



MESSAGE FROM THE CHAIR

by Lee “Pete” Muschott
2019-2020 Solo & Small Firm Section Chair

I am pleased to report that the Solo & Small Firm Section continues to provide many opportunities and benefits to its members, including free Wednesday Wisdom webinars and monthly audio webcast CLEs. The Wednesday Wisdom series provides CLE credit and the presentations are available to view at any time in the section’s members-only Facebook group.

My colleagues and I are looking forward to meeting as many of our section members as possible during this upcoming year. Our schedule of meetings is on the website and we invite members in each of the local areas where we meet to attend and provide us with their input. For the November 1 meeting at Le Meridien in Tampa, we will include a 1-hour CLE at the conclusion of our meeting. The presentation will be “Basics of Sovereign Immunity Litigation Under §768.28, Florida Statutes.” For those of you in the Tampa/St. Petersburg area, this will be an opportunity to get the foundation for prosecuting claims against governmental entities



LEE E. “PETE” MUSCHOTT

or defending those entities against claims for negligence. Following the seminar, we invite you to stay for our reception.

If you are seeking a broad base of information about the importance and utilization of technology in your solo or small firm practice, our program for the Feb. 7, 2020 Solo & Small Firm CLE Conference at the winter meeting of The Florida Bar is already in place. The theme is “SOS: Secure, Operate and Systemize.” Topics will include

cybersecurity and privacy for lawyers, member benefits, mentoring and optimizing Florida Bar resources, automation and going paperless, managing a successful virtual law firm, ethics and social media, outside revenue streams and surviving solo while you are unable to be physically present in your office. These are all topics of significance for those of us who practice in the solo and small firm environment. This will be your opportunity to get the latest information on these rapidly evolving areas.

Also scheduled is our out-of-country trip for 2020. This year, it is

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CHAIR'S MESSAGE

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truly a unique opportunity for travel and CLE. Our excursion will begin in Bergen, Norway and we will sail on the MS Midnatsol for seven days, stopping every day at a Norwegian

city along the coast and terminating in Kirkenes. This ship is not only a passenger cruise liner but also a working ship that services each of the cities where it puts into port every day. This will give us the opportunity to get a first-hand look at Norwegian life along the coast and enjoy the ambiance

and cuisine of each location, which is unique to that city. We are hoping to get local Norwegian attorneys to visit our group as we travel north to enlighten us about the structure and operation of the Norwegian legal system.

Lee E. "Pete" Muschott

THE VERDICT FORM: TIPS FOR TRIAL COUNSEL

by Cristina Alonso, B.C.S.
Board Certified in Appellate Practice
Alonso | Appeals

The instructions to the jury provide the necessary framework for the verdict form. The verdict form, in turn, formalizes the jury's determination of the case and how it will answer the claims and defenses at issue. Its structure and language could influence the jury's ultimate answers. It may also control what issues may be raised on appeal. Needless to say, it should be carefully crafted, and trial counsel should, if at all possible, consult with appellate counsel in doing so.

It goes without saying that the verdict form should include every claim and every defense. Otherwise, the omitted claim or defense may be deemed to have been waived.



CRISTINA ALONSO

The most difficult tactical decision, from both a trial and appellate standpoint, is how detailed the verdict form

should be. There are pros and cons of a detailed verdict form, and there is no right answer for all cases. In considering this issue, however, you should always take into account the two-issue rule, under which Florida appellate courts will not grant a new trial if the jury rendered a general verdict and there is no error on at least one of the theories on which the jury is instructed. See *Colonial Stores, Inc. v. Scarborough*, 355 So. 2d 1181 (Fla. 1977).

But be mindful this may not be the same rule in other forums or in federal court. The Eleventh Circuit has held, for example, that the defendant

See "Tips for Trial Counsel" page 13

The Florida Law Practice LINK is prepared and published by The Florida Bar Solo & Small Firm Section.

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MAKING MEANINGFUL LIFESTYLE CHANGES

by Eileen Orr, Isagenix International, LLC

A lot has been written over the years about health and wellness and our profession. There is an abundance of incredible resources being put out by The Florida Bar and the American Bar Association in light of recent studies and surveys of our peers. Nonetheless, the vast majority of us still seem to struggle with making meaningful change to positively affect our health and well-being. Remember those New Year Resolutions we all set at the first of the year? According to U.S. News & World Report, 80 percent of those fail by February and only 8 percent will be achieved. So, what's the issue?

