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WORKERS' COMPENSATION SECTION

NEWS
& 440 Report

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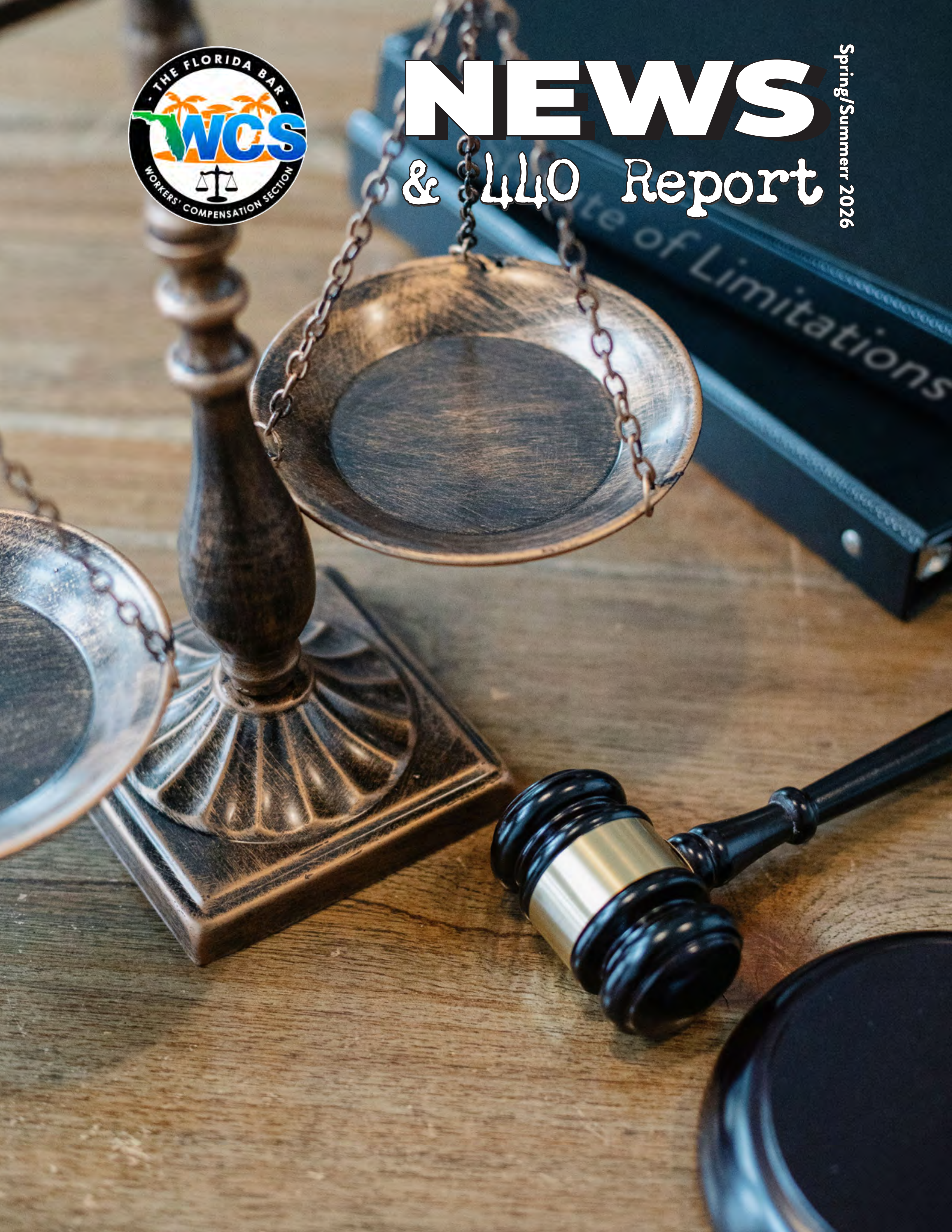

NEWS
& 440 Report

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In This Issue...

On the Cover

On the cover of this edition of the *NEWS & 440 Report* is a picture related to the recent *Estes* decision, discussed in this issue..

MESSAGE FROM THE OUTGOING CHAIR

Sean P. McCormack

From Empowerment to Reflections and Engagement

Time is an interesting concept. Sometimes it drags on, sometimes it flies by, or sometimes you feel stuck in time. As my term as chair comes to an end, I am reminded that this past year had all these components. A year seems like a long time, but it can be difficult to accomplish things when we as an Executive Council meet only four times a year. When I began as chair, my mission was to empower our members to get more involved and to shape the Section with new ideas and energy. As I reflect, we accomplished many positive things.

First, we expanded our membership committee by including mentorship. Our emerging leaders chair, Lisa Thomas, spearheaded this initiative throughout the state. Groups were created that consisted of several mentees and mentors. Topics were assigned each month to facilitate discussion of business development, professionalism, and involvement. I was fortunate to participate in a mentorship group in Orlando. Attorney Steve McKillop and I were able to mentor attorneys Zachary Geller, Catarina Kaltenhauser, and James Cox. It was great to see Steve participate in the mentorship program. We have many talented and experienced attorneys like Steve who got involved in Section-related initiatives and gave back to our members. My goal was to include members who typically are not involved in Section-related matters. The mentorship program created opportunities for our members to get involved that may not typically do so. Thank you, Lisa, and all our other committee members.

Second, we started the Workers' Compensation Section Podcast hosted by Kenneth Hesser. We invited several members to discuss workers' compensation-related topics and matters in a more relaxed setting. Please check out our episodes if you have not already. This coming season, Christopher Smith has agreed to host the podcast. Thank you, Ken, for your dedication to making our podcast happen.

Third, we switched things up and went on the CLE at Sea cruise several months ago in lieu of the winter ski retreat. We had several new Section members attend who had not previously traveled with the Section. Kudos to Mark Lee, Julio Fernandez, Trevor Hamlin, Michael Hernandez, and Dan Cruz Cariño for attending our CLE at Sea. We hope for a larger attendance in the future, but the smaller setting allowed for an in-depth round table format that our members enjoyed.

Fourth, we had non-Executive Council members helping with our committees. Thank you to Angela Lambiase and Jennifer Devine for your assistance with our CLE committee. This is one of our most active and time-consuming committees, and I appreciate your help. We had Jesse Rowe assisting with our social media accounts as part of our technology committee. And we had Billy Wieland, Jesse Rowe, and Kellye Shoemaker moderating our JCC Zoom Town Halls.

Fifth, we continued our free health and wellness CLE offerings to our members including our joint CLE program with the Animal Law Section.

It is exciting to see new interest in our Section. Elections took place at our Forum this year, and the ballot included many new candidates who are now part of our Executive Council. We amended the bylaws to include two mediators on the Executive Council and elected Paul Westcott and Howard Scheiner to these new positions.

As I begin my new term as immediate past chair, I am excited to see Tracey Hyde lead us as chair with our new Executive Council members bringing new ideas and energy to the Section. Thank you to everyone on the Executive Council for your hard work in the Section this year. Special thank you to Willie Mae Shepherd, our administrator, for your guidance and professional assistance in helping me fulfill my role as chair of the WCS. I am happy to report that my mission of empowerment created engagement throughout our membership. My goal was to get members who typically are not active in Section-related matters to get involved, and that was a success.

Sincerely,

Sean P. McCormack
Section Chair
2025–2026

MESSAGE FROM THE INCOMING CHAIR

Tracey J. Hyde

Something New Every Day

It is with great humility and honor that I assume chairmanship of the Workers' Compensation Section beginning July 1, 2026. My entire career since September 1994 (going on 32 years) has been devoted to workers' compensation defense with the same firm of McConnaughhay Coonrod, where I started as a file clerk in 1991 at $5.50/hour! Had to start somewhere!

I sought Bar service as early in my career as possible, as I believe strongly in giving back. After becoming board certified in 2006, I have continuously recertified every five years. I served on the Workers' Compensation Board Certification Committee from 2008 to 2014 and am serving again from 2023 to 2029. I had the honor of being chosen to sit on the BLSE (Board of Legal Specialization and Education) from 2014 to 2017 as the first member of the Workers' Compensation Section to serve on that august body and was also awarded the honor of Board Certified Lawyer of the Year in 2017.

My goals as chair this year are to continue the efforts of my predecessors as to membership/mentorship from Sean McCormack and women in work comp started by Karen Cullen and handled beautifully by Dawn Traverso. I also want to encourage increased involvement on the Executive Council's efforts to promote excellence in workers' compensation, along with a strong effort toward more members attaining board certification. I encourage past chairs who remain as elected members of the Executive Council to consider taking emeritus status to open up a seat for our up-and-coming emerging leaders.

My oft-stated phrase in workers' compensation is that there is something new every day, and you can't make this stuff up!

I look forward to a great 2026–2027!

Tracey J. Hyde
Section Chair
2026–2027

MESSAGE FROM THE EDITORS

Kenneth M. Hesser & Matthew J. Troy

As another edition of the *NEWS & 440 Report* comes together, this issue reflects the many perspectives that strengthen the workers' compensation community throughout Florida. We are honored to include messages from both outgoing Chair Sean McCormack and incoming Chair Tracey Hyde, highlighting the transition in leadership and the continued commitment of the Section to professionalism, mentorship, and service.

This issue also delivers substantive and practical guidance for practitioners at every stage of their careers, including an article on records custodian depositions by Veronica Porges and Neil Ambekar, a thoughtful discussion from Mike Rudolph on handling adverse rulings, and an analysis of *Estes* and the statute of limitations by Bill Rogner. Together with this edition's case law update and Judge Anderson's contribution to the Judge's Corner, these articles provide valuable insight into both emerging issues and everyday practice challenges.

Consistent with the spirit of our Section, this issue also highlights the relationships, professionalism, and community that make our practice unique. We are pleased to feature coverage of the Jacksonville Inn Talent Show and Judge Walker's announcement regarding the OJCC Scholars program's second class of professionals, both of which showcase the mentorship and collegiality that continue to define our profession. Finally, our Member Spotlight and Diversity Spotlight continue to recognize outstanding individuals whose contributions strengthen our Section and broaden the perspectives within it.

As editors, we are proud to present another issue that not only informs and educates, but also reflects the collaborative and supportive nature of our community.

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Textualism, Two-Timer Tolling, and *Estes v. Palm Beach Cnty. Sch. District*

By William H. Rogner

Introduction

"We're all textualists now," announced United States Supreme Court Justice Elena Kagan in 2015,[1] although she later recanted that statement.[2] Popularized by proponents such as Justice Antonin Scalia, textualism holds that laws mean what they say. Although perhaps oversimplified, this legal philosophy suggests that the words in a statute mean what they meant when they were adopted by the legislature, and that the law is to be applied as written. Textualism cares little about legislative intent, at least as it might be deduced through legislative history, committee reports, or the like.[3] Legislative intent, says the textualist, is best determined by faithfully applying the words actually adopted by the legislature.[4]

Textualism contrasts with purposivism, where judges attempt to apply the legislature's presumed intent rather than the statutory text when the two appear to diverge.[5] Textualism, which requires steadfast application of statutory language, has been championed by many conservatives in both the legislative and executive branches who desire clear textual rules that constrain what they perceive to be "activist" judges who applied open-ended inquiries into legislative purpose.[6] Florida has become, over the last 20 years, a reliably red state. Not surprisingly, governors Rick Scott and Ron DeSantis have appointed a steady stream of textualists to all levels of the Florida courts since 2011. Textualists are dominant today. When framing an argument in 2026, know your audience.

This article discusses the First District's recent en banc decision, *Estes v. Palm Beach Cnty. Sch. Dist.*, 2026 Fla. App. LEXIS 2191 (Fla. 1st DCA, March 23, 2026). The opinion crystalizes the textualists' dominance on the court, and the result, at least in the author's mind, reveals that a textualist analysis of statutory language may present a more compelling legal argument than a reliance on precedent, legislative intent, tradition, consistency, or predictability in the law.

Section 440.19, Fla. Stat.

