THE DADE COUNTY BAR ASSOCIATION

JUNE 2015

"A Century of Service to Miami-Dade County"

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PRESIDENT'S MESSAGE

Jason M. Murray

"In the 99th year of its existence, our association has taken another leap forward in its evolutionary development of becoming an association that is diverse, inclusive and reflective of our legal community."

I am ever mindful of the sacrifices made by those who have served in the office of president throughout this organization's history. We owe a special debt of gratitude to Mitchell D. Price who served as the first president of this association during a time when our country was dealing with the aftermath of the First World War. As women were gaining the right to vote in 1920, our association was officially incorporated as a non-profit corporation. Sixty-seven years after our incorporation, Judith M. Korchin advanced the cause of gender equality by becoming the first woman president of this association. Seven years later, Francisco R. Angones broke through another barrier to diversity and inclusion by becoming this organization's first Hispanic president. In the 99th year of its existence, our association has taken another leap forward in its evolutionary development of becoming an association that is diverse, inclusive and reflective of our legal community. As our community grapples with the fallacy of a post-racial society, I begin my term as the 99th President of this great association with profound gratitude and great humility. I am humbled by the task before me and grateful for the trust you have bestowed.

Let us continue the work of breaking down barriers to racial, ethnic, and gender diversity within the bench and bar of our legal community. United States Supreme Court Justice Sonia Sotomayor, the high court's first Hispanic justice, was reported saying to an audience at American University's law school that the lack of diversity in race, gender, and backgrounds poses a "huge danger" to the judiciary because it is undermining the public's confidence in the legal system. Justice Sotomayor also criticized the legal profession for perpetuating the glass ceiling and noted that the number of minority partners in law firms is "dismally small." The Dade County Bar Association must promote diversity and inclusion within our legal community's bench and bar.

We must unclog the diversity pipeline through efforts that will encourage women, minority, disabled, and economically disadvantaged high school, college, and law students to enter the legal profession. We should encourage high school students to consider a career in the law, support college students seeking admission to law school, help fund scholarships for law students and work to ensure that newer, diverse lawyers obtain practical early legal experience. We should also work on reversing the school to prison pipeline by supporting Miami-Dade County's Teen Court, which is an alternative sanctioning program for first-time youthful offenders who are often members of our minority and economically disadvantaged communities.

As we strive to be more diverse and inclusive, we must continue to serve Miami-Dade's economically disadvantaged citizens through Pro Bono work. We must strive to "put something back" into the local community that sustains our legal practices. I am honored to be able to continue our work with Dade Legal Aid and support them in handling thousands of Pro Bono cases for our Miami-Dade Community.

As we begin preparing for our centennial celebration, we must continue our growth. The Dade County Bar Association needs your input, your suggestions, and your participation. Only with your help will we remain an effective organization that serves as a vital resource for members. I look forward to serving and working with you this year!

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Saturday, June 6, 2015

Reception at 7:00 PM - Dinner at 8:00 PM

Dress Code - Black Tie Optional - $195 per person

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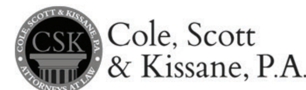

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Employee Handbooks Can Constitute Unfair Labor Practices

BY ANGEL CASTILLO, JR.

Can an employer's handbook constitute an unfair labor practice in violation of the National Labor Relations Act? Yes, according to a recent memorandum issued by the General Counsel of the National Labor Relations Board ("NLRB"), Richard F. Griffin, Jr.

The NLRB is the federal government agency that enforces the National Labor Relations Act of 1935. Among other provisions, Section 7 of the Act states that private sector employees have the right to unionize and to "engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection." The NLRB's General Counsel is responsible for the investigation and prosecution of unfair labor practice cases.

