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2018-2019
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The Florida Bar Board of Legal Specialization and Education (“BLSE”) has the responsibility to administer the programs for regulation of certification according to Chapter 6 of the Rules Regulating The Florida Bar, as well as to oversee the legal education offered to the membership. There are 16 members of the BLSE who serve: Chair Kim Ashby; Vice Chair Steve Lesser, Frank T. Adams, Philip R. Augustine, G. Scott Baity, Susan J. Cole, Joseph F. “Skooter” Kinman, Jr., Michele L. Lieberman, Robert A. Norgard, Mark Osherow, Colin M. Roopnarine, Elisha D. Roy, Elaine Thompson, Joseph J. Weissman, David C. Willis, and Barbara C. Wingo.

Each member of the BLSE is assigned as a liaison to designated areas of certification, and monitors issues and events for the individual certification areas, as needed.

During the current Bar year, BLSE has examined the impact of service as a judge or magistrate on a member’s status as board-certified. Specifically, BLSE has studied the definitions of “inactive status” to ensure that it is applied logically and uniformly to all areas of certification which may be affected, and to afford recognition for members who serve as judges and magistrates and then returned to practice as a lawyer. BLSE is also in the process of studying the rules as applied to members who become full-time mediators.

BLSE continues to support the program which coordinates, and makes available, board-certified lawyers to answer questions on a pro bono, “on call” basis, known as the CLOC Program. In its inaugural year, the CLOC Program announced that it “went live” in January 2019, and has experienced an enthusiastic response to its services. CLOC may be contacted at https://thefloridabarfoundation.org/pro-bono-partnerships/certified-lawyers-on-call/.

In its continuing effort to assure the members applying for board certification are treated fairly and uniformly across the various certification areas, BLSE has engaged a new exam consultant to revisit the methodology for administering and creating the examinations, as well as a review of the grading process. This review is tandem with BLSE’s review of the test specifications, which identify the subject matter areas for examination as well as the courses endorsed for preparation of the examinations.

As part of an integrated effort to apprise the public regarding board certification, the BLSE approved the upgrades and improvements to public service announcements and other media designed to educate the consumers of legal services about board certification and to facilitate the identification of those who are recognized by The Florida Bar as being “Board Certified”.

BLSE was asked to speak at the ABA forum on legal specialization and certification, in recognition of Florida as one of the States leading the continual development of board certification. BLSE presented on the topics of due process and advertising exclusivity of members who wish to advertise as specialists in a practice area in Florida. BLSE was also specifically highlighted to report at both Council of Sections meeting for The Florida Bar on the state of board certification in Florida.

Finally, BLSE serves as an appellate review board for board certified members and applicants who seek further review of decisions made by The Florida Bar Committees overseeing the certification areas.

At The Florida Bar Annual Meeting on Thursday June in June 27, 2019, Chief Justice Charles T. Canady will present the Justice Harry Lee Anstead award in recognition of The Florida Bar Board Certified Lawyer of the Year. This award goes to the member who is Board Certified and who demonstrates outstanding excellence, professionalism and commitment to the Certification Program, and to the practice of law in Florida. BLSE will also host its annual Certification Forum to serve as a roundtable for discussion on continuing to evolve and improve certification in Florida.

This report was prepared by BLSE Chair, Kim Ashby.
THE BOARD OF LEGAL SPECIALIZATION AND EDUCATION INVITES YOU TO JOIN US

at the

Board Certified Lawyers’ Reception & Awards Ceremony

Awards presented by Chief Justice Charles T. Canady

Thursday, June 27th - 6 P.M.

at The Florida Bar Annual Convention
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The Florida Bar 2019 Annual Convention
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Come by and see our exciting new B.C. giveaways!
In 1970, a young Peggy Quince was studying to become a doctor and had just graduated from Howard University with a B.S. Degree in Zoology.

Then on May 4, 1970, during a student protest at Kent State University in Ohio, twenty-eight guardsmen fired approximately 67 rounds over a period of 13 seconds, killing four students and wounding nine others. That, and the ongoing civil rights struggle, convinced a young black woman to change the trajectory of her life - from medicine to law. She graduated from the Catholic University of America, Columbus School of Law with her JD in 1975.