We start with the statute. The current version of section 440.19 was adopted in 1993. The prior version read (with author's emphasis):

> 440.19 Time and procedure for filing claims.
>
> (1) (a) The right to compensation for disability, rehabilitation, impairment, or wage loss under this chapter shall be barred unless a claim therefor which meets the requirements of paragraph (d) is filed **within 2 years after the time of injury**, except that, if payment of compensation has been made or remedial treatment or rehabilitative services have been furnished by the employer on account of such injury, a claim may be filed **within 2 years after the date of the last payment of compensation or after the date of the last remedial treatment** or rehabilitative services furnished by the employer.

The current law provides (with author's emphasis):

> 440.19 Time bars to filing petitions for benefits.
>
> (1) Except to the extent provided elsewhere in this section, all employee petitions for benefits under this chapter shall be barred unless the employee, or the employee's estate if the employee is deceased, has advised the employer of the injury or death pursuant to s. 440.185(1) and the petition is filed within 2 years after the date on which the employee knew or should have known that the injury or death arose out of work performed in the course and scope of employment.
>
> (2) Payment of any indemnity benefit or the furnishing of remedial treatment, care, or attendance pursuant to either a notice of injury or a petition for benefits shall **toll** the limitations period set forth above for 1 year from the date of such payment. This **tolling** period does not apply to the issues of compensability, date of maximum medical improvement, or permanent impairment. (author's emphasis)

Clearly, the latter version included a word not present in the former—"toll." The *Estes* court focused on the meaning of that word.

"Toll" and pre-*Estes* Precedent

As noted, the current version of section 440.19 was adopted in 1993, with an effective date of January 1, 1994. The industry immediately began debating the meaning of the new statute, and the First District issued several post-1994 cases. The court was presented with two arguments regarding the construction of the new statute. The first, made by the employer/carrier (E/C), asserted that the new version acted much like the old. Specifically, any provision of benefits served to extend the limitations period by one year. The other argument, made by the claimant, posited that any provision of benefits paused the running of the statute of limitations (SOL) for one year.

The First District grappled with these arguments and ultimately ruled in the E/C's favor. The E/C's construction of the new statute shortened the limitations period while the claimant's lengthened it in nearly all cases. The express purpose of the 1993 amendments was to dramatically lower out-of-control insurance rates.[7] Applying "toll" as an extension resulted in a shortening of the pre-amendment limitations period while applying it as a pause lengthened it, which seemed contrary to the legislature's intent.

The first important case addressing the new version of the statute was *Orange County Sch. Bd. v. Best*, 728 So.2d 1186 (Fla. 1st DCA 1999). The question presented in that case was whether the statute barred a petition for benefits (PFB) filed within two years of the industrial accident where more than one year had elapsed since the last furnishing of medical treatment. *Id*. at 1186. The court held that the petition was timely. *Id*. The court stated:

> A petition is timely if filed within two years of the date of the accident or, even thereafter, if filed within one year of the last date petitioner received medical treatment or indemnity benefits. *Id*. at 1188.

The *Best* approach treated the provision of benefits as an extension of the limitations period. *Best* was followed by *Claims Management, Inc. v. Philip*, 746 So.2d 1180 (Fla. 1st DCA 1999), in which the court more directly addressed tolling as applied in section 440.19. The E/C argued that a provision of benefits extended the limitations period while the claimant argued that it paused (or suspended) the running of the SOL for one year. Discussing the application of tolling urged by the claimant, which substantially increased the length of the SOL, the court concluded, "We do not believe this construction was intended by the legislature." Therefore, the court interpreted the word *toll*, as applied in section 440.19, to mean extend rather than pause. The *Philips* court's holding:

> We thus hold that a claimant is barred from filing a petition for benefits unless the claim is filed during the longer of the following two periods of time: (1) within two years from the date of the injury; or (2) within one year from the payment of indemnity benefits or the furnishing of remedial treatment, care, or attendance pursuant to either a notice of injury or a petition for benefits. 746 So.2d at 1182.

Philips ended the debate for a quarter century. Generations of claims handlers and workers' compensation lawyers understood that the SOL expired two years from the date of the accident or one year from the last provision of benefits, whichever was later. Additional "extension" cases included *Palmer v. McKesson Corp*., 7 So.3d 561, 563 (Fla. 1st DCA 2009)("The express tolling exception to that statute found in section 440.19(2), which *extends* the filing period for one year upon the payment of indemnity benefits or the furnishing of medical care."); *Medpartners/Diagnostic Clinic Med. Group, P.A. v. Zenith Ins. Co*., 23 So.3d 202 (Fla. 1st DCA 2009); *Varitimidis v. Walgreen Co*., 58 So.3d 406 (Fla. 1st DCA 2011); and *Sanchez v. Am. Airlines*, 169 So.3d 1197, 1197 (Fla. 1st DCA 2015)("The only events that will extend the statute of limitations are the payment of indemnity benefits or the furnishing of medical treatment.").

The law was settled, or at least seemingly so.

Ortiz v. Winn-Dixie, Inc., 402 So.3d 301 (Fla. 1st DCA 2024)

The debate over the meaning of the word *toll* was revived in 2023, as if from the ether, and uninvited by any party or judge of compensation claims (JCC). On May 31, 2023, the court issued the first of two opinions in *Ortiz v. Winn-Dixie, Inc*. (*Ortiz I*). A review of the *Ortiz* merits order and the briefs filed by the parties demonstrates that neither the parties nor the JCC addressed the tolling theory embraced in the *Ortiz I* majority opinion. Both the parties and the JCC understood exactly how the SOL worked—two years from the date of the accident or one year from the last provision of benefits, whichever was later. The dispute in *Ortiz* centered on whether the claimant presented sufficient proof that she received authorized compensable care sufficient to extend (not pause) the limitations period.

What became known as the *Ortiz* "two-timer tolling" analysis appeared for the first time at oral argument, and it was introduced not by a JCC or a party, but by a district court judge. Whether the analysis was correct or incorrect is of secondary concern. The legal theory was never raised by the parties or addressed by the JCC, yet it was adopted by the majority in reaching its conclusion in *Ortiz I*, even if mere dicta. Of course, *Ortiz I* was later withdrawn following an unopposed motion for rehearing.

On December 23, 2024, some 19 months after *Ortiz I*, the court withdrew the opinion and issued *Ortiz v. Winn-Dixie, Inc*., 402 So.3d 301 (Fla. 1st DCA 2024) (*Ortiz II*). *Ortiz II* reached the opposite result (the E/C prevailed in *Ortiz I* while the claimant prevailed in *Ortiz II*), but it did so by addressing the legal arguments tried below and argued by the parties in the briefs. The two-timer tolling analysis was removed from the majority opinion (written by Tanenbaum, J.) and included in a special concurrence (written by Tanenbaum, J.). In his concurring opinion, Judge Tanenbaum wrote that the meaning of "toll" was clear—tolling suspends the running of the SOL time clock until the identified condition is settled. Therefore, the prior cases referring to the tolling period as an extension were, in his judgment, clearly erroneous. Judge Tanenbaum encouraged practitioners and JCCs to feel "empowered by the Supreme Court decisions I have discussed to continue with their approach of analyzing tolling the way it plainly is meant to be; and was meant to be, starting in 1994: as a suspension of the limitation period—requiring an assessment of the stops and starts impelled by the provision of benefits—before making the final determination of whether the statutorily established *two-year limitation period* has run, rather than just the one-year tolling period." (emphasis in original). 402 So.3d at 318.

By December 2024, the meaning of the word *toll* as applied in section 440.19, which was previously settled, was decidedly unsettled. Thereafter, multiple JCC orders were entered, alternately embracing two-timer tolling as the new paradigm, or rejecting it as dicta.

A brief comment on the three-judge panel and horizontal versus vertical precedent

Nearly all district court opinions involve a three-judge panel. It is widely accepted that subsequent panels are bound by a panel decision unless the court recedes from the prior decision en banc.[8] This is "horizontal" precedent, although some question its validity.[9] According to the proponents of horizontal precedent, "a three-judge panel of a district court should not overrule or recede from a prior panel's ruling on an identical point of the law."[10] "A panel of our court has no authority to overrule or recede from our precedent on the same legal issue."[11] Unless the Florida Supreme Court overrules a prior panel's decision, a subsequent panel of a district court is not free to disregard, and must follow, precedent of the prior panel.[12] Only the entire court, sitting en banc, may recede from a prior panel's decision.[13]

Contrast horizontal precedent with "vertical precedent." This type of precedent requires inferior courts to apply the rulings of superior courts. The Office of the Judges of Compensation Claims (OJCC) is an inferior court (actually, not a "court" at all).[14] It is bound by vertical precedent, meaning that the district court decides and the OJCC is obligated to follow. Thus, the author respectfully suggests that the *Estes* JCC, bound to follow a case holding (*Philip*) and not dicta (*Ortiz II*), correctly ruled as follows:

> With the 5/31/23 opinion in *Ortiz* having been withdrawn, our First District Court of Appeal's decisions in *Best, Philip, Varitimidis*, and *Sanchez* remain binding precedent and good law. I, therefore, accept the Employer/Servicing Agent's affirmative statute of limitations defenses, and I conclude that the Claimant's statute of limitations has run on this claim.

The issue was bound to return to the First District, and it did so.

Estes v. Palm Beach Cnty. Sch. Dist.

Ortiz II did not squarely address two-timer tolling since its discussion was limited to a special concurring opinion. Therefore, its discussion was dicta, although perhaps the writing was on the wall. The specific legal dispute at trial in *Estes*, however, was whether section 440.19 was to be applied using the analysis in cases like *Claims Management, Inc. v. Philip*, or applied using two-timer tolling as described by Judge Tanenbaum in *Ortiz II*. The arguments in the appeal pitted textualism and the plain meaning of "toll" against prior precedent and over 25 years of settled law. At the November 4, 2025, oral argument, one focus of discussion centered on whether a three-judge panel was bound by *Claims Management, Inc. v. Philip* and related cases, and a disagreement between the panelists was apparent. Following the oral argument, the court entered an order on December 12, 2025, which read:

> A judge of this court having requested that this cause be heard en banc, and a majority of all judges in regular active service that are not recused having voted in favor of that request, this cause shall be considered and determined on the merits en banc. *See* Fla. R. App. P. 9.331(a).

After considering the issue en banc, the court issued *Estes v. Palm Beach Cnty. Sch. Dist.*, 2026 Fla. App. LEXIS 2191 (Fla. 1st DCA, March 23, 2026). Like the court did, we begin with the conclusion:

> In 1994, a comprehensive revision of the Workers' Compensation Law became effective in Florida. As part of that overhaul, the Legislature replaced a statute of limitations regime in § 440.19(1), Florida Statutes, that had allowed claimants to obtain successive two-year extensions to seek benefits. The revised law took a stricter tolling approach under which a claimant's receipt of injury-related treatment or benefits would "*toll* the [original two-year] limitations period set forth above . . . for 1 year from the date" that the benefits were

> provided or paid. § 440.19(2), Fla. Stat. (emphasis added). Nancy Estes's case turns on the meaning of this tolling provision. Because the term "toll" here means to suspend, stop temporarily, or abate the "limitations period set forth above," rather than extending a discrete one-year period to file additional claims, we set aside the final order which dismissed Estes's petition for benefits on timeliness grounds.

Acknowledging prior precedent reaching the opposite conclusion, the majority wrote, "Finally on the tolling issue, we understand the dissenters' stare decisis-based preference for us to stick with our previous wrongly decided § 440.19(2) cases. But here 'we have chosen to reassess a precedent and have come to the conclusion that it is clearly erroneous.' (citations omitted)." The two dissenters argued that the court should not have receded from long standing precedent, and that the majority opinion "installs a regime that will be difficult if not impossible to apply in workers' compensation cases, and potentially eliminates the statute of limitations in many cases."