In a 30-page guidance Memorandum dated March 18, 2015, Mr. Griffin has laid out what he sees as significant legal deficiencies in some employer handbooks that constitute unfair labor practices. Under the NLRB's 2004 leading decision in Lutheran Heritage Village-Livonia, 343 NLRB 646, the mere publication and maintenance of a work rule by an employer may constitute an unlawful "unfair labor practice" if, among other things, the rule has a "chilling effect" on employees' activities protected under Section 7. Employer rules that are often found unlawful by the NLRB include confidentiality rules, professionalism rules, anti-harassment rules, trademark rules, photography/recording rules, and media contact rules.

Confidentiality Rules

Because employees have a Section 7 right to discuss wages, hours, and other terms and conditions of employment with fellow employees, as well as with non-employees, such as union representatives, an employer's confidentiality policy that prohibits employee discussions of terms and conditions of employment violates the Act, according to the Memorandum. Examples of confidentiality rules that the NLRB has found unlawful as too broad include:

- "Never publish or disclose [the Employer's] or another's confidential or other proprietary information. Never publish or report on conversations that are meant to be private or internal to [the Employer]."

- "Discuss work matters only with other [Employer's] employees who have a specific business reason to know or have access to such information .... Do not discuss work matters in public places."

"Employees have a right to publicly criticize an employer's labor policies and its treatment of its employees, including on internet social media sites such as Facebook and Twitter, and in online blogs."

- Confidential Information is: "All information in which its [sic] loss, undue use or unauthorized disclosure could adversely affect the [Employer's] interests, image and reputation or compromise personal and private information of its members."

Rules Regarding Employee Conduct Toward the Company, Supervisors, and Other Employees

Because employees also have the Section 7 right to criticize or protest their employer's labor policies or treatment of employees, rules that can reasonably be read to prohibit protected concerted criticism of the employer will usually be found unlawfully overbroad by the NLRB. For instance, a rule that prohibits employees from engaging in "disrespectful," "negative," "inappropriate," or "rude" conduct towards the employer or management, absent sufficient clarification or context, will usually be found unlawful.

Moreover, according to Mr. Griffin, employee criticism of an employer will not lose the Act's protection simply because the criticism is false or defamatory. Accordingly, a rule that prohibits employees from making "false statements" will be found unlawfully overbroad unless it specifies that only maliciously false statements are prohibited.

In addition, according to the NLRB, the employees' right to criticize an employer's labor policies and treatment of employees includes the right to do so in a public forum. Notably, that includes comments posted on internet social media sites such as Facebook and Twitter or in online blogs. In the NLRB's view, employers may not generally prohibit an employee from commenting online about the Company's business, policies, or employees without authorization, or prohibit them from doing so anonymously.

Rules Regarding Employee Communications with Third Parties, Including the News Media, Outside the Workplace

The NLRB has found the following rules regarding third party communications to be unlawfully overbroad because employees reasonably would read them to prohibit protected communications with the news media:

- Employees are not "authorized to speak to any representatives of the print and/or electronic media about company matters" unless designated to do so by HR, and must refer all media inquiries to the company media hotline.

- "[A]ll inquiries from the media must be referred to the Director of Operations in the corporate office, no exceptions."

- "If you are contacted by any government agency you should contact the Law Department immediately for assistance."

Rules Restricting Photography and Recording

In Mr. Griffin's view, employees have a Section 7 right to photograph and make recordings in furtherance of their protected concerted activity, including the right to use personal devices to take such pictures and recordings. Thus, he continues, workplace rules placing a total ban on such photography or recordings, or banning the use or possession of personal cameras or recording devices, are unlawfully overbroad where they would reasonably be read to prohibit the taking of pictures or recordings on non-work time.

The Board has found the following handbook rules unlawfully overbroad because employees reasonably would interpret them to prohibit the use of personal equipment to engage in Section 7 activity while on breaks or other non-work time:

- "Taking unauthorized pictures or video on company property" is prohibited.

- "No employee shall use any recording device including but not limited to, audio, video, or digital for the purpose of recording any [Employer] employee or [Employer] operation ...."

No Distribution/No Solicitation Rules

Many employers include provisions in their handbooks to the effect that "[i]t is our policy to prohibit the distribution of literature in work areas and to prohibit solicitation during employees' working time. 'Working time' is the time an employee is engaged, or should be engaged, in performing his/her work tasks for us. These guidelines also apply to solicitation and/or distribution by electronic means."