I credit myself as a “self-help junky” and “health and wellness advocate.” Neither of these is an official title, so when preparing to write this piece, I wondered what I might have to add to the health and wellness discussion. But through my personal experiences and speaking intimately about this topic with a great number of people, I began to discover a reoccurring theme: Chronic overwhelm associated with making meaningful lifestyle changes. Can you relate?

The responsibility and time devoted to building a solo or small firm practice can result in a very full plate all on its own. Then when we factor in our responsibilities outside of our work, we start creeping up on a state that my husband and I call “survival mode.” No one is living their best life in “survival mode.” We become aware a lifestyle change is necessary, so now we task ourselves with the challenge of starting a new workout routine, changing our diet and nutrition, implementing a time blocking system, finding time to meditate, engage in self-care, and/or simply getting outdoors to unplug, and now we are truly overwhelmed. These desired lifestyle changes simply become another unsustainable “to do” on an ever-growing list. Our best made plans and good intentions often result in burnout and our new goals fall by the wayside.

A few years ago, I came across two questions that have changed the trajectory of



EILEEN ORR

my life and the way I goal plan:

- 1) What will matter to you when you are 80? And,
- 2) What won't matter to you when you are 80?

The answers to these questions became the key to setting achievable and sustainable goals and reducing sources of overwhelm. I recently read an article written by a hospice worker regarding the nine most common regrets people have at the end of life. To give you an idea of how powerful a tool these two questions can be, here is a list of those common regrets. People most wish they had:

- 1) been more loving to the people who matter most;
- 2) been a better spouse, parent, or child;
- 3) not spent so much time working;
- 4) taken more risks;
- 5) been happier and really enjoyed life more;
- 6) lived out their own dream;
- 7) taken better care of themselves;
- 8) done more for others; and /or
- 9) chosen work that was meaningful.

It is so insightful to consider that these seemingly simple things are what truly matter to most people when all is said and done.

Now, think back to a time when you set out to change your routine, create a new habit, or achieve a new goal. Did you ever stop to consider why this new goal really

matters to you or whether it somehow (big or small) contributes to your big picture vision? The truth is goals are rarely achievable or sustainable unless we tie them back to a very strong and personal “why.” It is so critical to know where you are going and to paint a very vivid picture of the life you desire. We must remember to ask ourselves:

What am I trying to achieve by taking on this task or lifestyle change?

Who am I trying to become?

How does this fit in with my big picture goal and the overall vision I have for my life?

This form of intentional goal planning has been the great and powerful motivator for the majority of people whom I have consulted. The additional beauty of this method is that creating meaningful change does not necessarily mean adding tasks to your already busy schedule. Once you identify what matters uniquely to you, you also become crystal clear about the energy you currently exhaust on things that do not matter at all. You begin to give yourself permission to eliminate those things which do not serve your vision. It is possible to simplify your life and seek out only the things that bring you real joy and purpose. Remember, you should not attempt to overhaul your whole life at once. Little by little progress is still progress. Growing slow and with intention will help you to avoid those common feelings of overwhelm and burnout. Live well friends!

Eileen Orr has been a member of The Florida Bar since 2007. After a short career as a construction litigation attorney in Jacksonville, Florida, she took a hiatus from the practice of law to raise her three young boys and a baby girl. She has spent the last two years as a Health and Wellness Advocate and Nutrition Consultant for Isagenix International, LLC. She especially enjoys leading an online community of women driven in the desire to design a life of abundance in mind, body, and soul in an effort to live in a state of Sheer Bliss.

PARTITIONING OUT ATTORNEYS' FEES REAL PROPERTY

by Jami Coleman, Esq., Williams & Coleman P.A., Tallahassee, Florida

Florida courts followed the “American Rule” that attorneys’ fees may be awarded by a court only when authorized by statute, by agreement of the parties, and by court order. *See Florida Patient’s Compensation Fund v. Rowe*, 472 So. 2d 1145, 1148 (Fla. 1985), modified, *Standard Guar. Ins. Co. v. Quanstrom*, 555 So. 2d 828 (Fla. 1990) and *Moakley v. Smallwood*, 826 So. 2d 221 (Fla. 2002).

