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TALLAHASSEE BAR BULLETIN

WINTER 2022

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PRESIDENT'S MESSAGE

As President of the Tallahassee Bar Association - we as lawyers must always be brave enough to see the light, to be the light, and brave enough to use that light to help people, to resolve disputes peacefully, fairly, openly, ethically, in an impartial manner, and for good. Because faith in our judicial system is perhaps the most important glue that binds us together not only as lawyers but as a society. Yes, we are American lawyers. We are TBA lawyers.

We are brave fighters in a continuing American journey to ensure "equal justice under law." THAT is our bright light, and it guides us every day. This is a truly American ideal, first envisioned over 200 years ago in a new country, that created a judicial system that is entirely founded on equality, fairness, colorlessness, and above all else - blind to any differences, advantages or disadvantages, of any kind or type.

No matter where a person's forefathers or family comes from, no matter a person's beliefs or which religion or no religion they may follow, no matter their wealth or no wealth, no matter their political affiliation or no affiliation. Above all else we must guard against any type of bias, or prejudice, or walk of life or adherence to belief ---- we must guard against any of it entering our courthouse doors - We must daily, zealously, protect our judicial independence, our equal treatment for all. Above all else. This is who we are. This is why we are lawyers.

Yes, we have stumbled and yes, we as a judicial system sometimes get it wrong. But we are the best system on earth and more importantly we as lawyers and judges strive to get it right every day. We must and we do follow our light. We have many, many successes. We are American lawyers. I am proud to be a trial lawyer and proud to be an American lawyer.

I am so very proud to be a part of the TBA, and to have served as your TBA President. Thank you for the opportunity to be YOUR President. TBA lawyers help people; TBA lawyers CARE, and TBA lawyers LEAD. Together, we are the TBA !

Lo Bielby

TBA President



Lo Bielby is the 2021-2022 President of the Tallahassee Bar Association. Lo is a Principal Shareholder with international law firm Greenberg Traurig, LLP. Lo is a business trial lawyer, focused on complex commercial and governmental litigation, regulatory administrative matters, patent/trademark disputes, franchising, Florida constitutional issues, and cannabis regulatory licensure.

FOR THERE IS ALWAYS LIGHT, IF ONLY WE'RE BRAVE ENOUGH
TO SEE IT. IF ONLY WE'RE BRAVE ENOUGH TO BE IT.

—(AMANDA GORMAN, JANUARY 20, 2021).

COVID SPECIAL SESSION UPDATE

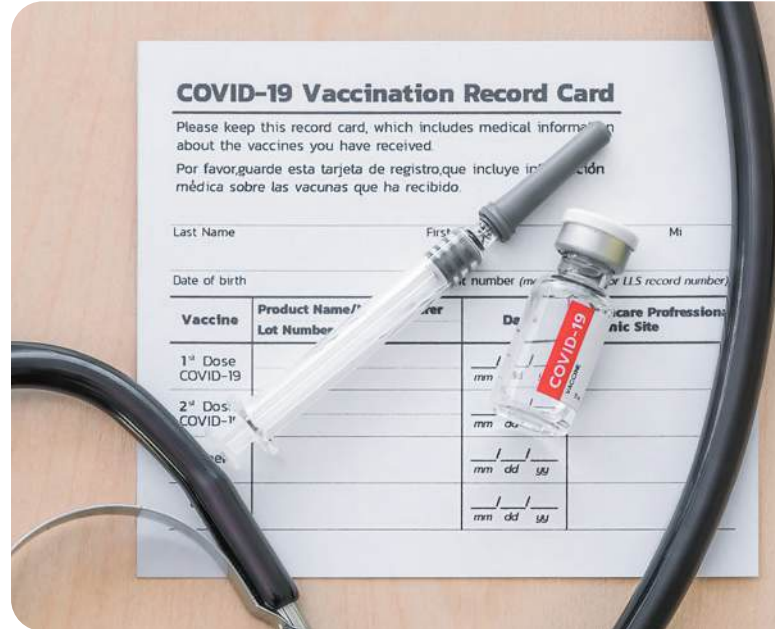
BY ROBERT J. WALTERS, ESQ.

