The Florida Bar Out-of-State Division

State-to-State

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Summer 2017

Florida's Constitution Revision Commission

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Fair housing and criminal records policies

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Community and separate property regimes

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OOSD proposed officers and executive council members

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5/2017

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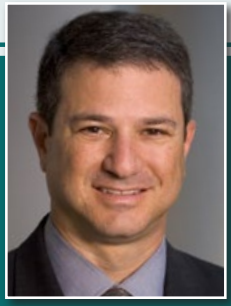
COVER:
BOCA RATON OLD TOWN HALL
BOCA RATON, FLORIDA

Photo: Discover The Palm Beaches

While you're in Boca Raton for The Florida Bar Annual Convention, you owe it to yourself to learn more about our host city. Let your guide be the Boca Raton Historical Society & Museum, located at Town Hall—easily spotted by its shining gold dome in the heart of Boca Raton. Architect Addison Mizner, who designed the Boca Raton Resort & Club, provided the original designs for a city hall, and Town Hall at 71 N. Federal Highway still bears the original footprint of the Mizner design. It was constructed in 1927 using ironwork, tile and woodwork supplied by Mizner Industries.

It has been a great year for the OOSD!



President's message

Larry H. Kunin

This will be my last message as president of the Out-of-State Division. It has been a pleasure serving the out-of-state members of The Florida Bar and, in particular, the members of our division. I would like to thank the OOSD officers and Executive Council for making my job very easy. My successor, Tiffany McKenzie, is a terrific leader, and the OOSD will be in her great hands. I look forward to continuing my service as immediate past president and as a member of the Executive Council.

The OOSD has had a terrific year! The number of out-of-state Florida Bar members is up, and our OOSD membership is also growing. There are almost 1,000 members of the OOSD among the more than 17,000 Florida Bar members who reside out of state.

The OOSD is meeting its mission to serve the varied needs of the Bar's out-of-state members. In October 2016, the OOSD met in conjunction with the Board of Governors' out-of-state meeting in Nashville. The OOSD Executive Council met at the Belmont College of Law. Thanks to Tim Chinaris, OOSD executive council member and associate dean of the college, the members had the opportunity to meet with Dean Alberto Gonzales, the former U.S. attorney general.

Then, in March 2017, the OOSD Executive Council met in Dallas, in conjunction with the Young Lawyers Division Board of Governors. During this meeting, the OOSD and the YLD were honored to host Frank Stevenson, president of the State Bar of Texas, and Harriet Miers, the first woman president of the State Bar of Texas and former White House counsel to President George W. Bush. Miers was also a Supreme Court nominee and was with President Bush in Florida on 9/11.

Finally, the OOSD is planning a CLE in conjunction with the next out-of-state BOG meeting, which will be held in Boston in October 2017.

The OOSD is always looking for more members and for attorneys interested in joining the Executive Council. Our next meeting will be held during The Florida Bar Annual Convention at the Boca Raton Resort & Club on Friday, June 23, 2017, from 3:30 to 5:30 p.m.

Open communication with our members is a high priority for the OOSD, and this *State-to-State* newsletter continues to be our most visible communication initiative. *State-to-State* is published four times per year and is sent to all out-of-state Florida Bar members electronically and free of charge. OOSD membership dues help to cover this cost, and thus we encourage your membership and support. We consistently receive positive feedback from the Bar leadership and our members about the quality of *State-to-State*, and we want to hear from you, too.

Please visit our website or see page 17 of this newsletter for the contact information of our officers and executive council members.

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Florida's Constitution Revision Commission

by Lansing "Lanse" Scriven

L. SCRIVEN

This article is the second part of a two-part overview of Florida's Constitution Revision Commission. The first part of this overview was published in the summer 2016 issue.

At the outset, it is important to note that the Florida Constitution may be amended in one of five ways, one of which is the Constitution Revision Commission. Once every 20 years, the Constitution Revision Commission, or "CRC" as it is known, convenes to consider revisions to Florida's constitution. Article XI, Section 2 of the Florida Constitution provides the authority for the CRC. The proposed revisions can run the gamut from technical changes intended to clarify conflicting language in the constitution to completely new initiatives.

The 2017-18 CRC held its initial organizational meeting on Mar. 20, 2017. For approximately the next 12 months, the CRC will conduct public hearings throughout the state as part of its "Floridians Speak, We Listen" tour. The CRC held the first of those public hearings in Orlando on March 29. Any amendments to the state constitution proposed by the CRC will be on the ballot in the November 2018 General Election.

Appointments

Article XI, Section 2 of the Florida Constitution provides that the CRC is composed of 37 members, consisting of:

- The attorney general;
- 15 members selected by the governor;
- Nine members selected by the House speaker;
- Nine members selected by the Senate president; and
- Three members selected by the Supreme Court chief justice with the advice of the other justices.

Given the long-range implications of the CRC's charge, Bar leadership has encouraged the appointment of 37 "thoughtful, diverse, forward-thinking individuals that have the interests of all Floridians at heart." On Feb. 6, 2017, Florida Supreme Court Chief Justice Jorge Labarga announced his appointments to the CRC. Those appointees are Henry "Hank" Coxe of Jacksonville, Arthenia Joyner of Tampa and Roberto Martinez of Coral Gables.

Hank Coxe, a Jacksonville attorney who specializes in federal and state criminal matters, has served as president of The Florida Bar. He has also served on the Judicial Qualifications Commission, which is the constitutionally created board that receives and investigates allegations of judicial misconduct. He served on the Florida Supreme Court Innocence Commission and the Judicial Nominating Commissions for the Fourth Judicial Circuit as well as the First District Court of Appeal.

Arthenia Joyner, a Tampa attorney, served in the Florida Legislature for 16 years, first in the Florida House and then in the Florida Senate. She was a student participant in the first civil rights demonstration in Tampa, part of the effort to desegregate department store lunch counters. A few years later, as a student at Florida A&M University, she was part of the demonstrations seeking to desegregate the city's movie theaters and churches.

Roberto Martinez, a Coral Gables attorney, has served in the U.S. Attorney's Office for the Southern District of Florida, first as an assistant U.S. attorney and then as the U.S. attorney. He has a record of active service in education, both in his home county of Miami-Dade and also on a state level, serving as a member of the state Board of Education for several years. He served as a member of the Florida Taxation and Budget Commission in 2007-08 and chaired the commission's Government Services subcommittee.

