract or negligence claims.

Palmer v. The Felicetti Law Firm, PLLC, Case No. 4D2023-0493 (Fla. 4th DCA 2024).

Attorneys cannot impose charging liens in excess of their fee agreements.

The School Board of Broward County v. Smith, Case No. 4D2023-0369 (Fla. 4th DCA 2024).

Arbitrators exceed their authority in violation of Florida Statute section 682.13 when their arbitration

agreement provides jurisdiction to determine whether a violation occurred and the arbitrators declare both a violation and the remedy to the violation.

Flying Panda Florida, LLC v. Rutherford, Case No. 5D23-1697 (Fla. 5th DCA 2024).

Relying on *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 445–46 (2006), the Fifth District holds that “unless the challenge is to the arbitration clause itself, the issue of the contract’s validity is considered by the arbitrator in the first instance.”

Lindke v. Freed, Case No. 22-611 (2024).

A public official who prevents someone from commenting on the official’s social-media page engages in state action under § 1983 only if the official both possessed actual authority to speak on the State’s behalf on a particular matter and purported to exercise that authority when speaking in the relevant social-media posts.

NBIS Construction & Transport Insurance Services, Inc. v. Liebherr-America, Inc., Case No. 22-14104 (11th Cir. 2024).

The Eleventh Circuit certifies the following question to the Florida Supreme Court:

Whether, under Florida law, the economic loss rule applies to negligence claims against a distributor of a product, stipulated to be non-defective, for the failure to alert a product owner of a known danger, when the only damages claimed are to the product itself?

Heritage Property & Casualty Insurance Company v. Killmeyer, Case No. 4D2022-1298 (Fla. 4th DCA 2024).

The crucial questions under *Binger v. King Pest Control*, 401 So. 2d 1310 (Fla. 1981), are whether the identity of the witness and the substance of their testimony were known and whether prejudice resulted from the non-disclosure.

Hanson v. National Legal Staffing Support, LLC, Case Nos. 4D2022-3194 and 4D2022-3438 (4th DCA 2024).

Non-signatories generally can be bound by contracts they did not sign, but a non-signatory attorney to a settlement agreement signed by his clients is not bound by the agreement or the non-disparagement provisions in the agreement.

Dunmar Estates Homeowner’s Association, Inc. v. Rembert, Case No. 5D23-1971 (Fla. 5th DCA 2024).

Florida Statute section 720.311(2)(a) requires pre-suit mediation as a condition precedent to filing a lawsuit for failure to provide access to homeowner associations records.

Advantage Limousine, LLC v. Koutsos, Case No. 2D22-257 (Fla. 2d DCA 2024).

Requiring a separate confidentiality agreement to be executed is an impermissible condition to a Proposal for Settlement but placing the confidentiality provision in the Proposal as set forth is permissible:

[T]he parties agree to maintain the facts and terms of this Release as confidential, and documents or information provided by the parties related to the Claim and Litigation, with the exception of any pleadings or documents filed with the court and to the extent that law, ordinance, or governing body requires, shall also be confidential.

Daniels v. Redcap Lending, LLC, Case No. 2D22-4106 (Fla. 2d DCA 2024).

A plaintiff that loses at trial on a guaranty due to failure to satisfy a condition precedent requiring notice is barred by *res judicata* from bringing the same claim if it gives notice after the unsuccessful trial.

Venn Therapeutics, LLC v. CAC Pharma Investments, LLC, Case Nos. 2D23-819 and 2D23-821 (Fla. 2d DCA 2024).

Statutory claims as well as theories such as fraud in the inducement of a contract, fraud in the performance of a contract, or negligent misrepresentation are duties dependent upon the existence of a contractual relationship between the parties and therefore “arise

Continued, next page

out of” or are “related to” a contract such that they are subject to arbitration under a broad arbitration provision.

Quality Diagnostic Healthcare Inc. v. The Responsive Auto Insurance Company, Case No. 3D23-0446 (Fla. 3d DCA 2024).

A party is bound by the contract they sign regardless of whether they have read or understood it.

Telesco Construction Management, Inc. v. National Concrete Preservation, Inc., Case No. 3D23-1730 (Fla. 3d DCA 2024).

A trial court should typically not require discovery pending a motion to compel arbitration.

North Bay Green Investments, LLC v. Cold Pressed Raw Holdings, LLC, Case Nos. 3D22-1292 and 3D23-0311 (Fla. 3d DCA 2024).

A plaintiff in a jury trial may await the jury’s verdict to elect remedies but a plaintiff in a non-jury trial must elect before judgment.

