

**Real Property, Probate and Trust Law Section  
Executive Council Meeting  
Sandestin Beach Resort & Hotel Effie  
Destin, Florida  
February 25, 2023  
9:00 a.m. (C.T.)**

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**Agenda**

- I. **Presiding** — *Sarah Butters, Chair*
- II. **Secretary's Report** — *Sancha Brennan, Secretary*
  1. Motion to approve the minutes of the December 10, 2022 meeting of the Executive Council held at The Four Seasons in Orlando, Florida. **p. 8**
  2. Meeting Attendance. **p. 24**
- III. **Chair's Report** — *Sarah Butters, Chair*
  1. Thank you to our Sponsors!
  2. Introduction and comments from Sponsors. **p. 40**
  3. Milestones.
  4. Interim Actions Taken by the Executive Committee.  
Actionline Editor 2023 Contract. **p. 43**  
Attendance Waivers
  5. 2022-2023 Executive Council Meetings. **p. 46**
  6. General Comments of the Chair.
- IV. **Board of Governors Report**— *Roland Sanchez-Medina, President-Elect Designate; Iris Elijah, YLD President*
- V. **Chair-Elect's Report** — *Katherine Frazier, Chair-Elect*
  1. 2023-2024 Executive Council meetings. **p. 47**

VI. **General Standing Division Report** — *S. Katherine Frazier, Division Director and Chair-Elect*

**Action Item:**

1. **Communications Committee** - *Michael V. Hargett, Chair*

Motion to approve amended and restated Communications Agreement between the Section and Schifino Lee including the exercise of the additional commitment of \$43,900 for an additional five months through August 31, 2023. **p. 48**

**Informational Items:**

2. **Disaster and Emergency Preparedness and Response Committee** – *Colleen Sachs, Chair*

CPR Refresher, South Walton Fire District

3. **Ad Hoc Civil Rules Revisions Committee** – *Michael V. Hargett, and Shawn G. Brown, Co-Chairs*

Update on report from the Supreme Court of Florida regarding the Report and Recommendations of the Workgroup on Improved Resolution of Civil Cases. **p. 66**

4. **Professionalism and Ethics Committee** – *Andrew Sasso, Chair*

Proposal to amend Chapter 4, of the Rules Regulating The Florida Bar to remove the words “zealously” and “zealous” from the preamble to Chapter 4 and the word “zeal” from the comment to Rule 4-1.3. **p. 83**

Ethics Podcast

5. **Liaison with Clerks of Circuit Court** – *Laird A. Lile, Liaison*

The Liaison to the Clerks of Court has contacted the Legislation Committee for the Clerks Association regarding two of the Section’s legislative initiatives, those that involve changes to Chapter 198 and to Section 28.223 regarding automatic recording of certain court filings in probate proceedings. In addition, the Liaison has interfaced with the Section and the Lee County Clerk of Court regarding initiatives to stop fraudulent deeds and other records being recorded in the official records.

6. **Liaison with TFB Pro Bono** – *Lorna E. Brown-Burton, Liaison*

Update on matters of interest.

7. **Fellows** - *Christopher A. Sajdera and Angela Santos, Co-Chairs*

Update on matters of interest.

VII. **Treasurer's Report** — *Jon Scuderi, Treasurer*

1. Statement of Current Financial Conditions. **p. 111**

VIII. **Director of At-Large Members Report** — *Steven H. Mezer, Director*

IX. **CLE Seminar Coordination Report** — *Angela Adams (Probate & Trust) and Lee A. Weintraub (Real Property), Co-Chairs*

1. Upcoming CLE programs and opportunities. **p. 120**

X. **Legislation Committee** – *Wilhelmina F. Kightlinger (Real Property) and Larry Miller (Probate & Trust), Co-Chairs*

XI. **Real Property Law Division Report** — *Wm. Cary Wright, Division Director*

General Comments and Recognition of Division Sponsors.

**Information Item:**

1. **Insurance and Surety Committee** – *Katherine Heckert, Chair*

Consideration of Insurance and Surety Committee pursuing application to establish new Board Certification in Insurance Law. **p. 122**

XII. **Probate and Trust Law Division Report** — *John C. Moran, Division Director*

General Comments and Recognition of Division Sponsors.

XIII. **Probate and Trust Law Division Committee Reports** — *John C. Moran, Division Director*

1. **Ad Hoc ART Committee** — *Alyse Reiser Comiter, Chair; Jack A. Falk and*

- Sean M. Lebowitz, Co-Vice Chairs
2. **Ad Hoc Committee on Electronic Wills** — Frederick “Ricky” Hearn, Chair; Jenna G. Rubin, Vice Chairs
  3. **Ad Hoc Guardianship Law Revision Committee** — Nicklaus J. Curley, Stacey B. Rubel and David C. Brennan, Co-Chairs; Sancha Brennan, Vice Chair
  4. **Ad Hoc Study Committee on Due Process, Jurisdiction & Service of Process** — Barry F. Spivey, Chair; Sean W. Kelley and Shelly Wald Harris, Co-Vice Chairs
  5. **Asset Protection** — Michael Sneeringer, Chair; Richard R. Gans and Justin Savioli, Co-Vice-Chairs
  6. **Attorney/Trust Officer Liaison Conference** — Mitchell A. Hipsman, Chair; Tae Kelley Bronner, Stacey L. Cole, Michael Rubenstein, Gail G. Fagan, and Eammon W. Gunther, Co-Vice Chairs
  7. **Charitable Planning and Exempt Organizations Committee** — Denise S. Cazobon, Chair; Kelly Hellmuth and Alyssa Razook Wan, Co-Vice-Chairs
  8. **Elective Share Review Committee** — Jenna G. Rubin, Chair; Cristina Papanikos and Lauren Y. Detzel, Co-Vice-Chairs
  9. **Estate and Trust Tax Planning** — Richard N. Sherrill, Chair; Al Stashis, Andrew Thompson and Sasha Klein, Co-Vice Chairs
  10. **Guardianship, Power of Attorney and Advanced Directives** — Stacy B. Rubel, Chair; Elizabeth M. Hughes, Stephanie Cook, Caitlin Powell and Jacobeli Behar, Co-Vice Chairs
  11. **IRA, Insurance and Employee Benefits** — Charles W. Callahan, III, Co-Chairs; Rebecca Bell and Rachel Barlow, Co-Vice-Chairs
  12. **Liaisons with ACTEC** — Elaine M. Bucher, Tami F. Conetta, Thomas M. Karr, Charles I. Nash, L. Howard Payne and Diana S.C. Zeydel
  13. **Liaisons with Elder Law Section** — Travis Finchum and Marjorie E. Wolasky
  14. **Liaison with the FSGA** – Stephanie Cook
  15. **Liaisons with Tax Section** — William R. Lane, Jr., Brian Malec and Brian C. Sparks
  16. **Liaison with Professional Fiduciary Council** — Darby Jones
  17. **OPPG Delegate** — Nick Curley
  18. **Principal and Income** — Edward F. Koren and Pamela O. Price, Co-Chairs, Jolyon D. Acosta and Keith B. Braun, Co-Vice Chairs
  19. **Probate and Trust Litigation** — J. Richard Caskey, Chair; Cady Huss and R. Lee McElroy, IV, Co-Vice Chairs
  20. **Probate Law and Procedure** — Theodore S. Kypreos, Chair; Benjamin F. Diamond, Stacey Prince Troutman, and Grier Pressley, Co-Vice Chairs
  21. **Trust Law** — Matthew H. Triggs, Chair; Jennifer J. Robinson, David J. Akins, Jenna G. Rubin, and Mary E. Karr, Co-Vice Chairs
  22. **Wills, Trusts and Estates Certification Review Course** — Rachel Lunsford, Chair; J. Allison Archbold, Eric Virgil, and Jerome L. Wolf, Co-Vice Chairs

**XIV. [Real Property Law Division Committee Reports](#)** — *Wm. Cary Wright, Division Director*

1. **Ad Hoc Hayslip** – Brian W. Hoffman, Chair; James C. Russick and Manuel Farach, Co-Vice Chairs
2. **Ad Hoc UCRERA** - Manuel Farach, Chair; Jason M. Ellison and James C. Russick, Co-Vice Chairs
3. **Attorney Banker Conference** — Salome J. Zikakis, Chair; Kristopher E. Fernandez, and R. James Robbins, Jr., Co-Vice Chairs
4. **Commercial Real Estate** — E. Ashley McRae, Chair; Brian W. Hoffman, Brenda B. Ezell, and Alexandra D. Gabel, Co-Vice Chairs
5. **Condominium and Planned Development** — Alexander B. Dobrev and Allison L. Hertz, Co-Chairs; Russel Robbins, Vice Chair
6. **Condominium and Planned Development Law Certification Review Course** — Jane L. Cornett and Christine M. Ertl, Co-Chairs; Allison L. Hertz, Vice Chair
7. **Construction Law** — Sanjay Kurian, Chair; Bruce D. Partington and Elizabeth B. Ferguson, Co-Vice Chairs
8. **Construction Law Certification Review Course** — Gregg E. Hutt, Chair; Jason J. Quinterro and Scott P. Pence, Co-Vice Chairs
9. **Construction Law Institute** — Brad R. Weiss, Chair; Deborah B. Mastin and Trevor B. Arnold, Co-Vice Chairs
10. **Development & Land Use Planning** — Colleen C. Sachs and Lisa B. Van Dien, Co-Chairs; Jin Liu, Vice Chair
11. **Insurance & Surety** —Katherine L. Heckert, Chair; Debbie S. Crockett, Vice Chair
12. **Liaisons with FLTA** — Alan K. McCall, Melissa Jay Murphy, Alan B. Fields and James C. Russick
13. **Liaison with American College of Real Estate Lawyers (ACREL)** — Martin A. Schwartz and William P. Sklar
14. **Liaison with American College of Construction Lawyers (ACCL)** — George J. Meyer
15. **Liaison with Florida Realtors** – Louis E. “Trey” Goldman
16. **Real Estate Certification Review Course** — Lloyd Granet, Chair; Martin S. Awerbach, Laura M. Licastro and Jason M. Ellison, Co-Vice Chairs
17. **Real Estate Leasing** —Christopher A. Sajdera, Chair; Kristen K. Jaiven and Ryan J. McConnell, Co-Vice Chairs
18. **Real Property Finance & Lending** — Jason M. Ellison, Chair; Deborah B. Boyd and Jin Liu, Co-Vice Chairs
19. **Real Property Litigation** — Manuel Farach, Chair; Amber E. Ashton, Amanda R. Kison and Shawn G. Brown, Co-Vice Chairs
20. **Real Property Problems Study** — Anne Q. Pollack, Chair; Susan K. Spurgeon, Reese J. Henderson Jr. and Brian W. Hoffman, Co-Vice Chairs
21. **Residential Real Estate and Industry Liaison**— Nicole M. Villarroel and Kristen K. Jaiven. Co-Chairs; James A. Marx and Richard S. McIver, Co-Vice Chairs
22. **Title Insurance and Title Insurance Industry Liaison**— Christopher W. Smart, Chair; Leonard F. Prescott, IV, Jeremy T. Cranford, and Michelle G. Hinden, Co-Vice Chairs
23. **Title Issues and Standards** — Rebecca L.A. Wood and Amanda K. Hersem, Co-Chairs; Robert M. Graham, Karla J. Staker and Melissa Scaletta, Co-Vice Chairs

**XV. General Standing Division Committee Reports** — Katherine Frazier, General Standing Division Director and Chair-Elect

1. **Ad Hoc Bylaws** - Robert S. Swaine and William T. Hennessey, III, Co-Chairs
2. **Ad Hoc Civil Rules Revisions** – Michael V. Hargett and Shawn Brown, Co-Chairs
3. **Ad Hoc RTOD** — Steve Kotler and Chris Smart, Co-Chairs; Jeff Goethe, Vice Chair
4. **Ad Hoc Series LLC** - James A. Marx, James C. Russick and Michael A. Sneeringer, Co-Chairs
5. **Amicus Coordination** — Kenneth B. Bell, Gerald B. Cope, Jr., Robert W. Goldman and John W. Little, III, Co-Chairs
6. **Budget** — Jon Scuderi, Chair; Tae Kelley Bronner, Linda S. Griffin, and Pamela O. Price, Co-Vice Chairs
7. **Communications** – Michael V. Hargett, Chair; Laura Sundberg, Vice Chair
8. **CLE Seminar Coordination** — Lee A. Weintraub and Angela Adams, Co-Chairs; Alexander H. Hamrick, Hardy L. Roberts, III, Tatianna Brenes-Stahl, Silvia B. Rojas, and Stacy O. Kalmanson, Co-Vice Chairs
9. **Convention Coordination** —Deborah Boje, Chair; Tae Kelley Bronner and Yoshi Smith, Co-Vice Chairs
10. **Disaster and Emergency Preparedness and Response** —Colleen Sachs, Chair; Amy Beller and Michael Bedke, Co-Vice Chairs
11. **Fellows** — Christopher A. Sajdera and Angela Santos, Co-Chairs; Bridget Friedman and Terrance Harvey, Co-Vice Chairs
12. **Homestead Issues Study** — Jeff Baskies, Chair; Shane Kelley, Jeremy Cranford and Burt Bruton, Co-Vice Chairs
13. **Information Technology** — Hardy L. Roberts III, Chair; Alexander B. Dobrev, Jesse B. Friedman, Sean Lebowitz, and Jourdan Haynes, Co-Vice Chairs
14. **Law School Mentoring & Programing** — Johnathan Butler and Kymberlee Curry Smith, Co-Chairs; Guy Storms Emerich, Lilleth Bailey and Kristine L.Tucker, Co-Vice Chairs
15. **Legislation** — Larry Miller (Probate & Trust) and Wilhemina Kightlinger (Real Property), Co-Chairs; Travis Hayes and Nick Curley (Probate & Trust), Chris Smart, Manuel Farach and Arthur J. Menor (Real Property), Co-Vice Chairs
16. **Legislative Update (2022-2023)** — Brenda Ezell and Salome J. Zikakis, Co-Chairs; Gutman Skrande, Jennifer S. Tobin, and Kit van Pelt, Co-Vice Chairs
17. **Liaison with:**
  - a. **American Bar Association (ABA)** — Robert S. Freedman, Edward F. Koren, George J. Meyer and Julius J. Zschau
  - b. **Clerks of Circuit Court** — Laird A. Lile
  - c. **FLEA / FLSSI** — David C. Brennan and Roland D. “Chip” Waller
  - d. **Florida Bankers Association** — Mark T. Middlebrook and Robert Stern
  - e. **Judiciary** —Judge Mary Hatcher, Judge Hugh D. Hayes, Judge Margaret Hudson, Judge Mark A. Speiser, and Judge Michael Rudisill
  - f. **Out of State Members** — Nicole Kibert Basler, John E. Fitzgerald, Jr.,

and Michael P. Stafford

- g. **TFB Board of Governors** — Roland Sanchez Medina
- h. **TFB Business Law Section** — Gwynne A. Young and Manuel Farach
- i. **TFB CLE Committee** — Angela Adams and Lee A. Weintraub
- j. **TFB Council of Sections** — Sarah Butters and S. Katherine Frazier
- k. **TFB Pro Bono Legal Services** — Lorna E. Brown-Burton
- 18. **Long-Range Planning** — S. Katherine Frazier, Chair
- 19. **Meetings Planning** — George J. Meyer, Chair
- 20. **Membership and Inclusion** —S. Dresden Brunner, Chair; Annabella Barboza, Vinette D. Godelia, Eryn Riconda, and Roger A. Larson, Co-Vice Chairs
- 21. **Model and Uniform Acts** — Patrick J. Duffey and Adele I. Stone, Co-Chairs; Chris Wintter and Amber Ashton, Co-Vice Chairs
- 22. **Professionalism and Ethics** — Andrew B. Sasso, Chair; Elizabeth A. Bowers, Alexander B. Dobrev, Rt. Judge Celeste Muir, and Laura Sundberg, Co-Vice Chairs
- 23. **Publications ActionLine** — Erin Finlen and Michael A. Bedke, Co-Chairs (Editors in Chief); Alexander Douglas, Daniel L. McDermott, Jeanette Moffa, Paul E. Roman, Seth Kaplan and Michelle Hinden, Co-Vice Chairs
- 24. **Publications Florida Bar Journal** — J. Allison Archbold (Probate & Trust) and Homer Duvall, III (Real Property), Co-Chairs; Marty J. Solomon and Mark Brown (Editorial Board — Real Property), Brandon Bellew, Jonathan Galler and Brian Sparks (Editorial Board – Probate & Trust), Co-Vice Chairs
- 25. **Sponsor Coordination** — Bill Sklar, Chair; Patrick C. Emans, Marsha G. Madorsky, Jason J. Quintero, J. Michael Swaine, Alex Hamrick, Rebecca Bell, and Arlene C. Udick, Co-Vice Chairs
- 26. **Strategic Planning** — Robert S. Freedman and William T. Hennessey, III, Co-Chairs
- 27. **Strategic Planning Implementation** — Robert Freedman, Andrew M. O'Malley, Robert S. Swaine, William T. Hennessey, III, and Debra L. Boje, Co-Chairs

**XVI. Adjourn:** Motion to Adjourn.

**Real Property, Probate and Trust Law Section  
Executive Council Meeting  
The Four Seasons  
Orlando, Florida  
December 10, 2022  
9:00 a.m.**

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**Minutes**

**I. Presiding** — *Sarah Butters, Chair*

The Chair called the meeting to order at 9:04 a.m.

**II. Secretary's Report** — *Sancha Brennan, Secretary*

Sancha Brennan presented the minutes of the October 1, 2022, meeting of the Executive Council held at Harborside Hotel & Spa in Bar Harbor, Maine, for approval.

**1. MOTION:  
to approve the minutes of the October 1, 2022, meeting of the  
Executive Council**

The motion was seconded by Steve Mezer.

There was no discussion.

**The motion PASSED, unanimously.**

**2. The Orlando meeting attendance roster was circulated to the members.**

**III. Chair's Report** — *Sarah Butters, Chair*

**1. Sponsor Recognition:** The Chair recognized and thanked the Section's General Sponsors and directed Section members to refer to the agenda for the list of Section Sponsors. She specifically thanked **FNF, First American Title, The Fund, Guardian Trust, J.P. Morgan, MPI, Old Republic Title, Stewart Title, Stout, Westcor and WFG Title Insurance.**

The Chair also expressed appreciation to those organizations that have been serving as Friends of the Section: **Business Valuation Analysts, CATIC, Cumberland Trust, Estate Inventory Services, Fiduciary Trust International, Heritage Investment Group, Hindman, National Philanthropic Trust, doMa, Title Resources and Valuations Services, Inc.,** noting to the Council members that we are able to host nicer events because of their generous support.

**2. Interim Action:** The Chair reported on an interim action that was necessary



for the Executive Committee to address between the last full Executive Council meeting held at the Breakers in Palm Beach and this meeting. The Section was presented with the applicants for appointment to the Florida Realtor Attorney Joint Committee and asked to provide recommendations to the Board of Governors in November. The Executive Committee reviewed the qualifications of the applicants and made recommendations of 7 Section members to staff the Florida Realtor Attorney Joint Committee. The recommendation is published on page 28-29 of the meeting agenda. The Chair then announced that the Florida Bar Board of Governors met last week and approved the recommendations of the Section, congratulating Colleen Sachs (1<sup>st</sup> DCA), John N. Redding (2<sup>d</sup> DCA), Vanessa Bertran (3<sup>rd</sup> DCA), Kristen King Javien (4<sup>th</sup> DCA), Liron Offir (5<sup>th</sup> DCA), Patrick Christiansen and Erin Miller (both for the 6<sup>th</sup> DCA).

The Executive Committee agreed to support as a Gold Sponsor of the 10 Year Anniversary Celebration of the Wm. Reece Smith, Jr. Leadership Academy held on Friday, January 20, 2023, during the Florida Bar meetings at the Rosen Shingle Creek Resort in Orlando.

3. **Meeting Schedule.** The Chair then directed the Council’s attention to the remainder of the meeting schedule for the 2022-23 Bar year, noting that the next meeting in Destin may be difficult to get to because it is in the panhandle, but it is beautiful, will be worth the trip and offers something a little closer for members located in the panhandle. She noted that there will be several room options at both the Sandestin Golf and Beach Resort, condo/townhome style rooms and rooms at the Hotel Effie, which is close to the convention area. The next meeting will be in Delray Beach at the Opal Sands.

2/22/23 - 2/26/23	Sandestin Golf and Beach Resort, Destin, Florida
6/1/23 – 6/4/23	Opal Sands Delray, Delray Beach (Convention)

4. **Sponsor Recognition:** The Chair then recognized General Section Sponsor, **Stewart Title** and introduced **David Shanks**, thanking him for the sponsorship. David Shanks then spoke to the Council about his recent experience participating as an ALM, becoming more involved by donating his time serving as a student interviewer and sharing what a wonderful experience it was. He then thanked the Section for the opportunity to become involved through support of the Section.

5. The Chair then announced recent Section **Milestones:**

- (A) The sad passing of Sam Wood Boone Jr., last month, a long-time Section and Executive Council member, known personally by the Chair and who will be dearly missed.
- (B) The passing of Russell Divine, another long-time Section and Executive Council member, a real property lawyer from Orlando, former member

of the Board of Governors and past Orange County Bar President.

- (C) Then, on a significantly happier note, the Chair announced that the Incoming Chair of ABA RPTE for the 2023-24 year, would be former Section Chair, Robert S. Freedman. Mr. Freedman will be joining former Section Chair, Ed Koren, as the only two people to have served as Chair of both organizations. A round of applause ensued in congratulations to Mr. Freedman, who appeared at the Council meeting virtually, from Prague.
- (D) The Chair announced that dedicated Executive Council member, Dresden Brunner, was honored by the Collier County Bar Foundation as the very first recipient of the Rebecca Vaccariello Service Award; and offered her Congratulations on that honor, noting to the Council that if Dresden did only a fraction of the work for that organization, that she does for our council, that it is certainly well-deserved
- (E) She then recognized and congratulated Executive Council members: Stacy Rubel, Mary Karr and Grier Pressley on their election as new Fellows to ACTEC.

6. **Sponsor Recognition**: The Chair called upon **Carlos Batlle** of **JP Morgan**, a General Sponsor of the Section to say a few words. Mr. Batlle thanked the Section for allowing JP Morgan to serve as a sponsor. He also announced the publication of a trust form book, commending it to Section members and directing members to the JP Morgan website located at: [jpmorgan.com](http://jpmorgan.com), then to the “services” tab, the “trust and estates” tab, then click on the “partnership” box, indicating that will bring you to the location of the downloadable form book. Mr. Batlle highlighted the intentional use of the terms “partnership” and “trust”, that JP Morgan appreciates the partnership of this professional community and the trust that we place in JP Morgan.

7. **General Comments of the Chair:**

- (A) Chair Butters notified Council members that the Florida Bar Committee application form is now available on the Bar’s website and recommends members to serve on those committees and requesting that if they do seek to serve on a Florida Bar Committee, that that member notify Section leadership of their intent.
- (B) Recognized and thanked Florida Bar President, Gary Lesser, for attending the Section meetings and events in Orlando, reported the regrets of President-Elect Westheimer, who was unable to attend our meetings in Orlando and also recognized Sia Baker-Barnes, who joined our meetings and events and has announced her candidacy for Bar President.
- (C) The Chair also thanked and recognized the continuing service of the

Members of the Florida Bar Board of Governors: Lorna Brown-Burton, Laird Lile, Sandy Diamond and Michael Gelfand, and Florida Bar Executive Director, Joshua Doyle, each of whom were in attendance at our weekend meetings.

- (D) Chair Butters also announced the formation and staffing of three new Section Committees:
  - a. Ad Hoc Bylaws Committee: William T. Hennessey, III and Robert S. Swaine, Co-Chairs
  - b. Ad Hoc Series LLC Committee: James C. Russick, James A. Marx and Micheal A. Sneeringer, Co-Chairs
  - c. Ad Hoc UCRERA Committee: Manuel Farach, Chair, James C. Russick and Jason M. Ellison, Co-Vice Chairs
- (E) The Chair then notified members of the Council that FSGA (Florida State Guardianship Association) requested appointment of a Liaison from our Section (to serve as a non-voting member of the FSGA Board) and Stephanie Cook was asked and agreed to serve in that role.

**IV. Board of Governors Report**— Chair Butters introduced Gary S. Lesser, Florida Bar President, to a round of applause, who addressed the Section to give the report of the Board of Governors.

- 1. President Gary Lesser: first offered his thanks for all the amazing work of the Section members and committees and then recognized the RPPTL Section as the hardest working Section, year after year.
  - (A) President Lesser then announced the launch of the following Bar initiative to help Floridians understand when and how to access legal services:
    - **Public Education Program – “Life’s Legal Moments”**
      - Promote civics education – only 37% of Florida students passed basic level civics courses last year
      - Promote Partnership with Chambers of Commerce – providing guidance navigating those critical moments in life when retaining counsel will help Floridians to protect themselves.
    - **Non-lawyer ownership of law firms** – The Board of Governors unanimously voted against this.
    - **Special Committee on Greater Access to Legal Services** – Jay Kim, Chair
      - Sandy Diamond served as co-chair of one of the hard-working sub-committees, that met every week; and we will hear more about the recommendations of the board in the spring.
    - **Anti-solicitation Hotline** – reporting lawyer solicitation
    - **Mentoring Program** – co-chaired by Zackary Zuroweste, who was introduced by President Lesser, to a round of applause.

(B) President Lesser then called for questions:

- *Laird Lile, former Section Chair and member of the Board of Governors, inquired as to the status of the proposal made to the Board of Governors to reevaluate the monopoly on basic skills courses (CLE) currently held by the Young Lawyers Division.*

*President Lesser explained that, originally, it was thought that members of the Young Lawyers Division would naturally be closer to the constituency that required those (basic) courses, which is why the restriction on providers of basic courses was originally instituted. President Lesser supports the evaluation and reconsideration of that restriction and has advised that a sub-committee has been appointed to consider the issue.*

- *Mr. Lile advised that the Young Lawyers Division had allowed the basic probate course to expire and it was therefore no longer an available option to the new lawyers who need it most.*
- *Angela Adams, Section CLE Co-Chair reports having received requests from Section members for more basic programming; and having to direct them to YLD.*
- *Lee Weintraub, Section CLE Co-Chair also contributed by comment*

In closing, President Lesser announced the formation of a Gender Disparity Task Force – tasked with addressing a serious issue in the legal field facing women lawyers. He reported that 60% of Bar members are male and 40% are female. But there are more women in law school than men. What is causing the decrease in the number of female lawyers?

Chair Butters then recognized Board of Governors Member, Roland Sanchez-Medina, who appeared by Zoom, to give his report.

2. Roland Sanchez-Medina: Mr. Sanchez-Medina added that Sia Baker Barnes (pronounced, “see-ah”) will be serving as the Chair of the Gender Disparity Task Force and can serve as the point person if anyone has any comments or wishes to contribute. Sanchez-Medina looks forward to attending the Section meeting in Destin; and announced that the Committee appointments will be made by Scott Westheimer, President-Elect of the Florida Bar; and recommended that anyone wishing to be considered reach out to either of them.
3. **Sponsor Recognition**: Chair Butters recognized **Jennifer Bloodworth and First American Title**. Ms. Bloodworth thanked the Council members for a great meeting and great events. She was met with a challenge to build into her report a reflection of the social event from the prior evening – and accurately recited everyone’s favorite spells “Wingardium Leviosa” (to lift an object) or “Expelliarmus” (to disarm an opponent) of course. Reminded of the

Rotary Club ideals, Ms. Bloodworth asked Do Your Actions Build Good Will and Friendships? Considering the role of First American as a Section sponsor, Ms. Bloodworth expressed her appreciation for the opportunity to continue to build good will and friendships among the members of the Section and on behalf of First American; and the opportunity to be a sponsor.

V. **Chair-Elect's Report** — *Katherine Frazier, Chair-Elect*

The Chair-Elect then addressed the Council, advising that the final meeting schedule for the 2023-2024 Executive Council meetings was published and directed the Council to p. 31 of the agenda.

7/19/23 - 7/23/23	The Breakers, Palm Beach, Florida
9/20/23 – 9/24/23	Fairmont Le Chateau Frontenac, Quebec City, Canada
11/8/23 – 11/12/23	JW Marriot Tampa Water Street, Tampa, Florida
2/21/24 – 2/25/24	Ritz Carlton Grande Lakes, Orlando, Florida
5/29/24 – 6/2/24	Hyatt Regency Coconut Point, Bonita Springs, Florida

**Sponsor Recognition:** Katherine Frazier then introduced **Jim Russick** of **Old Republic Title**, who reflected on the work that he and others have participated in and observed during our meetings and the issues that the Section is tackling along with his company and industry. He is proud to be a supporter and sponsor of the Section.

VI. **Treasurer's Report** — *Jon Scuderi, Treasurer*

1. Mr. Scuderi directed the Council to page 41 of the agenda to the financial summary from the past few years, the budget from the prior year and the proposed RPPTL Section Budget for the fiscal year 2023-2024.

He explained the budget committee met to review and propose the budget for the coming year, noting the difficulty the committee faced with dealing with the fluctuating market and resulting loss in the Section's investments. He also explained the issues with trying to anticipate the expenses for the coming year, given uncertain market projections and uncertainty with increased expenses, particularly in the coming year as the Section returns to producing more in-person CLEs. For that reason, the budget committee estimates reflected in the budget show larger than anticipated expenses and lower income/receipts than expected. Additionally, while the proposed budget reflects a loss, it is of course, just proposed; and we can manage the expectations and expenses as we move forward. The Treasurer then yielded the floor to questions:

- *Former Section Chair, Debra Boje, pointed out that our prior budget projected a gain for this year that has not been realized. She explained that CLE costs were up 30%, but that revenues had not likewise increased. Perhaps we should cut back on ZOOM meetings at \$40k/year. In addition to CLE income, the largest income producer for the Section is membership dues; and the Tax Section recently raised dues, proposing that RPPTL should consider that option. She also suggested the revenue and expenses for meetings be evaluated more often than once each year and that perhaps a meeting*

*committee should be organized to help in reviewing costs and then report back in February at the Destin meeting.*

Mr. Scuderi indicated that the committee was planning to meet again before the end of the year and made the following Motion of the Budget Committee:

**2. COMMITTEE MOTION:**

**To approve the proposed Real Property, Probate and Trust Law Section Budget for the fiscal year 2023-2024.**

As a committee motion, no second was needed:

No further discussion.

**The motion PASSED unanimously.**

3. Chair Butters then addressed the Council, explaining the changes made to the current meeting schedule to manage expenses, including the decision to do more on-your-own options and discontinuing some Section subsidized breakfasts and treats. She also explained that while room costs can be locked in advance, we are unable to do that with food costs.

**4. Additional comments from Council members:**

- *Debra Boje, indicating that she was not identifying any issues with the current leadership decisions on expenses, but wanted the council to focus for the future.*
- *Tami Conetta, requesting that overall cost to members for events be considered, that many firms are unable to support the costs (ex. \$175pp dinners) and that it will be difficult to attract younger lawyers with families due to costs.*
- *Chair Butters explained the difficulty balancing the quality of the events with the costs.*
- *Rich Caskey – inquired as to the last time the dues had been raised for the Section, pointing out that maybe it was time to consider that option.*
- *Former Chair Peggy Rolando indicated that the last time dues were raised was @2012-13, believes we could consider raising dues.*
- *Former Chair Chip Waller commented as to the reported cost of \$40k to provide ZOOM meeting alternatives. Based on the Strategic Planning Report about reducing the size of the Executive Council for meeting planning purposes, he supports continuing ZOOM meetings at that cost, that it cuts the burden on meeting attendance in-person; and hopes that expense is not reduced since it is important to continue, particularly for committee meetings.*
- *Former Chair, Rohan Kelley – meeting dues were raised from \$50-\$60 in @2007-08. Reviewing the projected budgets for the past 5 years shows an \$800k projected deficit. If the Council is considering raising*

*dues to deal with that, perhaps we need to re-think the hotels we are choosing first.*

- *Amanda (?) reported that the current dues to be a member of the Tax Section is \$75.*
- *Tae Bronner asked that we reconsider the cost of the meetings before we raise dues.*
- *Jason Ellison – believes our dues are very reasonable, identifies that all expenses across the board are increasing everywhere and supports raising dues based upon the value they will get from their dues (including ActionLine).*

**Sponsor Recognition:** Chair Butters recognized **Karla Staker** from **Fidelity Group**. Ms. Staker reminded the Council that the Fidelity Family of underwriters is made up of Commonwealth, Chicago and Fidelity Title – on behalf of all of them, they are very proud sponsors of the Section, appreciate all the work and are delighted to sponsor the Section.

**VII. Director of At-Large Members Report — Steven H. Mezer, Director**

Director Mezer addressed the Council, reporting that almost all of the 68 ALMS members appeared either in person or via ZOOM at the Thursday meeting.

- (A) Law School students – there was no reception at this meeting, but they were pleased to have students from FAMU, UF, FSU and Barry Law Schools in attendance.
- (B) Mentors and Mentees were introduced at the meeting and a call for 5 new mentors was satisfied in a matter of 10 minutes.
- (C) He introduced Johnathan Butler – who showed some photos from the event held at Western Michigan/Cooley Law School, where Amber Ashton spoke @50 law school students in attendance and engaged in the presentation.
- (D) Tom Henderson and David Shanks attended and conducted mock interviews with students, one student reporting that his practice assisted him in obtaining a job at a subsequent real life interview
- (E) Special thanks to Rebecca Wood and Rebecca Bell – supporting the initiatives.
- (F) Announced the Dirt/Death mid-year CLE caselaw review, Shawn Brown, and Mr. Mezer recognized and thanked Old Republic and Sable Trust, that served as sponsors.
- (G) Mr. Mezer commended the Council to review ALMS webpage for more information about upcoming events
- (H) They are looking for Sponsors for ALMS.
- (I) Shawn Brown and Kit Van Pelt are working to place pro bono cases.
- (J) Richard Warner – reported on the probate case managers/court personnel – meeting in January.
- (K) Some ALMS member (? unidentified) was mentioned in

- connection with the public service program with the Hispanic Bar
- (L) Hurricane Ian relief – on behalf of Section, Mr. Mezer reached out to the Deputy Director for Legal Aid in Collier County and offered pro bono assistance of the ALMS to those affected. More than a dozen attorneys stepped up immediately to assist. Mr. Mezer thanked all the volunteers who helped with that effort.
  - (M) There is still a need for help with landlord/tenant cases and probate cases in Collier County. If you wish to participate, please let Steve Mezer know.
  - (N) Thank you, too, to Westcor – not only are they a sponsor, but they also stepped up to help specifically with this endeavor.
  - (O) Colleen Sachs – Congratulations on her 30 years of service as an RPPTL Circuit Representative/ALM.
  - (P) Mr. Mezer commended the Communications Committee and Schifino Lee to review the ALMS webpage and notice that what is highlighted is the term “service”. Mr. Mezer suggested there be a focus on the service provided by the ALMS members.

**VIII. CLE Seminar Coordination Report — Angela Adams (*Probate & Trust*) and Lee A. Weintraub (*Real Property*), Co-Chairs**

1. Co-Chair, Angela Adams, directed the members to the upcoming CLE programs and opportunities published in the agenda at p. 52, but also directed members to the e-mails from the Section announcing new CLE programs, which are being updated and produced regularly.
  - (A) She reminded the Council of the upcoming FREE CLE program being produced by the ALMS, a mid-year caselaw update.
  - (B) Ms. Adams also announced that closed captioning will now be offered as an automatic feature to all full day and multi-day programming and would also be available on request for other programs. The cost to the Section is a flat \$195 per program.
  - (C) We will also begin a test program, offering CLEs to law students at cost (\$35).
2. Co-Chair, Lee Weintraub, then recognized all CLE program steering committee chairs and speakers, to a round of applause, thanking them for their work and contribution to the Section.
  - (A) He announced several new e-mail marketing campaigns for CLE sales, through the online catalog:
    - a. “Buy 3, get one free”.
    - b. “Coming Soon” – to highlight the upcoming CLE programs.
    - c. The “RIP” - promoting programs before they cycle off rotation (each has 18 months of CLE credit validity before the credit expires).
    - d. Personalized notification to members several months before the end of their CLE reporting period.



- (B) Mr. Weintraub then announced the new Real Property Litigation Symposium, an advanced level CLE, that will launch this May at the Portofino Bay Resort at Universal Studios. Currently slated as a one-day program, it is forecast to expand into a multi-day event in coming years.
- (C) He then recognized and thanked EC members and steering committee co-chairs, Shawn Brown and Manny Farrach, who have worked very hard to pull the new Real Property Litigation Symposium.

**IX. Legislation Committee – *Wilhelmina F. Kightlinger (Real Property) and Larry Miller (Probate & Trust), Co-Chairs***

- 1. Co-Chair, Wilhelmina Kightlinger – notified the Section members that committee meetings have started and bill drafting is open.
  - (A) She recommends that committee chairs start thinking about subject matter experts to be available for technical advice (keep in mind that expert input will be needed quickly, on occasion within only a few hours).
  - (B) Notified members working on legislation that it is too late for any 2023 submissions. Those working on 2024 session legislation need to be ready to publish as an information item on the agenda at the next EC meeting in Destin so a vote can be taken at the Breakers meeting.
- 2. Co-Chair, Larry Miller,
  - (A) Reminded members who are approached to serve as experts on a particular topic/legislation about the need to be ready in “hyper-speed”.
  - (B) He also reminded committee chairs submitting legislation to pay attention to the effective date when proposing legislation.
  - (C) He recognized and thanked the hard work of the vice-chairs “super-heroes”: Nick Curley and Travis Hayes, to a round of applause and Wilhelmina Kightlinger also thanked Manny Farrach, Art Menor and Chris Smart, to a round of applause.