Certified Questions and Florida Supreme Court Jurisdiction Over Workers' Compensation Cases

Following the *Estes* opinion, the E/C filed a timely motion to certify a question of great public importance. Specifically, the E/C asked the court to certify the following question or in the alternative, to rephrase it and to certify its own question:

> WHETHER THE INCLUSION OF THE WORD "TOLL" IN SECTION 440.19, FLA. STAT. (1994) LENGTHENED THE WORKERS' COMPENSATION STATUTE OF LIMITATIONS BY ALTERING THE MECHANICS OF CALCULATION, APPLYING ITS MEANING AS UNDERSTOOD AT THE TIME OF THE ENACTMENT, AND TAKING INTO CONSIDERATION THE LEGISLATURE'S EXPLICITLY DECLARED INTENT.

On April 21, 2026, the court denied the motion. While two judges dissented in the underlying opinion, three judges dissented from the order denying the motion to certify, indicating that they would certify a question of great public importance. This order effectively brought appellate review to an end. Aside from a certified question, there was no avenue to appeal *Estes* to the Florida Supreme Court. Under the Florida Constitution, the Florida Supreme Court has limited jurisdiction. It has mandatory jurisdiction only in death penalty cases, bond proceedings, and district court decisions that declare a statute to be unconstitutional.[15] The Florida Supreme Court *may* hear the following appeals (discretionary jurisdiction):

1. District court of appeal decisions finding that a statute is constitutionally valid;
2. District court of appeal decisions that expressly construe a provision of the state or federal constitutions;
3. District court of appeal decisions that affect a class of constitutional or state officers;
4. District court of appeal decisions that expressly conflict with an opinion from the Florida Supreme Court or another district court of appeal;
5. Questions of law certified by the Supreme Court of the United States or a United States court of appeal; and
6. Cases that pass on a question certified by a district court to be of great public importance.[16]

The Florida Supreme Court also has limited original jurisdiction:

> Original Jurisdiction. The supreme court may issue writs of prohibition to courts and all writs necessary to the complete exercise of its jurisdiction, and may issue writs of mandamus and quo warranto to state officers and state agencies. The supreme court or any justice may issue writs of habeas corpus returnable before the supreme court or any justice, a district court of appeal or any judge thereof, or any circuit judge.[17]

Noticeably absent is the writ of certiorari, which allows review of lower court decisions not subject to direct appeal. The Supreme Court of Florida does not have certiorari jurisdiction.[18] The only way to obtain review of *Estes* was via a certified question from the First DCA. Since the court denied the motion to certify a question, the appellate process came to an end.

Applying *Estes*

The author respectfully suggests that, while technically correct, the two-timer tolling methodology described in *Ortiz* was needlessly complex.[19] To apply *Estes*, we must simply change the way we think about the SOL. We no longer have a "2 year +1 year" SOL. Instead, we now have a 730-day SOL, applied as a bank of days. The claimant begins on the date of accident with a bank of 730 days. If no benefits are ever provided, the SOL expires 730 days (two years) after the accident. Each day that passes means the claimant's 730 days are ticking down toward zero. Whenever a benefit is provided, however, the countdown is "tolled" or "paused" for one year. If nothing is provided during that one-year period, the countdown begins again. What this means is that we can no longer simply look for whether it has been two years since the accident and more than one year from the last benefit. We have to do the math.

Although many SOL calculations will be tedious (at least until comprehensive software solutions are implemented), many others will not. The easiest:

1. Where the claimant is injured but receives no benefits, the SOL expires after 730 days (two years).

2. In every case where three years have elapsed with no benefits provided, the SOL has expired.

3. In every case where the claimant is injured and begins to receive benefits, the SOL has not expired if there is never a gap in benefits greater than one year, since the bank of days remains tolled and the countdown paused.

Estes' application can best be understood through example. Imagine that the employee is injured on June 1, 2026, receives care only on June 1, and then never receives another medical or indemnity benefit. SOL analysis:

1. Claimant begins with 730 days.

2. Claimant receives care on date of accident (D/A), so the countdown is paused for one year.

3. Claimant goes one year with no care, so the countdown begins on June 1, 2027.

4. The claim is barred on June 1, 2029, which is three years after the date of the accident.

A slightly more complex example:

1. Claimant is injured on June 1, 2025. Days remaining on SOL = 730.

2. Claimant receives first treatment on July 1, 2025 (30 days after D/A). Days remaining on SOL = 700.

3. Claimant stops treating on December 31, 2025. Days remaining on SOL = 700.

4. Pause lasts until December 31, 2026, and the countdown begins again.

5. Claimant returns for last treatment on January 30, 2027. Days remaining on SOL = 670.

6. Pause ends on January 30, 2028, and the countdown begins again.

7. Claimant files PFB on June 30, 2029. The PFB is timely. On January 30, 2028, the claimant had 670 days remaining. When the PFB was filed on June 30, 2029, the claimant still had 153 days remaining.

Estes can be more easily understood and applied by treating the SOL as a bank of 730 days. Through practice and patience, the SOL can be calculated accurately, even if the calculations are tedious and time consuming.

The next battle—when addressing medical care, does tolling begin with the date of service or the date of payment?

Applying case law and tradition, indemnity benefits are provided when paid. The provision of benefits for medical care, however, has been analyzed using the date the claimant receives the care, and not the date the bill is paid by the E/C. The critical date is the date the care is "furnished," or received. The date of service has controlled, at least until now.

Subsection 440.19(2), as it relates to medical care, uses the term "furnishing." Although it addressed an earlier version of section 440.19, Fla. Stat., the First District construed that term in *Commercial Roof Decks v. Flippo*, 616 So.2d 138 (Fla. 1st DCA 1993). The claimant argued that medical care was furnished when it was paid for while the E/C asserted that authorized care is furnished when received by the claimant. The court rejected the claimant's argument, finding that the controlling date for the SOL was the date of service and not the date the carrier paid the bill.

In *Ginsberg v. ChemMED Corp.*, 929 So.2d 633 (Fla. 1st DCA 2006), the claimant was given a 30-day prescription for medications. The court ruled that the SOL period began to run at the end of the 30-day period. The medications were intended to last through the end of the 30-day period during which the claimant continued to receive care furnished by the E/C. The date of *payment* for the medications had no relevance.

In *Southern Bell v. MacDonald*, 671 So.2d 207 (Fla. 1st DCA 1996), the court addressed the difference between authorized care and denied care. When addressing authorized care, the date the claimant receives the care controls for SOL purposes. The date of payment does not control unless compensability of the treatment is disputed by the E/C. *Id.* at 209.

In *Schiano v. City of Hollywood Police Department*, 277 So.3d 309 (Fla. 1st DCA 2019), this court applied the current version of section 440.19, Fla. Stat., noting that the SOL period was tolled for "one year following the date any indemnity benefit is *paid* or medical treatment is *furnished*." (emphasis added) *Id.* at 311. The court reached the same conclusion in *Palmer v. McKesson Corp., supra*, stating that the tolling provision "extends the filing period for one year upon the *payment* of indemnity benefits or the *furnishing* of medical care." (emphasis added). 7 So.3d at 563.

The court again recognized the distinction between indemnity and medical benefits in *Sanchez v. Am. Airlines*, 169 So.3d 1197 (Fla. 1st DCA 2015), noting that "only events that will extend the statute of limitations are the *payment* of indemnity benefits or the *furnishing* of medical treatment." (emphasis added).[20]

Since we now live in the age of textualism, where precedent seems to be much more elastic, one should consider the statute with fresh eyes:

> ***Payment* of any indemnity benefit** <u>or</u> **the *furnishing* of any remedial treatment**, care, or attendance pursuant to either a notice of injury or petition for benefits **shall toll the limitations period** set forth above **for one year from the date of such *payment***. (emphasis added). Subsection 440.19(2), Fla. Stat. (2021).

The statute is, at least in the author's opinion, poorly drafted. The provision begins with two distinct things that toll the statute:

1. *Payment* of any indemnity benefit; and
2. *Furnishing* of remedial care

We know that both things toll the statute, and if we were to apply our traditional understanding using existing precedent, we would conclude that the tolling period for indemnity begins on the date of payment while the tolling period for medical care begins when the care is furnished (received). A reliance on case law, however, may be unavailing. We must focus on the statutory language.

The phrase "from the date of such payment" might modify only the introductory phrase, "payment of any indemnity benefit." After all, the last phrase ("from the date of such **payment**") seems clearly related to the first ("**Payment** of any indemnity benefit . . ."). But that leaves us with no date from which to apply tolling for medical benefits, at least not a statutory one. The author respectfully suggests that the statutory language is irreconcilable since it premises tolling on both payment and furnishing, but initiates tolling only from payment but not from furnishing.

Perhaps the First District will ultimately conclude, despite all case law to the contrary, that medical care is furnished on the date of payment, which arguably makes the statutory language easier to apply if no less poorly drafted. The author respectfully suggests that such a ruling would lead to absurd results.

While a claimant receives the benefit of indemnity benefits when the claimant gets paid, the claimant receives the benefit of medical care when the claimant receives the care. The date that the E/C pays for authorized care is irrelevant. When care is authorized, the payment of the bill is "immaterial" to the claimant.[21] Although the JCC has jurisdiction over the SOL, the JCC has no jurisdiction over whether or when authorized bills are paid by the E/C.[22] The date of payment has no correlation to the receipt of medical care. Providers treat first and submit their bills later. The carrier then has 45 days to pay medical bills once received on the proper form.[23]

This leads us to an arguable absurdity. Under cases interpreting section 440.19, Fla. Stat., the use of a prosthetic device tolls the SOL indefinitely because an E/C continues to "furnish" care for as long as the claimant utilizes the prosthetic device. See *Gore v. Lee County Sch. Bd.*, 43 So.3d 846, 848 (Fla. 1st DCA 2010); *Coburn v. Polk County Bd. of County Comm'rs*, 51 So.3d 551, 552 (Fla. 1st DCA 2010). The date the E/C pays for a prosthetic device has never been relevant to an SOL analysis. If the date of payment were to control, then the SOL can expire notwithstanding the claimant's continued use of the prosthetic device. A claimant whose knee replacement (or prosthetic arm or leg) fails may be left without remedy.

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Endnotes

[1] Harvard Law School, The 2015 Scalia Lecture Series: A Dialogue with Justice Elena Kagan on the Reading of Statutes, YOUTUBE, at 08:29 (Nov. 25, 2015).

[2] West Virginia v. EPA, 142 S. Ct. 2587, 2641 (2022) (Kagan, J., dissenting) (quoting Kagan, 2015 Scalia Lecture Series).

[3] Frank H. Easterbrook, The Role of Original Intent in Statutory Construction, 11 Harv. J.L. & Pub. Pol'y 59, 65 (1988).

[4] See Kenneth A. Shepsle, Congress Is a 'They,' Not an 'It': Legislative Intent as Oxymoron, 12 Int'l Rev. L. Econ. 239, 239 (1992).

[5] See Amy Coney Barrett, Substantive Canons and Faithful Agency, 90 B.U. L. Rev, 109, 112 (2010) ("The rival theories [of statutory interpretation] in this regard were—and remain—purposivism and textualism. Purposivism, the classical approach to statutory interpretation, claims that a judge should be faithful to Congress's presumed intent rather than to the statutory text when the two appear to diverge. Textualism, by contrast, maintains that the statutory text is the only reliable indication of congressional intent. The defining tenet of textualism is the belief that it is impossible to know whether Congress would have drafted the statute differently if it had anticipated the situation before the court. The legislative process is path-dependent and riddled with compromise.").

[6] "Conservatives have long viewed textualism as well as originalism as important tools with which to identify and preserve the meanings of major laws and constitutional provisions and thereby to prevent liberals from using their own interpretations as a form of 'judicial activism.'" https://www.britannica.com/topic/textualism.

[7] Preamble (Laws 1993, c. 93–415).

[8] See Wanless v. State, 271 So.3d 1219, 1223 (Fla. 1st DCA 2019) ("We are of course bound to follow our own decisions unless and until an intervening decision from the Florida Supreme Court, the United States Supreme Court, or this court sitting en banc compels otherwise."); Sims v. State, 260 So.3d 509, 514 (Fla. 1st

DCA 2018) ("Each panel decision is binding on future panels, absent an intervening decision of a higher court or this court sitting en banc.").

