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Family Section Works From Home and 2020 Virtual Annual Convention (Photos)

Can Your Client’s Immigration Status Stop the Court from Exercising Subject Matter Jurisdiction?

An Open Letter to Non-Family Law Attorneys

Why Some Family Law Cases Do Not Settle

Mentorship: An Essential Tool as a Young Associate
Introduction to our New Chair

Douglas A. Greenbaum
2020-2021 Section Chair

The Commentator editorial staff and Publications Committee are pleased to introduce Doug Greenbaum, the newly sworn Chair of the Family Law Section of the Florida Bar. Doug has been involved with the Family Law Section for over 15 years and chaired several committees prior to his appointment to the Executive Committee three years ago. He was also the go-to planner of many Section retreats due to his great taste and attention to detail. Doug’s focus is always on serving others. His practice includes Guardian ad Litem work for children in family court as well as guardianship work for vulnerable adults in probate court. For years, Doug has worked with other leaders to ensure the highest quality programming by the Florida Bar. This year he is the Vice-Chair of the Continuing Legal Education Committee for the Florida Bar.

Doug is a graduate of University of Florida and Nova Law School. He has been an attorney since 1987. When he was Chair-Elect, he and immediate Past Chair, Amy Hamlin, took time to meet with the members of Executive Council throughout the state to listen to their interests, get their feedback on leadership, and develop a plan for his year as Chair. Doug’s theme for this year is INTEGRITY which he defines as doing the right thing when no one is watching. Doug said, “If you come from a place of integrity which is being true to yourself, it will impact how you react with your family, friends and will have a positive impact on the legal profession as well as the community in which we all live.” He wants us to remember that being kind, understanding and tolerant of differing views does not mean giving in or changing your beliefs but rather being cognizant of other points of view. If we do this then world can become a better place for all.
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Message from the Co-Chairs of the Publications Committee

UNPRECEDENTED DOESN’T EVEN DESCRIBE IT!

Dear Family Law Section members, we have been hearing the term “unprecedented” to describe the current season in our society including a world-wide pandemic that changes the way we are practicing law and running our businesses. But we would suggest, our collective experience is less unprecedented and more total upheaval! Nonetheless, one thing you can count on is your Family Law Section to do its best to serve its members’ needs during these uncertain times. And the consistent quality and timeliness of the wonderful and thoughtful articles written by judges, experienced attorneys, and young attorneys on the rise in this edition of the Commentator is a perfect example. How we navigate these massive changes to our culture, our workplace and our business plans really depends on our outlook. Many of the articles in this issue speak to what it means to be a family lawyer. And, now more than ever, we have opportunity to really contemplate what motivates us as lawyers and how we can use our skills and talents to be change agents to serve our communities both in our private and professional lives. Enjoy the Family Law Commentator, and if you want to author an article for an upcoming issue, please reach out to publications@familylawfla.org. Stay safe everyone!

Visit FAMSEG and see what’s new!

The Family Law Section’s FAMSEG is a monthly e-newsletter that keeps section members apprised of section activity. It includes upcoming meetings, events and announcements, and occasionally features substantive topics of interest.

www.familylawfla.org
The making of every edition of the Commentator is special, but this edition was particularly special given the pandemic and global protests. The practice of family law, and law in general, is going through an impressive transformation, and the Commentator strives to provide articles that will share applicable knowledge and helpful experiences. Thank you to the authors of this Commentator edition for their inspiring dedication. I also must thank our Publications team for their hard work and motivation. The Commentator welcomes your submissions for publication at publications@familylawfla.org.
## Family Law Section Fall Meeting Schedule
### Thursday, August 21, 2020
**Held Virtually***

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### Executive Council of the Family Law Section
**Saturday, August 22, 2020
Held Virtually***

9:00 AM – 5:00 PM

*Meeting times are subject to change. Virtual platform login will be provided by the chairs of committees prior to the meetings. For up-to-date information on the meeting schedule, visit www.familylawfla.org.
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On December 31, 2019, a pneumonia of unknown cause was detected in Wuhan, China. On January 30, 2020, the World Health Organization (WHO) declared the coronavirus outbreak a Public Health Emergency of International Concern. Even before I left for Orlando for the Marital & Family Law Certification Review Course, my wife and I had canceled our extra night on Saturday and our plans to go to Universal Studios on Sunday. We decided that standing in lines with people who had come from all over the world was not a particularly good idea.

By the beginning of March, my law partner and I were discussing what we would do if we had to close the office because of the Coronavirus, which was less than two weeks before the WHO declared a pandemic. We sent out a Coronavirus policy to our employees on March 5, outlining preventative measures that everyone was expected to follow, including a mandatory stay-at-home order for anyone who was experiencing any symptoms of any kind of illness, as well as reiterating our disaster policies as outlined in our Employment Handbook. If I had ever doubted that there was value in having an employment handbook (I did not), this situation removed even the slightest doubt. We did not have to invent the wheel under pressure.

On March 13, we sent our clients an email update about how we were adapting to the situation. We were limiting in-person meetings, we purchased a business Zoom account to facilitate videoconference meetings instead, upgraded Adobe to permit easy electronic document signing (boy did that come in handy) and we put hand sanitizer in our waiting room for clients that still had to visit the office. By the following week, we had closed the office to all clients and our entire firm switched to working remotely, with the exception of our single technologically-devoid staff member (no internet or computer at home, no smart phone that could handle anything) who continues coming into the physical office by herself, opening the mail and printing the immigration forms that still have to be sent to Federal agencies by mail.

I had two mediations in the first week of “Corona-closure” via Zoom. Both were settled. I became an immediate fan of this technology. By the second week I had 2 uncontested final hearings without ever having to leave my house. Could this be the wave of the future? I could get used to this! By the end of the third week I had participated in 2 evidentiary hearings with exhibits, and more webinars than I had participated in during the past 5 years. All
my CLE’s for the next reporting cycle are now done, including those pesky technology credits! So, if you are looking for something to do in your spare quaran-time, (see what I did there?), check out the webinars available online. The Broward County Bar Association in particular has a wide array of offerings at incredibly reasonable prices on their website https://cle.browardbar.org/us/, as does the Florida Bar’s www.legalfuel.com, many of which are free.

There have been challenges for many of us. And I suspect that some of those challenges are a result of being “Boomers” rather than “Millennials.” Younger lawyers seemed to have far less trouble making the leap into these new technologies. Several of my contemporaries and elders have not been able to adjust. “I’m not comfortable with mediation by videoconference. I don’t think it will be as effective” one lawyer told me. Other lawyers have been insisting on canceling hearings because they have not figured out how to conduct a hearing without having papers in hand to give to the Judge and the witness. And, I suspect, many “Boomers” don’t want to learn. Change is hard. Learning new technology can be hard, especially for lawyers (and their staff!) who were not especially comfortable with technology to begin with. I am talking to all of you still using AOL email for business, and you WordPerfect loyalists (I was one of them before I threw in the towel about 7 years ago and joined the Microsoft world). Some of you do not even have access to your email once you leave your office; it does not go to your cell phone, and you don’t have a relationship with an IT firm to help you through the transition. Now would be a good time to get started.

