

## The Florida Law Practice



*For Florida Lawyers – By Florida Lawyers*

A JOURNAL OF THE SOLO AND SMALL FIRM SECTION

# MESSAGE FROM THE CHAIR

by Cristina Alonso, Alonso Appeals

The bar year is off to an excellent start. Our annual virtual Solo & Small Firm Conference: *Tech Up: Transform Your Law Practice—And Your Life*, was held on February 23, 2024, and now is available to [purchase online](#). It provides valuable insights on technology and business management with an emphasis on incorporating A.I. into your practice. Our diverse roster of presenters covers topics that allow you to work smarter, more productively, and more effectively so that you can live a healthier, happier life. It is approved for 5 hours of CLE credits: 1 hour of Mental Health & Wellness, 3 hours of Ethics, and 4 hours of Technology credits.

We are excited to announce that our 2024 Destination CLE trip on mobile technology and cybersecurity will be in Southern Spain from May 24 to June 4, 2024. This provides a great venue for gaining four hours of Technology CLE credit from the experts. We will start the trip with 3 days in Madrid, followed by 2 days in Seville, 3 days in Marbella, and finish off with 2 days in Granada. The price starts at \$5,751 EU for double occupancy and \$5,551



CRISTINA ALONSO,  
2023-2024 SOLO & SMALL FIRM  
SECTION CHAIR

EU for single occupancy and includes accommodation at beautiful hotels with breakfast and train transportation between cities. For more information, please contact travel agent Lionel Moolchan, Lorraine Travel, 305-446-4433 ext. 3100, 10 AM to 5:30 PM. With special thanks to our Destination Event Sponsor, David C. Prather, of Smith, Ball, Baez, & Prather, Palm Beach Gardens.

We had a successful virtual Annual Ethics and Professionalism Update seminar titled: Scary Tales of

Unprofessional & Unethical Conduct on October 27, 2023, which is available for viewing on demand. It is approved for 5 CLE credits: 2 hours of Ethics, 2 hours of Professionalism, and 1 hour of Technology.

The Section continues to offer our members free one-credit Wednesday Wisdom zoom webinars that are held at lunchtime. These webinars remain

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available on demand on the Section's members' only Facebook page. Our members also receive a discounted rate on our paid CLEs.

In addition to CLEs, we offer our members free attendance at our virtual Book Club meetings. The September meeting was on *Profit First: Transform Your Business from a Cash-Eating Monster to a Money-Making Machine* by Mike Michalowicz. We look forward to future book club meetings on books dealing with business management, marketing and increasing your firm's profits.

We prioritized outreach this year by sponsoring the 2023 Voluntary

Bar Leaders Conference and the first YLD Virtual Summit. The Section also invites local solo and small firm committees and bar associations to its Executive Council meetings and receptions. Thank you to the Section members who joined us on February 9 at the TradeWinds Island Grand Beach Resort in St. Pete, FL.

There has never been a better time to join the Section and get involved. Throughout the year, the Section provides its membership with opportunities to publish videos as part of the Section's #HowToSoloSmallFirm series, which offers pro tips on business models, technology, personnel and client management, marketing, and

more. Each attorney offers a unique perspective on how to run a solo or small firm, and we add new videos throughout the year. We encourage you to submit videos for the series. You may also publish articles that are circulated to the Section membership via The LINK – the Section's newsletter that is published three times a year on a variety of topics– and QuickLINK – the Section's biweekly newsletter that provides tips on technology and business management, and updates on Section events. I encourage solo and small firm practitioners interested in learning more about the Section to reach out to an Executive Council member or committee chair.

## Solo & Small Firm says farewell to Ricky . . .

SECTION OF THE FLORIDA BAR

*Thank you* to the Solo & Small Firm Section's longtime Program Administrator, Ricky Libbert, who recently retired from The Florida Bar.

Ricky has been an integral part of the section for many years and deserves credit for all that she has contributed. We all will miss her enthusiasm, ability, creativity, and exceptional personality.

## . . . and welcome to Gabrielle!

Please join us in welcoming Gabrielle Hermesian as our new administrator. Gabrielle has worked with The Florida Bar's Research, Planning, and Evaluation Department and has an impressive professional background. We are sure that the section will be in good hands, and we look forward to working with her.

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# I AM SOLO

## DENISE AND MASIMBA

### MUTAMBA, MDM LEGAL, PLLC

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**What do you like best about being a solo or small firm? Please explain how you came to this type of practice and why. What do you like least?**

- The biggest advantages are flexibility and freedom. Flexibility to work how and when you need to serve clients; freedom to practice law in a way that takes full advantage of our style and our strengths. We are grateful to all of the mentors who we have learned from over the years. We have taken best practices from each of them to provide the best service possible to our clients. We especially love the freedom to take the sorts of cases that continue to fuel our passion for the law. Our practice areas reflect our interests; as a result, our firm specializes in Labor & Employment, Immigration, Civil Rights, Housing Discrimination, and Estate Planning.
- The best thing about owning your own firm can be the worst thing as well. Flexibility comes with a lack of the stability that comes from not always knowing when your next paycheck will be. That said, as long as you recognize this reality and stay disciplined with what you need to do: marketing; networking; and generating client referrals through exceptional service, this disadvantage is not as bad as it might seem.



DENISE MUTAMBA



MASIMBA MUTAMBA

**Would you say that solo or small firm practice is a “people” practice? Do you like people/are you a people person? Do you prefer working alone or with others, like a paralegal or with co-counsel?**

- Law is definitely a “people” practice and solo/small firm practice is even more so. Your reputation with clients, fellow attorneys, and the community at large can make or break your firm. That said, we have found that conducting ourselves with transparency,

integrity, and candor at all times has allowed us to have a cordial, friendly, and professional relationship with our clients, the Bar, and within our community.

- We consider ourselves to be people persons, which has definitely been helpful as owners of our own firm. However, as introverted extroverts, we need to recharge after prolonged contact with people. Owning our own practice works out well for that since we decide when to give presentations or attend events and when to stay home. Also, at this stage of the firm, the two of us are the only law partners my husband and I have, and we have not hired full-time support staff in our practice. When the time comes to hire full-time staff, we intend to hire like-minded professionals with a personal sense of integrity in their work since micromanaging is a pet peeve we share.