Governor Rick Scott, House Speaker Richard Corcoran and Senate President Joe Negron have also announced their appointees to the CRC. The governor's appointees are Carlos Beruff (chair), Jose Armas, Lisa Carlton, Timothy Cerio, Emery Gainey, Brecht Heuchan, Marva Johnson, Darlene Jordan, Fred Karlinsky, Belinda Keiser, Fred Kruppenbacher,

Need to meet your CLE requirements— for *free*?

Many of you may not know it, but The Florida Bar offers a large number of CLE programs **at no cost to its members**. This is especially useful to out-of-state members in states where there is not a mandatory CLE requirement. To access these programs, go to The Florida Bar's website (***www.flabar.org***) and click on the **"CLE"** tab in the upper right-hand corner. Scroll down to **"Online Courses"** and click on **"Catalog of Courses."** That brings you to a list of offered programs. If you click on either **"Discounted or Reduced Price Programs" or "Law Practice Management,"** you will see more than 30 hours of free online course offerings. That, combined with the free ethics tape the OOSD provides, should pretty much let you fulfill your CLE requirements.

Gary Lester, Jimmy Patronis, Pam Stewart and Nicole Washington. The House speaker's appointees are Jose Felix Diaz, Speaker Pro-Tempore Jeanette Nunez, Chris Sprowls, Tom Lee, Darryl Rouson, Chris Nocco, Erika Donalds, Rich Newsome and John Stemberger. The Senate president's appointees are Don Gaetz, Ana Marie Hernandez Gamez, Patricia Levesque, Sherry Plymale, William Schifino, Jr., Chris Smith, Bob Salari, Jacqui Thurlow Lippisch and Carolyn Timmann.

Issues Likely to Arise During the CRC Process

Since the work of the 2017-18 CRC is just underway, it is too early to speculate what specific amendments the CRC may attempt to place before voters in 2018. Based on legislation introduced during the current session of the Florida Legislature, however, it is widely anticipated that term limits for judges is one issue the CRC is likely to consider. The Florida House of Representatives has already passed a measure in this year's session to place a constitutional amendment before voters to impose term limits on appellate judges. Thus far, the measure has not received approval in the Senate, which is a prerequisite before an amendment can be placed before voters.

On Dec. 9, 2016, The Florida Bar Board of Governors voted unanimously to reject term limits for judges at all levels of the state's court system. No states impose judicial term limits. Three states have considered term limits: Colorado in 2006, Nevada in 1996 and Mississippi in 1995, and all rejected the concept. (The only limited exception is in New Mexico, which has term limits for its probate court judges.) If the legislation pending in the current session fails because the Senate refuses to follow the House's lead, the table will be set for term limits to become a focal point during the CRC.

The Florida Bar

Although The Florida Bar does not have any appointments to the CRC, the Bar will be actively engaged in the CRC process. Among other things, the Bar will collaboratively work with the LeRoy Collins Institute and other project partners to provide a forum for the exchange of varying ideas and concepts to educate citizens regarding the CRC process. Additionally, Bar President Bill Schifino has appointed a Special Committee on the 2017 CRC. This committee will monitor the activities of the CRC and, along with other groups, coordinate the Bar's role as an unbiased resource to those engaged in the CRC process.

To stay abreast of the CRC's activities, members may visit the website of the Partnership for Revising Florida's Constitution, *www.revisefl.com*. The mission of the Partnership is to educate the public on the importance of the CRC and to empower the public to vote on amendments that will be on the ballot in November 2018. The Florida Bar is one of several partner members of the Partnership.

Conclusion

Florida's laws are changed routinely as the Florida Legislature convenes on an annual basis in Tallahassee. In contrast, the CRC is a once-every-20-years occurrence. Amending the state constitution, particularly when that authority is vested in individuals who are unelected appointees with the power to place constitutional amendments directly on the ballot, has profound and far-reaching consequences. All lawyers, including our members who practice out of state, would be well-served to be engaged in, and to monitor the activities of, the CRC.

Mission of the Out-of-State Division

The purpose of the Out-of-State Division of The Florida Bar is to provide an organization for all Florida Bar members who reside outside of the state of Florida. The division focuses not on any specific practice area, but rather on the common interests and needs of out-of-state Florida Bar members as a whole. The division works toward the goal of ensuring equitable treatment for in-state and out-of-state Florida Bar members. This is accomplished through education, legislative and administrative review; the production and update of a website for division members and the public at large; and the publication of a newsletter sent to the division's membership.

Fair housing and criminal records policies

by Allison K. Bethel

A. BETHEL

The Federal Fair Housing Act prohibits discrimination on the basis of race, color, religion, national origin, sex, disability and familial status in a broad range of housing transactions. 42 U.S.C. §§ 3601 *et seq*. Nearly all states and many municipalities have their own fair housing laws, and many of these include more protected classes than the federal law. These additional protected categories reflect the realities of the more subtle discrimination practices seen in today's market. Housing providers may not directly refuse to rent to protected classes, but they may refuse housing to certain categories of people and in doing so, adversely impact protected classes.

Last year, the Department of Housing and Urban Development (HUD) issued a statement concerning the use of criminal background checks by housing providers. *See*, April 4, 2016, *Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions*. While persons with criminal records are not expressly protected under the Act,[1] overly restrictive screening policies have a disproportionate impact on persons of color, persons with disabilities and other protected classes. Blanket refusals to rent to persons with criminal backgrounds violate the Act, and providers must consider the nature, severity and age of the conviction. Policies should be narrowly tailored to meet objectives and include reasonable look-back periods starting from conviction[2] and evaluation of mitigating factors. Arrests that do not lead to a conviction should not be considered at all, and clear guidelines concerning the types of crimes considered should be provided.

This guidance comes on the heels of developments in the last couple of years confirming use of the disparate impact theory in housing discrimination cases. This theory may be used to challenge a policy or practice that is neutral on its face and as applied, but nevertheless has a discriminatory effect on protected classes. In 2015, the United States Supreme Court affirmed the use of this theory in housing discrimination cases in *Texas Department of Housing & Community Affairs v. The Inclusive Communities Project, Inc.*, 135 S. Ct. 2507 (2015). The case involved a claim that low-income tax credits were being concentrated in communities of color and furthering segregation in violation of the Act. The Supreme Court noted the disparate impact theory was critical to uncovering subtle, unintentional discrimination. It is not without limitation, and a policy adversely impacting protected classes may survive if it is supported by a legally sufficient justification and there is no less discriminatory alternative. Shortly before the decision was issued, HUD published a rule explaining how the disparate impact works. *See*, *Implementation of the Fair Housing Act's Discriminatory Effects Standard*, 78 Fed. Reg. 11,460 (Feb. 15, 2013).