Lima v. Intermarine Investments, LLC, Case No. 3D22-1492 (Fla. 3d DCA 2024).

Enforcement of a foreign judgment is entitled to comity where the parties have been given notice and the opportunity to be heard, the foreign court had original jurisdiction, and the foreign

decree does not offend the public policy of the State of Florida.

Stoppa v. Infinity The Oaks LLC, Case No. 3D23-1101 (Fla. 3d DCA 2024).

Florida Statute section 83.232(5) (court must enter a default judgment of possession if the tenant fails to deposit rent as required by order) applies only to non-residential tenancies.

Avila v. Biscayne 21 Condominium, Inc., Case No. 3D23-1616 (Fla. 3d DCA 2024).

Changing the termination provision in a declaration of condominium from 100% to 80% impermissibly alters the voting rights of unit owners as doing so eliminates the veto right inherent in a requirement of a unanimous vote.

34th Street, LLC v. Pro-Karting Experience, Inc., Case No. 2D22-3139 (Fla. 2d DCA 2024).

Florida Statute section 82.232 is not self-executing and can only be effectuated by a court order directing a tenant to deposit money in the court registry by a date certain.

Webjet Linhas Aereas S.A. v. ZGA Aircraft Leasing, Inc., Case No. 3D22-1736 (Fla. 3d DCA 2024).

A complaint which alleges a defendant’s liability is merely constructive does not require a joint offer to

attribute fault to each offeror and such joint offer does not violate Florida Statute section 768.79.

Sherman v. Gursky Ragan, P.A., Case No. 3D22-2040 (Fla. 3d DCA 2024).

The attorney for the board of a condominium owes a contractual fiduciary duty to the board but does not owe a fiduciary duty, either express or implied, to the individual unit owners.

Everett Painting Company, Inc. v. Gaga Opportunity 2501 NW 79 Street, LLC, Case No. 3D23-0411 (Fla. 3d DCA 2024).

A purchaser at a federal tax lien sale only purchases a claim to redeem a deed to the subject property and is not an “owner” as the only interest the purchaser received under federal tax law was that of the foreclosed owner.

Cauble v. Kaczmariski, Case No. 3D23-1095 (Fla. 3d DCA 2024).

Florida Statute section 64.081 does prohibit a trial court from retaining funds of a partition estate to pay fees and costs.

Echeverria v. Trombino, Case No. 4D2023-073 (Fla. 4th DCA 2024).

A trial court has discretion to award expert witness fees under Florida Statute section 92.231 to an attorney testifying as an expert witness on attorney’s fees.

Division News

2024
June 19-22

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June 19-22, 2024
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Capalongo v. Deutsche Bank National Trust Company, Case No. 2D22-3750 (Fla. 3d DCA 2024).

A spouse need not join in a mortgage if the spouse signs a valid waiver of their homestead rights; the word “join” in Article X, Section 4 describes the joining spouse and does not require the waiver to be attached to the mortgage.

Rudnikas v. Gonzalez, Case No. 3D23-975 (Fla. 3d DCA 2024).

A disinherited adult child does not have standing to petition for determination of homestead on the basis that he is a potential heir of the devisee of the real property.

The Marbella Condominium Association, Inc. v. Josepher, Case No. 4D2023-1192 (Fla. 4th DCA 2024).

In derivative actions filed involving condominium associations organized pursuant to Florida Statutes Chapter 718, an award of prevailing party attorney’s fees is governed by Florida Statute section 718.303(1) and not section 617.07401(5).

Macquarie Infrastructure Corp. v. Moab Partners, L.P., Case No. 22-1165 (2024).

Failure to make a disclosure required under Item 303 of SEC Regulation S-K is not the kind of omission that supports a private securities fraud claim under Section 10(b) of the Securities Exchange Act of 1934.

Sheetz v. County of El Dorado, Case No. 22-1074 (2024).

The Takings Clause applies to both legislative and administrative permit conditions, and accordingly, legislative conditions must pass muster under *Nolan v. California Coastal Comm’n*, 483 U.S. 825 (1987), and

Dolan v. City of Tigard, 512 U.S. 374 (1994).

Devillier v. Texas, Case No. 22-913 (2024).

The Taking Clause of the Fifth Amendment is self-executing with regard to compensation.

Al Zawawi v. Diss (In Re Al Zawawi), Case No. 22-11024 (11th Cir. 2024).

11 U.S.C. § 109(a) does not apply to Chapter 15 cases and does not establish a prerequisite for the recognition of a foreign proceeding under 11 U.S.C. § 1517.

RJ’s International Trading, LLC v. Crown Castle South, LLC, Case No. 22-11977 (11th Cir. 2024).