**What person/people most influenced your becoming a solo or small firm attorney? Either positive or negative**

- As spouses, we were each separately supportive of each other about starting out. Also, our closest attorney friends that we have known for years were all knowledgeable and supportive. One of us (my husband) has a full-time job in addition to his work for the firm. This provided

*continued, next page*



## I AM SOLO

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the financial stability that was crucial for getting started. Our friends who started their own firms before us encouraged us and provided great insights that proved instrumental to going out on our own.

**Denise Mutamba** focuses her practice on representing private and governmental clients with respect to labor and employment matters. As a labor and employment lawyer, she counsels her clients regarding day-to-day human resources matters, including disciplinary and termination decisions and wage and hour compliance, and compliance with federal, state, and local labor law compliance. She also represents clients' interests in collective bargaining negotiations, arbitration, and responding to claims of unfair labor practices. Finally, she responds to charges of discrimination filed with the U.S. Equal Employment Opportunity Commission and the Florida Commission on Human Relations on behalf of her clients. Ms. Mutamba is admitted to practice law in all county and circuit courts in the State of Florida, the United States District Court for the Middle District of Florida, the United States District Court for the Southern District of Florida, and the Supreme Court of the United States.

**Masimba Mutamba** is a seasoned civil rights and immigration attorney with over a decade's worth of experience handling complex issues for individuals and businesses alike.

Prior to being a Founding Partner with the firm, Masimba was the Human Rights Defense Center ("HRDC")'s inaugural William A. Trine Fellow. In that role, he litigated civil rights cases all over the country, including filing petitions with the U.S. Supreme Court. Masimba advanced the civil rights of media organizations, individuals, and classes of individuals

imprisoned in the nation's jails, prisons, and federal immigration detention centers. He filed First Amendment lawsuits around the country challenging censorship policies that greatly curtailed the rights of book and newspaper publishers and family members to contact people in custody. He also brought federal and state consumer class action claims, and appealed lower court decisions, to fight against the predatory schemes of some private companies targeting prisoners or the families who sought to maintain contact with them. Furthermore, Masimba litigated Eighth Amendment lawsuits against corrections and medical staff who subjected prisoners to cruel and unusual punishment that resulted in their catastrophic injury or death. Masimba now employs his extensive expertise on these issues as a civil rights consultant around the country.

Masimba has also represented clients across the country and beyond U.S. borders in obtaining a wide array of non-immigrant and immigrant visas, including but not limited to: student (F) visas; cultural exchange (J) visas; religious worker (R) visas; crewmember (D) visas; exceptional talent (O) visas; performing athlete, artist, entertainer (P) visas; specialty occupation (H-1B) visas; intracompany transferee (L) visas; and treaty trader/treaty investor (E) visas.

In addition to assisting clients with visa applications, Mr. Mutamba has also filed administrative appeals with the Administrative Appeals Office (AAO) of the U.S. Citizenship and Immigration Service (USCIS) and, when necessary, filed federal district court lawsuits and Circuit Courts of Appeals Petitions for Review against the U.S. Department of Homeland Security (DHS) and its subordinate agencies, including the USCIS and U.S. Immigration and Customs Enforcement (ICE). He is also experienced in advancing Freedom of Information Act (FOIA) requests and lawsuits in furtherance of his client's immigration cases.

Mr. Mutamba is currently a representative of the Fifteenth Judicial Circuit on the Florida Bar Young Lawyers Division's Board of Governors, and is member of the Florida Bar's standing Committee on Media & Communications Law. In his local community, Masimba is actively involved in the F. Malcolm Cunningham, Sr. Bar Association, the Palm Beach County Bar Association's standing Committee for Diversity and Inclusion, and that Bar Association's Young Lawyers Section.

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

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# MENTORSHIP WITH THE FLORIDA BAR'S COUNSEL TO COUNSEL PROGRAM

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Immediate Past President of The Florida Bar Gary Lesser recently stated “mentorship is essential to the professional development of lawyers, especially now when many hearings and depositions are virtual, and you’re not going to meet lawyers in the hallway, and you’re not going to be sitting in the back of the courtroom and see how lawyers handle themselves in front of a judge, all of those opportunities are essentially lost.”

To tackle the situation of new lawyers losing mentorship opportunities, The Florida Bar created **Counsel to Counsel**, a unique mentorship program facilitated virtually through the MentorcliQ software. Designed for attorneys in their first three years of practice with a focus on professionalism and ethics, the path of a lawyer’s career, and getting involved in the legal and general community.

Lesser stated, “we owe it to these newer lawyers to be able to be their best selves, to be the best lawyers at this stage of their career. [This program] will increase professionalism and will help these lawyers and the public we serve for years to come.”

Counsel to Counsel uses an app to cut the registration process to a few minutes for both parties and pair lawyers with similar personalities, preferences, and practices—with the biggest emphasis on personalities—to enhance the chances of the match succeeding. Zack Zuroweste, one of the founders of the program, stated that “[o]ur goal is to pair you with someone you can connect with and establish a mentor relationship; not just someone who does the same work as you.”

The program is designed to help connect seasoned attorneys to newer attorneys and assist them in developing meaningful professional relationships through the MentorcliQ technology



ASHLEY SYBESMA

and personal, direct communication. MentorcliQ is a mentoring software and mobile app used by Fortune 500 companies featuring scientific matching technology that makes it easy for mentors and mentees to connect and develop their mentoring relationships. Using MentorcliQ helps make this process as simple as possible so participating members can focus on what matters most in a mentoring relationship: communication.

“Counsel to Counsel is going to help newer lawyers be their best personal and professional selves,” President Lesser said. “This will be good for the newer lawyers, the mentors that work with them, and will overall elevate the legal profession going forward.”

Lawyers who signed up for Counsel to Counsel filled out a brief survey, and the program then used cutting-edge matching technology to determine compatibility between mentors and mentees. From there, the mentor or mentee chose their top three options, and the technology establishes the final match based on those responses.