Under Rule 1.525, Fla.R.Civ.P., “[a]ny party seeking a judgment taxing costs, attorneys’ fees, or both shall serve a motion no later than 30 days after filing of the judgment, including a judgment of dismissal, or the service of a notice of voluntary dismissal.” Additionally, the 30-day time requirement under Rule 1.525, Fla. R. Civ. P., does not apply when the trial court has already determined entitlement to attorneys’ fees and costs and only reserves jurisdiction to determine the amount. *See AmerUs Life Ins. Co v. Lait*, 2 So.3d 203 (Fla. 2009). However, when it comes to partition actions, attorneys’ fees are governed under **section 64.081, Fla. Stat.** and Rule 1.525, Fla. R. Civ. P., applies.

When joint owners of property cannot agree on the disposition or management of the property, and the parties cannot negotiate a resolution, then Florida Statutes Chapter 64 allows for a remedy, a partition action. A partition action is a cause of action filed by one or more co-owners against other co-owner(s). The action is grounded and guided in equitable principles. From determining whether the property should be divided in-kind or by sale to determining who is entitled to receive attorneys’ fees and who pays for costs and fees. Unlike the traditional “prevailing party” standard for attorneys’



JAMI COLEMAN

fees, section 64.081, Fla. Stat., provides that every party shall be bound by the judgment to pay a share of the costs, including attorneys’ fees to the plaintiff’s or defendant’s attorneys or to each of them commensurate with their services rendered and their benefit of the partition. In other words, every party in a partition action must pay a share of the total costs of the action, including a portion of the other party’s attorneys’ fees, and may even have to pay for the services of all attorneys involved in the partition action. The court awards attorneys’ fees for the services of each attorney based on the services the attorney performed and the benefits gained from the attorney’s skills and labor in pursuing the partition action. *See Robinson v. Barr*, 133 So.3d 599,600 (Fla. 2nd DCA 2014).

The court makes this determination based on equitable principles and the party’s proportional interest in the property that is at issue. So plaintiff’s and defendant’s counsel alike could recover attorneys’ fees, and each party is responsible for paying their proportional share. In fact, it is error for a trial court to assign responsibility for attorneys’ fees and costs to only one

party because **section 64.081, Fla. Stat.**, requires each party to share the costs and, that fees and costs be apportioned so that the greater burden would fall on the party with the majority interest in the property. *See Deshommes v. Bazin*, 421 So.2d 806 (Fla. 3rd DCA 1982). But, when allocating attorney’s fees in a partition action, the trial court must take into account the services rendered, customary charges, and time consumed. *See Adler v. Schekter*, 197 So. 2d 46, 1967 (Fla. 3rd DCA 1967). In *Fernandez-Fox v. Reyes*, 79 So. 3d 895 (Fla. 5th DCA 2012), a co-owner was entitled to attorneys’ fees in a partition action because both the co-owner’s attorney and personal representative rendered services of benefit to the action. After an entry of partial summary judgment against the co-owner on her first three counts, all that was left at trial were monetary claims each side was making for maintenance and other expenses. The co-owner was successful in their monetary claims for reimbursement for maintenance and other expenses, and both parties agreed partition was appropriate. Therefore, both the co-owner’s attorney and the personal representative rendered services of benefit to the partition. The personal representative would have provided greater services because he had to defend and overcome the co-owner’s first three counts to even get the case into partition posture, but that fact did not preclude the co-owner’s attorney from receiving some award of fees under **section 64.081, Fla. Stat.** (2010).

Although chapter 64 governs attorneys’ fees in partition actions, providing that every party share in the costs and fees and permitting both plaintiff’s

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ATTORNEYS' FEES

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and defendant's counsel to recover under certain conditions, it is important to keep in mind that other procedural and judicial rules will also apply. Rule 1.52, Fla.R.Civ.P., still requires the parties to serve their motion's for attorney's fees within thirty (30) days of the final judgment of the partition action, and under 1.090(b) Fla.R.Civ.P., a party can enlarge the time for filing their 1.525 motion. See *Svoboda v. Bay-er Corp.*, 946 So.2d 1204 (Fla. 5th DCA 2006). Similarly, Rule 2.514, Fla. R. Jud. Admin, or the mailbox rule, may also provide an additional five days to serve a motion under Rule 1.525, Fla.R.Civ.