Housing providers, municipalities and their counsels need to carefully examine criminal records policies and practices to ensure compliance with the Act. In addition to criminal records screening, other policies may have a disparate impact. For example, overly restrictive occupancy standards may adversely impact persons with disabilities needing live-in caregivers, families with children and/or persons from ethnic backgrounds where multigenerational living is common. Additionally, crime-free policies and nuisance ordinances requiring providers to evict tenants who cause the police to come to the premises may constitute sex discrimination as they discourage victims of domestic violence, disproportionate numbers of which are female, from calling for assistance. Blanket prohibitions on voucher holders or others receiving government assistance may adversely impact on the basis of race, color and/or disability. In sum, housing providers should evaluate applicants individually, taking into consideration relevant factors such as resources and rental history, and avoid creating broad exclusionary policies based on generalizations.

Endnotes

1 Communities with laws providing limited fair housing protections to ex-offenders include Urbana, Illinois; Champaign, Illinois; Madison, Wisconsin; Dane County, Wisconsin; San Francisco, California; Newark, New Jersey; Richmond, California; and the District of Columbia.

2 The guidance suggests a seven-year look-back period may be reasonable.

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Community and separate property regimes:
Educating the mobile client and the multijurisdictional attorney

by Christopher Weeg

C. WEEG

Most clients and many attorneys are unfamiliar with the concept of community property—that is, how it works and how it affects a broad spectrum of legal practices including family law, tax law and estate planning. For attorneys with diverse clients and multijurisdictional practices, ignorance of community property law can be costly. This article provides an introduction to the community property system and highlights topics to discuss with clients planning a move either to or from a community property state.

The two marital property systems in the United States are separate property (also known as the common law system) and community property. Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas and Washington are the traditional community property states. Additionally, Wisconsin has adopted the Uniform Marital Property Act modeled after the community property system, and Alaska and Tennessee allow couples to elect into community property classification through a community property trust. It's worth noting that while community property is the minority, the two most populous states, California and Texas, follow this system.

In separate property states, for most purposes, property acquired during marriage is deemed to be the separate property of the spouse who acquired it. The community property system, on the other hand, manifests the social and legal belief that property acquired by spouses during marriage should be construed as one total "community" of property. While each community property state has its own set of rules, the following concepts are generally common to all in the community property system.

In the absence of a written agreement to the contrary, all property acquired (and income earned for that matter) during marriage is owned one-half by each spouse *regardless* of how title to the property is taken. Thus, educating the client that *title does not affect classification* is imperative. Exceptions to the presumption that all property acquired during marriage is part of the community are property acquired by gift or inheritance, proceeds from the sale of separate property and property acquired with separate property. The chart below helps to illustrate the foregoing general rule and its exceptions as applied to a married couple living in a community property state.

Property	Classification
Automobile purchased during marriage and titled in husband's name	Community property (owned one-half by husband and one-half by wife)
Income earned by wife during marriage and deposited into bank account in wife's name	Community property (owned one-half by husband and one-half by wife)
Gift of cash received by wife from her parents during marriage	Separate property of wife
Vacation home acquired by husband before marriage	Separate property of husband

The separate or community property classification of an asset is determined at the time the asset is acquired and according to the laws of the state in which the couple was domiciled when acquired. That original classification is not altered when the couple later moves to a different state—that is, the character of property follows the couple as they move from state to state. For example, in a separate property state, property acquired from a husband's efforts during marriage is "his" property, and if the couple thereafter moves to a community property state, it generally remains his "separate property." In this scenario, to prevent severe injustice upon a subsequent divorce or death, community property states typically recognize a third marital property category called quasi-community property. Quasi-community property is separate property that would have been community property if acquired in the community property state. While the exact application of quasi-community property varies from state to state, the general concept is to protect a non-owner spouse upon a property division.

Besides ownership classification, other important differences exist between separate property and community property states. Because spouses in community property states by law own one-half of all property acquired during marriage, these states typically do not have spousal protection statutes, which prevent a spouse from completely disinheriting the other spouse. All

separate property states (with the exception of Georgia) provide for some form of spousal protection. For example, under Florida's elective share statute, a surviving spouse has a right to 30% of the deceased spouse's "elective estate."[1]

From a tax perspective, community property benefits from a "double basis adjustment" at death under Internal Revenue Code § 1014(b)(6). At death, property included in a decedent's estate obtains a new tax basis equal to the property's fair market value (in the tax world, a "basis adjustment"). While only the predeceasing spouse's one-half of the community property is included in the estate, the entire community property interest is adjusted to fair market value at the death of the predeceasing spouse. To illustrate, a husband and wife purchase an asset while married and living in Texas. The asset has a basis of $100 and a fair market value of $1,000. At the husband's death, the husband bequeaths the asset to his wife. The husband includes one-half of the value of the asset in his gross estate (*i.e.*, his community property interest) equal to $500, and the wife obtains a new basis in the asset equal to $1,000 pursuant to § 1014(b)(6). On the other hand, if a husband and wife purchase an asset as joint tenants with rights of survivorship while married in Florida, and the husband dies, then the husband similarly includes one-half of the value of the asset in his gross estate (*i.e.*, what he actually owned) equal to $500, but his wife obtains a new basis in the asset equal only to $550, which represents the wife's $50 share of the original basis in the asset plus the husband's $500 share included in his estate.

Planning for a move from separate property to community property

As mentioned above, when moving to a new state, property generally will maintain its character as determined by the laws of the state in which the property was acquired. Property thereafter acquired is determined under the laws of the new state. Accordingly, property acquired during marriage in a separate property state will remain separate property, and following a move to a community property state, all property thereafter acquired during the marriage is the community property of the spouses.