Millennial attorneys are laughing. They have been trying to tell us Boomers that our reliance on paper and pen is misplaced. They have been doing their legal research on their iPhones since they entered law school. They don’t know what it is to have to start with Fla Jur, go to West’s Florida Digest, make a list of all the case citations that look promising, pull all the Southern Reporters off the shelf and open them up to the cases we wrote down, read the cases and then take the ones we liked over to the copier and photocopy them, smashing the cover down as hard as we could so that we minimized the amount of black around the edges, and the print didn’t come out slightly curved.

Millenials are handling the videoconferencing of mediations and hearings with a shrug of the shoulders and a “what’s the big deal” attitude. They are wondering why this is not an option going forward into the post-Coronavirus-shutdown future. I think I am joining their ranks.

Now I will not lie. There have been significant challenges to shifting the practice of law and the court system to an almost entirely remote operation. Some Circuits in our State have...
adjusted much more quickly and completely than others. From the completely non-scientific poll I conducted on one of my state-wide lawyer Facebook groups, the 17th Circuit has gotten the highest marks (for once Broward County isn’t the laughingstock of the state!) and several Circuits including the 20th and the 7th are getting failing grades. Some were slow to ramp up but have made big strides over the past weeks (I am looking at you 15th and 11th!) Perhaps at the next major Bench/Bar conference, a task force could work on some uniform procedures to be utilized in the future. Surely this will not be the last emergency the Courts experience, and the citizens of Florida deserve the surety that the Court system, so essential to the redress of our disputes, can continue to function under the most challenging circumstances.

Nancy K. Brodzki is the founding partner in the law firm of Brodzki Jacobs, located in the heart of downtown Coral Springs. Nancy is a graduate of Newcomb College of Tulane University and the University of Miami School of Law, with honors. She was admitted to the Florida Bar in 1986, is Board Certified in Marital & Family Law and a Florida Supreme Court Certified Family Mediator. Her practice is focused on collaborative family law, family mediation, complex family law litigation, LGBT family law, adoption and surrogacy, and she is a certified Guardian Ad Litem for children in family cases. She has been a leader in the legal battle for marriage and divorce equality and LGBT rights. She filed the first challenge to the State ban on same-sex marriage in September 2013 and obtained for her client the first same-sex divorce in Florida as a result of that successful constitutional challenge on December 17, 2014.

The Family Law Section of the Florida Bar honors the memory of Mary Genova, mother of Section members Anthony Genova and Jeannette Genova. Mary attended many events and retreats with Anthony and Jeannette. Mary became an “honorary” member of the Family Law Section by gracing us with her indomitable spirit and love for all. She will be missed. Here she is pictured with Family Law Section Administrator, Willie Mae Shepherd, taken during the Out-of-State retreat in Charleston, South Carolina, December 2019. In loving memory of Mary Genova, November 1, 1927 to May 5, 2020.
DID YOU KNOW?
Non-Attorneys Can Become Affiliate Members of the Family Law Section of the Florida Bar!

Benefits of becoming a member:

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• Receive the Family Law Section’s Commentator, a quarterly publication containing all of the latest news involving the Family Law Section and Florida family lawyers.
• Receive the Family Law Section’s e-Newsletter, FAMSEG.
• You can even publish articles concerning your field in the Commentator and FAMSEG.
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Social Investigators  Guardian Ad Litems  Appraisers
Mediators  

Please visit the Family Law Section of the Florida Bar website to register as a member at familylawfla.org.

Membership is only $65.00.
TECHNOLOGY

Millennials: Battle Tested and Still Surviving

By: William “Trace” Norvell, Esq.

On March 16, 2020, President Donald J. Trump and the Centers for Disease Control and Prevention, hereinafter “CDC,” issued the “15 Days to Slow the Spread” guidance advising individuals to adopt far-reaching social distancing measures, including avoiding gatherings of more than ten (10) people, and in states with evidence of community spread, recommending restrictions to certain establishments conducive to mass gatherings and congregations.1 On March 29, 2020, President Trump extended such guidance to be in effect until April 30, 2020.2 On Tuesday, March 31, 2020, the President updated the guidance, renaming it “30 Days to Slow the Spread”.3 Following the recommendation of the Federal Government, on Wednesday, April 1, 2020, Gov. Ron DeSantis issued his statewide “Stay at Home Order”.4

As I sit at my makeshift home office planning my day around Zoom conferences, text messages with my boss and co-workers, and hearings held via the internet the novel coronavirus (hereinafter “COVID-19”5) spreads throughout the world and onto our doorsteps. Considering the reactive measures lawyers have taken to zealously represent their client’s interests during these uncertain times, one cannot help but reflect on how much has changed, how times will never be the same again, and how these changes that would affect my coworkers and peers. At 35 years old, I am on the outskirts of being a member of the Generation Y, commonly referred to as Millennials.5 We Millennials comprise the associates at your law office, the paralegals and receptionists, and, in some cases, are running our own law offices with our names on the shingle. Many millennials are also the members of the Florida Bar Young Lawyer Division. Many of us hold positions on boards and committees scattered throughout our respective counties, as well as the Family Law Section of the Florida Bar. From my Millennial vantage point, the experience of the stay-at-home or shelter-in-place orders is much different for the millennial members of the Family Law practice than the older generations. To understand how, you have to fully grasp our history as a generation thus far, from a Millennial’s perspective.

Millennials grew up in a weird hybrid of playing outside with friends, using phones still attached to the wall, and going to Blockbuster to see the latest movie while at the same time having computers in our homes with access to the internet (even if it was dial-up), which provided access to information and music (remember the Napster and LimeWire days?), as well as the ability to communicate electronically with our peers, whether it was via e-mail, a pager, or digital message (AOL instant messenger). When we got a bit older, we embraced the use of cell phones, text...
Millennials
CONTINUED, FROM PAGE 13

messaging, and social media platforms such as Facebook, Instagram, and Snapchat. As our phones got smarter, we got more tech savvy and learned how to use this technology to fully change how we date, work, go to the doctor, and even raise our children.

We Millennials have also had our share of tragedy and hard times: we witnessed the September 11, 2001 attacks —most of us have had friends or family who either have served or are currently serving in conflicts overseas as a direct result of that day—and in the late 2000’s, when it came time for us to get jobs after college to pay off the massive debt we took on to pay for school, we found the country in a massive recession with no jobs to be found. When the recession forced many of us to move back in with our parents, some of us worked various jobs in the service industry not commensurate with our respective level of education. My personal Millennial experience led me to living at home for almost a year until I got a job as a schoolteacher. While a full-time schoolteacher, I moonlighted for seven years as a server and a valet driver. In 2014, as a result of the salary concessions teachers made during the 2008 recession, I made the decision to leave teaching to become an attorney.