Jami is a partner at Williams & Coleman, P.A. in Tallahassee, where she focuses her practice on estate planning, probate administration, real estate, business, and tax matters. She is graduate of FSU's College of Law, and in 2009, She earned her Masters of Law in Taxation from Georgetown University Law Center. In addition to her practice, Jami is an adjunct tax professor at Florida A&M University School of Business where she teaches corporate and federal income tax to undergraduate students. She volunteers with Legal Services of North Florida, Legal Aid Foundation, and FSU Veterans Clinic where she assists low income taxpayers in resolving disputes with the IRS as well as other civil matters. She is a past president of the Legal Aid Foundation of Tallahassee, sits on the

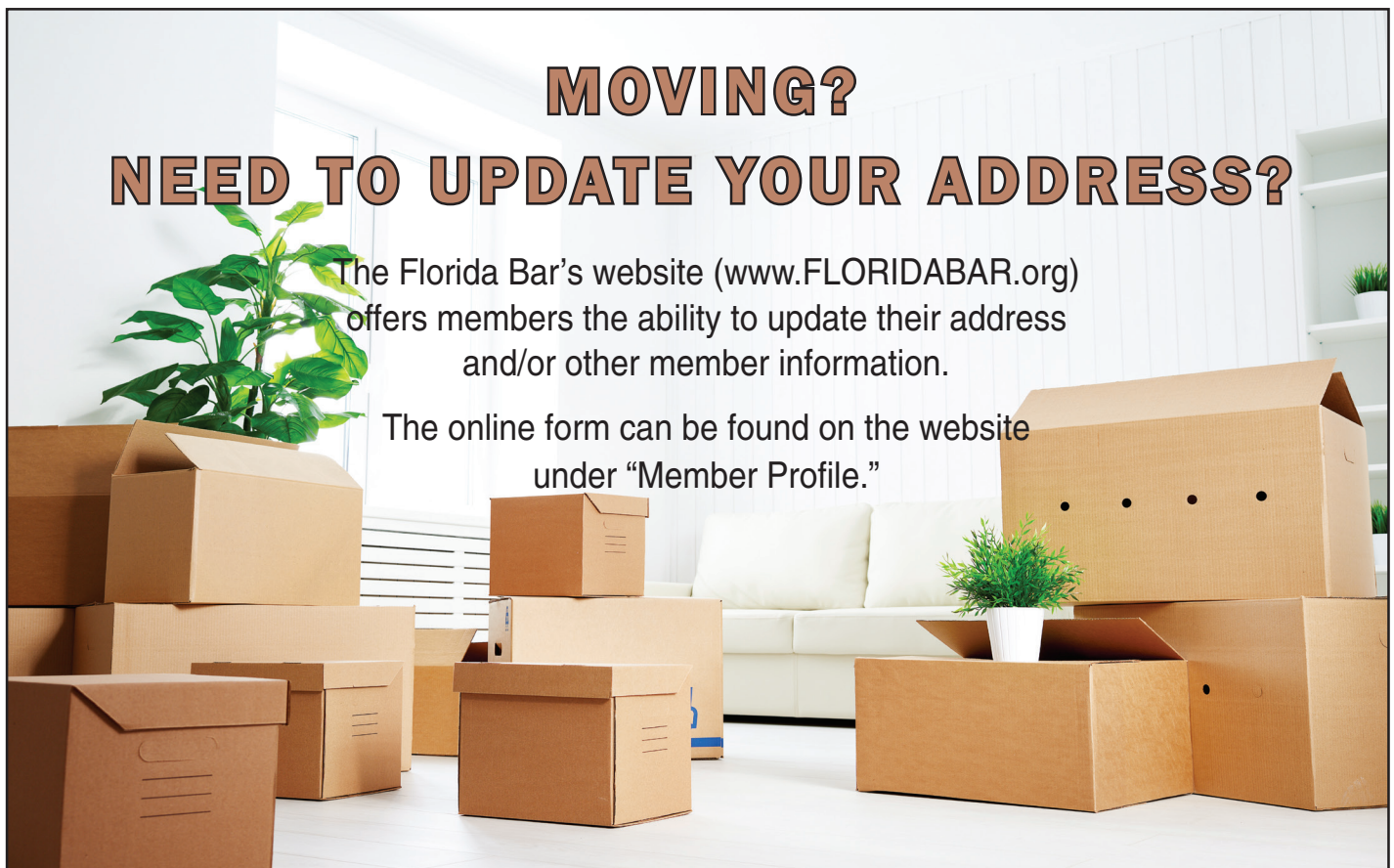
Board of the Tallahassee Bar Association, the board of the LeMoyne Art Center, as well as other non-profits. Jami is a Class III fellow of the Wm. Reece Smith Florida Bar Leadership Academy and a fellow of the RPPTL Section of The Florida Bar. Jami is recognized as a 2017 and 2018 Rising Star with Florida Super Lawyers, was awarded the Tallahassee Bar Association's 2017 Thomas M. Ervin, Jr. Distinguished Young Lawyer Award, and the 2016 Nation's Best Advocate Under 40 by the National Bar Association. She was the cover and featured story in the Fall 2016 Tallahassee Women Magazine and recently featured in the FSU College of Law Alumni Magazine. But Jami's most notable accomplishments are her three beautiful children.



