



The Capstone



BOARD CERTIFIED LAWYERS ARE EVALUATED FOR PROFESSIONALISM AND TESTED FOR EXPERTISE

Volume 1, No. 7

www.floridabar.org/certification

Spring/Summer 2023

News and resources for board certified attorneys and those seeking certification.

"Certification should be the capstone for a lawyer's professionalism goals.

Former Florida Supreme Court Justice Harry Lee Anstead.



Duval County Courthouse

Photo: John Deacon <http://www.courthouses.co>

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Traveling?
DON'T FORGET TO TAKE YOUR BOARD CERTIFICATION FLAG!



TRIAL LAWYERS SHOWING THEIR BOARD CERTIFIED SPIRIT IN GAINESVILLE, FL!

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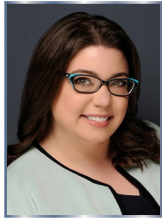


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 Real Estate

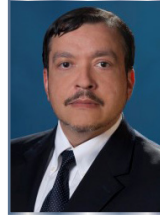


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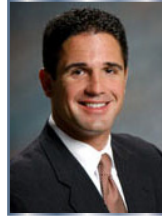
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- Kansas R. Gooden, Miami Chair, Communications Subcommittee
- John Eversole, West Palm Beach Communications Subcommittee
- Howard Cohen, Fort Lauderdale Communications Subcommittee
- Norma Stanley, Orlando Communications Subcommittee
- Phillip Augustine, Lake Mary Communications Subcommittee
- Jowanna Oates, Tallahassee Communications Subcommittee
- Kimberly Lisenby, Tallahassee Staff Editor
- Elijah Murphy, Tallahassee Graphic Artist

BLSE Chair Report

The Florida Bar Board of Legal Specialization and Education (“BLSE”) has the responsibility to administer programs for regulation of 27 areas of certification. The BLSE also oversees the continuing legal education offered to all members of the Florida Bar.

Established by the Florida Supreme Court, board certification is the highest recognition for ethics, character, professionalism, and credibility in the practice of law as recognized by The Florida Bar. The Florida Bar is the largest certification program in the nation with more than 5,000 board-certified attorneys.

The BLSE is comprised of 16 members and include: Chair Elisha D. Roy; Vice Chair David C Willis, Philip Augustine, John F. Eversole, Robert A. Norgard, Norma Stanley, Kansas Gooden, Colin M. Roopnarine, Joseph J. Weissman, The Honorable William Henry Burgess III, Amy J. Fanzlaw, Howard Cohen, Jennifer Ficarrotta, Barry Stein, and Jowanna Oates (Representative.) The Board of Governors liaison to the BLSE is Greg Weiss.

The BLSE is comprised of 7 Subcommittees. They include Executive, Strategic Planning, Exam Task Force, Standards, Rules and Policies, Communications and National Accreditation.

Each member of the BLSE is assigned as a liaison to designated areas of certification, monitors issues and events for the individual certification areas, as needed. This year, it was very important to ensure the area committees understood the role of the BLSE and how we can support one another. As such, each BLSE member was required to be active and involved with their area committee to open lines of communication. To that end, three different programs have been offered in conjunction with live meetings, including a test drafting session in June 2022, a grading session



ELISHA D. ROY, BLSE CHAIR

in January 2023, and upcoming in June 2023, a leadership training to include a better understanding of the role of the test matriculators and true goals of certification. In January 2023, the BLSE voted to continue laptop testing remotely through 2026. Hand writers will continue to test in-person.

At the beginning of the 2022-2023 Bar year, the BLSE discussed, at great length, comments from Alpine Testing Solutions who was retained in 2015 to review all area committee testing protocols. A new review is recommended every 5-7 years, but with many changes that occurred in 2020-21 due to Covid, 5 years did not make sense, and understanding that 2015 suggestions still needed to be implemented, 2022 truly did not either. Instead, the BLSE sought to do its best to implement recommendations and focus on a review in the following year.

Many of the recommendations seem to center around testing and pass rates, and as a result, the Exam Task Force created a new Test Writing Handbook that went to each area committee containing new requirements on lengths for questions, types of questions and drafting of questions. The goal is to create a fairer test that seeks to test knowledge of the practice area, not ability to take a test. This Handbook will

be modified as comments come in from the area committees with suggestions and comments as it is understood putting the plan into practice may show that some requirements are not successful, and others are quite successful. As of this writing, some changes have already been implemented based on meaningful feedback from the area committees.