[9] "Frankly speaking, the idea that three independent judicial officers constituting one of this court's panels are legally 'bound' by a decision of a prior panel of equivalent judicial officers comes from . . . nowhere. Well, at least nowhere in the law. The so-called 'prior panel precedent' (or 'horizontal precedent') rule is a fallacy, a figment, a chimera. It has no basis in our state constitution or in any statute. No foundation can be found even in a rule." Normandy Ins. Co. v. Bouayad, 372 So.3d 671, 694-99 (Fla. 1st DCA 2023) (Tanenbaum, J., concurring).

[10] In re Rule 9.331, 416 So.2d 1127, 1128 (Fla. 1982). See also, Taylor Eng'g, Inc. v. Dickerson Fla., Inc., 221 So.3d 719, 723 n.3 (Fla. 1st DCA 2017); Nat'l Med. Imaging, LLC v. Lyon Fin. Servs., Inc., 347 So.3d 63, 64 (Fla. 3d DCA 2020) (refusing to de-part from precedent because "we are bound by this Court's prior decision . . . .").

[11] Fox v. Fox, 262 So.3d 789, 792 (Fla. 4th DCA 2018).

[12] See Bean v. Univ. of Miami, 252 So.3d 810, 821 (Fla. 3d DCA 2018).

[13] See State v. Washington, 114 So.3d 182, 188-89 (Fla. 3d DCA 2012).

[14] The OJCC is not a court. JCCs are executive branch officials. See Jones v. Chiles, 638 So.2d 48, 51-52 (Fla. 1994).

[15] Article V, Section 3, Florida Constitution; Rule 9.030(a)(1), Fla. R. App. P.

[16] Article V, Section 3, Florida Constitution; Rule 9.030(a)(2), Fla. R. App. P.

[17] Article V, Section 3, Florida Constitution Rule 9.030(a)(3), Fla. R. App. P.

[18]Bray v. State, 542 So.2d 1332 (1989); Loden v. State, 662 So.2d 932 (1995); Adamson v. Adamson, 701 So.2d 867 (1997).

[19] Two-timer tolling as described in Ortiz I: "[T]he limitation timer and the tolling timer run in opposition to each other: they cannot both run at the same time. That means if the tolling timer is running, the limitation timer is stopped with whatever time was remaining when the tolling timer started. When the one-year tolling timer reached zero and has not been reset by the employer's furnishing of another benefit, the master two-year limitation timer starts counting down again from where it left off. Until a point is reached where both timers reach or remain at zero together (that is, time has run out on both timers simultaneously), the one-year timer can continue to be reset and run for as long as the employee continues under an award of benefits."

[20] See also, Childers v. Clay County Bd. of County Comm'rs, 128 So.3d 201, 202 (Fla. 1st DCA 2013); Varitimidis v. Walgreen Co., 58 So.3d 406 (Fla. 1st DCA 2011); Med Partners / Diagnostic Clinic Med Group, P.A. v. Zenith Ins. Co., 23 So.3d 202 (Fla. 1st DCA 2009); Orange County Sch. Bd. v. Best, supra.

[21] See Sansone v. Frank Crum/Frank Winston Crum Ins., Inc., 201 So.2d 1289, 1291 (Fla. 1st DCA 2016).

[22] See section 440.13(3)(f), 440.13(11), and 440.02(12), Fla. Stat. (2021); Terners of Miami Corp. v. Freshwater, 599 So.2d 674 (Fla. 1st DCA 1992); Avalon Center v. Hardaway, 967 So.2d 268 (Fla. 1st DCA 2007).

[23] Section 440.20(2)(b), Fla. Stat.; Rule 69L-7.602(5)(k), Fla. Admin. C.

Admitting Medical Records Into Evidence: An Argument for Using Records Custodian Affidavits

By Veronica J. Porges and Neil A. Ambekar

In our daily practice, we use medical records both to evaluate and to prove our cases. One of the necessary skills for a workers' compensation practitioner is getting medical records admitted into evidence.

Pursuant to section 440.29(4), Fla. Stat., all medical reports of authorized treating health care providers relating to the claimant and subject accident are admissible upon proper motion. This provision also allows the admission of medical reports without calling the medical record custodian so long as the proper motion is made.[1] The greater question comes with admitting the records of unauthorized providers.

In workers' compensation cases, unauthorized medical records have traditionally been admitted through the business records exception to hearsay by using a record custodian's deposition. However, in other areas of the law, a records custodian affidavit is generally used to admit these records. The experience of the undersigned is that in a post-COVID world, getting a records custodian to appear for deposition and getting a court reporter to actually secure a copy of the records has made this procedure costly and time consuming. This article will argue for the use of records custodian affidavits rather than records custodian depositions to admit medical records into evidence.

The business records exception to hearsay under Florida law includes the records of regularly conducted business activity, as defined in section 90.803(6)(a), Fla. Stat.:

> A memorandum, report, record, or data compilation, in any form, of opinion or diagnosis, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity and if it was the regular practice of that business activity to make such memorandum, report, record or data compilation, as shown by testimony of the custodian or other qualified witness.

Under this definition, a medical record qualifies as a report/record that includes an opinion or diagnosis made by a person with personal knowledge at or near the time of a claimant's visit. In addition, medical records are regularly written after a patient's visit and are kept in the course of this regularly conducted activity. A medical record's trustworthiness is presumed, under the business record's exception, as it solely relates to whether the health care providers relied on their medical findings in the course of treatment.[2]

In order to be admissible, the proponent of the business record admission must demonstrate: (1) the record was made at or near the time of the event; (2) the record was made by or from information transmitted by a person with knowledge; (3) the record was kept in the ordinary course of a regularly conducted business activity; and (4) it was a regular practice of that business to make such a record.[3]

A party can lay a foundation for the admission of documents pursuant to the business records exception in three ways: (1) offering testimony of a records custodian; (2) presenting a certification or declaration that each of the elements has been satisfied; or (3) obtaining a stipulation of admissibility.[4]

Certainly, the easiest way to proceed is a stipulation of admissibility. It should be noted that Rule 60Q-6.113(2)(c) provides that parties should "Stipulate to such facts and the admissibility of documentary evidence as will avoid unnecessary proof." However, assuming there is a valid basis for not stipulating to the admissibility of a medical record, at least for fact purposes, the cases provide the two other methods of admitting those records.

Records custodian affidavits are commonly used to admit evidence via the business records exception to hearsay. It is not necessary to call the person who actually prepared the document to lay the foundation for the business records exception.[5] Rather, any person, including a records custodian, who has the requisite knowledge to testify as to how the record was made can lay the necessary foundation.[6] Affidavits are self-authenticating, meaning that authenticity is presumed based on notarization, and further questioning or extrinsic evidence from the records custodian is not required.[7] It should be noted, however, that section 90.803(6) does not actually require an affidavit; a "declaration or certification" is sufficient.

Taking a records custodian's deposition requires coordination between parties and the records custodian;

hiring a court reporter; covering the costs associated with attendance by both attorneys, the records custodian, and the court reporter; and transcription. Depositions of records custodians are becoming increasingly rare outside the workers' compensation setting, as other practice areas are increasingly adopting affidavits as the primary authentication/foundation method.

The party seeking to admit the record must ensure that the affidavit establishes all four elements required for the business records exception, and it must be signed by the records custodian or a person who can affirmatively confirm the medical records and the creation of them. In addition, pursuant to section 90.803(6)(c), Fla. Stat., a party intending to offer evidence as a business record by certification or declaration (affidavit) must serve a reasonable written notice of their intention to do so on every other party and should make the evidence available for inspection sufficiently in advance of offering the record into evidence to allow for fair opportunity to challenge the record's admissibility. The First District Court of Appeal has not addressed how much time is required for a "fair opportunity," but it is reasonable to assume that notice in a pretrial stipulation is satisfactory. If the evidence is challenged, then a motion must be filed by the opposing party and determined by the court before trial. A party's failure to file a motion in opposition constitutes a waiver of their objection to the evidence; however, the court can still grant relief from the waiver upon showing of good cause.

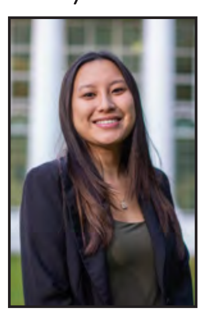
Using an affidavit simplifies the process, is less costly, and is more efficient in moving a case along. Time is saved because there is no need for live testimony, but rather a simple statement from the records custodian that the medical records are accurate and were prepared in the regular course of business. Money is saved by not having to order a deposition transcript to verify the medical records. The signature of the records custodian on the affidavit is sufficient.

Given the fact that a records custodian deposition is solely used to authenticate records and lay the business record predicate rather than to obtain substantive evidence, there is no particular reason why an affidavit is not preferable.

The issue of authentication has become somewhat more complex in recent years due to the use of "EMR" (electronic medical records). Additionally, medical providers now frequently use third-party management vendors where the medical provider has to authenticate the record, but the third-party vendor does as well to establish the hearsay exception and to allow for the records to be admitted into evidence. In order to admit a record from a third-party vendor, two affidavits are required to show competence of the document. In *Glarum v. LaSalle Bank National Association*, a bank moved for summary judgment using an affidavit; however, the DCA found that the affidavit was insufficient and reversed summary judgment. The affiant was unable to provide testimony that the records were made in the regular course of business. The moving party may have been able to supplement the loan servicer's affidavit and show competence of the records if they had also used affidavits from qualified individuals certifying that the document satisfied the business records exception.[8] Although this affidavit was provided in the context of a summary judgment motion, the same can be applied to the medical records context as both contexts involve the use of authenticating affidavits. Moreover, the same issues can arise in the deposition context, and a deposition of the outside vendor's witness may be required in addition to the medical provider.

The legislature has long provided that the workers' compensation system should be "an efficient and self-executing system . . . which is not an economic or administrative burden."[9] A court should exercise its discretion to award costs "in a manner that is consistent with the policy of reducing the overall costs of litigation and of keeping such costs as low as justice will permit."[10]

While medical records have traditionally been admitted via records custodian depositions, this is a slower and more costly route. Affidavits should be used to admit medical records in workers' compensation cases where the parties cannot (or will not) stipulate to admissibility. Not only is it cost efficient, timely, and a swift way to move along a claim, but it is also permitted statutorily, without the need for extrinsic evidence to authenticate the medical record. Practitioners should ensure that an appropriate affidavit is completed by the records custodian and provide timely written notice of the intention to use an affidavit.



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Endnotes

[1] *Tutor Time Child Care/Learning Centers v. Patterson*, 91 So.3d 264, 265 (Fla. 1st DCA 2012).

[2] *Love v. Garcia*, 634 So.2d 158, 160 (Fla. 1994).

[3] *Yisrael v. State*, 993 So.2d 952, 956 (Fla. 2008), and *Pescatore v. Fernandez*, 409 So.3d 657, 660 (Fla. 4th DCA 2025).

[4] *Jackson v. Household Fin. Corp. III*, 298 So.3d 531, 535 (Fla. 2020) citing *Yisrael* 993 So.2d at 956–57.

[5] *United Auto. Ins. Co. v. Affiliated Healthcare Ctrs., Inc.*, 43 So.3d 127, 130 (Fla. 3d DCA 2010) (quoting *Mann v. State*, 787 So.2d 130, 135 (Fla. 3d DCA 2001)).

[6] *Mann*, *supra* note 5, at 135.

[7] *Vaughan v. Broward Gen. Med. Ctr.*, 105 So.3d 569, 573 (Fla. 1st DCA 2012).

[8] *Glarum v. LaSalle Bank Nat. Ass'n*, 83 So.3d 780, 783 (Fla. 4th DCA 2011).

[9] Section 440.015, Fla. Stat.

[10] *Hernandez v. Manatee Cnty. Gov't/Commercial Risk Mgmt., Inc.*, 50 So.3d 57, 59 (Fla. 1st DCA 2010) (citing *Statewide Uniform Guidelines for Taxation of Costs in Civil Actions*).

