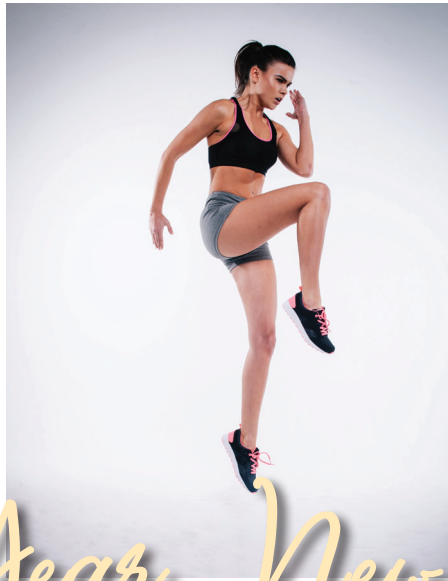
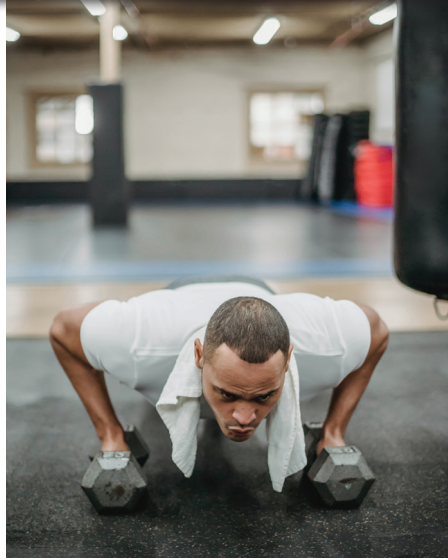


# THE DOCKET



JANUARY 2022



*New Year, New Goals*



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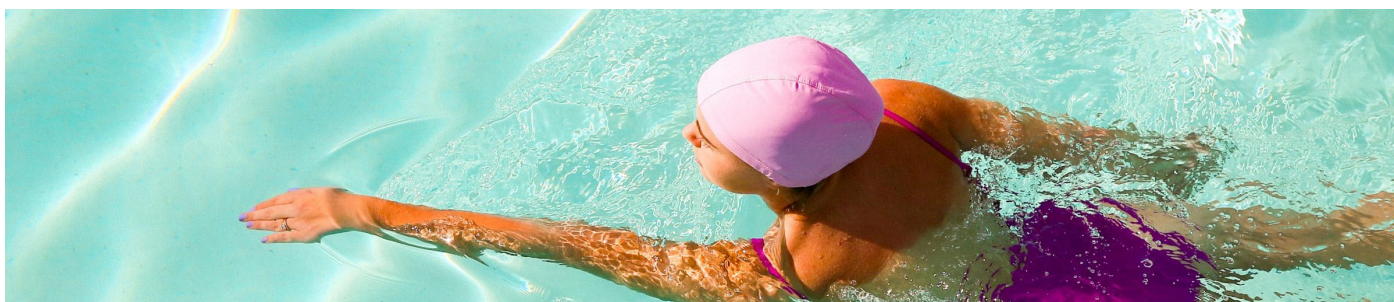
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**One survey found that in 2021, 91% of Americans with New Year's resolutions made one related to fitness. Here are some tips for a healthy and safe New Year from the CDC:**

- > Sleep - Adults need at least 7 hours of sleep per night.
- > Make Time to Unwind - For stress relief, take deep breaths, stretch, or do an activity you enjoy.
- > Connect with Others - Talk with people you trust about how you're feeling and express gratitude.
- > Eat Healthy - Reach for healthy options like fruits and vegetables instead of salty or sugary treats.
- > Move More, Sit Less - Get at least 150 minutes of moderate-intensity aerobic activity every week.
- > Rethink Your Drink - Substitute water for sugary or alcoholic drinks to reduce calories.
- > Don't Use Tobacco - You can quit today! Call 1-800-QUIT-NOW for free support.
- > Be Sun Safe - Wear layered clothes and apply broad-spectrum sunscreen.
- > Brush Your Teeth - Brush twice a day with fluoride toothpaste.

# the docket

THE DOCKET is the official award-winning publication of the Sarasota County Bar Association.

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# New Year, New Opportunities to Serve

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by Dana Keane, Esq.  
*Keane & Keane*



Happy New Year to my fellow SCBA members! It's hard to believe we're already in 2022. 2021 just flew by. I hope you all had a lovely Thanksgiving, Christmas, Hanukkah, Kwanzaa, Festivus, or whatever you celebrate. We had a great turnout for the YLD Holiday Party, our first in-person event since the pandemic began. It feels so good to actually be able to see each other in person and not just as torsos on Zoom. While we will likely keep some meetings virtual going forward based on the feedback we're getting from our members, we will also be having some in-person events. We will be holding our Annual Awards Dinner belatedly on January 20th at Michael's on East. This will be a great night of recognizing our award recipients, honoring our outgoing board members, and enjoying each other's company. I hope to see a lot of you there.

With the New Year, many people are making resolutions to get healthier. One of the suggestions to make these resolutions stick is to have an accountability partner or a buddy to workout with and motivate one another. This glorious cool weather is the perfect time to grab a colleague and go for a lunchtime walk. Maybe you need to have a discussion with opposing counsel and could take that outside rather than just calling on the phone, geography permitting. There are some nonlawyer

co-workers in my building who take walks together every day. What a great opportunity to take a break from your screen, dingy e-mail, and constantly ringing telephone to get some fresh air, stretch your legs, and destress. I must confess, I'm not practicing what I'm preaching unless I bring my dog to the office with me or have to run to the Clerk's office, but I'm going to try to get out and get a few walks during the day to complement my morning workouts.

Following up on something I wrote in the November Docket, I want to encourage you all to make another New Year's resolution. Make a commitment to volunteer with Legal Aid of Manasota. No matter what your practice area, LAMS can use your talents and it doesn't have to be a commitment for a full case. You'd be surprised at what a difference you can make volunteering just a few hours a month. With billable hour requirements and demanding clients, I know it can be difficult to think about fitting pro bono work into your already busy schedule, but I think you'll find it tremendously fulfilling. I want to thank my fellow SCBA Board member, Ed Ford, for stepping up to help teach the Pro Se Divorce Clinics. Although Ed has no family law experience, he was up for the challenge and did a great job teaching his first clinic at the beginning of December.



I would love to see a few more attorneys step up to teach this clinic. It is a commitment of only 1-3 hours a month.