And so began an illustrious law career. After moving to Florida in 1978 Quince worked from her law office in Bradenton, Florida where she practiced Civil Law, then moved to the Attorney General’s Office, Criminal Division in 1980. She was later appointed by the Governor to the Second District Court of Appeals, and then in 1998 she became the first African American woman appointed to the Florida Supreme Court.

It was during her time in the Attorney General’s Office that she decided to pursue Board Certification Specialist (B.C.S.) in Criminal Appellate Law.

“If anyone was going to be certified in Criminal Appellate law, we felt that it should be us.”

She set out to take the exam and received her B.C.S. Criminal Appellate Law status in 1993. Shortly afterwards she was appointed as an appellate judge in the Second District Court of Appeals.

“Studying for the exam was hard, but I think it makes you a better lawyer. You learn a lot by studying one specific area of law.”

When asked if she noticed when an attorney appearing before the Supreme Court was Board Certified, Justice Quince remarked:

“I never looked to see if an attorney was Board Certified, but when I became aware that they were, I had confidence that they were proficient in their area and had been vetted by their peers.”

Justice Quince retired from the Florida Supreme Court in February 2019, to begin a new chapter in her career where she will no longer need to carry Board Certification, but that accomplishment will always be included as part of her illustrious resume.
BLSE 2018-19 — NOT YOUR AVERAGE YEAR-END ARTICLE

By Kim Ashby, Chair of BLSE

Board certification is great. As Justice Harry Anstead said, Certification should be the capstone for a lawyer’s professional goals. For those who are certified in multiple areas, it is the Parthenon. So, all is well and no need to go on reading further, right? As Coach Lee Corso would say, “Not so fast, my friend.”

Certification is facing the same challenges the legal profession is in general. In the age of techno, do it yourself, dial it in, the law practice must maintain the ability to be nimble, evolutionary, and foremost, relevant in order to be viewed as the problem-solving profession. In the past year BLSE commissioned studies of trends in the areas of specialty covered by board certification. While some areas continue to flourish, other areas are continuing to struggle. BLSE examined the data and learned the primary reasons for falloff in the head count of certified lawyers fell into the categories of death and retirement, career change and practice area change. While the former categories are truly immutable, which it is as it relates to the departing lawyers, yet it fails to account for lack of new, younger attorneys lining up to become board certified. In the past year, BLSE vowed “to make Board Certification great again.” Though there is more work to do, BLSE embarked on a zero-based analysis of what makes the Florida board certification status preeminent, and well respected by the other State Bar associations.

As a result of our studies, BLSE also learned that by far most Florida board-certified lawyers engage in the additional study, and become board certified, because they want to improve themselves and to upgrade the delivery of legal services. A much smaller group of those who responded to the survey indicated that it was primarily to enhance business development that encouraged their application for board certification, and continuing in these programs.

Is there a message here? Perhaps. Maybe true success comes most often when you make the commitment to become excellent at what you do. Thanks and recognition go to the hard-working Board that has served this past year: Vice Chair Steve Lesser, Frank Adams, Philip Augustine, Scott Baity, Susan Cole, Skooter Kinman, Robert Norgard, Mark Osherow, Colin Roopnarine, Elisha Roy, Elaine Thompson, Joe Weissman, David Willis, and Barbara Wingo. Look for even greater things from BLSE in the upcoming year!
TRAVEL THE WORLD WITH THE BOARD CERTIFIED FLAG

HELP US PROMOTE YOU!

Contact Danielle Evans to reserve the flag for your travels!
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Board Certified Civil Trial Member
Susan J. Cole inducted into The Trial Lawyers Hall of Fame

By Blaire E. Bisbee

How did a $50 bet lead into attending the University of Miami Law School you may ask? Fast forward a few years and meet attorney Susan J. Cole, 1 of 4 Florida Bar Members who are the newest 2019 inductees of the National Trial Lawyers Hall of Fame.

Mrs. Cole, a Miami resident since the age of 4 and a former chemistry professor at the University of Miami pretty much fell into Law School after a friend bet her which one of them could get a higher LSAT score which neither had taken previously. The winner with the highest score was required to pay the other’s $50.00 examination fee. As it turned out, Ms. Cole was clearly destined to become a lawyer not only by securing the higher score than her counterpart but also when the Dean of Students called to congratulate her for her high score. Mrs. Cole ended up attending night classes at the University of Miami Law School and after her graduation eventually became a partner in the Bice Cole Law Firm with offices located in Ocala, Alachua, and Coral Gables, Florida.