For Millennials, the once-in-a-generation recessions have occurred just one decade apart from one another, resulting in particularly damaging consequences for Millennials. Compared to other generations at the same point in their lives, people currently in their 20’s and 30’s have relatively low levels of home ownership, net worth and real income. Because an economic crisis hampers job mobility, the effects of one early on in a person’s professional life can last for the next 20 years. Millennials now worry that they will get stymied in career advancement because another recession will result in Baby Boomers not retiring on schedule, resulting in less upward mobility. Millennials are becoming increasingly worried that conversations about the current situation will become less about the steps we are taking to combat infection and trend toward issues surrounding a reduction in billable hours, furloughs, and the lasting effects of an economic recession. As the nation watches, the unemployment number skyrockets to unprecedented numbers and our fears and stress for our future becomes more and more a factor.

Unjustly branded as lazy and entitled (for moving back home?), Millennials occupied Wall Street, were successfully elected to Congress, and most recently had our first serious contender for President in a major political party primary race. Now, we find ourselves working from home, many of us with small children, and social distancing in an effort to “flatten the curve.” As a generation, Millennials have grown up during a technical revolution, terrorist attacks, countless shootings in our schools and neighborhoods, two massive economic disasters occurring during our crucial working and career building years, and now a pandemic; it is safe to say that we, as a generation, are battle-tested to cope with this new world altering crisis. Like our Great-Grandparents who endured the Great Depression, we will always be fraught with the underlying stress that recessions can have on a generation including lingering uncertainty surrounding our financial security.

As COVID-19 crept closer and closer to Florida and the federal and state governments seemingly left it up to the individual counties to police themselves, information seemed to be in constant flux, changing from minute to minute. Questions just seemed to keep piling up with no real answers: How far would my county go in shutting down businesses? Are the Courts going to be closed? Is the office/building we
work in going to be mandatorily closed? This period of uncertainty was particularly confusing for a firm that practices in more than one county, and in an area of law that affects client’s families on a daily basis. The pandemic made the lack of modern technology in both the courtroom and the law office apparent. As the future looked uncertain and the partners and owners of firms, both large and small, started to figure out the process of making the practice virtual, many Millennials, having grown up with technology and internet, were helpful in identifying online procedures and methods to address our cases.

In the new normal, I find irony in that while practicing social distancing, I have connected more with the other Millennials, both professionally and personally, than when I could actually meet with them in person. I have found myself bouncing legal theories off other associates more and communicating in a way I never did before. Millennials, it seems, have been “training” for our current virtual status quo and like the other major events that has affected our generation, Millennials have taken it in stride and rolled with the punches. I think our reaction can best be summed up by what Rudy Ruetiger said in the film Rudy when asked if he was ready to take the football field for the first time in a game: “I’ve been ready for this our whole life!”

Once again, we all are on the cusp of a major shift in how we practice law, similar to the technological revolution of the 1980s and 2000s, it will never be the same and we all will be the lawyers pioneering the new frontier, spearheading the continued use of virtual hearings and depositions, the remote access home office, and the video committee meetings. And when it comes time for all of us to emerge from our homes and head back to the office, to the Gen. Xers and Boomers, most of who are our employers and/or mentors, please feel free turn to us, your millennial co-workers, we can help. For better or worse, the integration of new technology into our daily lives is kind of our thing, and we are good at it. I for one will continue to use Zoom and other similar apps going forward, the uses will not diminish once we all return to the office, this is not a fad or a temporary fix. We can use what we learned from this crisis to move forward and innovate the practice of law in the new, post COVID-19 world, such as how to make our on-line practice more secure and how to reach a wider variety of clients and their needs. The world can never go back to the old way of doing things, that is not how it works, Pandora’s Box has been opened, and the Millennials are here to help bridge the gap and advance us into the “new” twenty-first century.

William “Trace” Norvell is an associate with The Reid Law Group in Boca Raton, Florida, where he practices exclusively in the areas of marital and family law. Prior to practicing law, Trace was a social studies teacher in Palm Beach County. Trace is a graduate of Georgia Southern University where he earned his Bachelor’s degree in History. Trace received his Juris Doctorate from Nova Southeastern University. Locally, Trace sits on the board for the Palm Beach County Bar Association’s Young Lawyer Section and is a member of the Palm Beach County Bar Association Unified Family Practice Committee. Trace is an active member of the Family Law Section of the Florida Bar serving on various committees and recently was nominated to serve on the Executive Council for the Family Law Section of the Florida Bar. A native Floridian, Trace grew up in Seminole County, and lives in Palm Beach County with his Wife and Daughter.

Endnotes
2 Tamara Keith et al., How 15 Days Became 45: Trump Extends Guidelines to Slow Coronavirus, (Morning continued, next page
Millennials
CONTINUED, FROM PAGE 15


9 Shu Lin Wee, Delayed Learning and Human Capital Accumulation: The Cost of Entering the Job Market during a Recession (Mar. 22, 2016) available at https://docs.google.com/viewer?u=a-v&pid=sites&srcid=ZGVmYXVsdGRvbWFpbnxzahVsaW53ZWVZ3g6Mi0vNTFmYjdjNzRjMTJiOA; See also Joseph G. Altonji et al., Cashier or Consultant? Entry Labor Market Conditions, Field of Study, and Career Success, 34(S1) J. of LABOR ECON., S361 (2016). (People who enter a labor market with high unemployment typically see a 10% hit to income in the first year, with the effect averaging out to a 1.8% reduction in yearly earnings over 10 years.)

10 Bosley, supra., citing Chip Espinoza, Dean of Strategy, and Innovation at Vanguard University, “You’re really looking at a workforce that is going to continue to age and continue to create challenges for younger generations in their upward mobility, Millennials will have to rent longer, co-habitate longer, and stay in starter homes longer.”

CHAIR’S AWARD OF SPECIAL MERIT

Awarded for your leadership, commitment, and labor to benefit the Family Law Section of the Florida Bar.

SARAH C. KAY

JACK A. BORING

CHRISTOPHER M. RUBBOLLO

SPOTLIGHT AWARDS

Awarded in recognition of your positive impact and outstanding service to the Family Law Section of the Florida Bar and its goals.

TRISHA P. ARMSTRONG

LINDSAY A. GUNIA

JEANETTE D. GENOVA

SPOTLIGHT AWARDS

Awarded in recognition of your positive impact and outstanding service to the Family Law Section of the Florida Bar and its goals.

LINDSAY B. HABER

CHELSEA MILLER

PHILIP J. SCHIPANI

SPOTLIGHT AWARDS

Awarded in recognition of your positive impact and outstanding service to the Family Law Section of the Florida Bar and its goals.

EDDIE K. STEPHENS, III

AMANDA P. TACKERBERG

THE BUZZ AGENCY

LEGISLATIVE AWARDS

Awarded with grateful appreciation for your invaluable contributions and the time you spent protecting Florida’s families during the 2020 legislative session.

SHEENA A. BENJAMIN-WISE

AIMEE R. CROSS

DAVID L. HIRSCHBERG

LEGISLATIVE AWARDS

Awarded with grateful appreciation for your invaluable contributions and the time you spent protecting Florida’s families during the 2020 legislative session.

LISA MURRAY

DIANE B. KIRICIN

MICHAELE LININGER SMITH
LEGISLATIVE AWARDS

K. BETH LUNA
JACK A. MORING
ANDREA M. REID

Awarded with grateful appreciation for your invaluable contributions and the time you spent protecting Florida’s families during the 2019 legislative session.