MOVING? NEED TO UPDATE YOUR ADDRESS?

The Florida Bar's website (www.FLORIDABAR.org) offers members the ability to update their address and/or other member information.

The online form can be found on the website under "Member Profile."



UPCOMING CLE'S 2019-2020

2019

September 17 Audio Webcast 12 to 1 PM, 1.0 Ethics or General credit

"Malpractice Pitfalls for Solo & Small Firms" by FLMIC President/CEO, William Loucks

Statistics show that solo and small firm attorneys generate more malpractice claims than their larger brethren, so awareness of the pitfalls and prevention is crucial. William Loucks, President/CEO of Florida Lawyers Mutual Insurance Company, will share info on tips solo and smaller firms can build into their practices to avoid malpractice claims.

September 25 Zoom Webinar 12 to 1 PM, 1.0 credit

"Wednesday Wisdom: Paralegals and Lawyers – A Critical Partnership for Pretrial Litigation" by Priscilla Horn Warren, Florida Registered Paralegal and Jennifer Dietz, Attorney

This presentation is a comprehensive review of the documents and information needed at the commencement of a pre-suit or litigation matter. Many forms have been included to assist the solo or small firm attorney and paralegal in order to provide excellent representation to the client. The wealth of information contained in this material is invaluable, and fully explores the teamwork between the attorney and paralegal.

October 4 Live Seminar 8 AM to 1 PM, 5.5 credits General, or 5.5 credits State & Federal Government & Administrative Practice and 1.0 credit Ethics

"Agricultural Law Update 2019" at Florida Farm Bureau, Gainesville; Professor Mike Olexa and Sidney Ansbacher, Program Co-Chairs

- Update: Employment Laws Affecting Farm Operations - Christine D. Hanley
 - Crop Insurance Update - Chad Marzen
 - Water Management District Update - Irene Kennedy Quincey
 - Marijuana Agricultural Update: Ethics and Law - Tara Tedrow
 - Agricultural Policy Legislative Update: State - Adam Basford
 - Agricultural Policy Legislative Update: Federal - John-Walt Boatright
-

October 15 Audio Webcast 12 to 1 PM, 1.0 credit

"Hidden Immigration Law Implications that Solo & Small Practices Need to be Aware of," by Patricia Hernandez and Nora Rotella of Rotella & Hernandez

In today's constantly changing climate, more and more we find that to best serve our clients we need to be able to spot issues that may arise from a client's immigration status. This seminar will help you spot the hidden immigration law issues in traffic, criminal and family law cases. Additionally, this seminar will provide you with tips on how to make strategic alliances with immigration practitioners so they can be a resource for your practice.

October 23 Zoom Webinar 12 to 1 PM, 1.0 credit

"Wednesday Wisdom: A Lawyer's Guide to Creating a Life, Not Just a Living: Unique Opportunities for Small Firm Lawyers" by Josh Hertz and Paula Black

This webinar will discuss ideas dealing with happiness in solo and smaller firm practices which is the foundation of mental health and well-being. Topics to be discussed include how to successfully run your firm and to develop business that fits into your lifestyle while making you happy as you help others.