On January 17, we celebrate Martin Luther King, Jr. Day. This is the 37th year this federal holiday has been celebrated and it is a day to reflect on racial equality and the work remaining to achieve it. My Google search says that the theme for the 2022 MLK, Jr. Day is "It Starts with Me." One of the Sarasota County Bar's initiatives is working towards the goal of making the legal profession more diverse is the mentoring program at the Booker High School Law Academy, which is coordinated through our Council for Diversity and Inclusion. SCBA members are matched up with a student of the same gender for weekly one-hour mentoring sessions and, from my several years of participating in the program, I can attest that the mentors get as much, if not more, from the mentoring than the students do. Heck, I got a legal assistant out of the deal. My mentee graduated last year and started interning with me her senior year. She is now attending SCF in the paralegal program and working in my office part-time. There is a need for additional mentor attorneys, especially female mentors. If you have an interest in participating, please contact David Fugett, who is running the pipeline program, at [dfugett@ncf.edu](mailto:dfugett@ncf.edu).

If you can't tell, I have a passion for service. I hope I can inspire a few of you to take the plunge and volunteer. ✨

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# Focusing on the Who

by Patrick McArdle, Esq.  
*McArdle Law, P.A.*



As any trial lawyer knows, the quality of the question you ask determines the quality of the answer you will get. When it applies to doing work or making change, we often will default to “how” questions. “How am I going to meet my billable hour requirement?” “How am I going to write this brief?” “How am I going to cross examine this witness?” “How am I going to set up this event?”

While lying in bed with a head cold, I had the opportunity to read Who Not How: The Formula to Achieve Bigger Goals Through Accelerating Teamwork by Dan Sullivan and Dr. Benjamin Hardy. As the (somewhat hokey) title suggests, these co-authors suggest we focus on a different, more relationship-centric question that can move the needle in both work and personal spheres. Instead of asking how we can do something, they suggest this question: “Who is the best person (or who are the best people) who can help me accomplish this goal?” They focus on how to build a team.

The book itself is an example of that principle. Dan Sullivan spoke about the idea of “who not how” at a conference where Dr. Hardy heard him speak. Dan didn’t want to write a long form book, because his priority was on speaking and coaching. So, Dr. Hardy, who was a professional author, offered to write the book for him. Another person in their network joined with expertise in publishing and marketing the book. What could be viewed as an individual mission (“How do I write and publish a book?”)

formed into a team (“Who can help me write and publish a book about this idea?”).

I’ve begun asking this question, and it has certainly led to a wider range of solutions focused on the people in my life. “How can I get in better shape?” turns into “Who can help me get into better shape?” Thus, instead of researching workouts, I reach out to a recommended trainer to design workouts and keep me accountable. “How can I eat in a healthy way?” morphs into “Who can help me eat in a healthy way?” Again, this question redirects me from trying to research the optimal diet to instead find nutritionists who are experts in the field and can keep me accountable. I’ve found that this focus on reaching out for help from our relationships also makes life richer, because it makes us invest in what matters most: connection with friends, mentors, and our community.

Reflecting on their principle, a great example can be seen in the Young Lawyers Division’s most recent event. The YLD hosted the Sarasota County Bar Association’s Annual Holiday Party at the Sarasota Yacht Club. Instead of asking “How do we raise the money for sponsorships to cover the venue and have an awesome event?” the better question was “Who are the best people to go out and secure sponsorship money?” That turned out to be Warren Chin and the rest of the YLD’s sponsorship committee members Rian Davis, Michael Cowgill, Mallory Moretti, Natasha Selvaraj, Conrado Gomez, and Jill Bowen. Thank you all!



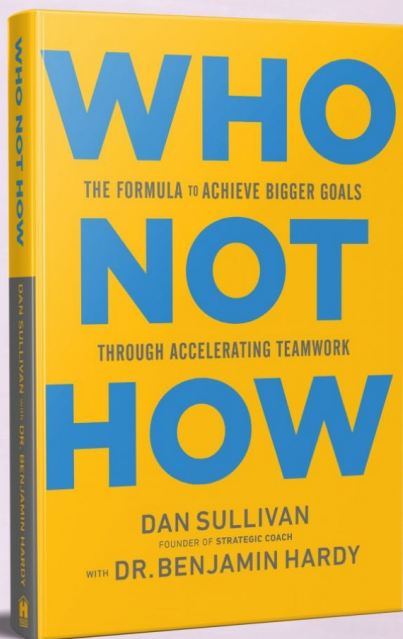
When the Sponsorship Committee asked who could help us put on an amazing holiday party, they found many generous firms and organizations that support us again and again. Community Foundation of Sarasota County and SouthState stepped up as our Annual Sponsors. Hutton & Dominko and MCT Law were our Platinum sponsors. Our Gold Sponsors were Eastmoore, Crauwels, and DuBose; Berlin Patten Ebling; Icard Merrill; Synovus; and MRI Associates. Finally, our Silver Sponsors were Bentley Goodrich Kison; Chapman Law; Shutts; and Symbiont Service Corp. It was all about who, not about how.

Even with a cap of 100 people, we had an amazing time! Again, it was more about the who than the how. Seeing judges and attorneys celebrating together in person was something we are all grateful to see again. I'm very excited for 2022, and all the amazing connections we can make to build amazing teams and a thriving community. ✨



**Co-Authors Dan Sullivan and Dr. Benjamin Hardy:**

*Who Not How: The Formula to Achieve Bigger Goals Through Accelerating Teamwork*



*"That's what real leadership is: Creating and clarifying the vision (the "what"), and giving that vision greater context and importance (the "why") for all Whos involved."*

— Dan Sullivan

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# South County Events Past and Future

by Pat Reilly, Esq.  
*Snyder and Reilly*



Greetings and belated Happy Holidays from South County! We hope that everyone had a safe and enjoyable time with family and friends. If you haven't seen downtown Venice during the holidays, trust me, it is worth the trip. The lights on Venice Avenue are absolutely beautiful. Now it's time to move on to 2022, which has to be better than 2021, right?

At our November board meeting, Evelyn Moya of Cenacle Legal Services made a presentation to the board concerning the need for assistance in South County. Not surprisingly, each of the board members volunteered to provide assistance as needed.