Mrs. Cole over her arduous 30-year legal career has focused her practice as a defense lawyer in asbestos litigation cases and in that capacity tried more than 80 such cases. She is recognized in the country as one of the leading asbestos litigation defense lawyers relating to the issues of medical causation and the “science” of asbestos. Because of Mrs. Coles’ lifetime achievement in Mass Tort litigation, she recently was nominated as an inductee of the Trial Lawyers Hall of Fame - an achievement only awarded to trial lawyers in the country with more than 30 years of practice in a legal specialty. She will be recognized at the Inductee Ceremony to be held April 11th, 2019 in Las Vegas, Nevada. In addition to this achievement, Mrs. Cole has also been Board Certified in Civil Law by the Florida Bar since 2002 and served on The Florida Bar Board of Legal Specialization and Education for the past 6 years. For a list of all nomination criteria for the National Trial Lawyers Hall of Fame please visit http://www.triallawyerhalloffame.org/.
Fort Myers, FL – Jan. 2, 2019 - Lori L. Moore, Shareholder-in-Charge of Roetzel’s Fort Myers office, has joined the board of directors for the Southwest Florida chapter of the National Association of Women in Construction (NAWIC).

The NAWIC got its start as Women in Construction of Fort Worth, Texas, in 1953. The founders organized NAWIC to create a support network for the small fraction of women in the construction industry at the time. The group organized nationally in 1955 and became the National Association of Women in Construction. Today, NAWIC provides its members with opportunities for professional development, education, networking, leadership training, public service and more as it seeks to enhance the success of women in the construction industry. The organization’s Southwest Florida chapter was chartered in 1982.

Ms. Moore’s practice includes the representation of owners, developers, and companies in real estate transactions, including acquisitions, sales, leasing, and title claims work, and corporate governance and transactional matters. She also boasts significant experience in commercial real estate and banking, with extensive credentials handling financial transactions and loan workouts from both the lender and borrower perspectives.

Having spent a number of years practicing in real estate and commercial litigation, Ms. Moore has been involved in both trials and dispute resolution. Her litigation experience allows her to provide unique analysis to real estate issues from both a litigation and transactional perspective.

Ms. Moore is Board Certified in Real Estate by the Florida Bar and is listed in The Best Lawyers in America© for Real Estate Law (2018). She is an active member of a number of both professional and real-estate related organizations, including the Lee County Bar Association, the Real Estate Investment Society of Lee County (REIS), and Commercial Real Estate Women - Southwest Florida Chapter (CREW).
Board Certified Lawyers

IN THE NEWS

Donna DiMaggio Berger of Becker in Ft. Lauderdale spoke at the Tobacco-Free Workgroup’s 2019 Tobacco-Free Workplace Summit on at United Way of Miami-Dade.
B.C.S. Condominium and Planned Development Law

Bill Rogner of Hurley, Rogner, Miller, Cox & Waranch was a panelist addressing Appellate Practice at the Judges of Compensation Claims Seminar at the First District Court of Appeal.
B.C.S. Workers Compensation and Appellate Practice

John H. Hickey of the Hickey Law Firm in Miami spoke at the Global Justice Network conference in Miami Beach on “When in Miami, Cruising is an Option, but is it always Smooth Sailing? Cruises and Travel Related Legal Issues.”
B.C.S. Admiralty and Civil Trial

Steve Lesser of Becker of Ft. Lauderdale received the Cornerstone Award, the highest honor presented by the ABA Forum on Construction Law.
B.C.S. Construction Law

Ofonedu-Ime Goodwyn of Hinshaw & Culbertson in Coral Gables has been named vice chair of the board of directors of Neighborhood Housing Services of South Florida.
B.C.S. Real Estate Law

Sean C Domnick of Domnick Cunningham & Whalen in Palm Beach Gardens discussed “Being an Advocate and Courtroom Warrior” at the Florida Justice Association Workhorse Seminar.
B.C.S. Civil Trial
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LESSONS ON PLEADING, WAIVER, AND TRIAL BY CONSENT FROM THE SECOND DCA
Appellate Practice Section
Chairs: Tom Selder – Brannock & Humphries and Joe Eagleton – Brannock & Humphries

The Second District Court of Appeal recently decided Derouin v. Universal American Mortgage Co., 2018 WL 3999415 (Fla. 2d DCA Aug. 22, 2018), in which it examined a number of general procedural issues that practitioners at all levels will likely encounter. The following is a brief summary of some of the lessons contained in the opinion.