The program curriculum is a nine-month program, using four milestones and practical experiences that the mentees will be asked to accomplish, and will help program developers gauge its success. Each milestone has

a series of worksheets that provides the mentors and mentees with a list of discussion points and suggested activities to help the newer lawyers grow their careers more effectively than without guidance.

The four milestones for the program include: 1) Career Planning and Professional Development; 2) Lawyer-Client Relationship; 3) Lawyer-Bar Relationship; and, 4) Client Development and Community Involvement.

Within the Career Planning and Professional Development milestone, the pairings are given worksheets to discuss career objectives, career paths, and career plan; time management, work-life balance, and fulfillment; office dynamics; law school debt; job searching and networking; and solo small firm. The Solo Small Firm worksheet provides suggested discussion topics such as the benefits and negatives of various firm structures, the benefits of having multiple mentors, and the benefits of getting involved in The Florida Bar Solo and Small Firm Section (“SSFS”), amongst others. It also drives mentees to the SSFS website and other Florida Bar websites to provide additional guidance in navigating the solo and small firm experience.

The milestone of the Lawyer-Client Relationship includes worksheets for the mentor’s office and staff; client management; case evaluation; non-paying clients; the business of law; client communication; malpractice insurance; and, the grievance process. Worksheets in the Lawyer-Bar Relationship milestone include written and unwritten local rules and practices; local bar leadership and involvement; Florida Bar resources; pro bono involvement; conflicts of interest; the

*continued, next page*

## MENTORSHIP

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unlicensed practice of law; and building and maintaining your reputation. Finally, the milestone of Client Development and Community Involvement has worksheets to guide the mentoring pairs on new business referral sources; local community involvement; lawyer advertising; volunteering with legal aid; local civic, charitable, and service; and completing a pro bono case.

In late October 2023, Counsel to Counsel officially matched participants, and the mentorship relationships began for the inaugural year. The program had 388 lawyers sign up and, so far, has made 186 matches. The participants represent all 20 judicial circuits in the Florida court system, with 21% of participants in the Eleventh Circuit. During the program, the pairings will receive communications providing additional professionalism and mentoring resources. This, combined with the ability to create participant surveys,

offers program administrators the ability to gauge program satisfaction, evaluate development, and get more insight into participant progress and program health.

A recent Florida Bar article on the program noted that “research has shown that mentors can gain exposure to new ideas, educational methods, technologies, and perspectives through conversations with their mentees. At the same time, mentees benefit from networking and new experiences, and being part of a mentorship can result in increased pay, responsibility, and happiness.” With International Mentoring Month in January, whether you are participating in The Florida Bar’s Counsel to Counsel program or otherwise have a mentoring relationship, now is the time to celebrate and make the most of these relationships and opportunities.

**Ms. Sybesma** is an attorney at The Smith Law Firm, in Key West, focusing her practice in the areas of commercial

litigation, immigration, land use, business, and real estate. She handles all phases of complex civil litigation. Ms. Sybesma has served as counsel for retailers, multinational corporations, general contractors, and healthcare providers. Ms. Sybesma and her firm are actively involved with The Florida Bar and the local community in Monroe County. Ms. Sybesma is currently the Co-Chair of the Mentoring New Lawyers Committee, which created and oversees the Counsel to Counsel to Program, and the First Vice President of The Florida Bar Foundation. She also serves on the Sixteenth Judicial Circuit Judicial Nominating Commission, the Sixteenth Circuit UPL Committee, the Sixteenth Judicial Circuit Local Professionalism Panel, the Sixteenth Judicial Circuit Pro Bono Committee, the Voluntary Bar Liaison Committee, and the Florida Bar Pro Bono Legal Services Committee. She previously served as an elected and appointed representative on the Florida Bar Board of Governors, Young Lawyers Division.

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# UNITED STATES BANKRUPTCY COURT: PROOFS OF CLAIM BASICS

A proof of claim is an official bankruptcy form (Proof of Claim- Form 410) that a creditor fills out to indicate that it is owed money by a person or entity that filed bankruptcy. After a debtor files bankruptcy, the court usually sends all creditors a notice of the case and instructions on when and how to file a proof of claim. A creditor must fill out and submit the proof of claim form before the Court-ordered deadline (called a “Bar Date”) to receive payment on the claim. While you don’t need an attorney to file a proof of claim, depending on the nature and size of the claim, you should consider hiring an attorney to ensure your rights are protected.

The most important information in a proof of claim is the correct name and case number of the debtor, the creditor’s name, the amount of the claim and the status of the claim (secured or unsecured, etc.). If possible and applicable, creditors should attach supporting documentation reflecting the basis of the debt owed (mortgage, lease, contract, etc.).

## Who should file a proof of claim?

All secured and unsecured creditors in Chapter 11, 12 or 13 bankruptcy cases should file a proof of claim to receive payment during the bankruptcy case.

In a chapter 7 (liquidation) case, the chapter 7 trustee determines whether proofs of claim should be filed, depending on whether there are assets to distribute in the case. If there no assets to distribute, a trustee will not call for proofs of claim to be filed. If there are assets, a trustee will file a notice of a bar date to file the claims.

Deadlines, including proof of claim deadlines, are very important in bankruptcy. Failure to file a claim timely



MEGAN MURRAY

could bar your right to recovery in the case. *In re Sherman*, 2019 WL 10733907, at \*1 (Bankr. M.D. Fla. Oct. 22, 2019) (referencing chapter 13 and noting the Bar Date is an “uncompromising deadline.”).

## How do I file my Proof of Claim?

Generally you should receive notices from the Bankruptcy Court on how to file a proof of claim. These days, most proofs of claim can be submitted electronically through each bankruptcy court’s website. If you print out a proof of claim form and decide to mail it to the Court, you should be very careful to ensure it is actually received by the Court by the Bar Date. *In re Seminole Backhoe Servs., Inc.*, 33 B.R. 914 (Bankr. N.D. Tex. 1983) (choosing to transmit claim in a bankruptcy case by mail, the IRS assumed the risk of untimely delivery).

In some bigger cases with many creditors, the debtor will outsource its claim process to a claims agent (Epic, Stretto, to name a few). These have websites where creditors can easily follow instructions to submit their claims online – the bankruptcy court’s deadlines still apply.