**X. General Standing Division Report — *S. Katherine Frazier, Division Director and Chair-Elect***

**Sponsor Recognition:** Chair-Elect Frazier recognized **Westcor Land Title** and **Lauren Licastro**. Ms. Licastro noted that in addition to the time given to regular jobs of the Executive Council members, she recognizes how much time, effort, and thought is contributed by the members for the betterment of the Section, the profession as a whole, and the citizens of the state of Florida; and Westcor Land Title is honored to sponsor this Section.

**1. Information Items:** Katherine Frazier introduced the information items:

- (A) **Communications Committee** - *Michael V. Hargett, Chair*  
Mr. Hargett addressed the Council and thanked the members,

generally, and specifically those in attendance at the Communications Committee meeting for their suggestions and contributions.

- a. Mr. Hargett explained the purpose of a “microsite” – which is virtually “in front of” our Section website and is designed, largely, for public consumption.
  - b. He expressed special thanks to Alex Hamrick, Hardy Roberts, Laura Sundberg and John Neukamm for all their hard work on the committee.
  - c. Mr. Hargett then presented the mission statement of the Section and then introduced Jeff Philbin, Director of Business Strategy, from Schifino Lee.
    - i. Mr. Philbin thanked Michael Hargett and then introduced his leadership team from Schifino Lee.
    - ii. Mr. Philbin then explained some of the background work he and his team have done to develop the foundation for their proposal (meeting with members, researching existing available Section information/materials) and then he presented a power-point presentation, providing a framework of their proposal for branding and promoting the good work of the Section, highlighting the brand awareness and education.
    - iii. He explained the microsite is not intended to replace the Section member’s website, but to work parallel to it, and to serve as an information resource to the public about Section initiatives.
    - iv. He also identified leveraging social media platforms as well as other legal publications.
    - v. Mr. Hargett then opened the floor for questions from members.
- *Former Section Chair and Member of the Board of Governors, Sandra Diamond, addressed the Council, bringing attention to Paragraph 7 of the contract with Schifino Lee, previously published. She raised concerns regarding communication and coordination with our legislative consultants and that we are following the proper process – that Schifino Lee will not be communicating with members of the legislature “without the express approval in writing.”*
  - *Will those writings be published?*
  - *Were the legislative consultants at Dean Mead consulted or were they involved in the process?*
  - Mr. Hargett then responded, explaining that there was a separate meeting between Schifino Lee and Pete Dunbar and his team at Duck Key and that Pete’s team participated in the Committee Meeting on December 8<sup>th</sup>.
  - Mr. Hargett further explained that the language in paragraph 7 was quoted from the Bylaws of the Board of Governors and that the Communications Committee developed extensive flow charts setting forth the procedures utilized to ensure that any political or legislative communications were presented during the December 8<sup>th</sup> Committee meeting and are available for review on the RPPTL website. Mr.

Hargett then offered to stay around after the meeting to answer any additional questions and to go through the contract with anyone who wants to take a deeper dive. The flow-charts and the PowerPoint will be published on the committee webpage.

- *Former Section Chair, Laird Lile then addressed the Committee – commenting that the PowerPoint presentation was very difficult to read and that raises concerns for him about the effectiveness of the organization producing it and hopes to see better moving forward.*
- *Tami Conetta then raised a concern about using terms like “expert” and “expertise” in any published material, since not all members of the Section qualify to be referred to as ‘experts’ and we should be careful that we are not being seen to endorse all Section members in that way.*
- *Former Section Chair and member of the Board of Governors, Michael Gelfand, requested that the Section make sure that among the messages published to the public, that we are advising those that need legal assistance to get it, particularly with regard to the recent attention on guardianship matters. He will be taking a closer look at the contract, particularly as that relates to communicating with legislative candidates.*

2. **Ad Hoc Bylaws Committee** – *Robert S. Swaine and William T. Hennessey, III, Co-Chairs*

Mr. Swaine reminded everyone that as a result of the COVID events in 2020, we began utilizing virtual meetings, but that the Section Bylaws only allow us to conduct voting in person, unless there is an emergency declaration or inability to access the meeting location. The committee is requesting members to provide their opinions on attendance by Zoom.

3. **Ad Hoc Series LLC Committee** – *James A. Marx, James C. Russick, and Michael A. Sneeringer, Co-Chairs*

Katherine introduced Jamie Marx, who recognized his co-chairs and other committee members (Len Prescott, Chris Smart, Burt Bruton, Amber Ashton and Michele Schute).

The Business Law Section has an initiative to add Series LLCs to c. 605 (LLC statutes). Delaware has had Series LLCs since 1996 and 21 other jurisdictions also currently have them. More and more, these foreign LLCs are being used in Florida for real estate transactions. (While there were only 3 in 2003, the committee reported that there are now more than @2,000). The BLS task force has issued a re-draft of chapter 605 to provide for Series LLCs in Florida and have approved it, subject to satisfying RPPTL concerns. Committee members are working with BLS to address concerns within the Section’s purview.

The materials have been circulated to other real property committees, and asset protection, and encourage questions to be directed to him or to Jim Russick. They need to have comments in by December 16<sup>th</sup> so we can get

the comments to the BLS section.

4. **Amicus Coordination Committee** - *Kenneth B. Bell, Gerald B. Cope, Jr., Robert W. Goldman and John W. Little, III, Co-Chairs*

(A) Former Section Chair, Bob Goldman, provided the report of the committee. He appeared at oral argument on behalf of the Section regarding changes to the civil rules. He reminded the Section that the Supreme Court created a workgroup to study the rules of procedure, out of concern that cases were not getting decided quickly enough and issued proposals based on the federal rules. The Section established a committee to review the proposals in early 2022 and sent comments to the Supreme Court workgroup that were favorably received. At oral argument, Mr. Goldman presented the concerns of the Section that the proposals would negatively impact real property litigation as well as probate, guardianship, and trust litigation cases, pointing out that there are very few guardianship, probate and trust cases in federal court. Mr. Goldman commended the work by Grier Pressley, who was able to provide specific examples and Laird Lile who spoke about efficiency. Both were very helpful.

The Workgroup acknowledged more education is necessary, and acknowledged their members have little experience with our area of law. His takeaway, as to our area of law, is a sense that the proposals are unlikely to be adopted, but we need to consider how we can change the rules as they pertain to us.

Personally, Bob noted that this exercise highlights our vulnerability, particularly where our practice rules overlap or adopt the civil rules. We may want to consider the goal of the workgroup and propose changes ourselves, folding in those civil rules into our rules.

(B) The Section was invited by the 5<sup>th</sup> DCA to offer an opinion on whether a revocable trust, irrevocable after the death of a testator, is held to be a natural person for purposes of constitutionally protected homestead property. The answer was – yes, it is homestead. The trust acts as a will substitute. However, that does not address whether the property in an irrevocable trust can be considered homestead. Ultimately, the 5<sup>th</sup> DCA case was settled; and therefore, no opinion will be issued.

5. **Liaison with Clerks of Circuit Court** – *Laird A. Lile, Liaison*  
No additional report.

6. **Sponsor Recognition**: Chair-Elect Frazier recognized general sponsor, **MPI**, and thanked them for their sponsorship.

7. **Liaison with TFB Pro Bono** – *Lorna E. Brown-Burton, Liaison*

(A) Board of Governors' member, Lorna Brown-Burton, notified the Council

that the pro bono committee is looking to create a method for members to keep track of their pro bono hours and/or donations on their member profiles. It is believed that attorneys are under-reporting those hours. This effort was approved by the committee; and they are in the process of determining whether it is technologically feasible.

- (B) The committee is looking to do a pro bono clinic in each circuit to provide pro bono legal service hours to assist legal aid attorneys: preparing for example: living wills, advance directives and are seeking members to serve.
- (C) She alerted the Council to their next event which will be a free, live, ½ day CLE in January at the Rosen in Orlando (Wednesday, January 18<sup>th</sup> from 1pm-4pm), on the nuts and bolts of pro bono service.
- (D) She also mentioned a judicial advisory committee and a pro bono podcast.
- (E) Ms. Brown-Burton also thanked the ALMS for their work they are doing.
- (F) She then informed the Council that 39,304 attorneys who provided pro bono legal service 1,513,202 hours of pro bono service, 537 law firms also – there were 39,200 members have NOT provided those legal services. Florida leads the nation in providing pro bono services 86%, whereas the national average is 65%.

**8. Membership and Inclusion Committee – S. Dresden Brunner, Chair**

Co-Chair, Erin Riconda addressed the Council for the committee.

- (A) On October 22<sup>nd</sup> the committee, in conjunction with the Caribbean Bar Association held an event.
- (B) On Saturday, January 2<sup>nd</sup> there will be a road clean-up, thank you Rebecca Bell who has volunteered.
- (C) On February 18<sup>th</sup>, there will be an e-mentoring clinic, thank you to Erin Finlen.
- (D) In May, the Tallahassee Bar Association will be holding a chili cookoff.
- (E) Reminder about the committee’s May 20<sup>th</sup> CLE, which is the annual CLE produced in conjunction with the minority bar associations. The topic will be real estate closings.
- (F) Thank you to the volunteers who participated in the Senior Partners Program.
- (G) Thank you to everyone who volunteered.

**XI. Real Property Law Division Report — Wm. Cary Wright, Division Director**

**Sponsor Recognition:** Director Wright thanked **The Fund** for its sponsorship and recognized **Melissa Scaletta** from **The Fund**, who addressed the Council, advising that The Fund is honored to be a sponsor of the Exec Council and all the committee work. It is intellectually satisfying to participate with the best and brightest attorneys.

She then announced upcoming annual program, The Fund Assembly

Director Wright then introduced Colleen Sachs, Chair of the Florida Realtor-Attorney Joint Committee, who addressed the Council and introduced the action item:

1. **Florida Realtor-Attorney Joint Committee - Colleen Sachs**

**COMMITTEE MOTION:**

**to approve 2022 revisions to The Florida Realtors and The Florida Bar (“FR/BAR”) forms submitted by the Florida Realtor-Attorney Joint Committee, as follows: Comprehensive Rider to the Residential Contract For Sale and Purchase Rider A. Condominium Rider. p. 84**

[Ms. Sachs announced that a friendly amendment was made to the motion at the Real Property Division RoundTable meeting but was subsequently withdrawn.]

**The motion was seconded** by Chip Waller, Steve Mezer and others

There was no discussion.

**The motion PASSED unanimously.**

2. **Sponsor Recognition.** Director Wright then recognized the Real Property Division committee sponsors, thanking **Attorneys Title Fund Services, CATIC, Attorney’s Real Estate Council of Florida, Inc.** and **First American Title.** We couldn’t do this without you.

**XII. Probate and Trust Law Division Report — John C. Moran, Division Director**

1. **Sponsor Recognition.** Director Moran recognized **WFG National Title Insurance Company**, the sponsor of the Section’s meeting application and introduced **Joseph Tschida.** Mr. Tschida addressed the Council and expressed on behalf of his company that it is an honor to sponsor the app, he loves it – and keep using the app!
2. Director Moran then reminded everyone to make sure that they have signed the attendance roster.
3. **Sponsor Recognition.** He then recognized and thanked the Probate and Trust Division Roundtable sponsor, **Stout.**
4. **Sponsor Recognition.** Director Moran also recognized and thanked the Division committee sponsors: **BNY Mellon Wealth Management, Business Valuation Analysts, LCC, Coral Gables Trust, Grove Bank and Trust, Kravit Estate Appraisal, Management Planning, Inc. and Northern Trust.**
5. Director Moran recognized the work of Ed Koren and Pam Price, from the Principal and Income Committee, thanking them for the voluminous work of

the committee, including Keith Braun and Jolyon Acosta. He informed the Council that they have been working on the new Principal and Income Act and suspect that it will be an information item at the next meeting and commended everyone to take the time to read and comment on it so that it can be ready for a vote at the Breakers.

6. Then, on behalf of the Ad Hoc RTOD (Revocable Transfer on Death) Committee, he announced that a question had arisen with respect to pre-death creditors of a decedent and the committee is looking for some input from anyone who has been involved in a case where either a TOD or POD account was brought back into the estate of a creditor.

OR

Has anyone had any experience with a ladybird deed property that had been brought back into an estate to satisfy a creditor?

If so – please bring your war stories to the committee for consideration in their discussion.

**XIII. Adjourn:** The meeting was then adjourned at: 11:48 am.

**ATTENDANCE ROSTER**  
**REAL PROPERTY PROBATE & TRUST LAW SECTION**  
**EXECUTIVE COUNCIL MEETINGS**  
**2022-2023**

Executive Committee	Division		7/21/22 Breakers	9/28/22 Bar Harbor, MAINE	12/8/22 Orlando	February 22, 2023 Destin, FL	June 3 <sup>rd</sup> Delray, FL
	R	P					
Butters, Sarah S. <b>Chair</b>		PT	√	√	√		
Frazier, S. Katherine <b>Chair-Elect &amp; Div. Director General Standing</b>	RP		√		√		
Wright, Wm. Cary <b>Division Director Real Property</b>	RP		√		√		
Moran, John C. <b>Division Director Probate &amp; Trust</b>		PT	√	√	√		
Brennan, Sancha <b>Secretary</b>		PT	√	√	√		
Scuderi, Jon <b>Treasurer</b>		PT	√		√		
Kightlinger, Wilhelmina <b>Legislation Co-Chair Real Property</b>	RP		√		√		
Miller, Lawrence J. <b>Legislation Co-Chair Probate &amp; Trust</b>		PT	√		√		
Adams, Angela M. <b>CLE Co-Chair Probate &amp; Trust</b>		PT	√		√		
Weintraub, Lee A. <b>CLE Co-Chair Real Property</b>	RP		√	√	√		
Mezer, Steven H. <b>Director At-Large Members</b>	RP		√		√		
Swaine, Robert S. <b>Immediate Past Chair</b>	RP		√		√		



Executive Council Members	Division		7/21/22 Breakers	9/28/22 Bar Harbor MAINE	12/8/22 Orlando	Feb 22, 2023 Destin, FL	June 3 <sup>rd</sup> Delray
	R	P					
Acosta, Jolyon Delphin		PT	√		√		
Akins, David J.		PT	Z	√	√		
Alaimo, Marve Ann M.		PT	√		√		
Altman, Stuart H.		PT					
Archbold, J. Allison		PT	√		Z		
Arnold, Casey		PT	√		√/Z		
Arnold, Trevor	RP		√		√		
Aron, Jerry E. <b>Past Chair</b>	RP			√			
Ashton, Amber E.	RP		√		√/Z		
Awerbach, Martin S.	RP		Z		Z		
Bald, Kimberly A.		PT	√		√		
Bailey, Lilleth		PT	Z		√		
Ballaga, Raul	RP		√		√		
Barboza, Annabella	RP		√		Z		
Barlow, Rachel		PT			Z		
Baskies, Jeffrey		PT	√		Z		
Battle, Carlos A.		PT	√		√		
Baumann, Phillip A.		PT	√	√			
Beales, III, Walter R. <b>Past Chair</b>	RP		√				
Bedke, Michael A.	RP		√				
Behar, Jacobeli J.		PT	√		√		
Belcher, William F. <b>Past Chair</b>		PT	√				

Executive Council Members	Division		7/21/22 Breakers	9/28/22 Bar Harbor MAINE	12/8/22 Orlando	Feb 22, 2023 Destin, FL	June 3 <sup>rd</sup> Delray
	R	P					
Bell, Kenneth B.	RP						
Bell, Rebecca Coulter		PT	√	√	√		
Beller, Amy		PT	Z		√		
Bellew, Brandon D.		PT	√		√		
Bloodworth, Jennifer J.	RP		Z/√		√		
Boje, Debra Lynn <b>Past Chair</b>		PT	√		√		
Bouchard, Eve		PT	√		√		
Bowers, Elizabeth A.		PT			√		
Boyd, Deborah		PT	Z		Z		
Braun, Keith Brian		PT	Z		√		
Brenes-Stahl, Tattiana		PT	Z/√		√		
Brennan, David C. <b>Past Chair</b>		PT	√				
Bronner, Tae K.		PT	√		√		
Brown, Mark A.	RP						
Brown, Shawn	RP		√		√		
Brown-Burton, Lorna	RP		Z		√/Z		
Brunner, S. Dresden		PT	Z		Z		
Bruton, Jr., Ed Burt	RP		Z/√		√		
Bucher, Elaine M.		PT	√		√		
Butler, Johnathan		PT	√		√/Z		
Callahan, Chad W. III		PT	Z		Z		
Caskey, John "Rich"		PT	√		√		

Executive Council Members	Division		7/21/22 Breakers	9/28/22 Bar Harbor MAINE	12/8/22 Orlando	Feb 22, 2023 Destin, FL	June 3 <sup>rd</sup> Delray
	R	P					
Cazobon, Denise		PT	Z		√		
Christiansen, Patrick <b>Past Chair</b>	RP				√		
Christy, Erin Hope	RP		√				
Cole, Stacey L.		PT					
Coleman, Jami A.		PT			Z		
Comiter, Alyse Reiser		PT					
Conetta, Tami F.		PT	√		√		
Cook, Stephanie		PT	√		√		
Cope, Jr., Gerald B.	RP		Z		Z		
Cornett, Jane Louise	RP		√				
Cranford, Jeremy	RP		√		Z		
Crockett, Debbie	RP		√		√		
Curley, Nick		PT	Z	√	√		
Detzel, Lauren Y.		PT	√				
Diamond, Benjamin F.		PT	√		√		
Diamond, Sandra F. <b>Past Chair</b>		PT	√	√	√		
Dobrev, Alex	RP		√		√		
Dollinger, Jeffrey	RP				√/Z		
Douglas, Alexander		PT	√		√		
Dribin, Michael <b>Past Chair</b>		PT	√	√	Z		
Duffey, Patrick J.		PT	√		√		
Duvall, III, Homer	RP		√		Z		

Executive Council Members	Division		7/21/22 Breakers	9/28/22 Bar Harbor MAINE	12/8/22 Orlando	Feb 22, 2023 Destin, FL	June 3 <sup>rd</sup> Delray
	R	P					
Eisel, Jeffrey		PT	√		√		
Ellison, Jason M.	RP		√		√		
Emans, Patrick C		PT	√				
Emerich, Guy S.		PT	Z				
Ertl, Christene M.	RP		√		√		
Evert, Jamison C.		PT			√		
Ezell, Brenda B.	RP		√	√			
Fagan, Gail		PT	Z/√		√		
Falk, Jr., Jack A.		PT	Z		Z		
Farach, Manuel	RP		√	√	√		
Felcoski, Brian J. <b>Past Chair</b>		PT	√		√		
Ferguson, Elizabeth B.	RP						
Fernandez, Kristopher E.	RP		√		√		
Fields, Alan B.	RP		√		√		
Finchum, Travis		PT	√				
Finlen, Erin F.		PT	√		√		
Fitzgerald, Jr., John E.		PT	√		√		
Freedman, Robert (Rob) <b>Past Chair</b>	RP		Z	√	Z		
Friedman, Bridget		PT	√	√	√		
Friedman, Jesse B.		PT	Z				
Fugate, Norm	RP		Z		√		
Gabel, Alexandra	RP						

Executive Council Members	Division		7/21/22 Breakers	9/28/22 Bar Harbor MAINE	12/8/22 Orlando	Feb 22, 2023 Destin, FL	June 3 <sup>rd</sup> Delray
	R	P					
Galler, Jonathan		PT					
Gans, Richard R.		PT	√		√		
Gelfand, Michael J <b>Past Chair</b>	RP		√	√	√/Z		
George, Joseph P.		PT	√	√	√		
Godelia, Vinette D.	RP				√		
Goethe, Jeffrey S.		PT	√		√		
Goldman, Louis “Trey”	RP		√		√		
Goldman, Robert W. <b>Past Chair</b>		PT	√		√		
Goodall, Deborah P. <b>Past Chair</b>		PT	√	√	√		
Graham, Robert M.	RP				Z		
Granet, Lloyd	RP		√		√		
Griffin, Linda S.		PT	√		√/Z		
Grimsley, John G. <b>Past Chair</b>		PT					
Gunther, Eamonn W.		PT	√				
Guttman, III, Louis B <b>Past Chair</b>	RP						
Hamrick, Alexander H		PT	√				
Hargett, Michael	RP		√		√		
Harris, Shelly W.		PT	√		Z		
Harvey, Terrance	RP		√		Z		
Hatcher, Hon. Mary							
Hayes, Hon. Hugh D.			√		√		
Hayes, Michael Travis		PT	√		Z		

Executive Council Members	Division		7/21/22 Breakers	9/28/22 Bar Harbor MAINE	12/8/22 Orlando	Feb 22, 2023 Destin, FL	June 3 <sup>rd</sup> Delray
	R	P					
Haynes, Jourdan	RP				√		
Hearn, Frederick “Ricky”		PT	√	√	√		
Hearn, Steven L. <b>Past Chair</b>		PT	Z	√			
Heckert, Katherine (Katie)	RP			√	√/Z		
Hellmuth, Kelly		PT	Z		Z		
Henderson, Jr., Reese J.	RP						
Henderson, III, Thomas N.	RP		Z		√		
Hennessey, William (“Bill”) <b>Past Chair</b>		PT	√	√	√		
Hersem, Amanda	RP		Z	√	Z		
Hertz, Allison	RP		√		√		
Heuston, Stephen P.		PT	Z/√		√/Z		
Hinden, Michelle	RP		√		√		
Hipsman, Mitchell Alec		PT	√		√		
Hoffman, Brian W.	RP		√				
Hudson, Hon. Margaret “Midge”		PT	√				
Hughes, Elizabeth		PT	√		√		
Huss, Cady L.		PT	√		√		
Hutt, Gregg Evan	RP		√				
Isphording, Roger O. <b>Past Chair</b>		PT					
Jaiven, Kristen King	RP		√		√		
Jarrett, Sharifa K.		PT					
Johnson, Amber Jade		PT	√		√		

Executive Council Members	Division		7/21/22 Breakers	9/28/22 Bar Harbor MAINE	12/8/22 Orlando	Feb 22, 2023 Destin, FL	June 3 <sup>rd</sup> Delray
	R	P					
Jones, Darby		PT	√		√		
Jones, Frederick W.	RP		√		√		
Kalmanson, Stacy O.	RP		√		√		
Kangas, Michael R.		PT	√		√		
Kaplan, Seth		PT	Z		√		
Karr, Mary E.		PT					
Karr, Thomas M.		PT			Z		
Kayser, Joan B. <b>Past Chair</b>		PT					
Kelley, Rohan <b>Past Chair</b>		PT	√	√	√		
Kelley, Sean W.		PT	√		√		
Kelley, Shane		PT	√		√		
Kibert-Basler, Nicole	RP						
Kinsolving, Ruth Barnes <b>Past Chair</b>	RP						
Kison, Amanda	RP		√		√		
Klein, Sasha		PT					
Koren, Edward F. <b>Past Chair</b>		PT	√				
Kotler, Alan Stephen		PT	Z		√		
Kurian, Sanjay	RP				√		
Kypreos, Theodore S.		PT	√		√		
Lane, Jr., William R.		PT					
Larson, Roger A.	RP		√		Z		
Lebowitz, Sean		PT	Z		√		

Executive Council Members	Division		7/21/22 Breakers	9/28/22 Bar Harbor MAINE	12/8/22 Orlando	Feb 22, 2023 Destin, FL	June 3 <sup>rd</sup> Delray
	R	P					
Licastro, Laura	RP		√		√		
Lile, Laird A. <b>Past Chair</b>		PT	√	√	√		
Little, III, John W.	RP						
Liu, Jin	RP		√		√		
Lunsford, Rachel Albritton		PT	Z		√		
Madorsky, Marsha G.		PT	Z		Z		
Malec, Brian		PT	√		√		
Marger, Bruce <b>Past Chair</b>		PT					
Marx, James A.	RP		√		√		
Mastin, Deborah Bovarnick	RP		√				
McCall, Alan K.	RP		Z				
McConnell, Ryan	RP		√		√		
McDermott, Daniel		PT	√		Z		
McElroy, IV, Robert Lee		PT	Z		Z		
McIver, Richard	RP		√		√		
McRae, Ashley E.	RP		√		√		
Menor, Arthur J.	RP				√		
Meyer, George F. <b>Past Chair</b>	RP		√		√		
Meyer, Michael	RP		Z		√/Z		
Middlebrook, Mark	RP		√		√		
Moffa, Jeanette		PT					
Muir, Hon. Celeste H.		PT	√		√/Z		



Executive Council Members	Division		7/21/22 Breakers	9/28/22 Bar Harbor MAINE	12/8/22 Orlando	Feb 22, 2023 Destin, FL	June 3 <sup>rd</sup> Delray
	R	P					
Murphy, Melissa J. <b>Past Chair</b>	RP		√	√			
Nash, Charles I.		PT	Z		Z		
Neukamm, John B. <b>Past Chair</b>	RP				√		
Nguyen, Hung V.		PT	√				
O'Malley, Andrew M. <b>Past Chair</b>	RP		Z	√	Z		
Papanikos, Cristina		PT	√		√		
Partington, Bruce	RP				√/Z		
Payne, L. Howard		PT					
Pence, Scott P.	RP		√		√		
Percopo, Joe		PT	Z		Z		
Pilote, Frank		PT	Z		√/Z		
Pinnock, Duane L.		PT					
Pollack, Anne Q.	RP		Z/√	√	√/Z		
Powell, Caitlin		PT	√		√		
Prescott, Leonard	RP		√		√		
Pressley, Grier James		PT	√		√		
Price, Pamela O.		PT	Z		√		
Prince-Troutman, Stacy		PT	Z		√		
Quintero, Jason	RP				Z		
Redding, John N.	RP		√		√		
Riconda, Eryn		PT	√				
Rieman, Alexandra V.		PT	√		Z		

Executive Council Members	Division		7/21/22 Breakers	9/28/22 Bar Harbor MAINE	12/8/22 Orlando	Feb 22, 2023 Destin, FL	June 3 <sup>rd</sup> Delray
	R	P					
Robbins, Jr., R. James	RP		Z/√		Z		
Robbins, Russell	RP		Z		√		
Roberts, III, Hardy L.	RP				Z		
Robinson, Jennifer		PT	Z		Z		
Rojas, Silvia B.	RP		√	√	√		
Rolando, Margaret A. <b>Past Chair</b>	RP		√		√		
Roman, Paul E.		PT	√	√	√		
Romano, Antonio		PT			Z		
Rubel, Stacy		PT	Z/√		√		
Rubenstein, Michael		PT					
Rubin, Jenna		PT	Z		Z		
Rudisill, Hon. Michael	RP				√		
Russick, James C.	RP		√		√		
Sachs, Colleen C.	RP		√		√		
Sajdera, Christopher	RP		√		√		
Sanchez-Medina, Roland			√		Z		
Santos, Angela		PT	√		√		
Sasso, Andrew		PT	Z		Z		
Savioli, Justin		PT	Z		Z		
Scaletta, Melissa	RP		√		√		
Schwartz, Martin	RP						
Schwartz, Robert M.	RP		√		Z		

Executive Council Members	Division		7/21/22 Breakers	9/28/22 Bar Harbor MAINE	12/8/22 Orlando	Feb 22, 2023 Destin, FL	June 3 <sup>rd</sup> Delray
	R	P					
Seigel, Daniel A.		PT	√	√	√		
Shanks, David	RP		√				
Sheets, Sandra G.		PT	√		Z		
Sherrill, Richard		PT	√		Z		
Sklar, William P.	RP		√		√		
Skrande, Gutman	RP		Z		Z		
Smart, Christopher W.		PT	√		√		
Smith, Kymberlee C.	RP		√		√		
Smith, G. Thomas <b>Past Chair/Hon. Member</b>	RP						
Smith, Yoshimi O.		PT	√				
Sneeringer, Michael		PT	√		√/Z		
Solomon, Marty	RP		√				
Sparks, Brian C.		PT	√		√		
Speiser, Hon. Mark A.		PT					
Spivey, Barry F.		PT	√		√		
Spurgeon, Susan K.	RP		√	√	√		
Stafford, Michael P.		PT	√		√		
Staker, Karla J.	RP		√		√		
Stashis, Alfred Joseph		PT	Z		Z		
Stern, Robert G.	RP		√		Z		
Stone, Adele I.	RP		Z		√		
Stone, Bruce M. <b>Past Chair</b>		PT					

Executive Council Members	Division		7/21/22 Breakers	9/28/22 Bar Harbor MAINE	12/8/22 Orlando	Feb 22, 2023 Destin, FL	June 3 <sup>rd</sup> Delray
	R	P					
Sundberg, Laura K.		PT	Z	√	√		
Swaine, Jack Michael <b>Past Chair</b>	RP		√	√			
Taft, Ellie	RP						
Taylor, Richard W.	RP		Z		√		
Thomas, Hon. Patricia		PT		√			
Thompson, Andrew		PT	√		√		
Thornton, Kenneth E.	RP		√		√		
Tobin, Jennifer S.	RP		Z/√				
Triggs, Matthew H.		PT	Z				
Tschida, Joseph John	RP		√		√		
Tucker, Kristine L.		PT	√		Z		
Udick, Arlene C.	RP		√		√		
Van Dien, Lisa Barnett	RP		√		√		
Van Lenten, Jason Paul		PT	√				
Van Pelt, Kit E.		PT	Z		Z		
Villarroel, Nicole Marie	RP		√		√		
Virgil, Eric		PT			√/Z		
Waller, Roland D. <b>Past Chair</b>	RP		√		√		
Wan, Alyssa Razook		PT	Z				
Warner, Richard		PT	√		√		
Weiss, Brad R.	RP		√		√		
Wells, Jerry B.		PT					

Executive Council Members	Division		7/21/22 Breakers	9/28/22 Bar Harbor MAINE	12/8/22 Orlando	Feb 22, 2023 Destin, FL	June 3 <sup>rd</sup> Delray
	R	P					
Williams, Margaret A.	RP		Z		√		
Williams, Jorja		PT	√		√		
Williamson, Julie Ann <b>Past Chair</b>	RP		√				
Wintter, Christopher		PT	√		√		
Wohlust, Gary Charles		PT	√		√		
Wolasky, Marjorie E.		PT	√		√		
Wolf, Jerome L.		PT	√		Z		
Wood, Rebecca	RP		√		√		
Young, Gwynne A.		PT					
Zeydel, Diana S.C.		PT					
Zikakis, Salome J.	RP		√		Z		
Zschau, Julius J. <b>Past Chair</b>	RP						

## Affiliate Members

Fellows	Division		7/21/22 Breakers	9/28/22 Bar Harbor MAINE	12/8/22 Orlando	Feb 22, 2023 Destin, FL	June 3 <sup>rd</sup> Delray
	R	P					
Boisrond, Sandy		PT	√		√		
Cummins, Amanda		PT	√		√		
Davis, Jade	RP		√		√		
Hernandez, Melissa	RP						
Mora, Jeanette		PT	√		√		
Mount, Shayla	RP						
Piezynski, Janaye	RP		√	√	Z		
Reid, Tanigaea		PT	√		√		

Legislative Consultants	Division		7/21/22 Breakers	9/28/22 Bar Harbor MAINE	12/8/22 Orlando	Feb 22, 2023 Destin, FL	June 3 <sup>rd</sup> Delray
	R	P					
Brown, French	RP		√				
Dunbar, Marc							
Dunbar, Peter M.	RP		√	√			
Edenfield, Martha Jane		PT	√		√		

## GUESTS

Guests	Division		7/21/22 Breakers	9/28/22 Bar Harbor MAINE	12/8/22 Orlando	Feb 22, 2023 Destin, FL	June 3 <sup>rd</sup> Delray
	R	P					
Clark, Danielle					Z		
Fanzlaw, Amy					Z		
Groover, Lea Anne					Z		
Khan, Nishad	√		√		√		
Lancaster, Rob					Z		
Linde, Matthew					Z		
Miller, Erin					Z		
Offir, Liron							
Persante, Robert			√		√		
Primeau, John					Z		
Roberts, Tance					Z		
Slater, Debra					Z		
Stoops, Elizabeth					Z		
Stotts, Darren					Z		
Tabak, Marcia					Z		
White, Richard					Z		
Zuroweste, Zack		√	√		√		



## Thank you to Our General Sponsors

<b><u>Event Name</u></b>	<b><u>Sponsor</u></b>	<b><u>Contact Name</u></b>	<b><u>Email</u></b>
App Sponsor	<b>WFG National Title Insurance Co.</b>	Joseph J. Tschida	<a href="mailto:jtschida@wfgnationaltitle.com">jtschida@wfgnationaltitle.com</a>
Executive Council Meeting	<b>Stewart Title</b>	David Shanks	<a href="mailto:david.shanks@stewart.com">david.shanks@stewart.com</a>
Friday Night Dinner	<b>First American Title Insurance Company</b>	Alan McCall	<a href="mailto:Amccall@firstam.com">Amccall@firstam.com</a>
Friday Reception	<b>Westcor Land Title Insurance Company</b>	Laura Licastro	<a href="mailto:laura.licastro@wltic.com">laura.licastro@wltic.com</a>
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Overall Sponsor/Leg. Up	<b>Attorneys Title Fund Services, LLC (The Fund)</b>	Melissa Murphy	<a href="mailto:mmurphy@thefund.com">mmurphy@thefund.com</a>
Probate Roundtable	<b>Stout</b>	Kym Kerin	<a href="mailto:kkerin@srr.com">kkerin@srr.com</a>
Probate Roundtable	<b>Guardian Trust</b>	Ashley Gonnelli	<a href="mailto:ashley@guardiantrusts.org">ashley@guardiantrusts.org</a>
Real Property Roundtable	<b>FNF Family of Companies – Florida Agency</b>	Karla Staker	<a href="mailto:Karla.Staker@fnf.com">Karla.Staker@fnf.com</a>
Spouse/Guest Breakfast	<b>Attorneys Title Fund Services, LLC (The Fund)</b>	Melissa Murphy	<a href="mailto:mmurphy@thefund.com">mmurphy@thefund.com</a>
Thursday Grab & Go Lunch	<b>Management Planning, Inc.</b>	Roy Meyers	<a href="mailto:rmeyers@mpival.com">rmeyers@mpival.com</a>
Thursday Night Reception	<b>J.P. Morgan Private Bank</b>	Carlos Batlle	<a href="mailto:carlos.a.batlle@jpmorgan.com">carlos.a.batlle@jpmorgan.com</a>
Thursday Night Reception	<b>Old Republic Title</b>	Jim Russick	<a href="mailto:jrussick@oldrepublictitle.com">jrussick@oldrepublictitle.com</a>





## Thank you to our Friends of the Section Sponsors

<u>Sponsor</u>	<u>Contact</u>	<u>Email</u>
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CATIC	Deb Boyd	<a href="mailto:dboyd@catic.com">dboyd@catic.com</a>
Cumberland Trust	Elizabeth Claiborne	<a href="mailto:Eclaiborne@cumberlandtrust.com">Eclaiborne@cumberlandtrust.com</a>
Estate Inventory Services	Jeremiah Cronin	<a href="mailto:jeremiah@estateinventoryservices.com">jeremiah@estateinventoryservices.com</a>
Fiduciary Trust International of the South	Vaughn Yeager	<a href="mailto:Vaughn.yeager@ftci.com">Vaughn.yeager@ftci.com</a>
Heritage Investment	Joe Gitto	<a href="mailto:jgitto@heritageinvestment.com">jgitto@heritageinvestment.com</a>
Hindman Auctions	Elizabeth Rader	<a href="mailto:elizabethrader@hindmanauctions.com">elizabethrader@hindmanauctions.com</a>
National Philanthropic Trust	Ethan Burke	<a href="mailto:eburke@nptrust.org">eburke@nptrust.org</a>
Doma Title Insurance	Carlos Rodriguez	<a href="mailto:Carlos.rodriquez@doma.com">Carlos.rodriquez@doma.com</a>
Title Resources	Lee Offir	<a href="mailto:Lee.offir@titleresources.com">Lee.offir@titleresources.com</a>
Valuation Services	Jeff Bae	<a href="mailto:jeff@valuationservices.com">jeff@valuationservices.com</a>



## Thank you to our Committee Sponsors

<u>Sponsor</u>	<u>Contact</u>	<u>Email</u>	<u>Committee</u>
<b>Real Property Division</b>			
Attorneys Title Fund Services, LLC	Melissa Murphy	<a href="mailto:mmurphy@thefund.com">mmurphy@thefund.com</a>	Commercial Real Estate
Attorneys Title Fund Services, LLC	Melissa Murphy	<a href="mailto:mmurphy@thefund.com">mmurphy@thefund.com</a>	Real Estate Leasing
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CATIC	Deborah Boyd	<a href="mailto:dboyd@catic.com">dboyd@catic.com</a>	Real Property Finance and Lending
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First American Title	Wayne Sobian	<a href="mailto:wsobian@firstam.com">wsobian@firstam.com</a>	Real Property Problems Study
<b>Probate Law Division</b>			
BNY Mellon Wealth Management	Joan Crain	<a href="mailto:Joan.crain@bnymellon.com">Joan.crain@bnymellon.com</a>	Estate and Trust Tax Planning
BNY Mellon Wealth Management	Joan Crain	<a href="mailto:Joan.crain@bnymellon.com">Joan.crain@bnymellon.com</a>	IRA, Insurance and Employee Benefits
Business Valuation Analysts, LLC	Tim Bronza	<a href="mailto:tbronza@bvanalysts.com">tbronza@bvanalysts.com</a>	Trust Law
Coral Gables Trust	John Harris	<a href="mailto:Jharris@cgtrust.com">Jharris@cgtrust.com</a>	Probate and Trust Litigation
Coral Gables Trust	John Harris	<a href="mailto:jharris@cgtrust.com">jharris@cgtrust.com</a>	Probate Law Committee
Grove Bank and Trust	Marta Goldberg	<a href="mailto:mgoldberg@grovebankandtrust.com">mgoldberg@grovebankandtrust.com</a>	Guardianship and Advanced Directives
Kravit Estate Appraisal	Bianca Morabito	<a href="mailto:bianca@kravitestate.com">bianca@kravitestate.com</a>	Estate and Trust Tax Planning
Management Planning Inc.	Roy Meyers	<a href="mailto:rmeyers@mpival.com">rmeyers@mpival.com</a>	Estate and Trust Tax Planning
Northern Trust	Tami Conetta	<a href="mailto:Tfc1@ntrs.com">Tfc1@ntrs.com</a>	Trust Law



Date: January 4, 2023

This agreement is made and entered into, as the date below, by and between Colleen Schuster ("Schuster") and the Real Property, Probate and Trust Law Section of The Florida Bar ("Client").