When Hiking Isn't Enough

By Michael Rudolph

Four years ago I wrote for the *440 Report* about the mental benefits of backpacking. Of course the physical benefits are obvious, the development of muscle strength and cardio fitness, but I focused on the mental benefits: clearing your head, the natural scenery, the lack of cell phone signals, etc. Those things still hold true, and I stand by that article. But what happens when backpacking or another favorite activity just isn't enough?

As most of you know, I am a claimant attorney. We charge our clients a percentage of the final recovery in addition to the occasional E/C paid fee. That percentage is usually covered by either the contract or the statute, or both. Unfortunately, our final remuneration varies from jurisdiction to jurisdiction, judge to judge. But that's a discussion for another article.

I recently settled a case for $13,500,000. You read that right, thirteen million five hundred thousand. A comp claim. It involved a 1993 D/A, so the statutory fee would have been 15%. The contract I had with the client entitled me to take up to 25%. Instead, I agreed to accept a 9.8% fee out of which I agreed to satisfy the *five* prior attorney fee liens. When all was said and done, my fee was 5.9%. What happened next would send me on an emotional spiral that no hike could cure. The judge reduced my fee to less than 1% based solely on the hours I had expended. My agreement to represent the client never contemplated working on an hourly basis. The legal journey that has transpired since is easily seen on DOAH, and as you would expect, the case was appealed. But that isn't what this article is about.

How does our mental health absorb the hits so common in this occupation? When the hits come so hard that remaining upright is almost impossible? When even the reassuring words of your spouse or your partners fail to bring comfort? When hits are coupled with stress over clients' needs, deadlines, and judges' demands, all the while trying to make a living and support your family, partners, associates, and staff? We try to act like money is not as important as the other aspects of our profession, lest we seem to be one of *those* attorneys. But who has the luxury of practicing without pay? Certainly not this attorney. So, when the case of a lifetime comes along, the likes of which we have enviably watched our personal injury brethren receive, it allows a comp attorney to dream.

Embarrassingly, my lottery fantasy is very rich indeed. I can spend hours at night deciding where to live, what my house would be like, what I would drive, where we would vacation, how much I would give to each of my partners and friends and staff. I can exhaust myself, which in fact helps me fall asleep, or at least used to. When the prospect of this fee coming in became what I thought was reality after the claimant signed the motion, it was easy to set my fantasy chops in motion. No mortgage, maybe the down payment on that North Carolina retirement property, cars paid off, a new setting for my wife's engagement ring (lord knows she deserves it), money in the bank, one step closer to retirement. Even more exciting, large bonuses for my employees and the same big payout as mine to my partners. So, when the fee was unexpectedly decreased by $700,000, the spiral that followed was beyond devastating.

The first thing to happen was that my client, who had been thrilled with the settlement and the fee and the fact that I was paying off the prior attorneys, now wanted that $700,000 sent to her. She went from telling me how proud I should be for having done for her son what no other attorney had done in 29 years to telling me I was "evil," that she would "sue me so that I could never practice law again," that she had sent a letter to the JCC saying I was trying to intimidate her because I told her she needed to get her own attorney as the judge had created a conflict between us, and that she had filed a Bar grievance. Armed with what I felt to be an obvious injustice, both in terms of the "theft" of $700k but also the turmoil created between my client and myself, I headed to the Florida Workers' Advocates (FWA) seminar.

The FWA, for those on the defense and perhaps not in the know, is a claimant organization composed of Florida workers' compensation attorneys. Our seminar is very much like any other seminar you would attend, with multiple lectures and panelists made up of attorneys, judges, mediators, and others in the industry. If 500 people attended, the majority surely were claimant attorneys all sympathetic to my plight over the fee. Every 10 minutes, another sympathetic colleague would approach to share my pain and hear the tale. It was like a scab being ripped off every time it began to dry. Brutal but OK, their support meant more than they could know. As the judicial panel discussed fees, I checked my email. From the First DCA, your case has now been restyled from *Smith v. Home Depot* to *Michael Rudolph v. Darien Smith*. It was an unexpected gut punch. Not lost on me was the optics of a greedy claimant attorney suing his catastrophically injured client. Horrific for me, my firm, and claimant attorneys everywhere.

I help my clients. I emotionally bleed for my clients. I don't sue them! Someone needed to hear from me.

And there he was. Sitting on the panel was the very judge who had denied my final motion to vacate. My hand shot up. *Yes, you in the second row …* Here it came, unfiltered and raw, weeks of emotional turmoil let loose by a gut punch email. "Do you judges understand the damage you are doing to the attorney-client relationship when you step into an uncontested settlement?" *Is that a question?* Me, fire burning hotter, "Yes, do you understand that you are creating conflicts where none existed and therefore depriving injured workers of representation? Issues come up well past settlements, late checks, bills not submitted on the proper forms, etc., which require ongoing representation well past the settlement." *That's a question you should ask the legislature.* I was left to my thoughts. Why? It was not the legislature who denied my fee and then recused itself or denied three motions for rehearing/motions to vacate. It was not the legislature that denied me what I felt was the smallest courtesy, to be heard. After 30 years toiling in this system, fighting for it, fighting for JCCs to get the raises they deserved, it was the JCC not the legislature who "did this to me"! Mercifully my questioning was put to a quick end by a fellow attorney who told me to let it go. I had asked a question, gotten an answer. Not the answer I wanted, but an answer. Fine. Off I went into the hall, fuming. And it would only get worse.

I have known Judge David Langham for 30 years. My first job was at a four-person firm, and Judge Langham's wife Pam and I were the two associates. We even quit on the same day. David was a defense associate at a firm called Gobelman and Love, and we had cases together. I could see after the lecture ended that he was still at the front of the room taking questions, and given our long relationship I certainly felt comfortable talking to him. Still fuming, I headed back into the room, passing the judge who had provided the non-responses referenced above. When our eyes met, I said, "That was a non-answer, judge, a non-answer." And on I went to the front of the room where I brought my grievances to Judge Langham. If you are waiting to hear what words of wisdom I received, I'm sorry to disappoint. That is where the seminar story ended. Or so I thought.

Weeks later I received a phone call informing me that the aforementioned judge felt very uncomfortable, with either my questions or demeanor or both. I have taken ownership of that behavior. More phone calls followed, and the incident would not die. Finally I was told the judges were talking about boycotting the Forum if I remained on the Executive Council. Having only desired to serve and help, I was now being told I am a problem. They recommended I step away from the Executive Council after more than 15 years of service. I had just been appointed secretary and had even attended my first meeting as secretary.

I have written a letter of apology to the judge and to FWA. I have had personal sit downs with other judges. I have sought out professional psychological help. And I've hiked.

The burning anger, the disappointment, the shame, and the feeling that $700k was stolen from me, my family, my partners, and my employees did not go away. As long as the appeal remained ongoing, no closure was to be had. What had been the crowning achievement of a professional career in which I have tirelessly represented injured workers was taken from me. Instead of the advertising opportunities, the office improvements, the home improvements, the case now felt like something to be ashamed of. And it did not have to be like this. No one thought a less than statutory fee being shared by six attorneys would be denied. Ever. And now there was no hike long enough to clear this disaster from my head. I considered hiking the entire Appalachian Trail, likely a five-month venture, but who has that luxury?

So, what do we do when hiking isn't enough? When the depression and anger won't subside? When not just a case but a career has taken a sharp and unexpected turn? When the passage of time fails to dull the hurt and your colleagues now look at you differently? When the very things that identify you, such as executive council member, are taken from you? I accept the part of this I am responsible for. But all I wanted was to represent my client to his satisfaction, to be paid, and to provide for those I am responsible for. I didn't want a fight with the judges, I didn't want an appeal, I didn't want my name to have a different meaning or connotation to those who know me. I certainly didn't want to sue my client!

I don't have the answer. I am still searching. And for those who read this article, I guess the message is you are not alone. Maybe if we all knew that, we wouldn't suffer the tragedy that befell one of my closest friends, Tom Stanford, a workers' compensation mediator who took his own life two years ago. He obviously must have been hurting, but did he feel alone in his hurt? Would reading this article have helped? Would he have reached out to talk to me like I wish he had? Could we have openly shared our pain and found solace in our experiences? I'd like to think so. I can imagine us talking about these matters over a few beers. Perhaps the load would have felt lighter at the end. Another attorney I consider a friend recently told me he was going through a divorce and literally had put a gun to his chin. We are human, even us Super Lawyers! We stress, we hurt, we suffer disappointments and failed relationships. And yet we are expected to soldier on in our occupations like robots on cruise control. Judicial denials of cases, of fees, have real world implications. We are not robots.

It is well past time for us to acknowledge the fragility of our own mental health and that of our colleagues and friends. Disappointments come almost daily and sometimes leave us feeling alone and despondent. Sometimes even a long hike in the woods cannot lift our spirits and clear our heads. Civility isn't just how we should practice law; it is how we should treat everyone because we never know the turmoil someone else is going through. So please, good reader, tread more lightly on those you deal with; you never know if they've reached a personal breaking point over personal or professional matters. A kind word, even if it feels insignificant to you, could mean all the difference between making it through another day or, like Tom, hitting the wall.

The First DCA has righted what was a clear wrong and reversed the denial of the less than statutory fee, reinforcing the importance of the contract, statute, and decades of precedent. Yay for me, for my firm, and of course for my outstanding appellate attorney Mike Winer. This is good for claimant attorneys all across the state. But the damage is done. The claimant remains unrepresented for life, and long after the money is disbursed and spent and I retire and pass on, the case *Michael Rudolph v. Darien Smith* will live on in the Southern Reporter, text books, and as a case cited in fee submissions.

As all this went down, I returned from another winter backpacking trip. It helped; the rain, the wind, the cold, the sound of my footsteps crunching in the snow as I climbed to the next campsite, and the camaraderie of old friends all helped to clear my mind and soften the anger. But it lives like a cancer in remission.

The answer to the question posed at the top of this article is you. Me. Us. All of us. When all else fails, the only solution is the kind words of our colleagues and friends, the support of our spouse and our partners. It is kindness to one another. So, if you are hurting, know you are not alone. Reach out to someone, anyone. Don't be like my friend Tom Stanford and shoulder your pain alone. And to the rest, be a shoulder, be the kind word that provides a small light in someone's dark day. And most importantly, please be kind.

***Michael Rudolph** is the managing partner at Rudolph, Israel, & Ellis, P.A., in Jacksonville, Florida. The firm represents injured workers in workers' compensation and Longshore and Defense Base Act cases, as well as individuals in cases regarding social security. Mr. Rudolph graduated from Stetson College of Law in 1991 and has been board certified in workers' compensation since 2007. He is a founding member of the E. Robert Williams Inn of Court and served as its president. He is a board member for the Florida Workers' Advocates. He is a frequent lecturer on workers' compensation and social security topics and has presented PTD at the Forum for the past several years.*

JUDGE'S CORNER

Are Workers' Compensation Fee Hearings Necessary?

By Judge Wilbur W. Anderson

In law, as in life, there is value in stepping back to view established norms through fresh eyes. Often, the things we take for granted require the most rigorous reexamination. That's what the Sixth District Court of Appeal recently did in *Ruffenach v. Deutsche Bank National Trust. Co.*, No. 6D2023-1482, 2026 WL 785140 (Fla. 6th DCA Mar. 20, 2026).

Acknowledging conflict with all five of the other District Courts of Appeal, *Ruffenach* holds that a trial court need not always conduct an evidentiary hearing or receive expert testimony about the reasonableness of attorney fees before awarding fees under a statute, rule, or contractual provision. By employing a "first principles" analysis, the idea that there must be a legitimate foundational source underpinning a legal requirement, the court seeks to overturn decades of precedent regarding the way attorney fees are awarded in civil cases. Finding no such foundation, the *Ruffenach* court certified direct conflict with 37 previous decisions of the other DCAs. Although *Ruffenach* is not a workers' compensation case, it provides a useful template for questioning the way we resolve disputes over attorney fees in our corner of the legal universe.