The BLSE has also stressed, through communications with the area committees and presentations at events, for whom the test should be written, and that is not the person writing the test. Quite the contrary, the test should be written so that a person who meets the qualifications to apply, has the requisite practical knowledge AND studies can pass the test. One area committee chair indicated he did not think he could pass the test, and the response was ... rewrite it. While we are trying to find a new title, the concept is finding the “Appropriately Qualified Candidate.” Someone who has been practicing the requisite 5 or more years who truly understands their practice area but is not yet seasoned. Reminding the area committees that the goal is to adequately test knowledge to make sure the candidate is appropriate to be considered a specialist in their field. This change was also sparked by taking into consideration the recommendations in the Alpine Testing Report.

As intimated above, it is recommended that an updated evaluation from Alpine be completed in 2023-2024, giving one full year of the new test writing and grading protocols and implementation of the “Appropriately Qualified” candidate being defined by each area committee. This will ensure the new evaluation provides meaningful feedback as to the development and validation processes that included the people involved, processes, procedures, results, and decision rules regarding certification exams. The goal is to ensure a credible and fair exam for attorneys testing for board certification.

In addition to these more internal changes, the BLSE has engaged in an outreach program to emphasize the value of becoming board-certified to accomplish the following: i) recruit new candidates to become board certified; ii) educate the public as to why it is important to retain a board-certified attorney; iii) to encourage existing certified members to retain their board-certified status. Our goal is to publicize the value of board certification and elevate this distinction to a new level. This is being effectuated by Facebook and other social media posts, spotlighting Board Certified lawyers in those mediums, printing articles with test taking tips by newly certified lawyers, and several other campaigns to encourage Board Certification. This also includes showing up and speaking out, attending meetings of the various Sections to provide information on Board Certification, speaking at YLD events, and having BLSE committee members speak at their own local events.

Board Certification matters! A recent study found that of 1400 visitors to the Florida Bar Website to locate an attorney revealed that 64% consider board certification to be the most important factor when retaining an attorney. This statistic supports our message to local bar associations, law schools and area committee functions that specialization provides an opportunity to become a better attorney and distinguish your credentials from others. To emphasize this point, the BLSE has encouraged board certified attorneys to post this video on their law firm website to educate potential clients about the advantages of hiring a board-certified attorney. The video is posted on the Facebook directly from the Florida Bar Board Certification page and available for download and dissemination by our members to clients and to consumers of legal services. The video can also be found on our YouTube channel by accessing this link [The Board-Certification Advantage](#).

At the Florida Bar Annual Meeting in Boca Raton on Thursday June 22,

2023, Chief Justice Carolos G. Muñiz or another Justice 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 present The Award for Excellence in the Promotion of Board Certification which recognizes excellence and creativity by a Florida Bar Board Certified Lawyer or a law firm in advancing the public's knowledge of and appreciation for legal board certification. The BLSE will also conduct its annual "pinning ceremony" to recognize all newly board-certified attorneys.

This report was prepared by BLSE Chair, Elisha D. Roy.

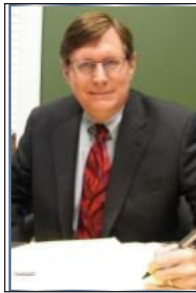
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Ethics Hotline
1-800-235-8619

ETHICS QUESTIONS?



Get to Know your BLSE Members



Robert A. Norgard is a partner in the firm of Norgard, Norgard & Chastang. He has been board certified in Criminal Trial Practice since 1995. Since 1981, Mr. Norgard has almost exclusively practiced in the area of criminal defense. His work experience includes the following – 6th Circuit Public Defender’s Office from 1982-1985, 10th Circuit Public Defender’s Office from 1985-1995, and in private practice from 1995-present. Mr. Norgard has tried over 235 criminal jury

trials, including approximately 80 homicide cases. Mr. Norgard has received recognition from both Best Lawyer’s and Superlawyers, and has twice been named Lawyer of the Year for Criminal Defense – General Practice for the Tampa area by Best Lawyers. Mr. Norgard’s Florida Bar activity has been predominantly in the area of Board Certification, including a total of four terms on the Criminal Trial Board Certification Committee and is in his second term on the BLSE. Mr. Norgard is married to Andrea, who is also a partner at Norgard, Norgard & Chastang. They have four children and numerous grand-pets. When Mr. Norgard is not busy defending the wrongfully accused, he enjoys reading, walking Stella the pit bull, and spending time poolside or lakeside.