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October 31 Webcast and Live Seminar, 8 AM to 12:30 PM, 4.0 credits Ethics, 1.0 credit Professionalism
"Annual Ethics Update: Building a Gold Standard Reputation—The Ethics of Practicing Law" at Tampa Hilton Westshore; Peggy Hoyt, Program Chair

- Ethically Speaking, It's Your Reputation; Imposter Syndrome and Sexual Harassment – Melanie Griffin
- Etiquette for the Courtroom: Ethical and Practical Tips in a Digital World – Jennifer Kuyrkendall Griffin, Peggy Hoyt and Melanie Griffin
- Professionalism: The Cornerstone of Your Reputation – Caroline Johnson Levine
- Cyber Security – How to Ethically Protect Yourself and Your Firm – Angel R. Rojas, Jr. (DataCorps)
- An Update on the Unauthorized Practice of Law – Ghunise Coaxum

November 1 Live Seminar, 5 to 5:50 PM, 1.0 credit

"Basics of Sovereign Immunity Litigation under F.S. §768.28" at Le Meridien in Tampa, by Lee E. "Pete" Muschott, Section Chair

This CLE will provide the foundation for prosecuting claims against governmental entities or defending those entities against claims for negligence.

November 6 Zoom Webinar 12 to 1 PM, 1.0 credit

"Wednesday Wisdom: Tips for Preparing Jury Instructions and Verdict Forms"

Jury instructions and the verdict form are the keys a jury needs to unlock the proper analysis of the evidence and argument at trial, rendering them a critical aspect of any successful trial strategy. This presentation will address best practices in drafting the instructions and verdict form, how to prepare for the jury charge conference, and tips when objecting to instructions and modifying instructions with an aim toward preservation of error for appellate review.

December 10 Audio Webcast 12 to 1 PM, 1.0 credit

"Transitioning from Government to Private/Solo Practice," by Sean Desmond and John Maceluch

"So I know how to litigate a jury trial or take a case to DOAH, surely I can run a law firm, right?" Learn from the experiences of two former prosecutors who opened up a practice and learned the hard way about overhead, personnel issues, marketing, etc.

December 11 Zoom Webinar 12 to 1 PM, 1.0 credit

"Does the Practice of Law Need to Be This Stressful?" by Jamie Billotte Moses

What makes the practice of law so stressful? What are you doing or not doing that might be contributing to your stress? Are you making things more time consuming and frustrating than they need to be? Are you sabotaging your peace of mind? Jamie Moses, appellate specialist at Holland & Knight, will share with you some of her strategies for balancing work, raising children, and trying to be a contributing member of the community.

2020

February 7 Live Seminar/Solo Small Firm Conference 8:30 AM to 4:30 PM, 7.0 credits at the Hyatt Regency Orlando

"SOS: SECURE, OPTIMIZE, SYSTEMIZE. Survive—and Thrive—Strategies for Solos and Small Firms," Theresa Jean-Pierre Coy and Cristina Alonso, Co-Chairs

Feb 18, 2020, Audio Webcast 12 to 1 PM, 1.0 credit

"Best Practices under Fla Bar Rules for Sharing Fees Among Different Law Firms," by Kristy Johnson and Jason Alderman

Solo & Small Firm Section 2019 Awards



Renee Thompson; Zack Zuroweste, Judge Walter S. Crumbley Award winner; Melanie S. Griffin, Mentor of the Year Award winner; and 2018-2019 Section Chair Jennifer Kuyrkendall Griffin.



2019-2020 Section Chair Pete Muschott; Jennifer Kuyrkendall Griffin; Eugene Pettis, Tradition of Excellence Award winner; and Renee Thompson, who presented the award.



Jacina Haston presented the Judge Walter S. Crumbley Award to Zack Zuroweste.



Priscilla Horn Warren, CP, FRP, presented the Paralegal of the Year Award to Jennifer Heape.



L. Michael Roffino Pro Bono Award winner Legal Aid Foundation of Tallahassee received \$4,000 in recognition of its Promise Zone program. Pro Bono Awards Committee Chair Jerry Currington is pictured with LAF Executive Director Carrie Litherland, Jennifer Kuyrkendall Griffin and Pete Muschott.

Community Law Program's Best Case Bankruptcy Software Project was honored as a runner-up for the L. Michael Roffino Award.



Dade Legal Aid & Put Something Back for its Patent Pro Bono Florida program also was honored as a Roffino Award runner-up.

FREE PROFESSIONALISM CLE AVAILABLE FOR VOLUNTARY BAR ASSOCIATIONS



The Solo & Small Firm Section is offering a one-hour professionalism CLE course at no charge to voluntary bar associations. “**This Really Happened: Taking the High Road of Civility and Professionalism**” discusses actual examples of unprofessional and uncivil conduct that have occurred in the everyday practice of law, identifies potential rule violations and suggests possible ways to handle or remedy the situations.