The Civil Standard

According to *Ruffenach*, all five of the other DCAs strictly adhere to a framework for awarding attorney fees that relies on two mandatory pillars. First, based on a precedent established in *Lyle v. Lyle*, 167 So. 2d 256 (Fla. 2d DCA 1964), a trial court must secure testimony from an independent expert witness to verify that the requested fees are reasonable. This requirement exists because the testimony of the attorney who performed the work is often dismissed as biased and legally insufficient on its own.

Second, because of this need for expert testimony, courts have interpreted the rule as requiring a mandatory evidentiary hearing unless the parties waive their right to one. Judges cannot set fees through affidavits alone if a party objects, even if the judge is familiar with the work performed. Ultimately, the *Ruffenach* court notes that these elements are treated as absolute legal prerequisites; failing to have an independent expert or a requested hearing triggers an automatic reversal of the fee award on appeal.

Ruffenach critiques what it calls a "universal" but baseless mandate, noting that for 60 years Florida courts have operated under the misguided belief that expert testimony and evidentiary hearings are required before awarding fees unless waived by the parties. *Ruffenach* argues this framework directly conflicts with first principles by stripping experienced trial judges of their inherent authority to determine reasonable fees without external validation.

The Workers' Compensation Connection

Although *Ruffenach* addresses civil cases, the opinion discusses an important workers' compensation case—*Crittenden Orange Blossom Fruit v. Stone*, 514 So. 2d 351 (Fla. 1987). In *Crittenden*, the Supreme Court reviewed a First DCA decision allowing attorney fees for time spent litigating the amount of those fees. The Court held that while bad-faith claims (a long-obsolete workers' compensation fee-entitlement standard) warrant attorney fee awards, compensation is not permitted for the time spent solely to establish the amount of the fee. The Court also clarified that expert witness fees for testifying about the reasonableness of a fee are not recoverable in workers' compensation proceedings.

Crittenden, now nearly 40 years old, also held that an evidentiary hearing and expert testimony are not always required in a workers' compensation case. In creating an exception for workers' compensation cases, the Court restated the then generally accepted rule for civil actions that "it is well settled that the testimony of an expert witness concerning a reasonable attorney's fee is necessary to support the establishment of the fee." Then the Court said,

> For much the same reason that we distinguish worker's compensation proceedings from other civil cases with respect to the taxing of the fee of the lawyer who testifies on reasonableness, we now conclude that it should no longer be necessary in every instance to have a hearing only for the purpose of proving the amount of reasonable attorney's fees in worker's compensation proceedings. We hold that the deputy commissioner may, upon consideration of a detailed affidavit of the claimant's attorney concerning the time spent on the case, award a reasonable attorney's fee without the necessity of an affidavit or the testimony of an expert witness concerning the amount of the fee.

But *Crittenden* didn't stop there. Having stated that the deputy commissioner (now JCC) has discretion to dispense with expert testimony and a hearing on the fee amount, the court then said that a hearing must be held if requested by either party: "However, the deputy commissioner shall have the discretion to require a hearing on the amount of a reasonable attorney's fee at which expert testimony would be required, and such a hearing shall be held if requested by any party before the fee is set."

The First DCA

Seven years after *Crittenden*, the First DCA released *Tropicana Products, Inc. v. Gunther*, 643 So.2d 698 (Fla. 1st DCA 1994). In that case, the JCC denied the employer/carrier's request for a hearing on the amount of attorney fees, instead ordering that the fee be determined by affidavit. When the employer/carrier appealed, the claimant conceded that the JCC erred in denying the request for a fee hearing. The court held that the claimant "properly" conceded error, and reversed and remanded for the JCC to conduct a fee hearing.

Although the court in *Tropicana* didn't cite *Crittenden* or any other authority to support this holding, it was consistent with the statement in *Crittenden* that a hearing on the amount of the fee must be held if requested. And while *Tropicana* concluded that the JCC erred in not having a hearing on the fee amount, there was no discussion of whether there were particular factors affecting the fee that made a hearing necessary.

Later Cases From the First DCA

Crittenden was clear in stating that JCCs have sufficient expertise to determine a reasonable attorney fee:

> We are convinced that in the ordinary case, deputy commissioners, by reason of their experience, are well qualified to determine the reasonableness of attorney's fees without the opinion of an expert on the subject. Such a rule is consistent with the philosophy of the worker's compensation law to provide an expeditious result at a minimum cost.

But despite this observation from the Supreme Court, the First DCA seemed to overlook it. In *Sanchez v. Woerner Mgmt., Inc.*, 867 So.2d 1173, 1174 (Fla. 1st DCA 2004), for example, the court reversed the fee award because it was based on the JCC's "subjective belief and personal experience." In *Morris v. Dollar Tree Store*, 869 So.2d 704, 706 (Fla. 1st DCA 2004), the court said that a reasonable hourly rate must be based on expert testimony. Many later opinions from the First DCA have followed the same path. As recently as 2024, the court said that a JCC cannot rely on subjective belief and personal experience in determining a reasonable attorney fee. *Rudolph v. Smith*, 377 So.3d 1186, 1191 (Fla. 1st DCA 2024). None of these opinions cited *Crittenden*, much less discussed the Supreme Court's statement that workers' compensation judges are well qualified to determine the reasonableness of attorney fees without the opinion of an expert.

The "Mandatory" Fee Hearing

While there is no statute or rule of procedure that requires an attorney fee hearing in a workers' compensation case, most fee hearings are scheduled with or without a request. In 1988, when the Supreme Court's workers' compensation rules of procedure were amended to require a verified fee petition, the rule implied that a fee hearing would be scheduled only if requested by a party or the judge: "At the request of any party, or on the Deputy Commissioner's own motion, the Deputy Commissioner shall determine the procedure for the hearing and adjudication of any issues as to a disputed attorney fee and taxation of costs." *The Florida Bar, In re Workers' Comp. Rules of Proc.* 535 So.2d 243, 248 (Fla. 1988).

After the Division of Administrative Hearings took over workers' compensation rulemaking from the Supreme Court in 2003, the new rules of procedure specified new and more detailed requirements for an attorney fee motion and the response to it. And even though the new rule, still in effect today, omitted any language about the JCC determining the procedure for the hearing, it was worded in a way that implied a hearing would occur:

> (c) If both entitlement and the amount of the fee are contested, the hearing may be bifurcated at the request of a party.
>
> (d) Unless the judge orders otherwise, the parties shall exchange exhibits and written witness lists no later than 10 days before the date of the attorney's fee and/or cost hearing.

Fla. Admin. Code R. 60Q-6.124(3).

Not One-Size-Fits-All

In challenging the expert witness and evidentiary hearing requirements in the civil arena, *Ruffenach* pointed out that there are cases in which an evidentiary hearing is necessary. The same reasoning applies to workers' compensation proceedings. There will be cases that require an evidentiary hearing, especially when entitlement to an employer/carrier-paid fee is an issue. If disputes over fee entitlement or amount involve complicated factual or legal issues, JCCs should have attorney fee hearings. But an evidentiary hearing should not be mandatory in every case simply because one is requested.

Understanding *Crittenden*

As the *Ruffenach* court observed, the argument that

Crittenden mandates an attorney fee hearing on request in all cases rests on a shaky foundation of *dictum* rather than binding precedent. When subjected to the first principles analysis discussed in *Ruffenach*, the mandatory hearing on request language is exposed as not only unnecessary to resolution of the issues in *Crittenden*, but also fundamentally at odds with the core mission of the workers' compensation system.

The primary flaw in treating as a mandatory rule the statement in *Crittenden* that a fee hearing must be held if requested by a party is a misunderstanding of the procedural posture of that case. For a statement to constitute a holding, it must be essential to resolving the specific dispute before the court. In *Crittenden*, an attorney fee hearing occurred, so whether a workers' compensation judge could deny a requested hearing was never at issue. The court's comment that a hearing "shall be held if requested" was a proactive, advisory instruction for future cases—the very definition of *dictum*. As *Ruffenach* explains, such statements are "without force as precedent" because they were not required by the facts of the case.

Further, the "if requested" language was likely intended as a procedural safety valve to soften the impact of *Crittenden's* authorization of affidavits to replace live testimony in workers' compensation cases. But it would be ironic that an opinion intended to increase efficiency also permitted parties to demand hearings without any material factual disputes. It would also conflict with the self-executing theme in the statement of legislative intent in section 440.015, Fla. Stat., including the "economic or administrative burden" concerns that statute addresses. If the workers' compensation system is intended to be expeditious and inexpensive, then allowing a party to trigger a hearing over nothing more than a dispute over the number of hours and the hourly rate defeats the very efficiency *Crittenden* sought to establish.

Jurisdictional Questions

There is another issue unique to workers' compensation that does not apply to civil litigation. When *Crittenden* was decided in 1987, the Supreme Court assumed it had the authority to adopt workers' compensation rules of procedure. Under this assumption, some might argue that the statement in *Crittenden* that an attorney fee hearing must be held if requested was, in effect, a rule of procedure consistent with the Court's constitutional rulemaking authority. If that argument is accepted, it could also be argued that the First DCA's 1994 decision in *Tropicana* adhered to this rule. Later events, however, have undermined this argument.

In 2004, years after *Crittenden* and *Tropicana,* the Supreme Court decided it never had the constitutional authority to adopt procedural rules for the Office of the Judges of Compensation Claims in the first place: "Given that the OJCC is not an article V court, but rather part of an executive department, we find that this Court has no authority under the Florida Constitution, nor has this Court ever had the constitutional authority to promulgate rules of practice and procedure for this executive entity." *Amendments to the Florida Rules of Workers' Comp. Procedure*, 891 So.2d 474, 478 (Fla. 2004).

If the Supreme Court never had jurisdiction to establish rules for the way workers' compensation litigation is conducted, it logically follows that the only valid limitations on the way JCCs handle attorney fee disputes, apart from constitutional due process constraints, are the Workers' Compensation Law in Chapter 440 of the Florida Statutes and the Rules of Procedure for Workers' Compensation Adjudications in Chapter 60Q-6 of the Florida Administrative Code. Neither the Supreme Court nor the First DCA has ever said a JCC's failure to have an attorney fee hearing violates due process. And neither Chapter 440 nor the 60Q rules require an attorney fee hearing.

Conclusion

Ruffenach rightly critiques "judicially invented" hearing requirements as the source of the "misspent expenditure of hundreds of thousands if not millions of hours of time by attorneys and judges." If JCCs are "well qualified to determine the reasonableness of attorney's fees without the opinion of an expert on the subject," that expertise does not vanish the moment a party utters the word "hearing." Just as *Ruffenach* holds that a trial judge in a civil case can deny a hearing when there are no material factual disputes, a JCC should be empowered to do the same. To the extent that cases like *Tropicana* have turned the *dictum* in *Crittenden* into a hard rule for workers' compensation cases, they perpetuate the same systemic waste that modern jurisprudence seeks to eliminate. Regrettably, neither party in *Ruffenach* sought review in the Supreme Court despite the certification of direct conflict. Perhaps a future case will give the high court an opportunity to clarify the civil rule. If that happens, the Court should also address workers' compensation cases. Meanwhile, JCCs are required to apply the holdings of the First DCA when considering similar issues even if they disagree with them.

__Judge Wilbur W. Anderson__ is a judge of compensation claims in the Orlando District of the Office of Judges of Compensation Claims. The views expressed in this article are his own and not necessarily those of the OJCC or the Division of Administrative Hearings.

Case Law Update

By W. Rogers Turner, Jr.

***Koren v. City of Kissimmee/PGCS*, ___So.3d___ (Fla. 1st DCA 6/10/26)**
Compensability /Burden of Proof/120-Day Rule

The opinion is short on facts and indicates only that the DCA affirmed the denial of psychiatric treatment, rejecting the claimant's argument that the city waived its defenses under section 440.20(4), Fla. Stat., and that he improperly shifted the burden of proof to the claimant. The ruling was affirmed based on the fact the claimant failed to challenge an alternative basis for the ruling. However, Judge K. Thomas provides additional facts and analysis of the 120-day pay and investigate provision in her 11-page concurring opinion. Although the employer/carrier (E/C) accepted a PTSD diagnosis, they retained the right to defend entitlement to ongoing psychiatric treatment. The claimant did not challenge the judge of compensation claims' (JCC's) alternative denial that he retained the burden to prove entitlement to ongoing psychiatric care.