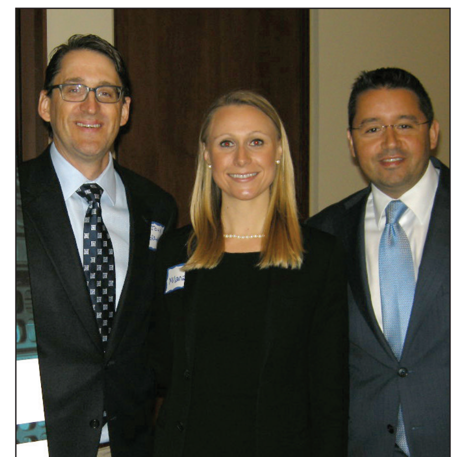
The NLRB has found that such a rule is unlawful because it restricts distribution by electronic means in work areas. In the NLRB's view, an employer may lawfully restrict distribution of literature in paper form in work areas, but it has no legitimate business justification to restrict employees from distributing literature electronically, such as sending an email with a "flyer" attached, while the employees are in work areas during non-working time.

The full Memorandum (Document No. GC 15-04) may be found online at: http://www.nlrb.gov/reports-guidance/general-counsel-memos.

Angel Castillo, Jr. *received a J.D. degree, with high honors, from the University of Florida in 1978, and an LL.M. at the Yale Law School in 1980. He is a partner at the Coral Gables law firm DLD Lawyers, where he heads the Employment Law Practice Group. Mr. Castillo can be reached at acastillo@dldlawyers.com.* ■

Privacy and Data Security Law Summit

The Law and Technology Committee held its 2nd Annual South Florida Privacy and Data Security Law Summit on March 31, 2015 at the University of Miami Newman Alumni Center. The Summit featured several sessions and concluded with a cocktail reception. Special thanks to this year's generous sponsors Shook, Hardy & Bacon, LLP, Garden City Group, LLC, Protiviti, and the University of Miami School of Law. ■



John Graham, Milana Kuznetsova, and Al Saikali, Summit Program Committee

YLS Judicial Reception

The 49th Annual Judicial Reception presented by the Dade County Bar Association's Young Lawyers Section was held on April 2, 2015 at the Hyatt Regency in Downtown Miami. This event brings together hundreds of lawyers and judges and gives them an opportunity to network and socialize at the end of the day.

Daniel Simon, Judge Marisa Tinkler Mendez, David De la Flor, and Barnaby Min

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Susan Trench, Stan Wakshlag, and David Lichter

Andrew Bernstein, Pamela Perry, and Dennis Kainen, DCBA Past-President

Bruce Katzen, Jake Greenberg, Retired Judge Ellen Leesfield, and Michael Higer, Fla. Bar BOG

Geri Satin, YLS President, Eric Bluestein and Joshua Wintle, YLS President-Elect

Judge Nushin Sayfie, Judge Rodolfo Ruiz, II, Judge Lisa Walsh, and Judge Richard Hersch

Jerome J. Kavulich, DCBA Director, Jessica Reyes, and Jason Murray

Garrett Biondo, DCBA Past-President, Damien Thomas, Josh Hertz, and Mark Eiglarsh

Gabe Garay, Ignacio Rodriguez, and Jorge Fors Jr.

Thomas Scolaro, William Aaron, DCBA Past-President, Robert Dulberg, and Ira Leesfield

DADE COUNTY BAR ASSOCIATION

Young Lawyers Section Gratefully Acknowledges the Generous Support of Our Sponsors for Their Significant Contributions to the 49th Annual Judicial Reception

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Do You Have a Trade Secret?