Lesson 1: Because a party’s right to sue is measured by the facts as they existed at the time of suit, a complaint filed before a necessary element or event has occurred cannot be resuscitated by post-suit activities.

In 1999, the Florida Supreme Court held that “the right of a plaintiff to recover must be measured by the facts as they exist when the suit was instituted.” The principle, while never overruled, has not often been repeated by Florida state courts. The Second DCA reaffirmed the principle in Derouin. It held that a post-suit offer to mediate could not satisfy a pre-suit condition to offer a face-to-face meeting incorporated into the contract at issue.

Lesson 2: When the law is unsettled as to whether a particular defense should be raised as a “specific denial” or an “affirmative defense,” the safest play is to plead it as both.

In Derouin, the plaintiff’s complaint alleged that it had satisfied all conditions precedent. As the Second DCA noted, the case law was somewhat unsettled as to whether the defendants’ answer needed to “specifically deny” that allegation or to raise it as an affirmative defense. The Second DCA held “we need not weigh in on the conflict,” because the defendants raised it both ways in their answer. Thus the defendants satisfied their pleading burden.

Lesson 3: A plaintiff must file a new reply in response to an amended answer containing affirmative defenses, else any avoidance is waived.

In the trial court, the defendants obtained leave of court and filed an amended answer with a new affirmative defense (noncompliance with conditions precedent). The plaintiff did not file a new reply in response to the amended answer. Yet the trial court ultimately ruled in favor of the plaintiff based on an avoidance of the affirmative defense.

The Second DCA reversed: “Because Universal failed to address the waiver issue by reply to an affirmative defense, the trial court could not award Universal relief on such a basis.”

Lesson 4: A specific denial shifts the burden of proof to the plaintiff.

The Second DCA held that the defendants’ specific denial shifted the burden of proof back to the plaintiff “bank to prove it satisfied conditions precedent to foreclosure.” The plaintiff, however, failed to present sufficient evidence to prove it complied with a particular pre-suit meeting requirement incorporated into the contract at issue (somewhat unique to foreclosure cases but potentially analogous to other areas of law, e.g., insurance coverage litigation).

The Second DCA held the plaintiff to its burden in this case, reversing for entry of an order of involuntary dismissal.

Lesson 5: “Trial by consent” is not automatic in the absence of a contemporaneous objection.

On appeal, the plaintiff argued that its unpleaded avoidance was tried by consent when it presented evidence relevant to that avoidance without contemporaneous objection.

The Second DCA rejected this theory, holding that failing to object to introduction of evidence that is also related to a pleaded issue is not implicit consent to try an unpleaded

Continued, next page
Certified Lawyers on Call (CLOC)

Certified Lawyers on Call, or “CLOC”, is a Service of The Florida Bar Board of Legal Specialization and Education (“BLSE”), in conjunction with The Florida Bar Foundation.

The CLOC Service was developed in 2018 to give legal aid organization staff attorneys, and private attorneys who work with a legal aid organization on a referral basis, pro bono telephone consultation access to a Board Certified Lawyer when a legal expert’s advice in a certification practice area is needed by the pro bono client. There are presently 190 Board Certified Lawyers who are available on a volunteer basis to consult with attorneys who are working on a pro bono case through a legal aid organization in Florida.

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Labor & Employment Law Section Update on Gender Discrimination: The New Gender Equality Course #2883
June 5, 2019 - Audio Webcast

Appellate Law Section – The Art of Objection: A Trial Lawyer’s Guide to Preserving Error for Appeal Course #2913
June 5, 2019 - Tampa, Hillsborough County Bar Association, #328)

Tax Section Telephonic Seminar-Section 118 Course #3265
June 5, 2019 - Telephonic Seminar

RPPTL Audio Webcast: Practice Series #1 Course #3196
June 6, 2019 - Audio Webcast