Under exceptional circumstances, a late proof of claim may be accepted

(for example, if the creditor did not receive notice of the bankruptcy case). *In re Fitzgerald*, No. 8:19-BK-07741-RCT, 2020 WL 5745973, at \*3 (Bankr. M.D. Fla. May 18, 2020) (referencing Federal Rule of Bankruptcy Procedure 3002(a) and (b)).

Motions to consider a late filed claim are considered on a case-by-case basis, and you should consider contacting an experienced bankruptcy professional for assistance.

In other circumstances, an informal proof of claim will be permitted, but creditors should not rely on this and should endeavor to file proofs of claim timely. *See In re Phillips*, 372 B.R. 97, 100 (Bankr. S.D. Fla. 2007) (stating the factors to establish an information proof of claim, which include apprising the court of the existence of the claim; stating the nature and amount of the claim; and evidencing an intent by the claimant to hold the debtor liable for the claim).

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## BANKRUPTCY COURT

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### Kinds of Claims

Creditors come in all shapes and sizes. Secured Claims are claims in which the creditor's debt owed by the debtor is secured by an asset of the debtor (collateral).

Administrative claims are claims incurred by the debtor for the actual and necessary costs of preserving the estate, after the filing of the case. See 11 U.S.C. § 503. Administrative creditors file these claims under a special process, not under a proof of claim form.

Priority Claims are claims which are granted special status by the bankruptcy law, are higher priority than general unsecured claims, but lower than secured claims. See 11 U.S.C. § 507. Priority claims include claims for wages, taxes and other special status creditors.

Some creditors have unsecured claims with no collateral. These claims are called "general unsecured claims" which are generally paid last after Secured Claims, Administrative Claims, and Priority Claims.

Best practices in executing a proof of claim is to have the client who is familiar with the claim execute the proof of claim (not the attorney). When the attorney files, he or she could conceivably be called as a witness to attest to the claim, something most attorneys choose to avoid.

**Megan Murray**, a founding shareholder of Underwood Murray, has nearly twenty years of reorganization and workout experience advising business owners, debtors, trustees, creditors' committees, secured and unsecured creditors, and asset purchasers and sellers. She has experience both on the legal side and on the business side in a global financial institution. She counsels businesses and owners in a wide variety of industries including but not limited to

real estate, healthcare, hospitality, pharmaceutical, medical services, construction, insurance, transportation, logistics, aviation, and financial services.

Ms. Murray also has extensive experience representing a variety of fiduciaries, from chapter 7 and 11 trustees, assignees in assignments for the benefit of creditors and receivers in proceedings across the state. She brings this knowledge to her fiduciary clients, which also adds value to her non-fiduciary clients and representations.

Ms. Murray is a contributing author to *Creditors' and Debtors' Practice in Florida*, is a frequent speaker and author on bankruptcy and insolvency topics, and is active in local and national bankruptcy bar associations. In 2023 Ms. Murray was selected to co-chair the American Bankruptcy Institute's task force on Subchapter V with the Hon. Michelle Harner, United States Bankruptcy Court for the District of Maryland. Ms. Murray is also president of the Tampa Bay Bankruptcy Bar Association (2023).



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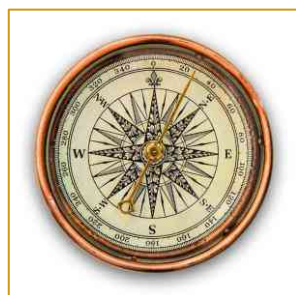


## Professionalism

**5723**—Professionalism Update for Lawyers: Ways to Avoid the Disciplinary Process. F. Scott Westheimer. 1 CLE, all of which may be applied toward Professionalism.

**6596**—Time Management Strategies & Life Hacks for the Productive, Professional Lawyer. Melanie Griffin. 1 CLE, all of which may be applied toward Professionalism.

**7844**—Annual Ethics & Professionalism Update: Scary Tales of Unprofessional Behavior. 5 CLE, 2 of which may be applied toward Ethics, 2 of which may be applied toward Professionalism; 1 Technology. \$250.



## Ethics

**7221**—Ethical Concerns When Representing Crime Victims: Emerging Issues Involving Technology & Cyberstalking. Stephanie Cagnet Myron. 1 CLE, all of which may be applied toward Ethics; 1 Technology.

**7231**—How to Avoid a Fee Dispute & Happily Get Paid (joint program with the ADR Section of The Florida Bar. Mari Frank. 1 CLE, all of which may be applied toward Ethics.

**7674**—Ethics News for Florida Lawyers. Tim Chinaris. 1 CLE, all of which may be applied toward Ethics.

**7844**—Annual Ethics & Professionalism Update: Scary Tales of Unprofessional Behavior. 5 CLE, 2 of which may be applied toward Ethics, 2 of which may be applied toward Professionalism; 1 Technology. \$250.

**8023**—Avoiding Ethical Pitfalls & Disciplinary Actions. Sia Baker-Barnes. 1 CLE, all of which may be applied toward Ethics.



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### Mental Health & Wellness

**7689**—Attorneys as Medical Marijuana Patients. Amanda Barton. 1 CLE, 1 Mental Health & Wellness.



### Technology

**6246**—Practice without Borders: Using Technology to Efficiently Run your Practice from Anywhere. Liz McCausland. 1 CLE, 1 Technology.

**6338**—Tech Options for a More Efficient Practice. Marck Joseph. 1 CLE, 1 Technology.

**7221**—Ethical Concerns When Representing Crime Victims: Emerging Issues Involving Technology & Cyberstalking. Stephanie Cagnet Myron. 1 CLE, all of which may be applied toward Ethics; 1 Technology.

**7234**—Bona Fide Technology Barriers: Principles for the Layered Protection of Your Practice. G.C. Murray II, Esq. and Robert Blackwell. 1 CLE, 1 Technology.

**7844**—Annual Ethics & Professionalism Update: Scary Tales of Unprofessional Behavior. 5 CLE, 2 of which may be applied toward Ethics, 2 of which may be applied toward Professionalism; 1 Technology. \$250.