BY AMY M. FOUST

Trade secrets are a hot topic these days. Recent court decisions have arguably reduced the scope of subject matter eligible for patenting, while increasing the disclosure required in a patent application. See Alice Corp. Pty. Ltd. v. CLS Bank Int'l, 134 S.Ct. 2347 (2014); Abbvie Deutschland GmbH & Co. v. Janssen Biotech, Inc., 759 F.3d 1285 (Fed. Cir. 2014). At the same time, federal legislation pending in the last Congressional session suggested that there might be support for new tools to protect trade secrets, including the ability to recover attorneys' fees and enhanced damages in some cases. S. 2267, 113th Cong. (2014). These circumstances have led many to reconsider trade secrets—possibly in lieu of patenting—as a way of protecting commercially valuable innovation.

Trade secrets are not a panacea. A key difference between a patent and a trade secret is that a trade secret often cannot be used to protect product design. If the chemical formula, ingredients, or mechanical structure of the product can be deduced from the product, those aspects of the product design are typically not protectable as a trade secret after the product is first made available to the public. Perhaps more importantly, there are widespread misconceptions about what a trade secret is, and what is necessary to maintain trade secret status.

Under Florida law, "'trade secret' means information, including a formula, pattern, compilation, program, device, method, technique, or process that: (a) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy." Fla. Stat. § 688.002 (4) (2014). At first glance, this might suggest that any information a business does not readily distribute could be a trade secret, and the Florida statute has been interpreted in some ways more generously than other states' trade secret laws. Florida law recognizes, for example, that employees have an implied duty not to use a trade secret for their own benefit. See All Leisure Holidays Ltd. v. Novello, 2012 U.S. Dist. Lexis 168774, *13-14 (S.D. Fla. Nov. 27, 2012).

"A key difference between a patent and a trade secret is that a trade secret often cannot be used to protect product design."

Florida businesses that work with foreign entities should be aware that other states may be less accommodating. Minimum efforts to protect a trade secret may include securing the secret within a business, as by locking up printed materials or limiting access to electronic files; consistently having employees, vendors, contractors, and others sign a confidentiality agreement before awarding access to the information; and marking documents to indicate that they contain confidential information. See, e.g., nClosures Inc. v. Block & Co., 770 F.3d 598, 602 (7th Cir. 2014) (citing Rockwell Graphic Systems Inc. v. DEV Industries, Inc., 925 F.2d 174, 180 (7th Cir. 1991) for the proposition that these protective measures were sufficient under Illinois law to preclude summary judgment against the trade secret owner, without deciding whether these steps were sufficient to protect the trade secrets.)

As a practical matter, these are significant burdens. Small companies reliant on agility to compete with larger competitors may not be disciplined about getting written agreements in place before conducting business with a new party. Medium and large companies may find it difficult to formulate and enforce policies to protect trade secrets, especially as the body of trade secrets and the number of individuals who need access to a variety of trade secrets grow. For companies of any size, restrictions on sharing trade secret information may run counter to other business needs, including communication related to marketing and social responsibility, and even companies that diligently use confidentiality agreements may be surprised by the effect of a choice of law clause—or lack thereof. Nonetheless, court decisions may discuss consistent securement, use of confidentiality agreements, and marking as minimum thresholds for finding that a trade secret exists, without expressly addressing the particular circumstances of the business. See generally, id.

Some companies respond by over-marking, stamping most or all outgoing documents as confidential, which may pose its own hazards. Marking a document confidential is not dispositive of whether it was kept confidential, and over-marking could be used to undermine testimony about routine business practices for protecting secrets, for example, by showing that materials marked as confidential are often disclosed publicly. Over-marking may also make it harder for business owners and employees to keep track of which information is really confidential. This could result in the markings being ignored, with well-intentioned owners or employees failing to take appropriate protective measures for significant secrets. Conversely, over-marking may be a sign that the business doesn't really know what might be confidential or a trade secret, making that information nearly impossible to protect appropriately.