Once domiciled in the community property jurisdiction, however, separate property can lose its separate classification if it is commingled with newly acquired assets or if its classification is simply lost through poor record keeping. Moreover, a spouse generally must rebut the presumption of community property with clear and convincing evidence that such property remained separate by, *inter alia*, lack of contact and integration with community property. Finally, the unavailability of the elective share to a surviving spouse could allow the spouse owning significant separate property to disinherit the non-owner spouse in certain circumstances, subject to applicable quasi-community property rules.

As an illustration, let's say you represent a Palm Beach couple who has grown tired of beautiful beaches and cocktails at The Breakers and is planning to relocate to a fixer upper in Waco. At a minimum, you should educate the couple as to the community property system and advise them to take one of the following actions:

1. **Do nothing.** If the clients do nothing with respect to their financial affairs, all of the income generated by the separate property brought to Texas will be community property. In many cases, the community property income will become commingled with the original separate property corpus, and at some point, the separate property may become untraceable. As a result of the presumption that all property is community property, unless it can be shown by clear and convincing evidence that it is the separate property of one spouse, the commingling may unintentionally convert separate property into community property by default.
2. **Do nothing but keep very good records.** A second alternative is for the clients to keep very accurate records as to the initial corpus of the separate property and allow the accumulation of community property income. This method would preserve the separate property character of the initial corpus and provide the clear and convincing evidence as to its separate property character.
3. **Keep the income and corpus separate.** In order to facilitate the record keeping, the clients may wish to arrange their financial affairs so that items of income, including earnings, interest and dividends on separate property investments, are segregated into a separate community property account, leaving the corpus of the separate property asset free from any community property taint.
4. **Enter into a marital property agreement.** The final alternative for the clients is to enter into a marital agreement that clarifies the character of the property and the income generated by the property. For example, the marital agreement could be limited to a particular asset and provide that all income generated by that asset will be separate property. This avoids any commingling of the reinvested income. To be effective, such agreements must meet all the requirements of Texas Family Code § 4.101, *et seq*. Alternatively, the spouses can enter into an agreement to convert separate

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property into community property under Texas Family Code § 4.201, *et seq*.

Regardless of which action the clients decide to take, it is important that they 1) understand the basics of the community property regime, and 2) understand the consequences of the characterization of property as it relates to distribution upon death, division upon divorce, management during the marriage and the issues related to taxation of such assets.

Planning for a move from community property to separate property

When spouses move from a community property state to a separate property state, as with the inverse move from separate to community, existing community property maintains its community classification unless lost through commingling or poor record keeping, and all future property acquired during the marriage is separate property. Accordingly, if the spouses desire to maintain the community classification, they should carefully segregate current community property from newly acquired separate property. If the couple owns appreciating assets, then maintaining their community property classification is particularly desirable to obtain the § 1014(b)(6) double basis adjustment at the death of the first spouse. To that end, the couple could fund a revocable trust with existing community property, explicitly providing in the trust agreement that such property shall retain its community property status.

Property rights affect a myriad of legal issues, be it family law, tax law, estate planning or bankruptcy and creditors' rights, to name a few. Knowing precisely what a client owns, especially at divorce or death, is a basic foundational issue of sound legal representation. Therefore, understanding where a client has lived and acquired property, as well as the client's marital status during those times, is very important.

Endnote

1 *See* Fla. Stat. § 732.201 *et seq.*

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THE FLORIDA BAR
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Not a member of the Out-of-State Division?

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Membership in the division is just $35 and provides a number of valuable benefits to out-of-state attorneys, including discounts on CLE registration, a free annual ethics CLE and opportunities to network with other Florida lawyers. Join now! Invite a colleague!

(For your convenience, an application is on page 18.)

For more information, please contact:

Mindi Wells, Chair
Membership & Long Range Planning Committee
mindi.wells@sc.ohio.gov

Willie Mae Shepherd,
Program Administrator
wshep@flabar.org

Pleased to meet you!

President-elect's message

Tiffany N. McKenzie

The Out-of-State Division is wrapping up another productive and successful year thanks in large part to our president, Larry Kunin, who has done an outstanding job of leading the OOSD for the 2016-2017 year. Larry was able to increase the OOSD's membership significantly this past year, which increased funding for division activities and allowed us to host productive networking events for our members. Most recently, the OOSD hosted a joint reception with the Young Lawyers Division in conjunction with an executive council meeting in Dallas. We had a great time getting to meet the members of the Young Lawyers Division! We also had the pleasure of meeting Harriet Miers, former White House counsel to President George W. Bush, and Frank Stevenson, president of the State Bar of Texas.

I look forward to taking the lead for the 2017-2018 year and meeting members of The Florida Bar throughout the country. I hope to see many of you at our next two events, the executive council meeting during The Florida Bar Annual Convention in Boca Raton, which is open to all OOSD members, and our CLE and reception in Boston, being held in conjunction with the Board of Governors' meeting on Oct. 4, 2017. The division is eager to schedule more CLE programs, especially a CLE that will fulfill The Florida Bar's new technology requirement. Please don't hesitate to contact our CLE chair, Eric Meeks, if you are interested in presenting a CLE session or can recommend someone who may be interested.

I also look forward to meeting you and learning about how we as a division can assist your legal development and your practice. My areas of focus for the 2017-2018 year will be to improve and increase our CLE programming, to host more networking gatherings and to increase the size of the division by providing access to relevant information that affects Florida lawyers, but may otherwise go unnoticed by nonresidents.

Thanks again to each of you who devoted your time and talents to the division in 2016-2017. I look forward to leading you into a successful 2017-2018 year!

During the OOSD-YLD reception held on March 2 in Dallas, the Young Lawyers Division of The Florida Bar presented a gift of "Florida gators" made of chocolate to Frank Stevenson, president of the State Bar of Texas, and Harriet Miers, the first woman president of the State Bar of Texas and former White House counsel to President George W. Bush. Pictured here are Zack Zuroweste, YLD president-elect; Tiffany McKenzie, OOSD president-elect; Frank Stevenson; Harriet Miers; Larry Kunin, OOSD president; and Katherine Hurst Miller, YLD president.