The course is presented by Jacina Haston, former Director of The Florida Bar Henry Latimer Center for Professionalism, and General Magistrate Jennifer Kuyrkendall Griffin, 2018-2019 Chair of the Solo & Small Firm Section. Approved for 1.0 Professionalism

CLE credit. The CLE package includes a PowerPoint and CD. If your bar association would like to reserve the CLE, please contact Solo & Small Firm Section Program Administrator Ricky Libbert at rllibbert@floridabar.org.



MEMBER SPOTLIGHT

Solo &
Small
Firm
Section
of THE FLORIDA BAR

The Solo & Small Firm Section member spotlight reaches 1,800+ section members PLUS hundreds more on Facebook and Twitter. What are you waiting for?

Volunteer today.

Please email rllibbert@floridabar.org to volunteer.

PARALEGAL CORNER

News for Paralegals to Use...

by Priscilla Horn Warren, CP, FRP

Welcome to the Paralegal Corner, where you can find breaking news and other useful items (including website link information) pertaining to our profession.

For many years the Solo and Small Firm Section has been presenting awards to various members of The Florida Bar in recognition of their legal and professional service. In 2015, our Section added an award to be given to our affiliate paralegal members. This prestigious award recognizes one outstanding Florida paralegal for demonstrating exceptional efforts in achieving a high standard of professionalism in the delivery of paralegal services, and who has also contributed significantly to the community and his or her law firm. This year's Paralegal of the Year award was presented by the SSF Section on June 28, 2019, at The Florida Bar's Annual Convention at the Boca Raton Resort & Club, to Jennifer M. Heape, CP, FRP, a personal injury trial paralegal for the senior partner at Spohrer & Dodd in Jacksonville, FL, handling complex personal injury cases including aviation crashes. Jennifer is also the current Treasurer for the Paralegal Association of Florida, Inc.

SAVE THE DATE: The Solo and Small Firm Section is putting together the roster for its annual conference, to be held in February 2020. Technology CLE credits will be available; please go to our [website](#) for more information.



PRISCILLA HORN WARREN

AND:

The Paralegal Association of Florida, Inc. has finalized its agenda for their PAF Fall Seminar to be held September 26-28, 2019, at Safety Harbor Resort & Spa, Florida. (Seminar volunteers are needed; please check the PAF website for more information.) Mark your calendar to attend this one.

If you are not an affiliate member of the Solo and Small Firm Section, what are you waiting for? Just download the online form today and send it in. Affiliate memberships are only \$40 per year. Multiple benefits are available to our members and affiliate members, as detailed in our new [website](#). Becoming an affiliate member of the SSF Section might be one of the best personal and professional decisions you will make for your paralegal career to flourish and prosper.

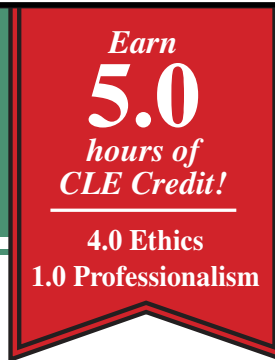
Several paralegals have asked about the requirements for obtaining the Florida Registered Paralegal designation. This is a separate paralegal membership opportunity, and for more information on attaining the FRP designation with The Florida Bar, please go to their main [website](#) and click on the Florida Registered Paralegal tab.

If you or your employer need more information on NALA, the nationwide paralegal association, and/or wish to obtain your national Certified Paralegal designation, kindly visit the NALA [website](#) for membership requirements and continuing education opportunities that are available online.

In closing, the Solo and Small Firm Section has a new vendor member: Law Office Support Services, represented by Margo Valenti and Karen Blakely (and the organization is also listed as a member benefit for The Florida Bar members and affiliate members). Law Office Support Services is a monthly subscription service that provides qualified virtual paralegals and legal assistants to meet the growing needs of today's solo practitioners and small law firms. Law Office Support Services was an exhibitor at the Florida Bar's Annual Convention, and more information can be obtained by visiting their [website](#).

Please do not hesitate to contact me with any questions or concerns. My direct email is: pris2323@yahoo.com.