Even in the absence of federal legislation (which has not been reintroduced so far this session), trade secrets are a useful tool. They are not, however, automatic or low-maintenance. As with other intellectual property (IP), businesses of all sizes should periodically assess what information they are using that is economically valuable and not generally known. Once identified, potential trade secrets should be secured—physically or electronically—and marked so that anyone who handles the information knows it must be handled with special care. Access to the trade secret should be limited as much as reasonably possible, and a confidentiality agreement should be obtained from anyone, including trusted employees, before granting access to the trade secret. Properly identified and secured, trade secrets have an important place in an IP portfolio.

Amy M. Foust *is a registered patent attorney and Of Counsel Attorney in Shook, Hardy & Bacon's Miami office. She may be reached at afoust@shb.com or by calling (305) 358-5171.*

Professionalism Marlins CLE

On April 7, 2015, the Professionalism Committee hosted the 11th Annual Marlins Lawyers Appreciation Night CLE and baseball game. This year's topic was "Winning Ethically – Views from the Bench" and was presented by the Honorable Federico A. Moreno, U.S. District Court – Southern District of Florida, the Honorable Kevin M. Emas, Third District Court of Appeal and the Honorable John W. Thornton, Jr., Eleventh Judicial Circuit of Florida and moderated by David Rothman. Following the seminar, attendees watched the Miami Marlins take on the Atlanta Braves.

Attendees enjoyed a lively presentation and 3 lucky members won Marlins Memorabilia

The Miami Marlins warming up for the Braves

Judge Kevin M. Emas, Judge John W. Thornton, Jr., David B. Rothman, and Judge Federico Moreno

Dade Legal Aid
Put Something Back

Pro Bono News

On May 1, Dade Legal Aid thanked its 225 "100% Law Firm" Stakeholders and 6,000 dedicated volunteer attorneys for providing "Access to Civil Justice" for thousands of low-income residents of Miami-Dade County at its annual awards luncheon. The program then recognized the following individual honorees for extraordinary dedication and selfless contributions to the impoverished members of our community through Dade Legal Aid and Put Something Back ("PSB").

Honorable Chief Judge Bertila Soto presented the awards on behalf of the Eleventh Judicial Circuit along with Karen Ladis of Dade Legal Aid. Rumberger Kirk & Caldwell, P.A. received this year's Outstanding Law Firm Award for unwavering dedication to pro bono services, expending thousands of hours on cases, projects, and other contributions benefitting our community and our profession. Nicole Smith, Partner, accepted the award on behalf of the firm. Scott Sarason, Managing Partner, and Paul Lipton, Director of Professionalism, Career and Skill Development, were unable to attend. Also in attendance were associates Armando Hernandez and Caitlin Trowbridge.

Honorable Vance E. Salter, a former Tobias Simon Pro Bono Winner, received the 17th Annual Richard C. Milstein Pro Bono Excellence Award for helping to make "access to civil justice" a reality for those in dire need. As a Judge on the Third District Court of Appeal, Judge Salter leads by example. The award was established in 1999 to honor Milstein's integrity, humility, compassion and professionalism.

Evan Langbein, of Langbein & Langbein, received the Appellate Law Award for devoting hundreds of hours on pro bono appeals cases for Dade Legal Aid clients. Jose Antonio Pagan, II received the Bankruptcy Law Award for going above and beyond to assist indigent debtors by accepting one pro bono bankruptcy case per month. Lisette Sanabria Dede, Director of Family Operations, Administrative Office of the Courts, received the Family Law Award for exceptional participation with our pro bono family law seminars, including selecting speakers, topics and courtrooms. For years she has gone above and beyond to ensure the success of each seminar. Peter M. MacNamara received the Probate & Guardianship Award for accepting an astounding 24 cases in one of the highest volume areas for PSB greatly befitting dozens of clients. David S. Abrams received the Real Property Award for zealously assisting pro bono real property clients in litigation and transactional matters. He never says "no" when called upon to help. Rob Collins, Education & Outreach Coordinator of HOPE, received the Small Claims Clinic Award for generously assisting pro se litigants seeking free advice with their cases at the bi-monthly clinics. Gary Winer received the Venture Law Award for counseling countless startups in need of intellectual property protection and patent services through Dade Legal Aid's Venture Law Project. Javier Banos is always available to assist indigent clients with wills matters. No matter how many cases he is handling, he graciously agrees to take on new assignments and received the Wills Award for giving of himself so freely.