LEGISLATIVE AWARDS

KIMBERLY RODRIQUEZ ENRIGUE
PHILIP E. WETZEL
BASSOH COMMUNICATIONS & CONSULTING

Awarded with grateful appreciation for your invaluable contributions and the time you spent protecting Florida’s families during the 2019 legislative session.

THE ALBERTO ROMERO "MAKING A DIFFERENCE" AWARD

KIMBERLY RODRIQUEZ ENRIGUE

We honor you in recognition of your dedication to making a difference for Florida’s children and families through your tireless service to the disadvantaged and underserved members of our community.

JORGE M. CESTERO DISTINGUISHED MEMBERS SERVICE AWARD

DEBORAH O. DAY, PSY.D

Thank you for your years of dedication, your devotion to improving the Section on all fronts, and your never-ending desire to be at the top of our profession.

THE HONORABLE RAYMOND T. MCNEAL PROFESSIONALISM AWARD

JACK A. MORING

We honor you in recognition of your passionate service to the Executive Council of the Family Law Section of the Florida Bar, performed with exemplary professionalism and courtesy towards those with whom you served.

CHAIR’S AWARD FOR EXTRAORDINARY SERVICE

DAVID L. HIRSCHBERG

Awarded in recognition of your outstanding service, unwavering dedication, and continued commitment to the Family Law Section of the Florida Bar.
First comes love, then comes marriage...then comes a Federal tax lien and divorce.

Though not the conventional happy ending of a storybook tale, this scenario plays out in real life often enough to have spawned its fair share of legal tales—aka litigation. Underlying such litigation is the fact that property encumbered by a Federal tax lien passes cum onere (which is to say, subject to the burden of the lien). As such, a sale or simple transfer of the property from the delinquent taxpayer to another individual does not extinguish the underlying lien.

When an unsuspecting spouse takes the family home subject to a Federal tax lien in an “equitable” distribution of property at divorce, that spouse may receive far less than he or she bargained for. Take for example, the following hypothetical.

Harry met Sally on April 15, 1989, and they married six months later. Unbeknownst to Sally, Harry had failed to pay his Federal income taxes in 1988, and in 1992, the IRS filed a Federal tax lien for $800,000. The Federal tax lien attached to the marital home (homestead) that was purchased by Harry and Sally in 1991. In 1995, Harry and Sally divorced, and Harry moved to Europe, never to be heard from again. Before exiting the United States, Harry “gave” Sally the marital home as a part of their divorce settlement, and in 1996, Sally put the home on the market for $1 million. Sally quickly lined up a buyer, but the title search turned up the outstanding Federal tax lien, which, with interest, now amounts to $1 million.

Although the sales price of the home is precisely equal to the lien amount, it does not seem equitable that Sally should forfeit the entirety of the sales proceeds to satisfy a lien for which she is not personally liable. The IRS, though sympathetic to Sally’s plight, rightfully asserts that the lien passed with the property, and nothing in the divorce decree that transferred the property to Sally—not even an agreement, in writing, that the liable spouse would pay the tax—divests the Government of its interest in the property.

Is Sally out of luck, or is there some way that she might be able to salvage her interest in the sales proceeds?

Interest of Innocent Spouse in Real Property Encumbered by Federal Tax Lien

In U.S. v. Craft, the Supreme Court examined whether, under Section 6321 of the Code, a delinquent taxpayer, who held property as a tenant by the entirety with his non-delinquent spouse, possessed a separate interest in the property to which a Federal tax lien could attach. The Supreme Court held that even

continued, page 22
Family Law Section Works From Home

[Images of people working from home, including someone with a dog, a person holding a trophy, and a person sewing.]

[Images of video thumbnails with titles like "Guaranteed with kids? Watch this." and "How to Survive - and Thrive - When You’re Forced to Work from Home."]

[Images of a person in a suit and tie, and a person smiling with glasses.

[Images of a person working at a computer, and someone with a sewing machine.]
Family Law Section
Virtual Annual Meetings
June 15-18, 2020
though the property could not be unilaterally alienated, a Federal tax lien could attach to property held by the entireties.6

The Craft opinion relies heavily on the earlier Supreme Court opinion, United States v. Rodgers, in which the Supreme Court observed that the Internal Revenue Code “is punctilious in protecting the vested rights of third parties caught in the Government’s collection effort, and in ensuring that the Government not receive...any more than that to which it is properly entitled.”7 Although Rodgers was decided in the context of a forced sale in execution of a levy, the Supreme Court first had to determine whether the Federal tax lien should have even attached to the property owned as tenants by the entirety by a liable husband and an innocent wife.8 The Craft and Rodgers opinions make it readily evident that even though Sally owned the marital home as a tenant by the entirety with Harry, the lien for Harry’s unpaid taxes rightfully attached to the home.

Fortunately for Sally, the Rodgers Court also extended a lifeline to the innocent spouse when, the Supreme Court held that “the Government’s lien under Section 6321 cannot extend beyond the property interests held by the delinquent taxpayer.”9 Citing the Supreme Court case of United States v. Nat’l Bank of Commerce,10 the Tax Court in Minihan v. Commissioner specifically held that a Federal tax lien or a levy under Section 6331 of the Code does not extinguish the non-delinquent spouse’s rights in the levied property.11 Thus, in the hypothetical, the Federal tax lien attaches to Harry and Sally’s home, not Sally’s interest therein.

Although the Federal tax lien does not diminish Sally’s rights in the home, this does not change the fact that the home is encumbered by Harry’s Federal tax lien. How, then, does Sally retain her rights while satisfying the lien upon the sale of the home?

In 2003, the IRS extended Rodgers to a situation in which entireties property, encumbered by a Federal tax lien, is transferred to an innocent spouse. In Notice 2003-60, the IRS observed “[w]here there has been a sale or other transfer of entireties property [to the transferee/non-liable spouse], subject to the Federal tax lien that does not provide for the discharge of the lien...the lien thereafter encumbers a one-half interest in the property held by the transferee.”12 In other words, if the liable husband transfers entireties property to the non-liable wife, the lien still remains; the lien cannot be stripped out or extinguished simply by transferring the property to a non-liable individual.

Practically speaking, although the lien attaches to Harry and Sally’s home, when Harry transferred his interest to Sally through the settlement agreement or divorce decree, Sally retained an unencumbered fifty percent interest in the home. It should be noted that the IRS carved out a one half interest in IRS Notice 2003-60 as a function of state property law, which the IRS interpreted as providing that an interest in property held by a spouse as a tenant by the entirety is exactly fifty percent of such property.13 The courts “look initially to state law to determine what rights the taxpayer has in the property the Government seeks to reach, then to federal law to determine whether the taxpayer’s state-delineated rights qualify as ‘property’ or ‘rights to property’ within the compass of the Federal tax lien legislation.”14

This principle, set forth in IRS Notice 2003-60, was similarly applied in the Southern District of Florida case of United States v. Callanan.15 In Callanan, a husband and wife bought homestead property in November 2004. They divorced in June 2007, with the wife receiving...
the property as part of the equitable distribution (which the court recognized “had the effect of a duly executed instrument of conveyance and transfer”). The husband had failed to pay taxes from 1994-96, and a Federal tax lien attached to the homestead property in September 2006. Thus, in Callanan, as in the hypothetical above, the lien was assessed prior to the marriage and attached subsequent to the marriage and attaching to a marital asset.