***David Olson, M.D. v. Christopher and Tammy Costello, as Personal Representatives of the Estate of Ryan Costello, et al.*, ___So.3d___ (Fla. 6th DCA 5/15/26) (consolidated opinions)**
WC Immunity/Choice of Law

Florida's 6th District Court of Appeal ruled that Florida law applies to Dr. David Olson's immunity defense in a wrongful death case against him. Ryan Costello, a Twins baseball prospect, died in 2019. His estate sued Dr. Olson and others in Florida state court, alleging medical negligence in connection with care provided in Florida before his death. Dr. Olson moved for summary judgment, arguing that Minnesota law applied and that, under Minnesota workers' compensation law, he was immune from the estate's claims. The court found that Florida law governed the dispute, the court applied Florida's "significant relationships" test, and the court agreed that Florida had the strongest connection to the case. Since professional athletes are excluded from coverage under Florida's Workers' Compensation Act, the court held that workers' compensation immunity did not bar the estate's lawsuit from proceeding.

***Leighton v. Kratos Logistics, LLC/Ascendant Claims Svcs.*, ___So.3d___ (Fla. 1st DCA 5/6/2026)**
Statute of Limitations

The DCA reversed the JCC's finding that the claimant's petition for benefits (PFB) was time-barred. The claimant's date of accident (DOA) was February 9, 2022. The final indemnity payment was made June 29, 2022, and the last visit with an authorized doctor was on August 1, 2022. However, that bill was paid on May 9, 2023. Section 440.19(2), Fla. Stat., states that the two-year period is tolled when ". . . [p]ayment of any indemnity benefit or the furnishing of remedial treatment, care, or attendance pursuant to either a notice of injury or a petition for benefits [is made] . . . for one year from the date of such payment." The JCC found the May 9, 2023, payment was not "furnishing of treatment." The DCA analyzed the recent *Estes v. Palm Beach County School Dist*. case. They held that *Estes* controlled, and they did not need to decide whether the May 9, 2023, "date of last payment" of medical treatment acted to toll the statute in this case. Pursuant to *Estes*, the last date of treatment in August 2022 tolled the statute of limitation (SOL) clock for a year thereafter, and the March 2024 PFB was timely.

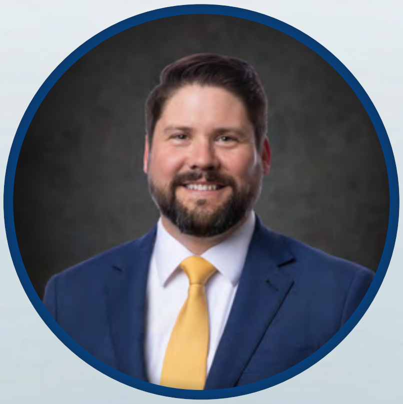
***Teed v. Everest Campus E., LLC*, ___So.3d___ (Fla. 2d DCA 4/8/26)**
Subcontractor Immunity/Section 440.10(1)(e), Fla. Stat.

The plaintiff was employed by a pool servicing company (Bay Guard) and injured while so employed at an apartment complex. His employer had a contract with Tampa SH1 Owner, LCC to maintain the apartment's pool. Everest Campus East, LLC was the property manager under a separate agreement with the owner. Because the property owner separately contracted with a property manager and pool service company to maintain its own apartment complex, the property owner was not a "contractor" under section 440.10(1)(e), Fla. Stat., because it had no primary obligation to perform work for a third party. Therefore, Everest could not claim subcontractor immunity against a negligence suit by an injured Bay Guard employee, and summary judgment in Everest's favor was improper.

***Estes v. Palm Beach Cnty. Sch. Dist./Davies Claims*, ___So.3d___ (Fla. 1st DCA 3/23/26)**
Statute of Limitations

In a 52-page *en banc* decision, the court eliminated the "two year/one year" analysis employed for the last 25 years to determine whether or not a PFB is time-barred under the statute. The claimant's DOA was September 30, 2021, with the last date of authorized medical occurring on January 26, 2023. The E/C asserted her June 13, 2024, PFB was time-barred, as the SOL would have run on January 26, 2024. The underlying JCC determined the claimant's PFB was time-barred under section 440.192(2), Fla. Stat., and prior case law. The order further determined her PFB sought compensability, to which that subsection does not apply. The court analyzed the statutory and case law history of the SOL in workers' compensation and the inclusion of the language in sub-paragraph (2) that obtaining authorized medical benefits ". . . shall toll the limitations period . . . for 1 year from the date of such payment . . . ." After analyzing the term "toll" in various prior cases and scenarios and deeming prior First DCA cases deficient in failing to interpret the term, the DCA held that the plain meaning of the statute supported the claimant's view. They held that because benefits had been provided shortly after her accident, and for 16 months thereafter, those benefits tolled the two-year statute until one year after the E/C furnished the last benefit. According to the DCA, the two-year statute did not even begin to run until the expiration of the separate one-year clock, which would have been in January 2024 at the soonest. Judges Bilbrey and Thomas wrote lengthy dissents.

__W. Rogers Turner, Jr__., is a shareholder in the Winter Park office of HR Law, P.A. He is board certified by The Florida Bar as a specialist in workers' compensation law and is AV rated by Martindale Hubbell. He is a member of The Florida Bar's Workers' Compensation Section Executive Council, past chair of the Board Certification Committee, and past president of the Judge William Wieland American Inn of Court. Mr. Turner earned a B.A. in German and history from Tulane University, an M.P.A. with a concentration in health policy from Florida State University, and a J.D. from Stetson University College of Law.



ATTORNEY SPOTLIGHT

Jesse Rowe

Morgan & Morgan
Daytona Beach, Florida

Who is someone who inspires you and why?

Astrophysicist Neil deGrasse Tyson. He is passionate about his field and can explain complex properties of the universe in a simple, relatable way. He inspires me to keep learning and stay humble.

Why do you practice workers' compensation law?

I fell into workers' comp randomly (as did most of us). I started as a paralegal and spent a lot of one-on-one time with injured workers. I quickly realized how difficult it would be for the average person to navigate the workers' comp system without an attorney. So, I stayed in the practice and made it my specialty. I also enjoy the degree of civility and professionalism within our practice as opposed to many others throughout the state.

Proudest accomplishment within the Section?

Board certification in 2024. It was something I had wanted to achieve and put a lot of effort into.

Favorite workers' compensation law case?

Wyeth/Pharma Field Sales v. Toscano, 40 So.3d 795 (Fla. 1st DCA 2010). When I was a new lawyer, I found it difficult to determine when TPD (temporary partial disability) benefits may be owed. This case provides a clear and concise formula for proving entitlement to TPD benefits and how to handle the affirmative defenses.

What is something few people know about you?

My wife's uncle and godfather is Buck Dharma from the band Blue Öyster Cult of (Don't Fear) The Reaper fame.

Favorite quote?

"You can get used to anything, except a rock in your shoe." – Dad (1953–2009)

Favorite song lyric?

Eat, drink, and be merry. For tomorrow we'll die. – Tripping Billies, Dave Matthews Band

Best place you have traveled and what makes it special?

Thirteen days in Italy, October 2014. My girlfriend (now wife) and I booked the trip to celebrate me finishing law school and (hopefully) passing the bar. The good news came in just before we left. We started in Venice then to Rome, Sorrento/Capri, and back to Rome. We did not have a lot of money, so we had pre-booked some tours and stayed in Airbnbs. We toured ancient Rome, the Vatican, Pompeii, and the Isle of Capri. But mostly we were just winging it.

A family friend put us in contact with a local driver that spoke English. He took us to little-known areas like his wife's hometown on the Amalfi Coast and the Pope's summer residence at Lake Albano.

It was the first (and only) time we traveled to Europe. We absolutely loved the history, culture, and food! We finished the trip with getting engaged while taking in the views atop Anacapri. Three children later, that is still one of our favorite trips.

If you could have lunch with anyone from history, who would it be and why?

Abraham Lincoln. I'm a fan of American military history, so I would love to hear about that firsthand. But also, he was regarded as a trustworthy attorney and great orator. As a president, he showed leadership under extreme pressure in both his professional and personal life—from the loss of his son to navigating the Civil War.

DEFYING UNIFORMITY: Spotlight on Diverse Leaders in the Workers' Compensation Legal Community

Mariam Yanes

MKRS Law

City where you practice?

Miami, Fort Lauderdale, and West Palm Beach.

Where did you grow up?

Miami Lakes.

Where did you go to undergraduate? Major? Law School?

University of Florida with a major in psychology and a minor in criminology. Law school at St. Thomas University.

What made you decide to be an attorney?

I have never been able to watch someone get taken advantage of and do nothing. Growing up, I noticed how often people who lacked power, knowledge, or a voice simply got steamrolled—not because they were wrong, but because no one was in their corner advocating loudly enough. Law felt like the most legitimate, most effective way to be that voice. The irony is not lost on me that I ended up on the defense side—but what drew me here was never about which side of the table I sat on. It was about doing the work rigorously and honestly so that the process itself is fair.

If you could go back in time, what would you tell yourself in your first year of practice?

Slow down and trust the process. In your first year, you feel like everyone else has a manual you never received. They don't. Everyone is figuring it out; they're just better at hiding it. I'd also tell myself: your background is not a liability—it is your greatest asset. The perspective you bring to this table that no one else can replicate is you. Own it from day one.

How long have you been practicing workers' compensation?

18 years.

Do you practice for the claimant or the defense in workers' compensation? Have you ever practiced for the other side?

I am a defense attorney, and I have been on the defense side exclusively throughout my career.

What do you like best about practicing workers' compensation?

The complexity masquerading as simplicity. People assume workers' compensation is a niche, straightforward area of law—and then they sit in on a hearing and realize how wrong they are. Medical causation, credibility, apportionment, compensability—there are so many moving pieces. Every case is a puzzle, and I love puzzles.

If you could change three things in Florida workers' compensation, what would they be?

1. Five calendar days to respond to a one-time change. I think it should be business days.
2. The attorney's fee structure.
3. More consistency in how independent medical examinations are conducted and weighed.

What accomplishment(s) in your career are you most proud of?

There was a case—I won't detail it here—where the facts were not in our favor. However, I took it to final hearing, we prevailed, and the district court agreed. Not because I was the smartest or more seasoned person in the room, but because I was more prepared and aware of the rules of evidence. In the end, the ability to exclude the evidence is what led to our favorable outcome.

What three accomplishments in life are you most proud of?

I am most proud of the family my husband and I created and our children. Being a working mother and wife in a demanding litigation practice is not for the faint of heart, and raising children who are kind and grounded is the work I am most proud of. Second, my career and professional growth. Law is a small world, and workers' compensation in Florida is even smaller. Over the course of my career, I have cultivated relationships—with my partners, colleagues, clients, opposing counsel, judges, and mentors—that are built on mutual respect and trust. Those relationships have helped shape me as an attorney and as a person. Third, my relationships with family and friends. A demanding career can quietly erode the connections that matter most if you are not intentional about protecting them. I am proud of protecting and preserving those valuable relationships.

Do you think pineapple belongs on pizza?

Absolutely not—but I have also never tried it.

Would you rather speak all languages or speak to animals?

All languages—without question. I was raised between cultures and languages; the idea of being able to fully inhabit every conversation, every story, every negotiation across every language is exciting to me.

Which food makes you gag?

Tomatoes. Raw, cooked, marinara sauce, ketchup—the answer is no.

Who would you choose to narrate your life?

My mother. She has always been invested in every aspect of my life with the best and most hopeful outlook. There would be no better choice—just pass her the mic.

In one word, describe how you feel when you watch the sunset?