Schuster agrees to provide the following services:

**Scope of Work:**

- Proofread and Edit ActionLine articles for layout;
- Organize and follow-up with the writers, article's editors, ALMS, fellows, and others who are all responsible for developing content for ActionLine;
- Work with staff and layout personnel through the layout process;
- Shepherd writing, editing and publishing processes between authors and layout teams;
- Follow up and solicit articles from the standing committees;
- Manage the ActionLine progress chart and follow up on authors and editors while managing the work flow;
- Manage the photos for ActionLine publication including collecting them effectively, including posting to the RPPTL website;
- Help manage advertising aspects and coordinate efforts to get more sponsors and advertisers;
- Manage ActionLine's page on the RPPTL website, including ActionLine staff guidelines; and
- Review, test, and learn what other sections and bars are doing and share some best practices so Client can give suggestions for going forward with respect to electronic newsletters etc.

**Timeframe:**

ActionLine is quarterly publication and work load will be dictated by the deadlines for submission of articles by authors listed below.

<b>Issue</b>	<b>Deadline</b>
Spring Issue	January 31
Summer Issue	April 30

Fall Issue	July 31
Winter Issue	October 31

The deadlines for publishing the electronic version of ActionLine is listed below:

Issue	Deadline
Spring Issue	March 15
Summer Issue	June 15
Fall Issue	September 15
Winter Issue	December 15

**Fee Schedule**

Schuster will submit detailed invoices to Client each month. Invoices should include an itemized list of time associated with each task. An agreed upon rate of \$50/hour with an estimated time required of 40 hours/month. If Schuster exceeds 40 hours/month, notice will be given to bar staff in advance of overage. In addition, any travel requested and required by Schuster, will be reimbursable by the client (see attached reimbursement form). The start date for this contract will be February 1, 2023. The end date for this contract will be January 31, 2024.

**Independent Contractor Provision:**

Contractor shall be and at all times act as an independent contractor with respect to Client and agrees to comply with all applicable state and federal tax and other laws imposed upon Contractor as a result of Contractor's status as an independent contractor, specifically including without limitation, Contractor acknowledges that Contractor shall be responsible for the payment of federal income, Social Security, Medicare or other taxes and withholdings. This Agreement shall not be deemed to create any agency, employment, partnership or joint venture relationship between Client and Contractor. Neither party shall have the power or authority to bind, commit or obligate the other in any manner whatsoever without the other's prior written consent. No representations of either party shall be binding upon the other party without the other party's prior written consent.

**Termination for Cause:**

Client shall be entitled to terminate Schuster for cause for failure to satisfactorily perform the items listed in the Scope of Work above or missing the deadlines for publishing the electronic version of ActionLine. Client shall give Schuster seven (7) days' written notice of the deficiencies in Schuster's performance and an opportunity to cure the items listed in such written notice. If Schuster fails to cure the noticed deficiencies, Client shall then provide a seven (7) days' written notice of termination.

**Termination for Convenience:**

Client has the right to terminate this contract for convenience and without cause. In such event, Client shall give Schuster seven (7) days' written notice.

Check to be made payable to: <sup>CS</sup> Colleen Schuster

Agreed to:

*Colleen  
CS*

*Colleen Schuster 1/4/23*

<sup>CS</sup>  
Colleen Schuster  
*Colleen  
CS*

Date

\_\_\_\_\_

Terry Hill, Director

Date

Programs Division  
The Florida Bar

**RPPTL 2022-2023**  
**Executive Council Meeting Schedule**  
**Sarah Butters' Year**

Limit 1 reservation per registrant, additional rooms will be approved upon special request.

**NOTE- Committee meetings may be conducted virtually via Zoom prior to the Executive Council meeting weekend.**

<b>Date</b>	<b>Location</b>
<b>July 21 – July 24, 2022</b>	<b>Executive Council Meeting &amp; Legislative Update</b> The Breakers Palm Beach, Florida Room Rate (Deluxe Room – King): \$250 Premium Room Rate: \$305
<b>September 28 – October 2, 2022</b>	<b>Executive Council Meeting</b> Opal Sands Harborside Bar Harbor, Maine Standard Guest Room Rate (King): \$318 Premium King: \$376
<b>December 8 – 12, 2022</b>	<b>Executive Council Meeting</b> Four Seasons Orlando, FL Standard Guest Room Rate: \$299
<b>February 22 – 26, 2023</b>	<b>Executive Council Meeting</b> Sandestin Golf and Beach Resort Destin, Florida Grand Complex 1 Bedroom: \$195 Hotel Effie Standard Guest Room Rate: \$244
<b>June 1 – June 4, 2023</b>	<b>Executive Council Meeting &amp; Annual Convention</b> Opal Sands Delray (Contract Pending) Delray Beach, FL Standard Guest Room Rate: \$189

\*Subject to availability

**RPPTL 2023-2024**  
**Executive Council Meeting Schedule**  
**Katherine Frazier's Year**

Limit 1 reservation per registrant, additional rooms will be approved upon special request.

**NOTE- Committee meetings may be conducted virtually via Zoom prior to the Executive Council meeting weekend.**

Date	Location
<b>July 19 – July 23, 2023</b>	<b>Executive Council Meeting &amp; Legislative Update</b> The Breakers Palm Beach, Florida Room Rate (Deluxe Room – King): \$257 Premium Room Rate: \$314
<b>September 20 – September 24, 2023</b>	<b>Executive Council Meeting</b> Fairmont Le Chateau Frontenac Quebec City, Quebec, Canada Standard Guest Room Rate (King): \$359 CDN (Canadian Dollars) *Reminder – You will need your passport!
<b>November 8 – November 12, 2023</b>	<b>Executive Council Meeting</b> JW Marriott Tampa Water Street Tampa, Florida Standard Guest Room Rate: \$259 King Suite Room Rate: \$289
<b>February 21 – February 25, 2024</b>	<b>Executive Council Meeting</b> Ritz Carlton Grande Lakes Orlando, Florida Standard Room Rate: \$359 JW Marriott Standard Room Rate: \$329
<b>May 29 – June 2, 2024</b>	<b>Executive Council Meeting &amp; Annual Convention</b> Hyatt Regency Coconut Point Bonita Springs, Florida Standard Guest Room Rate: \$209

February 9, 2023

To:

**Sarah S. Butters**

Ausley McMullen

PO Box 391

Tallahassee, FL 32302-0391

[sbutters@ausley.com](mailto:sbutters@ausley.com)

**RE: The Florida Bar: Real Property, Probate, and Trust Law Section RFP Response**

Thank you for the opportunity to continue to partner together on these important branding and marketing initiatives for The Florida Bar's Real Property, Probate, and Trust Law Section ("RPPTL"). This agreement (the "Agreement") amends and restates in its entirety the scope of agency services and costs for Schifino Lee set forth in my letter to you dated, August 31, 2022, and documents the terms and conditions under which RPPTL is exercising its optional commitment, for the sum of \$43,900 and for the period beginning on March 1, 2023 and ending on August 31, 2023.

**1. STRATEGIC MESSAGING + POSITIONING**

Based on the above process, Schifino Lee will develop a brand strategy and key messaging for RPPTL. The initiative will include the following:

- Brand Audit and Discovery
- Strategic Brand Positioning
- Tone of Voice
- Proof of Concept

**COMPLETE**

**2. OUTREACH DATABASE**

SL will build the Florida Bar's most comprehensive database and community of influential leaders and stakeholders:

- Thought Leaders and Opinion Leaders in RPPTL affecting real property, probate and trust law
- Florida Bar Members
- The Florida Legislature
- Demographically and geographically -segmented public audiences inside the state of Florida Major trade media and national media outlets

**COMPLETE**

**3. WEBSITE—MICROSITE**

Based on an approved website sitem ap and wireframe, Schifino Lee will design, develop, and launch a new mobile-friendly microsite for RPPTL (the "Microsite"). The project will include the following agency services:

- Competitive website audit and requirements confirmation
- U/XU/I Wireframing for user experience + sitem ap
- Design Mood Board Concepts – *minimum of 2 mood boards*
- Layout and design of all pages
- SEO audit and keyword mapping
- Copywriting
- Responsive programming – *for dynamic adaptation of all device screen sizes*
- Testing and Launch – *testing on platforms and devices prior to launch.*
- Project Management
- At RPPTL's option, the Microsite will be maintained on RPPTL's or Florida Bar servers.



**4. MICROSITE MAINTENANCE & SUPPORT**

Schifino Lee will provide monthly preventative maintenance and ongoing Microsite updates and support. The project includes the following:

- Install important updates
- Install security patches (this can be important to prevent malware issues on your website)
- Perform malware and security scans
- Perform site speed audits and make enhancements as necessary
- Ensure backups are running regularly
- Ensure SEO maintenance
- Make content changes and design tweaks
- Assess Google Analytics reports and optimize site to maximize conversions

**SUBTOTAL: \$500 per month**

*\*To begin immediately after completion of the Microsite infrastructure setup \*Includes two (2) hours of preventative maintenance, Microsite updates and support. Additional updates to be billed on an hourly basis. All copy and content to be provided by RPPTL unless otherwise directed in writing. All such copy and content shall be approved pursuant to Paragraph 7 below before publication or release outside RPPTL.*

**5. MELTWATER SETUP**

Schifino Lee will create, set up, and structure audience distribution lists on Meltwater system, to be maintained on the Microsite.

**COMPLETE**

**6. CAMPAIGN PRODUCTION & IMPLEMENTATION**

Subject to the approval process set forth in Section 7 hereafter, Schifino Lee will create assets needed based on approved strategic messaging plan and implement all deliverables according to campaign level, earned Public Relations and Owned marketing materials including, but not limited to:

- Press Releases
- Speaking Engagements
- Public Relations Events
- Media Pitches
- Email Marketing
- Social Posts
- Infographics + Fact Sheets
- Blog Posts
- White Papers
- Articles

**SUBTOTAL:**

Month 1-6

- One (1) Light Campaign (\$8,050) CLE Promotion - ABC

**IN PROCESS**

Months 7-12

- Two (2) Light Campaigns (\$16,100)

- One (1) Medium Campaign (\$12,080)

**TO BE DETERMINED**

*\*Photography and videography to be scoped separate per request and, based upon the pricing set forth on the Schifino Lee Phased Approach to Branding, Microsite and Marketing Communications proposal attached hereto as Exhibit "A" (the "Pricing Schedule") will follow for any a la carte update or upgrade to any campaign, at RPPTL's option.*

## **7. ACCOUNT MANAGEMENT**

Schifino Lee will manage all projects and key milestones throughout the duration of this agreement. This service includes the following:

- Weekly Status Meetings
- Project Management
- Monthly Status Reports

Schifino Lee's account management shall include, without limitation, a full understanding of RPPTL's obligations related to legislative and political activity. Schifino Lee shall not (a) publish, distribute or release any content, in any form, outside RPPTL nor (b) take any action that would constitute legislative or political activity without RPPTL's express approval, in writing, from a specifically designated RPPTL representative following approval of such legislation or political position. RPPTL's designated representatives are (i) the current RPPTL Section Chair and the RPPTL Section Chair-Elect. The form of legislative or political activity that may be approved by RPPTL, in writing, shall be limited to:

- Engaging in public commentary on an issue of significant public interest or debate;
- Commenting on any action taken by an elected or appointed governmental official;
- Direct communication with any elected or appointed governmental official;
- Publishing, whether by press release, article, earned media, or in any other form, information concerning bills that have been in the press frequently.

The definition of legislative or political activity is much broader than that set forth above and certain activities that fall within the definition are *expressly prohibited*. Such prohibited activities include:

- Submitting comments in any legal proceeding;
- Appearing before any governmental entity;
- Submitting comments to any regulatory entity; and
- Endorsement of political candidates.

**SUBTOTAL: \$2,000 per month**

**Months 1–5**

**(Final \$13,320 Payment Due)**

September/October 2022: (paid)

November 2022: (paid)

December 2022: \$13,320 (paid)

January 2022: \$13,320 (paid)

February 2023: \$13,320 (pending)

**Months 6 –11 (RPP TL’s Option)**

**COMMITMENT: \$43,900**

**\$43,900**

March 2023: \$7,316.67

April 2023: \$7,316.67

May 2023: \$7,316.67

June 2023: \$7,316.67

July 2023: \$7,316.67

August 2023: \$7,316.67

**8. ADDITIONAL TERMS:**

**AGREEMENT TIMEFRAME:** September 21, 2022 – February 28, 2023, with renewal option from March 1, 2023 – August 31, 2023

This Agreement shall be valid for a period of 12 months from the date signed and may be renewed by RPP TL for the second part of the agreement, March 1, 2023 – August 31, 2023 by providing written renewal agreement to Schifino Lee no later than March 1, 2023.

**BILLING:**

RPP TL will be invoiced on or around the 15<sup>th</sup> of each month. The approved budget for creative services will be invoiced upon commencement. All invoices are due Net 30 unless otherwise indicated.

**OUTSIDE EXPENSES:**

Outside expenses such as photography, eBlast distribution, travel etc. will be billed monthly on a progress basis as approved and incurred. Outside expenses exceeding \$200 will be individually budgeted for written RPP TL authorization.

**PAYMENT TERMS:**

RPP TL agrees to pay Schifino Lee, Inc. net 30 on all invoices. Any prepayments required by 3<sup>rd</sup> party vendors will be pre-billed and are due upon receipt. A monthly 1.5% interest fee will be applied to past due invoices. In the unlikely event of payment dispute, both parties agree Florida law will apply to any dispute and venue shall lie exclusively in Hillsborough County, Florida.

**MEDIA BILLING:**

RPP TL authorizes Schifino Lee to purchase media on its behalf, provided such media is within the approved proposal, including any commission. Schifino Lee will earn 15% commission on all media buys. Schifino Lee will provide RPP TL with a media reconciliation report on or around the 15<sup>th</sup> of the month for advertising that ran the previous month. Upon receiving media reconciliation from Schifino Lee, RPP TL is obligated for payment of such advertising. Once payment has been made, Schifino Lee assumes full responsibility for remitting payment to the media vendor in a timely manner. If, however, RPP TL fails to remit payment, the financial responsibility for payment lies with RPP TL and not with Schifino Lee.

#### **ADDITIONAL PROJECTS:**

Schifino Lee will gladly handle additional projects outside the scope of this agreement at an hourly rate of \$170 indicated above or at RPPTL's option on a flat-fee project basis as set forth in the Pricing Schedule. Written RPPTL authorization is required to commence work outside the project scope.

#### **OWNERSHIP:**

(a) Schifino Lee acknowledges and agrees that all work performed by Schifino Lee pursuant to this Agreement shall be "work for hire" to fullest extent permissible by law, and that the Microsite, software, content, and all source code, object code, data files, help files, artwork, documentation, programming, copyrights, patents, trademarks and other property rights, arising under the laws of the United States or any foreign jurisdiction, that relate to the Microsite, content and software, together with all works, ideas, discoveries, inventions or other information developed in whole or in part by Schifino Lee in connection with the performance of the services hereunder, shall be the sole and exclusive property of RPPTL; provided however, RPPTL is solely responsible for all product licensing and trademarks.

(b) To the extent that any of the Microsite, content, software, objects, properties or rights described in this Agreement (collectively, the "Work Product") are not deemed to be work for hire, Schifino Lee hereby assigns to RPPTL, without further compensation, all of Schifino Lee's right, title and interest in and to such Work Product.

(c) Any assignment of copyrights under this Agreement includes all rights of paternity, integrity, disclosure, and withdrawal and any other rights that may be known as "moral rights" (collectively, "Moral Rights"). Schifino Lee hereby irrevocably waives, to the extent permitted by applicable law, any and all claims it may now or hereafter have in any jurisdiction to any Moral Rights with respect to the Work Product.

(d) Schifino Lee shall make full and prompt disclosure to RPPTL of any inventions or processes, as such terms are defined in 35 U.S.C. § 100 (the "Patent Act"), made or conceived by Schifino Lee alone or with others during the term, related in any way to the Work Product described herein, whether or not such inventions or processes are patentable or protected as trade secrets and whether or not such inventions or processes are made or conceived during normal working hours or on the premises of RPPTL. Schifino Lee shall not disclose to any third party the nature or details of any such inventions or processes without the prior written consent of RPPTL. Any patent or copyright applications relating to the Work Product, related to trade secrets of RPPTL or which relate to tasks assigned to Schifino Lee by RPPTL, that Schifino Lee may file within one year after expiration or termination of this Agreement, shall belong to RPPTL, and Schifino Lee hereby assigns same to RPPTL, as having been conceived or reduced to practice during the term of this Agreement.

(e) Schifino Lee agrees to promptly sign all assignments, applications and other documents, and to take such other actions, as RPPTL may reasonably request to (i) confirm or establish RPPTL's ownership of the Work Product, (ii) apply for, obtain, register or renew, in the name of RPPTL, any patents, copyrights, trademarks or similar rights relating to the Work Product; or (iii) initiate or defend any judicial, administrative or other proceedings in respect of the Work Product or such patents, copyrights, trademarks or other similar rights.

(f) In the event RPPTL is unable, after reasonable effort, to obtain Schifino Lee's signature on any such documents, Schifino Lee hereby irrevocably designate and appoint RPPTL as its agent and attorney-in-fact, to act for and on its behalf solely to execute and file any such application or other document and do all other lawfully permitted acts to further the prosecution and issuance of patents, copyrights or other intellectual property protection

related to the Work Product with the same legal force and effect as if Schifino Lee had executed them. Schifino Lee agrees that this power of attorney is coupled with an interest.

(g) Schifino Lee acknowledges that RPPTL may use, sell, copy, modify or further develop the Work Product as it sees fit, and for any purpose or use whatsoever, without additional compensation to Schifino Lee, but that RPPTL is not obligated to use the Work Product for any purpose. Schifino Lee shall not have any right, title or interest in or to the Work Product, nor any license to use, sell, exploit, copy or further develop the Work Product.

(h) Schifino Lee has no right or license to use, publish, reproduce, prepare derivative works based upon, distribute, perform, or display any Work Product. Further, Schifino Lee has no right or license to use RPPTL's trademarks, service marks, trade names, trade names, logos, symbols, or brand names.

(i) Schifino Lee shall require each of its employees and contractors to execute written agreements securing for RPPTL the rights provided for in this Section 3 prior to such employee or contractor providing any Services under this Agreement.

**CANCELLATION:**

Either party can cancel this agreement at any time by providing 60-days written (or email) notice prior to termination. Schifino Lee will release or transfer full ownership of creative materials to RPPTL upon full payment of all outstanding and current invoices due. In the event of cancellation, Schifino Lee reserves the right to receive payment for its completed work and expenses related to approved, yet unbilled, work-in-progress, based on a discounted agency fee of \$170/hour for the total number of hours worked up to the delivery of notice of termination. Schifino Lee time and expenses spent collecting and transferring files on behalf of RPPTL after notice of termination will also be billed at Schifino Lee's fee of \$170/hour rate. Notwithstanding the foregoing or anything to the contrary set forth herein, RPPTL may immediately terminate this Agreement if the Florida Bar determines, in its sole discretion, that Schifino Lee has not acted in the Florida Bar's best interests.

**TERMS AND CONDITIONS:** The terms and conditions of The Florida Bar, attached hereto as Exhibit "B" are incorporated herein by this reference (the "Florida Bar Terms and Conditions"). Schifino Lee is referred to as the "Contractor" in the Florida Bar Terms and Conditions. In the event of any conflict between the terms of this Agreement and those of the Florida Bar Terms and Conditions, the terms and conditions of The Florida Bar attached hereto as Exhibit "B" shall control.

**DELIVERABLES:** The deliverables during the first five (5) months of this Agreement include, without limitation, the list of deliverables attached hereto as Exhibit "C" and are incorporated herein by this reference.

**We look forward to working with you and The Florida Bar's Real Property, Probate, and Trust Law Section. Please sign and return this document to Schifino Lee or contact me to review.**

**Thank you.**



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For Schifino Lee

2.9.23

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Date

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For The Florida Bar's Real Property, Probate,  
and Trust Law Section RFP Response

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Date

# 139490 lv4

Exhibit "A"

[attach Schifino Lee Pricing Schedule]

**EXHIBIT “B”**  
**FLORIDA BAR**  
**STANDARD CONTRACT TERMS & CONDITIONS**

In addition to the terms and conditions referenced in the primary document (RFP, contract, agreement, purchase order, MOU, etc.), any final agreement between The Florida Bar (TFB) and the Contractor will also include the following provisions, which will be incorporated by reference into the signed, final version of the primary document.

- I. **Accessibility.** The Contractor warrants that its product, service, program, platform, or facilities are currently in compliance with the Americans with Disabilities Act (ADA) and all amendments. The Contractor agrees that during the term of this Agreement the product, service, program, platform, or facilities will remain in compliance with all applicable federal and state disabilities laws and regulations.

If the contract is for facilities:

- A. TFB agrees that one week in advance of the event, TFB will furnish to a list of any auxiliary aids needed by TFB attendees in meeting and function spaces. TFB agrees that TFB will be responsible for the procurement and payment of all charges for all auxiliary aids.
- B. The Contractor will furnish TFB, upon TFB request, with the names of businesses TFB can contact to obtain these aids.
- C. TFB agrees to be responsible for compliance with the ADA in the setup and conduct of meetings.

TFB may request a timely response, resolution, or remediation to accessibility concerns at no cost to TFB. The Contractor agrees to promptly respond to TFB requests and resolve complaints within 3 business days. Where the Contractor is unable to resolve a TFB accessibility request or complaint within 3 business days, and where TFB provides the Contractor with 60 days' notice, TFB and the Contractor agree to cancel the contract and discharge all claims, actions, and costs subsequent to the cancellation date.

- II. **Assignment.** The Contractor may not assign or transfer the Agreement without the prior written consent of TFB.
- III. **Attorney Fees & Costs.** If a dispute arises under this Agreement, regardless of whether a lawsuit or other proceeding is filed, the prevailing party will be entitled to recover its reasonable attorney fees and costs, including attorney fees and costs incurred in litigating entitlement to



attorney fees and costs, as well as in determining or quantifying the amount of recoverable attorney fees and costs. The reasonable costs to which the prevailing party is entitled includes costs that are taxable under any applicable statute, rule, or guideline, as well as non-taxable costs, including but not limited to costs of investigation, copying costs, electronic discovery costs, telephone charges, mailing and delivery charges, information technology support charges, consultant and expert witness fees, travel expenses, court reporter fees, and mediator fees, regardless of whether such costs are otherwise taxable.

- IV. **Budget Authorization**. The Contractor acknowledges that TFB, on an annual basis, must obtain final budget authorization from the Supreme Court of Florida for all expenses associated with this Agreement. TFB agrees to seek such authorization in good faith but, in the absence of such appropriation, TFB will have the right to immediately terminate this Agreement consistent with the provisions of this Agreement.
- V. **Dispute Resolution**
- A. **Exclusive Dispute Resolution Mechanism**. The parties will resolve any dispute, controversy, or claim arising out of or relating to this Agreement under this section.
- B. **Negotiation**. First, a party will send written notice to the other party of any dispute. The parties will attempt in good faith to resolve any dispute set forth in the dispute notice by negotiation and consultation between themselves.
- C. **Mediation**.
1. Next, if the parties have not resolved the dispute through negotiation within 2 weeks from the date of the dispute notice, the parties will submit the dispute to any mutually agreed-upon mediation service for mediation, by providing to the mediation service a joint written request for mediation, setting forth the subject of the dispute and the relief requested.
  2. The parties will cooperate with one another in selecting a mediation service and will cooperate with the mediation service and with one another in selecting a neutral mediator and in scheduling the mediation proceedings.
  3. The parties will use commercially reasonable efforts in participating in the mediation.
  4. The parties will equally share the mediator's fees and expenses and the costs incidental to the mediation.

5. The parties agree that all offers, promises, conduct, and statements, whether oral or written, made in the course of the mediation by the parties, their agents, employees, experts, and attorneys, and by the mediator and any employees of the mediation service, are confidential, privileged, and inadmissible for any purpose, including impeachment, in any litigation involving the parties, provided that evidence that is otherwise admissible or discoverable will not be rendered inadmissible or non-discoverable as a result of its use in the mediation.
- D. Litigation as a Final Resort. Finally, if the parties cannot resolve a dispute for any reason, including but not limited to, the failure of either party to agree to enter into mediation or agree to any settlement proposed by the mediator, within 2 weeks of the date of mediation, either party may file suit in accordance with the venue clause below.
- VI. **Equal Employment**: By entering into this Agreement with TFB, the Contractor agrees that it does not, and will not, unlawfully discriminate against any person because of age, sex, race, creed, religion, national origin or disability and that it will take positive steps to assure equal opportunity.
- VII. **Force Majeure, Notice of Delay, and No Damages for Delay**
  - A. Definitions
    1. “Affected party” means a party to this Agreement that is affected by a force majeure event. Because the affected party cannot prevent the force majeure event, the affected party is without liability.
    2. “Force majeure event” means an event or circumstance that is beyond the control of the affected party. Such events include but are not limited to:
      - Acts of God
      - Flood, fire, earthquake, hurricane or explosion
      - Disease, epidemic, pandemic such as COVID-19, any variants, or quarantine
      - War, invasion, or hostilities, whether war is declared or not
      - Terrorist threats or acts, riots, protest, civil unrest, civil strife, or political unrest
      - Local, state, federal or foreign government recommendation, regulation, mandate, order, law, statute, or advisory
      - Actions, embargoes or blockades in effect on or after the date of this Agreement
      - Action by any governmental authority
      - National or regional emergency

- Unseasonable extreme inclement weather
  - Strikes, labor stoppages or slowdowns or other industrial disturbances
  - Shortage of adequate power or transportation
  - Any other cause reasonably beyond the affected party's control
3. "Without liability" means that there will be no liquidated damages, attrition fees, cancellation fees, rental charges, service charges, or any direct, consequential, compensatory, special incidental damages, or any other damages. The Contractor has no entitlement to, and TFB has no liability for: any costs, losses, expenses, damages or the payment of any part of the contract price during a force majeure event; or any delay costs incurred by the Contractor due to a force majeure event.
- B. When and to the extent such failure or delay is caused by or results from a force majeure event, the affected party will give 10 days' written notice of the force majeure event to the other party, stating how long the occurrence is expected to continue. The affected party will use diligent efforts to end the failure or delay and ensure the effects of the force majeure event are minimized.
- C. The affected party will resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. If the affected party's failure or delay remains uncured for 180 days following written notice, either party may terminate this Agreement upon 10 days' written notice.
- D. A force majeure event does not relieve an affected party from liability for an obligation that arose before the occurrence of the event and does not affect the affected party's obligation to make payments that matured before the force majeure event occurred.
- VIII. **Independent Contractor**. The Contractor and TFB represent that they are acting in their individual capacities and not as agents, employees, partners, or associates of one another. Nothing in this Agreement will confer upon the Contractor the right to be engaged as an employee by TFB. TFB and the Contractor acknowledge and agree that as an independent contractor, the Contractor will not be considered or permitted to be a partner, associate, employee, or agent of TFB. The Contractor will not have any claim under this Agreement as a third-party beneficiary, employee, or otherwise against TFB for vacation pay, sick leave, health insurance, retirement benefits, life insurance, disability, or other employee benefits of any kind.

As an independent contractor, the Contractor will be solely responsible for self-employment, social security, and federal and state income taxes applicable to compensation paid to the Contractor by TFB under this Agreement and TFB will not be responsible for withholding or paying any income, payroll, social security, or other federal, state, or local taxes. The Contractor will indemnify, defend and hold harmless TFB against any and all such taxes. The Contractor is not an employee of TFB and is therefore expressly excluded from receiving workers' compensation under TFB's worker's compensation insurance program.

IX. **Indemnification.**

- A. TFB will indemnify and defend the Contractor, its officers, directors, employees and agents, from and against any claims, actions, demands, judgments, liabilities, losses, fines, penalties, and expenses, including attorneys' fees and expenses resulting from, or alleged to result from, the TFB's breach of this Agreement.
- B. The Contractor will indemnify and defend TFB, its officers, directors, employees and agents, from and against any claims, actions, demands, judgments, liabilities, losses, fines, penalties, and expenses, including attorneys' fees and expenses resulting from, or alleged to result from, the Contractor's breach of this Agreement.
- C. To receive the foregoing indemnities, the party seeking indemnification must notify the indemnifying party in writing of a claim or suit promptly and provide reasonable cooperation (at the indemnifying party's expense) and full authority to defend or settle the claim or suit. Neither party will have any obligation to indemnify the other under any settlement made without its written consent.

X. **Insurance.** The Contractor agrees to:

- A. Obtain, carry, maintain and provide evidence of liability and other insurance in sufficient amounts to provide coverage against any claims arising out of or resulting from Contractor's obligations pursuant to this Agreement;
- B. Provide proof of workers' compensation insurance for any of the Contractor's employees on TFB premises upon request;
- C. Require any outside subcontractor to provide proof of workers' compensation insurance and proof of adequate general liability coverage for any activities on TFB premises;

- D. To name TFB as an additional insured to all applicable insurance policies obtained or maintained by the Contractor, relative to the requirements of this Agreement; and
- E. Seek written TFB approval of amounts and terms of insurance coverages provided by the Contractor.
- XI. **Integration.** The Agreement contains the entire agreement and understanding by and between the parties, and no representations, promises, agreements, or understandings, written or oral, not contained in the Agreement will be of any force or effect.
- XII. **Invoices**
- A. Invoices must contain sufficient information to adequately describe the period, quantity and type of services or purchases being invoiced for required pre- and post-audits, and should be emailed to [Accounting@floridabar.org](mailto:Accounting@floridabar.org) or mailed to Accounts Payable, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300.
- B. Charges are considered due 30 days from the invoice date unless specified otherwise in the Agreement. The Contractor is responsible for providing accurate billing and contact information and notifying TFB of any changes.
- XIII. **Modification.** Any alteration, variation, change, modification or waiver of provisions of the Agreement will be valid only when it has been reduced to writing, signed by each of the parties, and attached to the original Agreement.
- XIV. **Non-Discrimination.** TFB is committed to the principle that all persons will have equal access to programs, facilities, services, and employment without regard to personal characteristics not related to ability, performance, or qualifications as determined by TFB policy and/or applicable laws. TFB prohibits discrimination, harassment or bullying against any person because of age, ancestry, color, disability or handicap, national origin, race, religion, gender, sexual or affectional orientation, gender identity, appearance, matriculation, political affiliation, marital status, veteran status or any other characteristic protected by law. TFB expects its contractors to maintain an environment free of discrimination, including harassment, bullying, or retaliation, whenever and wherever those individuals are conducting TFB business or participating in TFB events or activities.
- XV. **Non-Exclusive Rights.** The right to provide services under the Agreement is not exclusive. TFB reserves the right to contract for and purchase these services from as many firms as it deems necessary without infringing upon or terminating the Agreement.

- XVI. **Notice.** Any notice or communication required or permitted under the Agreement will be sufficiently given if delivered in person or by certified mail, return receipt requested, to the addresses set forth at in the Agreement, or to such other addresses as the parties may furnish to each other in writing.
- XVII. **Promotion.**
- A. The Contractor will not use its relationship with TFB in any social media, commercial advertising, sales promotion, press releases or other publicity matter without the express written consent of TFB. Further, the Contractor acknowledges, covenants and agrees that it is prohibited from in any way using, reproducing, promoting, associating, or in any way publishing the name, trade name, service mark, trademark, likeness or image of TFB without the prior written consent of TFB.
  - B. Social media includes the internet, multi-media and social networking sites, blogs, microblogs, podcasts, forums, content communities, and wikis. When using social media, the Contractor must comply with TFB's Social Media Policy.
- XVIII. **Records**
- A. The Contractor acknowledges that its performance of services under this Agreement may involve access to confidential information, and agrees at all times during the term of the Agreement and thereafter to hold in strictest confidence, and not to use, except for the benefit of TFB to fulfill the Contractor's obligations under this Agreement, or to disclose to any person, firm or corporation without written authorization of TFB, any confidential information of TFB.
  - B. "Confidential information" means any TFB-proprietary information, technical data, trade secrets or know-how, including, but not limited to, research, plans, products, services, member information, software, developments, inventions, processes, formulas, technology, designs, drawings, engineering, hardware configuration information, marketing, finances or other business information disclosed by TFB either directly or indirectly in writing, orally, electronically or otherwise. Further, confidential information includes "trade secrets" within the meaning of the Florida Uniform Trade Secrets Act, Section 688.001 *et seq.*, Florida Statutes. Confidential information does not include any of the foregoing items that have become publicly known and made generally available through no wrongful act of the Contractor or of others.
  - C. The Contractor will not access, use or disclose confidential information except as permitted, required by this Agreement or as otherwise authorized by TFB in writing, or required by applicable laws. If required

- by a court of competent jurisdiction or administrative body to disclose confidential information, the Contractor will notify TFB in writing immediately upon receiving notice of such requirement and prior to such disclosure.
- D. The Contractor will not disclose any confidential information to any third party, *except* to its employees, subcontractors or agents that need to have access to such information and solely for the purpose of providing services to TFB under this Agreement, provided that such recipients are bound by confidentiality provisions no less restrictive than those in this Agreement.
- E. The Contractor agrees to protect the privacy and security of TFB data designated as confidential according to all applicable laws and regulations, by commercially acceptable standards, and no less rigorously than it protects its own confidential information.
1. If confidential information is accessed by unauthorized parties, that is considered a breach, and the Contractor will report the breach to TFB contract manager, orally and in writing, within 2 business days after the Contractor knows or reasonably suspects that a breach may have occurred. In the event of a suspected breach, the Contractor will keep TFB contract manager informed regularly of the progress of its investigation until the issue is resolved.
  2. “Breach” means the unauthorized access of data in electronic form containing personal information. Good faith access of personal information by an employee or agent of the covered entity does not constitute a breach of security, provided that the information is not used for a purpose unrelated to the business or subject to further unauthorized use.
  3. The Contractor’s report to TFB contract manager will identify:
    - a. The nature of the unauthorized access, use or disclosure;
    - b. The confidential information accessed, used or disclosed;
    - c. The persons who accessed, used, disclosed or received the confidential information;
    - d. The steps taken, or to be taken, to mitigate any deleterious effect of the unauthorized access, use or disclosure;
    - e. The corrective action taken, or to be taken, to prevent future unauthorized access, use or disclosure; and
    - f. Any other information as reasonably requested by TFB.
  4. In the event of a breach by the Contractor, the Contractor agrees to promptly reimburse all costs arising from the breach to TFB, including but not limited to costs of notification of individuals, credit

monitoring/identity restoration services, penalties levied against TFB, attorney fees, and court costs. Further, any breach may be grounds for immediate termination of this Agreement.

5. In the event of a breach by the Contractor that results in litigation involving TFB, the Contractor will make itself and employees, subcontractors and agents available to TFB at no cost to testify as witnesses.
  - F. All documents, papers, letters, or other materials relating to the Agreement that do not meet the above definition of “confidential information” and that are made or received by the Contractor in conjunction with the Agreement are required to be available for public access and copying in the manner specified by applicable Florida law. TFB may unilaterally cancel the Agreement for the Contractor’s refusal to allow access to public records.
  - G. The Contractor agrees that, as required by applicable state and federal law, auditors designated by TFB will have the option to audit the outsourced service. The Contractor will make records pertaining to this Agreement available to auditors and TFB during normal working hours for this purpose.
  - H. The Contractor will maintain records for 3 years after the expiration of the Agreement.
- XIX. **Severability.** If any provision of the Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable. If a court finds that any provision of the Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited.
- XX. **Subcontracting.** The Contractor may enter into written subcontracts for performance of work under the Agreement only with prior written approval of TFB. TFB will have the continuing right throughout the term of the Agreement to disapprove subcontractors if such disapproval would be in the best interest of TFB. Any subcontract entered into by the Contractor with respect to performance under the Agreement will not in any way relieve the Contractor of any responsibility for performance of duties stipulated in the Agreement.