The South County Division hosted the annual Christmas party at the R L Anderson facility on Friday, December 3. It was really nice to see one another face-to-face after the year plus ban on in-person gatherings. In 2020, we were only able to provide box lunches for the courthouse staff, but this year we were able to join them in the celebration. The event is funded by the generous donations of many of the lawyers and firms in South County, and once again this year we collected toys, clothing, and other items for The Twig, which provides services for the foster care community. The items collected will be available for Shopping Days when children in foster care are able to come to the facility and shop for free. Nicole Britton, the director of development for The Twig, was on hand to accept the donated items, and to tell us a little bit about what the Twig does. She invited us to come to one of the Shopping Days to see how much it means to the children.

Also joining us for the Christmas party as our honored guests were Judge Hunter Carroll, Judge Stephen Walker, Judge Maria Ruhl, Judge Dana Moss, and Magistrate Matt Peters. Various employees of the Sarasota County Sheriff's Office, the Clerk's office and others were in attendance. A big thank you to all who make the party possible each year with their generous donations, and especially to Jackie Mack for decorating the courtroom and Erin Itts for getting the box lunches.



Judge Hunter Carroll, Judge Dana Moss, SCD President Pat Reilly, Judge Maria Ruhl, and Judge Stephen Walker

Now that 2021 is over, we can look forward to upcoming events in South County, which we were unable to hold in 2021. The Train Station Wine social will be coupled with the Kickoff Dinner and will be held on February 18, 2022. We have been fortunate that for many years, Skip Berg has taken responsibility for putting on the event, but unfortunately, he has told us that this will be his last year. His shoes are tough to fill, but Kelley Corbridge and Dawn Bates-Buchanan have stepped up, at least for this year, and hopefully for many more, to organize and hold the event. Many North County lawyers have attended the event in years past, and we welcome them again this year. Because of the popularity of the event, tickets go fast, so don't wait.

Another popular event for both South County and North County has been the Sporting Clays outing, which this year is scheduled for March 4. It is held at the Sarasota Gun Club in Nokomis. It is usually attended by more than 150 people and is one of our most popular events. The fee includes lunch, a shotgun if you don't have your own, and all the ammo you need for a fun time. The facility also provides golf carts to travel to the different stations. Whether it is your first time attending the event, or you are a veteran of past events, it is a great time. It doesn't matter if you have never done it before. The staff at the facility is very friendly and willing to provide guidance and coaching should you need it. Please join us for this much anticipated event! ✂



> **SIGN UP NOW**  
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More details on **page 20!**

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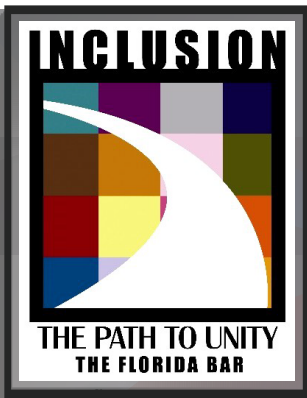
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# Path to Unity LUNCHEON

February 7, 2022  
11:30 am - 1:30 pm  
Michael's on East

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SCRUMPTIOUS  
lunch

DELIGHTFUL  
music

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# 2022 Starts Strong for the CDI

by Ilyas Sayeg, Esq.

*Maglio Christopher & Toale, P.A.*



Happy New Year! I hope the holiday season was full of love and joy for each of you and your families. 2021 was a big year for the SCBA's Council for Diversity and Inclusion (CDI). We finalized our transition from the legacy "Diversity Committee" to our current form as the Council for Diversity and Inclusion.

The change is not simply nomenclature. It is an intentional elevation of the legacy committee to something more. As a committee, we were a group of dedicated individuals within the SCBA who were interested in promoting diversity and inclusion. The elevation to council ensures that the mission of the CDI is now baked into the DNA of the SCBA as a whole. We serve the entirety of the SCBA now, and look forward to partnering with each section, division, and committee as we move into this new year. We hope to build upon the monumental work done by our predecessors, including, of course, the creation of the Richard Garland Diversity Scholarship, and more recently the Endowed Fund in support of the scholarship.

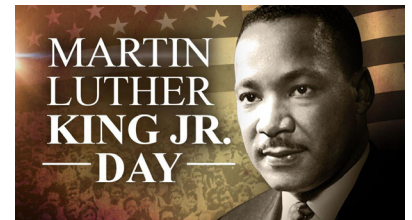
As we kick off 2022, the CDI calendar starts strong. We begin on January 17 for a celebration of MLK Day at First United Methodist Church. Then on January 25 we will have an important Town Hall to discuss voting laws. On February 7, we will be holding our biggest event of the year, the Path to Unity Luncheon, at Michael's on East. Below is a quick description of each event. We hope you will join us! If you have any questions about how to participate, please feel free to email me directly at [isayeg@mctlaw.com](mailto:isayeg@mctlaw.com).

## **January 17, 2022 - Celebration of MLK Day**

**Exact time TBD**

**First United Methodist Church, 104 S. Pineapple Ave, Sarasota**

The CDI is proud to celebrate Martin Luther King Jr.'s impact on our community. Join us as we look forward to exciting performances from Westcoast Black Theatre Troupe. Additionally, we will announce the winners of our annual High School MLK Essay contests, with the winning students reading their essays live. Every year, hearing these students read their moving essays energizes me to continue working to reach these kids. I know each of you will be as moved as I have been and welcome you to join me on January 17.



## **January 25, 2022 - Our first Town Hall of the new year!**

**Tentatively Planned / Noon-1:00pm / Zoom**

If you have not attended one of our online town halls yet, you've been missing out. On this great panel, we will hear from the Supervisors of Elections for both Manatee and Sarasota Counties, as well as the League of Women Voters. We will discuss changes to voting laws and precincts. This discussion will be held on Zoom, and registration instructions will be provided to the membership.

**February 7, 2022 - Path to Unity Luncheon**  
**11:30am – 1:00pm / Michael's on East**

The CDI proudly presents its biggest fundraiser event of the year: The Path to Unity Luncheon. This luncheon builds upon a statewide program put together by the Florida Bar. The Path to Unity commemorates five legends in our state who have helped pave the Path to Unity: James Wheldon Johnson, Anna Brenner Meyers, James Kracht, Larry Smith, and the Hon. Mario Goderich. Commissioned portraits of these legends are traveling the state and will arrive in Sarasota County at this event, to be temporarily displayed in our courthouse afterwards. We expect a packed house for this one, including the president and/or president elect of the Florida Bar as well as at least one of the two living legends honored in the program. Join us as the SCBA celebrates these legends, as we also pay tribute to the founding members of the SCBA's legacy Diversity Committee. Get your tickets early, as seats are limited, and this event will sell out.