Norma Stanley is a Board Certified Wills, Trusts & Estates attorney and a shareholder at the Lowndes Law firm in Orlando where she specializes in private wealth preservation, estate planning, business succession planning, charitable planning, federal taxation, probate, guardianships, trust administration and elder law. With more than 25 years of legal experience, Ms. Stanley represents a myriad of clients, including high net worth individuals and

their families, beneficiaries of trusts and estates, personal representative, trustees and small business owners. Ms. Stanley is the founder and chair of the Meritas Global Trusts & Estates Practice Group, which has over 250 members representing approximately 80 member firms throughout the US, including countries outside of the US. Ms. Stanley is also a past member of the Board of Directors for Meritas, which is a collaborative global network of nearly 8000 lawyers, representing over 180 markets world-wide. Ms. Stanley is a member of the Florida Bar Board of Legal Specialization and Education and the Ethics Committee, and is past chair of the Wills, Trusts & Estates Certification Committee. Ms. Stanley is a member of the National Academy of Elder Law, the Academy of Florida Elder Law Attorneys, and the Central Florida Estate Planning Council. Admitted to practice in Florida and Alabama, Ms. Stanley holds a Master of Laws in taxation from the University of Florida College of Law and a Juris Doctorate from The University Alabama School of Law. Ms. Stanley is currently listed in the Elder Law and Trusts and Estates Law sections of The Best Lawyers in America, in Orlando’s Best Lawyers by Orlando Magazine and in Florida Super Lawyers.



M. Sean Moyles is a partner in the firm of Langston, Hess & Moyles. He has been board certified in Labor & Employment Law since 2005. Since 1996, Mr. Moyles has practiced almost exclusively in the area of employment law, starting with a boutique defense firm in Tampa before opening the Clearwater office of his current firm. Mr. Moyles has held a number of leadership positions with the Florida and local Bar Associations, including his current service on the Florida Bar’s Board

of Legal Specialization & Education, and past service on the Florida Bar’s Employment Law Certification Committee (Chairman and Vice-Chairman). Mr. Moyles previously served on the Hillsborough County Bar Association’s Young Lawyers’ Division (Treasurer, Parliamentarian), which was probably around the time they took the (somewhat outdated) profile picture still appearing on the websites for his firm and the Bar. Mr. Moyles has been selected as a Florida Super Lawyer, as well as the Florida Trend Legal Elite. Mr. Moyles is married to Shannon, and they live in Clearwater. In his free time, he enjoys snow skiing with his wife and stepchildren (Marcus and Chandi), quality time with his pets (two cats and a dog) and struggling for mediocrity in several fantasy football leagues.



Amy J. Fanzlaw is dually board-certified in Wills, Trusts, & Estates and in Elder Law. Hailing from a small town in north central Florida, she was editor-in-chief of Law Review and, after law school, moved to South Florida, where she clerked for two appellate judges. Following a stint in Tennessee clerking for a third appellate judge there, she returned to South Florida where she began private practice specializing in special needs trust planning, estate and trust planning and administration, and long-

term care planning. Over the years, she has developed a niche practice in decanting and modifying all types of irrevocable trusts, but her expertise in decanting and modifying special needs trusts in particular has been sought by practitioners nationwide.

In addition to her work with BLSE, Amy is very active in the Elder Law Section, currently serving as an officer (incoming Vice-Chair, Substantive Division), and she’s an active member of RPPTL’s Ad Hoc Trust Decanting committee and the Academy of Florida Elder Law Attorneys. She previously served as Chair of The Florida Bar Elder Law Certification Committee, President of the Craig S. Barnard American Inns of Court LIV, and member of The Florida Bar Probate Rules Committee. She’s been a co-author of the Special Needs Trust chapter in the book published by The Florida Bar/Lexis, Administration of Trusts in Florida, since 2019.

Outside of the practice of law, she is an artist, bourbon enthusiast, and avid University of Florida Gators fan. She’s written the Great American Novel in her head at least three times – now she just needs to commit it to paper. She hasn’t missed a local DMB concert in over 20 years, and she sings a mean and memorable rendition of “Devil Went Down to Georgia” on karaoke. Besides spending time with her very large extended family, one of her favorite places to be is trapped under the weight of her ridiculously spoiled cats.

Board Certified Lawyers

IN THE NEWS



Ceci Berman of Brannock Humphries & Berman participated in a panel discussion at the Wm. Reece Smith, Jr., Litigation American Inn of Court on, "Last Things First: What Your Appellate Attorney Wants You to Know."



Rob Blank of RumbergerKirk in Tampa achieved recertification as a civil trial law advocate from the National Board of Trial Advocacy.



Michael J. Bradford of Marshall Dennehey in Tampa was appointed to the Middle District of Florida's Admiralty and Maritime Practice Committee. and has also been named a board member of the Claims & Litigation Management Alliance Western Florida Chapter.



Michael Corso of Henderson, Franklin, Starnes & Holt had his article, "Florida Drone Laws: Overview," published by Thomson Reuters.



Ben Dachepalli of Bradley Arant Boulton Cummings has been named general counsel for the Tampa Bay Economic Development Council.



Jennifer Diaz of Diaz Trade Law presented an "Import and Export Procedures and Processes Workshop" to delegates from Costa Rica, Nicaragua, St. Lucia, Grenada and the Caribbean for the Florida International University's Cochran Fellowship Program and was also featured in Marketplace's article, "I've Always Wondered...The long, tangled story behind country-of-origin labels."



