



the Ex Parte

May 2017

A publication of the Brevard County Bar Association



And it's Babe Ruth

By Geoff Golub

Judges Crawford, Mahl, Roberts, and Serrano played in the 25th (could be an exaggeration) annual lawyer-Judge softball game.

Two Judges played on each team. Judge Serrano looked and played like a ballplayer. Judge Roberts ran like Ricky Henderson until he pulled his hamstring. Judge Crawford pitched a complete game which is rare these days in the Era of Relief pitchers. He also had a few key hits, reminding people of Babe Ruth and why the National League still lets pitchers hit. Judge Mahl played a flawless first base and had the game winning hit. He was also awarded the game ball that I still need to give to him.

The score was close, and the team helmed by me won. But the win was not without controversy, as it was alleged one person on my team was allowed more than three strikes and a pinch runner did not touch home plate. Instant replay may have shown otherwise, but there was none. Judge Reinman also appeared at the game to root for both sides.



AT BAT	BALL										STRIKE										OUT									
	1										1										2									
	1	2	3	4	5	6	7	8	9	10	RUNS										HITS									
VISIT	8	0	0	0	0	1	6				15										30									
HOME	1	0	1	1	1	4	8				16										23									

MOTORCYCLE ACCIDENT?

CAUTION - FLORIDA MOTORCYCLE ACCIDENTS ARE ON THE RISE

CLIENT INJURED IN A MOTORCYCLE OR SCOOTER ACCIDENT?



ALPIZAR LAW_{LLC}
TRIAL ATTORNEYS

- Our attorneys have more than 35 years of combined experience with victims of motorcycle accidents.
- We have a thorough understanding of Florida's laws and how they apply to motorcycle accidents and cases.
- Many of our motorcycle accident cases have resulted in a verdict or settlement of \$1 million or more.

Call Alpizar Law.

**Auto / Motorcycle Accidents • Trucking Accidents • Wrongful Death
Premises Liability • Insurance Bad Faith • Se habla Español**

**1528 Palm Bay Road N.E. – Palm Bay, Florida 32905
WWW.ALPIZARLAW.COM | (321) 676-2511**



**Buying one is easy.
Choosing one is another
matter entirely.**



MELBOURNE

Just west of US 1 on NASA Blvd. | 800.719.6727
Shop Online 24 Hours at www.mbmelbourne.com
MON- SAT: 8:30 AM - 7:00 PM | SUN: 12 PM - 5 PM



Audi
Certified pre-owned



the Ex Parte

By Members, For Members, About Members

May 2017

President's Message	5
Young Lawyers Division	6
Brevard Bar Foundation	7
FL Bar Board of Governors	8
Clerk of Court Update	9
Mediation, Arbitration and Mindfulness	10
We Hold this Evidence to be Self-Evident	12
Legally Bald	14

the Ex Parte is a monthly publication for the members of the Brevard County Bar Association. *the Ex Parte* encourages unsolicited submission of articles, comments, photographs and notes of interest to Brevard County Bar Association members.

Publishing and editorial decisions are based on the editor's judgment of the quality of the writing, timeliness of the article and potential interest to the readers. Occasionally, *the Ex Parte* may publish articles dealing with controversial issues.

Views expressed in *the Ex Parte* are those of the authors and not necessarily those of the officers, directors or employees of the Brevard County Bar Association. No endorsement of those views should be inferred unless specifically identified as the official policy of the Brevard County Bar Association.

Advertising copy may be submitted. All advertisements are reviewed; however, the Brevard County Bar Association does not endorse or guarantee any product or service advertised in *the Ex Parte* or express an opinion concerning said advertisers or their products or services. Nothing contained in any advertisement should be taken as the opinion or an endorsement of Brevard County Bar Association or any of its officers, directors or employees.

Contact the Brevard County Bar Association office at (321) 254-8801 for advertising rates, specifications and deadline information.

Brevard County Bar Association

**2627 W Eau Gallie Boulevard
Ste. 101**

Melbourne, FL 32935

Telephone: (321) 254-8801

Fax: (321) 0254-8812

Website: www.brevardbar.org

Board of Directors

Bryan A. Lober, President
Michelle P. Studstill, President-Elect
Andrew Pickett, Treasurer
G. Philip Zies, Secretary
David Alpizar
Geoffrey P. Golub
Tino Gonzalez
Gregory S. Hansen
Guna Ose
R. Scott Robinson
Kelly G. Swartz
Jay R. Thakkar

Young Lawyers Division

Shane M. Smith, President
Robert Hoag, President-Elect
Nick Vidoni, Secretary
Aaron Thalwitzer, Treasurer
Scott Alpizar
Rachel Hughes
Jeffrey Nuckols
Kimberli Trader

