FORUM 8

Volume 80, No. 10 | Eighth Judicial Circuit Bar Association, Inc. | June 2021

President's Message

By Philip N. Kabler, Esq.

May it please the bench, the bar, and the six counties of the Eighth Judicial Circuit we serve. Please indulge that this monthly message is intentionally brief.

We have had a 'remarkable' year together. Our year has truly met the definition of remarkable – "*worthy of being or likely to be noticed especially as being uncommon or extraordinary.*" *

Although we did not gather in-person (except for the "Gloria" and some mentoring and Young Lawyer Division events), consider all we still accomplished. (Although we did become Zoom experts in the process.) We **learned** during monthly presentations from local, statewide, and national speakers. And we added several special presentations that were timely to the historic events of the period. We continued our traditional capstone events, such as the Professionalism Seminar, the "Gloria," the Margaret Stack Holiday Project, and the Leadership/Diversity/Inclusivity Forum. And Law In the Library, Ask-A-Lawyer, and this *Forum 8*. (Unfortunately, we did have to defer our Annual Cedar Key Dinner this one time.)

Thank you to the many officers, board members, committee chairs, and volunteers who brought all of those events to being. And to our Executive Director Judy Padgett.

We bade our *fare thee well* to immediate past Chief Judge James Nilon, State Attorney Bill Cervone, and Chief Assistant State Attorney Jeanne Singer, and welcomed our new Chief Judge Mark Moseley, Circuit Court Judge Wright, and State Attorney Brian Kramer. And we paid our deepest respects to the late Judge Stephan P. Mickle and his family.

Our work is not done – it is never done given the nature of the law and the march of history. Due to our collective resilience, flexibility, and creativity, we will emerge from the pandemic prepared and enthusiastic to build on our past and to pivot to the future.

There is a traditional Hebrew phrase which is apropos. "*L'dor V'dor*" means "from generation to generation." There is a long line of distinguished leaders of the Eighth Judicial Circuit Bar Association who brought us to where we are now. Cherie Fine, our Immediate Past President, set the stage for this particular year of change, and for that we are grateful. Evan Gardiner, our President-Elect, and Robert Folsom, our President-Elect Designate, are the next generation of leaders who will guide us into our future, and for that we are optimistic.

It has been a privilege to be one link in the chain of that history. And for *that* opportunity, thank you all.

Wising you all the very best,

Phil

* https://www.merriam-webster.com/dictionary/remarkable

So they are always readily at-hand, the following are links to:

The U.S. Constitution: https://constitution.congress.gov/constitution/

The Florida Constitution: https://tinyurl.com/FloridaConstitution

June 2021 Calendar

3 EJCBA Annual Meeting/Swearing in Ceremony via ZOOM, 6:00 p.m.
9 Probate Section Meeting, 4:30 p.m. via ZOOM
9-12 2021 Annual Florida Bar Convention, Hilton Bonnet Creek, Orlando (mixture of in-person and ZOOM events)

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Contribute to Your Newsletter!

From the Editor

I'd like to encourage all of our members to contribute to the newsletter by sending in an article, a letter to the editor about a topic of interest or current event, an amusing short story, a profile of a favorite judge, attorney or case, a cartoon, or a blurb about the good works that we do in our communities and personal lives. Submissions are due on the 5th of the preceding month and can be made by email to dvallejos-nichols@avera.com.

About this Newsletter

This newsletter is published monthly, except in July and August, by:

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Any and all opinions expressed by the Editor, the President, other officers and members of the Eighth Judicial Circuit Bar Association, and authors of articles are their own and do not necessarily represent the views of the Association.

News, articles, announcements, advertisements and Letters to the Editor should be submitted to the Editor or Executive Director by Email. Also please email a photograph to go with any article submission. Files should be saved in any version of MS Word, WordPerfect or ASCII text.

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Deadline is the 5th of the preceding month

Alternative Dispute Resolution

By Chester B. Chance and Charles B. Carter

Conceptions of Risk

David Leonhard is an American journalist and columnist for The New York Times. Recently he wrote an article about "Irrational COVID Fears," specifically, why so many vaccinated people remained fearful. We enjoyed and were interested in his article because mediation involves concepts of risk avoidance. There is no dispute: people are naturally and psychologically risk adverse. It certainly plays a role in resolution during a mediation. For the past year, it has played a role in our daily work lives and our personal lives.