The luncheon also recognized several outstanding community partners for supporting seminars, programs and fundraisers year-round: Bagel Emporium & Grille, Daily Business Review, Disability Independence Group and Sabadell Bank. Deborah Dietz and Sharon Langer received the award on behalf of "DIG." Dade Legal Aid also paid tribute to its talented Rising Stars in attendance for their involvement in becoming future leaders as part of the Inaugural Dade Legal Aid Leadership Academy: Zachariah Evangelista, Daryl Greenberg, Stephanie Grosman, Monique Hayes, Stephanie Moncada, Jeffrey Snyder and Caitlin Trowbridge. Recognized but not in attendance were Fellows: Yohan Gomez, Nicole Grimal, Monique Hayes, Jennifer Ruiz, Brian Toth, Stuart Weissman and Joshua Wintle as well as previous Pro Bono Recipients, John Kozyak and Liz Baker.

Also recognized were the following Guardian Angels for supporting Dade Legal Aid's Child Advocacy Project: Susan and Stanley M. Rosenblatt, Ver Ploeg & Lumpkin, PA, Podhurst Orseck, PA, St. Thomas University and Monsignor Franklyn Casale, Ratzan Law Group, Jude Faccidomo of Ratzan & Faccidomo, Courtney Law Firm, Needle & Ellenberg, PA, Nosich & Ganz, Attorneys at Law, PL, Wolfson & Grossman, PA, Reyes O'Shea & Coloca, PA, Buchbinder & Elegant, PA, Brian Spector, LLC, Michael J. Freeman, PA, Larry & Susan Davis, J.B. De Rosset, and Craig Savage, PA.

Children's Courthouse Ceremony

On April 24, 2015, the grand opening ceremony for the new Judge Seymour Gelber and Judge William E. Gladstone Miami-Dade County Children's Courthouse was held. The Dade County Bar Association hosted a reception immediately following the ceremony.

Herman Russomanno, DCBA President and Chief Judge Bertila Soto, Eleventh Judicial Circuit of Florida.

Murder Mystery Event

On April 11, 2015, the DCBA Criminal Courts Committee teamed up with local lawyers to Raise Funds for Dade Legal Aid at the first annual Murder Mystery dinner. Jude M. Faccidomo and Mycki Ratzan of Ratzan & Faccidomo hosted the first annual Murder Mystery Dinner to benefit Dade Legal Aid's Child Advocacy Project. In attendance were well-known Miami Criminal Defense lawyers, Judges, and dignitaries who gathered together for a fun filled evening. "When you can have a good time and support a good cause - it's a great night," said Faccidomo, Chair, Dade County Bar Association Criminal Courts Committee.

Herman Russomanno, DCBA President, and Suzette Russomanno, YLS Past President

Mycki Ratzan and Jude Faccidomo, of Ratzan & Faccidomo who sponsored the event to raise funds and awareness for Dade Legal Aid's Child Advocacy Project

Here is a picture of the Winning Team that solved the Murder Mystery!!!!! The Scanzianis, Vinings, Ladis, Harkes and Monteros.

Sea Change: The Eleventh Circuit Court of Appeals Departs From Decades of Legal Precedent

BY LAUREN E. DEFABIO

For over twenty-five years, the ability of cruise line passengers to sue the cruise lines for the medical negligence of its shipboard physicians was severely hampered, and essentially barred, by the "Barbetta rule." The Barbetta rule was derived from the 1988 case of Barbetta v. S/S Bermuda Star, 848 F.2d 1364 (5th Cir. 1988). In Barbetta, the Fifth Circuit Court of Appeals held that where a shipowner elects to employ a shipboard physician to treat its passengers, the shipowner has a duty only to select a physician that is qualified and competent. If the physician is negligent in treating a passenger, Barbetta found that this negligence cannot be imputed to the shipowner. The reasoning behind the Barbetta rule was two-fold: (1) the relationship is solely between the physician and the passenger, and the shipowner lacks the ability to interfere with same; and (2) a ship is not a "floating hospital," and the shipowner lacks the expertise necessary to supervise a physician making medical decisions.