The Eleventh Circuit certifies to the Florida Supreme Court the question of whether an attorney’s fees provision in a recorded easement runs with the land.

Holden v. Holiday Inn Club Vacations Incorporated, Case No. 22-11014 (11th Cir. 2024).

A report to a credit agency is not violative of the Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681s-2, if it arises from a contractual dispute which the credit agency cannot objectively and readily verify.

In Re: Amendments to Rules Regulating The Florida Bar – Chapter 6, Case No. SC2024-0031 (Fla. 2024).

The Florida Supreme Court adopts changes to Rules Regulating The Florida Bar 6-3.14 (Sunset of Certification Areas), 6-10.2 (Administration), 6-10.4 (Reporting Requirements), 6-12.1 (Basic Skills Course Requirement), 6-12.2 (Administration), 6-12.5 (Non-compliance and Sanctions), 6-12.6

(Reinstatement), 6-12.7 (Confidentiality), and 6-12.8 (Disciplinary Action).

McNulty Lofts Condominium Association, Inc. v. WRH McNulty Garage, LLC, Case No. 2D23-536 (Fla. 2d DCA 2024).

Inconsistency in admitted documents, including as to location of real estate boundaries, will defeat summary judgment even under the amended summary judgment rule.

Helmick v. Taylor, Case No. 2D22-3658 (Fla. 2d DCA 2024).

Being listed in a marital settlement agreement as a creditor to be paid by a signatory to the settlement agreement does not render the creditor an intended third-party beneficiary that can sue to enforce payment under the settlement agreement.

Seneca Specialty Insurance Company v. Jade Beach Condominium Association, Inc., Case No. 3D22-1290 (Fla. 3d DCA 2024).

An insurer is not required to satisfy a condition precedent of unsuccessfully suing the third parties that the insured released in order to plead a cause of action against the insured for interfering with subrogation rights.

Lemano Investments, LLC v. RGF Athena, LLC, Case Nos. 3D23-0695 and 3D23-0824 (Fla. 3d DCA 2024).

The Third District follows the Second and Fifth Districts and holds the Sole Actor Exception to the Adverse Interest Exception to the Imputation Rule does not apply if the business entity wholly entrusts the matter in dispute to its agent.

Continued, next page

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Facebook, LLC v. Grind Hard Holdings, LLC, Case No. 3D23-0948 (Fla. 3d DCA 2024).

Under Florida Statute section 48.193(1)(a)2, a company's violations of its own rules and procedures is not commission of a tort in this state, which bestows long-arm jurisdiction.

Chewy, Inc. v. Covetrus, Inc., Case No. 4D2023-2967 (Fla. 4th DCA 2024).

An affidavit in support of a motion for protective order under Florida Rule of Civil Procedure 1.280(h) (Apex Doctrine) must "explain the officer lacks unique, personal knowledge of the issues being litigated," i.e., the affidavit must demonstrate the officer does not have knowledge which cannot be obtained from lesser officials or documents.

Marlin Construction Group, LLC v. Bollinger, Case No. 6D23-810 (Fla. 6th DCA 2024).

A salesman for a roofing company is not a "contractor" nor engaged in "contracting," and accordingly, is not required to have a roofing contractor's license to sue for unpaid commissions.

Jon M. Hall Company, LLC v. Canoe Creek Investments, LLC, Case No. 2D23-1368 (Fla. 2d DCA 2024).

Failure to initiate suit against a surety within 60 days after a construction lien is transferred to bond during a proceeding extinguishes the lien claim under Florida Statute section 713.22(2); *Woolems, Inc. v. Catalina Caststone Creations, Inc.*, 358 So. 3d 1265, 1266-67 (Fla. 3d DCA 2023),

is distinguished on the basis of the relation-back doctrine.

Florida Roads Trucking, LLC v. Zion Jacksonville, LLC, Case No. 5D23-2094 (Fla. 5th DCA 2024).

While equitable estoppel may generally allow a non-signatory to an arbitration agreement to compel arbitration, the subject matter must still be one the underlying parties agreed to arbitrate.

OptumRx v. King's Drugs, Inc., Case No. 2D2023-0096 (Fla. 2d DCA 2024).

State courts have jurisdiction over cases controlled by the Federal Arbitration Act and 9 U.S.C. § 4 (2018) of the FAA authorizes state as well as district courts to compel arbitration.

Lyons Heritage of Tampa, LLC v. Phillips, Case No. 2D2023-1313 (Fla. 2d DCA 2024).