After a year of conflicting federal and state COVID-19 vaccine requirements and prohibition, recently some sense of clarity came from the State of Florida. In November 2022, Governor DeSantis called a Special Session to address COVID-19 vaccination mandates and parental rights. Following adjournment of the Special Session, the Governor **signed** four bills into law on November 18, 2021. The four recently passed bills are as follows were HB 1B, HB 3B, HB 5B, and HB 7B.

HB 1B prohibits a private employer from imposing a COVID-19 vaccination mandate for any full-time, part-time, or contract employee without providing individual exemptions that allow an employee to opt out of such requirement on the basis of: 1) Medical reasons, including, but not limited to, pregnancy or anticipated pregnancy; 2) Religious reasons; 3) COVID-19 immunity; 4) Periodic testing; and 5) Employer-provided personal protective equipment.

The bill also prohibits an employer from imposing a policy that prohibits an employee from choosing to receive a COVID-19 vaccination. Further, the bill prohibits, notwithstanding any other law to the contrary, an educational institution or a governmental entity from imposing a COVID-19 vaccination mandate for any full-time, part-time, or contract employee and prohibits educational institutions or any elected or appointed official from imposing a COVID-19 vaccination mandate for any student. Employers that violate these health protections can be fined with the new law (\$10,000 per violation for employers with 99 employees or less, and \$50,000 per violation for larger companies).

HB 3B creates a public records exemption for an employee's personal medical information and religious information contained in files created during an investigation of an employer who is alleged to violate state law regarding COVID-19 vaccination policies or practices.



HB 5B directs the Executive Office of the Governor to develop a proposal for a state plan to assert jurisdiction over Florida's occupational safety and health issues for government and private employees. This bill provides a \$1 million appropriation to the Governor's Office of Policy to study occupational safety and health issues.

HB 7B repeals the authority of the State Health Officer (State Surgeon General) to mandate vaccinations upon the declaration of a public emergency.

In addition, several emergency rules were adopted to implement the four bills that passed, and the agencies are currently in the rule making process to fully implement the legislation. The Department of Health adopted two emergency rules. **64DER21-17** provides the standards, circumstances, and forms sufficient for employees to claim exemption from a private employer COVID-19 vaccination mandate. **64ER21-18** establishes the procedure for imposing penalties against any governmental entity or educational institution for the violation of the new COVID-19 vaccination policies or practices. The

COVID Special Session Update continued »

Department of Legal Affairs (Office of the Attorney General) adopted **2ER21-1**, which establishes the procedure for private employer vaccination mandate complaints. The Department of Economic Opportunity proposed rules 73B-11.0201 and 73B-11.0191, which provides employees discharged from educational or governmental entities for refusing to comply with a COVID-19 vaccine mandate to still be eligible for reemployment assistance benefits and identifies exemptions to "suitable for work" where mandates are imposed.

There is still much uncertainty navigating through this COVID-19 pandemic, especially for employers with ever changing and conflicting requirements. Prior to implementing any policy, employers should consult with a labor and employment attorney to get the best and most up to date advice.



Robert Walters is an Associate Attorney in the Government & Administrative group at Stearns Weaver Miller, P.A.. His practice focuses on administrative litigation, civil litigation, appeals, and Florida administrative law, including regulatory compliance, licensure, administrative complaints and disciplinary proceedings, as well as election law, election compliance and non-profit association formation, compliance and management.