Brevard Bar Foundation

Kelly G. Swartz, President
Brooke Goldfarb, Immediate Past President
Michael Kahn, Treasurer
G. Paul Lemieux, Secretary
Mario Musil
Britta Hawkins
Christina Sanchez Serrano
Ed Kinberg
Laura Minton Young



President's Message

By Bryan A. Lober

This month's column is dedicated exclusively to the upcoming BCBA election. As some of you are already aware, within two weeks of starting my term as this Association's President, I contacted Supervisor of Elections ("SOE") Lori Scott and inquired as to the feasibility of outsourcing our annual elections to the SOE for a number of reasons: (1) to completely guarantee voter privacy; (2) to reduce the ongoing logistical burden on the Association; (3) to add greater transparency as to the elections process; (4) to ensure machine precision in tabulating results; and (5) to better standardize the elections process from year to year.

The SOE is handling the entire process in a manner compliant with both our bylaws and with statewide uniform ballot rules. More specifically, this election will be handled by the SOE exactly as the SOE handles mail-in ballots during a routine election for governmental positions. The one and only difference between the manner in which the SOE is handling this election as opposed to a governmental election is that the SOE does not have voter signatures on file with which to compare the signatures on the outside of the envelopes containing ballots. However, you still must sign and date the return envelope (not the ballot) just as you would in any governmental mail-in/absentee election. The ballots will be treated with the same care and handled by the same employees who process ballots in governmental elections.

This year marks the first year in which BCBA members will not have to sign their actual ballots, a past requirement unpopular enough as to have generated negative commentary from attorneys and judges, alike. This particular requirement did nothing to increase voter participation and, if anything, may have stifled it. To that end, this year marks the first year in which no employee, officer, or director of the Association will even be in the same room as submitted ballots when they are received and tallied.

This year, our Executive Director will have spent the least amount of time formatting ballots, mailing ballots, receiving ballots, and tallying ballots during her entire tenure with us. For the first time ever, this avoids requiring Terrie to choose between working overtime or temporarily putting aside her other duties to allow for sufficient time to work on election issues. What's more is that the SOE is charging us nothing for the time their employees put into this process. They are making

absolutely naught from us and are assisting us solely as an effort at community outreach in order to generate goodwill. Our only costs are their actual costs: paper, printing, and postage. There is no markup whatsoever. This election appears on track to be our least costly election in at least the past several years.

The ballots are the typical Scantron style that all of us will recognize. Please review the sample ballot included with this column. Ballots will be machine read and the only human tallying that could occur is if voters decide to fill in one or more write-in candidates. There will be write-in options available for all officer positions: President-Elect, Treasurer, and Secretary. There will not be an option to write-in candidates for a director position. Due to members being permitted to vote for up to eight directors, the SOE advised it would be logistically impracticable to allow for write-ins in that particular race.

Your address on file with the Association, as of May 5th, was the address sent to the SOE for use in conducting the election. To further protect member privacy, I personally advised the SOE that the member address list provided may contain information exempt from disclosure pursuant to §119.071, Fla. Stat.

Ballots were mailed Tuesday, May 16, from Ft. Myers, where they were printed, folded, inserted, and posted. You should receive your ballot that same week.

Should you need to obtain a replacement ballot, you must contact the SOE in order to obtain one. The Association is not in possession of ballots and cannot request a replacement on your behalf. In order to obtain a replacement ballot, you must direct your request via email to: BrevardBarElection@VoteBrevard.com. The deadline to request a replacement ballot is May 23.

You may mail your ballot back to the SOE using the enclosed self-addressed envelope after signing and dating the envelope. Please note that the return envelope does not have postage pre-applied. The SOE recommends that you allow 3 to 5 delivery days for return.

Should you wish, as an alternative to mailing, you may drop your ballot off any of the four SOE administrative offices (Titusville, Viera, Melbourne, or Palm Bay). Ballots must be received by the SOE by noon on Wednesday, May 31.

(continued on Page 6)

President's Message *(continued from Page 5)*

In prior years, the Association ballot deadlines were based upon postmark date. This is no longer the case, as the SOE is standardizing our election and handling it as they do governmental elections. If your ballot is not received by the SOE by noon on Wednesday, May 31, it will not be tallied.

As tabulation is electronic, results will be provided to the Association the day after voting closes. Based upon the tabulation of the SOE, as required by our bylaws, Secretary Phil Zies will determine the election results and I will certify Phil's determination. President-Elect Michelle Studstill will then reach out to congratulate those elected prior to the results being announced to the Association as a whole.

Though the ballots will be retained by the SOE in accordance with Florida Record Retention law, please be advised that these ballots will not contain your name and they will not contain your signature.

The Association thanks and acknowledges Supervisor of Elections Lori Scott, Chief Deputy Supervisor of Elections Tim Bobanic, and SOE Outreach Coordinator Jessica Santamaria, all of whom have been invaluable in facilitating this beneficial transition for the Association.