## Exhibit “C”

Deliverables to Schifino Lee/RPPTL Agreement Dated August 31, 2022

### Infrastructure:

- Content strategy platform
- Creative style guide
- Audience database
- Website
- Computer wireframe
- Design board & schematics
- Monthly Status Reports
- Website Analytic Reports

### Campaign, size dependent:

- Press Releases
- Speaking Engagements
- Public Relations Events
- Media Pitches
- Email Marketing
- Social Posts
- Infographics + Fact Sheets
- Blog Posts
- White Papers
- Articles

# Supreme Court of Florida

THURSDAY, JANUARY 12, 2023

**CASE NO.: SC22-122**

IN RE: REPORT AND RECOMMENDATIONS OF THE WORKGROUP  
ON IMPROVED RESOLUTION OF CIVIL CASES

---

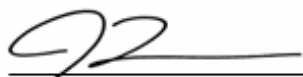
Having considered the final report of the Workgroup on Improved Resolution of Civil Cases, the comments filed, the Workgroup's response to the comments, and oral argument, the Court declines to adopt the Workgroup's proposed amendments at this time because additional refinements are necessary. Instead, the Court will make a series of phased referrals for the refinement and study of the Workgroup's proposals, beginning with the attached referrals to the Civil Procedure Rules Committee, the Rules of General Practice and Judicial Administration Committee, the Florida Courts Technology Commission, and the Trial Court Budget Commission. Any outstanding motions are denied.

The Court thanks the Workgroup and its staff for their hard work on this important matter, and it greatly appreciates the many helpful comments submitted in this case.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION  
AND, IF FILED, DETERMINED.

MUÑIZ, C.J., and CANADY, POLSTON, LABARGA, COURIEL, and  
GROSSHANS, JJ., concur.  
FRANCIS, J., did not participate.

A True Copy  
Test:



John A. Tomasino  
Clerk, Supreme Court



so

Served:

GEORGE N. MEROS JR.  
RICHARD E. RAMSEY  
NICHOLE J. SEGAL  
JOHN W. LITTLE III  
KARLA D. ELLIS  
JASON GOLDSTEIN  
DANIEL J. SANTANIELLO  
FRANCISCO RAMOS JR.  
KENNETH B. BELL  
KANSAS R. GOODEN  
ELIZABETH CLARK TARBERT  
SCOTT A. COLE  
MATTHEW N. POSGAY  
JULIA WYDA  
ASHLEY WITHERS  
TARA R. PRICE  
HON. GINA BEOVIDES, JUDGE  
HON. MONIQUE MARIE SCOTT  
THOMAS S. EDWARDS JR.  
HON. KATHERINE G. ESSRIG  
M. HOPE KEATING  
HENRY LAWRENCE PERRY  
EVELYN F. DAVIS  
ANDREW D. MANKO  
JOHN J. BAJGER  
KELLY NOEL SMITH  
HEATHER SAVAGE TELFER  
EDGAR VELAZQUEZ  
CORRINE COTTON HODAK  
COSME CABALLERO  
ELAINE D. WALTER  
MAEGEN PEEK LUKA  
DAN CYTRYN  
CARLOS ALBERTO REY

RICHARDS H. FORD  
HERMAN J. RUSSOMANNO  
LEWIS W. MURPHY JR.  
SARAH S. BUTTERS  
W. RANDALL BASSETT  
ASGHAR A. SYED  
KIMBERLY K. BERMAN  
DANIEL W. BELL  
ROBERT L. CHRISTIE  
HON. LINDSAY M. ALVAREZ  
CORY L. ANDREWS  
HOWARD C. COKER  
DORIS N. LAING  
COLLEEN REPPEN SHIEL  
JOSEPH J. KALBAC JR.  
WILLIAM T. COTTERALL  
HENRY C. WHITAKER  
THOMASINA MOORE  
BARD D. ROCKENBACH  
FRED W. BAGGETT  
SARA E. GOLDFARB  
KIMBERLY M. JONES  
HON. VIVIAN TERESA CORVO  
CRAIG M. GREENE  
CRISTEN H. MARTINEZ  
ANTHONY H. QUACKENBUSH  
ROBERT W. GOLDMAN  
HON. WILTON SIMPSON  
CHANTEL C. WONDER  
JUDSON LEE COHEN  
JASON BENNETT SHERRY  
JOSHUA S. STRATTON  
AMELIA HALLENBERG BEARD  
DENNIS W. MOORE

JASON B. GONZALEZ  
JOSHUA A. SAVAL  
HON. JARED E. SMITH, JUDGE  
JANINE Q. MENENDEZ-APONTE  
NICHOLAS E. CHRISTIN  
CELENE H. HUMPHRIES  
HON. SCOTT A FARR, JUDGE  
JASON LAWRENCE UNGER  
SCOTT M. EDSON  
HON. ROBERT W. LEE, JUDGE  
DUSTIN W. METZ  
DAVID A. ROWLAND  
JOSHUA E. DOYLE  
RONALD KOZLOWSKI  
GARY S. LESSER  
TROY A. FUHRMAN  
THOMAS ANSLEY DAVID  
PHILIP B. WISEBERG  
NEAL A. ROTH  
OSCAR J. CABANAS  
SCOTT B. PERRY  
MICHAEL SEBASTIAN VITALE  
BENJAMIN RASLAVICH  
MELISSA ANNE FOSS  
STEVEN G. DELL II  
THOMAS D. HALL  
PAUL R. REGENSDORF  
PETER D. WEBSTER  
BRUCE J. BERMAN  
LYNDSEY E. SIARA  
KENNETH BRIAN SCHURR  
PATRICK RUSSELL  
MEAH ROTHMAN TELL  
LAIRD ANDREW LILE  
HON. PAUL LEE HUEY, JUDGE  
HON. ASHLEY MOODY, ATTORNEY GENERAL  
HON. REX MARTIN BARBAS, JUDGE

LANDIS V. CURRY III  
EUGENE K. PETTIS  
ERIC S. ROSEN  
JAMIE J. FINIZIO BASCOMBE  
JOHN S. MILLS  
CHRISTOPHER J. BAUM  
HON. LISA A. ALLEN, JUDGE  
WILLIAM L. DURHAM II  
JOHN H. HICKEY  
SCOTT G. HAWKINS  
STACY B. RUBEL  
WILLIAM W. LARGE  
WESTON F. SMITH  
JAMES GRIER PRESSLY III  
RUSSELL M. LANDY  
SPENCER H. SILVERGLATE  
VAL LEPPERT  
ALLISON CARDEN SACKETT  
HON. STEPHEN R. JEWETT  
PETER ROBERT HUNT  
HON. GLORIA R. WALKER  
PHILIP DUSTON BARTLETT III  
VICTORIA KATZ  
JENNIFER LATTA  
SIDNEY C. BIGHAM  
J. B. GROSSMAN  
JAMES L.S. BOWDISH  
ARIADNE FITZGERALD  
CHERYL SILER  
CHARLES S. STRATTON  
VIVIAN H. FAZIO  
CAITLIN MCCAFFREY  
MATTHEW J. CONIGLIARO  
LEE L. HAAS  
DAVID B. ALEXANDER

HON. JENNIFER X. GABBARD, JUDGE  
HON. CHRISTOPHER JOSEPH SPROWLS  
HON. MESHON RAWLS, JUDGE  
HON. FRANCES M. PERRONE, JUDGE  
HON. EMMETT LAMAR BATTLES, JUDGE  
HON. RONALD N. FICARROTTA, CHIEF JUDGE  
HON. MONICA J. BRASINGTON, JUDGE  
HON. KATIE L. DEARING, JUDGE  
HON. DONNA MICHELLE KEIM, JUDGE  
HON. CRAIG C. DETHOMASIS, JUDGE  
HON. DON H. LESTER, JUDGE  
HON. JONATHAN ERIC SJOSTROM, CHIEF JUDGE  
HON. WADDELL A. WALLACE III, JUDGE  
HON. ROBERTO ARIAS, JUDGE  
HON. MICHAEL SCOTT SHARRIT, JUDGE  
HON. MARIANNE LLOYD AHO, JUDGE  
HON. BRUCE RUTLEDGE ANDERSON JR., JUDGE  
HON. GILBERT LEE FELTEL JR., JUDGE  
HON. MARK W. MOSELEY, CHIEF JUDGE  
HON. ROBERT MICHAEL DEES, JUDGE  
HON. JAMES HUNT DANIEL, JUDGE  
HON. STEVEN B. WHITTINGTON, JUDGE  
HON. VIRGINIA BAKER NORTON, JUDGE  
HON. THOMAS PATRICK BARBER, JUDGE  
HON. CAROLINE TESCHE ARKIN, JUDGE  
HON. CATHERINE M. CATLIN, JUDGE  
HON. WENDY JOY DEPAUL, JUDGE  
HON. CHERYL KENDRICK THOMAS, JUDGE  
HON. EMILY A. PEACOCK, JUDGE  
HON. DONALD ALVIN MYERS JR., JUDGE  
HON. DIANA LEE MORELAND, JUDGE  
HON. JAMES MANLY BARTON II, JUDGE  
HON. JENNIFER D. BAILEY, JUDGE  
HON. ROBERT J. MORRIS, CHIEF JUDGE  
HON. PATRICIA ANN MUSCARELLA, JUDGE  
HON. CLAUDIA RICKERT ISOM, JUDGE  
HON. WESLEY D. TIBBALS, JUDGE

**CASE NO.:** SC22-122

Page Five

HON. LYANN GOUDIE, JUDGE

HON. SUSAN SHORTER LOPEZ, JUDGE

HON. JAMES SALVATORE GIARDINA, JUDGE

HON. CHRISTOPHER NIDA PATTERSON, CHIEF JUDGE

HON. MICHAEL S. ORFINGER, JUDGE

HON. MELISSA M. POLO, JUDGE

HON. HELENE L. DANIEL, JUDGE

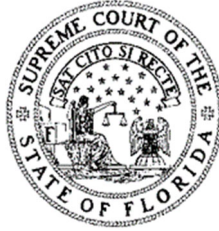
HON. MATTHEW ALEX SMITH, JUDGE

HON. LAWRENCE MARK LEFLER, JUDGE

HON. MIRIAM V. VALKENBURG, JUDGE

HON. MICHAEL T. MCHUGH, CHIEF JUDGE

HON. CHRISTOPHER CHARLES NASH, JUDGE



# Supreme Court of Florida

500 South Duval Street  
Tallahassee, Florida 32399-1925

CARLOS G. MUNIZ  
CHIEF JUSTICE  
CHARLES T. CANADY  
RICKY POLSTON  
JORGE LABARGA  
JOHN D. COURIEL  
JAMIE R. GROSSHANS  
RENATHA S. FRANCIS  
JUSTICES

JOHN A. TOMASINO  
CLERK OF COURT

SILVESTER DAWSON  
MARSHAL

January 12, 2023

Mr. Lance V. Curry III  
Chair, Florida Civil Procedure Rules Committee  
Paul Knopf Bigger  
511 West Bay Street, Suite 450  
Tampa, Florida 33606

Dear Mr. Curry:

At the direction of the Court, I am writing to you in your capacity as Chair of the Civil Procedure Rules Committee to ask the Committee to propose amendments to rules 1.200 (Pretrial Procedure), 1.201 (Complex Litigation), 1.440 (Setting Action for Trial), 1.280 (General Provisions Governing Discovery), and 1.460 (Continuances). As indicated in the order in Case No. SC22-122, this is the first in a series of phased referrals to the Committee for the refinement and study of the proposals submitted by the Workgroup on Improved Resolution of Civil Cases.

As you know, the Workgroup on Improved Resolution of Civil Cases submitted a final report proposing amendments to the Florida Rules of Civil Procedure and other rule sets aimed at promoting the fair and timely resolution of civil cases. The Workgroup's proposed amendments provided for court case management of civil cases with early judicial intervention, adherence to established deadlines, and reporting of case management data. Because additional refinements were needed,

the Court declined to adopt the Workgroup’s proposals at this time. *In re Report and Recommendations of the Workgroup on Improved Resolution of Civil Cases*, No. SC22-122 (Fla. Jan. 12, 2023).

The Court now asks that the Committee review the Workgroup’s proposal as revised in response to the comments and make the necessary refinements. Specifically, the Committee is asked to propose amendments to rule 1.200 that incorporate the fundamental elements of the Workgroup’s revised proposal for differentiated case management—i.e., the assignment of a case to one of three specific tracks based on the required level of judicial attention rather than its monetary value as well as the issuance of a case management order setting a timetable for pretrial proceedings and a proposed trial date. Eminent domain cases as well as probate, guardianship, and trust cases must be excluded from the case management requirements. Further, the proposed amendments must not place all bench trials into the streamlined track.

In preparing its proposal for rule 1.200, the Committee should consider the concerns expressed by the Attorney General’s Office in its comment on the Workgroup’s proposal regarding the timing of certain case management requirements. The Committee should also propose any necessary corresponding amendments to rule 1.201, and it should propose amendments to rule 1.440 to eliminate the “at issue” requirement to set a case for trial and to provide for the judicial fixing of trial periods.

Additionally, the Committee is asked to propose amendments to rule 1.280 that will require a party in a civil case to make certain initial discovery disclosures without awaiting a discovery request and to timely supplement any discovery that is made in the case. The proposed amendments should be modeled after the relevant aspects of Federal Rules of Civil Procedure 26(a) and 26(e)(1) and be consistent with the Committee’s proposed amendments to rules 1.200 and 1.201 pertaining to differentiated case management.



Lastly, the Committee is asked to propose amendments to rule 1.460 (Continuances) to provide that trial continuances should rarely be granted and then only upon good cause shown. The Committee's proposal must provide that lack of preparation is not grounds to continue the case and that successive continuances are highly disfavored.

Please file your report with my office by Monday, July 3, 2023. If you determine that more time is required to consider this matter, please submit a request for extension of time to my office indicating when your petition will be filed.

Thank you in advance for your consideration of this matter, and please do not hesitate to contact me or the Court's liaison to the Committee, Chief Justice Muñiz, if you have any questions.

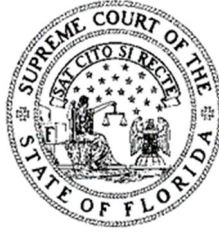
Sincerely,



John A. Tomasino

JAT/pw/sb

cc: Honorable Carlos G. Muñiz, Liaison to the Civil Procedure  
Rules Committee  
Honorable Charles T. Canady  
Diane West, Supreme Court Director of Central Staff  
Heather Telfer, Bar Staff Support to the Committee



# Supreme Court of Florida

500 South Duval Street  
Tallahassee, Florida 32399-1925

CARLOS G. MUNIZ  
CHIEF JUSTICE  
CHARLES T. CANADY  
RICKY POLSTON  
JORGE LABARGA  
JOHN D. COURIEL  
JAMIE R. GROSSHANS  
RENATHA S. FRANCIS  
JUSTICES

JOHN A. TOMASINO  
CLERK OF COURT

SILVESTER DAWSON  
MARSHAL

January 12, 2023

Honorable Stephen R. Jewett  
Chair, Florida Rules of General Practice and Judicial  
Administration Committee  
Ninth Judicial Circuit of Florida  
425 North Orange Avenue, Suite 465-A  
Orlando, Florida 32801

Dear Judge Jewett:

At the direction of the Court, I am writing to you in your capacity as Chair of the Rules of General Practice and Judicial Administration Committee to ask the Committee to propose rule amendments that address the issues addressed by the Workgroup on Improved Resolution of Civil Cases in its revised proposals to amend the Florida Rules of General Practice and Judicial Administration.

As you know, the Workgroup submitted a final report proposing amendments to the Florida Rules of General Practice and Judicial Administration and multiple other rule sets aimed at promoting the fair and timely resolution of civil cases. The proposed amendments provided for court case management of civil cases with early judicial intervention, adherence to established deadlines, and reporting of case management data. Because additional refinements were needed, the Court declined to adopt the Workgroup's proposals at this time. *In re Report and*

Honorable Stephen R. Jewett  
Chair, Florida Rules of General Practice  
and Judicial Administration Committee  
January 12, 2023  
Page: 2

*Recommendations of the Workgroup on Improved Resolution of Civil Cases, No. SC22-122 (Fla. Jan. 12, 2023).*

The Court asks that the Committee assist in making the necessary refinements to the Workgroup's revised proposals. Specifically, the Committee is asked to propose rule amendments that address the issues addressed by the Workgroup in its revised proposals to add new rule 2.546 (Active and Inactive Case Status), and to amend existing rules 2.215 (Trial Court Administration), 2.250 (Time Standards for Trial and Appellate Courts and Reporting Requirements), and 2.550 (Calendar Conflicts). In preparing its proposals, the Committee must consult with and seek input from the Civil Procedure Rules Committee, the Commission on Trial Court Performance and Accountability, and the chief judges of the circuits.

Please file your report with my office by Monday, July 3, 2023. If you determine that more time is required to consider this matter, please submit a request for extension of time to my office indicating when your petition will be filed.

Thank you in advance for your consideration of this matter, and please do not hesitate to contact me or the Court's liaison to the Committee, Justice Canady, if you have any questions.

Sincerely,



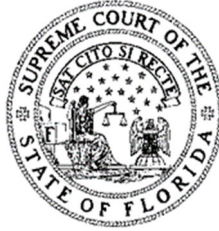
John A. Tomasino

JAT/pw/sb

cc: Honorable Charles T. Canady, Liaison to the Rules of General Practice and Judicial Administration Committee  
Diane West, Supreme Court Director of Central Staff  
Elizabeth Clark Tarbert, Bar Staff Support to the

Honorable Stephen R. Jewett  
Chair, Florida Rules of General Practice  
and Judicial Administration Committee  
January 12, 2023  
Page: 3

Committee  
Kelly Smith, Bar Staff Support to the Committee



# Supreme Court of Florida

500 South Duval Street  
Tallahassee, Florida 32399-1925

CARLOS G. MUNIZ  
CHIEF JUSTICE  
CHARLES T. CANADY  
RICKY POLSTON  
JORGE LABARGA  
JOHN D. COURIEL  
JAMIE R. GROSSHANS  
RENATHA S. FRANCIS  
JUSTICES

JOHN A. TOMASINO  
CLERK OF COURT

SILVESTER DAWSON  
MARSHAL

January 12, 2023

Honorable Lisa T. Munyon  
Chair, Florida Courts Technology Commission  
Ninth Judicial Circuit of Florida  
425 North Orange Avenue, Suite 2010  
Orlando, Florida 32801

Dear Chief Judge Munyon:

At the direction of the Court, I am writing to you in your capacity as Chair of the Florida Courts Technology Commission to ask that the Commission work with the Florida Courts E-Filing Authority to ensure that the Florida Courts E-Filing Portal (Portal) is capable of serving certain authorized documents on judges and other court officials without them being added to the service list.

The Court recently declined to adopt the Workgroup on Improved Resolution of Civil Cases' proposed rule amendments because additional refinements were necessary. *In re Report and Recommendations of the Workgroup on Improved Resolution of Civil Cases*, No. SC22-122 (Fla. Jan. 12, 2023). One of the changes proposed by the Workgroup was the establishment of a singular mechanism for directly notifying a judge when certain types of motions or notices are filed with the court. The amendments proposed by the Workgroup in its revised proposal would have required such documents to be electronically served on a judge through the Portal in accordance with Rule of General Practice and

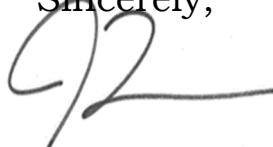
Judicial Administration 2.516 (Service of Pleadings and Documents). However, the Workgroup expressed concern that service through the Portal may in practice inundate judges with unnecessary notifications, since the Portal automatically serves copies of all court filings in a case by e-mail to each address on the service list, and there is currently no easy way to be removed from the service list once added through the Portal.

The Court asks that the Commission work with the Florida Courts E-Filing Authority to resolve the Workgroup's concerns regarding service on judges and other court officials through the Portal. The Commission should ensure that the Portal is capable of serving certain authorized documents on judges and other court officials without them being added to the service list. It should also correspondingly ensure that judges and other court officials can remove themselves from the service list.

Please file your report with my office by Monday, July 3, 2023. If you determine that more time is required to consider this matter, please submit a request for extension of time to my office indicating when your report will be filed.

Thank you in advance for your consideration of this matter, and please do not hesitate to contact me or the Court's liaison to the Committee, Justice Grosshans, if you have any questions.

Sincerely,



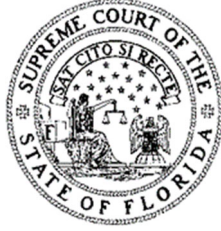
John A. Tomasino

JAT/pw/sb

cc: Honorable Jamie R. Grosshans, Liaison to the Florida Courts  
Technology Commission  
Honorable Charles T. Canady

Honorable Lisa T. Munyon  
Chair, Florida Courts Technology Commission  
January 12, 2023  
Page: 3

Diane West, Supreme Court Director of Central Staff  
Roosevelt Sawyer, OSCA Staff Support to the Commission



# Supreme Court of Florida

500 South Duval Street  
Tallahassee, Florida 32399-1925

CARLOS G. MUNIZ  
CHIEF JUSTICE  
CHARLES T. CANADY  
RICKY POLSTON  
JORGE LABARGA  
JOHN D. COURIEL  
JAMIE R. GROSSHANS  
RENATHA S. FRANCIS  
JUSTICES

JOHN A. TOMASINO  
CLERK OF COURT

SILVESTER DAWSON  
MARSHAL

January 12, 2023

Honorable Margaret O. Steinbeck  
Chair, Trial Court Budget Commission  
Twentieth Judicial Circuit of Florida  
Lee County Justice Center  
1700 Monroe Street  
Fort Myers, Florida 33901

Dear Judge Steinbeck:

At the direction of the Court, I am writing to you in your capacity as Chair of the Trial Court Budget Commission to ask that the Commission develop a legislative budget request for the resources necessary to implement the differentiated case management measures recently referred to the Civil Procedure Rules Committee for refinement.

The Court declined to adopt the Workgroup on Improved Resolution of Civil Cases' proposed rule amendments aimed at improving the fair and timely resolution of civil cases because additional refinements were necessary. *In re Report and Recommendations of the Workgroup on Improved Resolution of Civil Cases*, No. SC22-122 (Fla. Jan. 12, 2023). One of the main criticisms expressed by the commenters about the Workgroup's proposal for Florida's trial courts to engage in differentiated case management was the lack of resources currently available to successfully implement the proposal. Many of the commenters



noted that successful implementation of the Workgroup’s differentiated case management proposals will require additional staffing and technological resources.

Recently, the Court asked the Civil Procedure Rules Committee to assist in refining some of the Workgroup’s proposals. Specifically, the Committee was asked to propose amendments to Florida Rule of Civil Procedure 1.200 (Pretrial Procedure) to “incorporate the fundamental elements of the Workgroup’s revised proposal for differentiated case management—i.e., the assignment of a case to one of three specific tracks based on the required level of judicial attention rather than its monetary value as well as the issuance of a case management order setting a timetable for pretrial proceedings and a proposed trial date.” Eminent domain, probate, guardianship, and trust cases are to be excluded from the case management requirements. The Court also asked the Committee to propose corresponding amendments to Florida Rule of Civil Procedure 1.201 (Complex Litigation) as well as amendments to Florida Rule of Civil Procedure 1.440 (Setting Action for Trial) to “eliminate the ‘at issue’ requirement to set a case for trial and to provide for the judicial fixing of trial periods.” Additionally, the Court asked the Committee to propose amendments to Florida Rule of Civil Procedure 1.280 (General Provisions Governing Discovery) to “require a party in a civil case to make certain initial discovery disclosures without awaiting a discovery request and to timely supplement any discovery that is made in the case.” The proposed amendments to rule 1.280 are to be modeled after the relevant aspects of Federal Rules of Civil Procedure 26(a) and 26(e)(1). Finally, the Committee was asked to propose amendments to Florida Rule of Civil Procedure 1.460 (Continuances) “to provide that trial continuances should rarely be granted and then only upon good cause shown.” Lack of preparation is not to be considered grounds to continue a case, and successive continuances are to be highly disfavored.

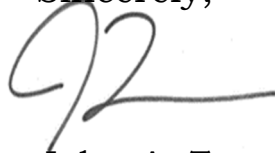
The Court asks that the Commission develop a legislative budget request for the resources necessary to successfully

Honorable Margaret O. Steinbeck  
Chair, Trial Court Budget Commission  
January 12, 2023  
Page: 3

implement these differentiated case management measures referred to the Civil Procedure Rules Committee on an ongoing basis.

Thank you in advance for your consideration of this matter, and please do not hesitate to contact me or the Court's liaison to the Committee, Justice Polston, if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'JAT', with a long horizontal flourish extending to the right.

John A. Tomasino

JAT/pw/sb

cc: Honorable Ricky L. Polston, Liaison to the Trial Court Budget  
Commission  
Honorable Charles T. Canady  
Diane West, Supreme Court Director of Central Staff  
Eric Maclure, OSCA Staff Support to the Commission

**The Florida Bar  
Real Property, Probate and Trust Law Section  
Professionalism & Ethics Committee**

---

**WHITE PAPER**

**Subcommittee, Review of Words “Zealously”,  
“Zealous” and “Zeal” in The Florida Bar Rules of  
Professional Conduct Preamble to Chapter 4 and  
Comment to Rule 4-1.3**

---

**Subcommittee Members**

Kimberly Bald, Esq.  
kab@harlleebald.com

Caitlein Jammo, Esq.  
caitleinj@jpfirm.com

Erin Farrington Finlen, Esq.  
erin@estatelaw.com

Lawrence E. Miccolis, Esq.  
lawrencemiccolis.law@gmail.com  
(Subcommittee Chair)

Marlene Watson, Esq.  
maw@marlenewatsonlaw.com

**Oversight**

Andrew Sasso, Esq.  
abs@macfar.com  
(Professionalism and Ethics Committee Chair)

Linda Allan, Esq., retired Circuit Court Judge  
lindaallanlaw@gmail.com

**January 18, 2023**

## I. Introduction

In the Rules Regulating The Florida Bar, the Preamble (A Lawyer’s Responsibilities) of Chapter 4 (the Rules of Professional Conduct) (the “Rules”) and the Comment to Rule 4-1.3 (Diligence), the terms zeal, zealous, and zealously (the “Z-terms”) are used to describe the way a lawyer advocates and pursues justice for clients. The Z-terms have a long history of both positive and negative definitions and connotations, with today’s meaning often associated with more negative behavior and labels. Inclusion of the Z-terms in Rules of Professional Conduct appears to cause confusion about acceptable standards in professionalism, and in some cases, the Z-terms encourage or are used as a shield for unprofessional behavior. Therefore, the Professionalism and Ethics Committee of the Real Property, Probate and Trust Law Section of The Florida Bar (RPPTL Section) determined that it is a matter of importance to the practice of law to review the impact of including the terms zeal, zealous and zealously in the preamble to Chapter 4 and the Comment to Rule 4-1.3 of The Florida Bar Rules of Professional Conduct.

## II. Approach

A subcommittee was formed on April 28, 2022 to determine whether or not the terms zeal, zealous, and zealously should be removed and replaced in the Preamble to Chapter 4 and the Comment to Rule 4-1.3 of The Florida Bar Rules of Professional Conduct (the “Subcommittee”). The Subcommittee chose four areas of research and review:

1. English Dictionary and Law Dictionary meaning, etymology of terms;
2. History of the Z-terms in Chapter 4 of The Florida Bar Rules of Professional Conduct;
3. Florida Case law; and
4. Other State Jurisdiction Rules of Professional Conduct.

The following sections of this paper summarize the key findings. Detailed reports for respective summary sections are found in the appendices.

## III. English Dictionary and Law Dictionary meaning, etymology of terms

The Z-terms have long been defined as a positive quality tracing back to the 14<sup>th</sup> century. Merriam-Webster Dictionary defines *zeal* as an “eagerness and ardent interest in pursuit of something.”<sup>1</sup> Black’s Law Dictionary currently defines *zeal* as a “[p]assionate ardor for a cause, especially that of a client; perfervid eagerness to achieve some end, especially the successful resolution of a client’s legal needs or difficulties.”<sup>2</sup> However, prior editions of Black’s Law Dictionary defined a zealous witness as “a witness, on trial of a cause, who manifests a partiality for a side calling him, and an eager readiness to tell anything which he thinks may be of advantage to that side.”<sup>3</sup> While the Z-terms have retained their positive definition and meaning, with regard to the legal profession, Z-terms are regularly associated with unethical and unprofessional behavior. The Z-terms are now

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<sup>1</sup> <https://www.merriam-webster.com/dictionary/zeal>

<sup>2</sup> Black’s Law Dictionary, ZEAL (11th ed. 2019)

<sup>3</sup> Black’s Law Dictionary, Zealous witness (5th ed. 1979)

often viewed as an uncompromisingly extremist attribute. Mixed meanings of the Z-terms create opportunities for misinterpretation. Lawyers sometimes use the Z-terms as a shield to excuse unethical behavior. Notably, while the definition and etymology of “zealous” focuses on devotion to the person or cause, the colloquial usage of “zealous” has expanded far beyond reasonable diligence to create an implied obligation of conduct at any cost in order to represent one’s client with zeal. Further discussion of the etymology of the Z-terms is attached as Appendix A.

#### **IV. History of the Z-terms in The Florida Bar Rules of Professional Conduct (Chapter 4 and Rule 4-1.3)**

The Florida Bar Rules of Professional Conduct, which went into effect January 1, 1987, provide guidance concerning an attorney’s ethical obligations in the practice of law and within these Rules there are aspirational comments and substantive rules. The word zeal has appeared in iterations of our ethical rules for over 100 years and has generally appeared in preambles and comments as guidance – not obligations. In our present Rules, the word zeal is purely aspirational.<sup>4</sup> We propose that any word which can be used as justification for unbecoming professional behavior does not belong in our Rules which are intended to reflect our best practices and suggest that this term be updated to truly reflect the ideals of legal practice. A detailed history of the Z-terms in The Florida Bar Rules of Professional Conduct is attached as Appendix B.

#### **V. Florida Case Law**

It appears Florida Courts have occasionally, mistakenly imposed a duty on an attorney to be a zealous advocate for his or her client. Recently stating a “requirement to provide zealous representation, as contemplated under our ethical rules” and the failure to represent a client zealously is a serious deficit in legal representation. However, the Courts are aware that zealous advocacy and professionalism may collide and the decisions place professionalism higher than zeal. A detailed report of Florida cases that include issues regarding the Z-terms as referenced in The Florida Bar Rules of Professional Conduct is attached as Appendix C.

#### **VI. Other State Jurisdiction Rules of Professional Conduct**

The Subcommittee examined the ABA Model Rules of Professional Conduct and all 50 state jurisdictions. The ABA Model Rules of Professional Conduct includes one or more of the Z-terms in the Preamble and Rule 1.3 Comment. Eleven state jurisdictions do NOT include any reference to the Z-terms in the preamble, rules, and/or comments of their respective states’ rules of professional conduct, while 39 states still include the Z-terms. State jurisdictions, such as Arizona, California, Indiana, Maine, Ohio, and Washington, have removed the Z-terms from their rules, comments, and/or preamble, indicating that — the removal of the Z-terms was due to the belief that the Z-terms promote and justify unprofessional behaviors by lawyers in their quest to pursue

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<sup>4</sup> The Preamble to the Rules states: “The comments are intended only as guides to interpretation, whereas the text of each rule is authoritative” and reiterates “[t]hus, comments, even when they use the term “should,” do not add obligations to the rules but merely provide guidance for practicing in compliance with the rules.”

justice for their clients. While Florida remains in the majority of states that currently include Z-terms in the professional rules of conduct, the trend appears to favor removing Z-terms with consideration to replacing the terms with words that more appropriately promote professional behavior and align with positive core values. Appendix D provides the breakdown of state jurisdictions that either include or exclude the Z-terms in their rules of professional conduct.

## VII. Additional Consideration – Kind and Just

The Subcommittee researched standards and descriptive terms of professionalism and leadership across a range of professions, such as health care and the military, for a broader perspective on terms to consider in The Florida Bar Rules of Professional Conduct. The Subcommittee found that both fields value treating colleagues and those for whom they are responsible with respect and dignity. Two professionalism and leadership qualities repeatedly appeared in our research – *kind* and *just*. *Kindness* is not synonymous with merely being nice. It reflects a strength of character whereby one can be assertive or adversarial without being unnecessarily intimidating, embarrassing, humiliating, or otherwise acting to harass others. University of South Dakota School of Medicine identified *kindness* as a core value at its school.<sup>5</sup> Military tenets of leadership and professionalism include terms such as *kindly* and *just*. The Commandant of the U.S. Marine Corps wrote a letter to the Officers of the Marine Corps in 1922, titled *Kindly and Just*.

**“You should never forget the power of example.** The young men serving as enlisted men take their cue from you. If you conduct yourselves at all times as officers and gentlemen should conduct themselves, **the moral tone of the whole Corps will be raised, its reputation, which is most precious to all of us,** will be enhanced, and the esteem and affection in which the Corps is held by the American people will be increased.

**Be kindly and just in your dealings with your men.** Never play favorites. **Make them feel that justice tempered with mercy may always be counted on.** This does not mean a slackening of discipline...”<sup>6</sup>

An example of one of the earliest recorded tenets of leadership is noteworthy. “*Man is born for deeds of kindness*” – Marcus Aurelius. The Subcommittee unanimously voted to add language to the Preamble to the Rules emphasizing the importance of attorneys being kind and just – however, the Professionalism and Ethics committee, as a whole, voted not to include the language. The Subcommittee has purposely chosen to include our findings regarding the use of “kind and just” in our report with the hope that these terms may become more prevalent in the Rules in the future.

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<sup>5</sup> Mick Garry, Kindness is a Core Value at USD Medical School, <https://news.sanfordhealth.org/neurology/kindness-usd-med-school/>, March 2, 2020

<sup>6</sup> Major General John A Lejeune, Commandant of the Marine Corps, *Kindly and Just*, Letter No. 1, 19 Sep 1922, <https://www.usmcu.edu/Research/Marine-Corps-History-Division/Frequently-Requested-Topics/Historical-Documents-Orders-and-Speeches/Kindly-and-Just/>

## VIII. Conclusions and Recommendations

The Subcommittee determined that the contemporary, plain language use of and reference to the Z-terms are often associated with negative extremist behavior and character. Use of the Z-terms in the Florida Bar Professional Rules of Conduct has a parallel negative course as well. It is important to note that the Z-terms are found only in Chapter 4 Preamble and Rule 4-1.3 Comment, which imposes no duty as a standard in advocacy. The Subcommittee determined these findings to be manifested in a significant body of Florida case law, with cases as recent as 2022, wherein there are several examples of attempts to justify unprofessional behavior. The Subcommittee concluded that the Z-terms in the Rules causes confusion and encourages or otherwise shields unprofessional behavior. Other state jurisdictions that have examined and removed the Z-terms from their professional rules of conduct consistently cite similar negative opinions regarding the Z-terms. Reactions to the work of the Subcommittee has been positive as exhibited by an article concluding “As I have said and written many times, the words zeal and zealous are related to the term zealot and the ordinary meaning of the term zealot is a person who is fanatical and uncompromising. There is no place in the Bar rules or in a lawyer’s practice for fanatical and uncompromising conduct.”<sup>7</sup> Therefore, the Subcommittee recommended and the Professionalism and Ethics Committee of the RPPTL Section unanimously voted that the Z-terms be removed from The Florida Bar Rules of Professional Conduct, Chapter 4 Preamble, and Rule 4-1.3 Comment and replaced with the language drafted by the Subcommittee. Appendix E provides the Subcommittee’s proposed revisions to Chapter 4, Preamble and Rule 4-1.3 Comment.

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<sup>7</sup> RES IPSA LOQUITUR “Florida Supreme Court issues opinion reminding lawyers not to violate Bar rules with “zealous advocacy” and Bar explores rule changes” by Joseph A. Corsmeier – referring to the work of the Subcommittee as reported in The Florida Bar News “DO ‘Z’ WORDS BELONG IN BAR RULES?” by Jim Ash, Senior Editor – both articles attached as Appendix F.

**APPENDIX A**  
**ENGLISH DICTIONARY AND LAW DICTIONARY MEANING,  
ETYMOLOGY OF TERMS**

The term, *zeal*, traces its etymologic origin to the late 14<sup>th</sup> century as a “passionate ardor in pursuit of an objective or course of action, from Old French *zel* (Modern French *zèle*) and directly from Late Latin *zelus* ‘zeal, emulation’.”<sup>8</sup> *Zeal* is also connected to the term “jealousy” from “old French *jalos/gelos* meaning ‘keen, zealous; avaricious; jealous’; from late Latin *zelosus*, from *zelus*, ‘zeal’; and from Greek *zēlos*, which sometimes meant ‘jealousy’ but more often was used in a good sense (‘emulation, rivalry, zeal’).”<sup>9</sup> While it appears that the predominant meaning was positive, Z-terms derive from positive and negative meaning and usage.