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REMEMBERING JUDGE J. LEWIS “PAPA” HALL, JR. 1930–2010

BY JUDGE GEORGE S. REYNOLDS III

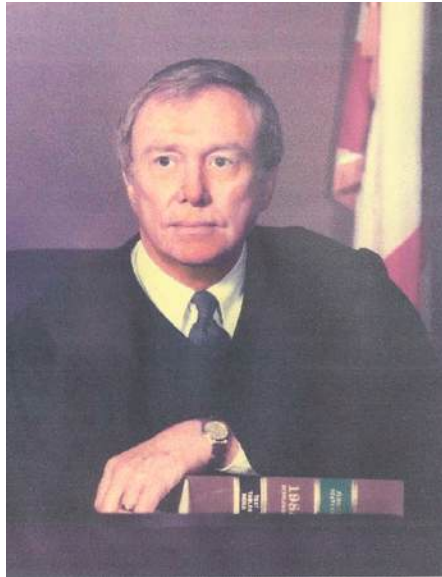
The Honorable J. Lewis Hall served as a Circuit Judge of the Second Judicial Circuit from 1980 until his retirement in 1998, when, in his words, he reached the age of “constitutional senility.” He ran against four other opponents in 1980. (Bob Travis and Mallory Horne are the two I remember.) Jay and Mallory were in the run-off; Jay won. I always heard that it was the Clerk of Franklin County, Bobby Howell’s, support that helped carry the day for Jay in a close election. Jay was slated to take office on the first Tuesday after the first Monday in January of 1981, along with newly elected County Judge John Crusoe. However, Chief Judge Ben Willis got the Governor to appoint Jay early so he could start work right away. He was appointed in late November (November 24, 1980) to take the place of Judge Jimmy Joanos, who had been appointed to the First District Court of Appeal.

Judge Hall was a natural leader from an early age. He was a legendary athlete, who acquired the nickname “Papa” as a schoolboy. He was selected for the Leon High School Football Hall of Fame and garnered even greater acclaim for his athletic abilities while attending the University of Florida. He holds memberships in the University of Florida Hall of Fame and the Letterman’s Association Hall of Fame.

He is also in the unofficial Leon County Judicial Hall of Fame. Twice he served as the Chief Judge of the Second Judicial Circuit, and he was elected by the Circuit Judges of Florida to be the Chairman of the Florida Conference of Circuit Judges in 1985–1986. Jay was the President of the

William H. Stafford American Inn of Court from 1992–1993, as well as the first recipient of the Trial Judge of the Year award by the local chapter of the American Board of Trial Advocates.

Jay warmed to the idea of computers early on and was a leader in prompting the County to purchase computers for the judges in Leon County. Due to his technological knowledge, the Florida Supreme Court appointed him to the Florida Court Technology Commission, where he served as Chairman for several years prior to his retirement at the end of 1998. Janet Ferris was elected in November 1998 to be Jay’s replacement. However, Jay was not to be replaced, and he just moved to a different position on the judicial team by serving an additional ten years as a senior judge. His initial tenure was in Leon County for several years followed by a move to Orlando for the remainder of his judicial service.



Jay was a teacher and presenter at judicial conferences, law schools, legal seminars, and bar associations. It has been stated by his fellow judges that one could not help but learn from Judge Hall by just being around him. Jay loved the art of conversation; and occasionally, Judge Charlie McClure would jokingly say that when he had conversations with Jay, “it was a listening experience.” Jay’s love of the law was great, and his ethics were beyond reproach. When a lawyer attempted to talk with him about a case by saying “the other party’s attorney said it would be OK,” Jay would stop them in their tracks and respond, “a lawyer may not waive my ethics.” That always concluded the discussion. He was a standard by which other judges were measured.

Remembering Judge J. Lewis continued »

Judge Hall had no personal agendas, but he did set personal goals, such as never intentionally embarrassing an attorney in front of his or her client. It is reported that he met that goal. Further, he served as a role model for new judges and made himself available for their guidance. He was a mentor to many, especially to Judge Kevin Davey and myself. He was always nearby, in his office, in the hallway, or at lunch, available to help with the inquiries and concerns of fellow judges. A true judicial coach and mentor.

With all of Judge Hall's accomplishments in sports and in life, he could have thought himself better than those around him, but he only regarded himself as an average person: no better nor worse than others. He was much more than a great judge and athlete; he was also an

excellent photographer, understanding father (Sara Page Hall and W. Douglas Hall, Esq.), extraordinary chef, computer whiz, trial lawyer, and all-round gentleman—a friend to all who knew him. That was Jay Hall, and, as he was fond of saying, “guts, feathers and all.”