We could focus a lot on what may be an individual's irrational fear of contracting and dying from COVID. Mr. Leonhardt's article does not ignore the fear of COVID in general; rather, it focuses on irrational versus rational fears of those who have been vaccinated against COVID.

Mr. Leonhardt references an anecdote used by Senior United States Circuit Judge and Yale Law Professor Guido Calabresi. Professor Calabresi would tell his students to imagine a god coming forth to offer society a wonderous invention that would improve everyday life in almost every way. It would allow people to spend more time with friends and family, see new places, do jobs they otherwise could not do. However, it would come with a cost. In exchange for bestowing this invention on society, the god would choose 1,000 young men and women and strike them dead.

Professor Calabresi would then ask his students if society should accept that deal. The overwhelming response: "NO." The kicker: the professor then drives his point home: "What's the difference between this and the use of automobiles?" Automobiles kill more than 1,000 young Americans each year. Total deaths are about 40,000 annually. "We accept this toll, almost unthinkingly, because vehicle crashes have always been part of our lives. We can't fathom a world without them."

Mr. Leonhardt suggests the students' answer is a classic example of human irrationality about risk. We underestimate large, chronic dangers, like car crashes or chemical pollution, but overestimate salient risks like plane crashes or shark attacks. Leonhardt strongly suggests that one way for a risk to become salient is for it to be ***new.*** The point: Professor Calabresi asked students to consider whether they would accept the cost of vehicle travel *if* it did not *already exist*. The fact that students say "no" underscores the *very different* ways individuals treat new risks versus enduring ones.

This caused David Leonhardt to address COVID 19 as it presents a very salient risk: "It's a Global Pandemic that has upended daily life for more than a year. It has changed how we live, where we work, even what we wear on our faces. COVID feels ubiquitous."

David Leonhardt then adds: "Fortunately *it is also curable."* He points out the vaccines have nearly eliminated death, hospitalization and serious COVID illnesses among people who have received that shot. "The vaccines have also radically reduced the chances that people contract even a mild version of COVID or can pass it on to others." And yet, Leonhardt notes, many vaccinated people continue to obsess over the risk from COVID because those risks are new and salient.

Mr. Leonhardt's article coincided with a major media news release of government data in mid-April 2021 showing 5,800 fully vaccinated Americans had contracted COVID. Mr. Leonhardt wrote his article on April 19, 2021. We wrote this article about 6 days later. Many people thought that sounded like a large and noteworthy number; however, Leonhardt points out that it indicates a vaccinated person's chances of getting COVID are about 1 in 11,000 and the chances of getting a version any worse than a common cold are even *more remote.* True, those chances are not zero.

Leonhardt points out they will not be zero any time in the foreseeable future. Other statistics to put this in context: the chance of being attacked by a shark while surfing is 1 in 11.5 million. The annual risk of being killed on a plane crash is also about 1 in 11 million. The odds of being struck by lightning in your lifetime are 1 in 15,300.

With respect to COVID: "Victory will instead mean turning it [COVID] into the sort of danger that plane crashes or shark attacks present: Too small to be worth reordering our lives." And that is what the vaccines accomplish. "If you're vaccinated COVID presents a minuscule risk to you, and you present a minuscule COVID risk to anyone else." A car trip is a *bigger* threat to you and others. "About 100 Americans are likely to die in a car crash today. The new federal data suggests that either zero or one vaccinated person will die today from COVID." In perspective, one person dies each day in America as a result of drowning in a pool and 67% of pool deaths involve children under the age of three. Ten…

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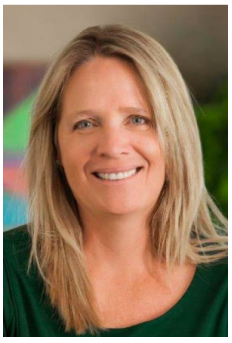
Federal Employment Law Update for Early 2021

By Laura A. Gross



While there have been many changes and proposed changes to federal employment laws in the first five months of 2021, here are six which all business owners should know.