Robert D. Eckard of Robert Eckard and Associates presented to the Clearwater and St. Petersburg bars 2023 Probate Law Update on, "The Intersection between Business Litigation and Probate."



Daniel Etlinger of Jennis Morse Etlinger presented at the 2023 Alexander L. Paskay Memorial Bankruptcy Seminar on, "Exemptions! Exemptions! Exemptions!"



John H. Friedhoff of Fowler White published, "The USA Corporate Transparency Act Update: Alert to Non-USA Lawyers and Clients," in the June 22 edition of Global Law Experts and was also a guest lecturer at the INIDEM Business Law School Master of Laws Program where he presented, "Taking Advantage of the Gringo Lawyer in Contract Negotiations: Examples and Principles for Future Use."



Michael J. Gelfand of Gelfand & Arpe presented, "Green Bananas: The Perception of 'Affordable,' Florida Condominium Ownership Slips on a Dirty Rotten Peel," for the Jacksonville Area Real Estate Council and also presented, "Recent Developments, Florida Judicial Update," at the University of Miami's 47th, Ralph E Boyer Institute on Condominium and Cluster Development.



John Gihon of Lasnetski Gihon Law in Orlando spoke at three events on Immigration Law: as a panelist at the American Immigration Lawyers Association, Central Florida Chapter Annual Conference, where he spoke on how crimes affect all aspects of immigration law; and two training presentations to the Public Defender's Offices for the Ninth Circuit and the 18th Circuit on, "Immigration Consequences of Criminal Prosecutions." and also spoke at two conferences on immigration law. The first was titled, "Crimmigration: Drafting successful motions to dismiss," at the Catholic Legal Services (Miami) Lazy Days of Summer program. The second was in Maui, Hawaii, at the AILA Fall Conference titled, "Stunningly-Creative litigation strategies in Immigration Court."



Maria C. Gonzalez (B.C.S. Marital & Family Law) recently presented a "Case Law Update" at the 37th Annual View from the Bench Family Law Seminar" sponsored by Miami-Dade County Bar and Dade Legal Aid-Put Something Back Program.



Kenneth A. Gordon of Brinkley Morgan in Ft. Lauderdale and the Broward Partnership Board served as one of the celebrity waiters at this year’s Breakfast for Champions of the Homeless.



Michael J. Gore of Jones Foster joined the United Way of Palm Beach County as a Campaign Cabinet legal lead.



Lonnie Groot of Daytona Beach was a featured speaker at the Veterans Recognition Event of Daytona State College at the college’s New Smyrna Beach/Edgewater campus.



Jorge P. Gutierrez, Jr. of The Gutierrez Firm in Coral Gables has become a fellow of the Litigation Counsel of America.



Celene H. Humphries of Brannock Humphries & Berman was presented with an award by the Broward County Trial Lawyers Association in recognition of her contributions that have benefited lawyers representing injured plaintiffs in Broward County.



Erin Jackson of Johnson Jackson has been elected president of the Hillsborough Association for Women Lawyers.



Charles F. James IV of Clark Partington has been selected by Florida’s Great Northwest Foundation as a participant for the inaugural Leadership Northwest Florida class.



Richard C. Lorenzo was named board chair of the Miami International Arbitration Society.



Kim Nutter of Brinkley Morgan in Boca Raton was named president of the Florida Chapter of the Association of Family and Conciliation Courts.



Ivan Parron of Parron Law moderated a panel, “The Future is Now: Sports and Web 3.0,” as part of the Sports Lawyers Association symposium The Future of Sports Media & Data Rights in Miami.



Bill Rogner of HR Law has been named president of Kids’ Chance of Central Florida for 2023.



Dr. Amy D. Ronner, law professor emeritus of St. Thomas University School of Law, did a talk on her sixth book, “Dostoevsky as Suicidologist: Self-Destruction and the Creative Process,” for the Global Speaker Series at Washington University in St. Louis and spoke in a Dostoevsky Roundtable in memoriam for Dr. Deborah Martinsen at the annual Convention of the Association for Slavic, East European, & Eurasian Studies in Chicago.



Steven J. Rothman of Jones Foster has been inducted as president of the American Board of Trial Advocates Palm Beach Chapter.



Elizabeth F. Schwartz of Miami was honored with the Pioneer Award by SAGE, a national non-profit that’s been looking out for LGBTQ+ elders since 1978.



Mark A. Sessums of Tampa spoke at the 2023 American Academy of Matrimonial Lawyers Florida Chapter’s Marital and Family Law Review course.