This History was prepared by Senior Judge George S. Reynolds III, in memory of Judge Ben C. Willis (1957–1984). Judge Willis spent a great deal of time educating young lawyers and judges on the history of our circuit. Hopefully, this article will reflect well on his efforts.

DEAN, MEAD & DUNBAR IS NOW OFFERING MEDIATION SERVICES

Attorneys William Hall and Daniel Russell are civil circuit certified mediators offering their services to the Tallahassee area.



William Hall
Certification #39609 R



Daniel Russell
Certification #39608 R

CREATING A 6TH DCA

BY LI X. MASSIE

In May 2021, the Florida Supreme Court appointed a District Court of Appeal Workload and Jurisdiction Assessment Committee, composed of appellate judges, trial court judges, and lawyers, to evaluate the necessity for increasing, decreasing, or redefining appellate districts. The Committee evaluated the operation of the existing appellate courts using the five criteria in Florida Rule of General Practice and Judicial Administration 2.241: effectiveness, efficiency, access to appellate review, professionalism, and public trust and confidence. A majority of the Committee recommended creating another district court to promote public trust and confidence, provide adequate access to oral arguments, foster public trust and confidence based on geography and demographic composition, and help attract a diverse group of well-qualified applicants for judicial vacancies. However, a minority of the Committee members disagreed, instead favoring maintaining the existing jurisdictional boundaries of the five district courts of appeal.

On November 24, 2021, Chief Justice Canady, along with Justices Labarga, Lawson, Muñiz, and Couriel, approved the Committee's recommendation for a realignment of Florida's appellate districts and creation of a sixth district court of appeal. (See *In re: Redefinition of App. Dist. & Certification of Need for Additional App. Judges*, No. SC21-1543 (Fla. Nov. 24, 2021).) Justice Grosshans concurred in result only, and Justice Polston dissented. The majority opinion agreed with the Committee's conclusion that the creation of a sixth district court would enhance the public trust and confidence and noted an underrepresentation of district court judges from the Fourth Judicial Circuit, which contains one of Florida's largest metropolitan areas, Jacksonville. The majority opinion certified the need for six more district court of appeal judgeships. The majority opinion recommended no decertification of district court judgeships and explained judges residing in a realigned county would become judges of the now-appropriate district court.

The majority opinion also recommended realigning the judicial districts to move the Fourth Judicial Circuit from the First District to the Fifth District, move the Ninth Judicial Circuit from the Fifth District to the Second District, and move the Sixth, Twelfth, and Thirteenth judicial circuits from the Second District to the newly created Sixth District. The realignment would not affect the boundaries of the Third and Fourth District Courts. To implement these proposed changes, the court certified to the Legislature the need to amend chapter 35 of the Florida Statutes.

In his dissenting opinion, Justice Polston argued against certifying the creation of a new district court of appeal or any additional district court of appeal judges, stating there was no compelling need or significant improvement to the judicial process as required by rule 2.241(b). In addition, Justice Polston argued that the majority did not properly consider rule 2.241(b)(8), which emphasizes that the court should consider the disruptive effect of changes and attempt to minimize it by other means.

The House has set forth HB 7027 to create a sixth district court of appeal. The bill is currently in the Appropriations Committee. If the Legislature agrees with the Committee findings, Florida will have its first new district court of appeal since 1979.

Li X. Massie, Law Clerk to Judge Brad L. Thomas, First District Court of Appeal. The views expressed herein are solely those of the author and do not reflect those of any organization or entity with which she is affiliated.



PATRICK BOOTER IMHOF

1. Why is professionalism important to you and how is it important within the legal profession?

I believe that professionalism and civility is important for several reasons. It comes down to the old saying that “you can disagree without being disagreeable.” In addition to making the job and workplace more pleasant, being professional helps in getting the job done. When there is a pleasant professional atmosphere in the office, in the courtroom and in society in general, I believe better decisions are made. In the Legislative Process, acting professional and being open to other people’s ideas gives you a better work product. There are many times when having an open mind to hear others ideas produces a more inclusive and workable product. I can recall many instances when new information changed the entire direction of a bill, amendment, or other decision. Treating people fairly and with the dignity we all deserve contributes to the betterment of the legal profession, the community, and makes life much more satisfying. I find that acting with professionalism helps with improving how the general public perceives the Legislature and the legal profession. In this time of political divisiveness and animosity, acting with professionalism and compassion goes a long way in establishing a more civil society and upholding the rule of law. Martha Barnett as a former ABA President and Florida Bar leader has led the way for women in the profession and has been a champion of protecting and advancing human rights, civil liberties, and social justice.