### General CLE

**7324**—Arbitrator/Mediator Perspectives - How to Best Prepare your Clients for Mediations, Conciliations, Conferences & Arbitrations. Renee Thompson and Adam Myron. 1 CLE.

**7397**—Florida's New Tort Reform: The Impact on Attorneys & Potential Litigants. Michal Meiler. 1 CLE; 1 Civil Trial certification credit.

**7914**—DUI Tips: What to Know Before You are Pulled Over. Justin Petredis. 1 CLE.

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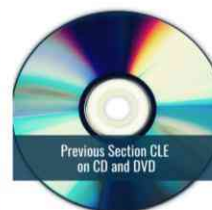
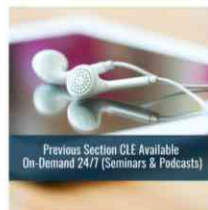
### Multi-Credit Programs (pricing indicated)

**7395**—Florida Law Update 2023. This course covers the latest updates in family law; employment law; real estate; elder law; estate planning; business law; government law and traffic. 8 CLE; 1 certification credit each in Business Litigation; City, County, & Local Government; Criminal Appellate; Criminal Trial; Elder Law, Labor and Employment; Marital & Family Law; and Wills, Trusts, & Estates. \$295.

**7844**—Annual Ethics & Professionalism Update: Scary Tales of Unprofessional Behavior. 5 CLE, 2 of which may be applied toward Ethics, 2 of which may be applied toward Professionalism; 1 Technology. \$250.

**6826**—2023 Solo & Small Firm Conference: Automate & Levitate: Tactics for Small Firm Business Owners. Automating your Practice, Conti Moore and Nikie Lomax. Simplify On Boarding and Collections, Marko Skarica. From Lawyering to Leading: Knowing the Numbers That Matter Most, Leticia DeSuzo. Funding your Law Firm - How to get Financing, Scott Leitner. Website Best Practices and Educating Different Customer Groups, Robin Cardella. 4 CLE, 2 Technology. \$245.

## CLE for Solos & Small Firms



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# MANAGING THE STRESS OF MANY HATS WITHIN SOLO AND SMALL BUSINESS FIRMS

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Attorney, Office Administration, Sales and Marketing Manager, Human Resources, Website Management and Tech Support are some of the hats that may be worn by lawyers within solo and small business firms. The additional duties that can come with a smaller environment compounds the stress of your primary role as you support clients, and work with the courts and opposing counsel. Three things you can do to combat stress while wearing multiple hats are to utilize your breath, delegate, and practice proactive well care.

Let's back up a moment to understand the stress response. The brain uses the autonomic nervous system to communicate with the rest of the body. The autonomic nervous system has two components, the sympathetic nervous system and the parasympathetic nervous system.

The sympathetic nervous system functions like a gas pedal in a car and it triggers the fight-or-flight response, often applied to emergency situations. A sequence of hormonal changes and physiological responses help someone to fight a threat off or flee to safety. It provides the body with a burst of energy so that it can respond to perceived dangers. While this is helpful in an emergency, the body can also overreact to everyday stressors that are not life-threatening.

The parasympathetic nervous system acts like a brake. It promotes the "rest and digest" response that calms the body down, easing the stress for a period of time.

Many people are not engaging their



KATHERINE MARIE

parasympathetic system, while continually holding onto daily stress, resulting in living in a chronic state of stress that affects our mind, body and behavior.

Persistent chronic stress can result in; headaches, muscle tension or pain, fatigue, sleep problems, irritability, overeating or undereating, and social withdrawal. Left untreated, these symptoms can lead to many health problems, including; heart disease, high blood pressure, obesity, and diabetes. Chronic stress lowers your immune system and when your immune system is lowered, you are susceptible to disease. Fortunately, people can counter the stress response, or put on the brake, by using a combination of approaches that elicit the relaxation response.

The one thing you can do for your stress *right now* is to breathe slowly and deeply. Breathing is something we do naturally, but when we are stressed we tend to take quick, shallow breaths. However, when we focus on our breath and breathe slowly and deeply, it can have a calming effect on our nervous system.

There are a variety of breathing techniques that guide a person to breathe in, hold, and breathe out for a specific duration. However, simply pausing and breathing deeply has been scientifically proven to positively affect the heart, the brain, digestion, and the immune system. It also works to naturally calm your nervous system as you focus on the pattern of breathing, instead of your thoughts and worries. Pausing once per hour to take five, slow, deep breaths can improve your mental clarity and focus, in addition to the physical benefits.

You put in the hard work and dedication of becoming a lawyer, and now you find yourself with duties beyond your scope of time or interest within your solo or small firm. Outside of providing legal services, the most effective hat you can wear is that of Human Resources. Why? Because to hire, or delegate where you can, will allow you to focus on your expertise and passion, and reduce your stress.

For example, there are companies that will run a website, and even manage social media promotion. Reflect upon which duties within your business can be delegated, and consider finding people to fill those roles.

"Put your own oxygen mask on first" is a cliché we all know well, and the over-used phrase, "Self-care" can elicit eye rolls and groans. Busy people who are dedicated to serving others do not have *time* for self-care, or to put their needs before their business. Yet, the consequence of not taking proactive well care steps is potentially high level

*continued, next page*

## MANAGING THE STRESS

from page 13

sick care. I can tell you first hand that managing the treatment of cancer can be a full time job! I've since learned that integrating wellness into a busy schedule takes thought and intention, but there are benefits to your mental, physical and emotional health.

Some aspects of holistic health that may reduce your stress, and in turn, support you in all your roles are; sleep, physical activity, nutrition and social/emotional connection.

Quality sleep is the springboard for a calm, productive day. Seven to eight hours of sleep is ideal. If you have trouble falling or staying asleep, set yourself up for success by creating a bedtime ritual with your hygiene tasks, releasing all the thoughts keeping your mind busy by journaling, and perhaps try a white noise machine to block out disruptions.