Young Lawyers Division

by Nick Vidoni, Secretary

On Friday, May 12, 2017, the Young Lawyer's Division was honored to host our annual roundtable with the judges. We had some seasoned judges. Judge Earp was there. Judge Roberts and Rainwater too. We were also pleased to have a relatively new judge, Hon. Kelly Ingram.

I am a young lawyer. So young that I don't know how far back in time this roundtable luncheon goes. I hope that it will be a tradition in the years to come. The YLD gets a chance to satisfy hungry judges and attorneys with some good "Pizza Gallery" pizza. I could just stop there and declare a mission accomplished.

But lawyers like to talk, so I guess I should continue. The YLD has some strings attached to the pizza offering. The practice of law takes practice to get

Car Dealer/Consumer Disputes? Call 321-255-2769

UCC/Lemon Law/Revocation of Acceptance Cases

23 years' experience handling new and used car purchases.

Will pay referral fees when permitted.

If you, a client or family member has been unfairly treated by a car dealer or manufacturer, call for a free telephone conference.



Kurt T. Sauter, Esq.

**2285 West Eau Gallie Blvd.
Melbourne, FL 32935
321-255-2769**

good. Good advice can be helpful to all lawyers. Perhaps good advice goes a little further when you have a bunch of green lawyers in one place.

I am personally thankful to the judges who participated. They provided thoughtful comments and tips as to how to litigate and become better lawyers. I also want to thank the hungry young lawyers. You came prepared with your questions locked and loaded, and we got some answers from the judges.

I end with this parting tip to young lawyers: try to use your time efficiently. Remember to use those words next year. Because I hope we will have another chance where you can use your time to (a) talk to judges; (b) get some helpful advice; and (c) have the YLD take care of your lunch.



Brevard Bar Foundation

by Kelly G. Swartz, President

As we prepare for an exciting 2017-18 membership year, please look for Brevard Bar Foundation membership renewals and new member forms to be included with your BCBA membership renewal forms. We hope that combining Brevard Bar Foundation membership forms with the BCBA forms makes your life just a little easier. As our membership continues to grow, we can give even more back to our community.

In April, we had the pleasure of donating to support Big Brothers Big Sisters of Brevard. Big Brothers Big Sisters is a Mentoring organization providing adult role models to the youth of Brevard County. They offer different levels of service designed to meet the needs of both Mentors and Mentees. Being a Big Brother or Big Sister provides the opportunity to help shape a child's future for the better by empowering them to achieve. And the best part is, it's FUN! You and your Little can share the kinds of activities you already like to do. To learn more about becoming a mentor, visit the Big Brothers Big Sisters website at bbbscf.org.

If you have a suggestion for one of our monthly donations, please let any of our board members know. Donations are voted on by the Brevard Bar Foundation board members and priority is given to donation recipients suggested by Foundation members.

Finally, we send a warm welcome and a big thank you to Judge Peter T. Fay who recently joined the Brevard Bar Foundation as an annual member. While attending our annual dinner, Judge Fay learned of the incredible work the Brevard Bar Foundation does year after year and gave his support by becoming a lifetime member.

You can also support the work of the Brevard Bar Foundation by becoming a member. Members provide financial support of varying levels and are not required to attend meetings or otherwise volunteer their time, though that is always welcomed, too. You can enjoy a lifetime of membership for a one-time payment of \$1,000 or you may become an annual member for \$100. Membership applications may be requested from any of our board members.

Thank you to all of our current lifetime members. We hope to add your name to the list.

<i>John Alpizar</i>	<i>Bryan Lober</i>
<i>Roy Alterman</i>	<i>Troy Lotane</i>
<i>Kevin Bailey</i>	<i>Mark Malek</i>
<i>Douglas Beam</i>	<i>Robert Moletteire</i>
<i>R. Mason Blake</i>	<i>Maureen Matheson</i>
<i>Sammy S. Cacciatore</i>	<i>Clifton A. McClelland</i>
<i>Steven G. Casanova</i>	<i>Joan Berry Nassar</i>
<i>Leslie J. Castaldi</i>	<i>James M. Nicholas</i>
<i>Stephen Charpentier</i>	<i>Arthur W. Niergartth</i>
<i>Hubert Childress</i>	<i>Mark Peters</i>
<i>Joseph G. Colombo</i>	<i>Robin M. Petersen</i>
<i>Dale Dettmer</i>	<i>Julie Glocker Pierce</i>
<i>Gregory Donoghue</i>	<i>Hon. Tonya Rainwater</i>
<i>Charles Dorfman</i>	<i>Kim Bonder Rezanka</i>
<i>Hon. Thomas G. Freeman</i>	<i>Amy Romaine</i>
<i>Daniel Freyberg</i>	<i>Walter C. Shepard</i>
<i>Carmine D. Gigliotti</i>	<i>Eric Shuman</i>
<i>Margorie S. Green</i>	<i>Charles R. Stack</i>
<i>Gregory Hansen</i>	<i>Nicholas E. Tsamoutales</i>
<i>Michael H. Kahn</i>	<i>Kenneth F. Tworoger</i>
<i>Edward J. Kinberg</i>	<i>David Volk</i>
<i>Hon. Stephen R. Koons</i>	<i>Hon. Robert Wohn</i>
<i>Scott Krasny</i>	