The CDI is honored to serve the membership of the SCBA, and we look forward to seeing you all at each of these events! ✂



# Will Search



Last Will & Testament of Ellen Sue (Haag) Givens; DOD October 26, 2021; Last Known Address: 5824 21st West, Bradenton, Manatee County, FL 34207. Contact Cathryn Girard, Esq. at [cegirard@aol.com](mailto:cegirard@aol.com) or 941-371-0532.

Charitable Trust dated 10/31/2003 or 12/31/2001 for Margaret Grasston; DOB: December 24, 1916; SSN last 4: 2630; Last Known Address: 331 Airport Avenue East, Venice, FL 34285. Contact Kate Smith, Esq. at [kate@katesmithlawfl.com](mailto:kate@katesmithlawfl.com) or 941-952-0550.

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\*Rules regulating the Florida Bar permit a 25% referral fee without any involvement of the referral attorney other than making the introduction to the client. Any additional fees require court approval and involvement of the referring attorney in the handling of the personal injury matter.



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January 20, 2022

5:30 pm ~ Social

6:00 pm ~ Dinner, Awards, Keynote

\$55 per person ~ Cash bar

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*Keynote Speaker*

Honorable Kenneth Abraham  
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18th Judicial Circuit, Illinois



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# Social Security Announces 5.9% Benefit Increase for 2022

Social Security and Supplemental Security Income (SSI) benefits for approximately 70 million Americans will increase 5.9 percent in 2022.

The 5.9 percent cost of living adjustment (COLA) will begin with benefits payable to more than 64 million Social Security beneficiaries in January 2022. Increased payments to approximately eight million SSI beneficiaries will begin on December 30, 2021. (Note: some people receive both Social Security and SSI benefits). The Social Security Act ties the annual COLA to the increase in the Consumer Price Index as determined by the Department of Labor's Bureau of Labor Statistics.

Some other adjustments that take effect in January of each year are based on the increase in average wages. Based on that increase, the maximum amount of earnings subject to the Social Security tax (taxable maximum) will increase to \$147,000 from \$142,800.

The earnings limit for workers who are younger than "full" retirement age in 2022 will increase to \$19,560 (Social Security deducts \$1 from benefits for each \$2 earned over \$19,560).

The earnings limit for people reaching their "full" retirement age in 2022 will increase to \$51,960. (Social Security deducts \$1 from benefits for each \$3 earned over \$51,600 until the month

the worker turns "full" retirement age). There is no limit on earnings for workers who are "full" retirement age or older for the entire year.

Social Security and SSI beneficiaries are normally notified by mail starting in early December about their new benefit amount. Most people who receive Social Security payments will be able to view their COLA notice online through their personal my Social Security account. People may create or access their my Social Security account online at [www.socialsecurity.gov/myaccount](http://www.socialsecurity.gov/myaccount). ✂

*Citations:*

[ssa.gov/cola/](http://ssa.gov/cola/)

[ssa.gov/news/press/releases/2021/#10-2021-2](http://ssa.gov/news/press/releases/2021/#10-2021-2)

by David Simon, Esq.  
*David Simon, P.A.*



# 10 Minutes Makes All the Difference



These days, it would be difficult to find anyone who would disagree that eating right, getting sufficient sleep, exercising regularly, and increasing mindfulness through things such as deep breathing or meditation provide significant health benefits. Research even shows that engaging in daily exercise improves not only our physical well-being but also mental health. Ironically, those who stand to benefit most, due to their busy and stressful lifestyles, are the ones who are least likely to carve out the time. Most working professionals push things like exercise and meditation to the bottom of their to-do list.

I am guilty as charged. When faced with the option of hitting the gym or heading home to my family, I am likely to choose the latter. However, years of sitting at a desk sedentary for most of the day and injuries from my youth have caught up with me. A few years ago, while trying to find a way to alleviate chronic back pain, I discovered tons of short but effective but highly effective ten-minute yoga routines online and gave morning yoga a shot.

I now start my day, every day, with a ten-minute morning yoga sequence. I can attest to the huge impact just a little bit of yoga can make because when I skip it, and seldom do, I am painfully reminded of my poor decision all day. In those ten minutes, my body goes from feeling stiff and achy to loose and energized. As

a bonus, taking time to start the day calmly in the quiet dimly lit room, before hitting the stopwatch on my daily grind, brings focus and clarity for the tasks ahead.

The myriad of options available on YouTube, allows me to change it up each day to avoid getting bored. With technology literally in the palm of our hands, it is easy to stick with this commitment even while on vacation. There are even five-minute options, for when you are really pressed for time, and yoga in bed options which allow you to get your stretch on before your feet even hit the floor. Those who have never done yoga or are hesitant to try it, may be surprised at how easy it can be. Whether you want to relieve stress, alleviate sore muscles, or just improve the start of your day morning yoga may be the deep breath of fresh air you have been looking for. ✨

by Adria M. Jensen, Esq.  
*Shumaker, Loop & Kendrick, LLP*



## An Anecdote About Attaining Wellness

Wellness may have different meanings to each of us. As busy practicing attorneys, wellness may simply mean getting our work done without succumbing to stress.

Merriam-Webster defines wellness as “the quality or state of being in good health especially as an actively sought goal.” For me, wellness has meant being a functioning and productive attorney, husband, and father who can be effective at work, present at home, and still find time to enjoy my non-work-related passions. I cannot say that I have always achieved the coveted “work life balance” we hear so much about, but ultimately, as noted by the definition above, wellness is and can be an ongoing project. Here I am sharing some personal experience with my personal pursuit of wellness and the wrench thrown into that pursuit by a newborn baby. I am not purporting to provide any good advice, just sharing my experience in the hope that maybe it can help others think about what will work for them if or when they encounter a similar issue. And such similar issues may arise not only from a newborn but any life altering event.

Part of my approach to wellness has been striving to maintain a general physical wellbeing. Historically, doing so meant going to the gym three days a week, running with our dog once or twice a week, and playing some recreational basketball. Those activities have permitted me to enjoy the indulgences we all love, such as pizza and that beer at a bar event, you know the one. However, nothing has altered my lifestyle as much as welcoming our first born to the world last June.