Incorporating physical activity into your day will also support a restful night's sleep, as well as provide physical and mental benefits. If you are new to exercise, start slow, and consider consulting your physician. Simply walking ten minutes at a time can be beneficial. The CDC recommends that adults get a minimum of 150 minutes of moderate-intensity physical activity and 2 days of muscle strengthening

activity each week. To break it down and put these numbers into perspective, if you sleep 8 hours each night, you have 16 waking hours, which total 960 minutes. If you spend 30 minutes per day doing any combination of physical activity and strength training, that's less than 3% of your day.

Fueling your body with nutritious food throughout the day will help with energy and mental clarity. Having healthy snacks on hand for the busiest of days will keep you from reaching for fat laden or sugary snacks. Try hummus and veggies, one ounce of nuts or seeds, fruit and plenty of water. For a quick breakfast for lunch, search on-line for an overnight oat recipe that appeals to you. The fiber in the oats will help keep you satiated, and a fruit and nut topping will add protein, healthy fat, vitamins and antioxidants.

Most successful professionals will tell you that they would not be where they are without their support system, which proves that social and emotional connection is vital. Your friends and family can keep you grounded, while your colleagues will be able to relate to your professional challenges.

The fact is, you will likely always have stress. What matters to your brain and body, is how you respond to stress.

When you practice proactive well care you naturally approach stressful situations differently, and you are providing your immune system with what it needs to ward off any potential risks to your health. As you juggle the demands of your solo or small business firm, utilize your breath, delegate where you can, and integrate holistic wellness to activate the parasympathetic nervous system and give yourself a break from daily stress.

**Katherine Marie** is a speaker, author and a holistic health coach. In 2015 her stage 3 breast cancer diagnosis served as a springboard to help others through their own challenges, and she shares insights on the stage, through numerous podcasts, and her YouTube channel. During coaching and while speaking, Katherine uses her relatable experience and training with the Institute for Integrative Nutrition to inspire and guide people in identifying goals and taking action. Her education and passion for stress management and holistic wellness is a thread throughout her business. Most recently, Katherine became a sponsor with the Minnesota State Board of Continuing Legal Education and offers a stress management course for attorneys. Katherine's book, *Fearless Action*, was published in April 2022.



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# THE MEDICAL MALPRACTICE PRESUIT PROCESS: AN OUNCE OF PREVENTION IS WORTH A POUND OF CURE

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I find that simply mentioning “medical malpractice” to many lawyers gives them angst. Medical malpractice is certainly a complex and unique area of the law, but it does not have to be intimidating. Familiarity with some of the more important aspects of a medical malpractice action may alleviate some of the trepidation. If you are like me, you may even find yourself loving it—the medicine is constantly evolving, the attorneys on both sides are top-notch, and, my favorite part, the subject of each case is a human being.

The purpose of this article is not to explain the ins-and-outs of every medical malpractice case. Rather, it is designed to provide an overview of one of the most unique aspects of medical malpractice actions, the mandatory presuit investigation.<sup>1</sup>

Within the medical malpractice statutory scheme—found in Chapter 766 of the Florida Statutes—are a number of statutes setting forth the prerequisites that each side must satisfy before filing or defending a medical malpractice lawsuit.<sup>2</sup> The purpose of the presuit investigation is to “alleviate the high cost of medical negligence claims through early determination and prompt resolution of claims[.]”<sup>3</sup> Each side must conduct their respective presuit investigation in good faith, including good faith cooperation in “informal” presuit discovery.<sup>4</sup> Failure to comply with the various presuit requirements is grounds for sanctions, including, but not limited to, dismissal of claims or defenses.<sup>5</sup>



ROBERT TRAVIESO

Before filing suit, the plaintiff must (1) obtain the plaintiff’s pertinent medical records, (2) have an expert review those records, (3) have the expert sign an affidavit corroborating the reasonable grounds for plaintiff’s contention that malpractice occurred, and (4) serve the respondent healthcare provider with a letter notifying the provider of the plaintiff’s intent to initiate medical malpractice litigation.<sup>6</sup> The plaintiff must wait a minimum of 90 days from the date the respondent is served with the presuit notice before filing suit.<sup>7</sup>

There are additional considerations within each of these requirements. For example, the law requires the plaintiff to obtain a supporting presuit affidavit from an expert that specializes in the same specialty as the negligent doctor.<sup>8</sup> If the plaintiff alleges that an orthopedic surgeon negligently performed surgery on his broken toe, the plaintiff cannot rely on the corroborating presuit affidavit of a podiatrist, even if the podiatrist regularly performs the same surgery

in her practice.<sup>9</sup> However, for purposes of this overview, the plaintiff’s satisfactory compliance with each of the above-described requirements will prevent the complaint from being dismissed for failure to satisfy the dictates of Chapter 766.

Once the respondent is served with the plaintiff’s letter notifying the provider of the plaintiff’s intent to initiate medical malpractice litigation (commonly referred to as the “notice of intent”), the respondent has 90 days to conduct a good faith investigation of its own.<sup>10</sup> During that time, the parties may elect to seek information directly from the other party by way of informal presuit discovery requests. This includes serving requests for production and/or written questions and conducting unsworn statements and/or medical examinations.<sup>11</sup> However, during the 90-day investigation, the respondent must retain its own qualified expert to review pertinent medical records of the plaintiff.<sup>12</sup> The respondent only has three ways to lawfully conclude its good faith presuit investigation.<sup>13</sup>

If the respondent’s expert opines that the healthcare provider was not negligent, the expert will execute an affidavit which will be used to corroborate the respondent’s denial of the claim.<sup>14</sup> In these circumstances, the respondent will almost always conclude presuit by forwarding a copy of the defense expert’s affidavit and denying the merits of the plaintiff’s claim. At that point, the plaintiff may file a complaint and initiate formal litigation.

*continued, next page*

If the respondent is unable to obtain an affidavit supporting its defense, it may conclude the 90-day presuit investigation by: (1) conceding liability and offering to submit the damages to binding arbitration, or (2) conveying a confidential settlement offer to resolve the claim.<sup>15</sup> Binding arbitration can be an extraordinarily powerful tool for the defense but their use is outside the scope of this overview. Concluding presuit with a confidential settlement offer is rare because it signals to the plaintiff that the respondent was unable to obtain a supporting expert affidavit. Assuming the offer of binding arbitration or settlement offer is rejected, the plaintiff may then initiate formal litigation by filing a complaint in the appropriate circuit court. From there, the litigation proceeds much like other civil actions.