1. DOL withdraws Trump-era rule that made it easier to classify gig economy workers as independent contractors instead of employees. On May 5, 2021, the Department of Labor announced the withdrawal of the "Independent Contractor Rule," which made it harder for gig workers to show they are employees for purposes of overtime and minimum wage. The withdrawal of the rule causes some uncertainty for gig economy businesses like Uber and Lyft as it revives the employee-versus-contractor debate that these workers and businesses thought had ended.

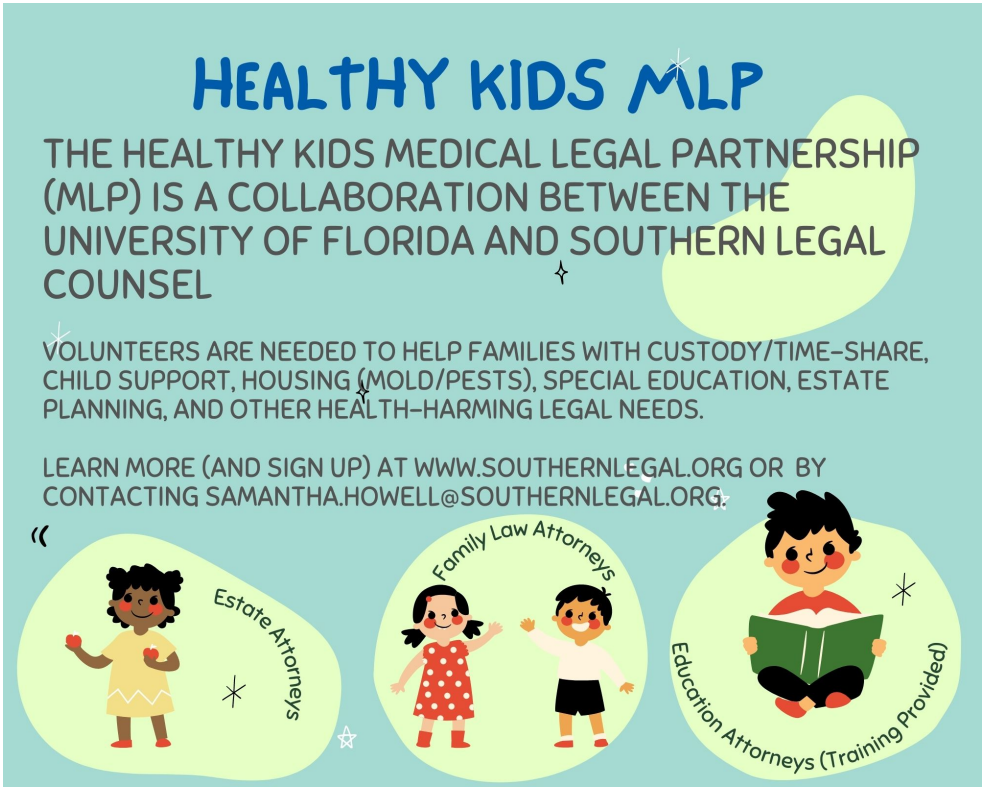
2. The American Families Plan proposes 12 weeks of federal paid leave. President Biden's infrastructure plan, announced on April 28, includes a proposal that would establish the first national permanent federal paid leave program. This program would provide workers paid leave for their own health issues, parental purposes or to seek care for sick family members. The amount of allowed paid leave per year would grow over the next decade to 12 weeks by 2031.

3. Executive Order increases federal contractor employees' minimum wage to $15 in 2022. The Order, issued on April 27, further provides that as of January 1, 2023, the Secretary of Labor will determine a new minimum wage (which cannot be less than the then current wage) which will reflect increases in the Consumer Price Index rounded to the nearest $0.05.

4. DOL issues guidance on employers' obligation to provide temporary COBRA premium assistance. As of April 7, the Department of Labor released guidance, Frequently Asked Questions, and Model Notices to explain how employers must comply with the new COBRA assistance provisions which provide for 100% premium assistance to certain qualified beneficiaries for continuation coverage under COBRA. This benefit is in effect from April 1 to September 30, 2021.