The current Merriam-Webster Dictionary defines *zeal* as an “eagerness and ardent interest in pursuit of something.”<sup>10</sup> The plain language definition infers an impactful effort but does not provide a context for such pursuit and could equally be applied in either a positive or negative situation.

Prior editions of Black’s Law Dictionary defined a zealous witness as “a witness, on trial of a cause, who manifests a partiality for a side calling him, and an eager readiness to tell anything which he thinks may be of advantage to that side.”<sup>11</sup>

Turning to the latest legal definitions, Black’s Law Dictionary defines *zeal* as a [p]assionate ardor for a cause, especially that of a client; perfervid eagerness to achieve some end, especially the successful resolution of a client's legal needs or difficulties.” Black’s Law Dictionary also defines “zealous” as “[i]ncited by fervor; ardently devoted to a person or cause, esp. to a legal client.”<sup>12</sup>

Under the entry for the term *zeal* in Black’s Law Dictionary, the reader is referred to the *Principle of Partisanship*, which provides further instruction:

“Let us ... look more closely at the principle of partisanship: When acting as an advocate, a lawyer must, within the established constraints on professional behavior, maximize the likelihood that the client will prevail. This principle corresponds to canon seven of the ABA Code: ‘A lawyer should represent a client zealously within the bounds of the law.’ Canon seven's language is borrowed in turn from canon fifteen of the 1908 ABA Canons, which asserts that ‘[t]he lawyer owes ‘entire devotion to the interest of the client, warm zeal in the maintenance and defense of his rights and the exertion of his utmost learning and ability,’ to the end that nothing be taken or be withheld from him, save by the rules of law, legally applied.’ The stock expression ‘zealous advocacy,’ often deployed in discussions of lawyers' ethics, derives from these rules, and the doctrine of zealous advocacy is

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<sup>8</sup> <https://www.etymonline.com/word/zeal>

<sup>9</sup> <https://www.etymonline.com/word/zeal>

<sup>10</sup> <https://www.merriam-webster.com/dictionary/zeal>

<sup>11</sup> Black's Law Dictionary, Zealous witness (5th ed. 1979)

<sup>12</sup> Black’s Law Dictionary, ZEALOUS (11th ed. 2019)



roughly equivalent to the principle of partisanship.” David Luban, *Lawyers and Justice: An Ethical Study* 11 (1988).<sup>13</sup>

In fact, Black’s Law Dictionary goes on to define the *Principle of Partisanship* as “the doctrine that a lawyer acting as an advocate must, within the established bounds of legal ethics, maximize the chances that his or her client will have a favorable outcome—Also termed *doctrine of zealous advocacy*.”<sup>14</sup>

Unfortunately, the defined positive qualities and established bounds of the Z-terms are increasingly plagued by misuse and misinterpretation in the legal profession. As was pointed out in a recent ABA article, statements regarding zealous advocacy in the Preamble to Model Rules of Professional Conduct “can reasonably be interpreted as calling for all-out, no-holds-barred, single-minded pursuit of the client’s goals—which is not what the Model Rules themselves require. In some instances, the kind of aggressive advocacy suggested by the use of the word ‘zealous’ in these phrases may actually be a violation of the ethical obligations imposed by other Model Rules, such as Model Rule 3.4 requiring fairness to opposing counsel and parties.”<sup>15</sup>

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<sup>13</sup> Black’s Law Dictionary, ZEAL (11th ed. 2019)

<sup>14</sup> Black’s Law Dictionary, PRINCIPLE OF PARTISANSHIP (11th ed. 2019)

<sup>15</sup> Daniel Harrington and Stephanie Benecchi, *Is it Time to Remove “Zeal” From the ABA Model Rules of Professional Conduct?*, Ethics & Professionalism, American Bar Association Litigation Section, May 26, 2021, <https://www.americanbar.org/groups/litigation/committees/ethics-professionalism/articles/2021/is-it-time-to-remove-zeal-from-the-aba-model-rules-of-professional-conduct/>

## APPENDIX B

### HISTORY OF THE Z-TERMS IN THE FLORIDA BAR RULES OF PROFESSIONAL CONDUCT

#### History

The Florida Bar Rules of Professional Conduct (hereinafter “Rules”) which are in effect today as Chapter 4 of the Rules Regulating The Florida Bar, were initially adopted by The Florida Supreme Court and went into effect on January 1, 1987<sup>16</sup>. As is the case with our current Rules, all prior rules providing guidance concerning an attorney’s ethical obligations in the practice of law have largely been modeled after rules proposed by the American Bar Association (ABA) and adopted throughout the country. The history discussed within will address usage of the word “zeal” or a derivative thereof in relation to rules of professionalism in the practice of law.

The first ABA Canons of Professional Ethics (hereinafter “Canons”) were written in May 1908<sup>17</sup> and adopted in Florida on November 4, 1936<sup>18</sup>. Canon 15 - *How Far a Lawyer May Go in Supporting a Client’s Cause* states,

“[n]othing operates more certainly to create or foster popular prejudice against lawyers as a class, and to deprive the profession of that full measure of public esteem and confidence which belongs to the proper discharge of its duties than does the false claim, often set up by the unscrupulous in defense of questionable transactions, that it is the duty of the lawyer to do whatever may enable him to succeed in winning his client’s cause. . . . The lawyer owes “*entire devotion to the interest of the client, warm zeal in the maintenance and defense of his rights, and the exertion of his utmost learning and ability,*” (emphasis added) to the end that nothing be taken or withheld from him, save by the rules of law, legally applied.<sup>19</sup>

The portion of the above quote in italics is believed to have been adopted from the 1887 Alabama Bar Association’s Code of Ethics, which was borrowed this from Professor George Sharswood’s essay on ethics published in 1860 at the University of Pennsylvania.<sup>20</sup> The notion of this unyielding loyalty by an attorney passionately championing his or her client’s matter is believed to have originated in 1820, where Lord Henry Brougham was counsel for the newly ascended Queen Caroline. The House of Lords had been encouraged by King George VI to enact the Pains

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<sup>16</sup> *The Florida Bar re Rules Regulating The Florida Bar*, 494 So.2d 977 (Fla. 1986), *opinion corrected* 507 So.2d 1366.

<sup>17</sup> See Final Report of the Committee on Code of Professional Ethics, [https://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/1908\\_code.pdf](https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/1908_code.pdf) (last visited 5/26/2022)

<sup>18</sup> *In Re: Canons of Professional Ethics*, 125 Fla. 501 (1936). Also See 145 Fla. 754 (1941). (The second cite is not available on Westlaw)

<sup>19</sup> *Id* at 579.

<sup>20</sup> Paul C. Sanders, *Whatever Happened To Zealous Advocacy?*, Paul C. Sanders, 245 N.Y.L.J (Mar 11, 2011).

and Penalties Bill so that he could divorce the Queen whom he had accused of adultery<sup>21</sup>. Lord Brougham’s masterful defense of the Queen saved her, and while the House of Lords passed the divorce bill, they chose not to enforce it.<sup>22</sup>

The Code of Professional Responsibility (hereinafter “CPR”) superseded the Canons of Professional Ethics in 1970<sup>23</sup> and while there is one mention of “warm zeal” in the Canons, the word zeal is mentioned nine times in the CPR as follows:

- Canon 2, *A Lawyer Should Assist the Legal Profession in Fulfilling Its Duty to Make Legal Counsel Available*, Ethical Consideration 2-23. “A lawyer should be **zealous** in his efforts to avoid controversies over fees with clients . . .”
- Canon 7, *A Lawyer Should Represent a Client Zealously Within the Bounds of the Law*.
  - o Ethical Consideration 7-1. “The duty of a lawyer, both to his client and to the legal system, is to represent his client **zealously** within the bounds of the law.”
  - o Ethical Consideration 7-10. “The duty of a lawyer to represent his client with **zeal** does not militate against his concurrent obligation to treat with consideration all persons involved . . .”
  - o Ethical Consideration 7-19. “[t]he advocate by his **zealous** preparation and presentation of fact and law, enables the tribunal to come to the hearing with an open and neutral mind and to render impartial judgments.” . . . “The duty of a lawyer to his client and his duty to the legal system are the same, to represent his client **zealously** within the bounds of the law.”
  - o Ethical Consideration 7-36. “Although a lawyer has the duty to represent his client **zealously**, he should not engage in any conduct that offends the dignity and decorum of proceedings.”
  - o Ethical Consideration 7-39. “[p]roper functioning of the adversary system depends upon cooperation between lawyers and tribunals in utilizing procedures which will preserve impartiality of tribunals and make their decisional process prompt and just, without impinging upon the obligation of lawyers to represent their clients **zealously** within the framework of the law.”
- Disciplinary Rule 7-101. Representing a Client **Zealously** (zeal is only listed in the title and not the substantive content of this rule.)

The use of zeal, and its derivatives, is significantly aspirational in the CPR – and is completely aspirational in the Rules, which went into effect on January 1, 1987 and are the operative ethical rules attorneys practice under today. Zeal is mentioned twice in the preamble to the Rules and once in a comment for Rule 4-1.3 Diligence. At no point is “zeal” listed in any of the substantive rules.

- 2<sup>nd</sup> paragraph of Preamble. “As an advocate, a lawyer **zealously** asserts the client’s position under the rules of the adversary system.”

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<sup>21</sup> <https://api.parliament.uk/historic-hansard/lords/1820/aug/17/bill-of-pains-and-penalties-against-her> (last visited June 8, 2022).

<sup>22</sup> Sanders, *supra*.

<sup>23</sup> See *In re The Integration of Rules of Professional Ethics*, 235 So.2d 723 (Fla. 1970).

- 8<sup>th</sup> paragraph of Preamble. “**Zealous** advocacy is not inconsistent with justice.”
- Comment to 4-1.3 Diligence. “A lawyer must also act with commitment and dedication to the interests of the client and with **zeal** in advocacy upon the client’s behalf.”

As practicing attorneys, expansion on the ethical Rules which govern our profession is encouraged to clarify understanding of the ideals which we all strive for to effectuate the best representation for our clients; we know better than most that words are powerful, and they have different meanings to different people. The purposeful use of “zeal” in our Rules in the present day, however aspirational, may mean different things to different people. If we look back to its origin, the intent and meaning of “warm zeal” may translate in modern times to a “passionate and diligent” representation of a client or an “ardent and conscientious” representation. During the course of our research, zeal especially in today’s vernacular, has a generally negative connotation and may be equated to someone who goes to extremes, which is not something that we want to aspire to in our Rules. There is also case law which is discussed further in Section V and Appendix C of this white paper where attorneys have used the term zeal to justify their unprofessional behavior. This is the best illustration of all that a word, which is purely aspirational in our Rules has been used as a sword and a shield. We propose that any word which can be used as justification for unprofessional behavior should not be in our Rules which are intended to reflect our best practices.

## APPENDIX C

### FLORIDA CASE LAW REGARDING THE Z-TERMS

#### ***The Florida Bar v. Roberts***, 689 So. 2d 1049 (Fla. 1997)

A complaint was filed over Attorney Roberts's handling of an Estate. The substance of his actions was his failure to communicate with his client and his improper distribution of estate assets.

The Florida Supreme Court stated that "failing to represent one's client zealously, failing to communicate effectively with one's client, and failing to provide competent representation are all serious deficiencies, even when there is no intentional misrepresentation or fraud. The Court cited to *Florida Bar v. Sommers*, 513 So. 2d 665 (Fla. 1987) for its authority but made no mention of the Rules of Professional Conduct.

#### ***The Florida Bar v. Buckle***, 771 So. 2d 1131 (Fla. 2000).

Complaint was filed against Attorney Buckle based on Mr. Buckle's attempts to contact the victim of the crime involving Mr. Buckle's client defendant. The final contact was by letter from Mr. Buckle which included religious materials. The referee found that the letter was humiliating and intimidating and had no substantial purpose other than to embarrass, intimidate or otherwise burden the victim. Mr. Buckle argued that his conduct did not violate any ethical rules and was, in fact, required by his duty to competently and zealously represent his client.

The Florida Supreme Court stated that the heart of the matter revolved around the lines of propriety involved in conflict between zealous advocacy and ethical conduct. The Court held that "We must never permit a cloak of purported zealous advocacy to conceal unethical behavior." The Court, citing *Florida Bar v. Machin*, 635 So. 2d 938 (Fla. 1994), held that the attorney must exercise sensitive professional and moral judgment guided by the basic principles underlying the rules [Rules of Professional Conduct].

The Court held that zealous advocacy cannot be translated to mean win at all costs, and although the line may be different to establish, standards of good taste and professionalism must be maintained while we support and defend the role of counsel in property advocacy. A lawyer's obligation of zealous representation should not and cannot be transformed into a vehicle intent upon harassment and intimidation.

#### ***The Florida Bar v. Cimpler***, 840 So. 2d 955 (Fla. 2002)

Multiple complaints were filed against Attorney Cimpler in connection with his handling of two real estate transactions and lack of communication with his client in a commercial lease dispute matter. The Court found that Mr. Cimpler engaged in a long pattern of multiple client neglect. The Court, citing *Florida Bar v. Roberts*, stated that "we have made clear that even where there has been no finding of intentional misrepresentation or fraud, 'failing to represent one's client zealously, failing to communicate effectively with one's client, and failing to provide competent representation are all serious deficiencies.'"

***Bowers v. Tillman***, 323 So. 3d 322 (Fla. 5<sup>th</sup> DCA 2021)

This action involved the denial of a motion for new trial by the plaintiff after an automobile personal injury trial which motion was based on the misconduct of defense counsel. There was evidence that lead counsel for both plaintiff and defendant were rude to each other and had caused a mistrial during the first trial. Further, the defense counsel submitted into evidence a document that was excluded by a motion in limine.

The Fifth District cited to the Fourth District Court of Appeal which held that the courtroom is neither a football field, nor a wrestling ring, and attitudes appropriate for professional sport are not appropriate for the courtroom. The Fifth District observed that lawyers, as officers of the court, have a special duty “to avoid conduct that undermines the integrity of the adjudicative process.”

In a concurring opinion, Judge Jay Cohen rejected attorney Gobel’s explanation that his conduct was nothing more than zealous advocacy. Judge Cohen noted that the Bar is full of lawyers zealously representing their clients who do not resort to the types of behavior and tactics of Mr. Gobel. Judge Cohen cited the above cited holding in the *Florida Bar v. Buckle* that zealous advocacy cannot be translated to mean win at all costs.

***The Florida Bar v. Schwartz***, 334 So. 3d 298 (Fla. 2022)

Complaint filed against Attorney Schwartz based on his creation and improper use of two defense exhibits during a pretrial deposition. The Florida Supreme Court cited to *Florida Bar v. Roberts* (“the requirement to provide zealous representation, as contemplated under our ethical rules”) and *Florida Bar v. Buckle* and reiterated that failing to represent one’s client zealously, in addition to other neglect, is a serious deficiency. Thus, as late as last year, the Florida Supreme Court is imposing an obligation on attorneys to be zealous advocated for his or her client – however, there is no obligation to be zealous in The Florida Bar Rules of Professional Conduct.

### **Additional Case Law**

***Huggins v. Siegel***, 336 So. 3d 58 (Fla. 1<sup>st</sup> DCA 2022)

Advocates are expected and encouraged to zealously advocate for their client. Citing R. Regulating Fla. Ba. 4-Preamble. But this duty of zealous advocacy must be tempered with respect, courtesy and decorum.

***Christ v. Florida Association of Criminal Defense Lawyers, Inc.***, 978 So. 2d 134 (Fla. 2009).

In a criminal case, Justice Pariente stated that “Whether an indigent defendant is represented by an elected public defender, the appointed regional counsel or a private attorney appointed by the court, the attorney has an independent professional duty to ‘effectively’ and ‘zealously’ represent his or her client.”

She further stated that **“The basic requirement of due process in our adversarial legal system is that a defendant be represented in court, at every level, by an advocate who represents his client zealously within the bounds of the law. Every attorney in Florida has taken an oath to do so and we will not lightly forgive a breach of this professional duty *in any case.*”**

*Cemoni v. Ratner*, 322 So. 3d 197 (Fla. 5<sup>th</sup> DCA 2021)

A court possesses inherent authority to award attorneys fees for bad faith conduct against a party’s attorney. This inherent authority is reserved for those extreme cases where a party acts in bad faith, vexatiously, wantonly or for oppressive means. In exercising this inherent authority, an appropriate balance must be struck between condemning an unprofessional or unethical litigation tactics undertaken solely for bad faith purposes, while ensuring that attorneys will not be deterred from pursuing lawful claims, issues, or defenses on behalf of their clients or from their obligation as an advocate to zealously assert the clients’ interests.

*Carnival Corporation v. Beverly*, 744 So. 2d 489 (Fla. 1<sup>st</sup> DCA 1999)

As an advocate, an attorney has a duty to zealously represent his or her client within the bounds of the law and the rules of professional conduct. citing Bar Rule 4-1.3.

## APPENDIX D

### STATE JURISDICTION COMPARISON OF INCLUSION/EXCLUSION OF THE Z-TERMS IN THEIR RULES OF PROFESSIONAL CONDUCT

The Subcommittee examined the rules of professional conduct for 50 state jurisdictions for inclusion or exclusion of the Z-terms. Eleven (11) states do not include the Z-terms in the preamble, rule, or comments of that state’s professional rules of conduct. All jurisdictions that removed the Z-terms reflected consistent opinions that inclusion of Z-terms in professional rules of conduct can reasonably cause misinterpretation and manifest in unethical behavior. The Subcommittee concurs with this reasoning and concluded that while the majority of state jurisdictions continue to include Z-terms in their professional rules of conduct, the Z-terms should be removed from The Florida Bar Rules of Professional Conduct. The by-state breakdown of inclusion or exclusion of the Z-terms is displayed in the tables below in Figure 1.

Jurisdiction	Zeal (Yes/No)	Jurisdiction	Zeal (Yes/No)	Jurisdiction	Zeal (Yes/No)
Arizona*	No	Alabama	Yes	Nebraska	Yes
California*	No	Alaska	Yes	New Hampshire	Yes
Indiana*	No	Arkansas	Yes	New Jersey	Yes
Louisiana	No	Colorado	Yes	New Mexico	Yes
Maine*	No	Connecticut	Yes	North Carolina	Yes
Montana	No	Delaware	Yes	North Dakota	Yes
Nevada	No	Florida	Yes	Oklahoma	Yes
New York	No	Georgia	Yes	Pennsylvania	Yes
Ohio*	No	Hawaii	Yes	Rhode Island	Yes
Oregon	No	Idaho	Yes	South Carolina	Yes
Washington*	No	Illinois	Yes	South Dakota	Yes
		Iowa	Yes	Tennessee	Yes
		Kansas	Yes	Texas	Yes
		Kentucky	Yes	Utah	Yes
		Maryland	Yes	Vermont	Yes
		Massachusetts	Yes	Virginia	Yes
		Michigan	Yes	West Virginia	Yes
		Minnesota	Yes	Wisconsin	Yes
		Mississippi	Yes	Wyoming	Yes
		Missouri	Yes		

Yes	39
No	11

Figure 1. By-state jurisdiction breakdown of inclusion/exclusion of Z-terms from that state’s professional rules of conduct. An “\*” next to the state indicates documented removal of the Z-terms. In the other states that do not include the Z-terms, the Z-terms may have been removed or were never included.

The May 2021 ABA Litigation Section article discussed the trend toward removing *Zeal* from ethics rules around the country. Several states were noted as already having removed the Z-terms from their ethics rules, including Arizona, Ohio, Indiana, and Washington.<sup>24</sup> Each state that removed the Z-terms generally noted that **‘zealous advocacy’ was often invoked as an excuse**

<sup>24</sup> Daniel Harrington and Stephanie Benecchi, *Is it Time to Remove “Zeal” From the ABA Model Rules of Professional Conduct?*, Ethics & Professionalism, American Bar Association Litigation Section, May 26, 2021, <https://www.americanbar.org/groups/litigation/committees/ethics-professionalism/articles/2021/is-it-time-to-remove-zeal-from-the-aba-model-rules-of-professional-conduct/>



**for unprofessional behavior, and, therefore, the phrase had no place in even the preamble or comments to ethics rules.**<sup>25</sup>

The May 2021 ABA Litigation Section article also noted:

The changes made by the State of Washington illustrate **how to eliminate the word “zeal” while maintaining the call to a heightened level of advocacy.** The Washington Supreme Court first adopted the preamble and official comments to the Washington Rules of Professional Conduct in 2006. The rules, preamble and comments were largely based on the ABA Model Rules. However, upon the recommendation of the Board of Governors of the Washington State Bar Association (WSBA), Washington replaced “zealous” with “conscientious and ardent” wherever it appeared in the preamble and replaced “zeal” with “diligent” in the comment to Rule 1.3, thus mirroring the duty set out in the rule itself. In support of these changes, the WSBA Board of Governors report stated: **“Owing to its etymology, the word ‘zealous’ in this content could inappropriately be interpreted to condone the extreme or fanatical behavior of a type that would be inconsistent with a lawyer’s professional obligations.”** (quoted in *Confidentiality and Candor Under the 2006 Washington Rules of Professional Conduct*, 43 Gonz. L. Rev. 327, 333 (2008))<sup>26</sup>

This Subcommittee revealed similar findings for the states that removed the Z-terms. For example, under Maine’s Model Rule 1.3 Diligence, Reporter’s Notes: “The task force discussed the use of the term “zeal” as used in Maine’s Model Rule 1.3 Comment [1] (2002). **The Task Force determined that the term “zeal” was often used as a cover for a lawyer’s inappropriate behavior.** Moreover, the Task Force thought the term was not needed to describe a lawyer’s ethical duties. Accordingly, the Task Force recommended its deletion.”<sup>27</sup>

Under Arizona’s ethics rules 1.3, Diligence, Comment [1]:

“A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer must also act with commitment and dedication to the interests of the client. A lawyer is not bound, however, to press for every advantage that might be realized for a client. **For example, a lawyer may have authority to exercise professional discretion in determining the means by which a matter should be pursued.** The lawyer's duty to act with reasonable diligence does not require the use of offensive tactics or preclude the treating of all persons involved in the legal process with courtesy and respect.”<sup>28</sup>

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<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> [https://www.courts.maine.gov/rules/text/mr\\_prof\\_conduct\\_plus\\_2019-05-13.pdf](https://www.courts.maine.gov/rules/text/mr_prof_conduct_plus_2019-05-13.pdf)

<sup>28</sup> <https://www.azbar.org/for-lawyers/ethics/rules-of-professional-conduct/>

## APPENDIX E

### PROPOSED REVISIONS TO THE FLORIDA BAR RULES OF PROFESSIONAL CONDUCT, CHAPTER 4 PREAMBLE AND RULE 4-1.3 COMMENT

#### CHAPTER 4. RULES OF PROFESSIONAL CONDUCT PREAMBLE: A LAWYER'S RESPONSIBILITIES

A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system, and a public citizen having special responsibility for the quality of justice.

As a representative of clients, a lawyer performs various functions. As an adviser, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As an advocate, a lawyer **zealously** asserts the client's position **with commitment and dedication to the interests of the client** under the rules of the adversary system. As a negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealing with others. As an evaluator, a lawyer acts by examining a client's legal affairs and reporting about them to the client or to others.

In addition to these representational functions, a lawyer may serve as a third-party neutral, a nonrepresentational role helping the parties to resolve a dispute or other matter. Some of these rules apply directly to lawyers who are or have served as third-party neutrals. See, e.g., rules 4-1.12 and 4-2.4. In addition, there are rules that apply to lawyers who are not active in the practice of law or to practicing lawyers even when they are acting in a nonprofessional capacity. For example, a lawyer who commits fraud in the conduct of a business is subject to discipline for engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. See rule 4-8.4.

In all professional functions a lawyer should be competent, prompt, and diligent. A lawyer should maintain communication with a client concerning the representation. A lawyer should keep in confidence information relating to representation of a client except so far as disclosure is required or permitted by the Rules of Professional Conduct or by law.

A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers, and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.

As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice, and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law, and work to strengthen legal education. In addition, a lawyer should further the public's understanding of and confidence in the rule of law and the justice system, because legal institutions in a

constitutional democracy depend on popular participation and support to maintain their authority. A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.

Many of the lawyer's professional responsibilities are prescribed in the Rules of Professional Conduct and in substantive and procedural law. A lawyer is also guided by personal conscience and the approbation of professional peers. A lawyer should strive to attain the highest level of skill, to improve the law and the legal profession, and to exemplify the legal profession's ideals of public service.

A lawyer's responsibilities as a representative of clients, an officer of the legal system, and a public citizen are usually harmonious. Zealous Commitment and dedication in advocacy ~~is~~ are not inconsistent with justice. Moreover, unless violations of law or injury to another or another's property is involved, preserving client confidences ordinarily serves the public interest because people are more likely to seek legal advice, and heed their legal obligations, when they know their communications will be private.

In the practice of law, conflicting responsibilities are often encountered. Difficult ethical problems may arise from a conflict between a lawyer's responsibility to a client and the lawyer's own sense of personal honor, including obligations to society and the legal profession. The Rules of Professional Conduct often prescribe terms for resolving these conflicts. Within the framework of these rules, however, many difficult issues of professional discretion can arise. These issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the rules. These principles include the lawyer's obligation to protect and pursue a client's legitimate interests, within the bounds of the law, while maintaining a professional, courteous, and civil attitude toward all persons involved in the legal system.

Lawyers are officers of the court and they are responsible to the judiciary for the propriety of their professional activities. Within that context, the legal profession has been granted powers of self-government. Self-regulation helps maintain the legal profession's independence from undue government domination. An independent legal profession is an important force in preserving government under law, for abuse of legal authority is more readily challenged by a profession whose members are not dependent on the executive and legislative branches of government for the right to practice. Supervision by an independent judiciary, and conformity with the rules the judiciary adopts for the profession, assures both independence and responsibility.

Thus, every lawyer is responsible for observance of the Rules of Professional Conduct. A lawyer should also aid in securing their observance by other lawyers. Neglect of these responsibilities compromises the independence of the profession and the public interest that it

serves.

**Scope:**

The Rules of Professional Conduct are rules of reason. They should be interpreted with reference to the purposes of legal representation and of the law itself. Some of the rules are imperatives, cast in the terms of “must,” “must not,” or “may not.” These define proper conduct for purposes of professional discipline. Others, generally cast in the term “may,” are permissive and define areas under the rules in which the lawyer has discretion to exercise professional judgment. No disciplinary action should be taken when the lawyer chooses not to act or acts within the bounds of that discretion. Other rules define the nature of relationships between the lawyer and others. The rules are thus partly obligatory and disciplinary and partly constitutive and descriptive in that they define a lawyer’s professional role.

The comment accompanying each rule explains and illustrates the meaning and purpose of the rule. The comments are intended only as guides to interpretation, whereas the text of each rule is authoritative.

Thus, comments, even when they use the term ““should,” do not add obligations to the rules but merely provide guidance for practicing in compliance with the rules.

The rules presuppose a larger legal context shaping the lawyer’s role. That context includes court rules and statutes relating to matters of licensure, laws defining specific obligations of lawyers, and substantive and procedural law in general. Compliance with the rules, as with all law in an open society, depends primarily upon understanding and voluntary compliance, secondarily upon reinforcement by peer and public opinion, and finally, when necessary, upon enforcement through disciplinary proceedings. The rules do not, however, exhaust the moral and ethical considerations that should inform a lawyer, for no worthwhile human activity can be completely defined by legal rules. The rules simply provide a framework for the ethical practice of law. The comments are sometimes used to alert lawyers to their responsibilities under other law.

Furthermore, for purposes of determining the lawyer’s authority and responsibility, principles of substantive law external to these rules determine whether a client-lawyer relationship exists. Most of the duties flowing from the client-lawyer relationship attach only after the client has requested the lawyer to render legal services and the lawyer has agreed to do so. But there are some duties, for example confidentiality under rule 4- 1.6, which attach when the lawyer agrees to consider whether a client- lawyer relationship will be established. See rule 4-1.18. Whether a client- lawyer relationship exists for any specific purpose can depend on the circumstances and may be a question of fact.

Failure to comply with an obligation or prohibition imposed by a rule is a basis for invoking the disciplinary process. The rules presuppose that disciplinary assessment of a lawyer’s conduct will be made on the basis of the facts and circumstances as they existed at the time of the conduct in question in recognition of the fact that a lawyer often has to act upon uncertain or incomplete evidence of the situation. Moreover, the rules presuppose that whether discipline should be imposed for a violation, and the severity of a sanction, depend on

all the circumstances, such as the willfulness and seriousness of the violation, extenuating factors, and whether there have been previous violations.

Violation of a rule should not itself give rise to a cause of action against a lawyer nor should it create any presumption that a legal duty has been breached. In addition, violation of a rule does not necessarily warrant any other nondisciplinary remedy, such as disqualification of a lawyer in pending litigation. The rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. Furthermore, the purpose of the rules can be subverted when they are invoked by opposing parties as procedural weapons. The fact that a rule is a just basis for a lawyer's self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the rule. Accordingly, nothing in the rules should be deemed to augment any substantive legal duty of lawyers or the extra-disciplinary consequences of violating a substantive legal duty. Nevertheless, since the rules do establish standards of conduct by lawyers, a lawyer's violation of a rule may be evidence of a breach of the applicable standard of conduct.

**Terminology:**

“Belief” or “believes” denotes that the person involved actually supposed the fact in question to be true. A person’s belief may be inferred from circumstances.

“Consult” or “consultation” denotes communication of information reasonably sufficient to permit the client to appreciate the significance of the matter in question.

“Confirmed in writing,” when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See “informed consent” below. If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time.

“Firm” or “law firm” denotes a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship, or other association authorized to practice law; or lawyers employed in the legal department of a corporation or other organization.

“Fraud” or “fraudulent” denotes conduct having a purpose to deceive and not merely negligent misrepresentation or failure to apprise another of relevant information.

“Informed consent” denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.

“Knowingly,” “known,” or “knows” denotes actual knowledge of the fact in question. A person’s knowledge may be inferred from circumstances.

“Lawyer” denotes a person who is a member of The Florida Bar or otherwise authorized to practice in the state of Florida.

“Partner” denotes a member of a partnership and a shareholder in a law firm organized as a professional corporation, or a member of an association authorized to practice law.

“Reasonable” or “reasonably” when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.

“Reasonable belief” or “reasonably believes” when used in reference to a lawyer denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.

“Reasonably should know” when used in reference to a lawyer denotes that a lawyer of reasonable prudence and competence would ascertain the matter in question.

“Screened” denotes the isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under these rules or other law.

“Substantial” when used in reference to degree or extent denotes a material matter of clear and weighty importance.

“Tribunal” denotes a court, an arbitrator in a binding arbitration proceeding, or a legislative body, administrative agency, or other body acting in an adjudicative capacity. A legislative body, administrative agency, or other body acts in an adjudicative capacity when a neutral

official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party's interests in a particular matter.

“Writing” or “written” denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or video recording, and electronic communications. A “signed” writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

### **Comment**

#### **Confirmed in writing**

If it is not feasible to obtain or transmit a written confirmation at the time the client gives informed consent, then the lawyer must obtain or transmit it within a reasonable time. If a lawyer has obtained a client's informed consent, the lawyer may act in reliance on that consent so long as it is confirmed in writing within a reasonable time.

#### **Firm**

Whether 2 or more lawyers constitute a firm above can depend on the specific facts. For example, 2 practitioners who share office space and occasionally consult or assist each other ordinarily would not be regarded as constituting a firm. However, if they present themselves to the public in a way that suggests that they are a firm or conduct themselves as a firm, they should be regarded as a firm for purposes of the rules. The terms of any formal agreement between associated lawyers are relevant in determining whether they are a firm, as is the fact that they have mutual access to information concerning the clients they serve. Furthermore, it is relevant in doubtful cases to consider the underlying purpose of the rule that is involved. A group of lawyers could be regarded as a firm for purposes of the rule that the same lawyer should not represent opposing parties in litigation, while it might not be so regarded for purposes of the rule that information acquired by 1 lawyer is attributed to another.

With respect to the law department of an organization, including the government, there is ordinarily no question that the members of the department constitute a firm within the meaning of the Rules of Professional Conduct. There can be uncertainty, however, as to the identity of the client. For example, it may not be clear whether the law department of a corporation represents a subsidiary or an affiliated corporation, as well as the corporation by which the members of the department are directly employed. A similar question can arise concerning an unincorporated association and its local affiliates.

Similar questions can also arise with respect to lawyers in legal aid and legal services organizations. Depending upon the structure of the organization, the entire organization or different components of it may constitute a firm or firms for purposes of these rules.

#### **Fraud**

When used in these rules, the terms “fraud” or “fraudulent” refer to conduct that has a purpose to deceive. This does not include merely negligent misrepresentation or negligent

failure to apprise another of relevant information. For purposes of these rules, it is not necessary that anyone has suffered damages or relied on the misrepresentation or failure to inform.

### **Informed consent**

Many of the Rules of Professional Conduct require the lawyer to obtain the informed consent of a client or other person (e.g., a former client or, under certain circumstances, a prospective client) before accepting or continuing representation or pursuing a course of conduct. See, e.g., rules 4-1.2(c), 4-1.6(a), 4-1.7(b), and 4-1.18. The communication necessary to obtain consent will vary according to the rule involved and the circumstances giving rise to the need to obtain informed consent. The lawyer must make reasonable efforts to ensure that the client or other person possesses information reasonably adequate to make an informed decision. Ordinarily, this will require communication that includes a disclosure of the facts and circumstances giving rise to the situation, any explanation reasonably necessary to inform the client or other person of the material advantages and disadvantages of the proposed course of conduct and a discussion of the client's or other person's options and alternatives. In some circumstances it may be appropriate for a lawyer to advise a client or other person to seek the advice of other counsel. A lawyer need not inform a client or other person of facts or implications already known to the client or other person; nevertheless, a lawyer who does not personally inform the client or other person assumes the risk that the client or other person is inadequately informed and the consent is invalid. In determining whether the information and explanation provided are reasonably adequate, relevant factors include whether the client or other person is experienced in legal matters generally and in making decisions of the type involved, and whether the client or other person is independently represented by other counsel in giving the consent. Normally, these persons need less information and explanation than others, and generally a client or other person who is independently represented by other counsel in giving the consent should be assumed to have given informed consent.

Obtaining informed consent will usually require an affirmative response by the client or other person. In general, a lawyer may not assume consent from a client's or other person's silence. Consent may be inferred, however, from the conduct of a client or other person who has reasonably adequate information about the matter. A number of rules state that a person's consent be confirmed in writing. See, e.g., rule 4-1.7(b). For a definition of "writing" and "confirmed in writing," see terminology above. Other rules require that a client's consent be obtained in a writing signed by the client. See, e.g., rule 4-1.8(a). For a definition of "signed," see terminology above.

### **Screened**

This definition applies to situations where screening of a personally disqualified lawyer is permitted to remove imputation of a conflict of interest under rules 4-1.11, 4-1.12, or 4-1.18.

The purpose of screening is to assure the affected parties that confidential information known by the personally disqualified lawyer remains protected. The personally disqualified lawyer should acknowledge the obligation not to communicate with any of the other lawyers in the firm with respect to the matter. Similarly, other lawyers in the firm who are working on



the matter should be informed that the screening is in place and that they may not communicate with the personally disqualified lawyer with respect to the matter. Additional screening measures that are appropriate for the particular matter will depend on the circumstances. To implement, reinforce, and remind all affected lawyers of the presence of the screening, it may be appropriate for the firm to undertake these procedures as a written undertaking by the screened lawyer to avoid any communication with other firm personnel and any contact with any firm files or other information, including information in electronic form, relating to the matter, written notice and instructions to all other firm personnel forbidding any communication with the screened lawyer relating to the matter, denial of access by the screened lawyer to firm files or other information, including information in electronic form, relating to the matter, and periodic reminders of the screen to the screened lawyer and all other firm personnel.

In order to be effective, screening measures must be implemented as soon as practicable after a lawyer or law firm knows or reasonably should know that there is a need for screening.

### **Conduct**

All prior references in this Chapter to a lawyer's duty to act zealously, as a zealous advocate, or with zeal upon the client's behalf have been removed. Zealous advocacy has been invoked in our profession as an excuse for unprofessional behavior. In *Fla. Bar v. Buckle*, The Florida Supreme Court stated "[w]e must never permit a cloak of purported zealous advocacy to conceal unethical behavior." 771 So. 2d 1131, 1133 (Fla. 2000). These Rules are meant to illustrate the special responsibility and high standards of professionalism in this field and zealousness as it has been applied in practice does not align with these ideals. A lawyer's conduct should strive to be respectful, considerate, and diligent in the practice of law.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended March 23, 2006, effective May 22, 2006 (933 So.2d 417); amended May 21, 2015, corrected June 25, 2015, effective October 1, 2015 (164 So.3d 1217), amended November 9, 2017, effective February 1, 2018 (234 So.3d 577).

### **RULE 4-1.3 DILIGENCE**

A lawyer shall act with reasonable diligence and promptness in representing a client.