Over the next twenty-five years, the Barbetta rule was regularly cited by Florida federal and state court judges, and used to bar claims made by cruise line passengers that sought to hold a cruise line vicariously liable for a ship physician's negligence through actual agency. As Barbetta's progeny developed, many judges held that because Barbetta provided that claims for actual agency were barred, so too were claims for apparent agency.

Despite the clear language of Barbetta and the courts' repeated adherence to same, cruise line passengers continued to file suit against the cruise lines alleging that they were vicariously liable for the medical negligence of its shipboard medical personnel through actual agency and apparent agency. These passengers

> *"[T]he evolution of the modern cruise industry and the develpment of new technology . . . have 'erased whatever utility the Baretta rule once may have had."*

argued that the Barbetta rule was outdated and did not reflect the realities of modern cruising. Specifically, they reasoned that many cruise lines now employ medical personnel at their shoreside offices who supervise the shipboard physicians and that due to advances in modern technology, these shoreside supervisors have the ability to communicate with the ship's physician about medical decisions when the ship is at sea.

After years of cruise line passengers attempting to do away with the Barbetta rule, the Eleventh Circuit finally did so in Franza v. Royal Caribbean Cruises, Ltd. No. 13-13067 (Nov. 10, 2014). This decision is historic not only because it marks a significant change in maritime law but also because the courts embrace the principle of uniformity and harmony in maritime law and very rarely deviate from established precedent.

In Franza, Patricia Franza brought suit against Royal Caribbean alleging that her elderly father died as a result of negligent medical care rendered onboard the Explorer of the Seas. In her lawsuit, Franza sought to hold the cruise line liable for the alleged medical negligence of the ship physician and nurse through the theories of actual agency and apparent agency. Unsurprisingly, the lower court applied Barbetta to dismiss Franza's actual agency claim, and also dismissed her apparent agency claim as inadequately pled.

In its landmark decision, the Eleventh Circuit reversed the lower court, holding that the theories of actual agency and apparent agency were available in the case, and that the complaint plausibly established those claims. The Court recognized that "much has changed" since Barbetta, including the evolution of the modern cruise industry and the development of new technology, and that these changes have "erased whatever utility the Barbetta rule once may have had."

One of the major questions left in Franza's wake is how the cruise lines will react. It is highly unlikely that they will cease employing medical personnel onboard their ships. Passengers regularly visit medical facilities onboard cruise ships for everything from seasickness to broken bones, and they rely on the cruise lines to provide them with medical care when they are ill or injured while at sea. If the cruise lines were to cease employing doctors for the use of passengers, they would undoubtedly loose a large portion of their clientele. One option that the cruise lines may explore in the hopes of defeating future agency claims is to have passengers sign a document acknowledging they understand that the shipboard physician is an independent contractor. Whether this will work in practice remains to be seen.

What is clear, however, is that there will likely be an increase in lawsuits brought against the cruise lines alleging medical negligence and judges in the Southern District of Florida have already begun to uphold Franza. Where attorneys previously and often passed on these types of cases because Barbetta made such cases very difficult to win and it was near-impossible to successfully sue the shipboard physicians directly, they no longer face this major obstacle and have a potential path to victory.

Lauren E. DeFabio *practices in the areas of personal injury and maritime law. Ms. DeFabio can be reached at lauren.defabio@gmail.com* ■

The Constitutional Corner

BY HONORABLE MILTON HIRSCH

"Baron Robert Ritz-Walter, Lord of Dunmow and standard-bearer of the city of London, buried ... his beautiful daughter Maud in the south side of the choir in his priory at Dunmow. Maud had been killed by a deadly poison, and her father was certain that the murderer had been sent by King John. Fitz-Walter believed he had saved his daughter when he thwarted the lecherous king's efforts to seduce her to become one of his concubines in the palace, as [King John] had done with wives and daughters of other barons. Now, [Fitz-Walter] realized, he had condemned Maud. The vengeful king had ... retaliated. Maud's abuse by King John and her tragic death inspired romantic stories. Poor Maud became the Maid Marian in the tale of Robin Hood."