As most everyone knows, having a baby alters your schedule, and that of your spouse. Compromises must be made to ensure that all responsibilities are satisfied along with the paramount task of caring for the newborn. Time is suddenly at an extreme premium. In my case, the first thing sacrificed to free up time, and hopefully get some more sleep, was exercise.

It is well documented that exercise is not the only key to health, perhaps more important are eating well and sleeping well. Sure enough, not only did my exercise regimen suffer, but my sleep and eating habits did too. Suddenly my pants felt tighter, and I just generally did not feel as good as I used to. I knew a change was due.

Thus, I set about figuring out how to balance exercise, eating right, and getting proper sleep with a newborn. Probably something I should have investigated beforehand, but as the saying goes, hindsight is 20/20.

Infants are known to copy their parents. With that in mind and knowing that I hope my son will be healthy and active, I figured it was time to show him some activities to copy. I created a workout space in our shed with some dumbbells, kettlebells, resistance bands, a pull-up bar, dip bars, and a rowing machine. Doing so was a time saving decision given that the drive to and from the gym suddenly felt much longer. Proximity also provided flexibility to my exercise schedule. There was also the added benefit of having my son watch as I exercised. I can only hope that doing so will encourage an active lifestyle for himself.

Keeping in mind that I was setting an example for my son, I have tried to excise the admittedly excessive amount of fried food, sweets, and red meat I would otherwise enjoy. I cannot say that I am always successful at eating well or exercising, but I am trying, and as busy attorneys know, sometimes trying is the key. In fact, just having a goal, such as losing my “baby fat,” and working toward it will result in better health related habits. Overall, just adapting to a new situation can be difficult, but what I learned above all else, is that there is a plethora of options available to us to strive toward the never-ending goal of wellness. Just set the goal and you will figure out what works for you! ✨



by Michael Cowgill, Esq.  
*Maglio Christopher & Toale*





# 11th Annual SPORTING CLAYS EVENT

Hosted by the South County Division



**Friday, March 4, 2022**

**11:30 am - Lunch & Registration**

**1:00 pm - Instruction & Shooting Begins**

**Sarasota Gun Club**

3445 Rustic Road, Nokomis

**REGISTRATION INCLUDES:**

BBQ lunch, shotgun rental, 50 clay targets, two (2) boxes of ammunition (25 shells each of 12 or 20 gauge), safety orientation

**WHO CAN ATTEND:**

Spouses and guests are welcome. The more the merrier!

**WHAT YOU SHOULD BRING:**

- ▶ If you have a shotgun that you feel comfortable shooting, please feel free to bring it (no assault shotguns or pistol grips).
- ▶ Eye protection (sunglasses will work) and ear protection (disposable ear plugs will be provided). All shooters are required to have eye and ear protection while on the range.
- ▶ If you have your own ammunition, feel free to bring it, but only target ammo, 2 3/4" rounds with lead shot sizes 7-9 are permissible. Two boxes of ammunition of 25 shells each (12ga or 20ga) are included and will be given when you register.
- ▶ There will be four shooters to a golf cart. Carts and beginning shooting stations will be assigned. If you would like to shoot with certain folks, please list their names and include their payment at the same time if possible.

**ADDITIONAL INFORMATION OR SPECIAL ARRANGEMENTS:**

Contact Event Chair Skip Berg: 941.493.0871 | skip@bergandkessler.com

**SPACE IS LIMITED TO 112 SHOOTERS - REGISTER TODAY!**

Lunch only \$15.00

Lunch & Sporting Clays \$75.00

Primary Contact: \_\_\_\_\_

Phone: \_\_\_\_\_

First Shooter: \_\_\_\_\_

Email: \_\_\_\_\_

Second Shooter: \_\_\_\_\_

Email: \_\_\_\_\_

Third Shooter: \_\_\_\_\_

Email: \_\_\_\_\_

Fourth Shooter: \_\_\_\_\_

Email: \_\_\_\_\_

I'm a beginner and would like to shoot with an instructor

Loaner 20 ga shotgun requested - 20 ga shotguns will be at the blue stations

Loaner 12 ga shotgun requested

Register online at [SarasotaBar.com](http://SarasotaBar.com) or call the SCBA office at 941.861.8180 | Deadline to register: Monday, February 21, 2022

Make checks payable to SCBA and mail to: PO Box 507, Sarasota, FL 34230

# Guardianship 101: Incapacitated Clients



by Jamie B.  
Schwinghamer, Esq.  
*Roetzel & Andress, LPA*

Attorneys are often the first line of defense for alleged incapacitated persons (“AIPs”) in Florida. We are usually one of the first people to receive phone calls from concerned family members about elderly relatives. If you have not already fielded a call from an elderly client’s child, who is fishing for information about their parent and trying to determine whether you believe that their loved one is incapacitated, you probably will at some point during your career.

To be prepared for these difficult conversations, you must know what you can – and cannot – say, and what your responsibilities are under the Florida Rules of Professional Conduct. Additionally, if guardianship proceedings are filed, you should be aware of the statute that governs substitution of counsel for your client, the AIP, and what not to do before filing a notice of appearance. It is my hope that the overview and case scenario below will assist you during your first (or next) client incapacity situation.

## Applicable Professional Rules of Conduct

When confronted with a family member seeking information, you will need to consult Florida Rule of Professional Conduct 4-1.6. Subsection (b) states that you must reveal confidential information to prevent death or substantial bodily harm to self or another, or to prevent a crime. Subsection (c) states that you may reveal confidential information if you believe it serves the client’s best interests, except in cases where the client has specified that you not disclose that information.

## Case Scenario: When Can I Disclose Personal Health Information to my Client’s Family?

Imagine you have a client’s family member calling you who is extremely concerned about their loved one. They want to better care for your client, who has been extremely forgetful and confused lately, but they aren’t sure what to do or how best to approach the situation. The family member has called you, the attorney, because you have a long-standing relationship with your client and are a trusted advisor. They are frantic with worry, but do not indicate that your client, or any other person in contact with your client, is in any immediate danger.

Now imagine that you are in possession of some pertinent medical information – let’s say, a report from an evaluation that your client recently had at the neurologist’s office, where they were diagnosed with Alzheimer’s disease or another form of dementia. Your client, however, has not given you consent to disclose his diagnostic test results. In fact, your client has specifically told you not to disclose this information to anyone.

It is now your duty to review the facts and weigh your options. Based on the information available, it appears that your client is not in critical danger of harming themselves or others (either physically or financially). In fact, even the concerned family member doesn’t believe that there is any imminent danger. Further, your client has told you not to disclose their diagnosis. Given the applicable Florida Rules of Professional Conduct an attorney in this situation must not disclose the client’s medical information to the concerned family member, even if the attorney believes that disclosure is in the client’s best interests.