A final judgment which contains a general reservation of jurisdiction to enter further orders but does not specifically find entitlement to attorney's fees does not extend the 30-day requirement of Florida Rule of Civil Procedure 1.525 to file a motion for entitlement within 30 days of judgment.

Grossfeld v. Security National Mortgage Company, Case No. 3D23-600 (Fla. 3d DCA 2024).

A mortgage on entireties property signed by only one spouse is not effective but becomes effective if the property loses its entireties character, and accordingly, is effective after foreclosure when the property has lost its entireties character.

Blue Water Coast Services, LLC v. Maize, Case No. 4D2022-252 (Fla. 4th DCA 2024).

A trial court is not permitted to reverse a jury verdict based on juror emotions, mental processes, or mistaken understanding of the effect of the verdict.

HCA Health Services of Florida, Inc. v. Berlin, Case No. 4D2022-2652 (Fla. 4th DCA 2024).

So long as a motion under Florida Rule of Civil Procedure 1.525 was timely filed, failure to timely set the motion for hearing does not waive the right to claim fees.

KMG Properties, LLC v. Owl Construction, LLC, Case No. 2D2023-1769 (Fla. 2d DCA 2024).

Florida Statute section 48.191(3) allows a process server to serve any representative of the registered agent, but service under section 49.193(4) (when registered agent "is temporarily absent from his or her office") requires service on an employee of the registered agent.

Tower Hotel, LLC v. City of Miami, Case No. 3D23-0285 (Fla. 3d DCA 2024).

While equitable estoppel is sparingly applied to governmental entities, its use is permitted when the ability to issue permits to avoid demolition within a time frame lies with the governmental entity and the entity was responsible for the delay.

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Division News

2024 Report of Nominating Committee *Proposed officers and executive council members*

The Nominating Committee, composed of Lawrence (Larry) H. Kunin, Brandon Lee Wolff, and Donald A. Workman, files this report and recommended slate of executive council members and proposed officers for consideration at the Out-of-State Division's annual meeting. In accordance with the division's bylaws, nominations from the floor may supplement the recommendations of the Nominating Committee. The following persons noted in bold are proposed to serve in their respective offices as noted:

EXECUTIVE BOARD NOMINATIONS:

Joy Heath (Raleigh, N.C.)	President
Mindi Wells (Columbus, Ohio)	President-Elect
G. C. Murray II (Washington, D.C.)	Secretary
Tim Brown (McLean, Va.)	Treasurer
Brandon L. Wolff (King of Prussia, Pa.)	Immediate Past President

EXECUTIVE COUNCIL:

Term Expires:

Brian D. Burgoon (Atlanta, Ga.)	BOG Member	
Eric L. Meeks (Cincinnati, Ohio)	BOG Member	
E. Duffy Myrtetus (Richmond, Va.)	BOG Member	
Donald A. Workman (McLean, Va.)	BOG Member	
Lauren C. Bingham (Washington, D.C.)	At-Large Member	2025
Tiffany N. McKenzie (Atlanta, Ga.)	At-Large Member	2025
Lawrence (Larry) H. Kunin (Atlanta, Ga.)	At-Large Member	2025
W. Bard Brockman (Atlanta, Ga.)	At-Large Member	2026
Natasha Dorsey (Elmhurst, Ill.)	At-Large Member	2026
Evan Azriliant (New York, N.Y.)	At-Large Member	2026

Standing committee chairs will be appointed by the president for the following standing committees, pursuant to Art. 5 of the OOSD's bylaws: (i) Executive Board; (ii) Nominating Committee; (iii) CLE Committee; (iv) Information and Technology Committee; and (v) Budget Committee. Special committees are approved by the president with the concurrence of the Executive Council, and the chair of each committee and special committee appointed by the president shall also be a member of the Executive Council.

The Nominating Committee acknowledges the recommendations of its members that greater diversity in terms of geography, gender, etc., should be a continuing consideration in identifying prospective candidates.





Board of Governors' update

We want you to stay informed on actions taken by The Florida Bar Board of Governors. So, here is the latest Board of Governors' update.

The Florida Bar Board of Governors met March 15, 2024, in Miami. [Major actions and reports received included:](#)

The board approved the initial proposed budget for FY 2024-25 that would continue a 23-year streak of no fee increases for Bar members. The budget, a 1.5% increase over current spending, projects \$43.1 million in revenues and \$48.4 million in expenses, for an operating loss of \$5.3 million. Fees will remain at \$265 for active members and \$175 for inactive members. ([See the complete breakdown of the proposed budget](#)). The board is required to forward the budget to the Supreme Court no later than June 1 after all members' objections have been resolved.