5. ADA website accessibility lawsuits are trimmed. On April 7, the Eleventh Circuit Court of Appeals in *Gil v. Winn-Dixie Stores, Inc.,* held that a website is not a "place of public accommodation" under the ADA and the plaintiff's inability to access the website using screen reader software did not violate the ADA. While the plaintiff was not an employee, the 67-page decision will be helpful to companies facing allegations that their website violates disability-discrimination laws including as applied to employees or applicants for employment.

6. The American Rescue Plan provides immediate tax credits to businesses that offer employees paid sick and family leave. On March 11, President Biden signed off on the plan which allows employers, who voluntarily participate, to continue to provide employees emergency paid sick leave (EPSL) and expanded family and medical leave (EFML) from April 1 through September 30, 2021. The plan expands the reasons for EPSL to include getting a COVID-19 vaccine, recovering from the vaccine, and awaiting the results of a diagnosis or test following close contact with a person with COVID-19 or at the employer's request, and it expands the reasons for EFML to include all of the reasons for EPSL essentially extending the length of paid leave time for EPSL reasons to 12 weeks but at a reduced rate.



Criminal Law

By Brian Kramer

The Law Enforcement Reform Bill

In response to recent growing social justice concerns, the Florida Legislature unanimously passed SB 1970 / HB 7051, the Law Enforcement Reform Bill. This is a wide-ranging bill with a far-reaching effect. At the time of this writing, the Governor has yet to sign this bill into law. This bill is an excellent start to healing the growing divide between law enforcement and diverse communities. Here are the main issues addressed by the bill:

The bill creates new educational requirements for officers. These include standards for training on the use of de-escalation techniques, crisis intervention, recognizing substance abuse disorders, mental disabilities and mental illness, implicit bias training, procedural justice training, and the use of a "reaction gap" to manage critical incidents. Training officers in many of the foundational issues that create discord between diverse communities and law enforcement should help officers to better understand how their reactions, perceptions, and behaviors influence different responses from different groups.

HB 7051 sets strict guidelines for officers' use of force by amending the requirements of Basic Skills Training. The bill widely prohibits the use of "any technique that requires the application of pressure to the neck, throat, esophagus, trachea, or carotid arteries alongside the trachea" by any law enforcement officer. Or, in other words, because a chokehold is potentially lethal, the bill prohibits the use of chokeholds except where the law would authorize the use of deadly force. Further, the bill imposes an affirmative duty to intervene if an officer observes another officer's use of excessive force, and an affirmative duty to render medical aid to a detained person. Violent confrontations between law enforcement and citizens can be some of the most difficult cases that we see. This new law will clarify when specific violent actions are impermissible.

The bill creates standards for the investigation of use of force incidents which result in the death of any person, or the intentional discharge of a firearm that results in injury or death. Such an investigation must be performed by either a law enforcement agency that did not employ the law enforcement officer under investigation, or by the state attorney of the judicial circuit in which the force occurred. The investigation must result in a report that shall be submitted to the state attorney. In our judicial circuit, this is merely a codification of existing practices. Most, if not all, of our local agencies have a memorandum of understanding with the Florida Department of Law Enforcement that provides that FDLE will conduct the investigation of these major use of force incidents. Upon completion, FDLE forwards the report to me. I expect that this practice will continue.

The bill creates a system for law enforcement discipline records to follow officers when an officer moves to a different agency. Law enforcement agencies must maintain all employment information for 5 years after the officer's termination. Law enforcement officers will be required to disclose on his or her application for employment "any pending investigation by a local, state, or federal agency or entity for criminal, civil, or administrative wrongdoing and whether the applicant separated or resigned from previous criminal justice employment while he or she was under investigation." There is a new requirement for quarterly reports of use of force incidents by agencies. "[E]ach law enforcement agency in the state shall report quarterly to the department data regarding use of force by the law enforcement officers employed by the agency that results in serious bodily injury, death, or discharge of a firearm at a person. The data shall include all information collected by the Federal Bureau of Investigation's National Use-of-Force Data Collection." This closes a well-known practice of problematic officers moving from agency to agency with relative anonymity.