Anchored.

What would be the title of your Netflix documentary?

"They Didn't See Me Coming."

What is something that has sparked joy for you in the past year?

My family. There is something about watching the people you love simply be—laughing at the dinner table, a random phone call from someone who just wanted to talk—that resets everything. The practice of law can be consuming. Family reminds me that the most important things happening in my life have nothing to do with a case file.

What life hack is now an unconscious standard practice in your everyday life?

Start before the world starts. I learned early in my career that in litigation, the day you planned rarely survives first contact with reality—a hearing runs long, an opposing counsel calls, a client has a crisis, a deadline shifts. The only time that truly belongs to you is the time you claim before any of that begins.

IN THE NEWS

Congratulations to the 2026 Graduating Class of OJCC Certified Scholars!

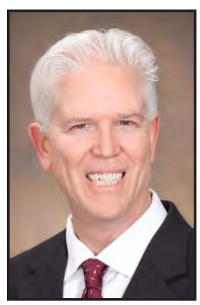
By Judge Jonathan E. Walker

The second class of the OJCC Certified Scholars program celebrated their graduation with a ceremony held April 22 during the 2026 Florida Bar Workers' Compensation Forum in Orlando.

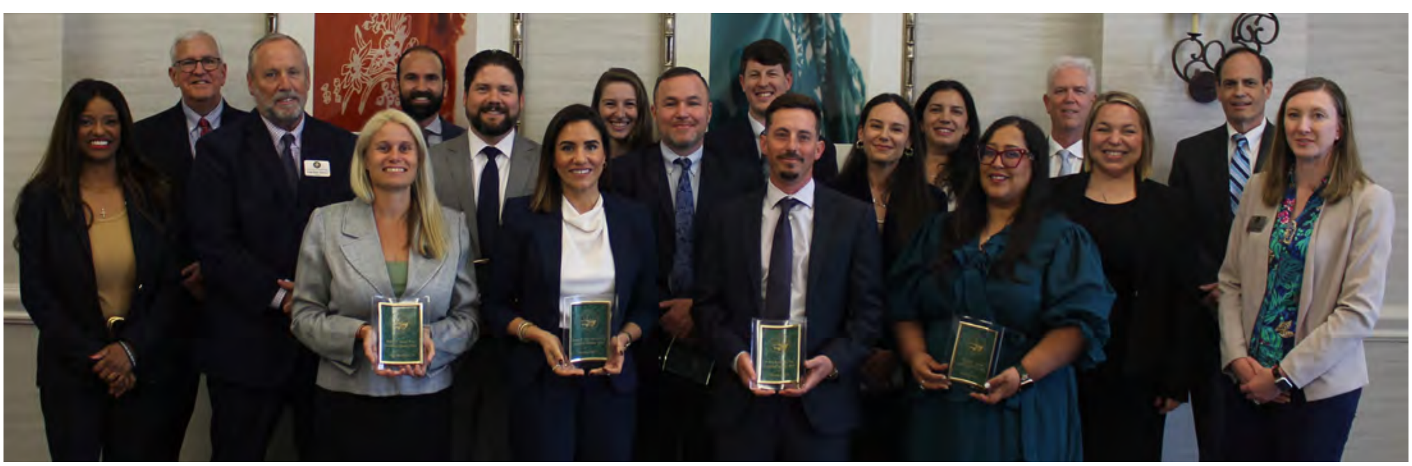
Graduates completed a curriculum that included topics such as workers' compensation history, comparative law, ethics, stress in the practice, engagement, and other subjects geared toward giving the Scholars a wider view of their chosen practice area. Each session featured a single topic with the speakers breaking the larger subject into smaller parts to give greater depth to the curriculum. A brainstorming session at the end of each program offered the participants and the speakers the opportunity to discuss topics of interest arising from each presentation.

Congratulations to the 2026 graduates:

- Holley Akers, with O'Rourke and Akers in Jacksonville
- Natalie Cavallaro, with The Law Office of Roberto Mendez in Tallahassee
- Isidora Eickelmann, with Work Injury Rights in Coral Springs
- Ingrid Hagerty, with Moran Kidd in Miami Lakes
- Joshua Higgins, with Cohen Vaughan in Fort Lauderdale
- Elaura Hodgetts, with McConnaughhay Coonrod in Panama City
- Christine Jermin, with Brown & Brown Insurance in Tampa
- Evan Kegler, with Vecchio Carrier in Lakeland
- Mark Lee, with the Lee Injury Law Firm in Tampa
- Will Ramhofer, with Ramhofer Garcia in Hollywood
- Jesse Rowe, with Morgan & Morgan in Orlando
- Brena Spraker, with Havlicek Spraker PLLC in Orlando



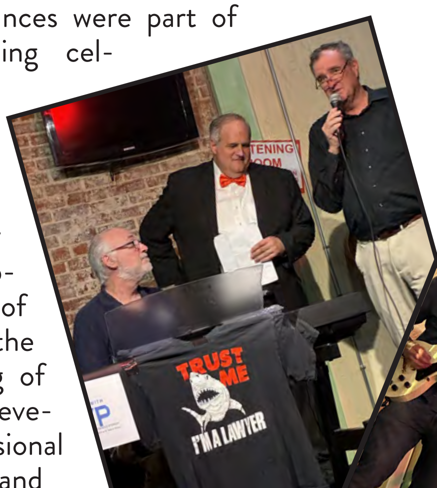
Judge Jonathan E. Walker *serves as a member of the OJCC Certified Scholars Planning Committee and as a member of the OJCC/WCI Tallahassee Winter Seminar Program Committee. He is also a team leader with the C. Roger Vinson American Inns of Court (Pensacola chapter).*

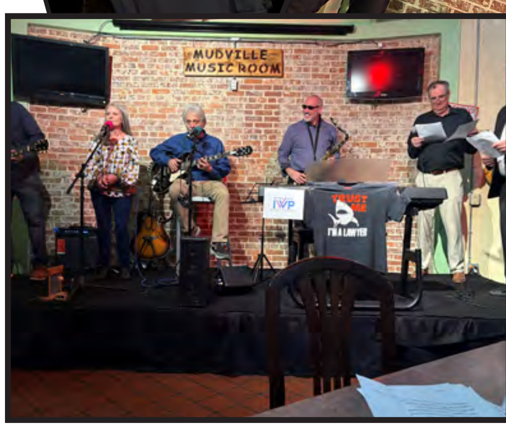


2026 class members and planning committee members pictured from left are committee member Gina Jacobs (2025 Scholar), Judge Ralph Humphries, Judge Brian Anthony, Holley Akers, Josh Higgins, Jesse Rowe, Isidora Eickelmann, Brena Spraker, Mark Lee, Evan Kegler, Will Ramhofer, Elaura Hodgetts, Ingrid Hagerty, Christine Jermin, Judge Jonathan Walker, Natalie Cavallaro, Judge David Langham, and mediator Kate Marshman.

E. Robert Williams American Inn of Court Celebrates Final Meeting With Talent Show, Leadership Tribute, and Surprise Proposal

The musical performances were part of a memorable evening celebrating camaraderie within the legal community and honoring outgoing President Andrew Goshen.





Inn members take the stage during the E. Robert Williams American Inn of Court talent show at Mudville Grille on April 16, 2026.

Members of the E. Robert Williams American Inn of Court gathered April 16 for the organization's final meeting of the 2025–2026 term, an evening that combined professional fellowship, musical talent, and heartfelt tributes to outgoing President Andrew Goshen.

The meeting began with a reception and buffet followed by the traditional ringing of the bell, invocation, and pledge of allegiance led by Chaplain Ed Williamson. Goshen welcomed members and guests and provided updates on Inn activities and opportunities for service in the legal community, including attending the Celebration of Excellence in July and volunteer opportunities with the Guardian Ad Litem program.

The evening's centerpiece was a spirited Inn talent show, emceed by Michael O'Rourke, featuring performances by members and friends, including Anita Bahl, Andrew Goshen, Michael Rudolph, Bradley Sopotnick, Edward Mallow, James Radloff, Judge William Raymond Holley, Michael O'Rourke, and Cameron Miller. Performances ranged from music to comedy and concluded with a lively group encore of *The Weight*.

Two surprise award presentations were also featured during the program.

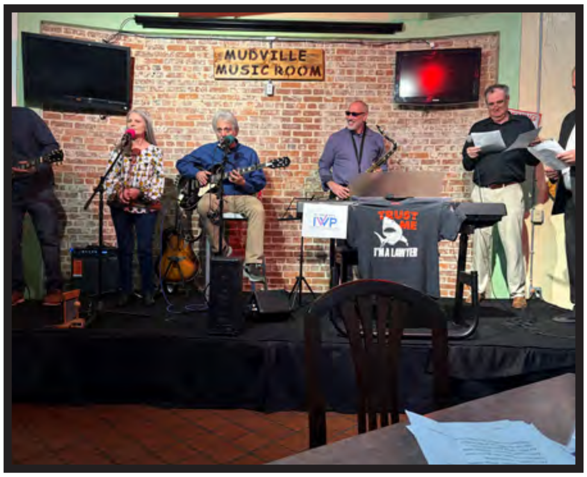
One of the evening's most memorable moments came during the second surprise presentation when O'Rourke turned the stage into a personal celebration, singing a live musical marriage proposal to his longtime girlfriend, drawing enthusiastic applause and marking what many attendees described as one of the most special moments in the Inn's history.

The event also served as a send-off for Goshen as he concluded his term as president and prepares to retire later this year after more than 40 years in the workers' compensation field.

"It was a night to remember," Goshen said following the event. "I could not ask for a better professional send-off. To be honored by friends and colleagues in such a fashion was truly moving."

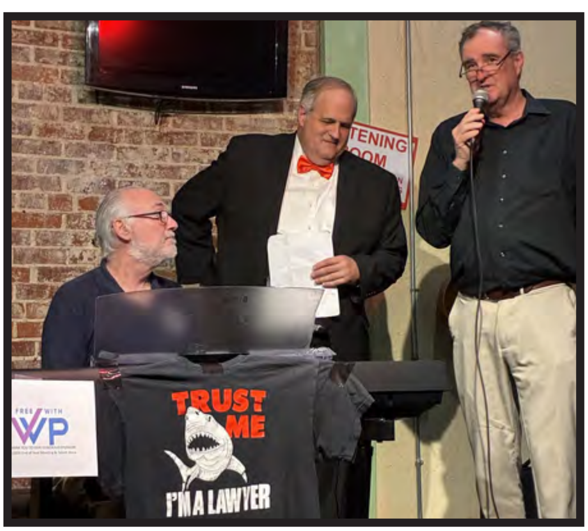
Incoming President Ashley Montoleone was also recognized during the evening, offering members a preview of her leadership as the organization moves into the next term.

The event was made possible with the support of volunteers and longtime sponsors, including IWP, and the participation of members who took the stage and helped create an evening of camaraderie and celebration.



Anita Bahl, Andy Goshen, Mike Rudolph, and Jim Radloff


Brad Sopotnick, Anita Bahl, and Andy Goshen



Ed Mallow, Judge Ray Holley, and Jim Radloff

WCS EXECUTIVE COUNCIL MEETING
August 7, 2026 • 9 a.m.–11 a.m.
Via Zoom

WCS CLE WEBINAR
August 12, 2026 • 11:30 a.m.–2 p.m.
Topic: Establishing Entitlement to TPD Benefits & Available Defenses

WCS OUT-OF-STATE RETREAT
September 23–26, 2026
Charleston Marriott
Charleston, South Carolina

WCS EXECUTIVE COUNCIL MEETING
January 15, 2027 • 11:30 a.m.
Joe's Stone Crab
Miami, Florida

WCS WINTER SKI RETREAT
February 9–13, 2027
Big Sky Resort
Big Sky, Montana

WCS EXECUTIVE COUNCIL MEETING
April 7, 2027
Rosen Shingle Creek
Orlando, Florida

WCS EDUCATIONAL FORUM
April 8–9, 2027
Rosen Shingle Creek
Orlando, Florida