As with any prerequisite to filing a lawsuit, medical malpractice presuit investigations are subject to great scrutiny. Hundreds of decisions have dealt with a party's failure to comply with the presuit requirements.<sup>16</sup> Although dismissal with prejudice is infrequent, given the overarching public policy preferring access to courts,<sup>17</sup> strict compliance with the provisions of Chapter 766 is the easiest, most efficient, and least stressful way to ensure the ultimate survival of claims or defenses.

## About Robert Travieso

**Robert Travieso** founded *The Travieso Law Firm* to advocate for individuals that have been injured by the negligence of their healthcare providers. Robert spent several years defending hospitals and physicians, but always knew that his true passion was seeking justice for individuals and families.

*Robert began his legal career fighting for victims as a prosecutor at the Miami-Dade State Attorney's Office. During his tenure, Robert served in the Misdemeanor Domestic Violence Unit, Economic Crimes Unit, and Career Criminal and Robbery Unit, where he prosecuted the most violent repeat offenders.*

*Robert earned his law degree from The George Washington University Law School, where he was the Editor-in-Chief of The George Washington International Law Review and a member of the highly-regarded GW Moot Court Board. Robert obtained his Bachelor of Science degree in finance, summa cum laude, from Florida State University.*

## Endnotes

1 Fla. Stat. § 766.104(1): "No action shall be filed for personal injury or wrongful death arising out of medical negligence . . . unless the attorney filing the action has made a reasonable investigation . . . to determine that there are grounds for a good faith belief that there has been negligence in the care or treatment of the claimant."; See also During the 90-day period, the prospective defendant or the prospective defendant's insurer or self-insurer shall conduct a review as provided in s. 766.203(3) to determine the liability of the prospective defendant.

2 Fla. Stats. §§ 766.101–766.318.

3 *Weinstock v. Groth*, 629 So. 2d 835, 838 (Fla. 1993).

4 See Fla. Stat. § 766.104(1); Fla. Stat. § 766.106(3); see also Fla. Stat. § 766.205(1)–(2) ("[E]ach party shall provide to the other party reasonable access to information within its possession or control in order to facilitate evaluation of the claim. . . . without formal discovery, . . .").

5 See, e.g., Fla. Stat. § 766.204(2) (healthcare provider's failure to timely produce medical records to patient "shall constitute evidence of failure of that party to comply with good faith discovery requirements and shall waive the requirement of written medical corroboration by the requesting party."); Fla. Stat. § 766.205(3) ("Failure of any party to comply with [presuit discovery] shall constitute evidence of failure . . .

to comply with good faith discovery requirements and shall waive the requirement of written medical corroboration by the party seeking production."); Fla. R. Civ. P. 1.650 ("Evidence of failure to comply with [informal presuit discovery] may be grounds for dismissal of claims or defenses ultimately asserted.")

6 Fla. Stat. § 766.106(2)(c) (The letter "must include, if available, a list of all known health care providers seen by the claimant for the injuries complained of subsequent to the alleged act of negligence, all known health care providers during the 2-year period before the alleged act of negligence who treated or evaluated the claimant, copies of all of the medical records relied upon by the expert in signing the affidavit, and [HIPAA authorization form] provided in s. 766.1065.").

7 Fla. Stat. § 766.106(3)(a) ("A suit may not be filed for a period of 90 days after notice is delivered to any prospective defendant.").

8 Fla. Stat. § 766.102(5).

9 *Clare v. Lynch*, 220 So. 3d 1258, 1260–61 (Fla. 2d DCA 2017) ("While both doctors' practices focus primarily on foot and ankle surgery, these two doctors . . . practice in different specialties. Therefore, the . . . noncomplying affidavit was insufficient on its face to constitute the required corroboration of reasonable grounds to initiate medical negligence litigation.").

10 Fla. Stats. §§ 766.106(3), 766.203(3).

11 Fla. Stat. § 766.106(6).

12 *Id.*

13 See Fla. Stat. § 766.106(3)(b).

14 *Id.*

15 See *id.*

16 A quick Boolean search of Westlaw for "medical malpractice" AND fail! /s "presuit" returned 217 cases.

17 See *Kukral v. Mekras*, 679 So. 2d 278, 284 (Fla. 1996) ("[T]he medical malpractice statutory scheme must be interpreted liberally so as not to unduly restrict a Florida citizen's constitutionally guaranteed access to the courts, while at the same time carrying out the legislative policy of screening out frivolous lawsuits and defenses.").







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## March 2024

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Live InReach webinar by [Mindi Wells](#), Columbus, OH. Moderator: [Bill Curphey](#). Course number 8340 is approved for 1 CLE.

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Free Wednesday Wisdom Zoom webinar for Solo & Small Firm Section members\* by [Brandon Sapp](#), Orlando (Plaintiff's Perspective); [Charise Morgan](#), Miami (Defense Perspective); and [Jamie Billotte Moses](#), Orlando (Appellate Perspective). Moderator: [Rebekah Taylor](#), Lake Mary. Host: [Judge Jennifer Kuyrkendall Griffin](#), 3<sup>rd</sup> Judicial Circuit. Course number 8342 is approved for 1 CLE. \*Registration will be approved when section membership is confirmed.

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Free Wednesday Wisdom Zoom CLE for Solo & Small Firm Section members\* by [Masimba Mutamba](#), West Palm Beach, and [Ashley Sybesma](#), Key West. Moderator: [Judge Jennifer Kuyrkendall Griffin](#), 3<sup>rd</sup> Judicial Circuit. Course number 8343 is approved for 1 CLE and 1 Immigration and Nationality Law certification credit.

\*Registration will be approved when section membership is confirmed.

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### 20—Florida Law Update

Updates in 8 key areas of law. 8 AM–4:25 PM in person during the Annual Florida Bar Convention at the Signia by Hilton Orlando Bonnet Creek and live webcast with 90-day, on-demand access. Moderator: [Judge Jennifer Kuyrkendall Griffin](#), 3<sup>rd</sup> Judicial Circuit. Course number and CLE pending approval. Registration opens soon.