If I am the attorney in this case scenario, what can I do to help my client? First, encourage your client to disclose their diagnosis to a trusted family member or friend. A diagnosis of incapacity carries a heavy burden and can take its toll on your client’s mental and physical health. Next, if you believe that your client still has capacity to contract, encourage them to contact an estate planning attorney to obtain a durable power of attorney, health care surrogate declaration and pre-need guardian declaration. Having these documents in place can prevent a costly guardianship proceeding, as the court is required to give deference to “less restrictive alternatives” to guardianship. However, if you suspect that your client does not have the capacity to contract, you may decide to refer the concerned family member to a guardianship attorney or, in extreme cases, file the guardianship yourself.

See *GUARDIANSHIP*, Page 31



## Don't Keep Your Documents in Portal Purgatory

Technology continues to change and improve the traditional ways that legal professionals conduct business. Advancements in technology influence the way the legal community researches, organizes cases and attends court proceedings. One such advancement is the electronic filing of court documents, or e-filing. This process, introduced over a decade ago, is now the most common way for filers to submit documents to the court. In 2011, the Florida Supreme Court mandated e-filing for attorneys. Now, approximately 2 million documents are filed through the Florida Courts E-Filing Portal each month.

A litigant's e-filed document follows a specific path. First, the document is received at the portal and time stamped. Next, the Clerk retrieves the document and either files the document into the case or places the document into the correction queue. If a document is placed into the correction queue, the litigant is notified that a correction is needed. Do not assume that all e-filed documents are on autopilot into the court record. For instance, a problem might arise if the Florida Courts E-Filing Portal sends a document to a correction queue because it fails to comply with Florida Rule of General Practice and Judicial Administration 2.520. Similarly, the Sarasota Clerk's Office will send a document to a correction queue if, among other things, there is an incorrect case style or non-compliance with the directives of a local administrative order.

***"The good news about computers is that they do what you tell them to do. The bad news about computers is that they do what you tell them to do." – Ted Nelson***

As a best practice, filers should always confirm receipt, acceptance and filing of any documents that they submit. The e-filing portal typically sends confirmation soon after a filer makes their submission. If the filer does not receive an email confirmation this indicates that there could be a problem. The email from the portal should state that the filing was accepted and reference a filing number. If a filer does not receive this email, it should prompt them to review the status of their filings on the portal. Successful filings are listed on the portal's "My Filings" page. Filers should also receive a second email confirming that the Sarasota Clerk of Court accepted or rejected the electronic filing.


Legal professionals can track filings in a case by registering for ClerkNet. ClerkNet is a secure public records service offered by the Sarasota Clerk's Office that allows free, online access to unsealed court case filings and daily court event dockets. Users who register for the ClerkNet service can subscribe to receive email notifications whenever a filing is added to a court case.

Additional resources about e-filing can be found on the Sarasota Clerk of the Circuit Court and County Comptroller's website or on the Florida Courts E-Filing Portal website. As court requirements and expectations evolve with expanding technology, it is vital that legal professionals have methods to ensure that their documents are reaching the court record. ✨



by Karen E. Rushing  
*Clerk of Court  
and County Comptroller*

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# "FOREIGN" TRUST ADMINISTRATION

What to Look for When Administering  
Trusts from Non-Florida UTC Jurisdictions

PRESENTER

Michael M. Rubenstein, JD, LLM, MBA, CTFA  
Senior Fiduciary Advisor and Vice President  
BMO Private Bank



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# news of note

**Icard Merrill** is proud to announce that the firm has been named to the list of “Best Law Firms” by U.S. News & World Report and Best Lawyers® for the twelfth consecutive year. The firm has achieved this ranking every year since the program started in 2010. In addition, the firm is regionally ranked in nine practice areas.

**Icard Merrill** Shareholder **John J. Waskom** has been selected as the recipient of The Florida Bar President’s 2022 Pro Bono Service Award for the 12th Judicial Circuit. Each year, the Florida Supreme Court and The Florida Bar honor and recognize lawyers, groups and members of the judiciary who have freely given their time and expertise in ensuring access to justice for those who otherwise could not afford it. Waskom and all award recipients will be honored at the 2022 Pro Bono Service Awards Ceremony at the Florida Supreme Court in Tallahassee on January 20, 2022.

**Carmen R. Gillett**, board certified in marital and family law, has recently received her L.L.M. in elder law from the Stetson College of Law. The closely related nature of elder law to family law will permit Ms. Gillett to expand her law practice to focus on assisting individuals and families with the legal issues that arise at crucial times in their lives. An example would be time sharing and support issues relating to a disabled child of divorce.

For the fifth year in a row, **Sessums Law Group, P.A.** has been recognized by US News & World Report and The Best Lawyers in America for being named to the 2022 Best Law Firms rankings.

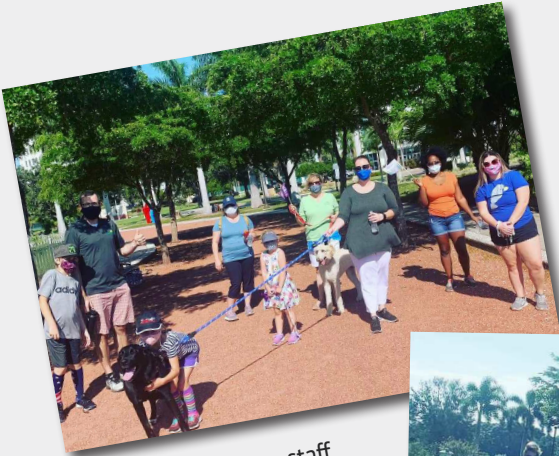
Have you or a member of your firm achieved professional recognition? Have you hired a new attorney? Any other news of note? If so, we would like to hear about it. Email your “News of Note” items to [scba@sarasotabar.com](mailto:scba@sarasotabar.com).

**Berlin Patten Ebling, PLLC**, is pleased to announce that **Conrado Gomez, Jr., Esq.** has joined Berlin Patten Ebling’s team of experienced lawyers. Conrado has practiced in the 12th Judicial Circuit since 2019 and focuses on commercial litigation, real property disputes, construction litigation, and landlord-tenant disputes.