The board [voted to approve proposed amendments to Rule 6-10.3](#) (Minimum Continuing Legal Education) that would permit Florida lawyers for the first time to earn CLE credit for pro bono service. The revisions would permit a Florida lawyer to receive one hour of general CLE for

every four hours of pro bono service, not to exceed five hours of CLE in a three-year reporting cycle. The Florida Supreme Court, in an August 2023 letter requested that the Bar consider "Authorizing continuing legal education credit or professionalism credit for pro bono participation." The justices issued the letter after reviewing recommendations by the Bar's Special Committee on Greater Public Access to Legal Services.

In other business, the board voted [conditional approval of a law firm's TV advertisement](#) that depicts an actor pressing a "magic button" that prominently features the law firm's name. Bar staff originally determined that the statement would violate Rule 4-7.13(b)(1), which prohibits "a prediction or guarantee of success or specific results" based on previous board decisions. After a discussion, and after viewing the video, the board voted to reverse the staff opinion and approve the ad—but only if the advertising firm agrees to include a disclaimer that they can only cover bills related to the underlying accident.

[The board received a report](#) that the \$117.5 billion budget the Florida Legislature approved March 8, the final day of the session, included a

3% pay increase for judges along with most state employees. The legislative budget also included funding increases for court reporting resources, due process (including court interpreters and expert witness fees), and case management.

In addition, the board voted to nominate Miami attorney Miriam S. Ramos to the Judicial Ethics Advisory Committee to serve a four-year term that commences July 1.

Continuing Legal Education (CLE) Requirements Update

The minimum requirements for continuing legal education ([Rule 6-10.3\(b\)](#)) changed effective January 8, 2024. As a result of the rule change, the CLER status of members whose reporting cycle ends in April or after has been returned to "incomplete" until they complete the new two-hour professionalism course. This mandatory course, [Professionalism Expectations: A Mandatory CLE for Members of The Florida Bar](#), is free and offered on-demand.

You may verify your CLER compliance status by logging into the [MyFloridaBar Member Portal](#) or [emailing the Legal Specialization and Education Department](#).



CLE
CONTINUING LEGAL EDUCATION

Need to meet your CLE requirements — for free?

Many of you may not know it, but The Florida Bar offers a large number of CLE programs **at no cost to its members**. This is especially useful to out-of-state members in states where there is not a mandatory CLE requirement. To access these programs, go to The Florida Bar's website (www.flabar.org) and click on the "CLE" tab in the upper right-hand corner. Scroll down to "Online Courses" and click on "Catalog of Courses." That brings you to a list of offered programs. If you click on either "Discounted or Reduced Price Programs" or "Law Practice Management," you will see more than 30 hours of free online course offerings. That, combined with the free ethics tape the OOSD provides, should pretty much let you fulfill your CLE requirements.

EDITOR'S CORNER

The OOSD works for you—join us!



TIM BROWN

Welcome to *State-to-State*, our principal means to communicate with you. We feature articles from members in Florida and elsewhere who share ideas and articles of interest to out-of-state members. Our contributing authors appear prominently, and we include the information you'd like others to read about your practice.

By way of introduction, I am the new associate editor for *State-to-State*, and I look forward to assisting the division and contributing to this newsletter.

Our lead article this edition is from Tim Chinaris who provided an excellent summary of Florida Ethics Opinion 24-1 as it relates to the latest technology-driven legal ethics questions surrounding the use of artificial intelligence (AI) by lawyers in the practice of law. The Florida Bar is one of the first bar organizations in the country to adopt a formal advisory opinion focusing on ethics issues presented by the use of AI, and the opinion was approved by The Florida Bar Board of Governors in January 2024.

President Joy Heath's president's message provides a recap of the OOSD executive council meeting convened in conjunction with both

the Young Lawyers Division (YLD) and the Solo and Small Firm Section (SSFS) in beautiful San Juan, Puerto Rico. Speaking of the division, on page 6 you'll find the mission of the Out-of-State Division, and on page 15 you'll find a recommended slate of executive council members and proposed officers for consideration at the upcoming Out-of-State Division's annual meeting in June.

Manuel Farach provides a summary of recent case law involving real property and business litigation on page 10. We appreciate his ongoing contributions to *State-to-State*.

Lastly, a huge thank you to G. C. Murray II for his suggestions and insights on how to streamline your law practice in his article entitled "Spring into success: A strategic guide to revitalizing your law practice" on page 8.