Administrative Order

17-20-B: IN RE: MENTAL HEALTH – MARCHMAN ACT HEARINGS – TELEPHONIC APPEARANCE OF QUALIFIED PROFESSIONALS



Report from

The Florida Bar Board of Governors

The Florida Bar Board of Governors met on March 24, 2017. The major actions of the Board and reports received included:

West Palm Beach attorney Michelle Suskauer was announced as president-elect designate of The Florida Bar. Also decided in the voting, which ended March 21, were elections for The Florida Bar Board of Governors in the: 8th Circuit – Stephanie Marusak Marchman, Gainesville; 13th Circuit – Amy S. Farrior, Tampa; and 20th Circuit – Marcy L. Shaw, Fort Myers. Suskauer will be sworn in as president-elect at the Bar's annual convention in Boca Raton on June 23, when current President-elect Michael J. Higer of Miami becomes president, and will begin her term as Bar president in June 2018. The Florida Bar News covered these election results; earlier results for other board elections are listed in this Dec. 16 news release.

As the Florida Legislature continues to meet in Tallahassee for the 2017 session, The Florida Bar is advocating positions including opposing term limits for judges at all levels, monitoring legislation of interest to the legal profession and posting weekly summaries for Bar members and additional information at www.floridabar.org/legislativeactivity. Business organizations have joined the Bar and other legal groups in opposing the proposed joint resolutions for term limits on appellate judges. The outlook on the state budget is that it will be lean, especially with predictions of a revenue shortfall for next year. The Florida Bar is working to ensure that the judicial system is adequately funded as directed in the Strategic Plan. The court's 2017-18 state budget request is covered in an April 1 Bar News article. Additional legislative positions of the Criminal Law, Family Law, and Business Law sections were approved; advocacy by sections is wholly supported by the separate resources of the voluntary sections and must be conducted solely in the name of each section.

A pilot project to test a real-time, browser-based solution for asset management and trust accounting to assist Bar members in complying with trust accounting rules, was approved. The pilot for the trust accounting solution, AddVantage, is set to begin around August 1. The trust accounting solution is specifically designed to automatically bring lawyers who enter information correctly in compliance with Bar rules 5-1.1 and 5-1.2,

and would be free to Florida Bar members who choose to use it. Through this proposed program, pooling trust account funds would also allow a higher interest rate and boost The Florida Bar Foundation's IOTA income. The April 15 Florida Bar News (available online the afternoon of April 10) will provide more information on the AddVantage trust accounting solution pilot project and the benefits of the software.

Two new Florida Bar Member Benefits were approved to be added to the more than 60 free or discounted benefits now available to members. Bar members will soon receive discounts on products and services purchased from Office Depot and Office Max and a discount for 360 BizVue, which optimizes search engine results. All member benefit programs, including free legal research through Fastcase, free CLEs through the Practice Resource Institute (PRI) and discounts on practice resources, legal publications and forms, travel, banking, shipping and insurance, are listed at www.floridabar.org/memberbenefits.

A report was given by representatives of a special committee on a proposed new Rule of Judicial Administration regarding granting continuances of court cases for parental leave. The rule would require that such continuances should be granted unless it would cause substantial prejudice to a party. The board will vote on the recommendation at its May 26 meeting. A notice of proposed board action requesting comments be submitted no later than May 15, 2017, is posted online and will appear in the April 15 Florida Bar News (available online the afternoon of April 10) along with complete coverage of the special committee representatives' comments to the Board of Governors.

The Florida Bar's Florida Free Legal Answers online virtual legal pro bono project now has more than 370 Florida Bar members enrolled, and additional eligible volunteers are encouraged to participate. The website, launching to the public May 1, will provide an additional way for low-income Floridians to access a volunteer attorney to answer civil legal questions online. Details on the project are available at <https://florida.freelegalanswers.org>.

The proposed 2017-18 Florida Bar budget, which will

(continued on page 9)

Board of Governors *(continued from page 8)*

be published for member comments in the April 15 Florida Bar News (available online the afternoon of April 10), keeps annual membership fees at \$265 for active members and \$175 for inactive members for the 16th consecutive year. The budget projects revenues of \$41.7 million and expenses of \$42.9 million resulting in a \$1.1 million deficit which will be adequately covered by reserves, if needed. After Bar member comments, the Board will approve the final proposed budget for submission to the Florida Supreme Court for approval.