2017 Report of Nominating Committee

Proposed officers and executive council members

The Nominating Committee, composed of Donald A. Workman, W. Bard Brockman and Tiffany N. McKenzie, files this report and recommended slate of executive council members and proposed officers for consideration at the Out-of-State Division's annual meeting. In accordance with the division's bylaws, nominations from the floor may supplement the recommendations of the Nominating Committee. The following persons noted in bold are proposed to serve in their respective offices as noted:

EXECUTIVE BOARD NOMINATIONS

Tiffany N. McKenzie (Atlanta, Ga.)	**President**
Matthew L. Kahl (Atlanta, Ga.)	**President-Elect**
Natasha B. Dorsey (Chicago, Ill.)	**Treasurer**
Mindi Wells (Columbus, Ohio)	**Secretary**
Larry H. Kunin (Atlanta, Ga.)	**Immediate Past President**

EXECUTIVE COUNCIL (INCLUDING EXECUTIVE BOARD):		Term Expires
Brian D. Burgoon (Atlanta, Ga.)	BOG Member	
Ian M. Comisky (Philadelphia, Penn.)	BOG Member	
Eric L. Meeks (Cincinnati, Ohio)	BOG Member	
E. Duffy Myrtetus (Glen Allen, Va.)	BOG Member	
Richard P. Lawson (New York, N.Y.)	At-Large Member	2019
Donald A. Workman (Washington, D.C.)	At-Large Member	2019
Christopher C. Marquardt (Atlanta, Ga.)	At-Large Member	2019
John C. Voorn (Palo Heights, Ill.)	At-Large Member	2018
W. Bard Brockman (Atlanta, Ga.)	At-Large Member	2018
Timothy P. Chinaris (Nashville, Tenn.)	At-Large Member	2018
TBD	YLD Liaison	

A YLD liaison will be appointed by the YLD president, pursuant to Art. 4.3(A) of the OOSD's bylaws.

Standing committee chairs will be appointed by the president for the following standing committees, pursuant to Art. 5 of the OOSD's bylaws: CLE; Information; Budget; and Multi-State Practice. Special committees are approved by the president with the concurrence of the Executive Council, and the chair of each committee and special committee appointed by the president shall also be a member of the Executive Council.

The Nominating Committee also acknowledges the recommendations of its members that greater diversity in terms of geography, gender, etc., should be a continuing consideration in identifying prospective candidates.

Mark your calendar

The Florida Bar Annual Convention

June 21-24, 2017

Boca Raton Resort & Club
501 East Camino Real
Boca Raton, Florida 33432

Out-of-State Division Executive Council Meeting

Friday, June 23, 2017

3:30 p.m. - 5:30 p.m.
Boca Raton Resort & Club
Room location: Veranda III

BOG News

Board of Governors' updates

We want you to stay informed on actions taken by The Florida Bar Board of Governors. So, here is the latest Board of Governors' update.

The Florida Bar Board of Governors met on March 24, 2017. The major actions of the board and reports received included:

- West Palm Beach attorney Michelle Suskauer was announced as president-elect designate of The Florida Bar. Also decided in the voting, which ended March 21, were elections for The Florida Bar Board of Governors in the 8th Circuit - Stephanie Marusak Marchman, Gainesville; 13th Circuit - Amy S. Farrior, Tampa; and 20th Circuit - Marcy L. Shaw, Fort Myers. Suskauer will be sworn in as president-elect at the Bar's annual convention in Boca Raton on June 23, when current President-elect Michael J. Higer of Miami becomes president, and will begin her term as Bar president in June 2018. The Florida Bar *News* covered these election results; earlier results for other board elections are listed in this December 16 news release.
- As the Florida Legislature continues to meet in Tallahassee for the 2017 session, The Florida Bar is advocating positions including opposing term limits for judges at all levels, monitoring legislation of interest to the legal profession and posting weekly summaries for Bar members and additional information at *www.floridabar.org/legislativeactivity*. Business organizations have joined the Bar and other legal groups in opposing the proposed joint resolutions for term limits on appellate judges. The outlook on the state budget is that it will be lean, especially with predictions of a revenue shortfall for next year. The Florida Bar is working to ensure that the judicial system is adequately funded as directed in the Strategic Plan. The court's 2017-18 state budget request is covered in an April 1 Bar *News* article. Additional legislative positions of the Criminal Law, Family Law and Business Law sections were approved; advocacy by sections is wholly supported by the separate resources of the voluntary sections and must be conducted solely in the name of each section.
- A pilot project to test a real-time, browser-based solution for asset management and trust accounting to assist Bar members in complying with trust accounting rules was approved. The pilot for the trust accounting solution, AddVantage, is set to begin around August 1. The trust accounting solution is specifically designed to automatically bring lawyers who enter information correctly in compliance with Bar rules 5-1.1 and 5-1.2, and would be free to Florida Bar members who choose to use it. Through this proposed program, pooling trust account funds would also allow a higher interest rate and boost The Florida Bar Foundation's IOTA income. The April 15 Florida Bar *News* provides more information on the AddVantage trust accounting solution pilot project and the benefits of the software.
- Two new Florida Bar member benefits were approved to be added to the more than 60 free or discounted benefits now available to members. Bar members will soon receive discounts on products and services purchased from Office Depot and Office Max and a discount for 360 BizVue, which optimizes search engine results. All member benefit programs, including free legal research through Fastcase, free CLEs through the Practice Resource Institute (PRI) and discounts on practice resources, legal publications and forms, travel, banking, shipping and insurance, are listed at *www.floridabar.org/memberbenefits*.
- A report was given by representatives of a special committee on a proposed new Rule of Judicial Administration regarding granting continuances of court cases for parental leave. The rule would require that such continuances should be granted unless it would cause substantial prejudice to a party. The board will vote on the recommendation at its May 26 meeting. A notice of proposed board action requesting comments be submitted no later than May 15, 2017, is posted online, and the April 15 Florida Bar *News* provides complete coverage of the special committee representatives' comments to the Board of Governors.
- The Florida Bar's Florida Free Legal Answers online virtual legal pro bono project now has more than 370 Florida Bar members enrolled, and additional eligible volunteers are encouraged to participate. The website, launched to the public May 1, provides an additional way for low-income Floridians to access a volunteer attorney to answer civil legal questions online. Details on the project are available at *https://florida.freelegalanswers.org*.
- The proposed 2017-18 Florida Bar budget, published for member comments in the April 15 Florida Bar *News*, keeps annual membership fees at $265 for active members and $175 for inactive members for the 16th consecutive year. The budget projects revenues of $41.7 million and expenses of $42.9 million resulting in a $1.1 million deficit, which will be adequately covered by reserves, if needed. After Bar member comments, the board will approve the final proposed budget for submission to the Florida Supreme Court for approval.
- A change requested by the Florida Supreme Court to proposed Rule 4-1.19 on collaborative law was approved. The change would require that clients be provided with information about and give informed consent to fees to be charged by the involved lawyers and mental health and financial experts.