#### **Comment**

A lawyer should pursue a matter on behalf of a client despite opposition, obstruction, or personal inconvenience to the lawyer and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer must also act with commitment and dedication to the interests of the client ~~and with zeal in advocacy upon the client's behalf.~~ A lawyer is not bound, however, to press for every advantage that might be realized for a client. For example, a lawyer may have authority to exercise professional discretion in determining the means by which a matter should be pursued. See rule 4-1.2. The lawyer's duty to act with reasonable diligence does not require the use of offensive tactics or preclude the treating of all persons involved in the legal process with courtesy and respect.

A lawyer's workload must be controlled so that each matter can be handled competently.

Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests often can be adversely affected by the passage of time or the change of conditions; in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed. Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer. A lawyer's duty to act with reasonable promptness, however, does not preclude the lawyer from agreeing to a reasonable request for a postponement that will not prejudice the lawyer's client.

Unless the relationship is terminated as provided in rule 4-1.16, a lawyer should carry through to conclusion all matters undertaken for a client. If a lawyer's employment is limited to a specific matter, the relationship terminates when the matter has been resolved. If a lawyer has served a client over a substantial period in a variety of matters, the client sometimes may assume that the lawyer will continue to serve on a continuing basis unless the lawyer gives notice of withdrawal. Doubt about whether a client-lawyer relationship still exists should be clarified by the lawyer, preferably in writing, so that the client will not mistakenly suppose the lawyer is looking after the client's affairs when the lawyer has ceased to do so. For example, if a lawyer has handled a judicial or administrative proceeding that produced a result adverse to the client and the lawyer and the client have not agreed that the lawyer will handle the matter on appeal, the lawyer must consult with the client about the possibility of appeal before relinquishing responsibility for the matter. See rule 4-1.4(a)(2). Whether the lawyer is obligated to prosecute the appeal for the client depends on the scope of the representation the lawyer has agreed to provide to the client. See rule 4-1.2.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended March 23, 2006, effective May 22, 2006 (933 So.2d 417).



## Florida Supreme Court issues opinion reminding lawyers not to violate Bar rules with “zealous advocacy” and Bar explores rule changes

By Joseph A. Corsmeier

This article will discuss the Florida Supreme Court opinion imposing a 3-year suspension on a lawyer who altered pictures of his client’s face and used the images as exhibits at a deposition in a criminal case which the opinion characterized as overzealous and a proposal by a Florida Bar committee to remove the words *zeal* and *zealous* from the Rules Regulating The Florida Bar. The case is *The Florida Bar v. Schwartz*, SC17-1391 (February 17, 2022).

According to the Florida Supreme Court opinion:

*(The lawyer), a criminal defense attorney who was admitted to the Bar in 1986, became the subject of the instant Bar proceedings based upon his use of two defense exhibits during a pretrial deposition. While representing the defendant in State v. Virgil Woodson, Circuit Case No. 13-2013-CF-012946-0001-XX (Miami-Dade County, Florida), Schwartz created the exhibits, two black and white photocopies of a police lineup. In each, Schwartz altered the defendant’s picture. In one exhibit, he replaced the defendant’s face with that of an individual whom witnesses other than the robbery victim had identified as the perpetrator. In the other exhibit, Schwartz changed the defendant’s hairstyle. However, the altered photocopies used at the deposition retained the victim’s identification of the defendant, including both her circle around what had been the defendant’s picture and her signature at the bottom of the lineup, as well as a police officer’s signature.*

*Finally, we reiterate that the requirement to provide zealous representation, as contemplated under our ethical rules, see Florida Bar v. Roberts, 689 So.2d 1049, 1051 (Fla. 1997) (“Failing to represent one’s client zealously, failing to communicate effectively with one’s client, and failing to provide competent representation are all serious deficiencies, even when there is no evidence of intentional misrepresentation or fraud.”), does not excuse engaging in misconduct, irrespective of one’s intent to benefit the client. As we have previously observed, “[w]e must never permit a cloak of purported zealous advocacy to conceal*

*unethical behavior.” Fla. Bar v. Buckle, 771 So.2d 1131, 1133 (Fla. 2000. (emphasis supplied).*

The referee recommended a 90-day suspension; however, after reviewing previous Bar discipline cases, aggravating and mitigating factors, and noting the lawyer’s prior disciplinary history, the Florida Supreme Court suspended the lawyer for 3 years.

The words “zeal,” “zealous,” or



“zealously,” do not appear in the Rules Regulating The Florida Bar; however, they are used in the Preamble to Chapter 4 of the Rules Regulating The Florida Bar and in the Comment to Florida Bar Rule 4-1.3 (Diligence).

The Preamble to Chapter 4 of the Rules Regulating The Florida Bar, states, in part, that “As an advocate, a lawyer zealously asserts the client’s position under the rules of the adversary system.” The proposed revision would state, “As an advocate, a lawyer asserts the client’s position with commitment and dedication to the interests of the client under the rules of the adversary system.” Another sentence in the Preamble states, “Zealous advocacy is not inconsistent with justice.” The proposed revision would state, “Commitment and dedication in advocacy are not inconsistent with justice.”

The comment to Rule 4-1.3 (Diligence) states: “A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client’s behalf.” The proposed revision would remove the words “and with zeal in advocacy upon the client’s behalf.”

After the opinion was rendered, Florida Bar’s Real Property, Probate and Trust Law Section Committee began considering a proposal to remove the words *zeal*, *zealous*, and *zealously*, from the Rules Regulating The Florida Bar.

The RPPTL committee is also proposing to include the word “kindness” for the first time in a Florida Bar rule or comment. The proposal would add the following words to the final sentence in the comment to Rule 4-1.3: “kindness and punctuality are not inconsistent with diligent representation.”

The proposed revisions are an early draft. If the RPPTL committee approves the proposed revisions, they would be placed on the agenda of the section’s executive council for a final vote in December 2022. The Board of Governors would then review the proposed rule revisions and the Florida Supreme Court would decide whether to implement the revisions. If the revisions are implemented, Florida would join at least 13 other states, including Georgia, New York, and California, which have removed such words from their rules and comments.

Bottom line: As I have said and written many times, the words *zeal* and *zealous* are related to the term *zealot* and the ordinary meaning of the term *zealot* is a person who is fanatical and uncompromising. There is no place in the Bar rules or in a lawyer’s practice for fanatical and uncompromising conduct.

Be careful out there.

*Joseph A. Corsmeier is a Martindale-Hubbell “AV” rated attorney who practices in Palm Harbor, Florida. His practice consists primarily of the defense of attorneys and all licensed professionals in disciplinary and admission matters, and expert analysis and opinion and court testimony on ethics and liability issues. Mr. Corsmeier is available to provide attorney ethics and professionalism advice, provide expert opinions on ethics and malpractice issues, assist attorneys to ensure compliance with the Florida Bar Rules, and defend applicants before the Florida Board of Bar Examiners.*

# DO 'Z' WORDS BELONG IN BAR RULES?

📅 Jun 08, 2022   👤 By Jim Ash   ▶ Senior Editor   📁 Top Stories



Andrew Sasso

A Real Property, Probate and Trust Law Section committee is considering a proposal to scrub so-called “Z” words — “zeal,” “zealous,” and “zealously,” — from the Bar rule book.

“It’s not just the legal profession, people in general relate someone who is ‘zealous’ to someone who is a zealot,” said RPPTL Professionalism and Ethics Committee Chair Andy Sasso. “And I don’t know anyone who would say that someone being a zealot is positive.”

If the committee’s proposed revisions were adopted, Florida would join at least 13 other states, including Georgia, New York, and California, that have removed “Z” words from their rules and commentary.

Sasso acknowledges that the words “zeal,” “zealous,” or “zealously,” don’t appear in Florida Bar rules — they appear in the preamble to Chapter 4, and in a comment to Rule 4-1.3 (Diligence).

But words matter, Sasso said, especially in the legal profession.

“You get into this whole thing, there is no requirement to provide zealous representation, because it’s in the comment, and that’s only aspirational,” he said. “I think it causes a lot of confusion for lawyers.”

Sasso said he decided to take the issue to his committee in April, after the Florida Supreme Court issued a ruling in a disciplinary case, *The Florida Bar v. Schwartz*, 334 So. 3d 298 (Fla. 2022).

“Finally, we reiterate that the requirement to provide zealous representation, as contemplated under our ethical rules ... does not excuse engaging in misconduct, irrespective of one’s intent to benefit the client,” the justices wrote. “As we have previously observed, “[w]e must never permit a cloak of purported zealous advocacy to conceal unethical behavior.”

Sasso said he has been thinking about the issue since his first semester of law school, and his fiancé — now wife — gave him a copy of Black's Law Dictionary.

The only definition he found was a disparaging reference to a witness.

"It says an untechnical term, denotes a witness on a trial of a cause, who manifests a partiality for the side that is calling him, and an eager readiness to tell anything which he thinks may be of advantage to that side," Sasso said.

A recent article in "Ethics and Professionalism," a publication of the ABA Litigation Section, argues that "Z" words should be removed from comments to ABA Model Rules of Professional Conduct.

The authors warn that it "contributes to the problem of lawyers using a misinterpretation of the Model Rules to justify their own uncivil and even unethical behavior — after all, the ordinary meaning of the term 'zealot' is a person who is fanatical and uncompromising."

In Florida Bar rules, the Preamble to Chapter 4, states, in part, that "As an advocate, a lawyer zealously asserts the client's position under the rules of the adversary system."

The Professionalism and Ethics Committee proposed revisions would state, "As an advocate, a lawyer asserts the client's position with commitment and dedication to the interests of the client under the rules of the adversary system."

Another sentence in the preamble states, "Zealous advocacy is not inconsistent with justice."

The committee's proposed revision would state, "Commitment and dedication in advocacy are not inconsistent with justice."

The final "Z" word reference appears in the comment to Rule 4-1.3 (Diligence). It states, in part, "A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf."

The committee's proposed revision would simply remove the last nine words of the sentence — "and with zeal in advocacy upon the client's behalf."

The committee is also proposing to introduce a word that has never appeared in a Florida Bar rule or comment — "kindness."

The proposed revision would add the following nine words to the final sentence in the comment to Rule 4-1.3 — “kindness and punctuality are not inconsistent with diligent representation.”

Sasso said he was inspired by an historical document a subcommittee chair recently shared with him — a 1922 letter from Marine Corps Commandant John A. Lejeune to his officers.

“Be kindly and just in your dealings with your men,” Lejeune wrote.

Sasso was intrigued.

“I thought that was really interesting,” he said. “You’ve got the Marine commandant asking his men to be just and kind.”

Sasso stressed that the proposed revisions are only a draft. If the committee approves them, they won’t be presented to the section’s executive council for a final vote until December. After that, the Board of Governors would weigh in. The Supreme Court would have the final say.

**THE FLORIDA BAR**  
**Real Property Probate and Trust Law Section Rollup**  
**For the Six Months Ending December 31, 2022**

	December	YTD 2023	YTD 22-23 Budget	YTD/YTD Variance (\$)	FY 22-23 Budget	YTD 2022	YTD/Prior YTD Variance (\$)	FYE Actual 2022
3001-Annual Fees	1,620	672,480	625,200	47,280	625,200	661,920	10,560	666,280
3002-Affiliate Fees	180	12,220	5,000	7,220	5,000	10,260	1,960	10,780
<b>Total Fee Revenue</b>	<b>1,800</b>	<b>684,700</b>	<b>630,200</b>	<b>54,500</b>	<b>630,200</b>	<b>672,180</b>	<b>12,520</b>	<b>677,060</b>
3301-Registration-Live	3,815	432,387	512,500	(80,113)	512,500	243,377	189,010	545,073
3331-Registration-Ticket	-	8,550	12,000	(3,450)	12,000	-	8,550	-
<b>Total Registration Revenue</b>	<b>3,815</b>	<b>440,937</b>	<b>524,500</b>	<b>(83,563)</b>	<b>524,500</b>	<b>243,377</b>	<b>197,560</b>	<b>545,073</b>
3341-Exhibit Fees	-	73,400	65,500	7,900	65,500	9,400	64,000	9,400
3351-Sponsorships	24,200	478,225	468,000	10,225	468,000	445,400	32,825	523,675
3391-CLE Profit Split	51,121	374,348	260,000	114,348	260,000	308,810	65,537	451,920
3392-Section Differential	1,140	9,360	15,000	(5,640)	15,000	6,600	2,760	18,300
<b>Other Event Revenue</b>	<b>76,461</b>	<b>935,333</b>	<b>808,500</b>	<b>126,833</b>	<b>808,500</b>	<b>770,210</b>	<b>165,122</b>	<b>1,003,295</b>
3401-Sales-CD/DVD	4,320	31,707	22,000	9,707	22,000	24,690	7,017	56,340
3411-Sales-Published Materials	-	-	1,500	(1,500)	1,500	-	-	-
<b>Sales, Rents &amp; Royalties Revenue</b>	<b>4,320</b>	<b>31,707</b>	<b>23,500</b>	<b>8,207</b>	<b>23,500</b>	<b>24,690</b>	<b>7,017</b>	<b>56,340</b>
3561-Advertising	-	2,000	18,000	(16,000)	18,000	6,030	(4,030)	8,969
<b>Other Revenue Sources</b>	<b>-</b>	<b>2,000</b>	<b>18,000</b>	<b>(16,000)</b>	<b>18,000</b>	<b>6,030</b>	<b>(4,030)</b>	<b>8,969</b>
3699-Other Operating Revenue	-	-	800	(800)	800	-	-	-
<b>Other Revenue Sources</b>	<b>-</b>	<b>-</b>	<b>800</b>	<b>(800)</b>	<b>800</b>	<b>-</b>	<b>-</b>	<b>-</b>
3899-Investment Allocation	23,549	123,496	148,906	(25,410)	148,906	146,329	(22,833)	(347,542)
<b>Non-Operating Income</b>	<b>23,549</b>	<b>123,496</b>	<b>148,906</b>	<b>(25,410)</b>	<b>148,906</b>	<b>146,329</b>	<b>(22,833)</b>	<b>(347,542)</b>
<b>Total Revenue</b>	<b>109,945</b>	<b>2,218,173</b>	<b>2,154,406</b>	<b>63,767</b>	<b>2,154,406</b>	<b>1,862,816</b>	<b>355,357</b>	<b>1,943,195</b>
4134-Web Services	5,455	24,427	75,000	(50,573)	75,000	38,117	(13,690)	58,168
4301-Photocopying	-	-	100	(100)	100	-	-	-
4311-Office Supplies	6	111	5,150	(5,039)	5,150	478	(367)	1,672
<b>Total Staff &amp; Office Expense</b>	<b>5,461</b>	<b>24,538</b>	<b>80,250</b>	<b>(55,712)</b>	<b>80,250</b>	<b>38,596</b>	<b>(14,058)</b>	<b>59,841</b>
5031-AV Services	-	79	-	79	-	-	79	-
5051-Credit Card Fees	758	17,799	29,200	(11,401)	29,200	8,806	8,993	29,152
5101-Consultants	30,000	71,366	120,000	(48,634)	120,000	30,000	41,366	108,634
5121-Printing-Outside	-	35,745	127,500	(91,755)	127,500	42,825	(7,080)	79,460
5181-Speaker Honorarium	-	-	5,000	(5,000)	5,000	-	-	-
5199-Other Contract Services	-	27,315	125,000	(97,685)	125,000	-	27,315	3,769
<b>Total Contract Services</b>	<b>30,758</b>	<b>152,304</b>	<b>406,700</b>	<b>(254,396)</b>	<b>406,700</b>	<b>81,631</b>	<b>70,673</b>	<b>221,015</b>
5501-Employee Travel	1,609	12,889	33,250	(20,361)	33,250	8,404	4,485	25,411
5531-Board/Off/Memb Travel	3,061	3,061	20,000	(16,940)	20,000	8,485	(5,424)	9,895
5571-Speaker Travel	-	10,263	27,600	(17,337)	27,600	11,282	(1,019)	21,863
5581-Consultant Travel	777	14,593	15,000	(407)	15,000	5,543	9,050	5,543
5599-Other Travel	-	1,410	-	1,410	-	-	1,410	-
<b>Total Travel</b>	<b>5,447</b>	<b>42,215</b>	<b>95,850</b>	<b>(53,635)</b>	<b>95,850</b>	<b>33,713</b>	<b>8,502</b>	<b>62,712</b>
6001-Post 1st Class/Bulk	680	2,251	11,575	(9,324)	11,575	16,156	(13,905)	35,477
6021-Post Express Mail	23	165	850	(685)	850	290	(124)	633
6211-Promot Exhibit Exp	-	-	-	-	-	-	-	535
6251-Promotion Sponsorship	-	-	-	-	-	-	-	500
6311-Mtgs General Meeting	9,427	607,606	750,000	(142,394)	750,000	251,567	356,039	656,515
6319-Mtgs Other Functions	-	10,198	35,000	(24,802)	35,000	5,899	4,298	27,579
6321-Mtgs Meals	-	111,348	357,000	(245,652)	357,000	75,343	36,005	540,786
6325-Mtgs Hospitality	-	167,418	156,500	10,918	156,500	80,809	86,609	140,081
6341-Mtgs Equip Rental	-	29,042	103,000	(73,958)	103,000	30,022	(980)	114,534
6361-Mtgs Entertainment	-	-	40,000	(40,000)	40,000	-	-	50,646
6399-Mtgs Other	-	3,320	15,000	(11,680)	15,000	4,581	(1,261)	4,823
6401-Speaker Expense	-	-	7,500	(7,500)	7,500	-	-	2,942
6451-Committee Expense	29,781	61,856	100,000	(38,144)	100,000	67,981	(6,124)	91,776
6531-Brd/Off Special Project	-	265	50,000	(49,735)	50,000	-	265	21,133
6599-Brd/Off Other	-	-	15,000	(15,000)	15,000	500	(500)	727
7001-Grant/Award/Donation	301	2,286	13,000	(10,714)	13,000	3,468	(1,182)	6,551
7003-Div Int Grants	-	1,584	12,000	(10,416)	12,000	-	1,584	2,000

7004-Law School Prog.	180	1,072	5,500	(4,428)	5,500	-	1,072	412
7006-Professional Outreach	-	-	3,000	(3,000)	3,000	-	-	-
7011-Scholarship/Fellowship	940	9,058	27,000	(17,942)	27,000	6,538	2,521	18,667
7999-Other Operating Exp	-	4	8,300	(8,296)	8,300	3,149	(3,145)	(12,471)
<b>Total Other Expense</b>	<b>41,332</b>	<b>1,007,473</b>	<b>1,710,225</b>	<b>(702,752)</b>	<b>1,710,225</b>	<b>546,300</b>	<b>461,173</b>	<b>1,703,847</b>
8011-Administration CLE	-	15,850	56,500	(40,650)	56,500	26,000	(10,150)	51,000
8021-Section Admin Fee	653	248,668	229,354	19,314	229,354	243,926	4,742	245,819
8101-Printing In-House	-	656	8,600	(7,944)	8,600	614	42	3,507
8131-A/V Services	-	5,337	10,800	(5,463)	10,800	5,651	(314)	11,099
8141-Journal/News Service	-	850	5,850	(5,000)	5,850	-	850	425
8171-Course Approval Fee	-	150	450	(300)	450	150	-	300
8901-Eliminated IntEnt Exp	1,000	3,500	3,000	500	3,000	-	3,500	6,000
<b>Total Admin &amp; Internal Expense</b>	<b>1,653</b>	<b>275,011</b>	<b>314,554</b>	<b>(39,543)</b>	<b>314,554</b>	<b>276,341</b>	<b>(1,330)</b>	<b>318,149</b>
9692-Transfer Out-Council of Sections	-	500	500	-	500	500	-	500
<b>Total InterFund Transfers Out</b>	<b>-</b>	<b>500</b>	<b>500</b>	<b>-</b>	<b>500</b>	<b>500</b>	<b>-</b>	<b>500</b>
<b>Total Expense</b>	<b>84,650</b>	<b>1,502,041</b>	<b>2,608,079</b>	<b>(1,106,038)</b>	<b>2,608,079</b>	<b>977,082</b>	<b>524,959</b>	<b>2,366,064</b>
<b>Net Operations</b>	<b>25,296</b>	<b>716,132</b>	<b>(453,673)</b>	<b>1,169,805</b>	<b>(453,673)</b>	<b>885,734</b>	<b>(169,602)</b>	<b>(422,869)</b>
2001-Fund Balance, Beginning	-	2,607,751				3,030,620		3,030,620
<b>Fund Balance, Ending</b>	<b>-</b>	<b>3,323,883</b>				<b>3,916,354</b>		<b>2,607,751</b>



**THE FLORIDA BAR**  
**Real Property, Probate and Trust Law General**  
**For the Six Months Ending December 31, 2022**

	December	YTD 2023	YTD 22-23 Budget	YTD/YTD Variance (\$)	FY 22-23 Budget	YTD 2022	YTD/Prior Variance (\$)	FYE Actual 2022
3001-Annual Fees	1,620	672,480	625,200	47,280	625,200	661,920	10,560	666,280
3002-Affiliate Fees	180	12,220	5,000	7,220	5,000	10,260	1,960	10,780
<b>Total Fee Revenue</b>	<b>1,800</b>	<b>684,700</b>	<b>630,200</b>	<b>54,500</b>	<b>630,200</b>	<b>672,180</b>	<b>12,520</b>	<b>677,060</b>
3301-Registration-Live	3,815	213,275	180,000	33,275	180,000	66,717	146,558	148,347
<b>Total Registration Revenue</b>	<b>3,815</b>	<b>213,275</b>	<b>180,000</b>	<b>33,275</b>	<b>180,000</b>	<b>66,717</b>	<b>146,558</b>	<b>148,347</b>
3351-Sponsorships	1,000	207,000	180,000	27,000	180,000	177,000	30,000	198,750
3391-CLE Profit Split	51,121	374,348	260,000	114,348	260,000	308,810	65,537	451,920
3392-Section Differential	1,140	9,360	15,000	(5,640)	15,000	6,600	2,760	18,300
<b>Other Event Revenue</b>	<b>53,261</b>	<b>590,708</b>	<b>455,000</b>	<b>135,708</b>	<b>455,000</b>	<b>492,410</b>	<b>98,297</b>	<b>668,970</b>
3561-Advertising	-	2,000	18,000	(16,000)	18,000	6,030	(4,030)	8,969
<b>Other Revenue Sources</b>	<b>-</b>	<b>2,000</b>	<b>18,000</b>	<b>(16,000)</b>	<b>18,000</b>	<b>6,030</b>	<b>(4,030)</b>	<b>8,969</b>
3899-Investment Allocation	23,549	123,496	148,906	(25,410)	148,906	146,329	(22,833)	(347,542)
<b>Non-Operating Income</b>	<b>23,549</b>	<b>123,496</b>	<b>148,906</b>	<b>(25,410)</b>	<b>148,906</b>	<b>146,329</b>	<b>(22,833)</b>	<b>(347,542)</b>
<b>Total Revenue</b>	<b>82,425</b>	<b>1,614,178</b>	<b>1,432,106</b>	<b>182,072</b>	<b>1,432,106</b>	<b>1,383,666</b>	<b>230,512</b>	<b>1,155,804</b>
4134-Web Services	5,455	24,427	75,000	(50,573)	75,000	38,117	(13,690)	58,168
4311-Office Supplies	6	111	5,000	(4,889)	5,000	478	(367)	1,672
<b>Total Staff &amp; Office Expense</b>	<b>5,461</b>	<b>24,538</b>	<b>80,000</b>	<b>(55,462)</b>	<b>80,000</b>	<b>38,596</b>	<b>(14,058)</b>	<b>59,841</b>
5051-Credit Card Fees	169	5,025	13,000	(7,975)	13,000	3,272	1,752	17,063
5101-Consultants	30,000	71,366	120,000	(48,634)	120,000	30,000	41,366	108,634
5121-Printing-Outside	-	32,975	120,000	(87,025)	120,000	42,825	(9,850)	79,170
5199-Other Contract Services	-	26,640	125,000	(98,360)	125,000	-	26,640	2,500
<b>Total Contract Services</b>	<b>30,169</b>	<b>136,006</b>	<b>378,000</b>	<b>(241,994)</b>	<b>378,000</b>	<b>76,097</b>	<b>59,908</b>	<b>207,367</b>
5501-Employee Travel	1,609	10,480	20,000	(9,520)	20,000	4,885	5,595	15,585
5531-Board/Off/Memb Travel	3,061	3,061	20,000	(16,940)	20,000	8,485	(5,424)	9,895
5581-Consultant Travel	777	14,593	15,000	(407)	15,000	5,543	9,050	5,543
5599-Other Travel	-	1,410	-	1,410	-	-	1,410	-
<b>Total Travel</b>	<b>5,447</b>	<b>29,543</b>	<b>55,000</b>	<b>(25,457)</b>	<b>55,000</b>	<b>18,913</b>	<b>10,630</b>	<b>31,023</b>
6001-Post 1st Class/Bulk	517	1,688	10,000	(8,312)	10,000	16,062	(14,374)	34,883
6211-Promot Exhibit Exp	-	-	-	-	-	-	-	535
6251-Promotion Sponsorship	-	-	-	-	-	-	-	500
6311-Mtgs General Meeting	9,427	591,150	750,000	(158,850)	750,000	251,567	339,583	651,612
6319-Mtgs Other Functions	-	-	-	-	-	-	-	2,139
6325-Mtgs Hospitality	-	28,805	35,000	(6,195)	35,000	27,911	894	27,911
6399-Mtgs Other	-	-	15,000	(15,000)	15,000	3,134	(3,134)	3,377
6401-Speaker Expense	-	-	7,500	(7,500)	7,500	-	-	2,942
6451-Committee Expense	29,781	61,856	100,000	(38,144)	100,000	67,981	(6,124)	91,776
6531-Brd/Off Special Project	-	265	50,000	(49,735)	50,000	-	265	21,133
6599-Brd/Off Other	-	-	15,000	(15,000)	15,000	500	(500)	727
7001-Grant/Award/Donation	301	328	8,000	(7,672)	8,000	1,866	(1,538)	4,950
7003-Div Int Grants	-	1,584	12,000	(10,416)	12,000	-	1,584	2,000
7004-Law School Prog.	180	1,072	5,500	(4,428)	5,500	-	1,072	412
7006-Professional Outreach	-	-	3,000	(3,000)	3,000	-	-	-
7011-Scholarship/Fellowship	940	9,058	27,000	(17,942)	27,000	6,538	2,521	18,667
7999-Other Operating Exp	-	-	5,000	(5,000)	5,000	-	-	3
<b>Total Other Expense</b>	<b>41,146</b>	<b>695,806</b>	<b>1,043,000</b>	<b>(347,194)</b>	<b>1,043,000</b>	<b>375,559</b>	<b>320,248</b>	<b>863,567</b>
8021-Section Admin Fee	653	248,668	229,354	19,314	229,354	243,926	4,742	245,819
8101-Printing In-House	-	450	2,000	(1,550)	2,000	614	(164)	2,769
8901-Eliminated IntEnt Exp	1,000	3,500	3,000	500	3,000	-	3,500	6,000
<b>Total Admin &amp; Internal Expense</b>	<b>1,653</b>	<b>252,618</b>	<b>234,354</b>	<b>18,264</b>	<b>234,354</b>	<b>244,540</b>	<b>8,077</b>	<b>254,588</b>
9692-Transfer Out-Council of Sections	-	500	500	-	500	500	-	500
<b>Total InterFund Transfers Out</b>	<b>-</b>	<b>500</b>	<b>500</b>	<b>-</b>	<b>500</b>	<b>500</b>	<b>-</b>	<b>500</b>
<b>Total Expense</b>	<b>83,875</b>	<b>1,139,011</b>	<b>1,790,854</b>	<b>(651,843)</b>	<b>1,790,854</b>	<b>754,205</b>	<b>384,806</b>	<b>1,416,886</b>

Net Operations

<u>(1,449)</u>	<u>475,167</u>	<u>(358,748)</u>	<u>833,915</u>	<u>(358,748)</u>	<u>629,461</u>	<u>(154,294)</u>	<u>(261,082)</u>
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**THE FLORIDA BAR**  
**Real Property Legislative Update**  
**For the Six Months Ending December 31, 2022**

	December	YTD 2023	YTD 22-23 Budget	YTD/YTD Variance (\$)	FY 22-23 Budget	YTD 2022	YTD/Prior Variance (\$)	FYE Actual 2022
3341-Exhibit Fees	-	-	14,000	(14,000)	14,000	9,400	(9,400)	9,400
3351-Sponsorships	-	16,400	-	16,400	-	-	16,400	-
<b>Other Event Revenue</b>	-	<b>16,400</b>	<b>14,000</b>	<b>2,400</b>	<b>14,000</b>	<b>9,400</b>	<b>7,000</b>	<b>9,400</b>
3401-Sales-CD/DVD	1,100	7,325	-	7,325	-	-	7,325	-
<b>Sales, Rents &amp; Royalties Revenue</b>	<b>1,100</b>	<b>7,325</b>	<b>-</b>	<b>7,325</b>	<b>-</b>	<b>-</b>	<b>7,325</b>	<b>-</b>
<b>Total Revenue</b>	<b>1,100</b>	<b>23,725</b>	<b>14,000</b>	<b>9,725</b>	<b>14,000</b>	<b>9,400</b>	<b>14,325</b>	<b>9,400</b>
4301-Photocopying	-	-	100	(100)	100	-	-	-
4311-Office Supplies	-	-	150	(150)	150	-	-	-
<b>Total Staff &amp; Office Expense</b>	<b>-</b>	<b>-</b>	<b>250</b>	<b>(250)</b>	<b>250</b>	<b>-</b>	<b>-</b>	<b>-</b>
5031-AV Services	-	79	-	79	-	-	79	-
5051-Credit Card Fees	38	468	700	(232)	700	48	419	261
5121-Printing-Outside	-	2,663	5,000	(2,337)	5,000	-	2,663	290
<b>Total Contract Services</b>	<b>38</b>	<b>3,210</b>	<b>5,700</b>	<b>(2,490)</b>	<b>5,700</b>	<b>48</b>	<b>3,162</b>	<b>551</b>
5501-Employee Travel	-	1,106	3,000	(1,895)	3,000	1,457	(352)	1,457
5571-Speaker Travel	-	5,165	6,500	(1,335)	6,500	4,626	539	4,626
<b>Total Travel</b>	<b>-</b>	<b>6,271</b>	<b>9,500</b>	<b>(3,229)</b>	<b>9,500</b>	<b>6,083</b>	<b>188</b>	<b>6,083</b>
6001-Post 1st Class/Bulk	112	262	50	212	50	3	258	3
6021-Post Express Mail	-	-	500	(500)	500	10	(10)	10
6311-Mtgs General Meeting	-	1,069	-	1,069	-	-	1,069	-
6321-Mtgs Meals	-	44,878	45,000	(122)	45,000	26,998	17,880	26,998
6325-Mtgs Hospitality	-	-	1,500	(1,500)	1,500	679	(679)	679
6341-Mtgs Equip Rental	-	9,359	15,000	(5,641)	15,000	10,871	(1,512)	10,871
7001-Grant/Award/Donation	-	1,958	5,000	(3,042)	5,000	1,601	357	1,601
7999-Other Operating Exp	-	-	500	(500)	500	280	(280)	280
<b>Total Other Expense</b>	<b>112</b>	<b>57,525</b>	<b>67,550</b>	<b>(10,025)</b>	<b>67,550</b>	<b>40,443</b>	<b>17,083</b>	<b>40,443</b>
8011-Administration CLE	-	1,000	500	500	500	1,000	-	1,000
8101-Printing In-House	-	200	1,000	(800)	1,000	-	200	-
8131-A/V Services	-	70	-	70	-	-	70	-
8141-Journal/News Service	-	-	1,600	(1,600)	1,600	-	-	-
8171-Course Approval Fee	-	150	-	150	-	-	150	-
<b>Total Admin &amp; Internal Expense</b>	<b>-</b>	<b>1,420</b>	<b>3,100</b>	<b>(1,680)</b>	<b>3,100</b>	<b>1,000</b>	<b>420</b>	<b>1,000</b>
<b>Total Expense</b>	<b>149</b>	<b>68,426</b>	<b>86,100</b>	<b>(17,674)</b>	<b>86,100</b>	<b>47,574</b>	<b>20,852</b>	<b>48,077</b>
<b>Net Operations</b>	<b>951</b>	<b>(44,701)</b>	<b>(72,100)</b>	<b>27,399</b>	<b>(72,100)</b>	<b>(38,174)</b>	<b>(6,527)</b>	<b>(38,677)</b>

**THE FLORIDA BAR**  
**Real Property Trust Officer Liaison Conference**  
**For the Six Months Ending December 31, 2022**

	December	YTD 2023	YTD 22-23 Budget	YTD/YTD Variance (\$)	FY 22-23 Budget	YTD 2022	YTD/Prior Variance (\$)	FYE Actual 2022
3301-Registration-Live	-	220,123	160,000	60,123	160,000	176,660	43,463	176,610
3331-Registration-Ticket	-	8,550	10,000	(1,450)	10,000	-	8,550	-
<b>Total Registration Revenue</b>	-	<b>8,550</b>	<b>170,000</b>	<b>58,673</b>	<b>170,000</b>	<b>176,660</b>	<b>52,013</b>	<b>176,610</b>
3341-Exhibit Fees	-	73,400	40,000	33,400	40,000	-	73,400	-
3351-Sponsorships	-	90,275	80,000	10,275	80,000	111,950	(21,675)	107,950
<b>Other Event Revenue</b>	-	<b>163,675</b>	<b>120,000</b>	<b>43,675</b>	<b>120,000</b>	<b>111,950</b>	<b>51,725</b>	<b>107,950</b>
3401-Sales-CD/DVD	2,570	11,852	5,000	6,852	5,000	12,340	(488)	22,320
3411-Sales-Published Materials	-	-	1,000	(1,000)	1,000	-	-	-
<b>Sales, Rents &amp; Royalties Revenue</b>	<b>2,570</b>	<b>11,852</b>	<b>6,000</b>	<b>5,852</b>	<b>6,000</b>	<b>12,340</b>	<b>(488)</b>	<b>22,320</b>
<b>Total Revenue</b>	<b>2,570</b>	<b>404,200</b>	<b>296,000</b>	<b>108,200</b>	<b>296,000</b>	<b>300,950</b>	<b>103,250</b>	<b>306,880</b>
5051-Credit Card Fees	88	7,389	8,000	(611)	8,000	4,008	3,381	6,648
5121-Printing-Outside	-	107	2,500	(2,393)	2,500	-	107	-
<b>Total Contract Services</b>	<b>88</b>	<b>7,495</b>	<b>10,500</b>	<b>(3,005)</b>	<b>10,500</b>	<b>4,008</b>	<b>3,488</b>	<b>6,648</b>
5501-Employee Travel	-	1,303	2,000	(697)	2,000	2,061	(758)	2,061
5571-Speaker Travel	-	5,098	8,100	(3,002)	8,100	6,656	(1,558)	6,656
<b>Total Travel</b>	-	<b>6,401</b>	<b>10,100</b>	<b>(3,699)</b>	<b>10,100</b>	<b>8,717</b>	<b>(2,316)</b>	<b>8,717</b>
6001-Post 1st Class/Bulk	11	101	1,000	(899)	1,000	85	17	85
6021-Post Express Mail	23	98	150	(52)	150	101	(3)	297
6319-Mtgs Other Functions	-	5,198	10,000	(4,802)	10,000	5,899	(702)	5,899
6321-Mtgs Meals	-	63,970	57,000	6,970	57,000	48,345	15,625	48,345
6325-Mtgs Hospitality	-	135,613	70,000	65,613	70,000	52,218	83,395	52,218
6341-Mtgs Equip Rental	-	19,683	30,000	(10,317)	30,000	19,151	532	19,151
6399-Mtgs Other	-	3,320	-	3,320	-	1,447	1,874	1,447
7999-Other Operating Exp	-	4	1,000	(996)	1,000	2,869	(2,865)	2,869
<b>Total Other Expense</b>	<b>35</b>	<b>227,987</b>	<b>169,150</b>	<b>58,837</b>	<b>169,150</b>	<b>130,114</b>	<b>97,873</b>	<b>130,310</b>
8011-Administration CLE	-	14,850	25,000	(10,150)	25,000	25,000	(10,150)	25,000
8101-Printing In-House	-	6	3,000	(2,994)	3,000	-	6	-
8131-A/V Services	-	5,120	7,000	(1,880)	7,000	5,315	(195)	5,427
8141-Journal/News Service	-	850	1,600	(750)	1,600	-	850	-
8171-Course Approval Fee	-	-	150	(150)	150	-	-	150
<b>Total Admin &amp; Internal Expense</b>	-	<b>20,826</b>	<b>36,750</b>	<b>(15,924)</b>	<b>36,750</b>	<b>30,315</b>	<b>(9,489)</b>	<b>30,577</b>
<b>Total Expense</b>	<b>123</b>	<b>262,710</b>	<b>226,500</b>	<b>36,210</b>	<b>226,500</b>	<b>173,154</b>	<b>89,555</b>	<b>176,252</b>
<b>Net Operations</b>	<b>2,447</b>	<b>141,491</b>	<b>69,500</b>	<b>71,991</b>	<b>69,500</b>	<b>127,796</b>	<b>13,695</b>	<b>130,628</b>