A change requested by the Florida Supreme Court to proposed Rule 4-1.19 on collaborative law was approved. The change would require that clients be provided with information about and give informed consent to fees to be charged by the involved lawyers and mental health and financial experts.



BCBA Board Ballots must be received by the Supervisor of Elections by noon on Wednesday, May 31st.

You may drop your ballot off any of the four SOE administrative offices (Titusville, Viera, Melbourne, or Palm Bay).

If your ballot is not received by the SOE by noon on Wednesday, May 31st, it will not be tallied.

Clerk of Court Update

Guardianship Case Review and Due Date Change for Guardianship Reports

The Brevard Clerk of Court is currently reviewing inactive cases in the Probate/Guardianship area. The Court is setting Status Hearings to review these cases and issue appropriate orders to close these cases. Attorneys are encouraged to review their files for orders closing cases and discharging guardians and personal representatives.

The state legislature has passed legislation changing the due date for Annual Plans in guardianship cases effective 7/1/17 **[F.S. 744.367(1)]**. Annual Plans will now be due 90 days after the end of the previous plan year's end date. In cases where the court has ordered a calendar year reporting basis, the Annual Plan will be due by April 1st each year.

The Clerk's office is updating their due date calculator to comply with the new statute. If you would like a copy, please contact the Probate/Guardianship department.

If you have a question regarding accounting and plan filing requirements, the Guardianship department of the Clerk's Office is here to help. Sometimes a simple phone call can avoid the need for an amended filing, saving you time and the Ward money.

Guardianship Department Contact information

Court Supervisor

Mendi Patterson Mendi.Patterson@brevardclerk.us

Assistant Court Supervisor

Lisa Baumgartner Lisa.Baumgartner@brevardclerk.us

Guardianship Accountings :

Mary Lee Parrott MaryLee.Parrott@BrevardClerk.us

(321) 637-6500 ext. 59090

John Pilley John.Pilley@BrevardClerk.us

(321) 637-6500 ext. 59123

Guardianship Plans

Ellie Burt Ellie.Burt@BrevardClerk.us

(321) 637-6500 ext. 59103

Probate / Guardianship Group

ProbateGuardianshipGroup@BrevardClerk.us

Probate eFiling Assistance

ProbateeFilingAssistant@BrevardClerk.us



Mediation, Arbitration and Mindfulness

by Jack Kirschenbaum

What is mindfulness you ask? Well, we'll get to that in a minute.

Bringing a matter of litigation to trial in the Circuit Court of Brevard County is both expensive and time consuming. Additionally, the uncertainty and the stress of litigation provides great anxiety for clients and attorneys. No matter how prepared the attorney is, how well intentioned the client might be, and how astute the Judge has become, litigation is always an arduous adventure. Alternatives to litigation therefore, can be viable avenues to both obtain "justice" and protect and enforce our client's interests.

So what do mediation and arbitration have to do with mindfulness?

Mindfulness is the process of actively noticing new things. It puts you in the present. It makes you more sensitive to contexts and perspective, it's the essence of engagement.¹ "Mindfulness means paying attention in a particular way, on purpose, in the present moment and non-judgmentally. Mindfulness is a practice of being acutely aware of what is taking place in the present moment."² Much has been written lately about mindfulness including the greater portion of the April, 2016 Florida Bar Journal being dedicated to it. Long considered "hippy dippy: stuff, mindfulness is now a mainstay of both judicial, legal and business regime courses and practices. It is particularly useful in the stressful, uncertain area of litigation. By becoming mindful of your client's financial, intellectual, emotional and legal position, and being mindful of your experience, the facts of your case, the law, yours and the court's calendar, the alternative advantages to fully litigating a case by means of mediation and arbitration become apparent.

Mediation and arbitration are the perfect settings for mindfulness. Chapter 44 of the Florida Statutes provides these alternatives to judicial action. Arbitration, both court ordered and non-binding arbitration and voluntary binding arbitration, as well as mediation are provided for under the statute.

As we all know, and as many of us have experienced, mediation is a process where a neutral third person conducts a settlement conference facilitating discussions between the parties. Mediators

encourage settlement by allowing, in a confidential setting, the parties and attorneys to discuss fully the strengths and the weaknesses of their cases. It allows for resolutions to be achieved that might not be otherwise available should the matter proceed to trial. The process usually begins by the parties and attorneys convening in one conference room. After introductions by the mediator and the participants, each side generally provides an opening statement stating its position and the remedy it is seeking. In many cases, the parties separate into adjoining conference rooms and the mediator, caucusing privately with each side, discusses and probes each party's case, shuttling offers and counter-offers between the separated parties until a mediated agreement can be reached. It is estimated that as high as 80% of the cases that go to mediation in Brevard County are settled.