The bill makes the arrest of any child younger than 7 illegal. Under this reform, a child younger than 7 years of age may not be arrested, charged, or adjudicated delinquent for a delinquent act or violation of the law that occurred before he or she reached the age of 7, unless the act is a forcible felony. This bill obviously sets a floor. In the practice of my office, it is highly unusual to file a petition for delinquency against a child under the age of 12, and even those are rare. I expect that the trend in this office will be to continue to refrain from petitioning the court to find a child delinquent unless such action is appropriate to both the child's mental and physical age and development.

It is both refreshing and encouraging to see the Florida Legislature crossing the aisle on such a divisive issue. I hope we see more of this cooperation for the good of all in the future.

Have a GREAT summer!

Expert Witnesses: Just How Expert Does the Witness Need to Be?

By Krista L.B. Collins

Many times, cases are won or lost on the strength of expert testimony. Sometimes experts are professional experts who make their living testifying at depositions and trials; sometimes they have an alphabet soup of letters after their name to show how qualified they are. Sometimes it is an expert's first time in a courtroom, and sometimes the expert has years of experience but no degrees or licenses. Determination of an expert witness's qualifications is "peculiarly within the discretion of the trial judge." *Blanco v. Creative Mgmt. Services, LLC-Tech. Ins. Co.*, 281 So. 3d 598, 601 (Fla. 1st DCA 2019). The burden of laying the proper foundation, including establishing the expert's qualifications, rests with the party offering the expert. *Prosper v. Martin*, 989 F.3d 1242, 1248 (11th Cir. Mar. 5, 2021); *Sanchez v. Cinque*, 238 So.3d 817 (Fla. 4th DCA 2018).

The Florida Statutes tell us that a "witness may be qualified to give expert testimony by knowledge, skill, experience, training or education." § 90.702, *Fla. Stat*. But what does this really mean? To begin, it means that "so long as the expert is minimally qualified, objections to the level of the expert's expertise go to credibility and weight, not to admissibility." *Dillon v. Sunbelt Rentals, Inc.*, 19-CV-80697, 2020 WL 2779604, *2 (S.D. Fla. May 29, 2020) (holding that witness who was board certified in forensic engineering with over 40 years' experience was qualified to provide expert opinion that pipe plug was defective, even though his expertise was in electrical engineering not mechanical engineering and he was not an expert in material sciences or failure analysis)[internal citations omitted]. In other words, an expert "need not be a *perfect* expert." *Id.* Furthermore, a lack of licensure does not disqualify a person from testifying as an expert. *Vega v. State Farm Mut. Auto.*, 45 So. 3d 43, 44 (Fla. 5th DCA 2010); *Davis v. South Florida Water Management District,* 715 So. 2d 996 (Fla. 4th DCA 1998). The Florida Supreme Court has previously clarified how an expert witness may be qualified:

> A witness may be qualified as an expert through specialized knowledge, training, *or* education, which is not limited to academic, scientific, or technical knowledge. An expert witness may acquire this specialized knowledge through an occupation or business or frequent interaction with the subject matter…. However, general knowledge is insufficient. The witness must possess specialized knowledge concerning the discrete subject related to the expert opinion to be presented.
> *Chavez v. State*, 12 So. 3d 199, 205 (Fla. 2009) [internal citations omitted].

In fact, the expertise need not even stem from the witness's education or even profession. In *Miller v. City of Fort Myers*, 424 F.Supp.3d 1136 (M.D. Fla. 2020), a case involving whether certain real property required additional remediation due to the prior dumping of arsenic-contaminated lime sludge, the City offered an expert to testify on matters of geology and hydrogeology. The plaintiff argued that because the expert lacked any degree in geology or hydrogeology, he lacked the qualification to offer the opinions. *Id.* at 1142. The Middle District Court disagreed, noting that the expert provided a declaration explaining that he had 40 years' experience in toxicology and environmental risk assessment, including evaluating the impact of pollutants in water, air, and soil, and had recently published a paper using groundwater and soil data to discuss the effects of arsenic. *Id.* The Court noted that the plaintiff offered nothing to rebut the evidence of the expert's experience and qualifications and denied plaintiff's motion to exclude the expert's opinion. *Id.*