The Southern District of Florida held in Callanan that because the spouses acquired and held the property as tenants by the entirety, the spouses “each held a one-half interest in the [homestead] property.” Notwithstanding the wife’s one-half ownership interest in the property, once the Federal tax lien attached to the property, the later conveyance, as a consequence of the divorce decree, did not extinguish such lien. The court recognized that under Florida law, creditors may not levy upon property held by tenants by the entirety in order to satisfy the debt of only one spouse. Finally, the court held that the IRS was entitled to the value of the husband’s interest in the property, which value is determined at the time the Federal tax lien attached.

The Southern District of Florida continued to apply Callanan in the case of United States v. Steinger, in which the court held that “the value of the [non-liable] taxpayer’s interest in entireties property will be deemed to be one-half.” In so holding, the court also relied upon IRS Notice 2003 60. Similarly, in United States v. Michael, the Middle District of Florida held that a non-liable, innocent spouse was entitled to “one-half of the remainder of the proceeds of the sale” of the property encumbered by a Federal tax lien.

It should be noted that the court in Michael observed that the innocent spouse’s one-half interest was to come from the sale proceeds of the property after the satisfaction of any liens (such as a mortgage) that had priority over the Federal tax lien. Thus, in the hypothetical, if the $1m house had a $600,000 first mortgage, Sally would be entitled only to $200,000, or one-half of the sale proceeds subsequent to the satisfaction of the mortgage.

continued, next page
Valuation for Innocent Spouse Potentially Greater than One-Half

The Supreme Court has noted, albeit in dicta, that the value of an innocent spouse’s interest in entireties property, which was also the spouse’s homestead, is likely much greater than one-half the sales proceeds of the property. In Rodgers, discussed above, the Supreme Court was faced with the issue of the forced sale of a family home in which the delinquent taxpayer and his non-delinquent wife both had homestead interests under state law. The Supreme Court in Rodgers observed at the outset that “the Government may not ultimately collect, as satisfaction for the indebtedness owed to it, more than the value of the property interests that are actually liable for that debt.”

The Supreme Court recognized that in the context of a forced sale pursuant to Section 7403 of the Code, the Government must consider not only the sale of the delinquent taxpayer’s own interest in the property, but also those of third parties “through the mechanism of judicial valuation and distribution.” In so finding, the Supreme Court permitted the forced sale of the property, but limited the Government to collect only “its fair share of the proceeds.”

Although the Supreme Court analyzed the “fair share” requirement through the lens of a judicial taking (forced sale) and just compensation to the third party, the analysis should apply equally to the non-forced-sale valuation of homestead property encumbered by only one spouse’s Federal tax lien. In Rodgers, the Supreme Court observed that “a homestead estate is the exact economic equivalent of a life estate.” In so finding, the Supreme Court used standard actuarial tables to compute a life estate / homestead interest for three hypothetical “non-delinquent, remaining spouses” ages 30, 50, and 70. The Supreme Court found that the innocent spouses would be respectively entitled to 97%, 89%, and 64% “of the proceeds of the sale of their homesteads as compensation for that estate.”

The fact that the property was the innocent spouse’s homestead was not the only factor analyzed under the “fair share” lens. The Rodgers opinion further noted that because the property was the innocent spouse’s homestead, and it was owned by the entirety, the Supreme Court could properly assume that the non liable spouses had “a protected half-interest in the underlying ownership rights to the property being sold,” thereby raising the levels of compensation to 99%, 95%, and 82%, respectively.

Mechanics of Sale and Refund

If the Supreme Court’s reasoning in Rodgers is to serve as precedent, then Sally, as a non-liable (innocent) spouse would be entitled to at least one-half of the sales proceeds of the property and perhaps even closer to 95%. Moreover, the Minihan Tax Court provided that a spouse who obtains innocent spouse relief pursuant to Section 6015(f) of the Code is released from joint and several liability, and the taxpayer’s liability is recalculated as if a married-filing-separately return had been properly filed.

If the IRS had not yet collected the joint tax due, the innocent spouse taxpayer would be required only to pay the portion attributable to her, as calculated on a married-filing-separately basis. If, however, the IRS has already collected the tax, the taxpayer is permitted a refund under Section 6015(g)(1) of the Code. In order to be allowed a refund, the Tax Court must make the determination that the taxpayer has made an overpayment pursuant to Section 6402 of the Code. A taxpayer makes an overpayment...
if she remits funds to the Secretary in excess of the tax for which she is liable. Revenue Procedure 2013-34 provides guidance for a taxpayer seeking equitable relief from income tax liability under Section 6015(f) of the Code, which permits relief from an underpayment of income tax or from a deficiency. The Revenue Procedure provides that “a requesting spouse is eligible for a refund of separate payments made by the requesting spouse after July 22, 1998, if the requesting spouse establishes that the funds used to make the payment for which a refund is sought were provided by the requesting spouse.” Thus, if Sally pays one hundred percent of the sales price of the home to the IRS, she has “provided funds for the overpayment” and is entitled to a refund.

The Tax Court may order refunds “where it determines the spouse qualifies for relief and an overpayment exists as a result of the innocent spouse qualifying for such relief.” The enactment of Section 6015 of the code was not intended “to displace state defined property rights;” instead, Congress intended to “create refund authority tied specifically to a determination of relief from joint and several tax liability.” Therefore, when an innocent spouse satisfies a Federal tax lien, to the extent that such spouse uses his or her own funds (or separate property owned by such spouse, like a one-half interest in entireties property), the innocent spouse taxpayer is entitled to a refund under Section 6015(g)(1) of the Code up to the amount of such separate property.

Conclusion

Though Harry left Sally in quite a pickle, all is not lost. Sally is entitled to at least one-half of the sales proceeds of the property, after any mortgages or other senior liens are satisfied. Although there are no published opinions in which a taxpayer invoked the heightened valuation in Rodgers, the fact that Rodgers is a Supreme Court opinion gives it potentially significant authoritative heft when negotiating with the IRS on this issue.

Even though a separation agreement may appear, on the surface, to be an "equitable" distribution of property, an unscrupulous spouse may foist encumbered property onto an unsuspecting spouse. To the non-liable spouse, the property is worth, potentially, one half the value to the receiving spouse, but it is worth its weight in gold to the liable spouse insofar as it will go towards paying off the latter spouse's tax liability.

This article should be a cautionary tale to tax and family law practitioners, alike. Before agreeing to take property in consideration of valuable rights, it is incumbent on the attorney advising the receiving party to perform a search of the public records to determine if a lien was filed on the property. This search, however, may not be enough.

Many practitioners do not understand that a lien relates back to the date the tax was assessed. The IRS is not required to file a Notice of Federal Tax Lien in order for the lien to attach. This is known as a "silent" or "statutory" lien. Therefore, it is critical to obtain transcripts or other proof that the soon-to-be ex-spouse does not have any outstanding tax liabilities. Failing to do so could be exceptionally costly for your client. If a practitioner does find an outstanding liability, the delinquent-taxpayer spouse should be required to satisfy the tax debt before the divorce decree is executed.