Thomas C. Shaw of ForsterBoughman presented, “Shrinking the Estate Tax Target: What CPAs Need to Know,” for the FICPA Volusia County Chapter at the LPGA International in Daytona Beach and also presented, “Protect Your IRA Planning from the New SECURE Act Proposed Regulations.”



Shawn Wolf of Bilzin Sumberg has been elected as a fellow to the American College of Tax Counsel.

Congratulations to the Newly Certified 1st Cycle Members!

Adoption Law

Katie R. Bost – Gainesville

Admiralty and Maritime Law

David Maass – Palm Beach

Elbert Martin – Tampa

Victor Pelaez – Miami

Appellate Practice

Jessica Christy Conner – Orlando

Jonathan P. Picard – West Palm Beach

Michael A. Rosenberg – Plantation

Jeffrey D. Slanker – Tallahassee

Edward M. Wenger – Washington, DC

Civil Trial

Mark Alexander – Jacksonville

David Anderson – Lakeland

Todd Baker – Boynton Beach

Javier Basnuevo Valdiva – Coral Gables

Robert Bleakley – Tampa

William Bledsoe – Deland

Joshua Canton – Tallahassee

Brandon Cathey – St. Petersburg

Leah Charbonnet – Boca Raton

Richard Dellinger – Orlando

John Fischer – Hollywood

Miriam Fresco Agrait – Miami

Alexander Hunt – Deerfield Beach



Richard Kearley – Ft. Lauderdale

Robindra Khanal – Orlando

Andrew Knopf – Winter Park

Joseph Kopacz – Palm Harbor

Scott Liotta – Orlando

Evan Lubell – Fort Myers

Luis Menendez-Aponte – Miami

Lewis Mertz – Miami

Cyrus Niakan – West Palm Beach

Karissa Owens – Ft. Lauderdale

Bernard Pastor – Miami

Daniel Smith – Orlando

Matthew Thomas – Vero Beach

David Thompson – Jacksonville

Robert Vannatta – West Palm Beach

Randy Weber – Miami

Philip Wiseberg – North Palm Beach

Michael Woodard – Orlando

Condominium and Planned Development Law

Ryan S. Copple – Jupiter

Carolina S. Sheir – Hollywood

Education Law

Jonathan Campbell Squires – Sanford

Shahar Vinayi Pasch – West Palm Bch

Elder Law

Ruth Rhoades – Melbourne

Beth Roland – Orlando

Jennifer Singh Akin – St. Augustine

International Law

Alvaro A. Acevedo – Miami

Fabio Giallanza – Coral Gables

Anda O. Malescu – Miami

Immigration and Nationality

Alexandra Friz-Garcia – Miami

Labor and Employment

Benjamin W. Bard – Tampa

Marital and Family Law

Abigail M. Cohen – Boca Raton

Michael Ray Goodson – Ft. Walton Beach

John M. Henderlite – Jacksonville

Katie Louise Harrison Kohn – Naples

Brittany Marie Pinson – Tampa

Kayla E. Richmond – Ft. Myers

Meghana M. Saoji – Ft. Lauderdale

Michael Mackay Shemkus – Naples

Autumn Lee Warner – Jacksonville

MOVING?
Need to update
your address?

The Florida Bar's
[website](#) offers
members the ability to
update their address
and/or other member
information.

The online form
can be found on
the website under
"Member Profile."

Cyber Coverage Pitfalls

By Robert Wilkins

Institutional data breaches are, unfortunately, more common (and more costly) than ever. Cybersecurity insurance can help—but is your firm’s policy really as ironclad as you think?

An oft-repeated mantra in business and technology is that it’s not a question of if a data breach will happen, but when. The average cost of a corporate data breach in the United States is nearly \$9.5 million, [according to an IBM report published in 2022](#). Without adequate cybersecurity insurance, companies (and law firms) might find themselves facing a double threat: being the victim of a breach and then having to contend with the denial of their cyber insurance claim. This article addresses the risks of failing to implement and follow all of the policies and procedures required by the cyber insurance policy.

Given the exponential growth in breaches and their high costs, insurance providers are raising premiums and increasingly investigating whether the practices, as represented by the insured when it applied for coverage at the outset, were implemented and regularly tested and updated as needed. Failure to do so has resulted, and will continue to result, in denial of coverage.

The Expanding Litigation Threat

The biggest risk of this kind that businesses face is not from individual plaintiffs asserting damages from a data breach—it’s a class action brought on behalf of all those similarly situated. In the past, Article III standing cases have generally held that plaintiffs could not establish the requisite “injury in fact” based on the mere risk of future harm because their personally identifiable information or protected health information was exposed.