Mediation provides a less expensive, less stressful, more certain and self-controlled result to matters of dispute. Even if the case does not settle, the door is open through which further mediation or settlement discussions can be pursued prior to the necessity of trial. And even if the case does not settle, mediation assists the parties in understanding the other parties' facts and positions, and allows them to better understand the weaknesses and deficiencies in their own case so that issues can be clarified for trial.

Arbitration is a process whereby a neutral person or panel is selected by the parties to consider the facts and the law as presented by the parties and render a decision that, based upon prior agreement of the parties may be binding or non-binding on the parties. Arbitration is at times called a mini or private trial and allows for the expert in the subject matter of the dispute to more thoroughly consider the case and therefore render a more knowledgeable decision. Arbitration often allows the parties quicker and less expensive access to a binding fully considered decision.

So how can mindfulness assist with mediation and arbitration? It is, as we all know, the attorney's responsibility to fully understand the client's litigation issues, but to also understand and appreciate the client's financial, emotional and intellectual capabilities. The attorney must be mindful of the client's best interest and how is the best way to resolve and solve the client's problems. Mindfulness is the process by which the attorney can turn all of her attention and all

Mediation

(continued from Page 10)

of her senses and her conscious and subconscious mind to the facts of this case, the setting of the mediation or arbitration, the body language of the participants, the verbal and non-verbal communications being employed, to fully understand the dynamics and the needs of the parties. This assists to shape and hopefully resolve the case. Mindfulness allows us to exclude the baggage of the past and the worry about the future and focus on the present to take full advantage of all the opportunities available to advise and assist our client to achieve their goals and to help them resolve their disputes. Mindfulness is another tool, and a powerful tool, available to attorneys that when used properly, can enhance the attorney's legal and people skills.

Litigation is terribly expensive, immensely time consuming, frighteningly uncertain and always stressful. The demands placed on our judiciary to get cases to trial, particularly in the civil and family law divisions, often lead to great delay and to unanticipated results. In advancing, protecting and enforcing our client's interests and representing them vigorously and professionally, alternative dispute resolution avenues can and should be considered.

There are any number of excellent mediators and arbitrators who are members of our Brevard County Bar Association and there are articles and seminars available to learn about mindfulness and its application to the legal practice. I would recommend them both.

¹ Ellen Langer in the March, 2014 issue of The Harvard Business Review

² John Kabat-Zinn

MURPHY'S LAW OFFICES, P.A.



**John C. Murphy,
Esquire**

Re-entering law practice
as Murphy's Law Offices,
P.A., 5575 US 1
Rockledge.

- ◆ Estate & Medicaid Planning
- ◆ Civil & Criminal Litigation
- ◆ Elder & Family Mediation
- ◆ Probate

(321) 985-0025

Estate Planning & Elder Law Center of Brevard



Robin M. Petersen, Esq.
Certified Elder Law Attorney, CELA



Tracy A. Glover, Esq.
Army Lieutenant Colonel, Ret.

Our Locations



WILLS, TRUSTS, PROBATE,
ESTATE PLANNING & ELDER LAW

321 Sixth Avenue, Indian Lake, FL 32903
321-729-0087

www.ElderLawCenterBrevard.com

One Senior Place
8085 Spyglass Hill Rd, Viera, FL 32940
321-253-6327

Experience ◆ Reliability ◆ Results



Graduate —
Pepperdine Law

- ◆ Immigration Law
- ◆ Criminal Defense - Indian River County
- ◆ Dependency & Delinquency
- ◆ Local Counsel appearances also made in Osceola, Indian River, St. Lucie & Volusia

Now conveniently located in the 1900 Building

RANDOL TRACY MASTERS, ESQ.

MASTERS LAW

1900 S. Harbor City Blvd., STE 124
Melbourne, FL 32901

Phone: (321) 394-8816
Email: masterslawoffice@aol.com
<http://www.masterslawoffice.com>

**Now
accepting referrals!**



We Hold this Evidence to be Self-Evident

by David Volk

The evidence code is not a torture device to torment lawyers in court. The code serves a simple goal: cases should be decided based upon reliable information that is rationally related to what is being decided. If you simplify your evaluation of your prospective evidence, your chance of having it admitted into evidence goes up quickly.

The key word for all evidence is reliability. The rules deliver reliability. Judges and juries don't want to guess. They want information that is reliable. If you are unsure if you can get your prospective evidence admitted, try to figure out what is wrong with it. We know what is right with it: it will help us win. And so, presenting that evidence will be fun!