Similarly, in *Marshall-Shaw v. Ford*, 755 So.2d 162, 166 (Fla. 4th DCA 2000), the Fourth District Court of Appeal affirmed the sufficiency and competency of a witness's opinion testimony as to the value of the jewelry that was the subject of the action, despite the witness's admission that he was not a professional jeweler or appraiser (he was, in fact, appellee's lawyer, which certainly raises other issues!). The witness testified that his experience dated to the 1980s when he purchased jewelry at auction and in other contexts, that he had investigated the market value of the jewelry, and that its unique nature and value meant the value was unlikely to fluctuate from the date of the loss until he gave his testimony. *Id.* The Court noted the trial court's broad discretion in determining whether a proffered expert witness is qualified and held that the appellant did not show the trial court abused its discretion in finding the witness's qualification and testimony sufficient to establish the value of the jewelry. *Id.*

Florida case law makes clear that the stereotypical TV-lawyer-show version of an expert with twelve PhDs is not the only route to successfully introducing expert testimony. But it is important to remember that the proffered expert must have *specialized* knowledge about the subject matter – however they acquired it.

Probate Section Report

By Cole A. Barnett

The Probate Section meets via Zoom on the second Wednesday of each month, beginning at 4:30 p.m. Matters of general interest to practitioners, including those specifically discussed during recent meetings, are set forth below (in no particular order).

(NEW) PROBATE MAGISTRATE

Alachua County is transitioning to a magistrate system for probate. Details will be announced during the May 12 section meeting. The early word is that General Magistrate Katherine L. Floyd will be designated as the probate magistrate. Stay tuned for further information.

NEW PROBATE AND TRUST FEE LEGISLATION

As this newsletter goes to press, the legislature passed, and we are anticipating that the governor will sign, new legislation effective October 1, 2021, requiring fee disclosures by attorneys in probate and trust cases. These disclosures include the total hours devoted to the representation or a detailed summary of the services performed during the representation. The new legislation, if signed, will be discussed in further detail in coming months.

ESTATE PLANNING DURING DIVORCE

At the section meeting in April, the members discussed estate planning in contemplation of or during divorce. The discussion centered around elective share rights under Chapter 732, Part II, *Florida Statutes* and Judge Roundtree's November 19, 2015 standing family court order, Administrative Order 5.09.

Part of the impetus behind the discussion was a local case where a wife filed a petition for dissolution of marriage in June 2009 and the husband died in March 2012 prior to an entry of a final judgment dissolving the marriage. In that matter, the wife took as a substantial beneficiary of the husband's estate.

To prevent such an occurrence, planners may be inclined to advise a spouse to change his or her will, trusts, beneficiary designations, and other planning documents if divorce is imminent or ongoing. But caution is needed.

Under Administrative Order 5.09, upon the filing of a petition to dissolve a marriage or service (or waiver of service) of the same the spouses are prohibited from selling, transferring, or assigning real or personal property, unless their spouse consents in writing or a court order is obtained. Administrative Order 5.09 also prohibits the altering of beneficiary designations. Discussion was held as to the constitutionality of the administrative order and the practicality of such a challenge. Additional discussion was held on the importance of estate planners reaching out to family law counsel when clients raise the issue of a contemplated divorce or are in divorce proceedings.

Further complicating estate planning during or in contemplation of divorce is Florida's elective share statutory scheme and what is called an "elective share trust." The April meeting's discussion was based on a real-world example, which is summarized below with some alterations.

Jane and John Doe are married. They do not have a nuptial agreement. They have no children together but Jane has two adult children from a prior marriage. During her marriage to John, Jane signed a will the leaves all her property to her two adult children and explicitly excludes John. The couple own a homestead valued at $400,000 as tenants by the entirety. Jane also owns in her individual name $800,000 in stock of a company she created years ago, with transfer on death designations to her two adult children in equal shares.

It is very important to Jane to pass to her two children as much of her stock as possible, if not all of the stock. Jane has an upcoming high-risk surgery and it is clear that her divorce will not be final prior to the surgery.

Under § 732.201, if Jane dies while married to John, John is entitled to elective share rights. Such rights would entitle John to 30% of Jane's "elective estate," which would be here $300,000 in value (30% of the stock and 30% of Jane's interest in the protected homestead). *See* §§ 732.2035; 732.2065.