EDITOR'S CORNER

Your Out-of-State Division wants to help your practice

D. WORKMAN

Your Out-of-State Division continues to provide professional gatherings and networking opportunities for you. We conducted an executive council meeting in Dallas in conjunction with The Florida Bar Young Lawyers Division's meeting. We joined the YLD for a reception in conjunction with this meeting. Please see the president-elect's message for details and a photo from the event on page 10. Everyone had a great time, and new attendees were able to visit with the YLD leadership. Please consider joining us for future events.

Next up will be the OOSD annual meeting and elections to be held during The Florida Bar's annual convention in Boca Raton. We will meet on Friday, June 23, at the Boca Raton Resort & Club. More details will follow. You can find the Nominating Committee's report on page 11.

You'll see in this edition the many programs available to out-of-state members. Joining provides many benefits. One of my favorites involves the work of this publication to introduce you to other out-of-state members who share a desire to develop their respective practices. As a reminder, on page 5, you'll find the mission of the Out-of-State Division.

We hope you continue to enjoy the all-cyber version of *State-to-State*. You should be receiving a link to each edition of the newsletter that allows you to view the edition online in color at your desk or on your mobile device. We continue to look for ways to enhance the *State-to-State*. By doing so, we can better serve out-of-state lawyers. Remember, too, that you can feature yourself or your law firm as well. It should be a win-win for everyone. We challenge you to think of new ideas on how the OOSD can continue to improve services to Florida lawyers practicing out of state.

Your publication continues to grow. And we'd like even more! You'll see throughout the *State-to-State* our requests for contributing authors. We feature articles from members in Florida and elsewhere who share ideas and articles of interest to out-of-state members. Our content continues to increase because of you. Our contributing authors appear prominently, and we include the information you'd like others to read about your practice. We have two goals here: to present your ideas to a broad audience and to introduce the readers to you. We want to help your practice.

The Florida Bar provides great support and opportunities for its members. Our OOSD president, the other officers and the executive council members are here to support the specific needs of out-of-state Florida Bar members. The Out-of-State Division is here to help you turn shared interests into a strong professional practice. We're not shy—we want to help you develop business. So, please join and get involved!

Send us your articles and we'll get you published as quickly and as often as we can. And by all means, please let us know how we can serve you better. Please feel free to contact me at *dworkman@bakerlaw.com* or by telephone at 202/861-1602. We also look forward to seeing you at one of the local receptions or at OOSD meetings.

—Don Workman, Editor

S t a t e - t o - S t a t e

THE PUBLICATION OF THE OUT-OF-STATE DIVISION OF THE FLORIDA BAR

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State-to-State is devoted to Florida and multi-jurisdictional legal matters. It is editorially reviewed and peer reviewed for matters concerning relevancy, content, accuracy and style. *State-to-State* is sent electronically to more than 17,000 legal practitioners throughout the United States.

Statements or expressions of opinion or comments appearing herein are those of the contributors and not of The Florida Bar or the division.

The deadline for the **FALL 2017** issue is **JULY 14, 2017**. Articles should be of interest to legal practitioners with multijurisdictional practices. Please submit articles in a Word format via email to Don Workman, *dworkman@bakerlaw.com*. Please include a brief biography with contact information and a photograph of the author. If a digital photo is not available, please mail a print to The Florida Bar, OOSD, 651 East Jefferson Street, Tallahassee, FL 32399-2300.

Author! Author!

The Out-of-State Division offers its membership a valuable forum for the exchange of information on legal issues affecting our interstate practices. To be truly effective, it is essential for a large cross section of our members to contribute articles, news and announcements to this newsletter.

For those of you who would like to see your work in print, the rules for publication are simple: The article should be related to a subject of general interest to legal practitioners with multijurisdictional practices. Articles focused on your home state are less appealing than issues impacting a number of jurisdictions.

Please send documents in MS Word format via email to Don Workman, *dworkman@bakerlaw.com*.

Please help your colleagues to get to know you by including a brief biography with contact information, and include a head and shoulders photograph. Your photo and bio will be kept on file and need only be submitted once.

Contributing authors

The Out-of-State Division appreciates the articles submitted for this edition by our contributing authors. They can serve as a resource to fellow division members who might have a question regarding these authors' areas of expertise or if a referral is needed.

Allison K. Bethel *is a clinical professor and director of the John Marshall Law School Fair Housing Legal Clinic in Chicago. She previously served as the director of civil rights for the Florida Attorney General's Office. She is a graduate of the University of Florida law school and is a former member of the Board of Governors for The Florida Bar from the 17th Circuit. She can be reached at 312/427-2737, ext. 641, or 7bethel@jmls.edu.*

Brian D. Burgoon *is an out-of-state member of The Florida Bar Board of Governors. He is a past member of The Florida Bar Executive Committee, past chair of The Florida Bar Disciplinary Review Committee and past chair of The Florida Bar Rules Committee. He practices business litigation, civil litigation and personal injury with the Burgoon Law Firm LLC in Atlanta. He can be reached at 404/260-5147 or burgoon@burgoonlaw.com.*

Larry H. Kunin *is president of the Out-of-State Division and also serves on The Florida Bar Standing Committee on Law Office Technology. He is a member of the Executive Council of the Business Law Section and immediate past chair of the Computer & Technology Law Committee of the Business Law Section. He practices technology-related, intellectual property and business litigation. He can be reached at 404/504-7798 or lkunin@mmmlaw.com.*

Catherine Peek McEwen *is a U.S. bankruptcy judge for the Middle District of Florida, Tampa Division, and is the vice-chair of the 13th Judicial Circuit (Florida) Pro Bono Committee. One of Judge McEwen's mantras is that "judges admire pro bono volunteers."*

Tiffany McKenzie *is president-elect of the Out-of-State Division. She focuses her practice on estate planning and administration, family wealth transfer tax planning, succession planning and fiduciary litigation. She can be reached at 404/572-6725 or tiffany.mckenzie@bryancave.com.*