We can become so enamored with how great the information is that we don't bother to think about whether it has reliability problems. If it has reliability problems, the judge will not let you have your fun. They really do want you to have your fun. They just want it to be good clean fun. In fact, I have experienced judges actually helping a lawyer (including me) figure out how to offer something in to evidence. They sometimes go that far to help us have fun. You can't blame them. They want the right outcome based upon all the available reliable evidence. Heck, we have all had moments where we wanted to say to the other attorney, "ASK THIS!" Still, we cannot count on someone bailing us out if we have not thought things through.

Run your prospective evidence through a checklist. Is it:

- relevant?
- relevant but immensely prejudicial?
- can you lay the proper foundation?
- is it hearsay?
- is there a hearsay exception?
- is it proper impeachment?
- do you need the original or will a copy suffice?

The list could go on. You understand the point. These questions are designed to get you thinking about what could go wrong and what you have to do to avoid that.

Create your own checklist. Walk through the table of contents of the rules of evidenced. There sure are a

lot of landmines when you look at that table of contents. And, opportunities to think about what could go wrong and prepare to navigate the minefield.

In a recent case, my client gave me something amazingly awesome to use to prove a point. It was internet map and travel data. I read it, was instantly immensely thrilled, then came crashing to earth wondering how I could possibly get it in to evidence. It was clearly hearsay and, seemingly, had a host of other problems. Hearsay was the big problem. I was despondent. I had pure gold and no way to cash it in. Then I remembered a possible hearsay exception it might fit in to. If I had not remembered, no big deal. I could have just looked through the exceptions or our eight to ten evidence books in the office. Yes, books. Books are our trial prep friends. Imwinkelried's Evidentiary Foundations, for instance, is great. It solves certain problems, but more importantly it walks us through the process of getting things admitted. When we view admission of evidence as a process, we don't try to rush through it. We take our time and check the boxes. We all must look at the rules and other resources at times to figure something out or make sure we are right about something. So, we looked at the exception and cases construing it. The data was admissible and we were able to use it. Don't rely on me telling you that sort of thing is admissible. Look it up to be sure. That is how you sharpen your skills. You don't assume something is right because someone told you or you have a deep abiding long term faith in the correctness of your belief. Sometimes, we have gotten away with using the wrong way for years and in a trial, an objection will be made and sustained.

If you try cases and evidentiary hearings, you should be working hard to become an evidence expert. You will never know all there is to know, but you will get better and better and better every time you investigate to remove uncertainty. Vince Lombardi said words to the effect that 'you should pursue perfection. You will not attain it, but in the end you will achieve excellence.'

MEDIATION | ARBITRATION



Certified Circuit Civil Mediator

JACK A. KIRSCHENBAUM

jack.kirschenbaum@gray-robinson.com

GRAY ROBINSON
ATTORNEYS AT LAW

1795 WEST NASA BOULEVARD
P.O. Box 1870
MELBOURNE, FLORIDA 32902-1870

TEL 321 - 727 - 8100
FAX 321 - 984 - 4122

MIKE KRASNY



**FLORIDA SUPREME COURT CERTIFIED
CIRCUIT CIVIL MEDIATOR SINCE 1996
MEDIATOR U.S. FED. DISTRICT COURT
FIFTH DISTRICT COURT OF APPEAL
Qualified Arbitrator since 1996**

**Forty Years Trial Practice & Litigation
Including:**

**Real Property + Wills, Trusts, Probate
Construction/Construction Liens + Contracts
Corporations & Partnerships + Mortgage Law
Personal Injury & Wrongful Death + Zoning
Governmental Law + Eminent Domain
Accounting Background**

**Phone: 321-543-2145
Fax: 321-777-9855**

E-mail: mkrasny@cfl.rr.com

STEWART B. CAPPS

Attorney At Law

Florida Supreme Court Certified Civil & Appellate Mediator
37 years of Trial & Litigation Practice

- ◆ Homeowners Association & Condominium Law
- ◆ Corporation, Partnership & Business Disputes
- ◆ Construction, Governmental & Zoning Law
- ◆ Probate, Wills & Trusts
- ◆ Real Estate



Phone:
(321) 727-3200

Fax:
(321) 727-0029

E-mail:
StewartBCappsPA@aol.com



Office Building for Rent

Titusville on US-1 near new Mall

- Riverfront
- Illuminated Sign
- Ample Parking
- 3200 sq. ft.
- Former Law Office

2223 South Washington Ave.
Call Pam Shaffner, Coldwell Banker

321-543-7242

pamela.shaffner@hotmail.com



Legally Bald — And other strange law-related thoughts

by Geoffrey Golub

*(All complaints and comments
please send to
geoffgolubpa@aol.com) ©*

*2017 Please remember the
views of Legally are in no way whatsoever (not
even remotely) the views of the BCBA or any of
its members, employees, advertisers, and
affiliates.*

METH-MADNESS

Apparently, doing Meth can make you do really crazy things. Like cut off your penis and feed it to an Alligator. Two Florida men have done this. (Go Gators?) The correlation between doing Meth and feeding one's penis to an Alligator is still a mystery to modern Psychiatry.