Chapter 732 allows Jane to create an "elective share trust" to satisfy John's elective share should Jane pass away while married to John and under which she can name a trustee of her choice, who can then control with what assets the trust is funded. Importantly, the trust will retain ownership of the property. Simply put, without an elective share trust, John would be entitled to fee simple ownership of 30% of Jane's elective estate.

Let's assume that Jane created an elective share trust, named her adult children as co-trustees, died while still married to John, and John chose to take an elective share. Thereafter, John and the trustees agreed that $200,000 in value from the homestead would be used to partially satisfy John's elective share. What remains is how much stock to place into the elective share trust to satisfy the remainder of the elective share to which John is entitled. As explained below, placing $100,000 in principal into the trust may not be sufficient.

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Probate Section Report

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Statutory language and the language of the trust governs how much trust principal will count towards satisfying John's elective share.

Under § 732.2025(2)(a-c), the trust must provide John with (1) the right to use of the property or to all of the income payable at least as often as annually for his life; (2) the right to require the trustee either to make the property productive or to convert it within a reasonable time; and (3) no person other than John has the power to distribute income or principal to anyone other than John until after John dies. *Janien v. Janien*, 939 So. 2d 264 (Fla. 4th DCA 2006). If the trust fails to meet these strictures, no more than 50% of the value of the principal of the trust will count towards satisfying John's elective share. § 732.2095(2)(f). In other words, if Jane's trust fails to meet § 732.2025(2)(a-c) and the trust is funded with $100,000 in stock, John may be entitled to an additional $50,000 in value or more to satisfy his elective share, which he will own in fee simple.

If the strictures of § 732.2025(2)(a-c) are met, the value of the trust principal that counts towards satisfying John's elective share is still uncertain. Under § 732.2095(d)(1-3), the effect of the value of the principal used to fund an elective share trust on the satisfaction of the elective share may be reduced depending on what powers, if any, the trust provides to John: (1) If the trust provides John with "both a qualifying invasion power and a qualifying power of appointment," then 100% of principal of the trust counts towards satisfying the elective share; (2) if the trust provides John with a "qualifying invasion power but no qualifying power of appointment," then only 80% of principal of the trust counts towards satisfying the elective share; and (3) if the trust fails to provide John with a qualifying invasion power and a qualifying power of appointment, then only 50% of principal of the trust counts towards satisfying the elective share. *See* § 732.2095(1)(b) and (c) for the definitions of "Qualifying invasion power" and "Qualifying power of appointment."

The following chart summarizes the conditions imposed by Chapter 732, Part II on trusts designed to satisfy elective shares and the effect on the amount of principal that counts towards satisfaction of the same if certain conditions are satisfied.

Elective Share Trust
Calculation Chart

Conditions	Percentage of Principal that Counts Towards Satisfaction			
	50% or less	50%	80%	100%
Spouse has the right to use of the property or to all of the income payable at least as often as annually for life		X	X	X
Spouse has the right to require the trustee either to make the property productive or to convert it within a reasonable time		X	X	X
No person other than the spouse has the power to distribute income or principal to anyone other than the spouse until after the spouse dies		X	X	X
Spouse has a qualifying power of appointment				X
Spouse has a qualifying invasion power			X	X

The bottom line for elective share trusts is that they tend to be very complicated and practitioners are urged to exercise extreme caution when treading in these waters.

OBTAINING PROBATE ORDERS

A discussion was held on the wait time for probate orders to be signed by the circuit's judiciary. Members cited various wait periods, ranging from weeks to months. One member has reported that he received an email from the staff attorney team that an average wait time of four to six weeks should be expected. But the same member reported receiving an order back within a few business hours after submitting a proposed order on an emergency basis. It is hoped that the wait time for non-emergency orders will undergo substantial improvement when the new magistrate system is implemented.

The Probate Section meets via Zoom on the second Wednesday of each month at 4:30 p.m., and all interested parties are invited to attend. Please contact Jackie Hall at (352) 378-5603 or jhall@larryciesla-law.com to be included on the e-mail list for notices of future meetings

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people drown each day in the United States. The odds of being killed in a motor vehicle crash for the average American is 1 in 5,000. Oddly, to a degree, we don't even blink at that risk.