The Florida Bar Continuing Legal Education Committee and the
Solo & Small Firm Section present



Annual Ethics Update 2019: Building a Gold Standard Reputation - The Ethics of Practicing Law

The 2019 Annual Ethics Update will focus on Building a Gold Standard Reputation. As members of The Florida Bar, our reputation, ethics and standing in the community should be impeccable. Our presenters will focus on professionalism, courtroom etiquette, cyber security in a changing world, sexual harassment and the unauthorized practice of law.

Course No. 3477 • Intermediate Level
Live and Webcast Presentation

October 31, 2019
Hilton Tampa Airport Westshore (Tampa)
2225 North Lois Avenue
Tampa, Florida 33607

To register, log into The Florida Bar Members Portal at
www.member.floridabar.org, click on CLE SEARCH
and search for the desired course number.

TIPS FOR TRIAL COUNSEL

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is entitled to a new trial if the jury renders a general verdict that could be based on several possible grounds, one of which cannot support the verdict. See *Grant v. Preferred Research*, 885 F.2d 795 (11th Cir. 1989). On the other hand, that court also has held that a defendant only is entitled to judgment as a matter of law if each possible ground for the general verdict is shown to be legally insufficient. *Maiz v. Virani*, 253 F.3d 641 (11th Cir. 2001).

If there are defects or inconsistencies in the jury's findings when the verdict is actually rendered, [(i.e., a particular question is not answered or not answered clearly, calculations do not add up or do not make sense (e.g., future and net present value damages are the same number), or findings are legally inconsistent)], you must consider whether to object and raise your concern before the jury is discharged. This is a tough judgment call that unfortunately must be made instantly.

On the one hand, failure to raise an inconsistency in the jury's verdict usually will waive any challenge on appeal. See *Pierce v. Southern Pacific Transp. Co.*, 823 F.2d 1366, 1370 (9th Cir. 1987); *Coralluzzo v. Education Mgmt. Corp.*, 86 F.3d 185, 186 (11th Cir. 1996) ("This

Court has repeatedly held that all challenges to the inconsistency of special verdicts must be raised before the jury is excused"); *but cf. Heno v. Sprint/United Mgmt. Co.*, 208 F.3d 847, 851 (10th Cir. 2000) ("when the verdicts are special verdicts a party is not required to object to the inconsistency before the jury is discharged in order to preserve that issue for a subsequent motion before the district court"); *U.S. E.E.O.C. v. Massey Yardley Chrysler Plymouth, Inc.*, 117 F.3d 1244, 1251 (11th Cir. 1997) (party waived contention that jury verdict was inconsistent by failing to move post-verdict for new trial or for further jury deliberation). As the court explained in *Progressive Select Ins. Co., Inc. v. Lorenzo*, 49 So. 3d 272 (Fla. 4th DCA 2010):

[L]ooking back over almost eighty years of Florida case law reveals a consistent goal of ensuring that 'the intent of the jury in rendering the verdict may fairly and with certainty be gleaned from the words used....' To that end, Florida courts have required any objection to the form of the verdict to be made before the discharge of the jury to allow correction of a correctable error. When that verdict is rendered and 'no objection appears to have been made to the form of verdict when the same was presented to the court, the form thereof was waived.' (Internal citations omitted).

On the other hand, if you do raise

the inconsistency before the jury is discharged, the jury obviously may resolve it against you. Then, you will have not only lost at trial, you will have lost any inconsistency argument for appeal, unless you can tie the original inconsistency into some defect in the instructions or verdict form and argue that a mistrial was required. The right answer may never be known, and it usually will not be known at the time the trial decision has to be made.

Lastly, you may want to get on the record the length of the jury deliberations. You certainly want to get on the record any questions that the jury asks about the verdict form and the jury instructions (or otherwise) and be sure that the jury's note is placed in the record.

Cristina Alonso of *Alonso | Appeals* is Board Certified in Appellate Practice by The Florida Bar. She was recognized as the "The Most Effective Lawyer" in Appellate Practice of 2014 in Miami-Dade, Broward and Palm Beach counties by the *Daily Business Review*. She has handled over 100 appellate matters, including matters before the Supreme Court of the United States, the United States Court of Appeals for the Eleventh Circuit, the Florida Supreme Court, and all Florida district courts of appeal, among other courts. She can be reached at alonso@alonsoappeals.com and you can find her blog at www.alonsoappeals.com/blog.



FLORIDA SMALL-FIRM PRACTICE TOOLS

1st Edition

BY STEVEN F. SAMILOW

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