Please visit the updated Out-of-State Division website at flabaroutofstaters.org. It contains a number of new features in an easier-to use format. You also can search for and view articles on the website. You should receive a link via email to each edition of the newsletter that allows you to view the edition online in color at your desk or on your mobile device. Check it out! You can also find us on X (formerly Twitter) @TFBOutofState, Facebook @ TheFloridaBarOutofStateDivision, and now on LinkedIn!

Help us to help you: participate in the Out-of-State Division. By doing so, you'll help other out-of-state lawyers wherever they are around the world. We've mentioned in the past the reach of the OOSD. We're here to help you wherever you practice. And we'd love to meet you. The result should be a win-win for everyone. We challenge you to think of new ideas on how the OOSD can continue to improve services to Florida lawyers practicing out of state. The Bar provides great support and opportunities for its members.

Our OOSD president, the other officers, and executive council members are here to support the needs of out-of-state Florida Bar members. Please feel free to contact the OOSD leadership. The Out-of-State Division is here to help you turn our shared interests into a strong professional practice. We're not shy—we want to help your practice. Most important—please join and get involved!

Author! Author!

The Out-of-State Division offers its membership a valuable forum for the exchange of information on legal issues affecting our interstate practices. To be truly effective, it is essential for a large cross section of our members to contribute articles, news, and announcements to this newsletter.

For those of you who would like to see your work in print, the rules for publication are simple: The article should be related to a subject of general interest to legal practitioners with multijurisdictional practices. Articles focused on your home state are less appealing than issues impacting a number of jurisdictions.

Please send documents in MS Word format via email to Don Workman, dworkman2024@gmail.com. Please help your colleagues to get to know you by including a brief biography with contact information, and include a head and shoulders photograph. Your photo and bio will be kept on file and need only be submitted once.

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Ethics Questions?



State-to-State

THE PUBLICATION OF THE OUT-OF-STATE DIVISION OF THE FLORIDA BAR

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State-to-State is devoted to Florida and multijurisdictional legal matters. It is editorially reviewed and peer reviewed for matters concerning relevancy, content, accuracy, and style. *State-to-State* is sent electronically to approximately 15,000 legal practitioners throughout the United States.

Statements or expressions of opinion or comments appearing herein are those of the contributors and not of The Florida Bar or the division.

The deadline for the **SUMMER 2024** issue is **JULY 12, 2024**. Articles should be of interest to legal practitioners with multijurisdictional practices. Please submit articles in a Word format via email to Don Workman, dworkman2024@gmail.com. Please include a brief biography with contact information and a photograph of the author. If a digital photo is not available, please mail a print to The Florida Bar, OOSD, 651 East Jefferson Street, Tallahassee, FL 32399-2300.

Division News

JOIN THE OOSD NOW!

Not a member of the Out-of-State Division?

Join now!

Membership in the division is just \$35 and provides a number of valuable benefits to out-of-state attorneys, including discounts on CLE registration, a free annual ethics CLE, and opportunities to network with other Florida lawyers. Join now! Invite a colleague!

For more information, please contact:

Timothy P. Chinaris, Chair
Membership Growth Strategy Committee
tchinaris@chinarislaw.com

Emily K. Young
Program Administrator
eyoung@floridabar.org

Contributing authors

The Out-of-State Division appreciates the articles submitted for this edition by our contributing authors. They can serve as a resource to fellow division members who might have a question regarding these authors' areas of expertise or if a referral is needed.

Tim Brown, associate editor of *State-to-State*, is a senior in-house attorney at the National Automobile Dealers Association (NADA) with extensive experience in public policy, regulatory, antitrust compliance, and international and government affairs. He can be reached at 703/821-7039 or tbrown@nada.org.

Tim Chinaris is a past president of the Out-of-State Division whose practice is devoted to legal ethics and advising matters. Follow rule changes and other legal ethics developments on his website, sunEthics.com. He can be reached at tchinaris@chinarislaw.com.

Manuel Farach is a shareholder with Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss PA in West Palm Beach, Florida. He represents businesses and individuals seeking help with complex real estate, business, and appellate issues. Mr. Farach is triple board-certified by The Florida Bar in real estate law, business litigation, and appellate law, and past chair of the Florida Supreme Court Committee on Standard Jury Instructions for Contract Cases. He is chair of the 19th Circuit Judicial Nominating Commission and past chair of the Fourth District Court of Appeal Judicial Nominating Commission. Mr. Farach also serves as chair of the ABA's Real Property Litigation Committee and is a Fellow of the American College of Real Estate Lawyers where he serves as chair of the Bankruptcy and Real Estate Litigation Committee. He can be reached at 561/721-1343 or mfarach@mrachek-law.com.