The moral of the story is simple. Caveat uxor – let the spouse beware.

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continued, next page
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Endnotes

1 United States v. Bess, 357 U.S. 51, 57 (1958) (quoting Burton v. Smith, 38 U.S. 464, 483 (1839) (holding “the transfer of property subsequent to the attachment of the [Federal tax] lien does not affect the lien, for it is of the very nature and essence of a lien, that no matter into whose hands the property goes, it passes cum onere”).


3 I.R.S. Manual, § 5.17.2.2.3 (2016) (directing that “after the Federal tax lien attaches to property, it remains on that property until the lien has expired, is released, or the property has been discharged from the lien”).


5 As used herein, the “Code” refers to the Internal Revenue Code of 1986, as amended.

6 Craft at 283-88.


8 Id. at 691.

9 Id. at 690-91.


12 IRS Notice 2003-60 (emphasis added).

13 Id.; C.f. Sitomer v. Orlan, 660 So.2d 1111, 1113 (Fla. 4th DCA 1995) (noting that each spouse is “seized of the whole or the entirety, and not a share or divisible part”).


16 Id. at *1.

17 Id. at *5.

18 See also United States v. Kennedy, 201 F.3d 1324 (11th Cir. 2000); United States v. Fleet, 498 F.3d 1225 (11th Cir. 2007).

19 Callanan, 2008 WL 6113516 at *5 (citing Kennedy, 201 F.3d at 1332).

20 Id. at 6.


23 Rodgers at 680.

24 Rodgers, 461 U.S. at 691.

25 Id. at 694.

26 Id.

27 Id. at 698.

28 Id. at 698-99.

29 Id. at 699.

30 Minihan, 131 T.C. at 8; see also Pullins v. Commissioner, 136 T.C. 432 (2011).


32 Jones v. Liberty Glass Co., 332 U.S. 524, 531 (1947); see also Estate of Smith v. Commissioner, 123 T.C. 15, 21 (2004), vacated on jurisdictional grounds, 429 F.3d 533 (5th Cir. 2005); contra Riggins v. Commissioner, 748 F. App’x 970 (11th Cir. 2018) (agreeing with Tax Court).


34 Id. at § 4.04.

35 Id.

36 Ordlock v. Commissioner, 126 T.C. 47, 55-56 (2006), aff’d, 533 F.3d 1136 (9th Cir. 2008).

37 Ordlock, 126 T.C. at 57.

38 Id.

39 Id.; see also Leissner v. Commissioner, T.C. Memo. 2003-191 (allowing a refund when a payment resulted from a levy on the taxpayer’s solely owned IRA account).

40 IRC § 6322.

41 See I.R.M. 5.17.2.3 (2016) (noting, however, that in order for the federal tax lien to have priority against certain competing lien interests, the IRS must file a Notice of Federal Tax Lien pursuant to IRC § 6323).

42 See, e.g., I.R.M. 5.17.2.2.1 (2018).
Can Your Client’s Immigration Status Stop the Court from Exercising Subject Matter Jurisdiction?

By Patricia Elizee, Esq.

As family law practitioners in Florida, we come across many immigrants facing family law issues. This is especially true for those of us practicing in South Florida. It is imperative as attorneys that we understand how our client’s immigration status may impact their family law case and vice versa. The intent of this article is to highlight how a client’s immigration status may impact whether a Florida trial court has subject matter jurisdiction over an immigrant’s divorce. Subject matter jurisdiction is the determination of whether the trial court has the power to hear a case and whether the case involves some nexus to Florida. Cunningham v. Standard Guar. Ins. Co., 630 So. 2d 179, 181 (Fla. 1989).

To obtain a divorce in Florida, one of the parties to the marriage, must reside in Florida for at least 6 months before the filing of the Petition. Florida Statute 61.021. Generally, the test for residency is physical presence in Florida and the concurrent intent to be a permanent resident. Fields v. Fields, 782 So.2d 530, 534 (Fla. 1st DCA 2001). The Florida Supreme Court has clarified that having U.S citizenship is not a statutory jurisdictional prerequisite to subject matter jurisdiction. Pawley v. Pawley, 46 So.2d 464, 471 (Fla. 1950).

Some have argued that a party’s non-permanent immigration status is a bar to having the intent to be a permanent Florida resident for purposes of showing that the court has subject matter jurisdiction over a case. For example, in Perez v. Perez, the trial court dismissed a Husband’s petition for dissolution of marriage for lack of subject matter jurisdiction on the ground that since he was a Cuban Refugee, he did not have authority under the immigration laws to remain in the United States permanently, therefore, he was incapable of acquiring a domicile in Florida and could not meet the 6 months residence requirement for divorce. 164 So.2d 561 (Fla. 3rd DCA 1964). The appellate court clarified that being physically present in Florida for more than six months, plus the intent to remain for an indefinite period, was sufficient even where the petitioner did not have a permanent immigration status Id, at 563. An alien who is a citizen of another country can acquire a domicile or ‘residence’ sufficient to satisfy the jurisdictional requirements for divorce. Id.

Similarly, in Weber v. Weber, the Husband was a German citizen and the Wife was a Ukrainian citizen. 929 So.2d 1165 (Fla. 2nd DCA 2006). They both had nonimmigrant visas. They moved to Florida in 1998, married in 1999, and the Wife filed for divorce in Florida in 2004. The Husband sought to have the petition dismissed for lack of subject matter jurisdiction. The Wife continued, next page
testified that both her and her husband had Florida driver’s licenses and bank accounts. She also testified that she intended to permanently remain in Florida. The trial court denied the Husband’s motion to dismiss and he sought a writ of prohibition or a writ of certiorari. On appeal, the Husband pointed to the fact that nonimmigrant aliens in Florida were not entitled to the constitutional homestead exemption from taxes and attachment from creditors. The appellate court held that the Wife had presented competent, substantial evidence to support the trial court’s finding that she resides in the state for the requisite six-month period and that she had a bonified intent to remain in Florida indefinitely. The appellate court also stated that prohibiting a nonimmigrant from claiming tax exemption or an exemption from creditor claims raise significantly different policy issues than preventing a nonimmigrant who is in the state and hopes to remain in the state from seeking a divorce here.

While the immigration status of a party by itself may not take away the court’s subject matter jurisdiction over a divorce, it is still a factor that can be considered. Whether or not a party is a resident of the State of Florida is a question of law and fact to be settled from the facts of each particular case. Rudel v. Rudel, 111 So.3d 285, 289 (Fla. 4th DCA 2013). A trial court may not lack subject matter jurisdiction as a matter of law based on the immigration status of the petitioning party, but their immigration status may be taken into consideration in the factual determination of domiciliary intent.