Hot Topics in Evidence 2019 Course #2834
June 7, 2019 - Orlando, Orange County Bar Association, #104) ● June 7, 2019 - Webcast (InReach, #317)

Labor & Employment Law Section Retreat/Seminar 2019 Course #2891
June 9, 2019 - Palm Beach

Overview of Medical Program Integrity Activities Course #3280
June 11, 2019 - Audio Webcast

RPPTL Audio Webcast: FR/Bar Residential Contract: Divine before You Sign Course #3294
June 11, 2019 - Audio Webcast

Significant Changes in the New 2017 AIA B101 Architectural Agreement Course #3334
June 11, 2019 - Telephonic Seminar

Workers’ Compensation Section Audio Webcast #9 Course #2967
June 12, 2019 - Audio Webcast

The New Landscape of Data Protection and Privacy in Brazil Course #3315
June 13, 2019 - Audio Webcast

Estate & Trust Planning/Wealth Preservation Course #2982
June 14, 2019 - Fort Lauderdale (Renaissance Cruise Port Hotel, #301) ● June 14, 2019 - Webcast (InReach, #317)

Tax Section Telephonic Seminar-International Charitable Planning Course #3266
June 16, 2019 - Telephonic Seminar

Operating Multi-Phased or Series Condominium Developments-What You Need to Know Course #3193
June 19, 2019 - Audio Webcast

RPPTL Audio Webcast: Practice Series #2 Course #3197
June 20, 2019 - Audio Webcast

#Miltoo: Military Law in the #Me Too Era Course #3206
June 26, 2019 - Boca Raton (Boca Raton Resort & Club, #164)

Alternative Dispute Resolution Region Live Program #2 Course #2965
June 27, 2019 - Boca Raton (Boca Raton Resort & Club, #164)

Florida Law Update Course #2873
June 27, 2019 - Boca Raton (Boca Raton Resort & Club, #164) ● June 27 - Webcast (InReach, #317)

Animal Law Update 2019 Course #2900
June 28, 2019 - Boca Raton (Boca Raton Resort & Club, #164) ● June 28, 2019 - Webcast (InReach, #317)

E-Discovery 2019 Course #2897
June 28, 2019 - Boca Raton (Boca Raton Resort & Club, #164)

Environmental & Land Use Law Section June Seminar 2019 Course #2917
June 28, 2019 - Boca Raton (Boca Raton Resort & Club, #164) ● June 28, 2019 - Webcast (InReach, #317)

Elder Law Annual Meeting Seminar 2019 Course #2952
June 28, 2019 - Boca Raton (Boca Raton Resort & Club, #164) ● June 28, 2019 - Webcast (InReach, #317)

Protecting Consumers Who Have unCONVENTIONALal Needs with CONVENTIONAL Strategies: Making Florida Safe for Military and Elderly Consumers Course #3200
June 29, 2019 - Boca Raton (Boca Raton Resort & Club, #164)
### Board Certification Calendar

**Application Filing Periods & Examination Dates**

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There are no alternative dates or make-up exams.

All 2019 exams will be held at the Tampa Hilton Westshore Hotel:
2225 N. Lois Avenue, Tampa - Florida 33607 - (813) 877-6688

### FIRST CYCLE AREA EXAM DATES

- **Thursday, March 7, 2019:**
  - Admiralty & Maritime Law
  - Adoption Law
  - Aviation Law
  - Civil Trial Law
  - Condominium & Planned Development
  - Immigration & Nationality Law
  - International Law

- **Friday, March 8, 2019:**
  - Appellate Practice
  - Education Law
  - Elder Law
  - Labor & Employment Law
  - Marital & Family Law
  - Tax Law

### SECOND CYCLE AREA EXAM DATES

- **Thursday, May 16, 2019:**
  - Antitrust & Trade Regulation Law
  - Construction Law
  - Intellectual Property
  - Juvenile Law
  - Real Estate Law
  - State & Federal Government & Administrative Practice

- **Friday, May 17, 2019:**
  - Business Litigation
  - City, County & Local Government Law
  - Criminal Appellate Law
  - Criminal Trial Law
  - Health Law
  - Wills, Trusts & Estates Law Workers’ Compensation
  - Internation Litigation and Arbitration
Areas of Board Certification

**Admiralty and Maritime Law**  
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**Adoption Law**  
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**City, County, and Local Government**  
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