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# WHAT SOLO AND SMALL FIRM LAWYERS NEED TO KNOW ABOUT ECONOMIC RECESSION IN 2024

By Aaron H. Wallace, Esq.

Spring seems like such an optimistic season, doesn't it? And yet the economic forecast for the months ahead seems decidedly less blossomy.

With economists predicting a downturn of undetermined magnitude at some point this year,

lawyers in our state should be mindful of the relationship between **economic recession** and **lawyers' professional liability**.

Did you know that, historically, recessions have meant a significant uptick in the number of malpractice claims brought against lawyers? As tough economic times put pressure on clients, they may look for windfalls in the form of an errors & omissions claim against counsel. Meritorious or not, such claims can become extraordinarily disruptive to the lawyer.

In light of the current economic landscape, we're sharing four essential "Do Nots" for lawyers practicing in the midst of recession:

## 1. Do not sue your clients for failure to pay.

As recession creeps in, it's possible clients will find themselves less willing or less able to timely satisfy outstanding invoices from your firm. The temptation to take legal action can be strong — especially if your firm is similarly feeling the grip of recession. But suing a client for fees is, effectively, inviting a counterclaim for legal malpractice — and as the ABA points out, the malpractice claim "usually seeks an amount far in excess of the legal fees in dispute."

## 2. Do not lower your client screening standards.

In downturned



AARON H. WALLACE,  
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times, it can be tempting to take on clients whom you are less than comfortable representing — or simply to take on more clients than for which you realistically have time or capacity. Can the client afford your services? Does he or she have unrealistic expectations or a cumbersome case with very little time left on the filing clock? Has the client already parted ways with multiple other lawyers regarding the same matter? Does he or she strike you as confrontational or angry? Are you thinking of helping a family member or friend against your better judgment simply because they are facing hard times? Heed these red flags!

## 3. Do not venture into unfamiliar practice areas simply to bring in more business.

This has been a common trap for lawyers during previous times of economic uncertainty. So many of those lawyers have found that dabbling does not pay. Unfailingly, what seems like a "simple case" becomes a quagmire, and lawyers

without sufficient experience and expertise in a given area may find themselves under fire either for making mistakes or billing clients for "learning on the job." Remember: the duty of competence does not yield to market conditions.

## 4. Don't be without high-quality lawyers' professional liability insurance.

Should you find yourself facing a legal malpractice claim — even an unmeritorious one — you'll want to know that you have high-quality coverage from a provider you can count on. Look for robust policy features and a personalized, Florida-based claims experience designed to protect your practice and your reputation.

*Aaron H. Wallace is a lawyer and author who serves as Director of Marketing at Florida Lawyers Mutual Insurance Company, the state's only direct-write lawyers' professional liability insurer. Rated by AM Best for Excellent Financial Strength and owned by its member lawyers, Florida Lawyers Mutual provides high-quality policy features (including a cyber liability endorsement at no additional premium cost), value-added membership benefits (including more than 33 hours of cost-free CLE for each reporting period), and legendary member service. The Company recently declared an historic member dividend. (Dividends are paid at the sole discretion of the Company's Board of Directors; a past dividend does not guarantee the payment or amount of future dividends; details available at [flmic.com](http://flmic.com).) Get a quick premium indication and learn more about how Florida Lawyers Mutual can add value to your practice at [www.flmic.com](http://www.flmic.com).*

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# PARALEGAL CORNER

## NEWS FOR PARALEGALS TO USE...

by Priscilla Horn Warren, CP, FRP

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

The [Paralegal Association of Florida, Inc.](#), for its Annual PAF Fall Seminar, hosted a virtual presentation of “May It Please the Court...How to Present an Effective Case” on November 3, 2023. This year several Florida judges provided an insight as to how paralegals can better operate and assist our attorneys when presenting matters before the court. View the topics and judges [at this link](#).

The following paralegals have been declared Officers-Elect for the Paralegal Association of Florida, Inc. for 2024:

Sherry Webber, CP, FCP, FRP – Office of President  
Jodee L. Buck, ACP, FCP, FRP – Office of Second Vice President  
Tina M. Contino, CP, FRP – Office of Secretary  
David Dewell, CP – Office of Treasurer  
Valerie G. Franklin, FRP – Office of Director at Large



PRISCILLA HORN WARREN

Visit the [PAF website](#) for contact information.

The Solo and Small Firm Section hosted its Annual Solo and Small Firm Conference on February 23. “Tech Up: Transform Your Law Practice – And Your Life” now is available to [buy online](#) and five CLE credits are available. Artificial Intelligence (AI) is explored in a variety of topics. Visit the [conference web page](#) for details or contact our section’s Program Administrator, Gabrielle Hermesman at [ghermesman@floridabar.org](mailto:ghermesman@floridabar.org) or 850-561-5631.

Another advantage of Solo & Small Firm Section membership is free CLE. The section offers at least 10 monthly CLEs on Zoom—at no charge to members. These continue to be exceptionally informative and convenient, as well as providing current information on legal issues and obtaining CLE credits.

If you are not an [affiliate member](#) of the Solo and Small Firm Section, what are you waiting for? Affiliate memberships are only \$45 per year. Multiple benefits are available to our members and affiliate members. Becoming an affiliate member of the SSF Section might be one

of the best personal and professional decisions you will make for your paralegal career to flourish and prosper. Interested? Please contact Solo & Small Firm Section Program Administrator Gabrielle Hermesman at [ghermesman@floridabar.org](mailto:ghermesman@floridabar.org) or (850) 561-5631.

For those of you who wish to learn more about the FRP designation, please visit The Florida Bar’s [Florida Registered Paralegal Program](#) web page.

If you need more information on NALA, the nationwide paralegal association, and/or requirements for obtaining your national Certified Paralegal designation, visit [their website](#) for membership requirements and continuing education opportunities.

**Please do not hesitate to contact me with any questions or concerns. My direct email is: [pris2323@yahoo.com](mailto:pris2323@yahoo.com).**



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