In Rudel, the Petitioning wife had relocated,...
to Florida with her daughter from Germany using a tourist visa. The trial court determined, and the appellate court, affirmed that the wife had not established actual residence with an intent to remain permanently. The court pointed to the fact that she renewed her tourist visa and signed affidavits in which she swore that she did not intend to remain permanently in the United States, and therefore the court lacked subject matter jurisdiction. She also never notified the German government that she moved from her home district, something she knew she was required to do. During the deposition she did not state that she was intending at the time to move to Florida permanently. She also left personal possessions in Germany. The Wife also made short trips to Germany in an attempt to reconcile with her Husband and safeguard her immigration status as a tourist in the United States. The appellate court found that it was reasonable for the trial court to conclude that the Wife did not have required intent to stay in Florida until she actually filed for divorce, and did not have the intent of remaining in Florida and did not actually reside in Florida for the prescribed period of six month before filing her petition for divorce. It was therefore proper for the court to find that it lacked subject matter jurisdiction over the case.

The Court may also consider the parties’ immigration status where a party claims that Florida is an inconvenient forum. Even where the child was physically present in Florida for more than six months, the trial court found and the appellate court affirmed that there was no rational basis for a Florida court to assume jurisdiction over a foreign court involving foreign citizens, a minor child who is also a foreign citizen, all of marital real and person property interests are in the foreign country. Rudel, 111 So.3d at 291.

As Florida family attorneys it is important that we investigate the immigration status of the litigants as it may have a serious impact on the pending family law matter. This is especially true where the Petitioner is an immigrant and may lack the required intent during the entire six month period prior to filing their Petition in Florida, or where a foreign forum may be more convenient.

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If you will indulge me for a few minutes, I want to give those of you who do not practice family law a glimpse into some of the daily challenges faced by family law attorneys. That is to say: what really goes on in the offices, on the phones, and in those relatively small hearing rooms in the family division of courthouses that some do not know exist and those of you from other practice areas might not enter for triple your hourly rate.

First, you should know that in family law there are rules for everything, but measuring devices for very little. Family law attorneys are routinely asked to quantify and weigh their client’s interests in one hand, and the best interests of a child in the other.

Further, family law attorneys often begin their work by being asked to untangle the complicated wreckage of a union their client once solemnly swore never to undo.

Family law attorneys must go about their work knowing that only in the rarest of cases is the Court going to hear from the persons who matter most – the children.

Consider further, that after months or even years of hard work, when family law attorneys bring their case to a close, rarely is it truly over. A few months later, their phone will ring, and the “Final Judgment” will begin life anew.

Family law attorneys are tasked with conveying to their clients that while the divorce is the end of the marriage, it is not the end of the family, an often difficult and tricky conversation. A family law attorney must help their client’s perception of “family” evolve.

Family law attorneys will spend hours, if not days, with their clients and opposing counsel dividing and distributing everything from the marital home, to 401Ks, to the box of 45-rpm records in the attic. Then comes the hard part; the distribution of the children, which even sounds unseemly, doesn’t it?

Family law attorneys measure a year—not like you and I, or at least as we should—in moments—but rather, family law attorneys measure a year in “overnights.”

And the challenges described here are only the tip of the proverbial family law iceberg. If you want to feel better about your current, non-family law practice, grab a family law attorney.
Observations from the Family Law Bench
CONTINUED, FROM PAGE 31

this evening and ask them to tell you about “TPR’s,” “DV” Court, Dependency Court, Hague Convention cases, or Relocations.

Considering the challenges a family law attorney must routinely face, why on earth would anyone in their right mind become, and then remain, a family law lawyer? The answer is this: every once in a while (and only often enough to keep one going) in the midst of what began as nothing short of utter despair and when everyone is together - the parties, the attorneys, and often the Court - there comes a moment of understanding. This moment is when the parents begin to fully comprehend the remarkable impact their conduct and their words have on the well-being of their children. The animus and ill will that has permeated case is replaced by acknowledgement, acceptance, appreciation, forgiveness and most importantly, by hope; hope for the future of the lives they, together, created.

**Circuit Court Judge John I. Guy** – Judge Guy is currently assigned to the Family Law Division of the Circuit Court of Florida’s Fourth Judicial Circuit. Judge Guy was appointed to the Circuit Court bench by Governor Rick Scott in December 2015. Judge Guy currently serves as the President of the Florida Family Law American Inn of Court. He is also a member of the Fourth Judicial Circuit Pro Bono Committee, the Jacksonville Bar Association Judicial Relations Committee, and the Duval County Courthouse Security Committee. Judge Guy is a faculty member of the Florida Judicial College and a mentor Judge for new Judges. In October 2019 Judge Guy was designated as the Hague Convention Judge for the Fourth Judicial Circuit. Prior to his appointment, Judge Guy was an Assistant State Attorney for the Fourth Judicial Circuit for more than 22 years. Judge Guy had been a prosecutor since graduating from the University of Florida College of Law in 1992. Judge Guy served as a faculty member for the National District Attorneys Association from 2002 to 2010. He has lectured for the American Prosecutors Research Institute (APRI), the Florida Prosecuting Attorneys Association (FPAA), the Association of Prosecuting Attorneys (APA), and the North Carolina Conference of District Attorneys (NCCDA). Judge Guy currently teaches “Trial Practice” as an adjunct professor at the Florida Coastal School of Law since 2002.

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Why Some Family Law Cases Do Not Settle

By William D. Slicker, Esq.

Kübler-Ross popularized the concept that people losing a loved one due to death go through stages of grief that include denial, anger, bargaining, and depression before arriving at acceptance. People going through the loss of a loved one due to divorce go through the same stages, so it may take a while before both parties have reached the acceptance stage and are ready to settle. However, the great majority of people get to that point and do settle.

Unfortunately, there are spouses that will never settle their divorce. Why? One long-serving judge has estimated that close to 90% of divorce cases settle; and that in those cases that do not settle, one or both parties have a mental health issue, substance abuse problem, or both.

With regard to substance abuse, America continues to deal with the opioid epidemic. It is estimated that there are 10.3 million Americans who are misusing opioids, which includes 9.9 million prescription pain reliever abusers and 800,000 heroin users. Common opioids are hydrocodone (vicodin), oxycodone (percocet), methadone, suboxone, dilaudid, and more recently, fentanyl. The substance abusers become practiced liars. However, there are usually clues such as: a criminal history, DUls, medical records of self-inflicted injuries that require pain medication, pawn shop records, or drug tests that will expose the problem.

Turning to mental health, it is estimated that one in 25 people have a major mental health issue. However, like most addictions, many mental health issues should be fairly easy to uncover. For example, the party that tells you that the president of the United States comes down by helicopter to consult with her and they have to meet in her attic wearing aluminum foil hats because spies are flowing down the electrical wires to eavesdrop (I had this client) is an easy-to-spot schizophrenic. Likewise, the party that attempts suicide may be diagnosed as depressed, bipolar, or borderline personality disorder.

It is those cases in which a party puts on a false front of normalcy while wanting everything their way and blaming the other party for all of the problems, are difficult to ferret out.