Leonhardt underscores that according to epidemiologists we are never going to get to a place of zero risk from COVID. However, epidemiologists also add that they do not think that is the correct metric for ultimately feeling that things are normal.

A professor at Brown University told Leonhardt recently about his struggle to return to a normal life after being vaccinated. He admitted he had been fully vaccinated for two months and yet had only recently decided to meet a vaccinated friend for a drink, unmasked. "It was hard – psychologically hard – for me." In other words, there are going to be some challenges "to re-acclimating and re-entering" the Brown professor said, "But, we've got to do it." Leonhardt asked the Brown professor how it felt after he got together for the drink with his friend. The response: "It was awesome."

Risk analysis is difficult in mediation or when coping with COVID. In either situation we *must* have the facts to make a reasoned decision. It is in our nature to avoid risk. We must do so in a rational manner. Avoiding risk at mediation, as with dealing with COVID fears, means knowing values, the likelihood of certain results, the cost of obtaining those results, etc. No one can make a good decision about resolving a case or claim without being prepared and having all relevant data in order to make a reasoned decision to avoid the costs and risks of trial. No one can make a reasoned decision with COVID without that same knowledge. Prior to the availability of the COVID vaccines people tried to evaluate the risk or loss of death or serious illness from COVID. After conducting such an assessment, members of society isolated themselves for months and some continue to do so. Why? To avoid the perceived risk of loss, i.e., death.

We read Mr. Leonhardt's article after reviewing some material on what makes for a successful mediation. Over and over again the answer was "prepare, prepare, prepare, i.e., know the facts, have the data, do the analysis." Good advice for mediation, good advice for life. There is going to come a time when Zoom mediations based on COVID concerns will stop. It is assumed, or at least possible, that we will gradually or rapidly go back to traditional in-person mediations. Done traditionally based on rational analysis.

EJCBA'S ANNUAL PROFESSIONALISM SEMINAR RECOGNIZED BY THE FLORIDA BAR

By letter addressed to Professionalism Committee Chair Ray Brady, Esq., The Florida Bar's Standing Committee on Professionalism and the Awards Working Group announced on May 5, 2021 that the Eighth Judicial Circuit Bar Association's Annual Professionalism Seminar has been named the 2021 recipient of the Group Professionalism Award.

As noted in the announcement, the Standing Committee on Professionalism seeks nominations from bar associations, judicial organizations, Inns of Court and law school organizations aimed at enhancing professionalism to recognize one organization with an innovative program that can be implemented by others to promote and encourage professionalism within the legal community. We, as an Association, are honored by this statewide recognition and congratulate Ray Brady for his commitment to and leadership of the Professionalism Seminar year after year.

The award will be presented virtually during the 2021 Florida Bar Convention on Tuesday, June 8, 2021 at 12 noon via Zoom. If you would like to attend the presentation, please contact Katie Young, Asst. Director of the Henry Latimer Center for Professionalism at (850) 561-5745 or via email at cyoung@floridabar.org.

Gerald T. Bennett American Inn of Court

The Gerald T. Bennett American Inn of Court is accepting applications for its 2021-2022 session. Applications can be submitted online at bennettinn.com.

The Bennett Inn of Court was established in 2011 to foster a cooperative learning environment between law students, attorneys, and judges, with a strong emphasis on exploring cutting-edge legal issues, mentoring, and interactive learning. The Inn is part of the American Inns of Court, America's oldest, largest and fastest-growing legal mentoring organization. For over twenty years, American Inns of Court have provided judges, lawyers, and law students an opportunity to participate actively in developing a deeper sense of professionalism, achieving higher levels of excellence and furthering the practice of law with dignity and integrity.

Meetings are held monthly from September to April at Blue Gill Quality Foods, with dinner provided. Continuing legal education credits are available for participation in each meeting. Scholarships are available for public interest attorneys and attorneys employed by the State of Florida.

For additional information, please visit www.bennettinn.com or contact the Membership Chair, Magistrate Katherine L. Floyd at floydk@circuit8.org.

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Thank you to all of the participants and volunteers. Your invaluable support helped to make the 2021 tournament successful – even in times of COVID.