**Williams Parker** is pleased to announce the firm has been named a 2022 “Best Law Firm” by U.S. News – Best Lawyers®. The firm was regionally ranked in four categories: Land Use & Zoning Law, Real Estate Law, Trusts & Estates Law and Tax Law. In addition, attorney **Michele B. Grimes**, a board-certified expert in real estate law, has been named a 2022 “Lawyer of the Year” by Best Lawyers in America for her work in real estate law in Sarasota. Fifteen additional Williams Parker attorneys were also named to Best Lawyers in America, including **Charles D. Bailey, Jr.** (Land Use & Zoning), **John T. Berteau** (Trusts & Estates), **Peter T. Currin** (Real Estate Law), **Gail E. Farb** (Employment Law), **Ric Gregoria** (Trusts & Estates), **J. Michael Hartenstine** (Real Estate Law), **Thomas B. Luzier** (Real Estate Law), **Patrick W. Ryskamp** (Real Estate Law), **Mark A. Schwartz** (Litigation – Trusts & Estates), **William M. Seider** (Real Estate Law), **Jeffrey T. Troiano** (Trusts & Estates), **James L. Turner** (Real Estate Law and Trusts & Estates), **E. John Wagner II** (Tax Law), and **Michael J. Wilson** (Corporate Law). Attorney **Fletcher H. Rush** (Trusts & Estates) was recognized as a 2022 Best Lawyers in America: Ones to Watch.



# picture this!



Boyer & Boyer attorneys, staff, and family members enjoyed a socially-distanced walk in Payne Park to support the 2020 Sarasota Alzheimer's Walk.



In August, Hale Law participated in a back-to-school event at University Town Center mall, donating hundreds of rulers to children.



In September, Hale Law sponsored Centerstone's Life;Story event at Nathan Benderson Park, raising awareness for suicide prevention and providing resources to those in need.

In October, all the attorneys at Hale Law donated their time and thousands of pieces of candy at Nathan Benderson Park's "Trick-Or-Treat on the Lake" event.

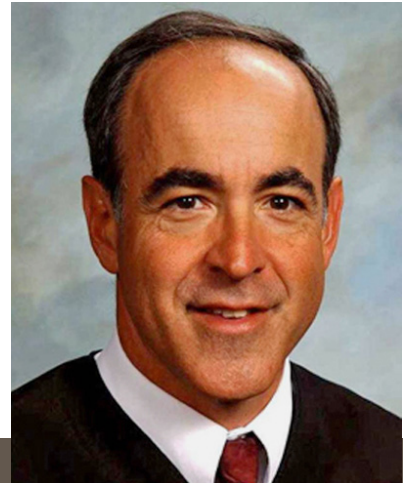


The investiture ceremony of **The Honorable Kevin Bruning** as Circuit Court Judge was held on November 5.

Hale Law donated water and Gatorade to the Riverview High School football team during their 2021 fall season.



# An Interview with Chief Judge Charles Roberts



I had the pleasure of interviewing Chief Judge Charles Roberts over Zoom on a variety of topics including, his background, what inspired him to become a judge, and the how the coronavirus has affected our court system. Chief Judge Roberts was a pleasure to talk to, and it was clear from his answers that he has a passion for his profession and helping others. The Sarasota County Bar Association is thankful that Chief Judge Roberts took the time out of his busy schedule to sit down for an interview with The Docket.

**Where are you originally from?**  
Washington DC.

**How long have you been a judge?**  
I became a judge nineteen years ago, and I currently preside over Drug Court and Mental Health Court in Sarasota County and Manatee County.

**What type of law were you practicing before you became a judge?**  
I worked for the state attorney's office for 21 years in Charlotte County. I was also the lead prosecutor for the homicide division of Sarasota County.

**What inspired you to become a judge?**  
As an advocate for a number of years, I watched a lot of judges in action and watched how they presided over their courtrooms. I tried to model myself after the judges who evaluated all aspects of the case. I believe that all judges should be both thorough and fair, which is how I try to preside over my courtroom every day.

**What aspect of being a judge gives you the most satisfaction?**  
Being a judge in Drug Court, I've seen a lot of success stories of people that overcame addiction and mental health issues. I've watched people I was familiar with in my days as a prosecutor, who had issues with substance and abuse and addiction, turn their lives around. Although the court system issues punishments, it can help people with substance abuse problems get on the

right track and reduce recidivism rates. I also appreciate it when a defendant leaves my courtroom feeling like they were given a fair hearing and an opportunity to be heard even when they are found guilty. It helps the community have trust in the court system.

**What has been the most challenging aspect of the coronavirus pandemic for the Sarasota and Manatee County's court system?**  
The biggest challenge during coronavirus was to keep all the cases moving while keeping everyone in the courtroom safe. For an entire year, we had no jurors. The virus created a backlog of cases, which all need to be addressed now that we are almost fully operational. We had to have all our judges and staff learn how to use Zoom. As the number of Coronavirus cases has gone down, our court system in Florida has done a great job of catching up with all the backlogged cases. I keep close tabs on the number of Coronavirus cases we have in Florida and the recommendations of medical experts.

*"We have greater restrictions than most other circuits in our state. That's because I want our jurors and staff to feel safe and secure. Hopefully, the numbers continue to improve, and we can remove some of those restrictions. I believe that most of the jurors are satisfied with the coronavirus restrictions we currently have in place."*

**Do you believe we will continue to have the majority of hearings via Zoom even after the pandemic is over?**  
Judges and attorneys all like Zoom, and I believe it is here to stay. To what degree is still to be determined. We still have the option of Zoom hearings because of orders by the Florida Supreme Court. However, I am not sure what the Florida Supreme Court's Rules Committee will do when the pandemic is under control. I personally believe a lot can be done by Zoom with agreements between parties. It helps attorneys avoid having to drive long distances to courtrooms, and ultimately saves some of their clients money.

What is one thing you would like to improve about the Sarasota County court system?

I spend a lot of time talking to other chief judges in different circuits, and I believe we are in a great shape in Sarasota County and Manatee County. We are in the forefront when it comes to technology. We do well with electronic filing and orders. If I had a wish list, I would ask for a couple more judges to address backlog in divisions, but that would be up to the Florida Supreme Court.

What is the most common mistake you see young lawyers make when in your courtroom?