Lansing "Lanse" Scriven *is a shareholder with Trenam Law in Tampa, Florida. He concentrates his practice in the area of business litigation, handling a diverse range of business disputes. Complementary to his litigation practice, he also serves as a special prosecutor for the Florida Judicial Qualifications Commission. He is a former federal appellate law clerk, having worked for the Honorable Joseph W. Hatchett, former Chief Judge of the United States Court of Appeals for the Eleventh Circuit, and a member of The Florida Bar Board of Governors. He can be reached at 813/227-7430 or lscriven@trenam.com.*

Christopher Weeg *is a triple Gator having earned the B.S. in accounting, J.D. and LL.M in taxation from the University of Florida. He practices tax law and estate planning in Dallas with Meadows Collier. He can be reached at 214/749-2430 or cweeg@meadowscollier.com.*

Donald A. Workman*, OOSD past president and State-to-State editor, is a partner in the Business Group and head of BakerHostetler's bankruptcy and creditors' rights practice in the Washington, D.C., office. His practice areas include business bankruptcy, creditors' rights, debtor reorganizations, general insolvency, stockbroker liquidations and commercial litigation. He can be reached at 202/861-1602 or dworkman@bakerlaw.com.*

Become a contributor!

See submission information on page 13.

THE FLORIDA BAR
OUT-OF-STATE DIVISION

www.flabaroutofstaters.org

Advertise in *State to State!*

Please indicate Ad Size	Item number	Cost
☐ 1/4 page	(8160022)	$250.00
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Your advertisement may be submitted electronically as a .jpg, .tif or .pdf file, at 300 ppi or larger. Black & white camera-ready copy is also acceptable. Payment is by check only and must accompany the proposed ad and signed agreement below. Payment will be accepted on a per-issue basis only.

For further information, contact Willie Mae Shepherd, Section Administrator, 850/561-5624 or *wshep@flabar.org*

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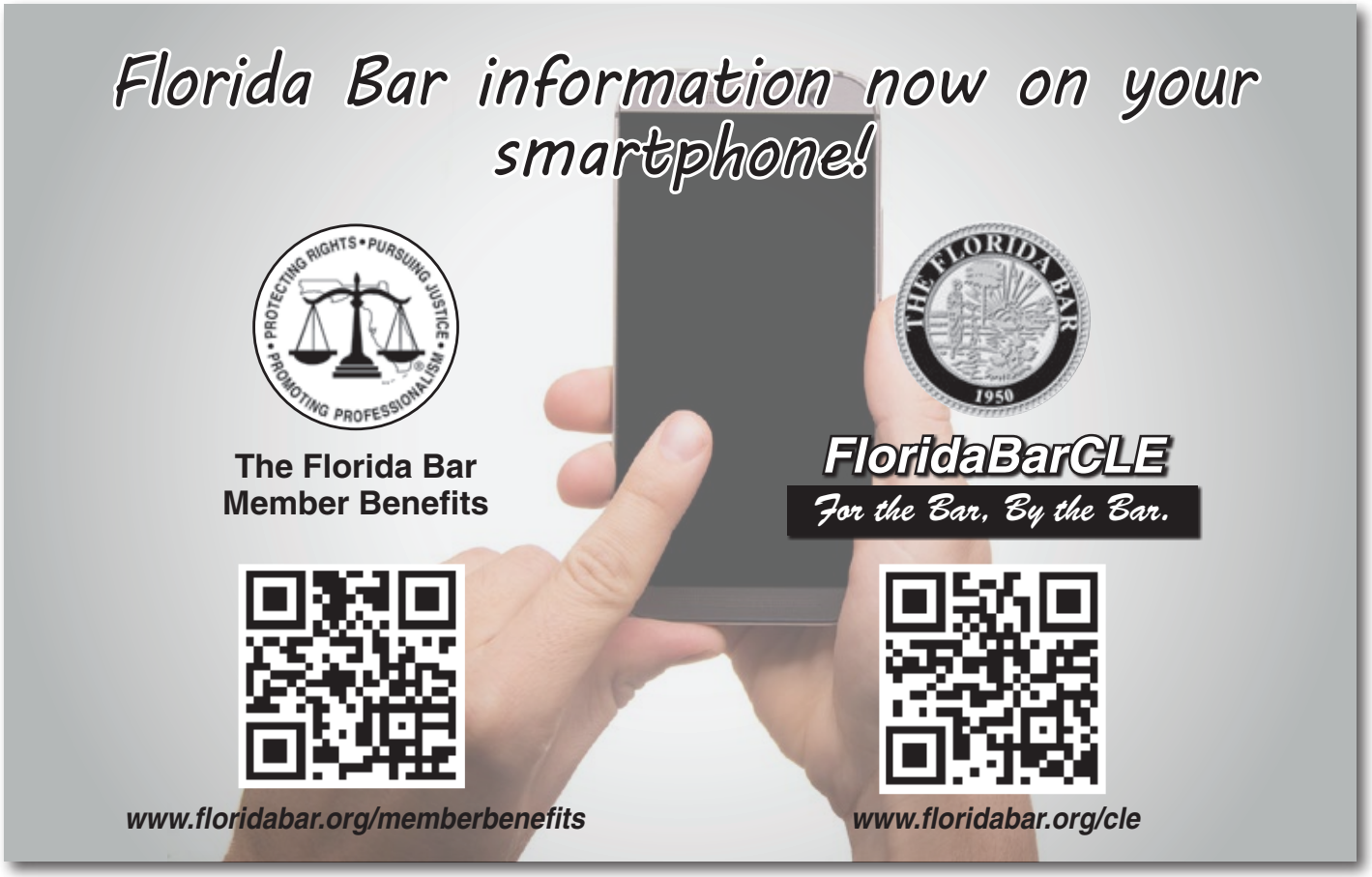

Stay current on ethics:

Free publication now available

In the past, out-of-state Florida Bar members have found that it can be difficult to stay abreast of ethics developments in Florida. Now, **two free resources** are available to help you stay current in this important area. The **"2016 Florida Legal Ethics Review"** by Tim Chinaris is available free of charge. This comprehensive compendium concisely summarizes developments in Florida legal ethics during 2016, including rule changes, cases and ethics opinions of interest. Arranged topically, the subjects covered are: Rule Changes (including Proposed Rule Changes); Advertising; Attorney-Client Relationship; Candor Toward the Tribunal; Confidentiality and Privileges; Conflicts of Interest (Including Disqualification); Disciplinary Proceedings; Fees (Including Attorney's Liens); Ineffective Assistance and Right to Counsel; Law Firms; Legal Malpractice; Professionalism; Public Official Ethics and Public Records; Rules and Ethics Opinions; Trial Conduct; Trust Funds; Unauthorized Practice of Law; and Withdrawal From Representation. To get your free copy, just send an email request to *tim@sunethics.com*. A copy will be emailed to you in PDF format. And stay up-to-date with legal and judicial ethics on a daily or weekly basis by visiting the comprehensive ethics website "sunEthics" (*www.sunethics.com*). This site offers summaries of cases and ethics opinions as they are released; links to everything related to Florida legal ethics, judicial ethics, bar admissions and professionalism; and links to ethics resources throughout the nation.