- Prof. Samuel Dash, The Intruders

Fitz-Walter became one of the leaders among the barons who, on June 15, 1215, obliged a grudging King John to sign the Magna Carta. Although many of the passages of that mythopoeic document are now of antiquarian interest only, there is a timelessness to the Great Charter's most enduring and vital promise: Rex non debet esse sub homine, sed sub Deus et lege. The king (or the federal government, or the president) is not subject to other men, but he is subject to God and the law.

The Honorable Milton Hirsch *has been a judge of the 11th Judicial Circuit of Florida since January of 2011. He is also an adjunct professor of law at the University of Miami School of Law and at St. Thomas Law School. In 2013, he was the recipient of the "Gerald Kogan Judicial Distinction Award," the highest award given to a member of the judiciary by the Miami Chapter of the Florida Association of Criminal Defense Lawyers. The above passage is an excerpt from Judge Hirsch's Constitutional Calendar. If you would like to be added to the Calendar's distribution list, please contact Judge Hirsch at milton.hirsch@gmail.com with your name and e-mail address.* ■

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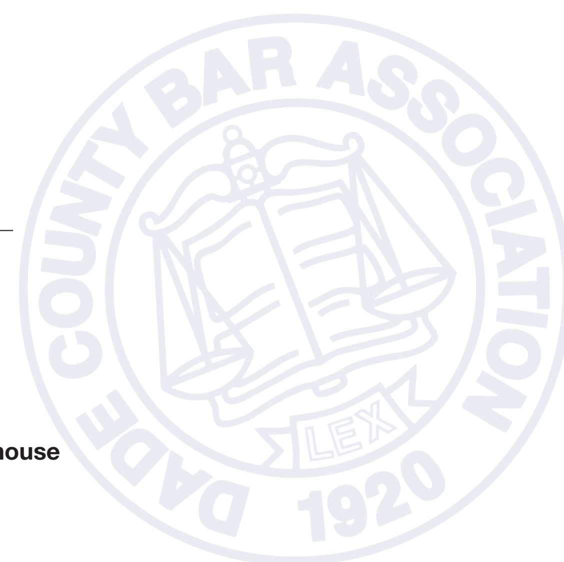

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Family Court Seminar
Location: Lawson Thomas Courthouse
Time: 12:00 noon
Member Admission: $20
Non-Member Admission: $25

JUNE 6
Annual Installation Dinner
Location: Fontainbleau Miami Beach
Time: 7:00 pm
Admission: $195

JUNE 9
GAL Foreclosure CLE
Location: Lawson Thomas Courthouse
Time: 12:00 noon
Admission: $15 in advance
At The Door: $20

JUNE 11
Probate & Guardianship Seminar/Meeting
Location: Lawson Thomas Courthouse
Time: 12:00 noon
Member Admission: $10
Non-Member Admission: $20

JUNE 19
Legal Aid View from the Bench
Location: TBA
Time: TBA

JUNE 25
YLS Social Happy Hour for Legal Aid
Location: Batch
Time: 6:00 pm
Admission: $20 suggested donation to Legal Aid

JULY 9
Third DCA Passing of the Gavel Ceremony
Location: Third DCA
Time: 3:00 pm
Admission: TBA

JULY 17-18
Dade County Board Retreat
Location: Naples
Time: All Day

AUGUST 28
Investiture for Judge Diana Vizcaino
Location: Dade County Courthouse
Time: 12:00 noon

SEPTEMBER 10
Probate & Guardianship Seminar/Meeting
Location: Lawson Thomas Courthouse
Time: 12:00 noon
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SEPTEMBER 11
Investiture for Judge Jason Bloch
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SEPTEMBER 18
Investiture for Judge Laura Anne Stuzin
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