<http://www.floridasunpost.com/nassau-county-man-high-meth-cuts-off-genitals-feeds-alligator/>

<http://www.newsiosity.com/articles/society/man-found-bleeding-death-crotch-onlookers-realize-something-unbelievable>

FELON FRIENDLY HOUSING

Many convicted felons call me who cannot find housing because most places are not Felon Friendly. Habitat for Humanity has come to the rescue, by creating Habitat For Habitualized Humanity.

SLEEP LAWYER

A man convicted of Mortgage fraud got a new trial because his lawyer was seen dozing off during parts of the trial. A Sleep Doctor tries to help you sleep. A Sleep Lawyer can get you a new trial, which is a good thing when you lose. So if you're representing someone and the case is starting to look bad for your client, dozing off a few times will at least get your client a new trial. Sometimes its best just to live to fight another day. So hire a Sleepy Lawyer.

<http://www.denverpost.com/2017/05/02/pennsylvania-man-lawyer-sleeping-trial/>

ARRESTED! CALL THE BAILMAN!

It's a bird, it's a plane, no, it's the Bailman. If you get arrested and you need someone to post bail, then call the Bailman. The Bailman will post your bail and deliver

you home. Of course if you try to jump bail, he'll catch you and deliver you back to the jail. Because the Bailman always delivers!

LEGAL MATCH.COM

Legal Match called my office to try get me to pay them to provide or rather "match" me with clients. My receptionist answered the phone and thought they were a dating service and asked if they were going to match me up with an attorney to date.

MEDICARE'S CATCH-22

I have a client who was in an accident and is not suing anyone for personal injuries. She just wanted her car repaired. But Medicare for some reason thinks I am representing her in a lawsuit for personal injury, and they of course want to be reimbursed for the medical payments they won't be paying. So I write them a letter telling them 1.) She is not seeking any money from anyone, because she was not injured. 2.) I do not represent her regarding any personal injuries. I get a letter back from Medicare stating that they cannot talk to me unless I get proof that I represent her. So now I have to have her sign paperwork stating that I represent her, so I can send a letter to Medicare telling them I do not represent her! I represent her for the sole purpose of not representing her.

UNITED AIRLINES SLOGANS

OLD SLOGANS: Let's Fly Together; It's Time to Fly; Fly the Friendly Skies

NEW SLOGANS: Fighting the Friendly Skies; Fighting the Unfriendly Skies; Let's Fight Together; It's Time to Fight

FREQUENT FIGHTING MILES: Getting beaten up and kicked off of the plane nets One Million Miles.

UNITED AIRLINES NOW HAS: FIGHT CLASS, similar to Fight Club, but in the air.

Family Mediation

Practicing
Family Law
over 30 Years
in Brevard County



Thomas W. Deans, Esq.

Florida Supreme Court
Certified Family Law Mediator

Hourly Rates for Combined Income:
Under \$100,000 \$175/hr
Over \$100,000 \$250/hr

(321)728-2311

25 W. New Haven Avenue, Suite B
Melbourne, Florida 32901

Email: twdeanspa@yahoo.com

FLORIDA MEDIATION PROFESSIONALS

WE'RE EXPANDING...

*Professional Mediation Services
Across Florida NOW Available!*

**Civil Litigation • Foreclosure • Guardianship
Bankruptcy & Consumer Debt
Homeowners & Divorce
Appellate & Federal Courts**

Kim W. Torres

*of Torres Mediation
Supreme Court Certified Since 2000*



321.821.9995 / Kim@FLMPro.com / www.TorresMediation.com

JERRY H. TRACHTMAN

Certified Circuit Civil Mediator

MEDIATION | ARBITRATION

Mediate-Arbitrate, LLC



- After practicing law in Brevard since 1976, now mediating/arbitrating
- No charge for travel or mediation preparation
- No minimum mediation fee

IT WOULD BE A PRIVILEGE TO ASSIST
IN RESOLVING YOUR CLIENTS' DISPUTES

"You never really understand a person until you consider things from his point of view."

(Atticus Finch in To Kill a Mockingbird, by Harper Lee)

1735 W. Hibiscus Boulevard
Suite 300
Melbourne, FL 32901

Telephone: (321) 723-8281
Facsimile: (321) 821-1311
jtrachtman@trachtman-law.com

Brevard County Bar Association
2627 W. Eau Gallie Blvd., Ste. 101
Melbourne, FL 32935

PRSR STD
U.S. POSTAGE
PAID
ADDRESS N'
MAIL

CHANGE SERVICE REQUESTED

052017

Save the Date!
Installation Dinner
Wednesday, July 12th