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Membership Application for
The Florida Bar
Out-of-State Division

More than 10 percent of Florida Bar members reside outside the state of Florida.

Although the division represents the interests of all lawyers outside the state, active participation in the division requires an election on the annual dues statement and, of course, the payment of dues (only $35).

Membership in this division will provide a forum for communication and education for the improvement and development of your practice through:

- a reduced fee for division-sponsored continuing legal education programs
- a newsletter especially designed for out-of-state practitioners
- a ready network for referrals and access to information through regional coordinators
- a web page especially designed for out-of-state practitioners
- an annual free online ethics CLE

To join, make your check payable to The Florida Bar and return your payment in the amount of $35 and this completed application form to OOS Division, The Florida Bar, 651 E. Jefferson St., Tallahassee, FL 32399-2300. **Membership will expire June 30**. Dues will not be prorated.

☐ OS Member Division Dues (Item number – 8161001)

☐ OS Affiliate (Inactive) Division Dues (Item number – 8161002)

Name: _____ Florida Bar Number: _____

Firm: _____

Office Address: _____

City/State/ZIP: _____

Email: _____

METHOD OF PAYMENT (CHECK ONE)

☐ Check Enclosed (payable to The Florida Bar)

☐ Credit Card: ☐ Mastercard ☐ Visa ☐ Discover ☐ AMEX

Name on Card: _____

Card Number: _____ Expiration Date: _____

Signature: _____

Mail or Fax your application today!

FAX: 850-561-9413

To learn more, visit our website at www.flabaroutofstaters.org or contact the program administrator at wshep@flabar.org.

THE FLORIDA BAR – OUT-OF-STATE DIVISION
APPLICATION FOR STUDENT MEMBERSHIP

More than 10 percent of Florida Bar members reside outside the state of Florida.

The Out-of-State Division seeks to keep its members informed of recent developments that could impact their practice as out-of-state Florida attorneys. Further, the division promotes opportunities to network—both socially and professionally—with other out-of-state Florida attorneys. Membership in the division provides access to the division's newsletter (*State-to-State*), the division's website (*www.flabaroutofstaters.org*), division-sponsored continuing legal education programs and division meetings.

Student membership in the division will:

- ✓Afford an opportunity to network with out-of-state Florida attorneys who can offer insights on practicing law as a Florida attorney outside the state.
- ✓Allow for communication with Florida lawyers practicing in a variety of locales nationwide.
- ✓Provide the member with access to the division's newsletter and website, which are designed especially for out-of-state practitioners, and an opportunity to submit articles for publication.
- ✓Entitle the member to a reduced fee for division-sponsored continuing legal education programs.

To join, send this completed application form to:

Out-of-State Division, The Florida Bar, 651 E. Jefferson St., Tallahassee, Florida 32399-2300.

(The application form also may be sent by email to *OOSD.Student.Member@gmail.com*.)

Student membership will expire upon admission to The Florida Bar or one year after graduation from law school, whichever occurs first. There is no membership fee for students.

NAME: _____

SCHOOL: _____

DATE OF GRADUATION (MO./YR.): _____

ADDRESS: _____

_____

PHONE: _____

EMAIL: _____

LIST ANY CITIES/STATES IN WHICH YOU HAVE A PARTICULAR INTEREST: _____

_____

SIGNATURE:_____ DATE:_____

Continuing Legal Education
Application for Course Attendance Credit

The Florida Bar
Legal Specialization & Education
651 E. Jefferson Street
Tallahassee, FL 32399-2300
(850)561-5842 (Phone) (850)561-9421 (Fax)
clemail@flabar.org

Attorney # _____ Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Fax: _____

Activity Title: _____

Sponsor Name: _____

Date and Location of Course: _____

Please attach a course brochure and/or outline which:

(A) Fully describes the course content and level of presentation
(B) Indicates the time devoted to each topic covered within the program
(C) Identifies the instructors

BOARD CERTIFICATION CREDIT

Please list the area(s) of certification applicable to this activity:

_____

For more information on The Florida Bar's Board Certification program,
visit: www.floridabar.org/certification

Total Minutes on Instruction: (excluding breaks, meals and introductions and based on a 50 minute hour)

_____ Total Credit (Total Minutes Divided by 50 = _____ Credit Hours)
50

If requesting Ethics, Professionalism, Substance Abuse, Mental Illness Awareness, Bias Elimination or Technology Credit, please check appropriate box below.

☐ Ethics ☐ Substance Abuse ☐ Bias Elimination
☐ Professionalism ☐ Mental Illness Awareness ☐ Technology

NOTE: If you have completed the minimum number of required CLER hours, and are not seeking Certification credit, please do not submit further courses for evaluation. **There is no carry over of hours in Florida from one reporting period to the next.**

Materials submitted for CLE credit review will be discarded once the credit has been determined. Should you wish to have your materials returned, please enclose a self-addressed stamped envelope.

Are you getting the most from your Member Benefits?

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- Citrix
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- CosmoLex
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- LawyersAdvisingLawyers
- LawCountability — Accountability. Consistency. Success.
- logikcull — Discover your documents. Anywhere.
- mycase
- netdocuments
- NEXTPOINT
- The Florida Bar Practice Resource Institute — PRI — Promoting Excellence in the Profession
- Career Center — PRI
- RightSignature
- rocket matter
- RPOST
- RUBY — receptionists
- ServeManager
- Citrix ShareFile
- Start Your Own Firm
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CNS — CroStar Network Solutions

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Visit www.floridabar.org/memberbenefits for a complete list of member benefits