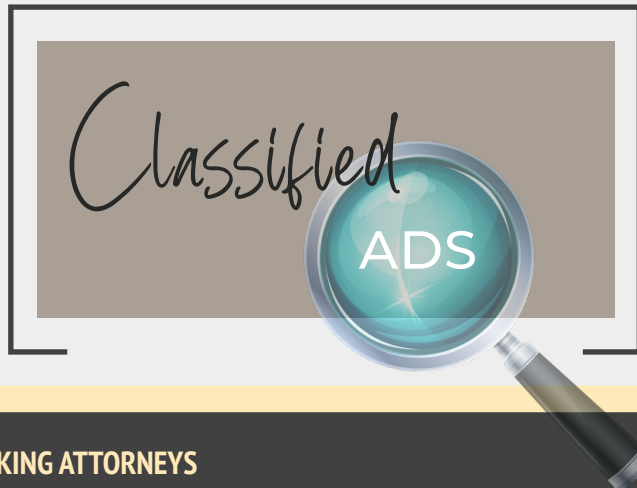
It's important to communicate with the opposing side. So many hearings could be avoided if the attorneys communicated better. These communications should occur well in advance of any hearings. And to all the young attorneys, pick your battles, do not just object for the sake of objecting, look at the big picture. Understand that constant objections can sometimes hurt your credibility.

What can we do to make judges' lives easier?

Judges want authority and memorandums well in advance of hearings, not day of hearing. The more organized the motions and exhibits are, the better. Obviously, communicating with opposing counsel and stipulating to certain facts or issues can also help make judges' lives easier. ✨



by Adam Shapiro, Esq.  
*Shapiro Delgado*



## SEEKING ATTORNEYS

Walters Levine Parisi & DeGrave is an "AV" rated mid-sized law firm with offices in Tampa and Sarasota, seeking an attorney with 3-5 years experience in insurance defense/Med Mal. Can work either in the Sarasota or Tampa location. Must have a strong academic background, excellent written and oral communication skills. Competitive salary with benefits including paid family health insurance, 401K and profit sharing, paid long term disability insurance, PTO, marketing and CLE budgets.

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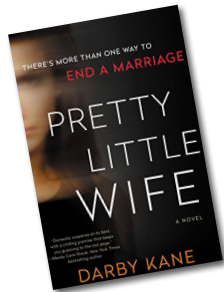
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by Mallory Bauer, Esq.  
*Berlin Patten Ebling, PLLC*

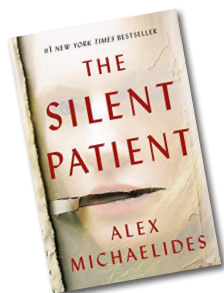


With the temperatures finally dropping, my favorite thing to do is cuddle up with a good book in front of the fireplace. I hope everyone can enjoy some down time during this holiday season to take time to do what makes them happy. If you are an avid reader, like myself, here are a few of my most recent reads that I highly suggest!



**“Pretty Little Wife”**  
by Darby Kane

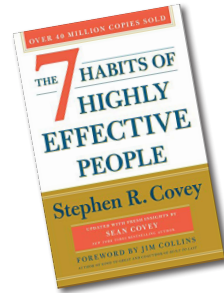
I read this book in 7 hours – that is how much of a page turner it was! If you enjoy psychological thrillers, you must put this on your reading list. The story focuses on a small-town wife, Lila, whose husband goes missing, but you clearly find out that he shouldn't be missing, because Lila killed him, or so she thought. This book contains characters who have flaws, are complex, and are realistically portrayed. It also unfolded with plenty of salacious twists and turns, which kept me wanting more and turning the pages quickly. I found it to be a well-paced book, with enough forward momentum to continually push you in to the next chapter.



**“The Silent Patient”**  
by Alex Michaelides

Alicia Berenson's life is seemingly perfect. A famous painter married to an in-demand fashion photographer, she lives in a big house with huge windows that overlooks London's most desirable areas. One evening her husband Gabriel returns home late from a shoot, and Alicia shoots him in the face five times, and then never speaks another word. I could not put down this book. I was a psychology major in college, so I found this book to be extra intriguing as it focused more on the psychological perspective, than the actual crimes. This book explores the psyches of both a woman convicted of murdering her husband and the therapist determined to treat her. “The Silent Patient” is an outstanding novel that delivers intelligent character study and a complex, masterful plot.

**“The 7 Habits of Highly Effective People”**  
by Stephen Covey



This book explains seven principles that makes a person more effective personally and professionally. The author demonstrates how a principle-centered, character-based life helps you build the healthy relationships that are key to an effective life. This is a classic and well-worth reading for its perspective and practical advice. On every single page, I found something that made me put the book down for a couple of minutes and really think about it. I cannot give this book enough praise – it will teach you how to be a better version of yourself. ✨



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Remember, however, that Florida Rule of Professional Conduct 4-1.14 states that a lawyer may seek the appointment of a guardian or take other protective action with respect to a client only when the lawyer reasonably believes that the client cannot adequately act in the client's own interest.

**May I Represent a Client in Their Guardianship Proceedings?**

If a guardianship is filed for your client, you may represent your client in the proceedings, but only if you did not file the petition to determine incapacity and petition to appoint plenary (or limited) guardian. Florida Statutes Section 744.331(2)(b) provides that the AIP may substitute their own private counsel for the court appointed attorney. See *Foster v. Radulovich*, 2121 WL 4447033, \*4 (Fla. 2d DCA Sep. 29, 2021) (an AIP has a right to substitute their court-appointed attorney with the attorney of their choice until the trial court determines his incapacity); see also *Holmes v. Burchett*, 766 So. 2d 387 (Fla. 2d DCA 2000) (the court may hold an evidentiary hearing on the AIP's capacity to contract prior to issuing an order on the AIP's motion for substitution of counsel). However, keep in mind that you cannot substitute in as counsel for the AIP if you have already filed a notice of appearance on behalf of any other party (i.e., the concerned family member). Florida case law reminds practitioners that they must remain independent, and that the AIP must be their only client. See *Fey v. Curtis*, 624 So. 2d 770 (Fla. 4th DCA 1993).

**Still Stuck in a Sticky Situation?**

If you have consulted the Florida Rules of Professional Conduct, but still find yourself stuck in a sticky situation related to client incapacity, please call the Florida Bar! The Florida Bar operates an ethics hotline for its members to offer guidance when a lawyer is unsure of the ethical obligations in a particular situation. Call 1-800-235-8619. ✨

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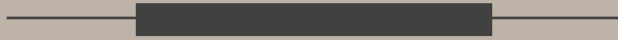
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