Welcome to narcissism. You are stepping into Bizarro World. Narcissists live in their own version of reality. Any fact that is shown to them that does not match up to their world view is discarded as false so there is no logical reasoning with them. The narcissistic parent is subtle and devious. On the surface and in public, the narcissistic parent is often unnoticeable as an abusive person. The narcissist will try to manipulate you into trusting them and will try to make you think that they want to play fair, but nothing could be further from the truth. They are only concerned about

continued, next page
what they can get and take from the other side. However, given enough time, their sense of self-importance, at the expense of others, will come to light. They are the ones who frequently ignore limits on their timesharing; who frequently ignore court orders; send unbelievable amounts of abusive messages; file multitudes of pro se pleadings that take up an inordinate amount of time; who try to get more than one judge recused; who go through multiple attorneys; who do not accept their children’s mental or emotional problems because their children are a reflection on them; who obsessively record their meetings with the other party or with their child; who pathologically lie without batting an eye; and who engage in domestic violence. They find it difficult to see beyond themselves, and have an inability to take into account the feelings of others.

We all know that in child custody matters, the mental health of the parents is one of the factors that is to be considered by the trial court in determining the best interest of the children. However, merely seeking child custody does not make a party’s mental condition an element of his or her defense. The mere allegation of mental or emotional instability is insufficient to place a parent’s mental health at issue so as to overcome the mental health record privilege. However, upon a proper motion and showing of good cause, a trial court can require a party to submit to a compulsory pre-trial mental examination. One example would be if a party attempts suicide during the proceedings. Commitment to a mental institution during a proceeding may also make mental health records relevant and admissible.
that if a party engages in a sufficient amount of the narcissistic behaviors listed in the above paragraph, that would also constitute sufficient grounds for a mental health evaluation.

So if you find yourself in a case that should be settling but it isn’t, start analyzing why. Is it too early? Is the other party on drugs? Is the other party exhibiting behavior that points toward a potential a mental health problem? If you find that the other party is exhibiting many of the characteristics of a narcissist, educate the judge and ask for a mental health evaluation of that party if your client can afford to pay for it. If your client cannot afford it, then just educate the judge about of the narcissistic characteristics the other party has. This should help the judge in determining the best interest of the minor child with regard to parental responsibility and with regard to timesharing. It may also be relevant on the issue of attorney fees caused by vexatious litigation.

William D. Slicker has authored 25 articles. He is recognized as AV Preeminent by Martindale-Hubbell. He has been recognized as Best of Tampa Bay by the Tampa Bay Times. He has received the Florida Bar President’s Pro Bono Award for the Sixth Circuit, the Ms. JD Incredible Men Award, the St. Petersburg Bar Foundation’s Heroes Among Us Award, the Community Law Program Volunteer of the Year Award, and the Florida Coalition Against Domestic Violence Lighting the Way Award.

Endnotes
1 Or it could be that one or both of the attorneys for the party or parties have these issues.
3 Id.
4 Bizzaro World is the reverse universe in the Superman comic series.
Mentorship: An Essential Tool as a Young Associate

By Gina Szapucki, Esq.

Ok, you’ve passed the bar. An exam you’ve worked so hard for throughout the years. There is a certain kind of excitement you feel when you first start a new job, especially as a young associate. You lay awake the night before your first day at a law firm thinking about the endless possibilities, challenges you have yet to face, and who you will encounter throughout this journey as a newly admitted lawyer.

As a young associate, you are bombarded with researching specific areas of law you have never practiced in, drafting extensive documents no one ever taught you to write, preparing for special set hearings or drafting simple discovery for a client. Depending on whether you work at a larger law firm or boutique law firm, business-related tasks that are non-billable can also be overwhelming and required. These tasks generally lead to late nights at the office and working weekends as young associates. You begin to ask yourself: How do you e-file documents? How do you properly bill a client and accurately reflect your billable time? How do you manage a client and their expectations? How do you prepare for and conduct final hearings, special set hearings or UMC hearings? In the midst of learning all these tasks, you will find it difficult to maintain a work-life balance.

I quickly realized law school did not prepare us for the “real world” and daily tasks that are required by attorneys, nor did it teach us how to apply the principles we’ve learned in law school as a practicing attorney. Although it takes patience and continued efforts to excel at the actual practice of law, one thing became exceptionally clear: the importance of mentorship.

A mentor’s guidance is found in various ways. A mentor is not always your boss. A mentor can be another associate at the same law firm, a colleague, a friend, or various bar associations and networking groups. A mentor is someone who embraces your growth as a young associate and is willing to assist with challenges faced daily, both in professional and personal environments. Being an Inn of Court member with the Susan Greenberg Family Law American Inn of Court of the Palm Beaches is just one example of how important mentorship is early on in your career. During meetings for young associates, both Debra Welch, Esq. and Cindy Crawford, Esq. communicate and strive to teach us real world professionalism, ethics, and skills in various forms. I am reminded by the examples set at every Inn of Court meeting that their leadership provides us with the proper tools to succeed, but ultimately, it is our job as young associates to learn how to apply those tools.

As a young associate, a mentor is not only about getting advice on those difficult clients or scenarios. From my experience, a good mentor should possess certain characteristics or role model qualities to assist in your journey to success. A mentor should routinely demonstrate a positive mindset and a passion to share their knowledge and expertise. A mentor is approachable. A mentor is ethical.
A mentor is able to effectively communicate their advice and opinions. This can be achieved through daily discussions with colleagues, clients, or courtroom technique. An effective mentor is not just about observing the right qualities; it is also about observing the wrong qualities.

A mentor continues to guide young associates to other opportunities that we generally would not be able to obtain early on in our careers. This can be achieved through encouraging our attendance at networking events, organizations, or charity events that we would otherwise be unaware of. A mentor provides continuous effort to assist us with building a solid foundation of the law. A mentor feels confident that they helped guide young associates in the shaping of their foundations and toolkits.

The best tools that we can receive from mentors are the ones that encourage us to embrace current challenges, new experiences, constructive criticism, and learning how to have a coachable mindset. An example of this can be as simple as learning how to have those hard and frank conversations with your clients. Providing young associates with real world courtroom experience can become an invaluable and foundational experience as we grow into our career. These invaluable experiences can be done by observing special set hearings or trials, allowing a young associate to conduct UMC hearings and direct or cross-examine at least one witness during a special set hearing or trial. This has been my personal experience.

As young associates, we are always striving to learn and observe all the knowledge we can from our mentor. There are certainly a lot of advantages young associates receive from having a mentor. However, it can become a daunting task for our mentors. When a mentor takes the time to assist us with our difficult and complex questions, a mentor is giving up their own time with their own clients and/or cases.

A mentor begins to have a lack of time with their caseload and preparations for hearings. At times, what young associates fail to realize is that mentors are working with inexperienced associates who are still learning that specific area of law. Young associates do not yet have the skill set mentors have. Young associates over-prepare for hearings, re-read petitions, motions, or marital settlement agreements, or simply research smaller issues that a mentor might not need to research. In the beginning, young associates are not well versed on those specific areas of law, and research becomes our best friend to understand these concepts. Building success takes time and dedication by young associates and mentors, alike.

As a young attorney who is building her career, I clearly see the value in having effective mentors. I hope to one day pay back my experiences with the same passion and dedication. In the end, our goal as attorneys is to serve our clients to the best of our ability. In an environment that can feel so challenging to start, mentorship is the guiding light that helps balance the scales. After all, we are the future generation of effective lawyering.

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