Joy Heath, president of the Out-of-State Division, is a partner at Williams Mullen in Raleigh, North Carolina. She focuses her practice on the representation of clients in the health care industry. She assists providers in monitoring and responding to opportunities to develop new capacities and advises on state-specific issues related to private equity arrangements, large-scale transactions, and a range of health care development initiatives. She can be reached at 919/559-3904 or jheath@williamsmullen.com.

Catherine Peek McEwen is a U.S. bankruptcy judge for the Middle District of Florida, Tampa Division, and is co-chair of The Florida Bar Pro Bono Legal Services Committee. One of Judge McEwen's mantras is that "judges admire pro bono volunteers."

G. C. Murray II, Esq., DPL, is the treasurer of the Out-of-State Division. Affectionately called Coach GC, he is a nationally recognized, award-winning attorney renowned for his leadership, diversity, and nonprofit management expertise. Beyond his legal practice, Mr. Murray is a dynamic speaker and executive coach, providing workshops and keynotes across the Western Hemisphere on various topics, including leadership, development, and operations. In his column, "Evolving esquire," he shares insights and strategies for lawyers aiming to elevate their practice, ethics, and community impact, empowering them to not just navigate but create greater change. He can be reached at gc@association.law or 202/793-4748.

Donald A. Workman, editor of *State-to-State*, is an out-of-state representative on The Florida Bar Board of Governors and an OOSD past president. His practice areas include business bankruptcy, creditors' rights, debtor reorganizations, general insolvency, stockbroker liquidations, and commercial litigation. He can be reached at 703/400-3637 or dworkman2024@gmail.com.

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OUT-OF-STATE DIVISION EXECUTIVE COUNCIL

President

Joy Heath
Williams Mullen
301 Fayetteville Street, Ste. 1700
Raleigh, NC 27601-2173
919/559-3904
jheath@williamsmullen.com

Treasurer

G. C. Murray II
Association GC
www.association.law
202/793-4748
gc@association.law

Secretary

Mindi Wells
P.O. Box 163456
Columbus, OH 43216-3456
614/702-7473
m-wells3@onu.edu

Immediate Past President

Brandon L. Wolff
Attorney at Law in PA, NJ, NY, FL, DC
630 Freedom Business Center,
3rd Floor
King of Prussia, PA 19406
215/436-9813
brandonleewolff@gmail.com

Board of Governors Members

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Burgoon Law Firm LLC
PO Box 8945
Atlanta, GA 31106
404/260-5147
burgoon@burgoonlaw.com

Eric L. Meeks
Meeks Law Firm Inc.
P.O. Box 8098
Cincinnati, OH 45208-0098
513/826-0229
emeeks@meekslawfirm.com

E. Duffy Myrtetus
OOSD Liaison to BOG
Eckert Seamans Cherin & Mellott LLC
919 E. Main Street, Ste. 1300
Richmond, VA 23219-4624
804/788-7749
edmyrtetus@eckertseamans.com

Donald A. Workman
6904 Georgetown Pike
McLean, VA 22101-2147
703/400-3637
dworkman2024@gmail.com

At-Large Members Terms Expiring 2024

W. Bard Brockman
Bryan Cave Leighton Paisner LLP
1201 W. Peachtree Street NW, Floor 14
Atlanta, GA 30309-3471
404/572-6600
bard.brockman@bclplaw.com

Timothy P. Chinaris
P.O. Box 120186
Nashville, TN 37212-0186
904/295-7395
tchinaris@chinarislaw.com

Adam J. Ouellette
Ouellette Carr LLC
P.O. Box 809
Columbus, NC 28722-0809
954/641-8269
adam@broward-law.com

At-Large Members Terms Expiring 2025

Lauren C. Bingham
U.S. Department of Justice, CIV-OIL
Ben Franklin Station
PO Box 868
Washington, D.C. 20044-0868
202/616-4458
lauren.c.bingham@usdoj.gov

Tiffany N. McKenzie
Harrison & Held
1180 W. Peachtree Street NW,
Ste. 2040
Atlanta, GA 30309-3487
404/566-4303
tmckenzie@harrisonheld.com

Lawrence (Larry) H. Kunin
Morris Manning & Martin LLP
3343 Peachtree Road NE, Ste. 1600
Atlanta, GA 30326-2400
404/233-7000
lkunin@mmmlaw.com

Program Administrator

Emily K. Young
The Florida Bar
651 East Jefferson Street
Tallahassee, FL 32399-2300
850/561-5650
eyoung@floridabar.org

CLE Committee

G. C. Murray II
Association GC
www.association.law
202/793-4748
gc@association.law

Information Committee

Donald A. Workman, Chair
6904 Georgetown Pike
McLean, VA 22101-2147
703/400-3637
dworkman2024@gmail.com