**THE FLORIDA BAR**  
**Real Property Construction Law Institute**  
**For the Six Months Ending December 31, 2022**

	December	YTD 2023	YTD 22-23 Budget	YTD/YTD Variance (\$)	FY 22-23 Budget	YTD 2022	YTD/Prior Variance (\$)	FYE Actual 2022
3301-Registration-Live	-	-	100,000	(100,000)	100,000	-	-	122,760
3331-Registration-Ticket	-	-	2,000	(2,000)	2,000	-	-	-
<b>Total Registration Revenue</b>	-	-	<b>102,000</b>	<b>(102,000)</b>	<b>102,000</b>	-	-	<b>122,760</b>
3351-Sponsorships	20,700	162,050	190,000	(27,950)	190,000	156,450	5,600	216,975
<b>Other Event Revenue</b>	<b>20,700</b>	<b>162,050</b>	<b>190,000</b>	<b>(27,950)</b>	<b>190,000</b>	<b>156,450</b>	<b>5,600</b>	<b>216,975</b>
3401-Sales-CD/DVD	650	12,530	15,000	(2,470)	15,000	12,200	330	33,870
3411-Sales-Published Materials	-	-	500	(500)	500	-	-	-
<b>Sales, Rents &amp; Royalties Revenue</b>	<b>650</b>	<b>12,530</b>	<b>15,500</b>	<b>(2,970)</b>	<b>15,500</b>	<b>12,200</b>	<b>330</b>	<b>33,870</b>
3699-Other Operating Revenue	-	-	800	(800)	800	-	-	-
<b>Other Revenue Sources</b>	-	-	<b>800</b>	<b>(800)</b>	<b>800</b>	-	-	-
<b>Total Revenue</b>	<b>21,350</b>	<b>174,580</b>	<b>308,300</b>	<b>(133,720)</b>	<b>308,300</b>	<b>168,650</b>	<b>5,930</b>	<b>373,605</b>
5051-Credit Card Fees	378	4,834	4,000	834	4,000	1,474	3,360	5,179
5181-Speaker Honorarium	-	-	5,000	(5,000)	5,000	-	-	-
5199-Other Contract Services	-	675	-	675	-	-	675	1,269
<b>Total Contract Services</b>	<b>378</b>	<b>5,509</b>	<b>9,000</b>	<b>(3,491)</b>	<b>9,000</b>	<b>1,474</b>	<b>4,035</b>	<b>6,448</b>
5501-Employee Travel	-	-	2,000	(2,000)	2,000	-	-	534
5571-Speaker Travel	-	-	9,000	(9,000)	9,000	-	-	10,581
<b>Total Travel</b>	-	-	<b>11,000</b>	<b>(11,000)</b>	<b>11,000</b>	-	-	<b>11,115</b>
6001-Post 1st Class/Bulk	39	200	25	175	25	6	194	261
6021-Post Express Mail	-	67	200	(133)	200	177	(110)	325
6319-Mtgs Other Functions	-	5,000	25,000	(20,000)	25,000	-	5,000	19,541
6321-Mtgs Meals	-	-	75,000	(75,000)	75,000	-	-	102,477
6325-Mtgs Hospitality	-	-	45,000	(45,000)	45,000	-	-	59,272
6341-Mtgs Equip Rental	-	-	35,000	(35,000)	35,000	-	-	50,747
7999-Other Operating Exp	-	-	1,500	(1,500)	1,500	-	-	(15,623)
<b>Total Other Expense</b>	<b>39</b>	<b>5,267</b>	<b>181,725</b>	<b>(176,458)</b>	<b>181,725</b>	<b>184</b>	<b>5,084</b>	<b>217,000</b>
8011-Administration CLE	-	-	25,000	(25,000)	25,000	-	-	25,000
8101-Printing In-House	-	-	2,000	(2,000)	2,000	-	-	737
8131-A/V Services	-	147	3,250	(3,103)	3,250	336	(189)	5,672
8141-Journal/News Service	-	-	1,650	(1,650)	1,650	-	-	425
8171-Course Approval Fee	-	-	150	(150)	150	150	(150)	150
<b>Total Admin &amp; Internal Expense</b>	-	<b>147</b>	<b>32,050</b>	<b>(31,903)</b>	<b>32,050</b>	<b>486</b>	<b>(339)</b>	<b>31,984</b>
<b>Total Expense</b>	<b>417</b>	<b>10,923</b>	<b>233,775</b>	<b>(222,852)</b>	<b>233,775</b>	<b>2,143</b>	<b>8,780</b>	<b>266,548</b>
<b>Net Operations</b>	<b>20,933</b>	<b>163,657</b>	<b>74,525</b>	<b>89,132</b>	<b>74,525</b>	<b>166,507</b>	<b>(2,850)</b>	<b>107,057</b>

**THE FLORIDA BAR**  
**Real Property Trust Attorney Loan Officer**  
**For the Six Months Ending December 31, 2022**

	December	YTD 2023	YTD 22-23 Budget	YTD/YTD Variance (\$)	FY 22-23 Budget	YTD 2022	YTD/Prior Variance (\$)	FYE Actual 2022
3301-Registration-Live	-	-	12,500	(12,500)	12,500	-	-	-
<b>Total Registration Revenue</b>	-	-	<b>12,500</b>	<b>(12,500)</b>	<b>12,500</b>	-	-	-
3341-Exhibit Fees	-	-	1,500	(1,500)	1,500	-	-	-
3351-Sponsorships	2,500	2,500	8,000	(5,500)	8,000	-	2,500	-
<b>Other Event Revenue</b>	<b>2,500</b>	<b>2,500</b>	<b>9,500</b>	<b>(7,000)</b>	<b>9,500</b>	-	<b>2,500</b>	-
3401-Sales-CD/DVD	-	-	2,000	(2,000)	2,000	150	(150)	150
<b>Sales, Rents &amp; Royalties Revenue</b>	-	-	<b>2,000</b>	<b>(2,000)</b>	<b>2,000</b>	<b>150</b>	<b>(150)</b>	<b>150</b>
<b>Total Revenue</b>	<b>2,500</b>	<b>2,500</b>	<b>24,000</b>	<b>(21,500)</b>	<b>24,000</b>	<b>150</b>	<b>2,350</b>	<b>150</b>
5051-Credit Card Fees	86	86	500	(414)	500	4	82	4
<b>Total Contract Services</b>	<b>86</b>	<b>86</b>	<b>500</b>	<b>(414)</b>	<b>500</b>	<b>4</b>	<b>82</b>	<b>4</b>
5501-Employee Travel	-	-	1,250	(1,250)	1,250	-	-	-
5571-Speaker Travel	-	-	4,000	(4,000)	4,000	-	-	-
<b>Total Travel</b>	-	-	<b>5,250</b>	<b>(5,250)</b>	<b>5,250</b>	-	-	-
6021-Post Express Mail	-	-	-	-	-	1	(1)	1
6321-Mtgs Meals	-	2,500	5,000	(2,500)	5,000	-	2,500	-
6325-Mtgs Hospitality	-	3,000	5,000	(2,000)	5,000	-	3,000	-
6341-Mtgs Equip Rental	-	-	3,000	(3,000)	3,000	-	-	-
7999-Other Operating Exp	-	-	300	(300)	300	-	-	-
<b>Total Other Expense</b>	-	<b>5,500</b>	<b>13,300</b>	<b>(7,800)</b>	<b>13,300</b>	<b>1</b>	<b>5,499</b>	<b>1</b>
8011-Administration CLE	-	-	6,000	(6,000)	6,000	-	-	-
8101-Printing In-House	-	-	200	(200)	200	-	-	-
8131-A/V Services	-	-	550	(550)	550	-	-	-
8141-Journal/News Service	-	-	1,000	(1,000)	1,000	-	-	-
8171-Course Approval Fee	-	-	150	(150)	150	-	-	-
<b>Total Admin &amp; Internal Expense</b>	-	-	<b>7,900</b>	<b>(7,900)</b>	<b>7,900</b>	-	-	-
<b>Total Expense</b>	<b>86</b>	<b>5,586</b>	<b>26,950</b>	<b>(21,364)</b>	<b>26,950</b>	<b>5</b>	<b>5,581</b>	<b>5</b>
<b>Net Operations</b>	<b>2,414</b>	<b>(3,086)</b>	<b>(2,950)</b>	<b>(136)</b>	<b>(2,950)</b>	<b>145</b>	<b>(3,231)</b>	<b>145</b>

**THE FLORIDA BAR**  
**Real Property Convention**  
**For the Six Months Ending December 31, 2022**

	December	YTD 2023	YTD 22-23 Budget	YTD/YTD Variance (\$)	FY 22-23 Budget	YTD 2022	YTD/Prior Variance (\$)	FYE Actual 2022
3301-Registration-Live	-	(1,011)	60,000	(61,011)	60,000	-	(1,011)	97,357
<b>Total Registration Revenue</b>	-	-	<b>60,000</b>	<b>(61,011)</b>	<b>60,000</b>	-	<b>(1,011)</b>	<b>97,357</b>
3341-Exhibit Fees	-	-	10,000	(10,000)	10,000	-	-	-
3351-Sponsorships	-	-	10,000	(10,000)	10,000	-	-	-
<b>Other Event Revenue</b>	-	-	<b>20,000</b>	<b>(20,000)</b>	<b>20,000</b>	-	-	-
<b>Total Revenue</b>	-	<b>(1,011)</b>	<b>80,000</b>	<b>(81,011)</b>	<b>80,000</b>	-	<b>(1,011)</b>	<b>97,357</b>
5051-Credit Card Fees	-	(2)	3,000	(3,002)	3,000	-	(2)	(2)
<b>Total Contract Services</b>	-	<b>(2)</b>	<b>3,000</b>	<b>(3,002)</b>	<b>3,000</b>	-	<b>(2)</b>	<b>(2)</b>
5501-Employee Travel	-	-	5,000	(5,000)	5,000	-	-	5,774
<b>Total Travel</b>	-	-	<b>5,000</b>	<b>(5,000)</b>	<b>5,000</b>	-	-	<b>5,774</b>
6001-Post 1st Class/Bulk	-	-	500	(500)	500	-	-	246
6311-Mtgs General Meeting	-	15,387	-	15,387	-	-	15,387	4,903
6321-Mtgs Meals	-	-	175,000	(175,000)	175,000	-	-	362,967
6341-Mtgs Equip Rental	-	-	20,000	(20,000)	20,000	-	-	33,765
6361-Mtgs Entertainment	-	-	40,000	(40,000)	40,000	-	-	50,646
<b>Total Other Expense</b>	-	<b>15,387</b>	<b>235,500</b>	<b>(220,113)</b>	<b>235,500</b>	-	<b>15,387</b>	<b>452,526</b>
8101-Printing In-House	-	-	400	(400)	400	-	-	-
<b>Total Admin &amp; Internal Expense</b>	-	-	<b>400</b>	<b>(400)</b>	<b>400</b>	-	-	-
<b>Total Expense</b>	-	<b>15,385</b>	<b>243,900</b>	<b>(228,515)</b>	<b>243,900</b>	-	<b>15,385</b>	<b>458,297</b>
<b>Net Operations</b>	-	<b>(16,396)</b>	<b>(163,900)</b>	<b>147,504</b>	<b>(163,900)</b>	-	<b>(16,396)</b>	<b>(360,941)</b>

## CLE Calendar (as of 2/8/23)

Date of Presentation	Crs. #	Title	Location
3/6/23	5996	Corporate Transparency Act	Audio Webcast
3/8/23	6029	FR/Bar in the Courts - A Survey of Recent Decisions	Audio Webcast
3/15/23 – 3/19/23	5988	CLI	JW Marriott Grande Lakes
3/15/23 – 3/19/23	5989	Advanced Construction Law Certification Review Course	JW Marriott Grande Lakes
3/22/23	6030	Constitutional Issues in Community Associations – Does the Bill of Rights Apply?	Video Webcast
3/28/23	6054	Practical Uses of the Uniform Title Standards Beyond the Issuance of Title Insurance	Video Webcast
3/31/23 – 4/1/23	5990	Wills, Trusts and Estates Certification Review Course	Tampa Marriott Airport
3/31/23 – 4/1/23	5991	Real Property Certification Review Course	Tampa Marriott Airport
4/5/23	6048	Endorsement Series: Understanding Common Title Insurance Endorsements Requested by Lenders	Video Webcast
4/6/23	6038	Endorsement Series: Understanding the ALTA 9 Endorsements	Video Webcast
4/12/23	6049	Technology Usage in Community Associations – The WiFi Password Is...?	Audio Webcast
4/19/23	6044	Construction Loan Negotiations	Audio Webcast
4/21/23	5992	Attorney Bankers Conference	Funky Buddha Brewery, Ft. Lauderdale
4/28/23	5993	Annual Guardianship CLE	Stetson Law School, Tampa
5/12/23	6491	Real Property Litigation Symposium	Orlando
5/13/23	6008	Minority Lawyers Seminar	Zoom



**CLE Calendar  
(as of 2/8/23)**

<b>5/17/23</b>	<b>6059</b>	<b>RP Lit Seminar on Mediation</b>	<b>Audio Webcast</b>
<b>5/24/23</b>	<b>6003</b>	<b>RPPTL Webcast "Lending After Surfside"</b>	<b>Audio Webcast</b>
<b>6/2/23</b>		<b>Convention CLE</b>	<b>Opal Sands, Delray Beach</b>

MEMORANDUM

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To: Real Property Division of RPPTL Executive Council

From: Katie Heckert and Debbie Crockett, Co-Chairs of RPPTL Insurance and Surety Committee

Date: November 14, 2022

Re: Memorandum Regarding Insurance and Surety Committee Efforts to Establish Board Certification in Insurance Coverage Law

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**Executive Summary**

This memorandum sets forth the efforts undertaken to date by the Insurance and Surety Committee (“ISC”) to establish a new area of Board Certification in Insurance Coverage Law.

The ISC is seeking formal approval from the RPPTL Executive Council as part of this effort and hopes that this memorandum assists in the review of 1) the background to these efforts, 2) the requirements to establish a new area of board certification, 3) steps taken to date, and 4) steps that remain outstanding.

The ISC recognizes that this is a significant undertaking, and would like RPPTL’s approval in support, so that we can submit the application to begin the rest of this process with the Board of Legal Specialization & Education (BLSE), Board of Governors (BOG), and the Supreme Court of Florida.

The anticipated schedule leading up to application submission is as follows:

December 2022:	Informational Item - Real Property Roundtable
January 2023:	Present (in concept / informational item) to the BLSE
February 2023:	Action Item - Real Property Roundtable Informational Item – RPPTL Executive Council Meeting
June 2023:	Action Item - RPPTL Executive Council Meeting
July 2023:	ISC will submit the completed Application packet.

## **1. Insurance and Surety Committee Background**

In 2022, Katie Heckert was appointed as the Chair of the ISC, and charged by the RPPTL Executive Committee with reinvigorating and expanding the committee beyond its status as a “sister committee” to the Construction Law Committee.

As a key part of the strategy to achieve the goal of expansion and reinvigoration, the ISC determined that it should focus on seeking to establish Insurance Coverage Law as a new area of board certification by the Florida Bar. This strategy was driven in part by the tremendous success the Construction Law Committee has had post establishment of Construction as an area of board certification.

As part of the application to establish a new area for board certification, the ISC would like to list RPPTL as a supporting organization. The ISC understands that the only way to obtain formal support from RPPTL is to present at the Real Property Roundtable as an information item, then as an action item, before being presented to the RPPTL Executive Committee as an information item, then as an action item to be voted upon.

While the ISC is very focused on the Board Certification effort, we have also been working toward expanding ISC membership to include attorneys who represent carriers and policyholders in first-party property insurance claims, revive the “Insurance Matters” newsletter, provide up-to-date information on ISC’s webpage, reestablish regular monthly zoom meetings, and the like.

One of ISC’s newest members (Clint Moore) has volunteered to serve as ISC’s Legislative Liaison, and he has already been working on a white paper about insurance law related issues that are anticipated to be coming down the pike. While having monthly CLE programs for members is important, currently, with the other efforts moving forward, we have yet to fill the CLE subcommittee chair position. But, in 2022, ISC has held joint meetings with the Construction Law Committee where insurance law topics were presented (July 2022 and November 2022).

## **2. Requirements to Establish a New Area of Board Certification**

The Board of Legal Specialization and Education Rules & Policies (“BLSE”) oversees the award of board certification in accordance with the Florida Supreme Court’s Rules Regulating the Florida Bar (“RRTFB”). RRTFB Chapter 6 establishes the rules related to “Legal Specialization and Education Programs.”

Chapter 6-3 “Florida Certification Plan” sets forth that the board of legal specialization and education “shall have the authority and responsibility to administer the program for regulation of certification including: a) recommending to the board of governors areas in which certificates may be granted ... .” RRTFB 6-3.1(a).

This chapter also sets forth the Standards for Certification. Those include setting forth “Minimum Requirements for Qualifying for Certification With Examination. RRTFB 6-3.5(c).

Once approved as an area for certification, the standards for each area are also included in Chapter 6 RRTFB, for which there are currently 26, as follows:

1. Civil Trial Law (6-4);
2. Tax Law (6-5);
3. Marital and Family Law (6-6);
4. Wills, Trusts, and Estates Law (6-7);

5. Criminal Law (6-8);
6. Real Estate Law (6-9);
7. Workers' Compensation Law (6-11);
8. Appellate Practice (6-13);
9. Health Law (6-14);
10. Immigration and Nationality Law (6-15);
11. Business Litigation (6-16);
12. Admiralty and Maritime Law (6-17);
13. City, County, and Local Government Law (6-18);
14. Aviation Law (6-19);
15. Elder Law (6-20);
16. International Law (6-21);
17. Antitrust and Trade (6-22);
18. Labor and Employment (6-23);
19. Construction (6-24);
20. State and Federal Government and Administrative Practice (6-25);
21. Intellectual Property (6-26);
22. Education Law (6-27);
23. Adoption Law (6-28);
24. Juvenile Law (6-29);
25. Condominium and Planned Development Law (6-30); and
26. International Litigation and Arbitration (6-31).

Following these rules established by the Florida Supreme Court, the BLSE has also published "Standing Policies of the Board of Legal Specialization and Education." Under the Standing Policies, Chapter 200 addresses the "Florida Certification Plan." It outlines the fact that BLSE "bears ultimate responsibility in the certification of applicants," but acknowledges that "Each area of certification must be approved by the Supreme Court of Florida." Standing Policy 2.02(a).

Of most importance to our efforts, 2.03 sets forth the requirements for a "New Certification Area Request." The Standing Policies establish that "any request for a new certification area will be presented to the BLSE. As the BLSE directs, staff will:

- a. Poll the appropriate section(s), division(s), and substantive law committee(s) of the Florida Bar for input;
- b. Contact other state bars or national certification organizations offering the same or similar specialization area; and
- c. Notify the membership of the request by publication on the Florida Bar's web site for a minimum of 30 days to allow interested parties to respond." Standing Policy 2.03(a).

Additionally, new area proposals will be considered on a showing that the area is:

- a. An established and recognized area of legal practice in which certification would be of benefit to both the public and The Florida Bar; and
- b. Projected to attain a 75 member threshold within the first 3 years of implementation.

Standing Policy 2.03(b).

The BLSE will review all information received. If there are sufficient facts to support establishment of the area, the BLSE will direct staff to assist the requestor in the preparation of proposed standards. On review and approval by the BLSE, the proposed standards must be approved by the board of governors. On approval by the board of governors, the standards must be approved by the Supreme Court of Florida before implementation. Standing Policy 2.03(d).

### **3. ISC Steps Taken to Date & Steps Outstanding (BEFORE Application Submission)**

Debbie Crockett has spearheaded the effort to establish Board Certification. To that end, she has successfully assembled an excellent subcommittee to assist with the application drafting process, including Chip Merlin; Steve Sellers; Michele Hinton; Michael Cassel; Mark Nation; Matt Weaver; Meghan Moore; David Zulian; Clint Moore; Matthew Danahy; Hugh Lumpkin; Mark Boyle; Reed Grimm; Scott Pence; and Rob Friedman. The subcommittee has put together an application draft and board certification minimum standards, which are attached hereto. **[Tab 1 and Tab 2]**.

ISC will present this as an information item during the December 2022 Real Property Roundtable<sup>1</sup>.

Additionally, the ISC has reached out to a variety of other groups, some within the Florida Bar and some outside. To date, we have received four letters of support - from the Trial Lawyers Section, United Policyholders, Florida Justice Association, and Florida Defense Lawyers Association, and they attached hereto. **[Tab 3]**. Just recently, we have reached out to number of other groups including some Florida Bar standing committees (many on the BOG) and sections, and we are waiting to hear back.

We have asked BLSE if ISC could be placed on their January 30 meeting agenda so that we can provide them some initial information. We hope that BSLE will want to hear about our efforts even in advance of submitting the completed application packet, and that they will offer some suggestions and guidance.

We have also investigated other states to determine what other jurisdictions may recognize Insurance Coverage Law as a specialty. The only state that we have identified is Ohio. The Ohio Exam Study Guide and board certification standards have been a good starting point for the ISC and it is anticipated that ISC may 'borrow' a few things from these materials. They are attached hereto. **[Tab 4]**. After the submission of the application, the BLSE staff will likely be directed to contact the Ohio Bar about their Insurance Coverage Law board certification.

At the most recent Board Certification Subcommittee Meeting, held on Monday, November 7, 2022, the members discussed the need to start gathering signed petitions to submit with the application packet, and on November 9, 2022, Maritza McGill of the Florida Bar confirmed that we may gather those signed petitions online using software like google forms or a specific online petition website/service. The petitions are necessary to show the BSLE that there is not only interest in the establishment of the Insurance Coverage Law board certification, but also those who sign the petition indicate that they would, themselves, seek to obtain the board certification. Our hope is to obtain over 150 signed petitions. A sample of the petition that will be disseminated is attached hereto. **[Tab 5]**. Accordingly, we will begin gathering signed petitions in the near term.

Of course, ISC's goal is to submit the complete Application packet as soon as possible. We see 3 discrete outstanding task items:

1. Disseminating petitions and obtaining signed petitions (hopefully 150+);
2. Obtaining letters of support from other groups (we are waiting to receive); and
3. Obtaining RPPTL's formal approval and support (during the June 2023 Executive Committee Meeting).

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<sup>1</sup> This will not be the first presentation to the Real Property Roundtable on this topic. Katie Heckert, presented this effort as an information item at the June 2022 Real Property Roundtable; and Debbie Crockett presented further about the effort at the July 2022 Real Property Roundtable.

#### **4. Steps Outstanding (AFTER Application Submission)**

Once we have submitted the application packet, the following steps will need to take place:

1. Approval of Proposed Standards by Board of Legal Specialization & Education (BLSE) Rules Committee
2. Approval of Proposed Standards by BLSE
3. Approval of Proposed Standards by:
  - a. Program Evaluation Committee (PEC) of the Board of Governors (BOG)
  - b. Budget Committee of the BOG
  - c. Rules Committee of the BOG
  - d. BOG (two readings)
4. Notice to the Bar membership must occur prior to final action by the BOG and prior to filing with the Supreme Court
5. Submission to the Supreme Court as an amendment to the Rules Regulating The Florida Bar.
6. Upon approval by the Supreme Court, a notice will be placed on the Bar's website and in the Bar News to advise the membership and to elicit members to apply for service on the inaugural nine-member certification committee. Pursuant to Rule 6-3.2, initial appointees shall be "eminent attorneys" in the field and shall be members in good standing of The Florida Bar admitted no less than 10 years. Appointments are made by the President of The Florida Bar. The three-year terms are staggered and each member is certified by virtue of assignment of staff and "application cycle" (July 1-August 31 or September 1-October 30). Committee orientation, application development, test development, acceptance of applications, processing of applications, administration of exam, grading and presentation of qualified candidates to the BLSE for certification of first class.

The ISC recognizes that this is a long process. As a result, we would like to move forward with obtaining RPPTL's approval, so that we can begin to move forward through the rest of this process.

# Tab 1

**Proposed Area:** Insurance Coverage Law

**Lawyer(s) and/or Organization seeking new certification area:** RPPTL's Insurance & Surety Committee ("ISC") - Co-Chairs Katherine Heckert & Debbie Sines Crockett and the following ISC members: Scott Pence, Rob H. Friedman, Mark Boyle, Chip Merlin, Hugh Lumpkin, Reed Grimm, Mark Nation, Steve Sellers, Michael Cassel, Matt Weaver, David Zulian, Clint Moore, Meghan Moore, Matthew Danahy and Michele Hintson.

***Please respond to the following by separate attachment(s):***

1. Define the proposed specialty area and any relevant subspecialties it may encompass.
2. Does the proposed specialty area conflict or overlap with any existing certification area(s)? If no, please skip to Question 5.
3. If yes, please provide a statement identifying the area(s) of conflict or overlap and explain why the proposed specialty should be established as a separate area.
4. If yes, could the proposed specialty, in your opinion, be incorporated within an existing certification area as a subspecialty, and if so, how would you propose that be accomplished?
5. How will certification standards for the proposed specialty benefit consumers of legal services?
6. How will certification standards for the proposed specialty benefit lawyers who practice in the area and the Bar overall?

***Please check all that you have provided to support this proposal:***

Letters of endorsement or Petitions from a minimum of 100 members of The Florida Bar, who support the establishment of the area, would qualify under the proposed standards, and who agree to seek certification when the area is available for certification. [See Exhibit XX].

Petition of recognized Section of The Florida Bar [See Exhibit XX].

Petition of substantive law standing committee of The Florida Bar. [See Exhibit XX].

Demonstration that the proposed specialty is an established practice area by providing documentation or information as to:

(Ohio – Insurance Coverage Law) Other states or accredited national organizations that offer certification in this area <https://www.ohiobar.org/cle-certification/certification/Attorney-Certification/insurance-coverage-law/> . [See Exhibit XX].

(Insurance Bad Faith) Listing as a practice area in *Martindale-Hubbell* <https://www.martindale.com/areas-of-law/>

(Insurance – with a subset list of types of insurance) Referral service listings (The Florida Bar or other services) <https://lrs.floridabar.org/practice-areas/insurance>

CLE availability options in proposed area. [See Exhibit XX].

Proposed Draft of Certification Standards. [See Exhibit XX].

Other: Letters of Support from United Policyholders, Florida Justice Association, Florida Defense Lawyers Association. [See Exhibits XX, XX, and XX].



**Supplement in Support of Insurance Coverage Law Board Certification Application**

**1. Define the proposed specialty area and any relevant subspecialties it may encompass.**

The proposed specialty area is Insurance Coverage Law, which is the practice of law that involves issues, disputes, and matters among or between insurers, policyholders, or third-party insurance policy beneficiaries concerning the rights, duties, responsibilities, and coverages that arise out of insurance policies. Included subspecialties are first party, third-party, bad faith/extracontractual claims, and state regulatory procedures and practices, which would be part of (not separate or in addition to) the Insurance Coverage Law board certification. Knowledge and skills required include the areas of insurance contract formation and cancellation, insurance policy construction, insurance policy interpretation, property insurance, liability insurance, insurance coverage litigation, reinsurance, bad faith/extra contractual litigation, recurring issues in insurance coverage, professional responsibility, and other types of insurance such as life and disability, professional liability, directors and officers, employment practices, commercial crime and fidelity, excess, umbrella, environmental, workers' compensation, builder's risk, and OCIPs/CCIPs. Policyholders include any insureds, including named insureds and additional insureds under any type of insurance policy. Beneficiaries include individuals and entities who may have rights to recover from insurers even though they are not insured under a policy, including those who hold judgments or assignments entitling them to recovery from an insurer by operation of law. Insurers include any type of insurance company including primary and excess insurers, and reinsurers, whether admitted or surplus lines insurers.

**2. Does the proposed specialty area conflict or overlap with any existing certification area(s)?  
If no, please skip to Question 5.**

Yes, there is possible overlap, but no conflict.

**3. If yes, please provide a statement identifying the area(s) of conflict or overlap and explain why the proposed specialty should be established as a separate area.**

Frankly, insurance is, or should be, a part of all areas of life and business. As such, there may be some overlap in the certification areas of Elder Law, Health Law, Marital & Family Law, Real Estate, Will Trusts & Estates, and Workers' Compensation; however, the largest potential overlap regarding litigation falls in the areas of Business Litigation, Civil Trial, and Construction Law.

Some Civil Trial law involves aspects of insurance coverage as such matters are inherently civil disputes; however, most insurance disputes do not reach the trial stage. This is because the Civil Trial specialty deals extensively with factual disputes which are proper for determination by a jury while Insurance Coverage deals more extensively with the application of existing facts to extremely nuanced law. Similarly, Business Litigation may involve disputes related to insurance issues; however, the law related to insurance coverage, and specifically insurance policies, is subject to separate rules of construction as a result of area specific case law that does not translate to standard contractual disputes found in Business Litigation. Finally, Construction Law may involve aspects of Insurance Coverage, specifically as it relates to liability insurance and the duties to defend and indemnify, but Insurance Coverage relates to a far more diverse practice area than solely Construction Law.

Insurance Coverage is a much more specialized and highly nuanced area of law which goes beyond the herein referenced existing specialty areas. Specifically, Insurance Coverage includes personal liability, professional liability, directors & officers coverage, first party property, builder's risk, cyber liability, errors & omissions coverage, and insurance bad faith/extra-contractual litigation.

Particularly in Florida right now, where insurance is a hotbed political issue and numerous attorneys and legislators alike are involved in a complex area of law in which they do not have any expertise, a separate specialty area in Insurance Coverage would be highly useful to not only attorneys and legislators, but more importantly, to consumers.

**4. If yes, could the proposed specialty, in your opinion, be incorporated within an existing certification area as a subspecialty, and if so, how would you propose that be accomplished?**

No. Insurance Coverage could not and should not be incorporated within existing certification areas as a subspecialty as it is its own area of expertise with significant law from both the Florida Statutes and existing case law. The Florida Insurance Code is comprised of Chapters 624-632, 634, 635, 636, 641, 642, 648, and 651, Florida Statutes. There is no current Bar program that provides something similar, as there is no current specialty in Insurance Law. This new Board Certification in Insurance Coverage Law will serve to supplement the already excellent work of other board certification areas whilst expanding certification to a highly specialized area of law for which expertise is required in practice and will further the Bar's goals of expanding Board Certification.

**5. How will certification standards for the proposed specialty benefit consumers of legal services?**

Specifically, in two areas, consumers would directly benefit. First, as to first-party property insurance (i.e., claims for perils such as hurricane and sinkholes), consumers are seeking out attorneys who have specialized knowledge and experience in handling insurance coverage matters, yet many attorneys who do not specialize in this industry claim to possess specialized knowledge. Certification will enable consumers to easily identify competent counsel after severe weather events. Without certification, inexperienced and unknowledgeable attorneys who are financially motivated may be retained to handle insurance coverage disputes, leading to an increase in litigation to the detriment of both policyholders and insurers alike. Having a specialty practice area will allow consumers to weed out inexperienced, opportunistic attorneys and serve to assist in rectifying issues within the insurance industry as a whole.

Second, as to liability claims arising out of construction defect actions or other complex liability claims, policyholders include contractors and other sophisticated insureds, but there are times when owners or others (consumers) are entitled to coverage as additional insureds and times when consumers such as claimants will directly benefit from a determination of whether and to what extent coverage is available. Those consumers are in need of expert guidance and advice. Currently, Insurance, Insurance Defense, and Insurance Bad Faith are each listed as specific practice areas by Martindale-Hubbell. Allowing consumers to search through a database of attorneys by practice area but to then narrow such database with certified expertise related to insurance coverage, as opposed to simply general knowledge regarding insurance or contract law, will provide invaluable resources to consumers when selecting counsel.

**6. How will certification standards for the proposed specialty benefit lawyers who practice in the area and the Bar overall?**

This certification will benefit lawyers who may not have specialized coverage expertise by identifying a pool of persons with such specialized insurance coverage experience who may serve as resources when such insurance coverage issues arise. The Bar will benefit from the positive public perception of the Bar's designation of this area of practice as a specialty, through direct consumer knowledge of and outreach to such attorneys specializing in providing legal advice on insurance coverage matters and through the anticipated reduction of claims volumes and/or adverse outcomes tied to members' insufficient familiarity with insurance coverage practice. Interestingly, Ohio is the only state that has the Insurance Coverage Law board certification specialty, and thus, if Florida did as well, it would help put

board certified Florida lawyers in the forefront of the legal community, particularly in a state in which insurance litigation is prevalent.

Furthermore, there are currently a number of conventions/conferences related to insurance coverage that will assist lawyers in staying up to date with the ever-changing landscape of insurance law. The Florida Bar RPPTL Section, ABA Tort-Trial & Insurance Practice Section, Windstorm Insurance Network (WIND), Florida Insurance Fraud Education Committee (FIFEC), Florida Association of Public Insurance Adjusters (FAPIA), Florida Defense Lawyers Association (FLDA), Florida Justice Association (FJA), Stafford, The Seminar Group, and many other organizations currently offer continuing education credits related to courses dealing solely with insurance coverage law and generate thousands of attendees each year. If insurance coverage becomes a stand-alone specialty, existing members, whether through a stand-alone RPPTL program committee, a subcommittee to the RPPTL Insurance and Surety Committee, or through other such mediums, it would be able to expand the availability of insurance related continuing education courses thereby providing funding to the specialty area, minimizing the fiscal impact on the program at the onset. Once more attorneys begin applying to the specialty area, something that, as described below, will likely garner tremendous interest, the program will eventually generate revenue for the Florida Bar. The attendance for such CLE programs/events would be used to measure effectiveness and efficiency of the program in perpetuity.

A Florida Bar Board Certification in Insurance Coverage Law fits into the strategic plan of the Florida Bar by including attorneys who have demonstrated specialized knowledge and skill in the field. The standards and requirements developed will not only ensure that an attorney so certified possesses an enhanced level of expertise and substantial involvement in Insurance Coverage Law, but that the attorney also possesses the requisite credentials and professional qualifications. Like all other Florida Bar board certifications, the Board Certification in Insurance Coverage Law will be designed to foster professional development and to facilitate public access to attorneys with this expertise. It is anticipated that well over 100 Florida Bar members would seek to obtain Florida Bar Board Certification in Insurance Coverage Law in the initial three years. In fact, there are [REDACTED] petitions included in this application submission. Moreover, having additional an area of board certification certainly meets the Florida Bar objective of enhancing not only the legal profession, but also the public's trust and confidence in those Florida lawyers who are board certified in a specialty.

Once implemented, the members of the RPPTL Insurance and Surety Committee spearheading this current project would like the opportunity, in conjunction with the BLSE, to create the Insurance Coverage Law Board Certification Committee (of at least 9 members, though the ISC would prefer 10, each of whom must meet the qualifications under the proposed standards) with minimum of 2 members who represent Policyholders and 2 members who represent Insurers in the practice of Insurance Coverage Law). Then, this Board Certification Committee which will work with the BSLE on, *inter alia*, exam drafting & grading. Those on the ISC who are not appointed to serve on the Board Certification Committee, would then create a separate subcommittee to focus on creating and organizing an exam preparation CLE program/event. It is anticipated that upon approval, the CLE program/event could take place within 12 months or less, and the exam could be ready to administer within 18 months or less. Challenges could include initial starting funding needed for the CLE Program/Event; however, based on the interest generated thus far and outlined herein, funding should not be a problem.

# Tab 2

**RULE 6-XX MINIMUM STANDARDS**  
**6 LEGAL SPECIALIZATION AND EDUCATION PROGRAMS**

**6-XX STANDARDS FOR BOARD CERTIFICATION IN INSURANCE COVERAGE LAW**

GENERALLY

A lawyer who is a member in good standing of The Florida Bar and meets the standards prescribed below may be issued an appropriate certificate identifying the lawyer as “Board Certified in Insurance Coverage Law.” The purpose of the standards is to identify those lawyers who practice insurance coverage law and have the special knowledge, skills, and proficiency, as well as the character, ethics, and reputation for professionalism, to be properly identified to the public as board certified in insurance coverage law.

DEFINITIONS

- (a) “Policyholders” means any insureds, including but not limited to named insureds, omnibus insureds, and additional insureds under any type of insurance policy.
- (b) “Insurers” means any type of insurance company including but not limited to primary and excess insurers, reinsurers, and sureties, whether admitted, surplus lines insurers, and/or enterprise.
- (c) “Insurance Coverage Law” is the practice of law that involves issues, disputes, and matters among and/or between Insurers, Policyholders, and/or insurance policy beneficiaries concerning the rights and responsibilities that arise out of insurance policies, including extra-contractual claims.
- (d) “Practice of Law” for this area is set out in rule 6-XX(c).
- (e) “Insurance Coverage Law Board Certification Committee.” The insurance coverage law board certification committee shall be a total of at least 9 members, must include a minimum of 2 members who represent Policyholders and 2 members who represent Insurers in the practice of Insurance Coverage Law, and all of whom must be board certified in Insurance Coverage Law.