2. Who do you look up to within the legal profession?

There are literally too many to mention. I believe that the legal profession generally, and in Florida in particular, have benefited from great leaders at all levels of the bar. This includes local bars and other voluntary bars as well as The Florida Bar. Two of my favorite leaders are Justice Major Harding and former ABA President, Martha Barnett. I think both of these individuals are the examples of the highest standard of leadership and professionalism in our profession. Justice Harding has mentored many, many lawyers, both old and young, regarding ethical and moral issues in the community.

3. When during your career were you most challenged?

Working on the Gaming package during Special Session A last year in 2021.



Booter Imhof receiving the TBA Award

4. Why did you get involved with the Florida Bar and voluntary bar associations, like TBA? Why have you stayed involved?

I enjoy meeting new people and seeing old friends. Being employed by the Legislature in a non-traditional legal job, being involved in The Florida Bar and the TBA allows me to meet and socialize with lawyers in both private and public practices. It also allows me to meet judges that I would otherwise not have had the opportunity to become acquainted.

5. What do you do for fun when you're not at the Capitol?

I enjoy playing racquetball and watching Gator Sports.

6. What advice do you have for young lawyers?

Get involved with the legal community and other organizations in the area. I have benefited greatly from my friends and colleagues that I met through my participation in bar and community activities. You never know who you will meet or what opportunity will arise in these settings. It is a great way to build your career.

A special thank you to Kelly Kibbey Smith for her assistance with this article.

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MEMBER NEWS

SUBMIT YOUR TBA MEMBER NEWS

Changing firms? Made partner? Receiving an award? Celebrating a personal or professional milestone? We want to hear about it!

Send your news to tba@tallahasseebar.org



Lily McLauchlin | LaVia Law

LaVia Law is pleased to announce the addition of Lily McLauchlin to the firm. Lily is a graduate of Florida State University College of Law and was sworn into the Florida Bar in 2021. She was a member of Law Review and active in FSU Law's Public Interest Law Center.



Judge Nina Ashenafi Richardson | Award

TBA Past President, Judge Nina Ashenafi Richardson, was the recipient of the Florida Council on Crime and Delinquency's 2020 Distinguished Service Award for Judicial. She received the award in recognition of her outstanding service, dedication and contributions to the judicial community. The state-wide award was presented at the Florida Council on Crime and Delinquency's 91st Annual Awards Banquet at the Rosen Plaza Hotel in Orlando, Florida.



Ausley McMullen | Pro Bono Award

Ausley McMullen, a full-service Tallahassee-based law firm that has made pro bono service a part of its attorney's responsibilities and duties, is proud to announce that it has received the 2022 Law Firm Commendation. The award was presented to the firm by Chief Justice Charles T. Canady at the annual Pro Bono Awards ceremony at the Supreme Court of Florida held on January 20th. The commendation honors significant contributions in the delivery of legal services to individuals or groups on a pro bono basis. Working with Legal Services of North Florida (LSNF) and Legal Aid Foundation of Tallahassee (LAF), attorneys from Ausley McMullen have donated countless hours representing clients in all types of cases, including – family law cases, landlord-tenant cases, civil disputes, and even several death penalty appeals. LSNF and LAF nominated the firm for this honor.

MEMBER NEWS



Kutak Rock

Kutak Rock, one of the nation's leading law firms, announces its official entrance into the Florida legal market with the opening of an office in Tallahassee. Our new team in Florida strengthens the firm's service offerings in the areas of special tax districts, public finance and real estate transactions.