Legislative Committee

G. C. Murray II, Chair
Association GC
www.association.law
202/793-4748
gc@association.law

Membership Growth Strategy Committee

Timothy P. Chinaris, Chair
P.O. Box 120186
Nashville, TN 37212-0186
904/295-7395
tchinaris@chinarislaw.com

Multi-State Practice Committee

Timothy P. Chinaris, Chair
P.O. Box 120186
Nashville, TN 37212-0186
904/295-7395
tchinaris@chinarislaw.com

Social Media Committee

Tim Brown, Chair
National Automobile Dealers Association
8484 Westpark Drive
Tysons, VA 22102
703/821-7039
tbrown@nada.org

Membership Application for ***The Florida Bar Out-of-State Division***

THE FLORIDA BAR
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www.flabaroutofstaters.org

More than 10 percent of Florida Bar members reside outside the state of Florida.

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Membership in this division will provide a forum for communication and education for the improvement and development of your practice through:

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To join, make your check payable to The Florida Bar and return your payment in the amount of \$35 with this completed application form to:

**Out-of-State Division
The Florida Bar
651 E. Jefferson Street
Tallahassee, FL 32399-2300**

Membership will expire June 30. Dues will not be prorated.

To learn more, visit our website at www.flabaroutofstaters.org, or contact the program administrator at eyoung@floridabar.org.

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THE FLORIDA BAR – OUT-OF-STATE DIVISION

APPLICATION FOR STUDENT MEMBERSHIP

Of the more than 100,000 members of The Florida Bar, more than 14,000 members reside and/or practice outside Florida. The Out-of-State Division of The Florida Bar represents the interests of all Florida lawyers residing and/or practicing outside the state.

The Out-of-State Division seeks to keep its members informed of recent developments that could impact their practice as out-of-state Florida attorneys. Further, the division promotes opportunities to network—both socially and professionally—with other out-of-state Florida attorneys. Membership in the division provides access to the division’s newsletter (*State-to-State*), the division's website (www.flabaroutofstaters.org), division-sponsored continuing legal education programs, and division meetings.

Student membership in the division will:

- ✓ Afford an opportunity to network with out-of-state Florida attorneys who can offer insights on practicing law as a Florida attorney outside the state.
- ✓ Allow for communication with Florida lawyers practicing in a variety of locales nationwide.
- ✓ Provide the member with access to the division’s newsletter and website, which are designed especially for out-of-state practitioners, and an opportunity to submit articles for publication.
- ✓ Entitle the member to a reduced fee for division-sponsored continuing legal education programs.

To join, mail this completed application form to:

Out-of-State Division, The Florida Bar, 651 E. Jefferson St., Tallahassee, Florida 32399-2300.

(The application form also may be sent by email to eyoung@floridabar.org.)

Student membership will expire upon admission to The Florida Bar or one year after graduation from law school, whichever occurs first. There is no membership fee for students.

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DATE OF GRADUATION (MO/YR): _____

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LIST CITIES/STATES IN WHICH YOU HAVE A PARTICULAR INTEREST: _____

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This application is for attorneys only. FRPs need to post credit via their online profile.

The Florida Bar
Legal Specialization & Education
651 E. Jefferson Street
Tallahassee, FL 32399-2300
(850)561-5842 (Phone) (850)561-9421 (Fax)
clemail@floridabar.org

Attorney #: _____ Name: _____
Address: _____
City: _____ State: _____ ZIP: _____
Phone: _____ Fax: _____
Activity Title: _____
Sponsor Name: _____
Date and Location of Course: _____

Please attach a course brochure and/or outline which:

- (A) Fully describes the course content and level of presentation
- (B) Indicates the time devoted to each topic covered within the program
- (C) Identifies the instructors

BOARD CERTIFICATION CREDIT

Please list the area(s) of certification applicable to this activity:

For more information on The Florida Bar's Board Certification program,
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Total Minutes on Instruction: (excluding breaks, meals, and introductions and based on a 50-minute hour)

_____ Total Credit (Total Minutes Divided by 50 = _____ Credit Hours)
50

If requesting Ethics, Professionalism, Substance Abuse, Mental Illness Awareness, Bias Elimination, or Technology Credit, please check appropriate box below.

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NOTE: If you have completed the minimum number of required CLER hours, and are not seeking certification credit, please do not submit further courses for evaluation. **There is no carry over of hours in Florida from one reporting period to the next.**

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Should you wish to have your materials returned, please enclose a self-addressed stamped envelope.***

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