For years, class-action data breach cases have foundered on that basis. However, a growing body of case law provides guidance on what constitutes “concrete harm,” and the number of class-action cases finding a concrete injury is on the rise. For a good summary of the law on



ROBERT WILKINS

this critical issue, see *TransUnion LLC v. Ramirez* (2021) and *Hunstein v. Preferred Collection and Management Services, Inc.* (2022).

Loss of Insurance Coverage

Recent reports have shown that an insured party’s perception of its security versus reality often differ greatly. One of the biggest reasons for coverage denial concerns misrepresentations in the company’s application and/or the failure to maintain security practices amid the ever-changing threat environment. Most cyber insurance policies provide broad coverage for cyber extortion, data restoration, public relations, computer fraud, business interruption, regulatory compliance and related elements. However, the coverage under a policy depends on the representations the insured made in its application, and its subsequent compliance with them.

A typical application for cybersecurity insurance will contain a privacy and security liability questionnaire, as well as a portion about information security. Key items insurance providers require for such policies, according to an [August](#)

[2022 FitchRatings report](#), include the use of multifactor authentication, employee training on phishing and other types of cyberattacks, strength-of-password requirements, regulatory reporting obligations, an assessment of the quality of one’s incident-response plan and penetration testing. In addition, all 50 states have data-breach notification laws, and law firms or clients must comply with the [requirements of each state](#) in which they do business.

The hole in the cyber insurance net stems from the insured’s potential misrepresentations in its application and its failure to adjust to the changes in the methods by which bad actors gain illegal access to data. Recently, one insured business that suffered an enormous data breach was denied coverage and had its policy rescinded. See *Travelers Property Casualty Company v. International Control Services, Inc.* (2022).

Travelers’ success was based on the fact that International Control Services, in its policy application, stated (and signed a separate attestation) that it required multifactor authentication to gain administrative access to its data. Upon investigation, Travelers determined that ICS misrepresented the scope of its authentication process, resulting in the breach.

A business’s failure to follow the policies and procedures claimed in its application is dire. In fact, most insurance policies have a specific exclusion that precludes coverage for claims arising from the policyholder’s failure to maintain adequate security standards. Companies must regularly monitor, update and test all cybersecurity requirements mandated in their policy. The same is true for policies regarding cyber extortion and ransomware attacks.

It’s not just insurance companies that require businesses to have solid proce-

dures and policies to prevent and contain data breaches. Banks, corporate clients and a multitude of others require similar assurances from law firms they deal with that the firms have, comply with and regularly test, update and monitor a written information-security policy and incident-response plan.

Takeaways

The increase in data breaches, the costs resulting from them (which can include potential criminal and regulatory liability), the representations required by clients and insurance companies and the need to meet constantly changing threats

in this data-driven age demand that law firms and their clients implement and closely monitor cybersecurity policies and practices. To that end:

- Read your cybersecurity insurance policy application and representations to confirm each representation is accurate.
- Update your policies and practices to stay on top of changes and innovations in data security.
- Train and test your employees in data security practices and potential breaches, especially phishing schemes.
- Keep an open line of communication

with your insurance provider and follow its recommendations regarding cybersecurity.

- Consider having an outside vendor run penetration tests of your data security systems.

The bottom line: Breaches may be inevitable, but diligence and preparation can mitigate both their financial and reputational impact.

This article originally appeared in the U.S. News – Best Lawyers® “Best Law Firms” 2023 publication on November 3, 2022.

The Board Certification Office is pleased to announce that we now offer the Certification Badges in color!

THEY CAN BE FOUND ON THE FLORIDA BAR WEBSITE UNDER THE CERTIFICATION LOGOS TAB



HEALTH LAW

The Coral Gables City Attorney

The Coral Gables City Attorney’s Office led by City Attorney Miriam Soler Ramos is now a fully certified office in City, County and Local Government Law. Assistant City Attorneys: Naomi Levi Garcia and Stephanie Throckmorton recently received Florida Bar certification in this practice area. They join a select group of 313 lawyers in Florida including Ramos, Deputy City Attorney Cristina Suarez and Assistant City Attorney Gustavo Ceballos in receiving this prestigious certification.

“We are very proud to be a fully certified office, said Ramos. “This certification designates that our entire team has the special knowledge, skills and proficiencies in local government law.”



MIRIAM RAMOS



NAOMI GARCIA



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GUSTAVO CEBALLOS

City, County and Local Government Law: Preemption bills present new challenges in practice area

By Sarah Rissman Taitt

As a career government attorney, I always subscribed to the Jeffersonian principle that the government closest to the people serves the people best. Perhaps it is self-validating to believe my work in local communities is as important as state and national issues. In either case, you can prove out concepts easier, quicker, and cheaper on a small scale, so local governments have long embraced their role as policy Petri dishes.