Joining Kutak Rock from HGS are attorneys Joseph A. Brown, Katie S. Buchanan, Michael C. Eckert, Wesley S. Haber, Jonathan T. Johnson, Tucker F. Mackie, Michelle K. Rigoni, Sarah R. Sandy, Lindsay C. Whelan and Alyssa C. Willson. The group brings with them paralegals and administrative support staff.

This group represents community development and special districts in Florida and Alabama, including multi-county stewardship districts for some of Florida's largest community developers. We look forward to growing the firm's practice throughout the state.

Ausley McMullen | New Shareholders

Ausley McMullen, a full-service firm based in Tallahassee, is pleased to announce that **Alexandra E. Akre**, **Jonathan W. Hayes** and **Clayton T. Osteen** have been elected to shareholders in the firm. Akre and Hayes were former judicial law clerks prior to joining the firm. Osteen was formerly an attorney in Florida's Department of Business and Professional Regulation.

Alexandra E. Akre focuses her practice on a variety of litigation and appellate matters involving administrative law, constitutional law, education, healthcare, and employment law.

Jonathan W. Hayes practices in the areas of litigation, appellate practice, probate, trust and estates, business law, healthcare, employment law, corporate law, and government.

Clayton T. Osteen primarily focuses his practice in the areas of construction law, administrative law, licensing, and business litigation. He has extensive experience representing clients throughout the construction industry relating to construction defects, liens, delay claims, payment disputes, licensing issues, and workers' compensation issues.



Alexandra E. Akre



Clayton T. Osteen



Jonathan W. Hayes



Kelly Overstreet Johnson | Retirement

Kelly Overstreet Johnson announces her retirement from Baker Donelson and the practice of law, and her full-time availability for mediations and arbitrations (non-binding and binding) through Overstreet Johnson Mediation & Arbitration, LLC. Visit her website for scheduling at overstreetjohnsonmediation.com or contact her scheduling assistant at haydee@overstreetjohnson.com. You can also reach Ms. Johnson on her cell at 850-566-1605.



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2021 HOLIDAY PARTY

On December 1, 2021, the Tallahassee Bar Association (TBA) and the Florida Government Bar Association (FGBA) hosted their annual Holiday Celebration to recognize outstanding lawyers and raise resources for Legal Services of North Florida. In attendance were over 150 attorneys, judges, and guests – and the event raised over \$3,700. Highlights of the

evening included remarks by First DCA Chief Judge Lori Rowe and Second Judicial Circuit Chief Judge Jonathan Sjostrom, presentation of the TBA Lifetime Professionalism Award to Booter Imhof, and recognition of the late Chesterfield Smith Jr. as FGBA's Government Attorney of the Year.



Mark your calendars!

UPCOMING EVENTS

TBA'S 25TH ANNUAL CHILI COOK OFF

benefitting the Legal Aid Foundation of Tallahassee

Wednesday, February 23, 5:30-8:00pm

Goodwood Museum & Gardens

Sample chili and margaritas prepared by 15 competing teams. Help us crown the 2022 People's Choice Winner.

TICKETS:

\$25 – TBA Members

\$30 – Non-members

\$15 – Students

\$5 – Kids (Age 6-18)

FREE- Kids 5 & under



TUESDAY, MARCH 1ST | 11:45-1:00

FOUR POINTS BY SHERATON
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PROGRAM TOPIC

Written Advocacy: Writing Like a Judge FOR the Judge presented by **Judge Lori Rowe (First DCA)**

and

Terry Lewis (Retired Judge, Second Judicial Circuit)



TICKETS

\$18 TBA Members | \$28 Non-Members

Price includes buffet lunch

To register for this event visit: tallahasseebar.org

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TBA ANNUAL GALA

Tuesday, April 5

Governors Club

The evening's events will include remarks by Chief Justice Canady, the installation of the 2022 TBA Board of Directors, presentation of the Martha Barnett Women Lawyers of Achievement Award and the Thomas M. Ervin, Jr. Distinguished Young Lawyer Award.

Visit tallahasseebar.org for complete event details and to purchase tickets.

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