**RULE 6-XX MINIMUM STANDARDS**

- (a) **Minimum Period of Practice.** The applicant must have been engaged in the practice of law for at least 7 years immediately preceding the date of application.
- (b) **Substantial involvement.** The applicant must demonstrate continuous and substantial involvement in the practice of law, of which at least 40 percent has been spent in active participation in Insurance Coverage Law during at least 5 of the 7 years immediately preceding the date of application.
- (c) **Practical Experience.** The applicant must demonstrate substantial practical experience in insurance coverage law by providing examples of at least 20 substantive tasks or services performed on behalf of, or in connection with Insurance Coverage Law, such as:
  - i. drafting and revising insurance provisions in contracts;
  - ii. drafting and revising statutory, regulatory, or administrative laws, rules, or provisions concerning Insurance Coverage Law matters;
  - iii. drafting or revising insurance policies including but not limited to endorsements and other insurance policy related documents;
  - iv. serving as an arbitrator or mediator in cases involving Policyholders, Insurers, and/or insurance policy beneficiaries as adverse parties involving Insurance Coverage Law;

- v. drafting and/or presenting legal opinions including but not limited to coverage opinion letters and coverage determination letters on Insurance Coverage Law matters;
- vi. representing Policyholders and serving as Policyholders' legal counsel in proceedings (trial, appeal, administrative or regulatory proceedings, arbitration, or mediation) concerning Insurance Coverage Law matters;
- vii. representing Insurers and serving as Insurers' legal counsel in proceedings (trial, appeal, administrative or regulatory proceedings, arbitration, or mediation) concerning Insurance Coverage Law matters;
- viii. representing insurance policy beneficiaries and serving as insurance policy beneficiaries' legal counsel in proceedings (trial, appeal, administrative proceedings, arbitration, or mediation) concerning Insurance Coverage Law matters;
- ix. preparing for and presenting continued legal education programs and preparing scholarly articles on Insurance Coverage Law topics and matters;
- x. providing insurance coverage counseling or risk management advice to Policyholders concerning Insurance Coverage Law matters; or
- xi. any other activities deemed appropriate by the Insurance Coverage Law Board Certification Committee.

The applicant must also describe, through examples or narrative, the applicant's law practice of representing Policyholders or Insurers in matters involving Insurance Coverage Law matters during the 5-year period preceding the date of application. The examples or narrative must include the approximate number and type of clients the applicant has represented during the 5-year period. Consideration will be given to applicants who have served as in-house counsel or who have been employed by governmental agencies.

- (d) Peer Review.** The applicant must submit the names and addresses of 5 individuals who are neither relatives nor current associates or partners as references to attest to the applicant's substantial involvement, practical experience, and competence in insurance law, as well as the applicant's character, ethics, and reputation for professionalism in the practice of law. At least 4 of the 5 references must be lawyers or judges and at least 3 of the lawyer references must be members of The Florida Bar. The Insurance Coverage Law Board Certification Committee may, at its option, send reference forms to other lawyers and judges.
- (e) Education.** The applicant must demonstrate completion of 50 credit hours of approved continuing legal education in Insurance Coverage Law during the 5-year period immediately preceding the date of application. Such hours may include time spent preparing for, presenting, and/or teaching formal training programs including educational programs that are internal to either an employer or to clients, accredited programs, and continuing legal education programs concerning Insurance Coverage Law topics as well as preparing and drafting scholarly articles. Accreditation of hours is subject to policies established by the Insurance Coverage Law Board Certification Committee or the Florida Bar BSLE.
- (f) Examination.** The applicant must pass an examination administered uniformly to all applicants to demonstrate sufficient knowledge, skills, proficiency, and experience in insurance law to justify the representation of special competence to the legal profession and the public.

**(g) Exemption.** An applicant who has been substantially involved in Insurance Coverage Law (at least 40 percent has been spent in active participation in Insurance Coverage Law) for a minimum of 20 years, and who otherwise fulfills the standards under rule 6-XX(c), (d), and (e), will be exempt from the examination. This exemption is only applicable to those applicants who apply within the first 2 application filing periods from the effective date of these standards.

**RULE 6-XX RECERTIFICATION**

During the 5-year period immediately preceding the date of application, the applicant must satisfy the following requirements for recertification:

- (a) Substantial Involvement.** The applicant must demonstrate continuous and substantial involvement in Insurance Coverage Law throughout the period since the last date of certification or recertification. The demonstration of substantial involvement must show that insurance law comprises at least 40 percent of the applicant's practice.
- (b) Practical Experience.** The applicant must demonstrate continued compliance with the requirements of rule 6-XX(c).
- (c) Education.** The applicant must demonstrate completion of at least 75 credit hours of approved continuing legal education in insurance law, in accordance with the standards set forth in rule 6-XX(e).
- (d) Peer Review.** The applicant must submit the names and addresses of at least 3 individuals who are neither relatives nor current associates or partners as references to attest to the applicant's substantial involvement, practical experience, and competence in Insurance Coverage Law, as well as the applicant's character, ethics, and reputation for professionalism in the practice of law. At least 2 of the 3 references must be lawyers or judges, and at least 1 must be a member of The Florida Bar. The Insurance Coverage Law Certification Committee may, at its option, send reference forms to other lawyers and judges.

# Tab 3



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September 12, 2022

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VIA EMAIL ONLY

Re: RPPTL Insurance and Surety Committee, Insurance Coverage Board Cert.

Ms. Crockett,

As you and I recently discussed, I thank you for providing me with the information concerning the proposed addition of a Board Certification in Insurance Coverage Law.

I provided the information to the Executive Council of the Trial Lawyers Section and it was reviewed and discussed at our recent meeting on September 10, 2022. The Trial Lawyers Section has no concerns or objection and wishes you the best of luck with instituting the new Board Certification. Please feel free to contact me if I can be of any further assistance.

Very Truly Yours,

Weston F. Smith, Esq.



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November 9, 2022

Katherine L. Heckert, Chair [kheckert@carltonfields.com]  
Debbie Crockett, Vice-Chair [dscrockett@napleslaw.com]  
Florida Bar Insurance & Surety Committee  
The Real Property Probate and Trust Law Section of the Florida Bar  
651 East Jefferson Street,  
Tallahassee, FL 32399-2300  
*Sent Via Email*

**Regarding: Board Certification in Insurance Coverage Law**

Dear Chair Heckert and Vice-Chair Crockett:

I write on behalf of the non-profit United Policyholders in strong support of the proposed Board Certification in Insurance Coverage law. Given the nuances and high financial stakes involved in insurance legal matters, we believe it is appropriate that the Bar establish a process for distinguishing practitioners that have expertise in insurance coverage law from the bar at large.

United Policyholders is a non-profit organization funded by grants and donations that has been informing, helping, and speaking for insurance consumers in the United States since 1991. Through its Roadmap to Preparedness and Roadmap to Recovery programs, United Policyholders helps Americans be financially strong by fortifying their homes to withstand extreme weather events, buying insurance, and navigating the claim process successfully after a loss. The organization was founded to provide consumers with an advocate and information resource focused solely on the important but complex business of insurance. We address all lines of insurance with a special focus on property insurance and disasters.

In Florida, United Policyholders educates and assists residents with insurance matters and coordinates with the Office of Insurance Regulation, insurance and claim professionals, attorneys and other non-profit organizations. Since Hurricane Andrew in 1992, we have been helping address insurance marketplace and claim problems in Florida and supporting policyholders in recovering from catastrophes, including most recently Hurricane Ian. United Policyholders' services include in-person and online education and problem-solving clinics and seminar, survivor to survivor mental/emotional health support forums, and extensive consumer help and disaster-specific online libraries. *See, e.g.,* <https://uphelp.org/disaster-recovery-help/hurricane-ian-2022/>.

United Policyholders strongly supports the proposal before the Florida Bar to add Board Certification in Insurance Coverage Law and believes that insurance consumers, both individual and corporate, throughout Florida will benefit from a certification process that identifies lawyers that have earned the proposed distinction. In the wake of natural disasters, it is challenging for Florida residents to identify qualified counsel on matters of insurance coverage. The proposed Board Certification will help qualified attorneys accurately market their skillset to potential clients.

November 9, 2022  
Page 2 of 2

Thank you in advance for your consideration of our input and your work on this important matter.

Sincerely,



Amy Bach, Esq. Executive Director  
United Policyholders

Do Not Disseminate



President  
**Curry G. Pajcic**  
Executive Director  
**Paul D. Jess**

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Tallahassee, Florida 32301

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October 26, 2022

Katherine L. Heckert, Chair [kheckert@carltonfields.com]  
Debbie Crockett, Vice-Chair [dscrockett@napleslaw.com]  
Florida Bar Insurance & Surety Committee  
The Real Property Probate and Trust Law Section of the Florida Bar  
651 East Jefferson Street,  
Tallahassee, FL 32399-2300

Re: Insurance Coverage Board Certification

Dear Chair Heckert and Vice-Chair Crockett:

Thank you for your efforts leading the Insurance and Surety Committee (ISC) of the Real Property, Probate and Trust Litigation (RPPTL) section of The Florida Bar. The Florida Justice Association (FJA) is aware that you are applying for a proposed Board Certification in Insurance Coverage Law on behalf of Florida lawyers.

The FJA Property Insurance Section has discussed the information provided about the proposal. We are glad to support this addition to The Florida Bar's Board Certification categories. The FJA tirelessly advocates for consumer-friendly laws. The Insurance Coverage board certification will add value for Florida consumers by identifying the most competent lawyers in a growing and nuanced area of practice. Business owners in Florida will benefit from the counsel from Insurance Coverage board certified attorneys for risk management activities. Florida attorneys will be able to accurately market their skillset to a wide array of potential clients who transact in insurance for personal or commercial pursuits. In sum, this proposed board certification category will improve The Florida Bar, attorneys, and the clients they serve.

We appreciate your dedication to helping consumers identify specialists in the area of Insurance Coverage Law.

Please let me know if you have any questions.

Sincerely,

*/s/ Amy Boggs*

Amy Boggs, Esq.  
Chair, FJA Property Insurance Section

November 3, 2022

Debbie S. Crockett, Esq.  
Cheffy Passidomo, P.A.  
4100 W. Kennedy Blvd., Suite 335  
Tampa, FL 33609  
dscrockett@napleslaw.com

Re: Insurance Coverage Law Board Certification

Dear Ms. Crockett:

The Florida Defense Lawyers Association (“FDLA”) is a statewide organization of civil defense attorneys and insurance professionals formed in 1967. It has over 1200 members and continues to grow each year. We understand that the Florida Bar is considering adding Board Certification in Insurance Coverage Law. The FDLA supports this proposal. The FDLA has several substantive committees that focus on insurance coverage and bad faith. Many FDLA members practice almost exclusively in these areas and would benefit from having their expertise recognized with Board Certification.

We did have one comment. The name of the certification is Insurance Coverage Law. It is our view that the certification should also encompass bad faith law and perhaps should be renamed “Insurance Coverage and Bad Faith.”

Sincerely,

/s/ Francis E. Pierce, IV  
Francis E. Pierce, IV  
FDLA President

/s/ Matthew Lavisky  
Matthew Lavisky  
FDLA President Elect

/s/ Elaine Walter  
Elaine Walter  
FDLA Sec/Treasurer

# Tab 4

**OSBA**  
***Insurance Coverage Law Exam***  
***Study Guide***  
***For Certification***  
***As a Specialist***

Exam Date: Friday, November (check OSBA website for specific date)  
Place: Ohio State Bar Association  
Time: 1:00 p.m. – 5:00 p.m.  
Format: Exam will be approximately 100 multiple-choice questions.  
Content: The exam may cover any of the following areas.

**Insurance Coverage Specialization Examination Topics**

	<u>Percentage</u>
Insurance Contract Formation and Cancellation	10%
<ul style="list-style-type: none"><li>• Policy Applications</li><li>• The Role of Insurance Agents and Brokers</li><li>• Cancellation and Rescission</li><li>• Reformation</li></ul>	
Insurance Policy Construction	5%
<ul style="list-style-type: none"><li>• Contract Ambiguity</li><li>• Construing Exclusions</li></ul>	
Property Insurance	20%
<ul style="list-style-type: none"><li>• Causes of Loss</li><li>• Conditions and Exclusions</li><li>• Claim Adjustment</li><li>• Examinations Under Oath</li><li>• Business Income and Extra Expense</li></ul>	
Liability Insurance	20%
<ul style="list-style-type: none"><li>• Occurrence and Claims Made Policies</li><li>• Business Risk Exclusions</li><li>• Automobile Insurance and Uninsured Motorists</li><li>• Duty to Defend</li><li>• Assignments</li><li>• Bodily Injury, Property Damage, and Personal Injury</li><li>• Successor Liability Coverage</li></ul>	

Other Types of Insurance	10%
<ul style="list-style-type: none"> <li>• Life and Disability</li> <li>• Professional Liability/E&amp;O Coverage</li> <li>• Directors and Officers</li> <li>• Employment Practices</li> <li>• Crime Insurance</li> <li>• Excess and Umbrella</li> <li>• Environmental</li> </ul>	
Insurance Coverage Litigation	10%
<ul style="list-style-type: none"> <li>• Claim File Discovery</li> <li>• Work Product Privilege and Attorney-Client Privilege</li> <li>• Declaratory Judgments</li> <li>• Bad Faith</li> </ul>	
Reoccurring Issues in Insurance Coverage	20%
<ul style="list-style-type: none"> <li>• Reservation of Rights</li> <li>• Late Notice</li> <li>• Intentional Acts Exclusion</li> <li>• Duty to Cooperate</li> <li>• Trigger of Coverage</li> <li>• Waiver &amp; Estoppel</li> <li>• Allocation of Loss</li> <li>• Subrogation</li> </ul>	
Professional Responsibility	5%
<ul style="list-style-type: none"> <li>• Conflicts of Interest</li> <li>• The Tri-Partite Relationship</li> </ul>	
TOTAL	100%



Ohio State Bar Association

# Insurance Coverage Law

Attorney Information and Standards



**Accredited by the  
Supreme Court Commission  
on Certification of Attorneys as Specialists**

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# ATTORNEY INFORMATION & STANDARDS

Ohio State Bar Association  
Specialty Certification  
**Insurance Coverage Law**

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## SECTION 1: INTRODUCTION & POLICY STATEMENTS

### 1.1 **Introduction**

The Ohio State Bar Association Insurance Coverage Law Specialty Certification Program is accredited by the Ohio Supreme Court Commission on Certification of Attorneys as Specialists (CCAS).

This document outlines the Standards by which the OSBA will certify attorneys as specialists in the field of Insurance Coverage law. These Standards will ensure that an attorney Certified under this program possesses an enhanced level of skill and expertise as well as substantial involvement in Insurance Coverage Law . These Standards are further designed to foster professional development and expertise and to enable the Association to thoroughly evaluate the credentials of attorneys seeking Certification.

Finally, the ultimate function and most important goal of these standards is to facilitate public access to appropriate legal services.

### 1.2 **Nondiscrimination Statement**

The OSBA Insurance Coverage Law Specialty Board Certification Program does not discriminate against lawyers seeking Certification on the basis of race, color, national origin, religion, gender, sexual orientation, disability or age. Experience requirements for lawyers seeking Certification that may have an effect on a particular age group are reasonable.

### 1.3 **Organization Statement**

The OSBA, founded in 1880, is a voluntary professional association open to any person who has been admitted to the practice of law, law school students and legal assistants sponsored by an OSBA member.

From the date of its founding until today, the Association's working goals have been to:

- advance the science of jurisprudence;
- promote improvements of the law and administration of justice;
- uphold integrity, honor and courtesy in the legal profession and encourage and enforce adherence to high standards of professional conduct;
- take positions on matters of public interest as deemed advisable;
- encourage thorough legal education;
- cultivate cordial relations among members of the Bar; and
- perpetuate the history of the profession and the Association.

## **SECTION 2: DEFINITIONS**

2.1 As used in these Standards:

- (A) “Applicant” -- An attorney applying to be certified as a specialist under these Standards.
- (B) “Application form” -- The form created and/or approved by the Association, the Specialization Committee and/or the Specialty Board, as may be applicable, that is used to apply for certification under these Standards.
- (C) “Association or OSBA” -- The Ohio State Bar Association.
- (D) “Certified/Certification” -- The result of an applicant successfully completing the application or re-application process under these Standards.
- (E) “Commission” -- The Supreme Court Commission created by Section 2 of Rule XIV of the Supreme Court Rules of the Government of the Bar of Ohio.
- (F) “Insurance Coverage Law” -- Insurance Coverage Law is the area of law involving issues between insurers and policyholders concerning the rights and responsibilities that arise under insurance policies.
- (G) “Recommendation form” -- The form created and/or approved by the Association, the Specialization Committee, and/or the Specialty Board, as may be applicable, that is to be provided to designated third parties to recommend an applicant for certification.
- (H) “Specialty Board” -- The Board appointed by the Association’s president upon the recommendation of the chair of the Insurance Law Committee pursuant to Section 4 of the Standards.
- (I) “Standards” -- The criteria that determines whether an applicant will or will not be certified as a specialist in the field of Insurance Coverage Law.
- (J) “The Insurance Law Committee” -- The Insurance Law Committee of the Ohio State Bar Association.

## **SECTION 3: AUTHORITY**

- 3.1 The authority to grant, revoke, or re-grant certification in the field of Insurance Coverage Law is vested in the Association and as also may be delegated to the Specialization Committee, and to the Insurance Law Committee and its Specialty Board.
- 3.2 No provision contained herein shall in any way limit the right of an attorney certified as specializing in the field of Insurance Coverage Law to practice law in any other field or to act as counsel in any other type of legal matter. Any attorney, alone or in association with any other attorney(s), shall have the right to practice in all fields of law, even though he or she is certified as specializing in the field of Insurance Coverage Law.
- 3.3 Further, no attorney shall be required to be certified as specializing in the field of Insurance Coverage Law before he or she can practice law in such field of law or act as counsel in any particular type of Insurance Coverage Law matter. Any attorney, alone or in association with any other attorney(s), shall have the right to practice in the field of Insurance Coverage Law and to act as counsel in every type of Insurance Coverage Law matter, even if he or she is not certified as being specialized under the Standards.

## SECTION 4: CREATION OF THE SPECIALTY BOARD

- 4.1 There is created an Insurance Coverage Law Specialty Board attached to the Insurance Law Committee. The purpose of the Specialty Board is, with the staff and financial assistance of the Association, to oversee the administration of the Standards.
- 4.2 The Specialty Board is to be composed of between eight (8) and twelve (12) individuals, the majority of whom will be attorneys generally recognized as experts in the field of Insurance Coverage Law. The initial composition of the Specialty Board is to be of four (4) members chosen to serve a two (2) year term, four (4) members chosen to serve a three (3) year term, and with any remaining members chosen to serve a six (6) year term. Thereafter, each member will serve a term of six (6) years and must be an OSBA Certified Specialist in Insurance Coverage Law or an academic. Board members will be appointed by the OSBA president upon the recommendation of the chair of the OSBA Insurance Law Committee and the Chair of the Insurance Coverage Law Specialty Board. The chair of the OSBA Insurance Law Committee shall be an ex-officio member of the Specialty Board.
- 4.3 All Specialty Board members serve on a volunteer basis, without pay, and are not considered to be employees of the Association, or the Specialty Board.
- 4.4 A member of the Specialty Board does not have to be a member of the Insurance Law Committee or of any other committee or section, but must be an OSBA member.
- 4.5 No member of the Specialty Board may be initially certified under the Standards unless they have been off the Specialty Board for a period of one testing cycle.
- 4.6 A member of the Specialty Board may be removed during his or her term by a two-thirds affirmative vote of the other members of the Specialty Board for just cause, such as neglect of duty. A Specialty Board member is entitled to a hearing before the Specialty Board prior to his or her removal, and an appeal may be taken within sixty (60) days after any such removal to an Independent Review Panel.
- 4.7 The Specialty Board shall determine its own meeting and related schedules and its own internal procedures.

## SECTION 5: CERTIFICATION REQUIREMENTS

An applicant for certification as a specialist in the field of Insurance Coverage Law must be an attorney licensed to practice law in the State of Ohio and in good standing and, in addition, must meet the following mandatory requirements as of the date of the filing of the application:

- 5.1 **Substantial Involvement.** The Applicant seeking certification shall be required to make a satisfactory showing of experience through substantial involvement in the specialty area during the five-year period immediately preceding the application. Substantial involvement includes, but is not limited to, the type and number of cases or matters handled and the amount of time spent practicing in the specialty area. It may also include other appropriate criteria such as time spent teaching or publishing in the specialty field. The applicant must make a satisfactory showing that he or she has engaged in a minimum of 520 hours per year (25% of a normal full-time practice) practicing in the specialty field in each of the most recent five (5) year calendar periods preceding the application.

5.2 **Specialists Who Become Judges:** No sitting, full-time judge or magistrate may represent or hold the judge's or magistrate's self out as a certified specialist nor may any Accrediting Organization represent or hold out a sitting, full-time judge or magistrate as a specialist. When a certified specialist assumes a position of sitting, full-time judge or magistrate, the date on which the specialist's certification would otherwise expire shall be noted by the Accrediting Organization. If the specialist's tenure as a sitting, full-time judge or magistrate concludes before that expiration date, and provided the specialist has in the interim continued to satisfy the continuing legal education requirements of Gov. Bar R. XIV, the judge's or magistrate's certification may resume upon request, subject to any reasonable requirements of the Accrediting Organization, and continue until the next expiration date.

5.3 **Peer Review/Recommendations:** The applicant must submit with his or her application for certification, the names of seven (7) separate individual references, none of which may be related to or associated with the applicant in the practice of law by way of partnership or any other professional association. The OSBA will forward the appropriate recommendation forms to the seven (7) references. A minimum of five (5) completed reference forms must be returned to the OSBA for the application to be considered complete. If more than five (5) references are returned to the OSBA, the board may consider all of the references completed and returned. Persons recommending applicants for specialty certification must themselves demonstrate a familiarity with the competence of the applicant in the field of Insurance Coverage Law. References must come from attorneys already certified in Insurance Coverage Law, sitting judges, magistrates or from an attorney who meets the "substantial involvement" requirement and who are familiar with the applicant's competency in the specialty. The Specialty Board reserves the right to reject recommendations and request additional recommendations. The recommendations in regard to thereto shall be forms created by the Association, or Specialty Board for such purposes.

5.4 **Written Examination:** The applicant must pass a written examination of suitable length and complexity. The examination shall test the knowledge and skills of the substantive and procedural law in the specialty area and include professional responsibility and ethics as it relates to the particular specialty area. The areas of inquiry will include, but are not necessarily limited to: Insurance Contract Formation and Cancellation, Insurance Policy Construction, Property Insurance, Liability Insurance, Insurance Coverage Litigation, Recurring Issues in Insurance Coverage, Professional Responsibility, and Other Types of Insurance such as Life and Disability, Professional Liability, Directors and Officers, Employment Practices, Excess and Umbrella, Environmental.

The examination will be prepared, administered, and graded by the Specialty Board under the guidance of an independent testing service retained by the Association in order to ensure the reliability and validity of the examination. Matters related to the time, place, pass/fail rate and related examination issues are to be determined by the Specialty Board.

5.5 **Certificates of Good Standing & Liability Coverage:** The applicant seeking certification shall furnish satisfactory evidence that:

- a. The lawyer is active and in good standing pursuant to Gov. R. VI of the Supreme Court of Ohio, and the lawyer's fitness to practice is not in question by virtue of disciplinary action in Ohio or in another state;
- b. Coverage by professional liability insurance continually maintained through a reputable company that is admitted in Ohio, in an amount not less than Five Hundred Thousand Dollars (\$500,000) per loss;
- c. The lawyer has demonstrated the ability to pay all claims that fall within the deductible amount selected by the attorney under the insurance policy.

Professional liability insurance will not be required of those lawyers who

- (i) can demonstrate to the OSBA's satisfaction that the lawyer's practice relationship with the lawyer's clients will fully cover any professional liability claim made against the lawyer in an amount not less than five hundred thousand dollars (\$500,000) per loss.
- (ii) are employed by an entity, other than a law firm, whose sole professional practice is for that entity;
- (iii) are employed by a governmental entity which would be immune from liability claims.

The lawyer shall notify the OSBA immediately of any cancellation or change in coverage.

5.6 **Disciplinary Action:**

- a. Applicants for certification or recertification shall furnish satisfactory evidence of their fitness to practice and good standing with the Ohio Supreme Court.
- b. When filing an initial application or application for recertification, the applicant shall disclose to the appropriate Ohio State Bar Association Specialty Board any disciplinary action taken against the applicant by the Supreme Court of Ohio; any federal or state administrative agency, or other agencies of competent jurisdiction.
  - The applicant shall disclose to the Ohio State Bar Association Specialty Board any pending or prior malpractice complaint, judgment, settlement or admission of malpractice. Each matter involving a civil suit must contain a copy of the complaint, answer and final judgment entry. Each settlement or admission of malpractice must contain a description of the underlying claim of malpractice and how the claim was resolved.
  - The applicant shall disclose to the Ohio State Bar Association Specialty Board any felony conviction that arose after the date the attorney was admitted to the practice of law. Applicant must provide a copy of the indictment or bill of information, order of conviction and sentence.

Failure to disclose such information is a material misrepresentation and may cause rejection or decertification.

- c. Applicant need not disclose pending disciplinary complaints or matters that were closed or dismissed without discipline.
- d. If an attorney is disciplined by the Supreme Court of Ohio; any federal or state administrative agency, other agencies of competent jurisdiction or is deemed no longer in "good standing" with the Supreme Court of Ohio during any time during which they are certified, the certified specialist has a period of sixty (60) days from the date the action is taken by the Supreme Court of Ohio to disclose this information to the OSBA Specialty Board.
- e. Failure to maintain good standing with the Supreme Court of Ohio shall result in immediate decertification as a specialist.

5.7 **Continuing Legal Education:** The Applicant seeking certification shall be required to complete a minimum of thirty-six (36) hours of participation in continuing legal education in the specialty area in the three-year period preceding the lawyer's application for certification. Continuing Legal Education (CLE) must meet the requirements of Rule X Section 4, of the Supreme Court Rules of the Government of the Bar of Ohio. Applicants must include a copy of their CLE transcript with their application for certification and must include proof of attendance of all courses not listed on the transcript. CLE must be of "intermediate" or "advanced" level. CLE hours in the field do not include credit for attendance at seminars promoted as "basic" or "introductory" in nature but may include speaking at such seminars.

## **SECTION 6: DUTY TO SUBMIT ANNUAL REPORT, ANNUAL FEE**

6.1 **Certification:** An applicant for certification will be deemed certified as a specialist in the field of Insurance Coverage Law upon the successful completion of the requirements herein and the affirmative decision of the majority of the members of the Specialty Board. The certification will be effective on the January 1st following the Specialty Board's decision approving an applicant's certification. Any applicant denied certification at any stage of the process may appeal the denial under the procedures set forth in these Standards under Section 10: Appeals Procedure. Notwithstanding such procedures, an applicant may also bring a clerical or related error to the Specialty Board's attention within thirty (30) days of the issuance of notice to the applicant of the complained of action allegedly caused by a clerical or like error.

6.2 **Annual Report:** Any attorney certified under the Standards must, in order to maintain his or her certification, annually report by way of affidavit, or upon a form that may later be created for such purpose, that there have been no material changes in the information submitted in the attorney's application for certification. If there have been material changes, then such changes must be detailed on a form to the Insurance Coverage Law Specialty Board. Further, the certified attorney must show that, in addition to the requirements of Rule X, he or she has completed twelve (12) hours of continuing legal education every two years of certification, with the continuing education hours meeting the criteria set forth in Section 5.7 herein.

Said affidavit or form is due to be filed with the Specialty Board, or the Association, as may be determined, between October 1st and December 1st of each year that an attorney is certified under these Standards. Annual reports must be accompanied by annual fees as established by the fee schedule of the OSBA, section 9 hereof. The Specialty Board, by an affirmative vote of the majority of its members, may de-certify an attorney previously certified under the Standards if material changes reported on the affidavit or form, or that may otherwise come to the Specialty Board's attention, are such that the attorney involved would no longer be qualified for certification or re-certification under the Standards. Any attorney so de-certified may request reconsideration and, if denied, appeal such de-certification pursuant to the procedures outlined by these Standards under Section 10: Appeals Procedure. or any such subcommittee thereof convened for such purposes.

Any attorney certified under the Standards who has his or her license to practice law in the State of Ohio revoked or suspended shall automatically be deemed de-certified as of the date of said revocation or suspension without regard for the procedures listed in the foregoing paragraph. Upon any later reinstatement of the license to practice law in the State of Ohio, such reinstated attorney would be eligible to reapply for certification under the Standards.



## **SECTION 7: CERTIFICATION PERIOD AND RE-CERTIFICATION**

7.1 The certification period under these Standards is a period of six years.

7.2 In the calendar year preceding the expiration date of an attorney's certification under these standards, hereinafter referred to as "the calendar year", an attorney certified under the standards must apply for recertification under the same criteria as set forth in Section 5 hereof, with the exception of subsection 5.4 (written examination) and provided that the CLE criteria shall be as set forth in Section 6.2 hereof. Applications for recertification shall be available between October 1<sup>st</sup> and December 1<sup>st</sup> of the calendar year. If a full and complete application is not completed by December 31 of the calendar year, the applicant shall be decertified, and must apply for recertification under the same criteria as set forth in Section 5 hereof including the written examination.

(a) A certified specialist may exempt from the requirements of Section 6.2 & Section 7 of these standards in the event of a severe, prolonged illness or disability that prevents the specialist from participating in accredited continuing legal education programs and activities and in the requirements for certification renewal established by the Commission and the OSBA as follows:

(1) Before the deadline for recertification, the lawyer shows, by a preponderance of the evidence and to the satisfaction of the certifying organization, that completing the requirements for recertification presents an extreme hardship and that recertification is significantly more difficult as a result of the severe, prolonged illness or disability;

(2) After the deadline for recertification, the lawyer shows, by a preponderance of the evidence and to the satisfaction of the certifying organization, that completing the requirements for recertification presented an extreme hardship, that recertification was significantly more difficult as a result of the severe, prolonged illness or disability, and that there exists an adequate explanation as to why the lawyer did not seek exemption prior to the end of the lawyer's certification period.

(3) The duration of an exemption granted pursuant to Section 7.2 (a) of this section shall be dependent upon the severity of the lawyer's illness or disability and may be limited, as determined by the OSBA and the specialty board.

## **SECTION 8: ADOPTION AND AMENDMENT**

8.1 These Standards were effective upon the approval thereof by the Association's Board of Governors and the Supreme Court Commission.

8.2 The power to amend these Standards is vested in the Insurance Coverage Law Specialty Board, subject only to review and approval by the OSBA the Association's Board of Governors, and/or the Commission.

8.3 The Standards further incorporate any further rules or regulations that the Commission may later issue as to the creation of a specialty plan or a specialty board. Any language in these Standards that is contrary to any provisions of any Commission future rules or regulations is deemed to be null and void and is to be replaced by such contrary language, subject only to the Insurance Law Committee's decision to withdraw its Plan of Specialization.

## SECTION 9: FEES

- 9.1 **Application fee:** Applicants must submit a one-time non-refundable application fee:
- |              |       |
|--------------|-------|
| OSBA member: | \$250 |
| Non-members: | \$300 |
- 9.2 **Exam fee:** Applicants must pay a non-refundable exam fee each time the exam is administered:
- |               |       |
|---------------|-------|
| OSBA members: | \$225 |
| Non-members:  | \$275 |
- 9.3 **Annual reporting fee:** Applicants must pay a non-refundable annual reporting fee each year after certification of:
- |              |       |
|--------------|-------|
| OSBA member: | \$125 |
| Non-member:  | \$175 |
- 9.4 **Re-certification fee:** Applicant must pay a non-refundable recertification fee of:
- |              |       |
|--------------|-------|
| OSBA members | \$200 |
| Non-member:  | \$250 |

## SECTION 10: APPEALS PROCEDURE

10.1 **Notice of Action.** An applicant who is denied certification, or a specialist who is denied recertification, will be notified by registered or certified mail sent to the lawyer's last known address of the OSBA Specialty Board's ("Board") decision ("Notice"). The reasons for the Board's action shall be set forth in that Notice. The Notice shall advise the lawyer that he or she may file, within 30 days of the receipt of the Notice, a Request for Reconsideration of the Board's decision.

10.2 **Reconsideration.** The Request for Reconsideration shall include any additional information or supporting material that the lawyer believes will help the Board in its reconsideration of the initial decision. The Board's decision shall be reconsidered by the entire Board or a committee of the Board appointed by the chairperson.

The Board shall send the reconsideration decision in writing to the applicant or specialist by registered or certified mail within 45 days of the receipt of the Request for Reconsideration setting forth the reasons for the decision. The Board shall notify the applicant or specialist that he or she may, within 30 days of the receipt of the decision on Reconsideration, appeal in writing to an Independent Review Panel.

10.3 **Independent Review Panel.** If a request by an applicant or a specialist is made for an appeal to an Independent Review Panel, the chair of the OSBA Specialization Committee shall appoint a three-person Independent Review Panel. The Independent Review Panel shall include at least two persons whose practice is primarily in the same specialty area. When the subject of the appeals relates to a matter of substantive law, the entire Independent Review Panel shall be comprised of persons whose practice is primarily in the same specialty area. No member of the Review Panel shall have had previous involvement in considering the applicant's or specialist's applications.

10.4 **Hearing.** The hearing before the Independent Review Panel will be *de novo*. The Board may send a representative to the Independent Review Panel hearing. The Independent Review Panel may consider any relevant evidence, including hearsay, if it is the type of evidence upon which reasonable persons rely, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. The rules of privilege shall be effective to the same extent that they are recognized in civil actions. The Independent Review Panel may exclude incompetent, irrelevant, immaterial and unduly repetitious evidence.

The Independent Review Panel shall report its findings, and decision to the Board. The Board shall notify the applicant or specialist of that decision by registered or certified mail sent to the lawyer's last known address.

The decision of the Independent Review Panel shall be final.

*Adopted by the Board of Governors 2011*

*Amended by the Board of Governors – February 2018*

# Tab 5

**Petition in Support of Insurance Coverage Law Board Certification**

I understand that the Insurance and Surety Law Committee of the Florida Bar RPPTL Section proposes to establish board certification standards in Insurance Coverage Law as an amendment to Chapter 6, Rules Regulating The Florida Bar.

Board certification recognizes attorneys' special knowledge, skills and proficiency in specific areas of law and professionalism and ethics in practice. Board certified attorneys are allowed to identify or advertise themselves as "Florida Bar Board Certified," board certified experts or board-certified specialists, and use the letters B.C.S for Board Certified Specialist. Established as a voluntary program by the Supreme Court of Florida, board certification helps consumers identify legal specialists. Certification is the highest level of evaluation by The Florida Bar of the competency, experience, and professionalism of attorneys in the areas of law approved for certification.

A lawyer who is a member in good standing of The Florida Bar and who meets standards prescribed by the Florida Supreme Court may become board certified. The minimum requirements for certification will be:

- 7 years in the practice of law;
- Substantial involvement in the field of Insurance Coverage Law, meaning 40 percent has been spent in active participation in Insurance Coverage Law during at least 5 of the 7 years immediately preceding the date of application;
- Passage of an examination;
- Satisfactory peer review as to competence in the specialty field as well as character, ethics, and reputation for professionalism in the practice of law; and
- Satisfaction of a minimum of 50 CLE hours in the area of Insurance Coverage Law during the 5-year period immediately preceding the date of application.

Using the minimum standards above as a guide, board certification in Insurance Coverage Law will encompass the practice of law that involves issues, disputes, and matters among or between insurers, policyholders, or third-party insurance policy beneficiaries concerning the rights, duties, responsibilities, and coverages that arise out of insurance policies. Included subspecialties are first party, third-party, bad faith/extracontractual claims, and state regulatory procedures and practices, which would be part of (not separate or in addition to) the Insurance Coverage Law board certification. Knowledge and skills required include the areas of insurance contract formation and cancellation, insurance policy construction, insurance policy interpretation, property insurance, liability insurance, insurance coverage litigation, reinsurance, bad faith/extra contractual litigation, recurring issues in insurance coverage, professional responsibility, and other types of insurance such as life and disability, professional liability, directors and officers, employment practices, commercial crime and fidelity, excess, umbrella, environmental, workers' compensation, builder's risk, and OCIPs/CCIPs. Policyholders include any insureds, including named insureds and additional insureds under any type of insurance policy. Beneficiaries include individuals and entities who may have rights to recover from insurers even though they are not insured under a policy, including those who hold judgments or assignments entitling them to recovery from an insurer by operation of law. Insurers include any type of insurance company including primary and excess insurers, and reinsurers, whether admitted or surplus lines insurers.

Preliminary recommendations as to the other requirements will include, for recertification, a minimum of 75 CLE hours in the area of Insurance Coverage Law during the 5-year period immediately preceding the date of application for recertification.

The fees for participation are set at:

- \$250 - Application
- \$150 - Exam (Laptop testing optional for \$60 surcharge)
- \$150 - Annual Fee (for each year except the 5th year when renewal occurs)
- \$250 - Renewal Fee (every 5th year)

I have read the information above and by my signature below, I affirm that I endorse the efforts of the Insurance and Surety Law Committee of the Florida Bar RPPTL Section to establish Insurance Coverage Law as an area of board certification, I am now or expect to be qualified by the projected implementation date (late 2024), and it is my intent to apply for certification in this area if approved by the Supreme Court of Florida.

\_\_\_\_\_  
Signature & Date

\_\_\_\_\_  
Print Full Name (on file with Florida Bar)

\_\_\_\_\_  
Florida Bar Number

\_\_\_\_\_  
Email Address (on file with Florida Bar)