In Florida, home rule is a constitutional adage that cities and counties can self govern, so long as they don't conflict with state law.¹ This allows latitude in communities throughout the state to decide what is important to their constituents. It also results in a patchwork of local laws, making it somewhat onerous when working in or traveling to different jurisdictions.

Sometimes the state steps in and enacts what is known as a preemption bill. For example, the State Uniform Traffic Control Law mostly reserves to the state the field of traffic regulation.² This means that the rules of the road are the same regardless of how many county lines you cross on a road trip.

Since the adoption of home rule in the 1968 Constitution, preemption bills trickled year by year, often addressing major statewide issues or public health emergencies. One preemption bill in 2011 was pushed by local governments to help solve the pill mill crisis, an epidemic that was spiraling out of control and fueling the inter-state drug trade.³ Another sensible preemption bill helped establish state regulation for the new medical marijuana industry in Florida.⁴

But some recent preemption bills have benefitted corporate interests rather than the public good. Over a 10-year period, the state chipped away at single-use plastic and styrofoam



SARAH RISSMAN TAITT

bans, eventually preempting them in their entirety, despite local support and evidence of environmental benefit in coastal communities. The Florida Retail Federation, a powerful lobbying organization, celebrated the preemption victory.⁵

Affordable housing problems also pitted powerful lobbying interests against the public benefit. Anecdotally, it is more expensive to live in Tampa than in Bartow. Yet the state passed multiple preemption bills to keep local governments from using a myriad of tools that were previously at their disposal, such as rent control and other tenant protections. The Florida Apartment Association and the Florida Realtors successfully advocated for preemption.⁶

The real chilling effect happened in 2019 when the state enacted a new law relating to preemption challenges.⁷ In essence, if a local government passed an ordinance that was expressly preempted by the state, a court was obligated to award prevailing party attorney fees. Local government practitioners know that preemption cases are often close calls, requiring a parsing of legislative

intent, terminology, and comma placement. With automatic attorney fees, few local governments will choose to wade into a potentially costly legal battle.⁸ Unfortunately, where does this leave our democracy?⁹

Striking a balance between policy goals is an essential role of government. If local governments are hindered in choosing policy initiatives, then potential solutions become limited. Let's go back to the basics and allow local governments to develop policy on a small scale. After all, it's how our government was designed to function.

Endnotes

1 For counties, Article VIII, Section 1(f) and (g), Fla. Const. For cities, Article VIII, Section 2(b), Fla. Const.

2 Chapter 316, F.S.

3 Sec. 458.3265, F.S.

4 Sec. 381.986, F.S.

5 "FRF Applauds Appeals Court Decision to Strike Down Coral Gables' Polystyrene Ordinance," August 14, 2019, <https://www.frf.org/index.php/news/news-releases/item/534-frf-applauds-appeals-court-decision-to-strike-down-coral-gables-polystyrene-ordinance>

6 "FAA's 2019 Legislative Priorities," January 15, 2019, <https://www.faaahq.org/news/faas-2019-legislative-priorities->

"2023 Legislative Final Report," updated May 12, 2023, <https://www.floridarealtors.org/advocacy/2023-legislative-final-report>

7 Sec. 57.112, F.S.

8 The legislature doubled down in the 2022 session with SB 620, a bill that would have given businesses the right to sue local governments to recoup lost profits. It was surprisingly vetoed by the governor.

9 As Alexis de Tocqueville observed in *Democracy in America*: "The genius of democracies is seen not only in the great number of new words introduced but even more in the new ideas they express."

The author served as an assistant county attorney for Lake and Osceola counties and as an assistant city attorney for the City of Orlando. She is currently on sabbatical.

“Why Hiring A Board-Certified Lawyer Makes Sense”

By Steven B. Lesser

Consumers of legal services often seek to hire legal counsel for a variety of matters including personal injury, accident, divorce, a business dispute, real estate transaction, or probate matters. Finding the right lawyer can be challenging for the consumer that is often bombarded with television advertising highlighting certain lawyers, along with billboards, internet reviews, and recommendations from family and friends.

For consumers searching for the right lawyer on short notice, the process can be confusing and frustrating. In narrowing down choices, the consumer of legal services should consider hiring a board-certified lawyer who has already been vetted for expertise and professionalism in a legal specialty area.

Board certification is administered by eight national private organizations with 18 certification programs accredited by the American Bar Association. These private certification programs include specialty areas in bankruptcy, estate planning law, juvenile law, and elder law. Many state bar associations also administer board certification programs. For example, Florida has the largest number of certification specialty areas, at 27, which range from marital and family law to criminal law, construction, real estate, and workers' compensation. Texas, California, North Carolina, and other states also have robust programs. There are approximately 28,000 lawyers in the United States who are board certified specialists.

Selecting a board-certified lawyer provides an assurance of the lawyer's expertise. Generally, all certifying programs require a lawyer to have practiced with substantial involvement in a specialty area for at least five years and to pass a rigorous examination testing their knowledge of the law in the



STEVEN B. LESSER

specialty area. A board-certified lawyer must also be vetted by their peers for professionalism and ethics through a confidential peer review process. In addition, most candidates must satisfy a continuing education requirement in a designated specialty area. Typically, board-certified lawyers must apply to be recertified every five years and through that process, must demonstrate compliance with all board certification requirements. Board-certified lawyers pride themselves on being up in date on current developments and legislation that impacts their legal specialties. For example, with constantly evolving business technologies and systems, lawyers who are board certified in Privacy Law by the International Association of Privacy Professionals (IAPP) are on top of emerging privacy legislation on state and global levels.

Elder law includes a diverse range of legal issues affecting older or disabled persons and their families and lawyers board-certified by the National Elder Law Foundation handle at least 60 elder law matters every three years, spread across areas such as health and personal care, fiduciary representation, legal capacity

counseling, public benefits advice, special needs counseling, insurance advice, resident rights advocacy, and more.

Lawyers board certified in Business Bankruptcy Law by the American Board of Certification (ABC) must participate in at least 30 adversary proceedings or contested matters across a range of business areas. Thus, board-certified lawyers have focused legal acumen that is demonstrated and tested on a regular basis. Selecting a board-certified lawyer has appeal for a number of other reasons beyond proven competency. First, board-certified lawyers have extensive experience in their jurisdiction and are familiar with local practices, the jury pool, and judges. Second, because these lawyers practice in a specific specialty area, they tend to know their colleagues on the opposing side. This type of knowledge and familiarity can be of assistance in amicably resolving disputes that could otherwise wind up in drawn-out, expensive litigation.

Finally, when faced with personal litigation and/or disputes, qualifications matter, and the consumer can sleep better at night knowing that board-certified counsel is capably acting in their best interest.

At the very least, consumers can use the board certification designation to narrow down the list of qualified candidates for consideration. On this point, consumers should consider consulting the American Bar Association Standing Committee on Specialization's website for more information on board certification, specialty areas, and links to the national private organizations with ABA-accredited certification programs and states that run their own certification programs throughout the country. The ABA has been involved with board certification of lawyers for

almost 30 years, and ABA accreditation is widely recognized as a valuable seal of approval for organizations conferring board certification.

Additionally, the ABA has worked with states on incorporating ABA Model Rule 7.2 (formerly 7.4) into state ethics codes, and many states permit certified specialists to publicly disclose certification without any limitation if

they are certified by a program that is accredited by the ABA.

Steven B. Lesser is a Shareholder at Becker & Poliakoff and Chair of the Firm's Construction Law & Litigation Practice. Mr. Lesser is Florida Bar Board Certified in Construction Law and Chair of the American Bar Association Standing Committee on Specialization.

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Application Filing Periods & Examination Dates

| | |
|--|---|
| <p>First Cycle Filing Period: July 1 – August 31, 2023</p> <p>Areas: Admiralty and Maritime Law Adoption Law Appellate Practice Aviation Law Civil Trial Law Condominium & Planned Development Education Law Elder Law Immigration & Nationality Law International Law Labor & Employment Law Marital & Family Law Tax Law</p> | <p>Second Cycle Filing Period: September 1 – October 31, 2023</p> <p>Areas: Antitrust & Trade Regulation Law Business Litigation City, County & Local Government Law Construction Law Criminal Appellate Law Criminal Trial Law Health Law Intellectual Property Law International Litigation & Arbitration Juvenile Law Real Estate Law State/Federal Government & Administrative Practice Wills, Trusts & Estates Law Workers' Compensation Law</p> |
|--|---|

There are no alternative dates or make-up exams.

All 2024 hand write exam will be held at the Renaissance Orlando Airport Hotel:
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|---|---|
| <p>Thursday, March 7, 2024: Admiralty & Maritime Law Adoption Law Aviation Law Civil Trial Law Condominium & Planned Development Immigration & Nationality Law International Law</p> | <p>Friday, March 8, 2024: Appellate Practice Education Law Elder Law Labor & Employment Law Marital & Family Law Tax Law</p> |
| SECOND CYCLE AREA EXAM DATES | |
| <p>Thursday, March 9, 2024 Antitrust & Trade Regulation Law Construction Law Intellectual Property Juvenile Law Real Estate Law State & Federal Government & Administrative Practice</p> | <p>Friday, March 10, 2024: Business Litigation City, County & Local Government Law Criminal Appellate Law Criminal Trial Law Health Law International Litigation & Arbitration Wills, Trusts & Estates Law Workers' Compensation</p> |

So Long, Farewell

A special shout out of “thanks” to these committee members that worked hard to make the board certification program successful!

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